

**PERSONAL INJURY  
COMPENSATION:  
HOW MUCH IS ENOUGH?  
A study of the compensation  
experiences of victims of  
personal injury**



LAW COMMISSION  
LAW COM No 225

LAW COMMISSION

# **The Law Commission**

(LAW COM.No.225)

## **PERSONAL INJURY COMPENSATION: HOW MUCH IS ENOUGH? A study of the compensation experiences of victims of personal injury**

**Item 11 of the Fifth Programme of Law Reform: Damages**

*Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of  
the Law Commissions Act 1965*

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Commissioners are:

The Honourable Mr Justice Brooke, *Chairman*  
Professor Andrew Burrows  
Miss Diana Faber  
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## LAW COMMISSION

# PERSONAL INJURY COMPENSATION: HOW MUCH IS ENOUGH?

A study of the compensation experiences of victims of personal injury  
carried out for the Law Commission

## CONTENTS

	<i>Section</i>	<i>Page</i>
INTRODUCTION BY THE LAW COMMISSION		xv
<b>CHAPTER 1. INTRODUCTION</b>		
Research objectives	1.1	1
The 'adequacy' of damages	1.2	1
The research design	1.3	3
The survey method	1.4	4
Qualitative interviews	1.5	7
Solicitors' files	1.6	8
The structure of the report	1.7	8
The analysis of data	1.8	10
A note on terminology	1.9	11
<b>CHAPTER 2. CHARACTERISTICS OF THE SURVEY RESPONDENTS</b>		
Type of accident or illness for which damages were paid	2.1	13
Date of accident	2.2	14
Period since date of settlement or award	2.3	15
Gender	2.4	15
Age	2.5	17
Marital status	2.6	19
Household size and composition	2.7	21
Ethnic group	2.8	24
Accommodation details	2.9	24
Highest qualification	2.10	26
Economic activity status	2.11	27
Occupation	2.12	29
Socio-economic group	2.13	31
Status	2.14	34
Trade union membership	2.15	34
Summary	2.16	35

	<i>Section</i>	<i>Page</i>
<b>CHAPTER 3. THE AFTERMATH OF THE ACCIDENT</b>		
Injuries suffered as a result of the accident	3.1	37
Effects of injury/illness at time of onset	3.2	40
Later effects of injury/illness	3.3	42
Hospitalisation	3.4	45
Treatment or tests outside of hospital	3.5	45
Private treatment or tests	3.6	46
Home nursing	3.7	48
Extra help with day-to-day tasks	3.8	49
Other aids or assistance needed	3.9	50
Current health condition	3.10	51
Ongoing care and treatment	3.11	59
Current and future effects of injury/illness	3.12	63
Summary	3.13	67
 <b>CHAPTER 4. THE COMPENSATION CLAIM</b>		
Period between accident and claim	4.1	69
Period between accident and settlement	4.2	70
Use of solicitor	4.3	72
Expectations when first making claim	4.4	73
Offers rejected	4.5	73
Interim payments	4.6	74
Settlement or court award	4.7	76
Court of Protection	4.8	77
Provisional damages	4.9	78
Contributory negligence	4.10	81
The construction of settlements	4.11	82
Satisfaction with compensation at time of settlement	4.12	85
Summary	4.13	89
 <b>CHAPTER 5. THE EFFECT OF THE ACCIDENT ON RESPONDENTS' JOBS</b>		
Immediate effect of accident on capacity for work	5.1	91
Leaving the pre-accident job	5.2	92
Returning to the job	5.3	93
The effect of accidents on jobs	5.4	96
Summary	5.5	98
 <b>CHAPTER 6. WORK HISTORY SINCE ACCIDENT</b>		
Work histories since the accident	6.1	101
Returning to work	6.2	108

	<i>Section</i>	<i>Page</i>
First post-accident job	6.3	109
Whether still in job returned to after accident	6.4	111
Number of jobs since accident	6.5	113
Unemployment since the accident	6.6	115
Current employment situation	6.7	115
Current socio-economic group	6.8	118
Early retirement	6.9	120
Looking for work and job search activities	6.10	120
Summary	6.11	121

## **CHAPTER 7. THE IMPACT OF ACCIDENTS ON EARNINGS**

### **I. THE IMMEDIATE IMPACT OF ACCIDENTS ON EARNINGS**

Earnings at time of the accident	7.1	123
Payments received by those who did not return to their job	7.2	125
Payments received by those returning to their job	7.3	130
Summary of short-term impact of accidents on respondents' earnings	7.4	134

### **II. LONGER TERM IMPACT ON EARNINGS**

Returning to a different job	7.5	136
Current earnings compared with earnings at time of accident	7.6	138
Summary of longer term impact on earnings	7.7	143

## **CHAPTER 8. OTHER COSTS AND LOSSES RESULTING FROM THE ACCIDENT**

Private medical treatment	8.1	145
Home nursing	8.2	146
Extra day-to-day help	8.3	147
Aids or assistance	8.4	147
Future costs	8.5	148
Legal costs	8.6	149
Problems paying extra expenses	8.7	150
Savings and debts	8.8	152
Summary	8.9	153

## **CHAPTER 9. INCOME FROM OTHER SOURCES**

Income from insurance policies	9.1	155
State benefits	9.2	155

	<i>Section</i>	<i>Page</i>
Earnings of other household members	9.3	158
Summary	9.4	160

## **CHAPTER 10. THE USE OF DAMAGES**

Planning the use of damages	10.1	161
Savings and investment of damages	10.2	162
Satisfaction with savings and investments	10.3	164
Reasons for not saving or investing damages	10.4	166
Financial advice received	10.5	167
Helpfulness of financial advice	10.6	169
Would financial advice have been helpful?	10.7	170
Approach to the use of damages	10.8	172
How damages were spent	10.9	173
Maintaining and improving the quality of life	10.10	174
Debt reduction	10.11	175
Gifts for family and friends	10.12	175
The structure of settlements and actual expenditure	10.13	176
Amount of damages spent by time of interview	10.14	177
Preference for lump sum or instalments	10.15	180
Freedom to choose how damages are used	10.16	184
Summary	10.17	187

## **CHAPTER 11. THE ADEQUACY OF DAMAGES**

### **I. INFORMATION FROM SURVEY RESPONDENTS**

Extra costs and expenses already incurred	11.1	189
Adequacy of damages to cover future expenses and costs	11.2	195
Adequacy of damages in maintaining standard of living	11.3	199
General levels of satisfaction with settlement at time of interview	11.4	202
Adequacy of damages in relation to non-financial loss	11.5	208
Views about compensating pain and suffering	11.6	210

### **II. INFORMATION FROM SOLICITORS' FILES**

Characteristics of the subsample	11.7	214
Time-lag between accident and settlement in subsample	11.8	216
Claims, offers and settlements	11.9	217
The construction of claims	11.10	222
The accuracy of predictions	11.11	222
The costs of compensation claims	11.12	225
Summary	11.13	228

**CHAPTER 12. STRUCTURED SETTLEMENTS**

The nature of structured settlements	12.1	231
The use and advantages of structured settlements	12.2	232
The adequacy of structured settlements	12.3	233
Summary	12.4	234

**CHAPTER 13. FATALITIES**

Characteristics of recipients at the time of interview	13.1	235
Circumstances of the victim at the time of the accident	13.2	237
Recipients' activity status and job details at time of accident	13.3	238
Type of accident	13.4	238
Impact of accident on work and earnings	13.5	238
Recipients' current activity	13.6	240
Impact of fatality on earnings	13.7	240
Other sources of income	13.8	241
Problems paying costs and expenses	13.9	245
The compensation claim	13.10	246
Use of damages	13.11	248
Adequacy of compensation	13.12	250
Lump sum or instalments	13.13	252
Summary	13.14	253

**CHAPTER 14. SUMMARY AND OVERVIEW**

Chapter 1	Introduction	14.1	255
Chapter 2	The Survey Respondents	14.2	255
Chapter 3	The Aftermath of the Accident	14.3	255
Chapter 4	The Compensation Claim	14.4	256
Chapter 5	The Effect of Accidents on Respondents' Jobs	14.5	257
Chapter 6	Work History	14.6	257
Chapter 7	The Impact of Accidents on Respondents' Earnings	14.7	257
Chapter 8	Other Costs and Losses	14.8	258
Chapter 9	Income From Other Sources	14.9	258
Chapter 10	The Use of Damages	14.10	258
Chapter 11	The Adequacy of Damages	14.11	260
Chapter 12	Structured Settlements	14.12	261
Chapter 13	Fatalities	14.13	261
	Overview of Research Findings	14.14	262



## LIST OF TABLES AND FIGURES

*Page*

### I. TABLES

#### CHAPTER 2

Table 201:	Type of accident for which damages paid: by size of settlement	14
Table 202:	Period between date of accident and date of interview by size of settlement	14
Table 203:	Period between date of settlement and date of interview by size of settlement	15
Table 204:	Type of accident for which damages paid: by gender within band	17
Table 205:	Age at time of accident: by size of settlement	17
Table 206:	Gender and age at time of interview: by size of settlement	18
Table 207:	Age at time of interview: by gender within band	19
Table 208:	Marital status at time of interview: by size of settlement	20
Table 209:	Marital status at time of interview: by gender within band	20
Table 210:	Household size at time of accident: by size of settlement	21
Table 211:	Household composition at time of accident: by size of settlement	21
Table 212:	Household size at time of interview: by size of settlement	22
Table 213:	Household composition at time of interview: by size of settlement	23
Table 214:	Household type at interview: by household type at accident	24
Table 215:	Tenure at time of interview: by size of settlement	25
Table 216:	Length of time at current address: by size of settlement	25
Table 217:	Moved since accident: by size of settlement	26
Table 218:	Highest qualification: by size of settlement	27
Table 219:	Activity status at time of accident: by size of settlement	27
Table 220:	Activity status at time of interview: by size of settlement	28
Table 221:	Activity status at time of interview: by gender within band	29
Table 222:	Occupation group (SOC) of job at time of accident: by size of settlement	30
Table 223:	Occupation group of jobs at time of accident: by gender within band	31
Table 224:	Socio-economic group (SEG) at time of accident: by size of settlement	32
Table 225:	Socio-economic group (SEG) at time of accident: by gender within band	32
Table 226:	Socio-economic group for current or last job: by size of settlement	33

	<i>Page</i>
Table 227: Socio-economic group: by gender within band	34
 <b>CHAPTER 3</b>	
Table 301: Injuries suffered at time of accident: by size of settlement	39
Table 302: Effects of injury/illness at time of accident/onset of illness: by size of settlement	41
Table 303: Later effects of injury/illness: by size of settlement	43
Table 304: Time spent as hospital inpatient as a result of accident: by size of settlement	45
Table 305: Non-hospital treatment: by size of settlement	46
Table 306: Any private medical treatment or tests: by size of settlement	46
Table 307: Reasons for choosing private medical treatment: by size of settlement	48
Table 308: Extra help for day-to-day activities: by size of settlement	49
Table 309: Aids or assistance required: by size of settlement	50
Table 310: Health at time of interview: by date of accident within band	53
Table 311: Long-term health problems or disabilities and whether registered disabled: by size of settlement	55
Table 312: Experience and severity of pain resulting from the accident at the time of interview: by size of settlement	58
Table 313: Requirements for medical attention at time of interview: by size of settlement	60
Table 314: Future home nursing care: by size of settlement	61
Table 315: Future help with day-to-day activities: by size of settlement	62
Table 316: Future aids or assistance: by size of settlement	63
Table 317: Effect of injuries on work or daily activities at time of interview: by size of settlement	64
Table 318: Future expectations: by size of settlement	64
Table 319: Effect of injuries on future work: by size of settlement	65
 <b>CHAPTER 4</b>	
Table 401: Period between accident and claim: by size of settlement	70
Table 402: Period between accident and settlement: by size of settlement	71
Table 403: Offers rejected: by size of settlement	74
Table 404: Interim payments: by size of settlement	75
Table 405: Size of interim payments: by size of settlement	75
Table 406: Provisional damages: by size of settlement	78
Table 407: Contributory negligence: by size of settlement	82
Table 408: What was included in the settlement: by size of settlement	83

	<i>Page</i>
Table 409: Whether extra costs were covered by compensation for those with extra costs	84
Table 410: Whether satisfied with settlement at time: by size of settlement	86
Table 411: Reason for accepting unsatisfactory level of damages: by size of settlement	86

## CHAPTER 5

Table 501: Whether or not returned to job at time of accident: by size of settlement	92
Table 502: Period between accident and formally leaving job: by size of settlement	93
Table 503: Time taken off work before returning: by size of settlement	94
Table 504: Effect of injuries on duties in job: by size of settlement	95
Table 505: Effect on work for all those in work at time of accident: by size of settlement	97
Table 506: Effect on work for those returning to job they were in at time of accident: by size of settlement	98

## CHAPTER 6

Table 601: Summary of work histories since accident of those who were in work at the time of the accident by size of settlement	103
Table 602: Band 1: Work histories since accident: by activity status before accident	105
Table 603: Band 2: Work histories since accident: by activity status before accident	106
Table 604: Band 3: Work histories since accident: by activity status before accident	107
Table 605: Band 4: Work histories since accident: by activity status before accident	108
Table 606: Period between accident and returning to work: by whether returned to previous job or new job within band	108
Table 607: Socio-economic group (SEG) of first job after the accident: by size of settlement	109
Table 608: Socio-economic group (SEG) of first job after the accident: by whether returned to previous job or new job within band	110
Table 609: Bands 2-4: Cross-analysis by SEG of previous job and job after accident	111
Table 610: Whether still in job returned to: by size of settlement	112

	<i>Page</i>
Table 611: Whether still in job returned to: by whether returned to previous job or new job within band	112
Table 612: Number of jobs since accident: by size of settlement	113
Table 613: Activity status at time of interview: by size of damages	116
Table 614: Socio-economic group (SEG) at time of interview: by size of settlement	118
Table 615: A comparison of socio-economic group at time of interview with socio-economic group at time of accident: by size of settlement	119
Table 616: Bands 2-4: A cross-analysis of SEG of job at time of accident with job at time of interview	120
 CHAPTER 7	
Table 701: Usual net weekly pay at time of accident: by gender within band	124
Table 702: Usual gross weekly pay at time of accident: by gender within band	125
Table 703: Pay received before formally left job: by size of settlement	126
Table 704: How long full pay received after accident: by size of settlement	126
Table 705: How long part-pay received after accident: by size of settlement	127
Table 706: Sickness benefit and pay received after accident: by size of settlement	128
Table 707: How long sickness benefit received after accident: by size of settlement	129
Table 708: Special payments when left job: by size of settlement	130
Table 709: Pay received during time off work: by size of settlement	131
Table 710: How long full pay received during period off work: by size of settlement	131
Table 711: How long part pay received during period off work: by size of settlement	132
Table 712: Sickness benefit received during period off work: by size of settlement	133
Table 713: Length of period during which sickness benefit received after accident: by size of settlement	133
Table 714: Weekly take-home pay for those who returned to a different job: by gender (bands 2-4 only)	137
Table 715: A comparison of net earnings after the accident with earnings at the time of the accident for those who returned to a different job: by gender (bands 2-4 only)	138
Table 716: Weekly take-home pay at the time of interview: by gender within band	139
Table 717: Comparison of current earnings with earnings at time of accident for those in work at both times: by gender within band	140

	<i>Page</i>
Table 718: Comparison of current earnings with earnings at time of accident for those in full-time work at time of accident: by size of settlement	141
Table 719: Comparison of current earnings with earnings at time of accident for those in full-time work at time of accident: by gender within band	142
 <b>CHAPTER 8</b>	
Table 801: Payments for private medical treatment or tests: by size of settlement	146
Table 802: Payments for private nursing: by size of settlement	147
Table 803: Payments for extra daily help: by size of settlement	147
Table 804: Payments for aids or assistance: by size of settlement	148
Table 805: Future costs for treatment, assistance or aids: by size of settlement	149
Table 806: Legal costs: by size of settlement	150
Table 807: Problems with expenses before settlement: by size of settlement	151
Table 808: Debts: by size of settlement	152
Table 809: Savings: by size of settlement	153
 <b>CHAPTER 9</b>	
Table 901: State benefits received since accident: by size of damages	156
Table 902: State benefits received at time of interview: by size of settlement	157
Table 903: Reduction in income of other household members: by size of damages	159
Table 904: Increase in income of other household members: by size of damages	160
 <b>CHAPTER 10</b>	
Table 1001: Savings and investments: by size of settlement	163
Table 1002: Advice on how to spend, save or invest damages: by size of settlement	168
Table 1003: How damages were spent: by size of settlement	173
Table 1004: How much of damages spent by time of interview: by size of settlement	177
Table 1005: How much of damages spent by time of interview: by period since settlement and size of settlement	178

	<i>Page</i>
Table 1006: Amount of damages spent among those respondents interviewed 4 years or more after settlement (bands 2-4 only)	180
Table 1007: Preference for lump sum or instalments: by size of settlement	181
Table 1008: Reasons for preferring lump sum: by size of settlement	182
Table 1009: Circumstances when instalments may be preferred: by size of settlement	184
Table 1010: Whether there should be restrictions on spending the damages: by size of settlement	185
Table 1011: Reasons for restricting how damages are spent: by size of settlement	186

## CHAPTER 11

Table 1101: Expenses not covered: by size of settlement	190
Table 1102: How much larger should damages have been to cover extra expenses and costs: by size of settlement	191
Table 1103: Reason damages did not cover extra expenses: by size of settlement	192
Table 1104: Source of money to pay for extra expenses not covered by damages: by size of settlement	194
Table 1105: Adequacy of damages for future expenses and costs: by size of settlement	196
Table 1106: Future expenses and costs not covered by damages: by size of settlement	197
Table 1107: Inclusion in settlement of future expenses not covered: by size of settlement	197
Table 1108: Reason future expenses not included in damages: by size of settlement	198
Table 1109: Source of money to pay for future expenses not covered by damages: by size of settlement	199
Table 1110: Current standard of living compared with period before accident: by size of settlement	200
Table 1111: Long-term standard of living compared with period before accident: by size of settlement	201
Table 1112: Satisfaction with damages at time of interview: by size of settlement	202
Table 1113: Reason for current dissatisfaction: by size of settlement	204
Table 1114: How much larger should damages have been: by size of settlement	208
Table 1115: Reasons for compensating pain and suffering: by size of settlement	211
Table 1116: Reasons for compensating pain and suffering even if victim is unconscious: by size of settlement	213

	<i>Page</i>
Table 1117: Age-groups in subsample	215
Table 1118: Cause of injuries in subsample	215
Table 1119: Settlement size in subsample	216
Table 1120: Year of settlement/award of cases included in subsample	216
Table 1121: Length of time between accident and settlement within settlement bands	217
Table 1122: Summary of claims, offers and settlements	220
Table 1123: Settlement as a percentage of claim	221
Table 1124: Recorded first offer as a percentage of settlement	221
Table 1125: Detail of discrepancies in subsample between employment predictions and outcome	224
Table 1126: Accuracy of work prognosis in relation to period between accident and settlement	225
Table 1127: Plaintiffs' costs	226
Table 1128: Summary of plaintiffs' costs	226
Table 1129: Plaintiffs' costs as a percentage of settlement	227
Table 1130: Plaintiffs' costs in relation to length of time taken to settle claim	228

## CHAPTER 13

Table 1301: Activity status of both victim and recipient before the fatality	240
Table 1302: Comparison of recipients' activity status at time of interview with activity status before accident	241
Table 1303: Fatality sample: state benefits received at any time since accident: state benefits received at time of interview	243
Table 1304: Fatality sample: problems with expenses before settlement	246

## II. FIGURES

Figure 201: Period between date of settlement and date of interview: by size of damages	16
Figure 301: Health condition at time of interview: by size of settlement	52
Figure 601: Work history since accident: by size of settlement	104
Figure 602: Whether left job as a result of accident: by size of settlement	114
Figure 603: Bands 2-4: Activity at time of interview: by age	117
Figure 1001: Proportion spending more than half of compensation: by band within period between settlement and interview	179
Figure 1101: Satisfaction with compensation at time of settlement and at time of interview: by size of settlement	203

# LAW COMMISSION

Item 11 of the Fifth Programme of Law Reform: Damages

## PERSONAL INJURY COMPENSATION: HOW MUCH IS ENOUGH?

### A study of the compensation experiences of victims of personal injury

*To the Right Honourable the Lord Mackay of Clashfern, Lord High Chancellor of Great Britain*

## INTRODUCTION BY THE LAW COMMISSION

1. This report presents the results of a large scale survey of victims of personal injury in the United Kingdom who received damages in respect of personal injuries. It addresses broad questions concerning the adequacy and effectiveness of damages. The study represents the most comprehensive attempt to date to investigate the situation of compensated victims *some time after* the receipt of their compensation and to provide assessments of the adequacy of the damages received in the light of experience. The existing empirical work concerned with compensation for accidental injury and death in Britain is relatively sparse and has tended to focus on the *litigation process* and costs of obtaining compensation,<sup>1</sup> rather than on what happens to accident victims after they have received their damages. Indeed, our knowledge of these matters is very meagre.
2. The report has been written by Professor Hazel Genn of the Faculty of Laws, University College, London,<sup>2</sup> and is based on a survey of victims of personal injury who received damages carried out for the Commission by Social and Community Planning Research (SCPR), an independent non-profitmaking institute specialising in social surveys.
3. This Introduction is intended to set the report in context, presenting the background to, and progress of, the review of the law of damages currently being carried out by this Commission, of which the report is an important part. It also contains a brief outline of the principles of tort compensation for accidental injury. It concludes with appropriate acknowledgements and reference to the way ahead.
4. The Law Commission does not have a standard procedure for harnessing socio-legal research to its law reform consultation exercises. However, it has from time to time used other methods to inform itself where appropriate and resources allow. Questionnaires were developed and sent to trade associations and market

<sup>1</sup> See the studies referred to in Ch 4, n 1 of the empirical report below.

<sup>2</sup> Formerly of the Faculty of Laws, Queen Mary and Westfield College, London.



practitioners as part of the reviews of the law of the sale of goods in bulk and fiduciary duties.<sup>3</sup> Public attitude surveys were used for the divorce and intestacy projects.<sup>4</sup> Pamphlets were designed and circulated to elicit views on the opening of the Land Register and the views of minors on the age of contractual capacity.<sup>5</sup>

5. The Commission has consistently tried to get information about the practical operation of the existing law. The main inhibition on empirical research has been its cost and the fact that it is very time consuming. In this case, we have been able to conduct empirical research to assist us in the study of personal injury damages because significant additional resources were provided by the Lord Chancellor's Department, for which we are most grateful.
6. Prior to finalising the design of our empirical project, the Commission organised a conference with the Society of Public Teachers of Law, and the Faculty of Law of Manchester University.<sup>6</sup> At that conference, we outlined our plans for the damages review, including the empirical research. The research design took account of a number of points arising from discussion at the conference, in particular, that, as well as interviews with victims of personal injury, a follow-up examination of the solicitors' files of a representative sample of victims was desirable.

#### **A review of the law of damages**

7. In June 1991 our Fifth Programme of Law Reform was announced. This included two new items relating to common law. One of these was the remedy of damages.<sup>7</sup> We considered that the time had come for us to carry out:

“...an examination of the principles governing and the effectiveness of the present remedy of damages for monetary and non-monetary loss, with particular regard to personal injury litigation. Certain matters to which specific consideration is to be given include

- (i) the use of structured settlements as an alternative to, or in conjunction with, lump sum awards;
- (ii) deductions and set-offs against monetary loss (other than the recovery provisions of the Social Security Acts 1989 and 1990);

<sup>3</sup> Sale of Goods Forming Part of a Bulk (1993) Law Com No 215, Scot Law Com No 145; Fiduciary Duties and Regulatory Rules (1992) Consultation Paper No 124.

<sup>4</sup> Distribution on Intestacy (1989) Law Com No 187; The Ground for Divorce (1990) Law Com No 192.

<sup>5</sup> Law of Contract: Minor's Contracts (1984) Law Com No 134; Nineteenth Annual Report (1983-4) Law Com No 140, para 2.43.

<sup>6</sup> Compensation for Personal Injuries: Prospects for the Future, 31 March 1992.

<sup>7</sup> Fifth Programme of Law Reform (1991) Law Com No 200, Item 11.

- (iii) awards to cover medical and nursing expenses;
- (iv) bereavement damages;
- (v) the principles relevant to awards of punitive or exemplary damages;
- (vi) the effectiveness of the present remedy of damages in multi-party actions, examining in particular whether awards of damages should be assessed for the class as a whole and the means for determining their allocation to individual parties.”

We noted that the principles upon which courts assess damages, and the continuing effectiveness of the remedy in serving those principles are matters of fundamental importance to the common law, and that we saw our role in examining them as helping a more rational basis to be applied and understood by all those affected by civil litigation. We were aware, however, that in most common law systems it appears only a minority of all victims of accidental injury seek and obtain compensation for their injuries by litigating.<sup>8</sup> Our investigation must be seen in this context.

8. The Commission’s review of the law of damages is not the first of such enquiries. In 1968 the Winn Committee reported on personal injuries litigation,<sup>9</sup> in 1973 we made recommendations in the same area,<sup>10</sup> and in 1978 the Royal Commission chaired by Lord Pearson also investigated the need for legal reform of civil liability and compensation for personal injury.<sup>11</sup> The recommendations made were only partially implemented by the Administration of Justice Act 1982. Other issues raised in the previous investigations remained unresolved and new issues had arisen since. Because of this and because there are strongly held views on the purpose of awards of damages and their adequacy or inadequacy, we recognised in this case that there was a need to go beyond the Commission’s usual pattern of legal research and comparative study, to conduct empirical research.

<sup>8</sup> A study carried out in 1984 by the Harvard Schools of Public Health and Law looking at medical injuries and malpractice estimated that one in sixteen patients who had suffered injury due to medical negligence filed a tort claim. Only half of those filing recovered any compensation (Harvard Medical Practice Study. Patients, doctors, and lawyers, malpractice litigation, and patient compensation in New York. The report of the Harvard Medical Practice Study to the State of New York (1990), Patients, doctors, and lawyers, 7-1). For a British study see D R Harris, M Maclean, H Genn, S Lloyd-Bostock, P Fenn, P Corfield and Y Brittan *Compensation and Support for Illness and Injury* (1984), Chapter 2, and paras 1.7 and 14.14 of the empirical report below.

<sup>9</sup> Report of the Committee on Personal Injuries Litigation (1968), Cmnd 3691.

<sup>10</sup> Report on Personal Injury Litigation - Assessment of Damages (1973), Law Com No 56.

<sup>11</sup> The Report of the Royal Commission on Civil Liability and Compensation for Personal Injury (1978) (the Pearson Commission), Cmnd 7054.

9. Some of the information in this report has already been published in our report on structured settlements and interim and provisional damages.<sup>12</sup> That report followed a consultation paper issued in 1992<sup>13</sup> which had a strong response. We have recommended that structured settlements, a form of damages whereby the plaintiff receives compensation partly as a lump sum and partly as periodic payments backed by an annuity, be made more easily available, to allow plaintiffs choice as to how to receive their damages. This recommendation was solidly supported by the results of our empirical survey, which showed that plaintiffs who suffered greatest losses wanted security and the certainty that their compensation would last into the future. The empirical survey will also inform the provisional recommendations we make in subsequent consultation papers in our damages review, in particular those on pain and suffering and bereavement damages, nervous shock, and medical and nursing expenses.<sup>14</sup>

#### **Principles of tort compensation for accidental injury**

10. Although the tort system is said to have a number of objectives which include deterrence, retribution and appeasement,<sup>15</sup> there is little disagreement that the objective of providing 'compensation' is one of the most significant. The law of tort represents an important opportunity for victims of accidental injury to obtain compensation for the losses they incur as a result of their injury. In 1978 the Pearson Commission estimated that the number of accident victims obtaining compensation through the tort system was just over 200,000 a year.<sup>16</sup> In a national study of the social, legal and economic consequences of accidental injury, Harris et al estimated in 1984 that only 25% of victims of accidental injury considered claiming compensation and only 45% of these actually obtained any damages.<sup>17</sup> The tort system aims to provide full compensation, thus supposedly removing the consequences of the tort for the injured party. A statement of the compensation principle can be found in *Livingston v Rawyards Coal Co*: "...in settling the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has

<sup>12</sup> Structured Settlements and Interim and Provisional Damages (1994) Law Com No 224.

<sup>13</sup> Structured Settlements and Interim and Provisional Damages (1992) Consultation Paper No 125.

<sup>14</sup> The second consultation paper in the damages review, Aggravated, Exemplary and Restitutionary Damages (1993) Consultation Paper No 132, had little scope to be affected by the empirical evidence and in any event, was published before any results were available.

<sup>15</sup> Keith Stanton *The Modern Law of Tort* (1994) p 11; Aggravated, Exemplary and Restitutionary Damages (1993) Consultation Paper No 132, pp 1 and 23.

<sup>16</sup> Royal Commission on Civil Liability and Compensation for Personal Injury (1978) Cmnd 7054, vol 1, table 4, 13.

<sup>17</sup> See Harris, et al (1984) op cit, 46-47.

suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation".<sup>18</sup>

11. Awards of damages in personal injury cases are generally assessed under four main heads as laid out by Lord Denning in *Lim Poh Choo v Camden Health Authority*.<sup>19</sup> The heads are "special damages in the shape of money actually expended. Second, cost of future nursing and attendance and medical expenses. Third, pain and suffering and loss of amenities. Fourth, loss of future earnings." These last three headings are collectively referred to as 'general damages'.<sup>20</sup> The distinction between special and general damages lies in the ability to quantify the losses. Special damages thus consist of financial losses which have been incurred by the date of the trial or settlement. General damages consist of all post-trial pecuniary losses or non-pecuniary losses and may include losses not anticipated in the above quotation, for example, awards for inability to carry out housework, home decoration, or loss of enjoyment of a holiday.<sup>21</sup> General damages used to be awarded as a global sum, but it is now usual for the award to be broken down under broad and more specific headings.<sup>22</sup>

#### **The objectives of the research**

12. The broad objective of the study was to gather information directly from a representative sample of compensated accident victims about their experiences and circumstances several years after the settlement of their claims. In order to achieve the objective, the research posed a great number of detailed questions, probing the courses of the lives of accident victims *following* their settlement. This is an important subject about which we have scant information. We know little of the extent to which predictions about the speed of recovery and the long-term effects of accidents on work, family and social life are borne out in practice. We know little of how compensated victims choose to spend or save their compensation and we have little qualitative data about the impact of accidental injury, whether minor or catastrophic, on the day-to-day existence of those who have been through the legal system and succeeded in gaining compensation for the injuries they have suffered.<sup>23</sup>

<sup>18</sup> (1880) 5 App Cas 25, 39, *per* Lord Blackburn. Quoted in K Stanton *The Modern Law of Tort* (1994), 144. See also Aggravated, Exemplary and Restitutionary Damages (1993) Consultation Paper No 132, para 1.2, n 3.

<sup>19</sup> [1979] QB 196, 217-218 (CA).

<sup>20</sup> See also Structured Settlements and Interim and Provisional Damages (1994) Law Com No 224, paras 2.1-2.2.

<sup>21</sup> See generally R A Buckley *The Modern Law of Negligence* (1993), Chs 7 and 8.

<sup>22</sup> Structured Settlements and Interim and Provisional Damages (1994) Law Com No 224, para 2.17.

<sup>23</sup> Some useful information can be derived from a small empirical exercise carried out by the Disability Management Research Group at the University of Edinburgh and completed in 1993: Paul Cornes *Coping with Catastrophic Injury - A follow-up survey of personal injury claimants who received awards of £150,000 or more in 1987 and 1988* (January 1993), published in June

13. We envisaged that such empirical research would provide statistical backing to our analytical and consultative research, to inform and assist us in the development of policy and recommendations for reform. To that end we now present the report. However, it is also our hope that the report, containing the results of our empirical research, will have a wider influence, assisting in the consideration and formulation of policy on compensation for personal injury generally. As a body of information which will be generally available it will also influence the process of rebuilding the ruined lives of those afflicted by personal injury when referred to by those who will have a natural interest in its contents - lawyers, the judiciary, insurance companies, financial advisers, government departments, the victims themselves and those involved in their recovery and rehabilitation. Finally, we consider that those concerned with the administration of civil litigation will find much of interest in the report.<sup>24</sup>

14. The findings<sup>25</sup> constitute a rich collection of data about the remedy of damages in personal injury litigation. Some of these findings are striking:

- ◆ It appears that minor injuries may have unexpectedly severe consequences while relatively serious injuries may not necessarily result in substantial settlements.
- ◆ Surprisingly, four in five victims were still experiencing pain at the time of interview, and two in five were in constant pain.
- ◆ A high proportion of accident victims in all settlement ranges do not return to work at all after their accident, or return for a time but are forced to leave due to the continuing effect of the injuries.
- ◆ There is a significant burden of unpaid care shouldered by parents, spouses and friends of injury victims.
- ◆ Although most victims experience satisfaction at the time of settlement when faced with what appears to be a substantial sum of money, this satisfaction drains away over time when the reality of long-term ill-effects and reduced capacity for work bite.

1993. This study was funded by the Association of British Insurers and was part of a research and development programme in rehabilitation. The study focused on the first decade after injury of 83 victims of personal injury and brought to light some discrepancies between predicted requirements for services, care, practical assistance, adaptations and equipment in terms of rehabilitation. It also found that apart from the purchase of property, awards were usually conserved in anticipation of future contingencies - there were no examples of profligacy.

<sup>24</sup> For example, the Supreme Court Procedure Committee, and the inquiry into the civil justice system announced by the Lord Chancellor's Department in May 1994, chaired by Lord Woolf (the Woolf Inquiry).

<sup>25</sup> Which are summarised in Chapter 14 of the empirical report below.

- ◆ Many respondents are unprepared for the impact of their injuries on their capacity for work. A high proportion of those who eventually returned to a different job received much lower average earnings than reported in the job they had before the accident.
  - ◆ Most victims are keen to preserve the value of their damages for the future. However, on the whole they do not appear to be in the best position to yield the maximum returns from their damages. The availability of independent financial advice is patchy. Accident victims are not profligate, but they may regret the choices they make.
15. The survey also found that the majority of accident victims had to wait for very long periods before they received their damages and the delay increased with size of the settlement. Delay in civil litigation has been the subject of comment and research over many years.<sup>26</sup> Although some degree of delay is unavoidable while the parties wait for the medical condition of the plaintiff to reach a plateau, a substantial proportion of cases, both large and small, remain unsettled four years after the date of the accident. There are a number of significant ramifications arising from such delay. During the litigation process the victim and the victim's family face a prolonged period of financial difficulty during which debts accumulate, savings are reduced and legal costs increase. These lengthy periods of financial hardship, in addition to physical distress, affect the degree of satisfaction with damages and attitudes to adequacy. The stress of litigation and apprehension about the future may impede recovery, which has an impact on the probability that accident victims will eventually return to the workforce. Delay in receiving damages also influences decisions about the use of money as accident victims seek to make up for the material comforts that they have lacked in the years while waiting for their case to be settled.

### **Acknowledgments**

16. We wish to thank and commend Professor Hazel Genn for interpreting and weaving together the enormous amounts of data arising from the survey into this special report, which, we believe, makes a substantial contribution to understanding this area of the law. We must also express our thanks to the Association of British Insurers (ABI) and the Medical Protection Society, the Medical Defence Union and the Law Society, without whose assistance the survey would not have got off the ground. The solicitors who voluntarily gave their time and energy to locate files for us are owed a debt of thanks and we also wish to record the debt which the Commission owes to Mr Bob Erens, Mr Andrew Thomas and their co-workers at

<sup>26</sup> See eg: the Report of the Pearson Commission (1978), Cmnd 7054, paras 181, 234, 252-4, 992 and 1730; Harris et al (1984) op cit, ch 3; H Genn *Hard Bargaining* (1987), ch 6. The Civil Justice Review considered the problem of delay in relation to actions for personal injury (the Report of the Review Body on Civil Justice (1988), Cm 394, ch 7), and the Woolf Inquiry will also be reexamining the issue.

SCPR who assisted in the survey. All of these people went beyond the call of duty to complete a task which grew beyond that envisaged at the outset. Mr Mike Horton, Ms Caroline Law and Mr Pascoe Pleasence gave invaluable assistance to Professor Genn for which she and we are grateful. Finally, special thanks are owed to the victims of personal injury throughout the United Kingdom who voluntarily gave their time to be interviewed for the survey, although in many cases discussing the accident or illness which led to their injury or the death of a loved one must still have been most distressing. We hope that the product of all these endeavours will receive the wide public acknowledgment, and will have the effect, it deserves.

### **Conclusion**

17. The law of damages has developed largely on a case by case basis and not by statute. This development has been augmented by mainly anecdotal evidence about what people who have suffered personal injury in the United Kingdom feel about the principles which govern what losses they will be compensated for and the value which the legal system places on those losses, what they do with their damages, and how long their damages last. In 1989, the Solicitor General, Sir Nicholas Lyell suggested that "... a careful, partly academic, partly practical study of what is awarded" was required before it could be said that current personal injury damages were too low.<sup>27</sup> This report represents the first substantial empirical evidence in this country of the answers to those previously vexing questions. It is therefore a major step towards our declared objective of helping to develop a more rational basis to be applied and understood by all those affected by civil litigation, and a solid basis upon which we can complete our review of the law of damages.

*(Signed)* HENRY BROOKE, *Chairman*  
JACK BEATSON  
DIANA FABER  
CHARLES HARPUM  
STEPHEN SILBER

MICHAEL SAYERS, *Secretary*  
7 September 1994

<sup>27</sup> Together with a comparative study of the kind of damages awarded in other, similar countries. Standing Committee C (Citizen's Compensation Bill), Hansard, 3 May 1989, col 8.

**PERSONAL INJURY COMPENSATION:  
HOW MUCH IS ENOUGH?**

**A study of the compensation experiences  
of victims of personal injury**

*September 1994*



# CHAPTER 1. INTRODUCTION

## 1.1 Research objectives

The broad objective of this research was to provide empirical evidence that would have a direct bearing on questions concerning the adequacy and effectiveness of the remedy of damages for personal injury. In order to achieve this objective the research was designed to gather information directly from a representative sample of victims of personal injury who had claimed and received damages for their injuries through the tort system. The intention was to undertake a comprehensive investigation of the experiences and circumstances of compensated accident victims several years *after* they had received their damages. An exercise on this scale has not previously been undertaken in Britain and as a result little reliable information is available on matters such as: whether and when respondents return to work; whether income returns to its pre-accident level; whether and when compensated accident victims recover their health in the years after receiving their compensation. Most importantly we do not know whether the damages received by accident victims are sufficient to cover their losses, how such damages are used, whether accident victims are prudent or profligate, and what advice is obtained about the management of damages payments that may have to yield a substitute income for the rest of the life of the accident victim. Evidence on all of these questions, and many more, has been gathered by means of a representative survey of compensated accident victims, supplemented by in-depth qualitative interviews and documentary evidence from case files.

## 1.2 The 'adequacy' of damages

Unlike state compensation where levels of benefit are set with little reference to individual cases, some of the claimed advantages of tort compensation are: first, that it purports to provide 'full compensation'; and second, that it has the ability to provide awards based on individualised assessments of past losses and future needs. However, whether or not an award will at the end of the day be 'adequate' to cover past and future losses depends on a large number of factors.

As far as *past losses* are concerned, the adequacy of compensation will depend on the accuracy of the assessment of past losses and whether the sum awarded meets that assessment. The final sum agreed by way of compensation may be less than the assessment of past losses for a number of reasons. First, because although the amount claimed is accepted by the defendant, it may be reduced as a result of an allegation of contributory negligence. Second, because although the sum claimed is one that would cover losses, a lower sum is accepted as a result of a discount on settlement for avoiding the uncertainties of trial, or negotiating pressures that lead the plaintiff to settle for a sum less than that claimed<sup>1</sup>.

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<sup>1</sup> See D R Harris, M Maclean, H Genn, S Lloyd-Bostock, P Fenn, P Corfield and Y Brittan *Compensation and Support for Illness and Injury* (1984) (Oxford: Clarendon Press); H G Genn *Hard Bargaining: Out of Court Settlement in Personal Injury Claims*, (1987) (Oxford: Clarendon Press).

The adequacy of compensation in terms of meeting *future needs*<sup>2</sup> depends on the assessments made of such needs at the time of trial or settlement. This is a complicated procedure which is inevitably subject to error, causing either over-compensation or under-compensation. Under the current system, damages are awarded as a once and for all, lump-sum payment with virtually no possibility of the award being modified at a later stage because of deterioration or improvement in the injured victim's condition or circumstances. The result is that in cases where there are likely to be continuing future losses, complicated predictions about the future must be attempted in order to arrive at a settlement figure. Assessments must be made about what the plaintiff's situation would have been, had the accident not occurred. Would the accident victim have remained in that job? Would the victim have been promoted? How much could or would the victim have earned? Predictions must also be made about what is likely to happen to the plaintiff in the future. What course will the medical condition take? What work and social activities will the plaintiff be able to undertake? What care might be needed, what equipment might be needed? What medical services will be needed? How will the plaintiff's social, family and sexual life be affected in the future? These predictions are naturally very difficult to make with any degree of reliability, and the expert opinions available to assist in making educated guesses may legitimately differ.

In addition to the difficulties involved in calculating a lump sum that is likely to meet the future needs of accident victims, the ultimate adequacy of the award will also depend on the management of the lump sum by the plaintiff or the plaintiff's relatives. One of the most enduring criticisms of the lump sum method of compensation is the argument that plaintiffs do not manage their money effectively, that lump sums become dissipated and that, having exhausted the lump sum, injury victims may become dependent on the State. There is little reliable information on this issue, and the only work to be carried out in this country to date provides contradictory evidence. The Pearson Commission's survey of compensation for personal injury indicated that only five percent of recipients invested any of their funds.<sup>3</sup> The Oxford study of the social, legal and economic consequences of accidental injury ("the Oxford Study") published in 1984<sup>4</sup> included some evidence of the use of damages by injury victims. This study indicated that although most compensated victims did not seek professional advice about the use of money, the majority used some or all of their lump sum in a way that was designed to preserve its benefit for the future, despite the fact that most of the accident victims included in that study had received relatively small sums by way of compensation.<sup>5</sup>

Similar findings on the use of compensation have been made in a recent study of accident victims attending the Accident Service of a hospital in Oxford carried out between 1988 and

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<sup>2</sup> See the extended discussion of the difficulties of estimating future losses in *Structured Settlements and Interim and Provisional Damages* (1994) Law Com No 224 Part II. See also R Lewis *Structured Settlements the Law and Practice* (1993) Chapter 2.

<sup>3</sup> The Pearson Report, Vol 1, p 123, para 562

<sup>4</sup> Harris et al (1984) op cit.

<sup>5</sup> Ibid, Chapter 3.

1993.<sup>6</sup> The study collected information about the compensation claims of 96 road accident victims. Among the 56 respondents who had settled their claims by the third year after the accident, the vast majority had settled their claims for £10,000 or less (44 victims); four accident victims had settled for £20,000 and 5 for more than £20,000. Since the amounts received among this sample were relatively low, it was not surprising that the researchers found that the most frequent use of money was to replace savings and to repay loans. Other uses were to improve the home, purchase a car or motorbike, replace damaged articles, take a holiday or provide treats for the family.<sup>7</sup>

An important study of accident victims who had suffered catastrophic injuries, was reported in 1993 ("the Edinburgh Study").<sup>8</sup> Follow-up interviews with 83 accident victims (or their carers) who had received £150,000 or more was conducted on average ten years after injury. That study provided little evidence of 'profligacy'. Apart from the purchase of property the author found that, 'awards were usually conserved in anticipation of future contingencies.'<sup>9</sup>

There are therefore a wide range of issues regarding the use and adequacy of damages, and the circumstances of accident victims in the years *after* their settlement upon which reliable information is needed. The intention of the Law Commission in carrying out a substantial empirical study was to provide factual evidence that would assist its review of damages and proposals for the future. It is also hoped that the information from the survey will support informed debate on the Commission's recommendations, and on wider issues concerning the operation of the tort system and the litigation process.

### 1.3 The research design

The research was designed to provide statistical evidence that was representative of compensated accident victims as a whole; and to generate in-depth qualitative data that would provide a greater richness of information about the experiences of accident victims and the course of their lives *following* settlement.

In order to achieve these objectives data were collected in three ways. First, by means of a large scale survey consisting of face-to-face structured interviews with 761 people who received compensation payments in respect of accidental injury, work-related illness, or for the accidental death of a relative. Second, by means of unstructured qualitative interviews<sup>10</sup> conducted with 52 accident victims. Finally, information relating to a subsample of the survey respondents was collected from the closed case files held by their solicitors.

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<sup>6</sup> B Bryant et al *Compensation Claims Following Road Accidents* (1993) (University of Oxford: Department of Psychiatry) Unpublished Paper.

<sup>7</sup> Ibid, Table 10, p 22.

<sup>8</sup> Paul Cornes *Coping with Catastrophic Injury* (1993) (Edinburgh:University of Edinburgh)

<sup>9</sup> Ibid, pp 57-58.

<sup>10</sup> See Andrew Thomas *Report of Qualitative Survey* (1994) SCPR.

## 1.4 The survey method<sup>11</sup>

The sample consisted of people living in England and Wales who had settled<sup>12</sup> their claim for damages between January 1987 and December 1991. The date of the accident, however, had usually occurred much earlier. The sample of compensated accident victims was selected from the records of 15 of the 20 largest insurance companies in the country.<sup>13</sup> The sample included respondents who had received damages in respect of accidental injury or work-related illnesses, and those who had received damages as a result of the death in an accident of a spouse (or other close relative). Throughout this report the former group is referred to as "accident victims", and the latter as "fatalities". Of the 761 cases where successful interviews were completed, 654 involved accident victims and in 107 cases compensation was received as a result of a fatality.

Lists were obtained from insurance company records of settled claims going back as far in time as each company's records would allow. We had wanted to interview respondents several years after the date of their settlement so that a reasonable period would have elapsed in which to assess the adequacy of damages. We discovered, however, that most companies destroy their records three years after settlement, and some even sooner. Since we were unable to retrieve cases before 1987, the longest period between settlement and interview was six years. The date of accident, however, was usually much earlier because of the delay between accident and settlement of claims, so that we are able to consider the effects of accidents over a considerable period.

In order to draw comparisons between the experiences and situations of victims receiving different levels of damages, the sample drawn from insurance company records was stratified into four settlement 'bands':

Band 1	£ 5,000-£19,999
Band 2	£ 20,000-£49,999
Band 3	£ 50,000-£99,999
Band 4	£100,000 or more

Since the vast majority of damages awards and settlements are for relatively small sums of money, the greatest number of insurance company cases from which the sample was selected fell in band 1, and the number of settlements decreased for each subsequent band. A simple random selection of cases from insurance company files would have resulted in a sample

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<sup>11</sup> The survey was conducted by Social and Community Planning Research who have published a Report of the survey. See Bob Erens *Recipients of Personal Injury Compensation* (1994) SCPR. The Report contains further detail on sample design, survey method and data analysis in the Technical Appendix.

<sup>12</sup> The term "settlement" is used throughout this Report to include both out of court settlements and the small number of cases in which damages were awarded by the court. See Chapter 4 section 4.7 for details of court awards and see section 1.9 for a note on the terminology used in the Report.

<sup>13</sup> We are grateful to the ABI for their assistance and to the insurance companies who agreed to co-operate with the research and who devoted considerable time and resources to providing us with lists from which to sample and in completing sampling sheets.

largely comprising small settlements.<sup>14</sup> Therefore, band 1 was significantly under-sampled, while larger awards (bands 2-4) were over-sampled to ensure sufficient numbers of cases of large settlements for analysis. The difference in the sampling fractions was such that, for analysis purposes, small awards in band 1 are analysed separately throughout this Report from awards of £20,000 or more (bands 2-4).

In all, 220 of the survey respondents had received settlements or awards of between £5,000 and £19,999 (band 1). Settlements of £20,000 or more were fairly evenly distributed between the other three bands: among the non-fatalities, 170 respondents (39% of the sample) received damages of £20,000 – £49,999 (band 2); 130 respondents (30% of the sample) received damages of £50,000 – £99,999 (band 3); and 134 respondents (31% of the sample) received damages of £100,000 or more (band 4).

The amount of damages received by accident victims as a result of tort claims depends on a large number of factors, and it is therefore difficult to provide average examples of the kinds of cases that might fall into any one of the above settlement bands. However, in order to provide some bench-marks the following cases have been selected from Kemp & Kemp in order to illustrate the kinds of injuries and circumstances that would attract damages falling within the four bands used in our analysis:

Band 1:           £5,000 – £19,999

*Madeley v Baxters Butchers* (1985) Kemp & Kemp, Vol 3, 58654. Married woman with two children, aged 45 at accident. Injured right hand in unguarded machinery. Major useful function of hand gone (she was right-handed). Pain and aching. Deformity and scar. Ability to do housework and hobbies affected. Off work 90 weeks. Returned to different work with same employers. Special damages: £1,374. £3,000 *Smith v Manchester* award (for disadvantage on labour market). General damages: £15,000. **Total: £19,370.**

Band 2:           £20,000 – £49,999

*Blamire v South Cumbria Health Authority* [1993] PIQR Q1, Kemp & Kemp, Vol 2, 55313. Female, aged 22 at accident. Lifting injury to lower back while working as nurse. Pain and discomfort for five years to trial. Permanently vulnerable back with likelihood of recurring painful episodes. Future loss of earnings, loss of earning capacity and loss of pension benefits £25,000. £11,000 for non-pecuniary loss and loss of career. £3,000 past loss of earnings. **Total: £39,000.**

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<sup>14</sup> This is what occurred in the Oxford study which was based on a sample drawn from the general population.

Band 3: £50,000 – £99,000

*Comber v Greater Glasgow Health Board* (1991) Kemp & Kemp, Vol 3, 53603. Unsuccessful plastic surgery on woman when aged 13 and subsequently to remedy moderately deformed face. Appearance distinctly worse after 27 operations. Mental distress, suicide attempts, continuing headaches, double vision. Adolescence disrupted and no career. Poor future employment prospects. Non-pecuniary loss £40,000, past loss of earnings £10,000, future loss of earnings £24,000. **Total: £74,000.**

Band 4: £100,000 and over

*Cassel v Hammersmith and Fulham Health Authority* [1992] PIQR Q1, Kemp & Kemp, Vol 3, 51502. Grave and irreparable brain damage to boy asphyxiated at birth. Suffering from cerebral palsy. Health authority admitted negligence. Non-pecuniary loss £110,000, past paid care £25,678, past parental care £53,125, past medical costs £16,948, future care £508,574, future accommodation £13,000, cost of small swimming pool £32,500, future costs of purchases for carers £13,014, future costs educational tour £2,625, miscellaneous costs including holidays £49,960, future costs of appliances and medical costs £7,762, future loss of earnings £350,000, Court of Protection fees £47,700. **Total: £1,186,550.**

The initial sample was selected from the records of insurance companies. Those selected were sent an advance letter from the Law Commission to notify them of their inclusion in the study and to give them an opportunity to decline to take part in the survey. The names and addresses of recipients who did not opt out of the study were issued to interviewers. Of 968 possible interviews,<sup>15</sup> 761 were productive, giving a response rate of 79%.

Interviews were carried out between May and July 1993 and were relatively long, averaging about 82 minutes for accident victims and 58 minutes for fatalities. In a small number of cases (8), the sampled accident victim had died since the settlement of the claim and interviews were carried out with the victim's spouse or other relative as a proxy respondent. These interviews were analyzed together with those of other accident victims, and *not* with the fatalities; the latter category only includes people who were paid damages because of the *death* of a spouse (or other relative). Where appropriate, (for example questions relating to future effects of injuries), the cases in which the respondents had died since settlement have been excluded from the analysis and are not shown in table base numbers.

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<sup>15</sup> Some 1239 names and addresses were passed on to interviewers of which 271 were out of scope, for example because the address was untraceable or derelict, the person had moved to an unknown address, or because the respondent had died; thus leaving 968 in scope. In 207 cases interviews could not be carried out, for example, because the respondent refused (159 cases) or another member of the household refused on behalf of the respondent (19 cases); or because the respondent was sick or away during survey period (10 cases). For full details of response rate see the Technical Report appended to the SCPR report of the survey op cit (1994).

The main objectives of the survey were:

- i) to examine the types of accidents and injuries which led to the claim for personal injury damages
- ii) to investigate the effects of the injuries (or bereavement) on work, earnings, household income, and future job prospects
- iii) to describe the various types of costs and expenses which result from the injuries (or bereavement)
- iv) to examine respondents' use of, and satisfaction with, their compensation
- v) to investigate whether accident victims receive damages that are adequate to cover past and future losses and expenses resulting from their injuries.

The interview schedule was therefore divided into six main sections:<sup>16</sup> background information; details of injury/illness; effect of injury/illness on work and earnings; care, treatment and expenses; details of claim; savings, use of damages, views and background data.

The questionnaire administered to those respondents who had received damages in respect of fatal injuries was very similar to that used for victims of injury and disease, but excluded, for example, questions concerning health problems suffered by the victim, future care and assistance for the victim, and prospects concerning future work.

### **1.5 Qualitative interviews**

The qualitative research was based on a series of in-depth interviews with people who had settled a claim for personal injury. A total of 52 people, all living in England, took part. Participants were selected to reflect a wide range of characteristics, experiences and levels of settlement, but with a particular focus on people receiving settlements in excess of £100,000. Some of the interviews were conducted at an early stage in the research in order to assist in the development of the main structured survey. The interviews were carried out in two phases during June–August 1992 and May–July 1993. They lasted 1–1½ hours and were tape recorded and transcribed verbatim to allow a detailed content analysis to be undertaken.

Interviews were conducted in two parts; the first taking around ten minutes obtained background information, household composition and income. The major part of the interview, lasting around an hour, used a topic guide and in-depth interviewing methods to explore a range of issues including:

- the nature of the injury and its subsequent effects;
- details of the compensation claim
- how people used their settlement money, and its perceived adequacy in meeting their needs.

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<sup>16</sup> The questionnaire used is appended to the SCPR report (1994) op cit.

Although interviews were based on a common framework, the style of questioning was responsive to the person's individual circumstances and experiences.

## **1.6 Solicitors' files**

Experience of previous research in this field<sup>17</sup> suggested that respondents might be unable to give detailed information about the specific breakdown of their damages payment or the items that the money was intended to cover. It was also argued during the planning stage of the research<sup>18</sup> that an analysis of the 'adequacy' of damages settlements would need to be based on reliable information about the components of settlements, as well as predictions made at the time of settlement or trial, and with reference to reductions in damages as a result of contributory negligence. This kind of information could only reliably be obtained from solicitors' files. It was therefore decided to match information about a subsample of respondents interviewed in the main survey with information obtained from their solicitor's file. In order to undertake this exercise, all respondents interviewed during the main survey were asked whether they would complete a form authorising their solicitor to allow Law Commission researchers to read the case file held by their solicitor. Most respondents agreed to do this. Solicitors were contacted in order to trace the original case files. Although in a number of cases the files had been destroyed or were unobtainable for other reasons, we succeeded in reading and extracting data from a total of 92 files. The information from these files was compared with the information obtained in the survey interview, and the result of this exercise is reported in Chapter 11, sections 11.7 to 11.12.

## **1.7 The structure of the report**

This Report represents a synthesis of the analysis of data collected by means of survey interviews, in-depth qualitative interviews, and information extracted from solicitors' case files. While the survey data enable us to make statistically reliable generalisations about the circumstances of compensated accident victims in general, information from in-depth interviews permits us to provide a greater richness of information about the experiences of those particular accident victims, and about the situation that they now find themselves in some years after the settlement of their claim for damages. The information from files provides supplementary evidence on claims, settlements and adequacy of damages.

During the course of the survey a huge quantity of factual and attitudinal information was gathered. This Report attempts to present that information in a logical and accessible form. Although most chapters include a large amount of tabulated statistical data, the text draws attention to the key features of tables and summarises the results of the analysis. Extracts of interviews presented within this Report have been reproduced verbatim from survey questionnaires or transcripts of qualitative interviews.

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<sup>17</sup> For example the Oxford survey, Harris et al (1984) op cit.

<sup>18</sup> During discussion of the proposed research at a Conference at the University of Manchester, Compensation for Personal Injury: Prospects for the Future, March 1992.



In reading the results of this research it should be borne in mind that the population about whom we make generalizations throughout the Report are *compensated accident victims* and not *accident victims as a whole*. As previous research has shown,<sup>19</sup> only a minority of all victims of accidental injury seek and obtain compensation for their injuries. The circumstances and experiences of accident victims who do not consider making a claim, those who fail to seek advice about making a claim, and those who cannot establish that their injuries have been negligently caused or who abandon their claim in the process of attempting to prove negligence, cannot form part of this survey, since our respondents are drawn from and are representative of those accident victims who succeeded in obtaining damages through the tort system. Generalizations within this Report, therefore, based on factual information about the effects of injuries and the losses incurred by respondents, as well as the perceptions and experiences of the sample, relate only to victims of accidental injury who have obtained damages through the tort system.

A second point that should be borne in mind when reviewing the results of the research is that the amount of damages received by respondents in the survey is a reflection of past and future losses and expenses, and *not* a measure of the seriousness of injury and degree of continuing impairment. Although there is clearly an association between severity of injury and amount of damages, it is nevertheless the case that seriously injured victims who are older, those who are in low-income jobs at the time of their accident, those who are not in paid employment but are looking after a home and children, and those who have already retired at the time of their accident, will all receive lower damages than, for example, a young man in full-time highly paid work who suffers an injury of similar severity. This fact is not a distortion of the tort system, but a reflection of the objectives of the system. Damages are paid on the basis of the *past and future losses* of the individual injured victim in order to put that victim, as far as possible, back into the position he or she would have been in were it not for the accident. This means that although those receiving the highest settlements will all have suffered catastrophic or very serious injuries, the lower settlement bands also include seriously injured victims who, for one reason or another, received more modest damages.

Chapter 2 of the Report describes the demographic characteristics of the survey respondents at the time of their accident and at the time of the interview. Chapter 3 describes the immediate aftermath of accidents, the injuries suffered by members of the sample, and the care and treatment required in the early days following the accident. The Chapter then focuses on the situation of compensated accident victims at the time of their interview, in relation to their health, their continuing need for care and support, and their ability to work.

In Chapter 4 we trace the course of accident victims' compensation claims, and includes information about interim damages, provisional damages, offers and settlements. The Chapter also describes respondents' levels of satisfaction with their damages at the time of the settlement of the claim. Chapters 5 and 6 deal with the effect of injuries on accident victims' jobs, looking at whether, and how quickly, they returned to the job they were in when their accident occurred; the ways in which their capacity for work was affected in the short term; and then the extent to which their capacity for work has been affected in the long term. These Chapters provide considerable detail about the ways in which both relatively minor and

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<sup>19</sup> Harris et al (1984) op cit, Chapter 2.

more serious accidents can have profound effects on victims' future capacity for work and their success in finding alternative employment.

The immediate and longer-term impact of accidents on victims' earnings is assessed in Chapter 7, while Chapter 8 summarises the extra expenses and losses caused by the accident other than lost earnings. Chapter 9 provides information about the sources of financial support received by victims following their accident and the effects of the accident on the employment of other household members.

Chapter 10 presents information about the ways that compensated accident victims used their damages. The Chapter discusses the way that victims plan their expenditure and the advice they receive; the ways in which accident victims saved and invested their damages; as well as the ways in which they spent their money. We also look at respondents' attitudes to lump sum and periodic payments, and their views on the extent to which compensated accident victims should be free to make their own decisions about how to use their damages.

In Chapter 11 we present respondents' assessments of the adequacy of their damages in the light of experience and their circumstances. Issues discussed include the extent to which the damages covered past losses, whether the damages will be sufficient for future needs and expenses, and respondents' satisfaction with their damages at the time of the interview. We also look at respondents' views about the extent to which damages can 'compensate' for non-material losses and their attitudes towards the payment of compensation for pain and suffering. At the end of Chapter 11 we compare responses from a subsample of survey interviews with information obtained from solicitors' case files.

A number of those with whom we carried out qualitative interviews had agreed structured settlements and information given by these respondents is presented separately in Chapter 12. We have also analysed separately information relating to fatal accidents and this material is discussed in Chapter 13. Chapter 14 summarises the material in earlier Chapters and provides an overview of research findings.

## **1.8 The analysis of data**

For the purposes of the analysis the survey collected data from three categories of respondents:

- i victims who received small settlements of under £20,000;
- ii victims who received settlements of £20,000 or more;
- iii respondents who received damages as a result of a fatality.

As a result of the different approach to sampling used for groups i and ii, the comparisons between groups of respondents separate band 1 from bands 2 to 4. Data relating to those who received compensation as a result of a fatal accident are presented separately in Chapter 13, since the information collected from them is in many respects different from that collected from injury victims who survived their accident.

The survey has collected a considerable amount of previously unavailable detailed information about the experiences and circumstances of compensated accident victims several years after

the receipt of their damages. The data presented in this report are largely descriptive, presenting breakdowns of key variables and cross-tabulations of variables in order to show whether the variables are related or associated. Although this kind of analysis performs an important descriptive function, further analysis in the future will be necessary in order to explore more complicated relationships and to explain the extent to which apparent relationships between variables, which have been identified in the text, may mask more complex underlying relationships between variables.

In the tables in this report, figures are shown to the nearest whole percentage point. Because of the effects of rounding, columns of percentages do not always add to exactly 100%, nor will they always agree with the more precise figures included in the text. Percentages may occasionally add to considerably more than 100%; this occurs when more than one answer to a question was permitted.

The data used in the Report have been weighted to reflect the distribution of size of settlement amounts (for those over £20,000). In general, the tables presented in the Report show the unweighted bases, since the accuracy of the results depends upon this, rather than upon the weighted bases. However, it is important to note that the unweighted bases do not reflect the true relative sizes of the groups analysed.

The symbol \* is used in tables to denote a non-zero quantity of less than 0.5%. In some tables, the bases for the sub-groups may not add to the total base of the table. This occurs when some respondents were not categorised in any of the sub-groups, because they were unclear or not stated for the relevant variable.

## **1.9 A note on terminology**

For ease of presentation, certain shorthand terms have been used throughout the Report as follows:

“accident victims”	this term should be read throughout this Report to include respondents who had received damages in respect of accidental injury or work-related illness
“fatalities”	refers to those who received compensation as a result of the death of a spouse or other relative in an accident
“settlement”	this term has been used to include both the overwhelming majority of claims for damages that were settled outside of court, and the few that were concluded on the basis of a court judgment (see Chapter 4).



## CHAPTER 2. CHARACTERISTICS OF THE SURVEY RESPONDENTS

Respondents to the survey were selected from insurance company records of settled cases in order to provide a representative sample of compensated accident victims. This chapter describes in some detail the characteristics of those included in the survey. It is important to note that the characteristics of the respondents to the survey are representative of *compensated* victims of accidental injury and work-related disease. They are *not* representative of victims of accidental injury as a whole, since only a minority of accident victims seek and obtain compensation through the tort system for their injuries and losses.<sup>1</sup> Previous empirical research suggests that a sample of compensated accident victims would have fewer women, elderly and non-working people than a representative sample of accident victims as a whole, since these groups are, in general, less likely to seek damages for their injuries.<sup>2</sup>

Since several years separated the date of the accident from the date of the interview, we present, and sometimes draw comparisons between the characteristics of respondents at the time of the accident and their characteristics at the time of the interview.

### 2.1 Type of accident or illness for which damages were paid

The vast majority of damages settlements included in the sample had been paid as a result of an accident rather than a work-related illness or disease. The incidence of damages paid as a result of a disease was 2% among the smallest settlements up to £49,999 (bands 1 and 2), and 5% among those settlements over £50,000 (bands 3 and 4). Most of the claims arising from an illness were for asbestosis or for breathing problems such as asthma.<sup>3</sup> Other illnesses included mesothelioma, glaucoma and hydrocephalus.

About one-half of the settlements in the sample were paid as a result of work-related accidents or illnesses, and most of the remainder related to motor accidents (Table 201). Only a very small proportion of cases concerned medical accidents or public liability. Compensation for public liability was most common among the lowest settlements (band 1); payments in respect of medical negligence were most common among the largest settlements (band 4).

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<sup>1</sup> See Harris et al 1984 op. cit. which estimated, on the basis of a nationally representative sample of accident victims with relatively substantial injuries, that only 26% considered claiming damages, 23% thought a claim was possible, 14% consulted a lawyer and 12% succeeded in obtaining damages (Chapter 2 p 46).

<sup>2</sup> Ibid, Chapter 2.

<sup>3</sup> A large number of damages payments for illness relate to hearing problems which have resulted from a work situation. However, damages for hearing problems are generally for small amounts and therefore did not qualify for inclusion in the sample.

Table 201: Type of accident for which damages paid: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Accidents (unweighted)	215	167	124	127	418
Type:	%	%	%	%	%
Employers' liability	52	57	56	48	54
Motor accidents	41	40	41	47	42
Medical negligence	1	2	2	6	3
Other	6	1	1	-	1

## 2.2 Date of accident

Respondents were asked to give the month and year when their accident occurred, or when their illness was *first diagnosed*. The earliest accident took place in 1967 and the most recent in 1991. However, three-fifths (61%) of the accidents suffered by our sample of compensated accident victims took place in the period between 1983 and 1987; and 84% occurred between 1982 and 1989.<sup>4</sup>

Table 202: Period between date of accident and date of interview (1993) by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
Period since accident occurred:	%	%	%	%	%
Less than 4 years	22	6	1	1	3
4 yrs less than 6 years	41	13	17	8	13
6 yrs less than 8 years	18	38	28	35	34
8 yrs less than 10 years	11	28	32	35	31
10 years or more	6	15	20	21	18
Unclear	3	*	3	*	1

\* Less than one per cent.

Table 202 shows that the lowest settlements tended to be associated with the most recent accidents, and the highest settlements with the earliest accidents. Among band 1 respondents, nearly two-thirds (63%) had suffered accidents that had occurred less than six years prior to the interview that took place in Spring 1993; the equivalent figures for the other bands were 19% in band 2, 18% in band 3 and only 9% in band 4 (16% for all in bands 2-4). On the

<sup>4</sup> These figures are based on the unweighted sample, and make no adjustment for the different sampling fractions based on size of damages.

other hand, only 17% of respondents in band 1 said their accident happened *before* 1985 (i.e. more than eight years before the interview) compared with 43% in band 2, 52% in band 3, and 56% in band 4 (which is one-half of all those in bands 2-4).

### 2.3 Period since date of settlement or award

Respondents who received the lowest settlements (band 1), were most likely to have been interviewed within three years of the date of their final settlement: three in four in band 1 (78%) as compared with just over one-third (38%) of those in bands 2-4. Among the latter, three-fifths (60%) had settled their claims at least three years *before* the interview, and one-sixth (17%) at least four years before (see Figure 201).<sup>5</sup>

Table 203: *Period between date of settlement and date of interview (1993) by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Period since settlement</i>	%	%	%	%	%
Less than 2 years	30	12	-	6	7
2 yrs less than 3 years	48	25	34	37	32
3 yrs less than 4 years	16	44	50	37	44
4 years or more	1	16	15	19	17
Unclear	5	2	1	1	1

### 2.4 Gender

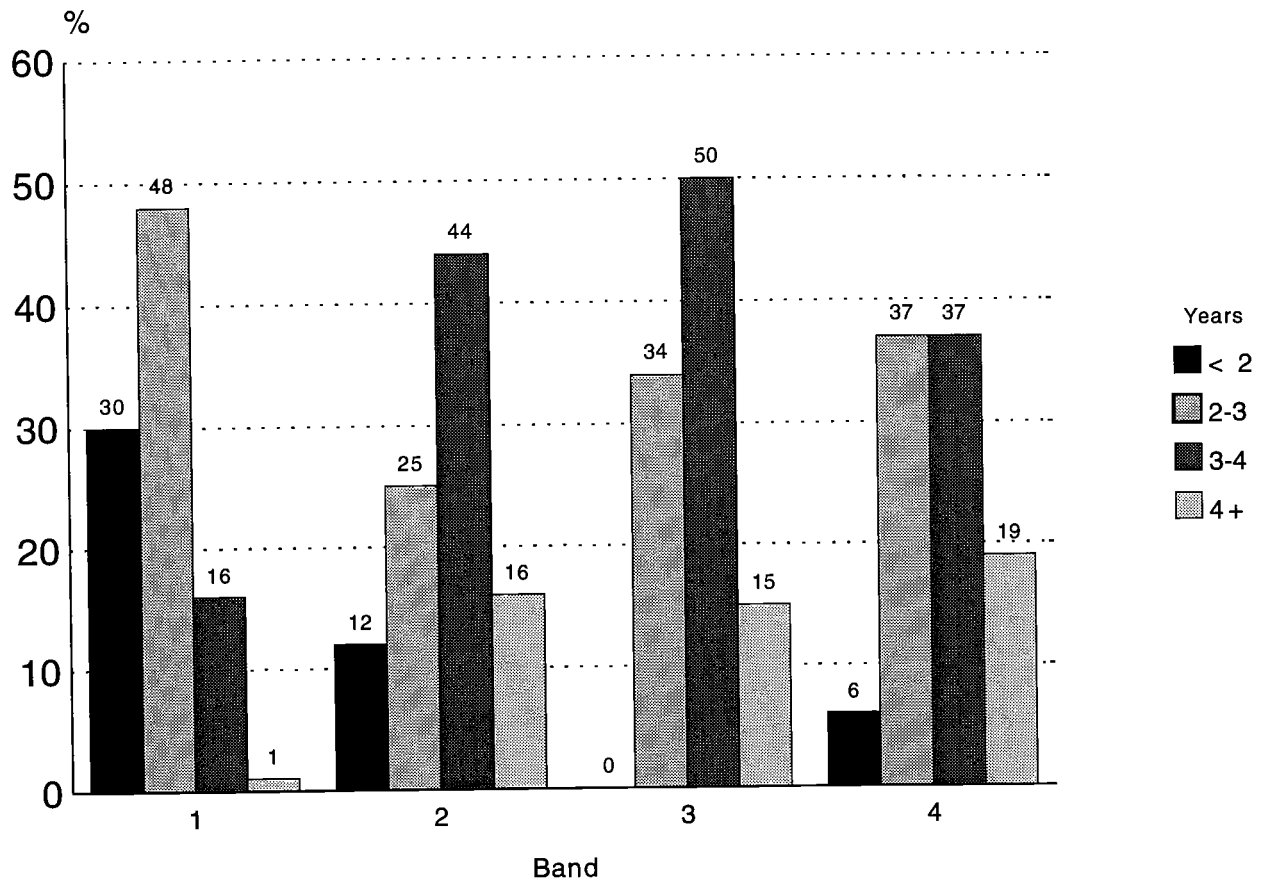
The sample comprised considerably more men than women. In bands 2-4, some 80% of respondents were men compared with only 20% who were women. The difference for the smaller settlements of under £20,000 (band 1) was much less marked, with only twice as many men as women in that settlement band (65% compared with 35%).<sup>6</sup>

Among the smaller settlements, men were twice as likely to receive damages for employers' liability as for motor accidents; the reverse applied among women (Table 204). The same pattern was found for the higher settlements (band 2-4), although the differences were not as large.

<sup>5</sup> Dates of settlement were provided by the insurance company. Further details about the period between the date of settlement and the date of interview can be found in the Technical Appendix in the survey report by SCPR (1994) op cit.

<sup>6</sup> These figures are consistent with the recent study of compensation cases of £150,000 or more carried out by the University of Edinburgh. In the Edinburgh sample of 152 cases of catastrophic injury drawn from insurance company records, males outnumbered females by a ratio of 3:1 (P Comes (1993) op cit, p. 23, and Table 7).

Figure 201: Period between date of settlement and date of interview: by size of damages



Base: All



Table 204: Type of accident for which damages paid: by gender within band

	Band 1		Bands 2-4	
	Men	Women	Men	Women
Base: All (unweighted)	139	76	334	84
Type:	%	%	%	%
Employers' liability	62	31	58	32
Motor	31	60	39	58
Medical negligence	2	1	2	8
Other	5	9	*	3

## 2.5 Age

### *At the time of the accident*

Table 205 shows the age of our sample of compensated accident victims at the time of the accident (or when their illness was first diagnosed). As might be expected, there was a clear tendency for age to decrease as the size of the settlement increased, reflecting the larger element in settlements received by younger accident victims to cover future wage loss and care requirements. Over one-third (36%) of respondents in band 1 were aged 50 or over at the time of the accident; this decreased to 27% for band 2, 22% for band 3 and 11% for band 4. Mean age decreased from 42 in band 1, to 38 in bands 2 and 3, and to 33 in band 4. There was no difference in the mean age of men and women at the time of the accident.

Table 205: Age at time of accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
Age:	%	%	%	%	%
Under 16	4	1	4	4	3
16 - 29	27	31	26	36	31
30 - 39	16	20	21	28	23
40 - 49	17	22	27	21	23
50 - 59	18	20	20	10	17
60+	18	7	2	1	3
Mean (years)	42	38	38	33	37

*At the time of the interview*

On average, respondents in band 1 were five years older at the time of the interview than at the time of the accident, while those in bands 2-4 were 8 years older. Table 206 shows that respondents who received smaller settlements (band 1) were somewhat older at the time of the interview than those who received larger settlements (bands 2-4). In particular, the youngest respondents on average were those with damages of £100,000 or more: the mean age of recipients in band 4 was 41 compared with a mean of 47 for band 1 respondents.<sup>7</sup>

Compared with the general adult population,<sup>8</sup> compensation recipients were *less* likely to be aged 60 or more (13% of those in bands 2-4 compared with 27% of the general population) and were more likely to be aged 40-59 (49% in bands 2-4 compared with 32% of the general population).

*Table 206: Gender and age at time of interview; by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Age:</i>	%	%	%	%	%
Under 16	1	*	*	*	*
16 - 29	18	17	16	23	19
30 - 39	18	21	15	20	19
40 - 49	19	19	27	27	24
50 - 59	13	27	24	24	25
60+	31	16	18	5	13
Mean (years)	47	45	46	41	44
<i>Gender:</i>	%	%	%	%	%
Men	64	80	87	86	84
Women	36	20	13	14	16

On average, there were no differences in age between men and women respondents in our sample according to size of settlement (Table 207).

<sup>7</sup> The age distribution of the higher settlements in our sample is largely consistent with the Edinburgh study of catastrophic injuries which looked only at settlements of £150,000 or more, with some three-fifths of the sample of 152 injury victims being 30 years or younger at the time of their accident (Cornes et al (1993) op cit. p 24).

<sup>8</sup> The general population figures are from the 1992 General Household Survey (GHS), and relate to all people aged 16+ in Britain (compared with the survey data which contain a few respondents aged under 16 and relates only to England and Wales).

Table 207: Age at time of interview: by gender within band

	Band 1		Bands 2-4	
	Men	Women	Men	Women
Base: All (unweighted)	140	79	342	85
Age:	%	%	%	%
Under 16	2	*	*	1
16 - 29	16	23	18	21
30 - 39	16	20	20	13
40 - 49	20	18	25	19
50 - 59	14	11	24	31
60+	33	28	13	15
Mean (years)	47	47	44	45

## 2.6 Marital status

### *At the time of the accident*

Two-thirds (66%) of our respondents were married (or living as married) at the time of the accident, and one-third were single, separated, widowed or divorced. There were no differences between bands, except that respondents in band 4 were slightly less likely to be married at the time of the accident (61%). Given the somewhat younger age profile of compensated accident victims in band 4, this is to be expected.

### *At the time of interview*

At the time of the interview the proportion of respondents who were married or cohabiting had increased to nearly three-quarters (Table 208). This applied among all age bands, although there was a slight tendency for the percentage of single (and never married) to increase with age: respondents who had received the largest settlements (band 4) were the most likely to be single, reflecting the somewhat younger age profile of this group. On the other hand, those with the smallest settlements (band 1) were the most likely to be widowed (reflecting the older age profile of this group of recipients).

Survey respondents were more likely than the general population to be married (74% in bands 2-4 compared with 64% of the general public); they were less likely to be widowed (1% in bands 2-4 compared with 9% of the general public) or single (16% and 21% respectively).<sup>9</sup>

<sup>9</sup> General Household Survey 1992. See note 8 for a description of the differences between the survey and the GHS samples.

Table 208: Marital status at time of interview: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Marital status:</i>	%	%	%	%	%
Married/cohabiting	74	79	76	67	74
Single	10	11	17	20	16
Separated/divorced	8	8	6	12	9
Widowed	8	1	1	1	1

There were significant differences in marital status depending on the gender of the recipient (Table 209). Women who had received damages were much less likely than male recipients to be married at the time of the interview, but were more likely to be widowed or divorced. Among those in band 1, women were also more likely to be single.

Table 209: Marital status at time of interview: by gender within band

	Band 1		Bands 2-4	
	Men	Women	Men	Women
Base: All (unweighted)	140	79	342	85
<i>Marital status:</i>	%	%	%	%
Married	86	52	78	58
Single	7	16	16	16
Separated/divorced	4	15	6	21
Widowed	3	17	*	5

*Changes in marital status between accident and interview*

In terms of marital status, there were few changes during the period between the accident and the interview. Among those who were married at the time of the accident, nearly all (95% in band 1, and 92% in bands 2-4) were still married at the time of interview (although it is not known whether the partner was the same as at the time of the accident); a few respondents were divorced or separated by the time of the interview (4% in band 1 and 7% in bands 2-4).

Among those who were single, etc. at the time of the accident (and aged 16 or more), two thirds (34%) of band 1 respondents and three-fifths (57%) of those in bands 2-4 were also single, etc. at the time of interview; but one-third (34%) of respondents in band 1 and two-fifths (42%) in bands 2-4 were now married.

## 2.7 Household size and composition

### *At the time of the accident*

At the time of the accident, very few of our respondents lived alone (about one in ten). Most lived in households containing two to four people; in band 4, nearly half (47%) lived in four person households.

*Table 210: Household size at time of accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Household size:</i>	%	%	%	%	%
Lived alone	13	9	8	9	9
2 persons	32	24	26	12	21
3 persons	21	26	23	20	23
4 persons	20	21	25	47	30
5+ persons	11	20	15	12	16
Unclear	3	*	3	*	1

Those accident victims who had received the largest damages settlements were most likely to live in a large adult household (44% in band 4, decreasing to 30% in band 1). Households with only two adults were the most common type for those receiving the lowest settlements (band 1), with one-third (32%) of respondents in band 1 in this household type (Table 211).

*Table 211: Household composition at time of accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Household type:</i>	%	%	%	%	%
Single adult	13	9	8	9	9
Two adults	32	24	26	11	20
Small family	16	18	12	29	19
Large family	7	11	10	7	9
Large adult	30	38	42	44	41
Unclear	3	*	2	*	1

Single adult = 1 person aged 16+ only; two adults = 2 persons aged 16+ only; small family = 1 or 2 persons aged 16+ and 1 or 2 persons aged under 16; large family = 1 or more persons aged 16+ and 3 or more aged under 16, or 3 or more aged 16+ and 2 aged under 16; large adult = 3 or more persons aged 16+ and 0-1 aged under 16.

*Household size and composition at time of interview*

At the time of interview, three in five (60%) respondents lived in two- or three-person households (Table 212). There was little difference in the household size distributions between respondents in band 1 and bands 2-4. Compared with the general population, the sample had far fewer one person households (12% in bands 2-4 compared with 27% of households in the general population) and more 3-4 person households (45% and 32% respectively).<sup>10</sup>

*Table 212: Household size at time of interview: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Household size:</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
Lives alone	11	10	10	18	13
2 persons	34	43	32	23	33
3 persons	25	23	32	26	27
4 persons	22	12	15	27	18
5+ persons	8	12	11	5	9

Between two-fifths and one-half of respondents in each band lived in a 1 or 2 person adult household; the rest had children aged under 16 or lived with 3 or more adults – the majority of the latter consisted of a couple with children aged 16+ (Table 213). Those with the highest settlements (band 4) were the most likely to live on their own (18%) or in large adult households (40%).

<sup>10</sup> The GHS (1992) refers to British households; the survey data to households in England and Wales.

Table 213: Household composition at time of interview: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Household type:</i>	%	%	%	%	%
Single adult	11	10	10	18	13
Two adults	33	42	32	23	33
Small family	25	15	22	16	18
Large family	5	6	9	3	6
Large adult	25	26	27	40	31
Unclear	1	-	-	-	-

Single adult = 1 person aged 16+ only; two adults = 2 persons aged 16+ only; small family = 1 or 2 persons aged 16+ and 1 or 2 persons aged under 16; large family = 1 or more persons aged 16+ and 3 or more aged under 16, or 3 or more aged 16+ and 2 aged under 16; large adult = 3 or more persons aged 16+ and 0-1 aged under 16.

Compared with the general population, respondents were twice as likely to live in large adult households (31% in bands 2-4 compared with 16% of the general population) and only one-half as likely to live in single adult households (13% and 26% respectively).<sup>11</sup>

#### *Changes in household composition since the accident*

There were considerable changes in household type during the period between the accident and the interview. Looking only at bands 2-4 (the numbers for band 1 being too small for analysis purposes), 42% of respondents were classified in the same household type and 58% were in a different type at the two points in time. The clearest trends seemed to be young children growing up during this time, so that small and large families became classified as large adult households as their children reached the age of 16+. The details are shown in Table 214.

<sup>11</sup> These figures are from the 1991 GHS.

Table 214: Household type at interview: by household type at accident

Base: Bands 2-4 (unweighted)	Time of accident				
	Single adult	Two adults	Small family	Large family	Large adult
	35	90	79	46	174
<i>Time of interview:</i>	%	%	%	%	%
Single adult	46	4	9	*	14
Two adults	30	67	7	13	35
Small family	10	16	38	7	12
Large family	6	3	7	24	3
Large adult	9	11	39	56	35

## 2.8 Ethnic group

The great majority of respondents classified themselves as white: 97% in band 1 and 97% in bands 2-4. The remainder were spread across the other ethnic minority groups. The ethnic composition of our sample of compensated accident victims displays similar proportions of ethnic groups to those within the general population.

## 2.9 Accommodation details

The majority of respondents were owner-occupiers at the time of the interview, with most of the remainder renting from a local authority (Table 215). There was a clear relationship between size of settlement and tenure, with the likelihood of owner occupation increasing as the amount of damages increased: while three in four (77%) of those with the lowest damages (band 1) owned their own home, this increased to over nine in ten (94%) of those with the highest damages (band 4); conversely, the likelihood of renting from a local authority decreased as size of settlement increased.

Compared with national figures, compensation recipients were much more likely to own their accommodation (88% in bands 2-4 compared with 67% of the general population) and were less likely to rent from a local authority (7% and 25% respectively).<sup>12</sup>

<sup>12</sup> 1992 GHS data for all households in Britain.



Table 215: Tenure at time of interview: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Tenure:</i>	%	%	%	%	%
Own	77	83	86	94	88
Rent from local authority	16	8	9	4	7
Rent from housing association	1	1	*	-	*
Rent privately	3	4	2	2	3
Other	3	4	3	1	3

The great majority of respondents lived in houses or bungalows, rather than in flats or maisonettes: about nine in ten respondents in band 1 and in bands 2-4 lived in a house/bungalow, compared with 8% in these groups living in a flat. (The national figures are 79% and 20% respectively).<sup>13</sup>

About one-half of respondents (55% in band 1 and 49% in bands 2-4) had lived at their address for 10 years or more (and a further fifth for 5-10 years). However, respondents with the largest damages (band 4) were the most likely to have moved to their present accommodation within the past 5 years: nearly one-half (46%) had done so, compared with 24% in band 3, 31% in band 2, and 23% in band 1 (Table 216). This is probably the result of a number of factors, including the younger age profile of the group, the need for special accommodation and having the money available to spend on housing.

Table 216: Length of time at current address: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Time lived at current address:</i>	%	%	%	%	%
Less than 1 year	4	6	4	5	5
1 year, up to 2 years	4	5	6	9	7
2 years, up to 5 years	14	19	14	32	22
5 years, up to 10 years	23	19	17	16	17
10 years or more	55	50	59	38	49
Unclear	-	1	-	-	*

<sup>13</sup> Ibid.

Respondents were asked whether they had moved house at all since their accident (or onset of illness). The likelihood of having moved since the accident increased with the size of settlement (Table 217): over one-half (55%) of respondents in band 4 had moved house since their accident compared with one-quarter (24%) of those in band 1.

The reasons for moving also varied with size of settlement. In the lower bands (1 and 2), most moves were unrelated to the respondent's injuries; in the higher bands (3 and 4), the reason given for moving house was as often related to the respondent's injuries as to other reasons.

Table 217: *Moved since accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Whether moved since accident:</i>	%	%	%	%	%
No move	76	56	63	45	55
Moved <i>because</i> of injuries	5	9	16	27	17
Moved for other reason	19	35	21	28	29

## 2.10 Highest qualification

Two-fifths (39% of respondents in band 1 and in bands 2-4) held no qualifications (Table 218). The pattern of qualifications was similar for all four bands and is similar to that of the general population.<sup>14</sup>

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<sup>14</sup> GHS 1992. See note 8 for a description of the differences between the survey and GHS samples. Also note that GHS figures only include people aged 16-69.

Table 218: Highest qualification: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Highest qualification:</i>	%	%	%	%	%
Degree or equivalent	4	4	5	9	6
Higher education below degree	11	9	10	8	9
'A' level	5	7	7	6	7
GCSE/'O' level	19	22	18	20	20
CSE (grade 2)	13	11	15	18	14
Apprenticeship/commercial quals	6	4	2	3	3
Other qualifications	4	3	2	1	2
No qualifications	39	41	40	35	39

## 2.11 Economic activity status

The vast majority of respondents over the age of 16 at the time of the accident were in work when the accident occurred or when their illness was first diagnosed. Predictably, the likelihood of being in work, especially full-time, was higher for those receiving larger settlements: 74% of respondents in band 1 were working full-time at the time of their accident, as were 89% of those in bands 2-4. Respondents in band 1 were slightly more likely than those in bands 2-4 to have been retired at the time of the accident (9% as compared with 2%). The details are shown in Table 219 (for respondents aged 16 or more at the time of their accident).

Table 219: Activity status at time of accident: by size of settlement

Base: Aged 16+ at time of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	220	170	130	134	434
<i>Activity status:</i>	%	%	%	%	%
Full-time work	74	87	92	87	89
Part-time work	6	3	1	3	2
Unemployed, signing on	2	2	1	6	3
Unemployed, not signing on	2	*	-	1	*
Full-time education	2	2	2	1	2
Retired	9	3	1	-	2
Looking after family or home	3	3	1	1	1
Other activity	2	-	2	-	1

Among respondents aged 16 or over who were not in work at the time of their accident, one-third (33%) of those in band 1 and one-quarter in bands 2-4 (23%) had worked in the year prior to their accident; 21% and 16% respectively had last worked between 1 year and 5 years before their accident; 15% and 26% had not worked for at least 5 years; and 30% and 27% had never had a regular paid job (the vast majority of whom were young).

*Activity status at time of interview*

The likelihood of being in work at the time of interview decreased as size of settlement increased (Table 220). About one-half (48%) of those receiving the smallest settlements (bands 1 and 2) were in paid work; this decreased to 42% of those in band 3 and to only one-quarter (27%) of those who had received the largest settlements (band 4).<sup>15</sup>

The likelihood of being permanently disabled and incapable of work was over five times as great among those receiving the highest settlements (band 4) than the lowest (band 1): over one-half of the respondents in band 4 were permanently disabled.

Those respondents who had received the lowest settlements were the most likely to be retired (over one-fifth); this is to be expected given the older age profile of respondents in band 1. They were also the most likely to be looking after a family or home, and this is also to be expected given the higher proportion of women in band 1.

Table 220: *Activity status at time of interview: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Current activity:</i>	%	%	%	%	%
In work	48	53	42	27	42
Unemployed & signing on	8	8	5	4	6
Unemployed, not signing on	2	-	2	4	2
Temporarily sick	1	-	2	2	1
Permanently sick/disabled	9	19	33	52	33
Retired/early retirement	21	12	8	5	9
Looking after family/home	6	4	2	1	3
In education	2	1	2	2	2
Aged under 16	1	*	*	1	*
Other activity	1	-	1	-	*
Victim died	*	2	2	1	2
Unclear	1	1	*	*	1

As Table 221 shows, men were more likely than women to be economically active at the time of the interview, whether in work or unemployed, while women were much more likely than

<sup>15</sup> Issues relating to the effects of injuries on work activity are discussed in full in Chapters 5 and 6.

men to be looking after their family or home. In bands 2–4, 55% of men were economically active and 45% were in work; the figures for women were 32% and 30% respectively.

Despite the relatively high proportion of the sample who were under retirement age when compared with the general population, compensated accident victims were much less likely to be economically active or in work when compared with national figures: among the general adult population, 73% of men were economically active and 64% were in work; the national figures for women were 55% economically active and 50% in work.<sup>16</sup>

Table 221: Activity status at time of interview: by gender within band

	Band 1		Bands 2–4	
	Men	Women	Men	Women
Base: All (unweighted)	140	79	342	85
<i>Current activity:</i>	%	%	%	%
In work	51	42	45	30
Unemployed and signing on	10	5	7	2
Unemployed, not signing	1	3	2	1
Temporarily sick	*	2	2	–
Permanently sick/disabled	9	10	35	31
Retired/early retirement	21	21	8	15
Looking after family/home	1	16	–	16
In education	3	*	2	3
Aged under 16	2	*	*	1
Other activity	1	–	*	–
Unclear	–	1	*	2

## 2.12 Occupation

Respondents who were in work at the time of their accident were asked details about the job they were in, while those who had last worked within one year of their accident were asked about the last job they held before the accident. In all, job details were collected for 86% of respondents. Jobs were classified by occupation, industry and socio-economic group.

The categorisation of jobs used the Standard Occupational Classification (SOC) which has nine major groups. These are shown in Table 222. About two-thirds of compensated accident victims last worked in the two occupation groups of craft and related or plant and machine operatives.

<sup>16</sup> 1992 GHS figures for British adults aged 16+.

Table 222: Occupation group (SOC) of job at time of accident: by size of settlement

Base: Worked within 1 year of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	180	150	116	108	374
<i>Occupation group:</i>	%	%	%	%	%
Managers, administrators	6	4	5	4	4
Professional	5	3	3	6	4
Associated professional/technical	2	5	3	8	6
Clerical & secretarial	5	6	5	9	6
Craft & related	32	32	39	37	36
Personal & protective services	7	6	9	4	7
Sales	6	3	1	2	2
Plant & machine operatives	24	28	25	18	24
Other	13	11	9	9	10
Unclear	1	1	-	4	1

Table 222 shows that there were few differences between settlement bands, except for a small tendency for those with the highest settlements (band 4) to be more likely than those in bands 1 to 3 to have worked in professional and executive jobs (the first three categories in Table 223).

Table 223 indicates, however, that there were very large differences in occupational group between the sexes, with men much more likely than women to be working in craft and related jobs or as plant and machine operatives; women were more likely than men to have been in occupations classed as clerical and secretarial, associated professional and technical, or personal and protective services.

Table 223: Occupation group of jobs at time of accident: by gender within band

	Band 1		Bands 2-4	
	Men	Women	Men	Women
Base: Worked within 1 year of accident (unweighted)	124	56	313	61
<i>Occupation group:</i>	%	%	%	%
Managers, administrators	3	14	4	6
Professional	7	-	4	6
Associated professional/ technical	3	*	4	16
Clerical & secretarial	3	10	3	25
Craft & related	39	17	41	2
Personal & protective services	5	11	5	16
Sales	1	17	2	4
Plant & machine operatives	26	18	26	13
Other	13	12	10	11
Unclear	1	*	1	1

### 2.13 Socio-economic group

#### *At the time of the accident*

Socio-economic group (SEG) is a classification which aims to group together people of similar social and economic status. This classification is based on employment status and occupation. There are 17 basic socio-economic groups, which can be combined into 5 main groups. The details for the sample of compensated accident victims are shown in Table 224 within settlement bands. Nearly half of the respondents in our survey were classed as skilled manual workers on the basis of their job at the time of the accident, with about one-fifth classified as semi-skilled manual workers (in bands 2-4).

Table 224: *Socio-economic group (SEG) at time of accident: by size of settlement*

Base: Worked within 1 year of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	180	150	116	108	374
<i>Socio-economic group:</i>	%	%	%	%	%
Professional, etc.	10	6	13	14	10
Intermediate/junior non-manual	14	17	12	18	16
Skilled manual	41	47	53	43	47
Semi-skilled manual	26	25	18	21	21
Unskilled manual	8	5	4	1	3
Armed forces/unclear	1	1	*	4	2

Those who had received lower settlements (bands 1 or 2) were slightly more likely to have been working in semi-skilled or unskilled jobs at the time of the accident than those with higher settlements (bands 3 or 4). The latter were more likely than the former to have worked in non-manual or skilled manual jobs.

There were significant differences between the sexes in socio-economic group at the time of the accident (Table 225). Men were much more likely than women to have been in skilled manual work (53% and 10% respectively in bands 2-4), and much less likely to have been in intermediate or junior non-manual work (11% and 43% respectively).

Table 225: *Socio-economic group (SEG) at time of accident: by gender within band*

	Band 1		Bands 2-4	
	Men	Women	Men	Women
Base: Worked within 1 year of accident (unweighted)	124	56	313	61
<i>Socio-economic group:</i>	%	%	%	%
Professional, etc.	9	11	9	16
Intermediate/junior non-manual	8	29	11	43
Skilled manual	48	26	53	10
Semi-skilled manual	24	32	21	21
Unskilled manual	10	3	3	9
Armed forces/unclear	1	-	2	1

Comparisons with national figures are not easily made, as the date of the accident refers to a period ranging from between 1967 to 1991, rather than to a single year. The year 1985 is used for comparison purposes, as a very high proportion of the accidents occurred between 1983 and 1987 (of which 1985 is the midpoint). Looking at men, sample members were



much less likely than men in general (in 1985) to be in non-manual jobs (20% of men in bands 2-4 compared with 46% of men nationally); they were much more likely to be in skilled or semi-skilled jobs (74% in bands 2-4 compared with 51% of men nationally). Female respondents were much more similar to the general population of women: among the latter, 63% were in non-manual jobs in 1985 and 31% were in skilled or semi-skilled work.<sup>17</sup>

*At the time of the interview*

Table 226 shows SEG for all respondents where occupation details for their current or last job were available; no occupation details were available for 9% of respondents, either because they had never worked, or because they had not worked after their accident *and* for the year before their accident.

Table 226: *Socio-economic group for current or last job: by size of settlement*

Base: All currently in work or who worked within 1 year of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
		190	156	122	111
<i>Socio-economic group:</i>	%	%	%	%	%
Professional, managers	12	8	13	9	10
Intermediate/junior non-manual	18	19	14	23	20
Skilled manual	37	39	46	40	43
Semi-skilled manual	26	26	18	18	21
Unskilled manual	6	7	9	2	6
Armed forces/unclear	1	1	*	9	*

Using this classification of current or last job for SEG, about one-third of respondents were classified in non-manual jobs, and over two-thirds were in manual jobs (most often in skilled manual work).

As Table 227 shows, men were much more likely than women to be classed in manual jobs, with nearly one-half (48%) of men in the skilled manual group; over one-half (55%) of women were in the intermediate or junior non-manual group.

<sup>17</sup> 1985 GHS figures for working men aged 16-64 and working women aged 16-59.

Table 227: *Socio-economic group: by gender within band*

Base: All currently in work or who worked within 1 year of accident (unweighted)	Band 1		Bands 2-4	
	Men	Women	Men	Women
	125	65	323	66
<i>Socio-economic group:</i>	%	%	%	%
Professional, managers	10	17	10	9
Intermediate/junior non-manual	7	38	14	55
Skilled manual	47	18	48	8
Semi-skilled manual	28	22	22	19
Unskilled manual	7	5	6	8
Armed forces/unclear	1	-	*	1

Compared with national figures for SEG, men in the sample were much more likely to be classified as skilled or semi-skilled manual workers (70% compared with 51% nationally), and were less likely to be in non-manual occupations (24% compared with 35% nationally). Among women there were no significant differences between the sample and the national figures.<sup>18</sup>

Further analysis of work history and changes in socio-economic group between the accident and the time of interview can be found in Chapter 6, sections 6.3 and 6.8.

## 2.14 Status

Over nine in ten compensated accident victims were working as employees in their job. Respondents in band 1 were slightly more likely than those in bands 2-4 to be self-employed (13% compared with 8%).

## 2.15 Trade union membership

Just under one-half (48% for band 1, 47% for bands 2-4) of all respondents were members of a trade union in the job they were working in before their accident. Looking only at those who were working as full-time employees, the proportion of trade union members was 54% for men in bands 2-4 and 43% for women in bands 2-4. This is similar (albeit somewhat lower) than the national figures for trade union membership: for full-time male employees, it was 57% and for full-time female employees it was 50%.<sup>19</sup>

<sup>18</sup> 1992 GHS figures for British adults aged 16+, based on their current or last job (excluding those in the Armed Forces).

<sup>19</sup> These figures relate to the 1983 GHS.

## 2.16 Summary

Of the settlements included in the sample about one-half had been paid as a result of a work-related accident or illness and most of the remainder related to motor accidents. Only a very small proportion of cases concerned medical accidents or public liability.

The earliest accident had taken place in 1967 and the most recent in 1991. Three-fifths of settlements had occurred at least three years before the interview, and one-sixth at least four years before the interview.

Although accidental injury occurs to all types of people, the sample of compensated accident victims was dominated by white, male respondents with a relatively young age profile. The average age was 44 and many of the most serious injuries had occurred to younger people who had received some of the largest settlements. Although the majority of the sample were married at the time of the accident and interview, women at the time of the interview were more likely to be widowed, divorced or single than the men. Although there had been few changes in marital status between the accident and the interview, many respondents who were single at the time of their accident had remained so, although a proportion had married by the time of the interview.

Compared with the general population, sample members were twice as likely to live in large adult households and were half as likely to live in single adult households. Most lived in owner-occupied accommodation, which tended to be a house rather than a flat. Those with larger settlements were more likely to have moved house within the last five years.

The vast majority of respondents were in full-time work at the time of the accident, with half in skilled manual jobs, but the likelihood of being in work at the time of the interview decreased as size of settlement increased. At the time of the interview only half of those with the lowest settlements were in work and this number fell to one-quarter among those respondents who received the largest settlements. There was a high probability that sample members would be permanently sick or disabled at the time of the interview and among those with the lowest settlements a high probability that they would have retired.

Despite the relatively high proportion of the sample under retirement age when compared with the general population, the sample members were much less likely than the general population to be economically active or in work when compared with national figures.



## CHAPTER 3. THE AFTERMATH OF THE ACCIDENT

The sample of compensated accident victims included respondents with a wide range of injuries from relatively minor problems to the most devastating, catastrophic injuries. At the less serious end of the spectrum were those who had suffered broken wrists and ankles, while at the most serious end were injury victims who had suffered brain damage or spinal cord injuries. Some of those interviewed had made an almost complete recovery from their injury by the time of the interview, while others continued to have permanently impaired physical abilities. This chapter provides detail about the nature of the injuries suffered, the treatment received by accident victims, the effects of injuries both in the period immediately after the accident and in the longer-term, and the need for treatment and care. The final sections describe the condition and circumstances of the sample of compensated accident victims at the date of interview, which was several years after the receipt of damages and usually many years since the accident occurred.

### 3.1 Injuries suffered as a result of the accident

The descriptions given by accident victims of the circumstances in which they suffered their injuries provide sometimes shocking evidence of unexpected, abrupt and often irrevocable physical damage. For example:

*I was a pedestrian. I was standing in front of my own vehicle as another car driver drove past at speed and lost control of the car on the corner and skidded into me.*

*I was walking along the pavement and a motor cycle mounted the pavement and hit me.*

*I was working nights in a railway station. I tripped and went down a hole onto the next floor.*

*I was loading supplies on to a yacht and a crew member pushed me off the back of the yacht. The engines were being tested at that time and the propellers were turning. I landed on the rotating propeller.*

*I was driving a bucket down the pit and two mine cars hit the back of the bucket and I was crushed.*

*I was working at a farm and one of the silage bales fell on to me.*

*I went to hospital for a hip replacement operation. When they were stitching me up they put a stitch through the sciatic nerve and found there was nothing they could do to reverse this.*

*I had a lump removed from my neck in hospital. When I came to I was*

*violently sick and later that evening found my right hand more or less glued to my chest.*

Accident victims who were interviewed in-depth often gave vivid accounts of their accidents. Despite the fact that accidents had happened many years previously, respondents frequently remembered every detail about the event. An example is provided by a policeman injured while dealing with a traffic accident and who was left with permanent injuries:

*I could see a vehicle coming towards me along a straight road. I looked at him two, three times, put my hand up for him to stop. I thought "Oh he must have seen me now", turned my back to him and started to wave the traffic on thinking that this guy was going to stop because I had my arm out and my back to him. The special turned round, he shouted "Look out!" and I turned. Everything just felt as though it was in slow motion and you just saw the headlights of this car. I just leaned into it. The main thought in my mind was my head as this thing went underneath me.*

Another example was given in a qualitative interview by a man blinded in a work accident:

*We was lifting a 22 foot 14x10 girder. Lifting it with an iron-cone machine. Basically it toppled over and dropped onto me head....It fractured me skull, cut the optic nerve on me left eye and when the girder hit me on top of the head it shoved me onto a metal elbow which pushed the right eye back into my head and damaged it and now I've got a glass eye in this eye...If it had been opposite I would have been able to see out of one eye. I was unlucky twice. If it had hit me on this side of the head, it would have cut the optic nerve on this eye, which got damaged anyway, so it wouldn't have mattered.*

All respondents were asked about the nature of their injuries *at the time of the accident*. Most common were broken bones or fractures: between one-half and three-fifths of respondents in each band suffered these types of injuries. Back or neck injuries were the next most common, experienced by around one-quarter of all victims in each band. Head injuries were also quite common, but their incidence increased with size of settlement from one in seven (15%) in band 1 to two in five (43%) in band 4. The other most common injuries included cuts, bruising, muscle or nerve injuries, and injuries to joints. Table 301 summarises the details of injuries.

Table 301: Injuries suffered at time of accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Accidents (unweighted)	215	167	124	127	418
<i>Injuries:</i>	%	%	%	%	%
Broken bones/fractures	51	57	60	53	57
Back/neck injuries	24	28	24	25	26
Head injuries	15	21	24	43	29
Cuts	25	16	24	17	19
Bruising	19	13	18	10	13
Muscle, nerve injuries, paralysis	13	11	9	19	13
Joint injuries, dislocations, sprains	12	11	11	10	11
Internal injuries	4	9	9	11	10
Eye/ear injuries	3	6	10	10	9
Amputation	5	2	4	4	3
Damage to skin	5	7	4	1	4
Other injuries	6	1	6	2	3
Unclear	-	*	-	3	1

Columns total more than 100% since more than one response was permitted

### Illnesses

Some 2% of respondents in bands 1 and 2, and 5% of respondents in bands 3 and 4 had suffered from a work-related illness. Most of the claims arising from an illness were as a result of a diagnosis of asbestosis or for breathing problems such as asthma. Other illnesses included mesothelioma, glaucoma and hydrocephalus. Examples of the circumstances in which the illnesses were recognized and diagnosed are as follows:

*It was just the working conditions. It is the materials you work with. I was stripping asbestos insulation and putting in more asbestos. We didn't wear masks or anything like that. It was all pipe lagging on boilers at power stations.*

*The X-ray showed up a small spot. In 1984 they said the spot had got larger and the doctor said it had come about through inhalation of silica dust over a period of 20 years.*

### 3.2 Effects of injury/illness at time of onset

Respondents were asked how their injuries/illness affected their work or daily activities *at the time of the accident (or when the disease was first diagnosed)*. As can be seen from Table 302, respondents' conditions had wide-ranging effects on their everyday lives.<sup>1</sup> The most frequently cited effects were being in hospital or confined to bed, and having to leave work or take time off from work. As would be expected, victims with higher settlements (especially band 4) were more likely than those with lower settlements to have been confined to bed/hospital: over half (53%) of those in band 4 gave this reply compared with one in five (19%) in band 1.<sup>2</sup> Some respondents described the effects of their injuries in terms of physical or psychological problems (which are also shown in Table 302). Problems with mobility were widely encountered by respondents in all four bands (band 1 39%; bands 2-4 31%). Other effects mentioned included pain, problems with dexterity, vision or hearing problems and psychological effects.

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<sup>1</sup> These results must be treated with caution, as these replies were coded from an open-ended question; the proportions shown, therefore, are likely to *underestimate* the numbers who actually suffer from each of the problems shown.

<sup>2</sup> While those with the lowest settlements were the most likely to mention employment-related difficulties, this is undoubtedly explained by the nature of the question and coding frame (eg, victims who said they were *in hospital* were unlikely to also mention that they could not work, because their answer implies that they at least took time off work). (The effect of accidents on work is examined more fully in Chapters 5 and 6.)



Table 302: *Effects of injury/illness at time of accident/onset of illness: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Physical/psychological effects:</i>	%	%	%	%	%
Mobility	39	34	34	24	31
Dexterity	8	3	6	*	3
Pain	7	6	3	4	4
Vision/hearing	2	3	2	7	4
Mental state	5	7	4	6	6
Other physical/psychological effect	5	6	10	5	7
<i>Effects on daily life:</i>					
Confined to hospital bed	19	38	42	53	44
Employment	61	62	59	47	57
Social life/recreation	9	2	11	8	6
More dependent on others	7	2	11	8	3
Domestic duties	5	2	3	*	2
Driving	4	2	3	*	2
General: "Just couldn't do anything"	15	15	15	22	17
Other	1	1	-	-	*

The columns add to more than 100% as more than one response was permitted. Some respondents mentioned only physical/psychological effects, other only effects on their daily life, and yet others mentioned both.

Examples of the kinds of effects that accidents had in the immediate period after the accident are as follows:

*My neck was placed in a collar. I lost the use of my hands from time to time which stopped me from driving and eventually from working and the loss of my job.*

*I haven't worked since. Continuous pain in the neck and headaches. Rheumatism in the small of my back.*

*I had three young children to look after by myself. I couldn't go to bed because I couldn't get out. Slept on the sofa upright for a whole year. Had to give up job I had.*

*I was on a life support machine and since then couldn't work. I have been trying but can't.*

*I used to do work where I'd be on my legs. I was in hospital for five weeks. I was unable to work.*

*I had to give up my job. In hospital for a long time and restricted movement in my knee. It was not safe to continue in my job.*

*Basically unable to do anything physically, but being a manager I was able to drive around and do things that way. Mainly administration and supervision.*

*I have never been able to work since. Can't stand or sit long enough.*

*I couldn't walk. I was in bed for months. Walked on crutches and it stopped me from going back to work.*

*I never went back to work. I was taken to hospital and was in there for nearly four months. Then I was in and out of hospital for about two years for different spells of a month - 10 days. Operations on my leg, roughly about five or six at least.*

### **3.3 Later effects of injury/illness**

Respondents were also asked about the *longer-term* effects of their injury/illness which continued after the immediate effects described above. The majority of respondents did experience longer-term ill-effects of their injuries: two-thirds of victims in band 1 and four-fifths of those in bands 2-4 suffered relatively prolonged effects from their injuries (Table 303).

Three types of effect predominated among the accounts given by respondents. These were psychological problems, problems with mobility and suffering from pain. Victims with larger settlements were particularly likely to have experienced psychological effects as a result of their condition: one-quarter (26%) of respondents in bands 2-4 mentioned this, while the proportion in band 1 was 16%.<sup>3</sup>

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<sup>3</sup> In common with Table 303, these results must be treated with caution, since the replies were coded from an open-ended question; the proportions shown, therefore, are likely to underestimate the numbers who actually suffer from each of the problems shown.

Table 303: Later effects of injury/illness: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Accidents (unweighted)	220	170	130	134	434
<i>Later effects:</i>	%	%	%	%	%
No later effects	34	28	16	18	21
<i>Physical/psychological effects:</i>					
Mental state	16	25	26	28	26
Mobility	16	20	32	18	23
Pain	18	20	13	21	18
Dexterity	11	5	8	7	7
Vision/hearing	4	7	9	17	11
Stomach, liver, kidney bladder	1	3	7	11	6
Chest /breathing	3	5	7	2	4
Heart/blood pressure or circulation	4	4	5	1	3
Epilepsy	*	-	4	7	3
Other physical/psychological effect	19	21	29	18	22
<i>Effects on daily life:</i>					
Social life/recreation	9	4	4	9	6
Confined to hospital bed	2	3	5	1	3
Employment	*	2	2	-	1
More dependent on others	-	-	1	7	2
Driving	1	1	*	7	3
Other effects	3	4	2	4	3

See note under Table 302.

Information given by respondents during the survey about the longer-term effects of their injuries depicts the substantial, and often prolonged physical and psychological problems that had to be endured by accident victims and by their families. For example:

*Difficulty walking. One leg was left shorter than the other by two inches. Unable to work for 12 months. I was on crutches for a lot of the time, and then graduated to walking sticks. I couldn't walk very far. Arthritis has set in in pelvic area. Depression.*

*I got bronchitis whilst in hospital. It was from having to lie in bed all the time. I used a wheel chair for about two months after I came out of hospital. I couldn't use crutches because my injuries were all on the left side and I couldn't support myself properly. I've still got plates in my left arm which affects me when the weather's cold. I get a lot of pain.*

*He lost his memory completely. He couldn't remember his name, age, where he lived. He has a problem with his leg which has a plate in. He suffers from phobias. Phobias about insects, breathing air, cleanliness, animals. Visual disturbance which makes things look different to him. He gets heart palpitations caused by stress and anxiety. (Proxy respondent).*

*Stomach problems, bowel trouble all the time. Constant pain in my legs. Walking problems which leads to depression. I have to take strong painkillers for pains in my legs and back. I don't work. I can't sit down or stand around. I can't find a happy medium.*

*Continual back problems – pain, difficulty walking, bending, lifting. I am a plumber by trade and eventually the doctor found I could no longer carry on the trade.*

*Psychological problems. Extremely nervous on motorways. Stress-induced asthma. I became extremely irritable and resentful of others able to work. The constant pain caused severe depression.*

*I had a nervous reaction and we moved here because we liked walking and I couldn't do that. I can only go out with my wife and that means I suffer from depression. My foot is stiff and I can't move my toes. I have a special shoe which helps me walk a bit.*

*Depression because I couldn't do normal things and there was a lot of pressure at work. Pressure to go back out to work and I collapsed. Some of the drugs I took caused problems. I would not walk far because of back pain. I suffered from dizziness and could lose consciousness.*

*Started to get severe pain in hands. Couldn't work at all then or since. Restricted activity at home. My marriage broke up.*

*Depression. You don't expect your life to come to a standstill. It affects me socially. Only the family understand.*

*Loss of memory. Inability to concentrate. Outbursts of bad temper. Unable to look for work. Severely curtailed sports/leisure activities.*

*From 1985 to 1987 life was hell. I couldn't walk, could only shuffle round. I became incontinent because it took so long to get to the loo. Slept in dining room and couldn't go upstairs. Couldn't work for two years.*

*The stress more than anything. Could not sleep from the pain. Have to strap it up. I'm supposed to wear a calliper all the time, but if I did I would lose my job as I am supposed to be 100% fit. It finished off my business and my wife had to give up her job to look after me.*

### 3.4 Hospitalisation

Most respondents spent at least some time in hospital as a result of their accidents. As would be expected, both the likelihood of being hospitalised and the number of nights spent in hospital increased along with the size of the settlement. Thus, two in three of respondents with the smallest settlements (band 1) spent at least one night in hospital; this increased to nearly all (97%) of those with the largest settlements (band 4). Similarly, only 1% of band 1 victims spent 6 months or more in hospital compared with two in five (39%) of band 4 victims (Table 304). The Table shows that in bands 2, 3 and 4 substantial proportions of accident victims suffered long periods of hospitalization following their accident. It will be seen (Chapters 5 and 6) that lengthy recovery periods inevitably delay the return to work among those who were working at the time of their accident, and that the longer the delay the less likely it is that accident victims will return to the job they had at the time of their accident.

Table 304: *Time spent as hospital inpatient as a result of accident: by size of settlement*

Base: All (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	220	170	130	134	434
<i>Nights in hospital:</i>	%	%	%	%	%
None	33	18	8	3	11
Less than 2 weeks	42	16	14	4	12
2 weeks, to under 1 month	12	16	10	8	12
1 month, to under 3 months	9	30	29	29	30
3 months, to under 6 months	3	11	20	16	15
6 months, to under 1 year	*	5	15	24	14
1 year or more	1	3	4	16	8
Can't say	-	-	1	-	*

Descriptions of hospitalisation were as follows:

*I was hospitalised and near to death. I had an operation straight away. I had lost all feeling from the waist down and couldn't move my legs. I was told if there was no feeling in 48 hours I would never walk again.*

*I was in hospital for 5 months, had eleven operations and unable to carry on a pleasant retired life.*

### 3.5 Treatment or tests outside of hospital

Besides any treatment or tests received in hospital, all but a small minority of respondents received some treatment or tests from a GP or other medical specialist (eg, physiotherapist, osteopath). As Table 305 shows, nearly two-thirds of victims in band 1 and three-fourths

in bands 2–4 received treatment from a GP as a result of their accident. The proportion seeing other medical specialists was even higher: 72% for band 1, and 82% for bands 2–4.

Table 305: *Non-hospital treatment: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: All (unweighted)	220	170	130	134	434
<i>Treatment received from:</i>	%	%	%	%	%
GP	63	70	78	70	72
Other medical specialists	72	80	85	83	82
None received	14	7	3	1	4
Can't say/not stated	*	1	–	–	*

Thus, nearly all victims received some type of medical treatment or tests: 97% in band 1 did so, as did 99% in band 2, 99% in band 3, and 100% in band 4.

### 3.6 Private treatment or tests

A significant proportion of respondents opted for some private medical treatment (Table 306): one-third (34%) of those in band 1, and two-fifths (44%) of those in bands 2–4. However, very few respondents received *only* private treatment, and there were no significant differences between groups according to size of settlement.

Table 306: *Any private medical treatment or tests: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: All (unweighted)	220	170	130	134	434
<i>Private treatment received:</i>	%	%	%	%	%
None	66	59	51	57	56
Some	30	39	47	43	43
All	4	3	2	*	2

Respondents who had received private medical treatment were asked a number of questions on this subject, for example, about the type of treatment received, its cost, and their reason for choosing private medical care.

#### *Type of private treatment or tests received*

Table 307 shows the types of treatment and tests that respondents had received outside of the NHS. Over one-third said that they had received a private examination which was required for the purposes of their compensation claim (40% in band 1, and 37% in bands 2–4),

although these figures are likely to be an underestimate.<sup>4</sup>

One-fifth (21%) of those in band 1 and one-quarter (24%) of respondents in bands 2–4 had some sort of manipulative treatment (such as physiotherapy or osteopathy). A small proportion of respondents had private psychiatric treatment; and half had received other treatments or tests (including ‘alternative’ medicine such as homeopathy, acupuncture, etc).

#### *Payments for private treatment*

The majority of those receiving private medical treatment or tests reported that they had paid at least some of the costs of their treatment, aside from money they received in compensation or which was paid back by private medical insurance: three-fifths (59%) of those with the lowest settlements paid some or all of the costs of their private treatment as did half (54%) of those with the highest settlements (bands 2–4). (See Section 11.1 for further discussion of payments for private treatment.)

#### *Reasons for choosing private treatment*

Those who had to pay for at least some of their private treatment were asked why they chose to be treated privately instead of on the NHS. Four reasons were most often cited:

- it was necessary for their compensation claim to have a private examination;
- they could receive treatment more quickly;
- the treatment they wanted was more easily (or only) available privately;
- private treatment was considered better than that available on the NHS.

These responses are shown in Table 307 by size of settlement.

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<sup>4</sup> In fact, the numbers receiving a private examination for the purposes of a legal claim is probably much higher; however, it is likely that this was not regarded as a treatment or test by some respondents, so was not mentioned as private treatment; for others, as the costs would have been included in their claim, it seems likely that they may not have realised their examination was not an NHS one, or that they did not consider it a private examination as they did not have to pay for it directly.

Table 307: Reasons for choosing private medical treatment: by size of settlement

	Band 1	Bands 2-4
Base: Paid some private medical costs (unweighted)	45	113
<i>Reason:</i>	%	%
Necessary for claim	22	30
Better treatment than NHS	22	20
Quicker than NHS	36	27
Not available on NHS	12	24
Other	17	8
Can't say/not stated	-	3

Examples of respondents' reasons for choosing private medical treatment are as follows:

*I was advised by the GP to go privately because of the speed of it. I was in too much pain to wait for the NHS.*

*I had the operation privately because the solicitor advised me to go privately rather than go on waiting.*

*Because under the NHS I'd have to wait two years. I was in agony. They did it the following day privately.*

*Felt it was a better standard of medicine. I wanted it quickly.*

*Advice from the insurance company. The NHS couldn't provide the intensive treatment I needed.*

### 3.7 Home nursing

Respondents were asked if they had received any nursing care *in their home* as a result of their accident. Among the smallest settlements, receipt of nursing care in the home was very rare (only one in ten (11%)), and all of those who received such care in this band said that it had been provided by a community nurse or health visitor.

The likelihood of receiving home nursing care increased with the amount of damages. Just over one-fifth (21%) of respondents in band 2 received nursing care in the home, as did 34% of band 3 respondents and 38% of those in band 4. Nearly all of those who received such care said that it had been provided by a community nurse or health visitor. However, small proportions received care from a private nurse (2%) or a social worker or counsellor (3%).

#### *Payments for private nursing*

Of those who received nursing care in their home, only a very small proportion said that they



had paid for some or all of the care they had received. In fact, no-one in band 1 had paid for any care, and fewer than one in ten (8%) victims in bands 2-4 said they had paid some of the costs of nursing care.

### 3.8 Extra help with day-to-day tasks

Respondents were asked if they had needed extra help with their daily tasks (such as dressing, washing, cooking, getting about) as a result of their accident. The vast majority of respondents did need such help: three-fourths (77%) of respondents in band 1 needed extra help, as did four-fifths (83%) of those in bands 2-4. Nearly all of those with the highest settlement (band 4) needed extra help (93%). Table 308 shows who provided this necessary help. Most often, victims relied on *unpaid* help from other family members or relatives (usually a spouse), or from friends or neighbours.

Only a very small proportion of respondents said that they had paid for any of this extra help: 5% of band 1 respondents, and the same proportion of respondents in bands 2-4.

Table 308: Extra help for day-to-day activities: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Extra help provided by:</i>	%	%	%	%	%
None needed	23	23	18	8	17
Spouse/partner	51	51	52	57	53
Parent	22	24	24	38	28
Brother/sister	11	13	13	18	14
Son/daughter	21	16	12	11	13
Other relative	4	8	4	7	7
Friends, neighbours	17	20	11	24	19
Home help, community nurse, etc.	6	5	7	13	8
Someone else	2	1	4	2	2
Had to pay for extra help	5	3	7	6	5

Table 308 demonstrates clearly the burden of care that falls on close family over extended periods following an accident. The findings of the present study in relation to the provision of care are consistent with previous research which has looked specifically at the nature of support received by accident victims during their period of recovery and in the longer term. The Oxford survey<sup>5</sup> of the consequences of accidental injury reported that 'informal support' provided by neighbours and kin was used by over half over the sample (57%) and that: 'use of informal support remained at a more consistent level than any other kind of support

<sup>5</sup> See Harris et al (1984) op cit, Chapter 9.

reported, regardless of the cause of the individual victim's problem...Payment for informal help was very rare, occurring in fewer than 5 per cent of cases, although gifts to helpful friends and relatives are reported in accounts of use made of damages received.' (pp. 245–247). The Edinburgh study<sup>6</sup> of victims of catastrophic injury conducted some five years after settlement found that although 40% of victims were not receiving any form of care assistance at the time of the interview some 16% of cases required care for more than eight hours per day and 26% received care and/or supervision for two or more but less than eight hours daily. The analysis of care providers highlighted 'the extent to which immediate family members – spouse, parents, and, less frequently, siblings – were solely or mainly responsible for the care and supervision provided to the 60% of respondents for whom such arrangements were in place' (p 48). That study also found little evidence of the purchase of nursing or other care assistance.<sup>7</sup>

### 3.9 Other aids or assistance needed

Finally, respondents were asked if they needed other types of aids, assistance or rehabilitation (such as a wheelchair, hearing aids, spectacles, physiotherapy, etc) as a direct result of their accident. The vast majority of respondents did require such aids or assistance, and the likelihood of their doing so increased with size of settlement, from two-thirds (67%) of respondents in band 1 to 87% of respondents in band 4 (Table 309).

Table 309: *Aids or assistance required: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: All (unweighted)	220	170	130	134	434
<i>Aids or assistance needed:</i>	%	%	%	%	%
None needed	33	22	14	13	17
For mobility/lifting	41	50	69	63	60
For sight/hearing	6	10	9	31	16
Alterations to home	4	6	15	40	19
Rehabilitation	45	46	58	54	52
Other aids	5	8	5	2	5
Can't say/not stated	*	–	–	3	1
Had to pay for aids/assistance	12	22	32	39	30

The most commonly needed types of aid and assistance were for help with mobility or rehabilitative assistance such as physiotherapy or occupational therapy. Other aids were less common for those receiving lower settlements, but were quite prevalent among those who

<sup>6</sup> Comes 1994 op.cit. Chapter 3.

<sup>7</sup> See Section 3.11 below for a discussion of the impact of 'caring' on spouses and close relatives.

received the largest settlements (band 4). Aids for sight or hearing, and the need to make alterations to homes, were much more commonly mentioned by respondents in band 4. The likelihood of having to pay for extra aids or assistance also increased by band, from 12% of all band 1 respondents to 39% of band 4 respondents.

### 3.10 Current health condition

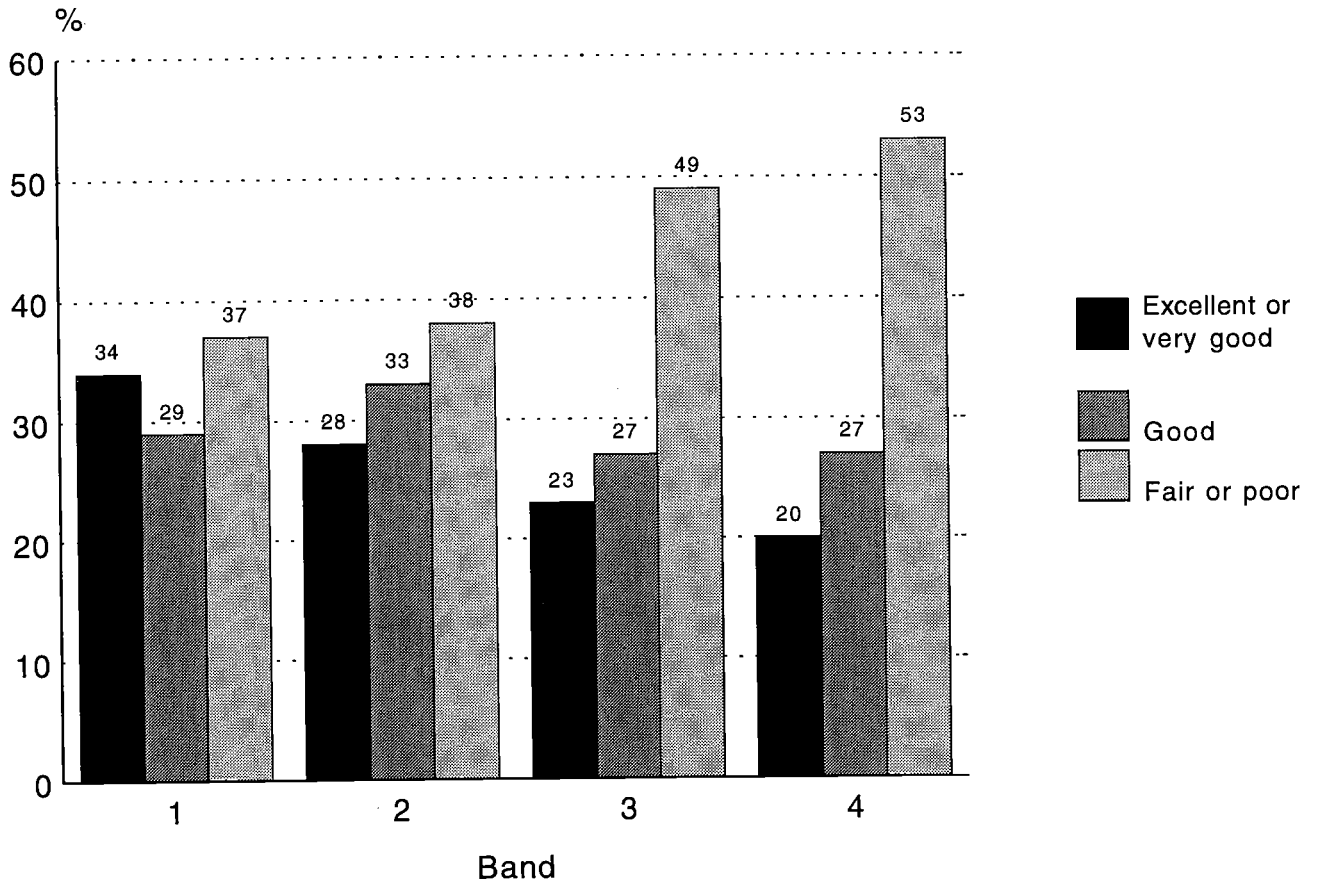
By the time that survey interviews and qualitative interviews were carried out, some respondents had made an almost complete recovery from their injuries, whilst others, particularly those who had experienced major accidents, continued to have permanently impaired physical abilities. This latter group was often associated with considerable levels of dependence on others for basic tasks such as toileting and bathing. A further group of people had made a partial recovery. For example, some of their health problems had cleared up, while others had not; in some instances people had regained the use of a damaged limb although they continued to experience restricted use and movement; others had reached a 'plateau of pain' which they only found manageable if they restricted their activities and made continual use of pain killers. Evidence from qualitative interviews indicates that an individual's circumstances at the time of the interview were not always related to the severity of the initial injury. While some people with very severe physical injuries had made very significant recoveries, others with comparatively minor injuries continued to have a poor prognosis. For example:

During the course of her work, one respondent fell through a rotten floorboard and damaged her ankle. While this was an essentially minor injury the consequences were very severe. Her ankle healed poorly and became very weak. Being unable to put pressure on her foot she was only able to walk with a stick and was in pain much of the time. She was unable to continue with her job and accepted early retirement on health grounds; she was also unable to exercise and as a consequence gained considerable weight. Together, these contributed to severe depression and a very restricted lifestyle. *It is very difficult. My children really don't want to listen to the story of it. If I was to say I'm terminally ill, you'd get sympathy. But it's only an ankle. But people don't realise the knock-on effect...you learn to live with it and you learn to work to your limitations...And it frightens me for what is going to be long-term, what is going to happen in the future? In 10 years time it will have got progressively worse and what is the future going to be then? How will I cope?*

#### *State of health at time of interview*

All respondents were asked how they would describe their state of health at the time of interview. As might be expected, responses showed that as size of settlement increased, the likelihood of being in excellent or good health decreased, while the chances of being in fair or poor health increased (Figure 301). The likelihood of being in fair or poor health increased significantly with size of settlement, from 36% in band 1 to 53% in band 4. Those respondents who received the largest settlements (band 4) were more than twice as likely to say their health was fair/poor than to say it was excellent/very good (53% compared with 20%). Even among those with the lowest settlements (band 1), respondents were as likely to describe their health as fair/poor as to say it was excellent/very good (36% compared with 34%).

Figure 301: Health condition at time of interview: by size of settlement



Base: All

While there was no clear association between current health and the date when the accident occurred, there was a slight tendency for people to be in *poorer* health the longer ago the date of the accident (Table 310), reflecting the fact that a higher proportion of early accidents were serious (see Chapter 2, Table 202).

Table 310: Health at time of interview: by date of accident within band

	Band 1			Bands 2-4			
	Accident occurred:			Accident occurred:			
	Within 4 years	4-6 years ago	6+ years ago	Within 6 years	6-8 years ago	8-10 years ago	10+ years ago
Base: All (unweighted)	44	71	99	56	128	136	104
Health at time of interview:	%	%	%	%	%	%	%
Excellent	13	21	3	6	10	5	5
Very good	15	24	22	18	19	17	14
Good	34	26	31	29	29	27	30
Fair	32	22	25	30	32	29	28
Poor	4	8	19	16	8	21	24
Unclear	2	-	-	-	2	1	-

In general, then, the picture is of a group of people who tend not to be in good health after their accident or illness. The extent of their health problems at the time of interview are looked at more closely below.

#### Long-term health problems

During the survey interview, respondents were shown a card and asked about any current long-term health problems they had. The vast majority of respondents reported that they were suffering from a long-term health problem, regardless of the size of the settlement that they had received. Only 2% of those respondents who had received the largest settlements (band 4) had none of the health problems asked about on a long-term basis; of all those with settlements of £20,000 or more, only 7% did not have any health problems. This is a much lower proportion than for the general population as a whole, two-thirds (64%) of whom have no such long-standing health problems.<sup>8</sup> The difference between our sample of compensated accident victims and the general population is much greater still, if our sample is compared with the general population of working age. In the general population of 16 - 64 year olds, 71% have no longstanding health problems as compared with our sample in which only 16% of respondents in band 1 and 7% of respondents in bands 2-4 had no longstanding health problems.

<sup>8</sup> 1991 GHS. Note that the GHS figures include 16 and 17 year olds, unlike the survey data, which starts at 18 years.

There was also a clear relationship between health problems and the size of settlement, with the incidence of each of the various types of problem increasing by band (Table 311). Problems connected with limbs or the back (including arthritis and rheumatism) were by far the most common type of disability. While nearly nine in ten of those receiving the largest settlements (band 4) had long-term problems with their limbs or back, this was also the case for seven in ten of those who received the smallest settlements (band 1); among the general population, the proportion reporting similar problems is 15%.<sup>9</sup> Band 4 respondents were particularly prone to sight problems (35%), stomach, liver or kidney problems (32%), chest or breathing problems (23%) and skin conditions (23%). Depression and anxiety was also very prevalent among those with the highest settlements, with over one-quarter mentioning this as a long-term problem; nearly one-fifth (18%) mentioned other types of mental illness or nervous disorders. Comparable figures among the general population (from 1988-89) are: 3% with sight problems; 4% digestive problems; and 7% respiratory problems. The incidence of being registered as disabled also increased with size of settlement, ranging from 8% in band 1 to 43% in band 4 (Table 311).

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<sup>9</sup> GHS 1988 and 1989 combined for all persons aged 16+ (the most recent years for published figures). Note that the survey used a show card to classify health problems, whereas the GHS question is open-ended.

Table 311: Long-term health problems or disabilities and whether registered disabled: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Type of problem:</i>	%	%	%	%	%
None	16	9	9	2	7
Limb or back problems (incl. arthritis or rheumatism)	70	80	84	89	84
Chest or breathing problems	16	14	15	23	17
Difficulty seeing	10	16	15	35	22
Difficulty hearing	9	7	14	19	13
Stomach, liver, kidneys, bladder or digestive problems	9	13	13	32	19
Skin conditions, allergies	9	9	12	23	14
Severe heart, blood pressure or circulation problems	9	14	11	17	14
Epilepsy	1	2	5	10	5
Other central nervous system diseases like MS, stroke	2	3	4	12	6
Depression, anxiety	7	21	22	27	23
Mental illness, phobias, panics, nervous disorders	4	7	4	18	10
Drug or alcohol dependency or addiction	1	1	*	6	3
Other	7	11	12	16	13
<i>Registered disabled</i>	8	16	33	43	30

Information obtained during qualitative interviews provides important detail on the nature of the long-term health problems suffered by accident victims. Head injuries, in particular, lead to reduced intellectual abilities, memory loss and considerable dependence on others. Many respondents suffered from depression, anxiety, nightmares, changes of personality and mood, guilt and anger. These difficulties were mentioned by those who received large and small settlements, and were manifested in a number of ways:

#### Depression

*I was bad tempered, grouchy..and I just thought I was an abject failure, that was it. (Male, 51; motorbike accident; now self-employed)*

*Frankly, there are times when I simply don't want to live any more...I've lost everything, my job, my friends, going out...I have terrible diarrhoea...I'm in pain whenever I eat...I just want to die sometimes. (Male, 51; Medical negligence, unable to work, housebound and in constant pain)*

## Anxiety

*I start to worry a lot and get very tense and anxious. I never, ever, suffered from nerves. When I was a musician I played all over the world, literally in front of thousands, millions of people...and I never suffered from nerves at all, but now I do.* (Male, 33; knocked over by a drunk driver while on police duty; no longer working, no longer able to perform as a musician)

## Nightmares

*I have real difficulty travelling by train now. I have to cocoon myself with a book and a radio to stop my fear of being thrown...I wake up at night – quite frequently – going through the accident time after time after time...I still get flashbacks during the day, but it's the night that can be the worst.* (Male 59; Rail crash; working in a different job for the same employer)

Qualitative interviews also revealed that sexual difficulties had resulted from injuries, such as inability to function as a result of pain, impotence, and embarrassment at being physically damaged. Some of the men in the study, particularly those who had experienced traumatic accidents or had sustained head injuries, had found that they had become impotent after their accident:

*The physical side of the relationship was damaged, for two and a half years. As I say, she has been very, very patient, very loving.* (Male 33; work-related injury resulting in physical and psychological injuries)

Respondents who were now caring for a severely injured partner expressed similar experiences:

*[Relationship has changed] tremendously, tremendously. I mean there's no sexual relationship or 'owt like that.* (Male, 57; injured with his wife in a car crash; his wife was injured physically and sustained brain damage)

For some people, their injuries were an embarrassment and were a contributory factor in the curtailment of their sex life. In the following example, a respondent talks about how he found it difficult to continue a sexual relationship with his wife after his hands had been severely damaged in an industrial accident.

*I couldn't stand seeing my hands anywhere near her. Although she said it didn't bother her, it did me.* (Male 30; work accident)

Despite the prevalence of medium- and longer-term psychological and sexual difficulties following accidents, there was little evidence in qualitative interviews of counselling or psychological assistance having been given to respondents. Indeed, several respondents to qualitative interviews commented on the lack of counselling. For example:

*I can't remember seeing one psychiatrist to talk about, just to concentrate on what effect the accident had had on myself...I was seeing psychiatrists and*



*doctors, but it was all false. It was all due to money, it was all about the accident. It didn't seem sincere from their part or my part...It didn't seem to be done to help me..I'd got to do it because it was a set pattern for accidents and for claims. I didn't have any counselling, it was all just going to see doctors for the accident. (Male 48; work accident)*

### *The experience of pain*

The long-term effects of victims' injuries are evidenced by the very high proportion of respondents still suffering from pain at the time of the interview as a result of their injuries: as many as three-quarters (74%) of band 1 respondents and four-fifths (83%) of those in bands 2-4 said they experienced some pain (Table 312).<sup>10</sup>

While there was no obvious association between the likelihood of experiencing any pain and the amount of compensation received, there *was* a correlation between the size of settlement and being in pain *all of the time*: the chances of being in constant pain increased from one in five (20%) of those who received the smallest settlement (band 1) to half (48%) of all those respondents who had received the largest settlements (band 4).

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<sup>10</sup> The number mentioning pain at the time of interview is much higher than those saying they suffered from pain at the time of their accident in Section 3.2 (see Table 302) or soon afterwards (Section 3.3, Table 303). This apparent discrepancy is explained by the differing questions asked: the answers summarised in Tables 302 and 303 were responses to open-ended questions asking about the effects of the injury; the responses summarised in Table were given to a *direct* question asking if the respondent currently suffered from any pain and, if so, how severe it was. It is to be expected that a higher proportion of respondents would report that they are in pain when asked directly about pain, than in response to an open-ended question.

Table 312: Experience and severity of pain resulting from the accident at the time of interview: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>In pain:</i>	%	%	%	%	%
All of the time:	(20)	(39)	(41)	(48)	(42)
- severe	8	16	19	24	19
- moderate	5	12	13	8	11
- mild	1	4	-	3	2
- varies	7	7	9	13	10
Some of the time:	(27)	(28)	(17)	(17)	(22)
- severe	7	8	5	10	8
- moderate	11	14	7	3	9
- mild	3	3	1	3	3
- varies	7	4	3	1	3
Occasionally:	(22)	(19)	(19)	(6)	(15)
- severe	3	4	1	2	2
- moderate	9	10	10	4	8
- mild	7	5	5	-	3
- varies	2	1	3	*	1
Time varies	5	2	9	3	4
No pain	26	13	13	26	17

As Table 312 shows, the likelihood of being in severe pain also increased with size of settlement, especially for those victims who were in constant pain.

There was no correlation between being without pain and the period of time between the accident and the interview. However, victims with the earliest accidents, of 10 years ago or earlier, were the most likely to say that they were in constant pain: 52% of those in bands 2-4, compared with 39% of those whose accidents occurred within the previous 6 years; and they were also the most likely to say their pain was severe (41%). This finding is probably explained by the fact that the highest settlements (and therefore many of the most serious injuries) were associated with the earliest accidents.

This common experience of being in pain is reflected in respondents' feelings about the adequacy of their compensation and their attitudes towards the desirability of receiving damages for pain and suffering, which are discussed in detail in Chapter 10 on the use of damages and Chapter 11 on the adequacy of damages. In Chapter 11 we provide a number of examples of responses relating to the experience of pain. Many of the responses about whether or not compensation should be paid for pain and suffering contained direct references to respondents' own experiences of pain. For example:

*It affects your whole life and family you live with. It affects everything. I just keep thinking "How can I get rid of the pain?"*

*We had no life; life was ruined. The children had no life. He suffered and we all suffered with him.*

*The amount of pain I have had, not for anything would I go through it again.*

*I don't have a minute's peace. Dreadful pain 24 hours a day for 18 months. My personality has changed. It was very difficult.*

*Sometimes these nerve pains are so bad you feel like doing yourself in.*

*You have to learn to live with constant pain.*

### **3.11 Ongoing care and treatment**

Respondents were also asked if they were likely to require any treatment, care or assistance in the future and, if so, what would be required. Their responses are described below.

#### *Medical treatment or tests*

Only a small minority of those with the lowest settlements (band 1) required further treatment or tests (20%). Those with higher settlements, on the other hand, were twice as likely to say they still required further treatment or tests as a result of their accident: overall, 40% of bands 2–4 required further medical attention. Moreover, this proportion increased from one-third (33%) among respondents in band 2, to just under one-half (45%) of respondents in band 3, to just over one-half (53%) of respondents in band 4 (Table 313).

As Table 313 shows, the likelihood of receiving all types of medical treatment or tests increases with size of settlement. The types of requirements most often mentioned were further investigative work, prescriptions, and further treatment.

Table 313: Requirements for medical attention at time of interview: by size of settlement<sup>11</sup>

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Further treatment/tests needed:</i>	%	%	%	%	%
None needed	73	54	44	37	46
Possibly/depends	7	13	11	10	11
Yes:					
- investigative work	5	10	16	20	15
- prescriptions	11	11	18	16	15
- treatment	3	9	13	10	10
- artificial limbs	-	*	1	4	2
- check-ups with GP	2	1	4	4	3
- manipulative treatment	5	5	10	7	7
- psychiatric treatment	-	*	-	*	*
- other answer	1	3	2	5	3
<i>Private treatment:</i>					
- yes	5	4	6	9	7
- possibly/depends	1	6	5	9	6

The columns total more than 100% since more than one response was permitted

Only a small proportion of respondents thought that they would be likely to receive any *private* medical treatment or tests in the future (Table 314): this ranged from 5% of band 1 respondents who said they were likely to do so (with a further 1% saying that it would depend on their condition) to 9% of band 4 respondents who thought that they would receive private treatment in future (and a further 9% saying that they might do so).

#### *Home nursing care*

Very few accident victims could say with any certainty whether they would need home nursing care from a private or community nurse, or other health visitor, in the future: only 1% of band 1 respondents said that they would need such care, increasing to 10% among band 4 respondents. However, a further one in three (32%) of band 4 respondents were unsure if they would need home nursing, or said it would depend on their condition (Table 314).

<sup>11</sup> In this Table, and in the others in this section, 8 respondents who had died by the time of interview are excluded from the base and from all percentages.

Table 314: *Future home nursing care: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Home nursing in future:</i>	%	%	%	%	%
Not needed	87	76	63	57	66
Possibly/depends	12	21	30	32	27
Yes:					
– private nurse	–	–	3	2	1
– community nurse/health visitor	1	3	4	8	5
– social worker/counsellor	–	1	–	1	1
– other	–	1	3	1	2

The columns total more than 100% since more than one response was permitted

### *Help with daily tasks*

Although the vast majority of respondents thought that they would not need home nursing care in the future, respondents were much more likely to say they would need help with their daily tasks in the future (Table 315). Even among those with the smallest settlements, one in five people (29%) said they would need help in future (with a further 5% saying that it would depend on their condition); among all those with settlements of £20,000 or more, one-third (34%) thought that they would definitely need help, and a further 18% thought that it would depend on their condition. The majority of those with the highest settlements (band 4) said that they would need help (52%), with a further 14% unsure if they would. Thus, as many as two in three of band 4 respondents thought that they would certainly or possibly need help with their daily tasks in future.

Respondents most often expected this help to be provided by their spouse/partner or other family members; very few expected help to be provided by non-relatives such as friends, neighbours, or home helps.

Table 315: Future help with day-to-day activities: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Help with daily tasks in future:</i>	%	%	%	%	%
Not needed	76	58	51	34	49
Possibly/depends	5	17	21	14	18
Yes:					
- partner	10	19	18	34	24
- parent	2	3	3	16	7
- brother/sister	3	2	2	7	3
- son/daughter	7	7	6	4	6
- other relative	1	2	1	1	2
- friend/neighbour	4	4	4	3	4
- home help, etc.	2	2	4	7	4
- other answer	2	2	7	3	4

The columns total more than 100% since more than one response was permitted

We saw earlier in Table 308 that care needed at home during the recovery period after the accident was most often provided by spouses, parents and other close relatives. Table 315 shows that the bulk of care needed in the future would also be provided by spouses, parents and close relatives. Tables 308 and 315 together provide ample evidence of the burden of care that had fallen on partners and relatives in the past and the continuing responsibility that would have to be taken by these carers in the future. Although questions were not asked during the survey about the impact of caring on spouses and relatives, other than to identify situations in which carers had been forced to give up paid employment (Chapter 9, section 9.3), information given during qualitative interviews provides some evidence about the strain to which long-term carers are exposed. The effects on carers revealed in qualitative interviews were often dramatic, and impinged on all aspects of their lives. For example, the role of carer had physical effects such as the development of back pain from lifting a partner with mobility problems. Caring could lead to emotional problems since, with negligible outside help, the constant burden of caring could lead to the feeling that *'there's no let-up; I just don't know how I cope'*. For example:

*Drives me bloody crackers sometimes, I'll tell you. You know what I mean; its affecting me in a way..having to look after her...I've been doing this since she came out of hospital which is six years ago...I need a break, and I do need a break, there's no doubt about it. (Husband looking after wife)*

The increased stress of a partner's injury, worries about their prognosis, financial difficulties, and the cessation of marital and sexual relations were all said to contribute to the strains on spouses who were caring for accident victims. Where partners had given up their job to undertake the role of carer they sometimes found that they had problems later when they tried

to re-enter the labour market. Indeed, their problems were often similar to those experienced by the person who had sustained the injuries; for example, the loss of a career; a less well-paid job; a loss of status; and some feelings of resentment that they should experience such losses as a result of an accident that *'should never have happened.'*

#### *Aids or assistance in future*

When respondents were asked if they were likely to need any (other) aids or types of assistance in future, the pattern of response showed the proportions doing so increasing by size of settlement. Thus, one in five (18%) band 1 respondents said they were likely to require additional aids or assistance in future, increasing to over half (55%) of band 4 respondents (Table 316). The items most likely to be needed were aids for mobility, rehabilitation (eg, physiotherapy), and among band 4 respondents, alterations to the home and aids for sight or hearing.

*Table 316: Future aids or assistance: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Aid or assistance in future:</i>	%	%	%	%	%
Not needed					
Possibly/depends	82	58	59	43	54
Yes:	*	3	2	2	2
- aids for mobility	8	21	19	31	24
- aids for sight/hearing	1	5	4	16	8
- alterations to home	2	5	6	17	9
- rehabilitation	10	19	21	12	17
- other answers	1	1	1	2	1

The columns total more than 100% since more than one response was permitted

### **3.12 Current and future effects of injury/illness**

#### *Effect on work or daily activities at time of interview*

Respondents were asked if their injuries or illness still affected their work or daily activities in any way. As size of settlement increased, so did the likelihood of victims' injuries affecting their work, from two-thirds of those with the lowest settlements (band 1) to nearly all (97%) of those with the highest settlements. The details are shown in Table 317; as can be seen from the Table, over four in five people with settlements of £20,000 or more said their work or daily activities were still affected by the injuries they suffered.

Table 317: *Effect of injuries on work or daily activities at time of interview: by size of settlement*

Base: All (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	219	167	128	132	427
<i>Current effect:</i>	%	%	%	%	%
Still affects work	67	78	85	97	86
No longer affects	32	22	13	3	14
Can't say	1	-	2	-	*

Respondents who said that their work or daily activities were still affected by their injuries were asked if they thought that their condition would improve over time, get worse, or stay the same. Only a very small minority expected improvement (Table 318): some 6% of those with the lowest settlements (band 1), and 1% of those with damages of £20,000 or more thought that their condition would improve. Over half of the respondents in each band expected their condition to *deteriorate*, while about one-third expected their condition to remain stable.

Table 318: *Future expectations: by size of settlement*

Base: Injuries still affect work or daily activities (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	154	129	111	128	368
<i>Condition is likely to:</i>	%	%	%	%	%
Improve	6	-	1	3	1
Get worse	50	63	50	54	56
Stay the same	34	27	32	33	30
Can't say/not stated	11	10	18	11	13

*Future effects of injuries on work*

Respondents of working age (men aged under 65 and women under 60) were asked if they thought that the injuries they had suffered in their accident would affect the type of work that they could do in future, or their chances of finding work. The vast majority of respondents thought that their injuries would affect their future work prospects, particularly among those who received the largest settlements. Not a single respondent in band 4 thought their job prospects would be unaffected; and only 2% of all those receiving £20,000 or more in compensation thought that their work would be unaffected. Even in band 1, only one-quarter (27%) of respondents thought that the continuing effect of their accident would not affect their future job prospects (Table 319). Moreover, among the very few respondents who did



not think their work would necessarily be affected in future, one-fifth of those in band 1 and one-third of those in bands 2-4 thought that there could be a future recurrence of problems related to their injuries which might affect their work.

Table 319: *Effect of injuries on future work: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	All
Base: All of working age (unweighted)	120	112	104	124	340
<i>Effect on future work:</i>	%	%	%	%	%
No effect	27	5	2	-	2
Will affect/cannot work again	70	92	91	93	92
Can't say/not stated	3	3	7	7	5

*Effects on relationships*

Information from qualitative interviews provides some insight into the impact of injuries on family and social relationships. Traumatic injuries, accidents that resulted in brain damage or severe psychological changes, and increased dependency on others were often associated with changes in relationships.

In some instances the relationship between partners was said to have been 'brought closer', for example, as a result of one partner giving up their job to care for the other, or as a result of the increased dependence of an injured partner on the other.

In other situations, however, relationships were characterised by stress, separation or divorce. In part this was felt to be due to the physical and/or emotional dependence brought about by a person's injuries. The unfamiliarity of 'having him home all day' and 'being under my feet all the time' was sometimes said to place considerable pressures on the relationship between partners. A number of respondents to qualitative interviews also found that since the accident their partner had become 'a different person'; changes in personality and mood swings were new experiences which, for some people, made the relationship difficult to cope with.

*It put a hell of a lot of strain on it [relationship] 'cos basically for about six months after I came out of hospital I couldn't use either hand so she had to nurse me really...we had rows. We're still rowing now. Yes, it's put a permanent dent in it. Plus, being at home all the time..actually being stuck under the same roof it puts a hell of a lot of strain on [the relationship]..we almost live separate lives. (Male 30; industrial accident; now working in a less-skilled job)*

*It had an enormous effect, it just changed our life completely in every way. I mean one minute I'm working seven days a week. I was still playing football in the same side as my two sons. I was still active in sport, working seven*

*days a week and then the next minute I'm at home seven days a week. It put a lot of stress on the family. All of a sudden I was dependent. I was relying on the wife for basically everything.* (Male 48, blinded in work accident)

For some of those who were not in a relationship at the time of the interview, the prospect of future relationships was felt to be bleak:

*I'm just not interested in any sort of relationship at all. I just like having loads of friends. I'll go to night clubs, meet people. That does me. If I hadn't had my accident I'd have been married and I'd have been happy. But things change.* (Male 27; injured in a motor-bike accident resulting in physical injuries and changes in personality; had a long-term girlfriend at the time of the accident)

Responses to qualitative interviews also described the way in which children had been affected by a parent's experiences. The effects, usually associated with a major injury, generally fell into one of several types: i.e. changes in behaviour such as aggression, 'going off the rails', moodiness, depression, truancy from school and being unable to settle; fears about accidents or disasters occurring; and coping with a parent who has 'changed as a result of their injuries'. For example:

*If she [daughter] traps her finger in a door she screams 'cos she thinks it's going to fall off. A window, or anything like that, or catches it on her bike, or anything, she really stands and screams 'cos she's expecting to look down and see it's fallen off.* (Male, 30; lost all his fingers in an industrial accident, talking about his 7 year old daughter)

*He's coped really well, but it did take him quite a while to adjust to the fact that his dad isn't the same...he found it difficult at first to, you know, cope with his father being unable to remember who he was, being unable to do things for himself, not being able to count his change from the shopping.* (Female 46, talking about the effect on her son of her husband's considerable injuries due to a car accident)

This final extract from a qualitative interview brings together the strain on the carer of having to be constantly in attendance, the strain on children of having a catastrophically injured father, and the loss of normal sexual relations which seem to be so rarely acknowledged or discussed:

*It made life very different, very different...the fact of not being able to go out without there being somebody here to be with him, not being able to pop to the shops or just pop to a friend's...it had an effect [on the children]..my daughter was the youngest and she had health trouble with always wanting to go to the toilet...she was afraid that she wasn't going to be near a toilet in time and she was only six at the time...my middle son was very close to his dad and he did have trouble coping...but the oldest boy, I don't know, I never got anything out of him at all. He was older and he tended to clam up...so yes, it definitely affected them, there's no two ways about it...I think the hardest was when you*

*actually go out into the street and see other couples that are, you know, getting on with their lives. Oh yeah, its hard....People don't talk to you about the sexual side of it and, you know, the physical side of it all, I mean out of the whole of the six years up to the court case I only had one doctor actually speak to me about it. (Wife of accident victim injured in road accident at age 38; brain damaged and crippled; £300,000)*

### 3.13 Summary

This chapter has described the sudden occurrence of serious injury which had both immediate and prolonged effects among our sample of compensated accident victims. The most common injuries suffered at the time of the accident were broken bones or fractures, back or neck injuries and head injuries. Almost all of the victims were treated in hospital following their accident and many spent a long time in hospital, with periods of over six months common among the higher settlements. A significant proportion opted for some private medical treatment, often using physiotherapy or osteopathy to assist in the rehabilitative process. The choice of private care was based on perceptions of its speed and quality, as well as the fact that the type of service might not have been available on the National Health Service.

The majority of accident victims in our sample experienced long-term effects from their injuries such as mobility problems, psychological problems and continuing pain. Extracts from interviews graphically illustrate the misery of lives dogged by depression, difficulty in moving about and continual pain.

Although the need for care was substantial among the sample, few received nursing care in the home, either free or purchased. The great burden of care was provided, and continues to be provided unpaid by spouses, parents, other relatives, friends and neighbours.

Questions about the current health of the sample at the time of the interview revealed that although many respondents had recovered from their injuries, a large number had suffered permanent impairment. The proportion of the sample reporting that they were in only fair or poor health increased with size of damages from over one-third of those in band 2 to over one-half of those in band 4. The proportion of the sample suffering from long-term health problems was much higher than the general population. Among those of working age 71% in the general population have *no* longstanding health problems while the comparable figure for our sample was 16% in band 1 and 7% of respondents in bands 2-4.

The long-term effects of injuries is evidenced by the high proportion of respondents still suffering pain in all settlement bands. Many respondents reported being in constant pain, which was often severe. The experience of pain and its effects were referred to frequently during interviews.

Respondents were likely to require a high degree of future care, which would be provided by family and friends, and qualitative interviews provided evidence of the stress that this imposes on carers in terms of the physical strain, emotional pressure, and damage to their own work prospects.

At the time of the interview the vast majority of accident victims still found that their injury affected their work and daily activities. An overwhelming majority of those still affected by their injuries expected their condition to remain stable or to deteriorate.

## CHAPTER 4. THE COMPENSATION CLAIM

Although the main focus of this survey of compensated accident victims was on the experiences and circumstances of respondents *since* the settlement of their compensation claim, we nevertheless sought information from respondents during the survey and in qualitative interviews about the period between the date of their accident and receipt of their damages, and about certain aspects of their claim for damages.<sup>1</sup> This information is important for a number of reasons: first it provides an insight into the losses, expenses and financial difficulties suffered by accident victims while they wait for their claim to be resolved; second, details about the claim such as the way in which it was financed, receipt of interim payments, receipt of provisional damages, and the length of time taken to resolve the claim, provide important contextual information against which subjective and objective assessments of the adequacy of damages must be set. The experiences of accident victims in seeking to obtain compensation, often over several years, help to explain the point at which they decide to settle their claims, their levels of satisfaction *at the time of settlement*, and some of the changes in their levels of satisfaction with the benefit of hindsight. The protracted settlement process may also influence the way in which compensated accident victims choose to spend their compensation once it has been obtained, and may colour respondents' views of the adequacy of their damages several years after settlement. This Chapter therefore presents information about the claim process, including delay, expectations, provisional damages, and satisfaction with damages at the time of settlement. Chapter 8 provides more information about expenses and losses during the period before settlement, and Chapters 10 and 11 provide further evidence about the impact of the settlement process on the use of compensation and perceptions of the adequacy of damages.

### 4.1 Period between accident and claim

Most of our respondents began their claim for compensation within three months of their accident, although the period between the accident and first claiming tended to increase with the size of the claim (Table 401). Among respondents in band 4 some 20% waited for six months or more before making their claim. The proportion who appeared to delay for a considerable period may seem slightly high. The figures are not inconsistent, however, with

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<sup>1</sup> There have been previous empirical studies of personal injury litigation in Britain which provide greater detail on certain aspects of the claims process, and to which we occasionally refer for comparison at relevant points in the text. See D R Harris and S J Hartz *Report of a Pilot Survey of the Financial Consequences of Personal Injuries suffered in Road Accidents in the City of Oxford during 1965* (1968) (unpublished but summarised in 'A Road Accident Survey', (1969) 119 *New Law Journal* 492 22 May; S B Burman, H G Genn, and J Lyons 'Pilot Study of the Use of Legal Services by Victims of Accidents in the Home' (1977), 40 *Modern Law Review*, 47; Lord Pearson *Report of the Royal Commission on Civil Liability and Compensation for Personal Injury* (1978) (3 vols) (London: HMSO, Cmnd 7054); H G Genn *Meeting Legal Needs?* (1982) (Oxford: Centre for Socio-Legal Studies); D R Harris, M Maclean, H Genn, S Lloyd-Bostock, P Fenn, P Corfield and Y Brittan *Compensation and Support for Illness and Injury* (1984) (Oxford: Clarendon Press); H Genn *Hard Bargaining: Out of Court Settlement in Personal Injury Claims* (1987) (Oxford: Clarendon Press).

the Oxford study,<sup>2</sup> although in that study a lower proportion of accident victims waited six months or more to commence a claim (8% compared with 9% of band 1 respondents in the present survey and 15% of respondents in bands 2-4). However, the Oxford sample was dominated by relatively small settlements which may account for these differences. Both the present survey and the Oxford study show that the majority of claims are commenced within six months of the incident.

*Table 401: Period between accident and claim: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Period:</i>	%	%	%	%	%
Within 1 month	33	32	31	24	29
1 month, less than 3 months	38	35	37	32	35
3 months, less than 6 months	12	15	13	19	16
6 months, less than 1 year	7	8	10	10	9
1 year or more	2	5	3	10	6
Can't say	9	5	6	5	6

#### 4.2 Period between accident and settlement

Most respondents had to wait a substantial period before their claims were settled<sup>3</sup> and Table 402 shows that, in general, the larger the ultimate settlement, the longer respondents had to wait before their claims were settled. About two-thirds (64%) of respondents in band 1 had settled their claims within 4 years of their accident, as compared with one-third (34%) of respondents in bands 2-4. At the other end of the time-scale just over 10% of respondents in band 1 took over six years to settle their claim while almost one-third (30%) of those in bands 2-4 took more than six years. It is revealing that even among the lowest settlements (i.e. less than £20,000) over one-quarter of respondents (28%) took more than four years to settle their claim, and that among band 4 respondents (those receiving £100,000 or more) as much as one-third of cases took six years or more to settle. These figures are somewhat different from those found in the Oxford study which involved a nationally representative sample of accidents occurring between 1971 and 1976, and which contained relatively few large settlements. In that study three-quarters of the settlements had been achieved within

<sup>2</sup> Harris et al (1984) op cit, Chapter 3 p 105.

<sup>3</sup> See also the material discussed in Chapter 11 of this Report which was obtained from solicitors' files of respondents' cases.

two years of the accident, and 90% within three years,<sup>4</sup> which appears, on average, to be rather more swift than the settlement periods found in the present study, even among the smallest settlements in this survey.

Delay is a constant feature of personal injury litigation and a certain degree of delay is inevitable while the parties wait for the medical condition of the plaintiff to stabilize. It is, however, notable that such a substantial proportion of cases, both large and small, remain unresolved four years after the date of the accident.

*Table 402: Period between accident and settlement: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Period:</i>	%	%	%	%	%
Less than 2 years	23	6	7	3	5
2 years, less than 3 years	20	16	9	5	11
3 years, less than 4 years	21	20	15	20	18
4 years, less than 6 years	17	35	36	38	36
6 years, less than 8 years	8	17	22	25	21
8 years less than 10 years	2	3	6	6	5
10 years or more	1	1	3	2	2
Unclear	6	2	2	1	2

Qualitative interviews revealed the effect on respondents of the protracted period during which claims are investigated, negotiated and finally settled. Three main concerns emerged about the time taken to agree settlements: the stress of waiting for compensation, the financial implications of long settlement times, and in some cases, delays in being able to adapt housing to meet mobility needs. Almost without exception, respondents felt that the amount of time spent in litigation was excessive. Stress and feelings of anger and frustration about the time taken were common. For example:

*..we started it when [son] was five, over 10/11 years [ago], a very long time. The case took too long and I was fed-up. I was even about to give up, saying, "Just leave me with my problem". At a certain stage I just wanted to say "Just leave me". At one stage I wasn't even able to go to the solicitors for consultations...' (Female 54. Medical negligence claim pursued on behalf of her five year old son. Settled after 11 years)*

*You have to wait and wait and wait and you might get something and you might not get anything...I've been off four years now and I received [the*

<sup>4</sup> Harris et al (1984) op cit, Chapter 3, p 106.

*damages] four weeks ago, so it's taken four years...I don't think it was quite pursued as fully as it could have been, but by the time we'd gone that far I'd had enough. I mean four years and you think, God, this is going to go on and on and on. Let's forget about it and call it a day. So I accepted. (Female 51, early retirement as a result of broken ankle that did not heal. Settled £5,200)*

The delay involved in settling claims also adds extra financial burdens on those who are not legally-aided and increases the possibility that accident victims may consider abandoning their claims:

*When we first started they said we could do it on Legal Aid...but I got made redundant from work and they came with a golden handshake so we had to report this to the solicitor...then we got a letter asking could we please send a cheque for £800...I thought what do I do?...[the solicitor] said keep going you've got a good case, but if we lost the case we would have had to lose the house....[my wife] talked me round and she was crying by my bed...and I just signed the letter just to shut her up to be honest with you...[the case] took from roughly April 1982 to September 1989. I do think that these things could be put through a lot quicker and at the time I got the impression [the health authority] either wanted me to give it up or to drop dead....because it was ridiculous, they were taking six weeks or seven weeks just to give an answer yes or no. (Male 52 at the time of the accident in which neck broken. Aged 63 at time of interview. Medical negligence claim. £215,000)*

In some instances the time taken to arrive at a settlement was said to have hindered the recuperative, or grieving, process:

*I've been very frustrated at the length of time it's taken and that hasn't helped my grief either. It's like an open wound when, you know, when I've been trying to get myself healed and back into life again...and so it was like an open wound that could never heal. [Female 35. Husband - cyclist - killed by car. £95,000 claim settled after four years.]*

The financial implications of the time taken to settle were often considerable, particularly where people sustained major injuries, required full-time care, or were reliant on state benefits for support. Some respondents were only able to survive financially by going into debt, using credit cards up to the limit, taking out bank loans or borrowing from others. While some people's indebtedness was relatively modest, others mentioned bank loans of up to £15,000 and loans from relatives of up to £12,000.<sup>5</sup>

### **4.3 Use of solicitor**

Nearly all respondents reported that they had used a solicitor to assist with their claim for compensation. The very few exceptions were among those making the smallest claims. The majority of respondents reported that they had not paid any of their legal costs themselves,

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<sup>5</sup> See discussion in Chapter 8, sections 8.7 and 8.8 on this issue.



either because they had received legal aid, or because their costs were covered by the other side or a trade union. About one in four respondents (25% in band 1, and 22% in bands 2-4) had to pay at least some of their legal costs. This is discussed in more detail in Chapter 8.

#### 4.4 Expectations when first making claim

Respondents were asked how much money they had expected to receive when they *first* made their claim. The vast majority could not say: 62% in band 1 and 65% in bands 2-4. Among those who could provide a figure, a minority (15% in band 1 and 13% in bands 2-4) expected a smaller sum in damages than they actually received, with most receiving 50% more than their original expectations. However, respondents were more likely to get *less than they expected*: 23% of respondents in band 1 and 22% of respondents in bands 2-4 gave a higher expected amount than their actual settlement. In fact, many respondents appeared to have settled for considerably less than they had expected, even though these expectations must have largely been based on what they had been told to expect by their legal advisers. Some 16% in band 1 and 14% in bands 2-4 accepted *at least 50%* less than their original expectation. Evidence bearing on these issues and reasons for accepting settlements are discussed in sections 4.7 and 4.12 below, and in Chapter 11.

#### 4.5 Offers rejected

Before settling their claims, most respondents had rejected at least one offer made by the insurance company: two in three respondents in band 1, and three in four respondents in bands 2-4 had rejected at least one offer. The likelihood of rejecting offers, and the number of offers rejected both increase by band (Table 403): whereas only 6% of band 1 victims rejected 3 or more offers, nearly four times as many (23%) band 4 respondents did so.<sup>6</sup> It is perhaps surprising that in bands 1 - 3 a significant minority of respondents reported that they had accepted the first offer made by the other side. Although it is possible that their solicitors had rejected earlier offers that had not been discussed, this finding is consistent with the Oxford study which found that the majority of accident victims had accepted the first offer made to them. In that study some 63% of respondents had accepted the first offer made, although there was a tendency for a higher proportion of offers to be rejected by those receiving larger settlements. As with our results, however, there was clear evidence that even in some of the largest cases the settlement had been reached on the basis of the first offer made by the insurance company.<sup>7</sup>

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<sup>6</sup> It should be noted that the number of offers rejected is probably higher than this, as solicitors may not always tell their clients about every offer made by the insurance company. The figures reported in this Chapter can be compared with data collected from a subsample of respondents' solicitors' files reported in Chapter 11.

<sup>7</sup> Harris et al (1984) op cit, Chapter 3 pp 93-97.

Table 403: Offers rejected: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Offers rejected:</i>	%	%	%	%	%
None	27	22	17	9	17
1	37	29	31	30	30
2	21	27	23	35	28
3+	6	15	22	23	20
Can't say	9	7	7	4	6

#### 4.6 Interim payments

##### *Knowledge of interim payments*

Respondents to the survey were asked about receipt of interim payments from the insurance company, pending final settlement of the case. All respondents were asked if they had known about the possibility of receiving interim payments at the time of making their claim. About one in four (28%) of those who received the smallest damages (band 1) were aware of this, and knowledge increased directly with size of damages so that two-thirds (64%) of those in band 4 knew about interim payments (Table 404).

##### *Claiming interim payments*

When asked if they, or their solicitor, had requested interim payments at any stage of their claim, the proportions were similar to those who knew about it (although in band 1, the proportion requesting an interim payment was somewhat lower than those knowing about it).<sup>8</sup>

As might be expected, the likelihood of asking for an interim payment, and receiving one, increased with size of settlement. As Table 404 shows, only 12% of respondents in band 1 received an interim payment, while nearly two-thirds (63%) of band 4 respondents did so. In fact, nearly all of those who said that they had asked for an interim payment received one. The likelihood of *not* being given an interim payment was highest among respondents in band 1, where nearly one-quarter of those asking for an interim payment did not receive the payment requested; the equivalent figures for the other bands were 17% in band 2, 14% in band 3 and 14% in band 4.

<sup>8</sup> There appears to be an anomaly in band 4, with more people requesting an interim payment than apparently knowing that they could do so. The explanation for this may be that their solicitor had asked for an interim payment on their behalf, without their knowledge. However, there may also have been some ambiguity in the question wording which led to this anomaly. There is also some evidence that some respondents received various kinds of payments from employers to tide them over which they reported as interim payments.

The number of interim payments received also increased with amount of damages: respondents in bands 1 and 2 were most likely to receive only one interim payment, while respondents in band 3 were nearly as likely to get two or more payments, and those in band 4 were more likely to receive two or more payments than only one (Table 404).

Table 404: *Interim payments: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Interim payments:</i>	%	%	%	%	%
Knew of interim payments	28	56	63	64	60
Asked for interim payment(s)	16	48	60	74	60
Received interim payment(s):	(12)	(39)	(52)	(63)	(51)
- one	9	32	29	29	30
- two	1	6	11	23	13
- three or more	1	1	12	11	8
- unclear	1	-	1	-	*

*Size of interim payments*

Table 405 shows the size of the interim payments respondents said they had received. Except for those in band 4, most interim payments were for quite small amounts, with the majority under £5,000; in band 4, about half were under £10,000. (These figures refer to individual payments, not to the total received by individuals.)

Table 405: *Size of interim payments: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Interim payments (unweighted)	39	84	115	138	337
<i>Amount:</i>	%	%	%	%	%
Under £5,000	78	72	64	26	50
£5,000 - £9,999	15	26	17	24	22
£10,000 - £49,999	7	1	13	28	16
£50,000+	-	-	3	4	3
Unclear	-	1	3	19	9

When asked whether the interim payments received had been for the amount that respondents had requested, the vast majority of those receiving such payments said that they had been, or that they had not expected a specific amount. However, about one in eight respondents were dissatisfied with the size of at least one or more of their interim payments: 12% of those requesting interim payments in band 1, and the same figure for those requesting interim payments in bands 2-4.

#### *Reason for interim payments*

Among those who received an interim payment, half of those in band 1 (54%), 60% in bands 2 and 3, and 73% in band 4, said the payment had been made to enable them to pay for something in particular. Among those who said this, almost all (97% in bands 2-4) said that they had used the money in the manner intended.

#### *Reason for no interim payment*

A few respondents who had wanted an interim payment did not receive one. When asked why they had not received an interim payment, the majority (in bands 2-4) reported that the insurance company had refused to make an interim payment (57%), 6% said their solicitor advised them not to ask for one, 19% gave various other reasons, and 18% did not know the reason.

### **4.7 Settlement or court award**

Nearly all of the claims included in the survey had been concluded on the basis of an out of court settlement. In band 1 6% of cases had been concluded on the basis of a court judgment and in bands 2 to 4 some 9% of cases were concluded by a court judgment.<sup>9</sup>

The overwhelming majority of respondents in all bands who had settled their cases out of court were asked if they would have taken their claim to court if they had not been "satisfied with the final offer" made by the other side. Regardless of the size of the claim, the majority of respondents said that they *would* have taken their case to court (66% in band 1 and 75% in bands 2-4) or could not say (15% and 11% respectively).

A sizeable minority, however, said that they definitely *would not* have been prepared to go through court proceedings: 19% in band 1 and 15% in bands 2-4. The main reasons given for reluctance to go to court were: that their solicitor had advised them against doing so (51% band 1; 42% bands 2-4); that they might have been awarded less money in court (11% band 1; 29% bands 2-4); fear of the legal costs involved in going to court (21% band 1; 19% bands 2-4); and, that going to court would have been too great an emotional or physical strain (24% band 1; 17% bands 2-4). Other reasons given (by fewer than one in ten respondents) included: fear that they might lose their case in court; the amount of damages awarded by a judge might not have been any larger; and, that it might have taken too long (or that the claim had already had taken so long).

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<sup>9</sup> These figures are comparable with the Oxford study in which five cases (3 per cent) were concluded on the basis of a court judgment of a total of 182 cases in which damages were received.

Examples of the reasons given by survey respondents for not wanting to go to court are as follows:

*I couldn't stand the thought of being questioned and going through it all again. The thought that the motorcyclist might be there.*

*Because it's such a traumatic time. I'd had enough. I was just about to break. I was at my wits end.*

*My husband was too poorly and didn't want to die and have me with a load of trouble having to go to court.*

*The costs would not allow me to. If I lost I would have to pay costs. Could be £4000 a day.*

*Because there was a possibility of losing everything.*

*The solicitor said we would wait three years and then another three years. I didn't know how we would manage. I was the bread winner.*

*You have to have money to go to court. If we had lost we would have been behind bars for non-payment.*

*I'd reached the end. I was a nervous wreck. I was advised by my solicitor to take it. I had had enough.*

*I was blackmailed into accepting the amount offered. The other side said that I could go into court and be prepared to pay my own costs, which could amount to more than the compensation.*

*I didn't want any more medicals or court work or arguments over costs. I wanted to get it finished.*

#### **4.8 Court of Protection**

All respondents were asked whether the Court of Protection "had to approve" their settlement or award. In response to this question, two-thirds of respondents did not know, and about one-quarter said that the Court did not have to approve the settlement. Only 5% of respondents in bands 1, 2 and 3 reported that the Court of Protection did have to approve their settlement, while among respondents in band 4, the figure was much higher at 18%. (The figure for all settlements of £20,000 or more was 9%.)

Those who said that the Court of Protection had approved their settlement were asked if the Court had appointed a receiver to supervise how the damages were spent. Only 3% of respondents in band 1, and 4% of respondents in bands 2-4 reported that a receiver had been appointed (with most of the rest unable to say). However, there is likely to be considerable confusion among accident victims about the specific role of the Court of Protection and of

a receiver, including whether or not a receiver was appointed. These results, therefore, must be treated with caution since respondents' perceptions may not correspond with actual circumstances.<sup>10</sup>

#### 4.9 Provisional damages

We were also interested in the frequency with which respondents in our survey had claimed and received provisional damages. All respondents were asked whether they had claimed provisional damages, and if not, whether they now thought that they should have claimed provisional damages. We expected that such claims would be relatively rare and this was borne out in the responses to questions about provisional damages (Table 406). Only 4% of respondents in bands 2–4 reported that they had claimed provisional damages, and only 1% said they had been awarded provisional damages. The figure for respondents in band 1 is less than 0.5% either claiming or being awarded provisional damages. We suspect, however, that there may have been some confusion among respondents about this matter, and the figures should therefore be treated with caution.

Table 406: Provisional damages: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: All (unweighted)	220	170	130	134	434
<i>Provisional damages:</i>	%	%	%	%	%
Claim made:					
– awarded	*	3	–	–	1
– not awarded*	–	2	5	2	2
Should have claimed	43	55	55	57	55
No need to have claimed	29	22	18	19	20
Can't say	27	18	22	22	21

\*Includes a few cases in band 3 where it was not stated if provisional damages were awarded.

At the time of the interview, no one who had been awarded provisional damages had made a subsequent claim for more money.

While very few victims had claimed provisional damages, a majority of those who received damages of £20,000 or more thought, in retrospect, that they should have done so. Among those who did not claim provisional damages, 62% in bands 2–4 said they wished they had done so, as did 46% of those in band 1 (which is 55% and 43% based on all those in bands 2–4 and band 1 respectively).

<sup>10</sup> Indeed, information collected from a subsample of respondents' solicitors' files which was compared with responses given in the survey suggests that at least some respondents were unaware of the fact that the Court of Protection was involved (see discussion in Chapter 11).

The main reasons given by those who said that they *should* have claimed provisional damages were: that they *had suffered* from further health problems or incurred additional expenses which were not anticipated at the time of the settlement (49% band 1; 45% bands 2-4); that they thought they *might* suffer from such health problems in future (25% band 1; 20% bands 2-4); that they believed they *will definitely* suffer from such health problems, or have extra costs, in the future (15% band 1; 17% bands 2-4); and that they considered their damages to have been inadequate (7% band 1; 11% bands 2-4).

The answers to this question reveal how many respondents faced apparently unexpected difficulties *after* the settlement of their claim, and this is reflected in the fact that around half of all respondents interviewed (46% of respondents in band 1 and 55% of respondents in bands 2-4) wished that they had claimed provisional damages.

The following examples of the reasons given by respondents for wanting provisional damages illustrate the kinds of unanticipated problems that can occur, and the way that these problems bear on perceptions of the adequacy of damages:

#### Further health problems

*Because my hearing will deteriorate more and in hindsight I do not believe the solicitor was acting in my best interest.*

*Because the one injury has turned into four. I have put out other parts of my body – my hip, shoulders, knee and back.*

*I'm getting worse and worse. My condition has deteriorated. I'd go through court next time.*

*I can see I am not getting any better. It is getting worse. Before the accident I was a footballer, very active. Now I sit around and I have got heart trouble. No one tells you that this can happen at the time.*

*Because I've got worse and deteriorated more as I have pains I didn't have at the time. I'm struggling more now than two years after the accident.*

*You don't know what the future holds. As it is, my health has deteriorated. We're only allowed one bite of the cherry. Take that bite and that is it. I didn't expect the pain I'm experiencing now to go on as it is.*

*At the time the prognosis was that it was possible that she would get a bit better, but not worse.*

*They have diagnosed a general deterioration since the accident. The brain damage will get worse.*

## Unanticipated problems

*Because I realise now the only work I can get is rubbish. Low pay and ridiculous hours. As I get older the leg is going to get worse.*

*At the time of the award it was hoped that my son would be able to do work of some sort. This hasn't been possible. It is likely that he will not be able to work again. The award was no-where large enough to cover this contingency.*

*You don't know what may happen. We didn't realise that she would remain at school until she was 19 and then remain at home unable to work.*

*Because I am out of work now. I am getting worse.*

## Money not enough to compensate

*When you get paid for anything like this you think your injuries will go as time goes by, but then you realise what you've lost. All of your life is changed. We used to go caravanning. We had to sell them. I can't drive because I'm panic stricken.*

*Because his life was ruined. He couldn't do anything. All our lives have been ruined.*

*After paying off all the bills we bought our house. There is not enough left. It sounded a lot at the time but by the time you pay your debts there is not much left. I don't think I should be working but I have to for financial reasons.*

*I don't think you can tell what is going to happen. You just don't know how the injuries are going to affect you. I was getting fed up by this time. Everything goes on too long.*

*The amount that was finalised was all right, but with inflation and unemployment it is not a lot for the rest of your life.*

*Well I haven't got any chance of getting a job again with the injuries. Not educated enough for an office job.*

Those who said they were happy *not* to have claimed provisional damages were asked their reasons for their response. The most common answers were: that they had not suffered from any unanticipated effects as a result of their accident (30% band 1; 37% bands 2-4); they were satisfied with the size of their damages (19% band 1; 26% bands 2-4); they would not want to have to repeat the claim process again (17% band 1; 13% bands 2-4); and they no longer experienced any effects from their accident (18% band 1; 8% bands 2-4).



Among those respondents who did not claim provisional damages, those who said that their health at the time of the interview was "fair" or "poor" were much more likely than those in "excellent" or "very good" health to say they should have made such a claim (73% and 41% respectively in bands 2-4). Similarly, those who thought their health was likely to deteriorate in future were also much more likely to wish that they had claimed provisional damages than did those who thought their health would stay the same (70% and 52% respectively).<sup>11</sup>

#### 4.10 Contributory negligence

Respondents were asked whether their damages had been reduced as a result of their own contribution to their injuries. Reductions for contributory negligence are an important factor in considering the ultimate adequacy of damages. If an estimate of an individual's past losses and future needs are heavily discounted as a result of an allegation of contributory negligence, it is reasonable to suppose that the damages will be inadequate for future needs and perceived as inadequate by respondents. The answers to the question about contributory negligence are interesting (Table 407). In bands 1, 2 and 3 the proportions saying that they had been held partly to blame for their accident were fairly similar, at between 8% and 10% in each of the three bands. However, among respondents in band 4 almost one in five (19%) of respondents reported that they had been held to be contributorily negligent. Respondents who reported that they had been held to be partly responsible for their accident were generally unable to give the percentage of blame attributed to them; those who could provide a figure most often said they had been held to be between 25% and 49% responsible for the accident (about one-third of those reporting themselves to have been contributorily negligent).

It is somewhat surprising that among the highest settlements reductions for contributory negligence occur at about twice the rate for lower settlements. This finding may be explained by the fact that respondents receiving higher settlements were more knowledgeable about the construction of their claim and therefore more aware of the fact that a reduction had been made on the basis of an allegation of contributory negligence.<sup>12</sup> It is also possible that among the largest claims, insurance companies are more likely to use allegations of contributory negligence as a strategy for reducing the amount of damages ultimately payable.<sup>13</sup>

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<sup>11</sup> See Chapter 3 for a discussion of current and future health conditions.

<sup>12</sup> See section 4.11 below which reveals greater knowledge about the breakdown of settlements.

<sup>13</sup> In our analysis of a subsample of respondents' solicitors files we attempted to assess the proportion of claims in which reductions for contributory negligence were made. However, the deficiencies of information contained in files made it impossible to carry out this procedure in a reliable way. See Chapter 11 for a discussion of information obtained from solicitors' files.

Table 407: *Contributory negligence: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Contributory negligence:</i>	%	%	%	%	%
None	86	87	84	79	84
Yes:	(8)	(10)	(8)	(19)	(12)
- under 25%	1	1	1	5	2
- 25% - 49%	2	4	4	5	4
- 50% - 74%	1	1	*	1	1
- 75% or more	-	-	1	-	*
- can't say how much	4	4	2	8	4
Can't say	6	3	8	2	4

One example from qualitative interviews illustrates both the pressure on plaintiffs at the time they settle, and the imprecise way in which allegations of contributory negligence may be used to discount settlements:

The respondent was a male aged 29 at the interview who had suffered a broken neck in a road accident at the age of 23 and was now paralysed. He settled his claim for £120,000:

*My solicitor was originally talking of £200,000 to £250,000 which would have been comfortable. It would have been adequate. Anything over £250,000 would have been enough. But I did not get it. I could have got nothing.. The insurers offered a settlement, and we looked at it with a barrister and he said 'Take it' because the case apparently was - it was one of those, you put in a claim for so much and you take a percentage of blame. And he said 'Take it, because you could lose the lot. If the judge is in a bad mood you will lose the lot.' So we tried to argue it up some more, and we did not..*

#### 4.11 The construction of settlements

The quantification of claims for damages is a complex process. A central concern of the research was to try to establish the various items for which compensation had been received, and all respondents were asked detailed questions about the losses and expenses included in their claim for damages. We did, however, anticipate that recipients might have only limited knowledge of how the quantum of their claim had been calculated. This anticipated lack of knowledge results from the complexity of the claims process and imperfect communication of detail between solicitor and client.<sup>14</sup> In addition, although the statement of claim may contain considerable detail about past and future losses and expenses, the final settlement is

<sup>14</sup> cf Harris et al (1984) op cit; Genn (1987) op cit.

often achieved on the basis of a global figure which is lower than the initial claim, but which does not provide detail about how the parties arrived at the reduced figure. The absence of a detailed breakdown of claim, together with the complexity and jargon of the claim process, makes it difficult for the average injury victim to have more than a rudimentary grasp of what happened and why the outcome turned out as it did.

The responses to our survey certainly support the view that recipients of damages settlements have only the vaguest notion of what their settlement included. Respondents were read a list of nine items and asked if their damages included money for each one. They were then asked an open-ended question about other items that may have been included. The responses are shown in Table 408.<sup>15</sup>

Table 408: *What was included in the settlement: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Damages included money for:</i>	%	%	%	%	%
Pain and suffering	60	63	74	80	71
Expenses before settlement	29	37	37	47	40
Expenses after settlement	9	12	24	26	20
Loss of enjoyment of life/amenities	26	42	50	54	48
Legal costs	40	53	47	53	51
Damage to property/clothing	33	36	41	41	39
Private medical treatment/nursing	12	20	26	24	23
Loss of earnings	51	63	65	78	68
Future loss of earnings	19	41	62	84	61
Other:					
- moving home/alterations to home	*	*	1	10	3
- new car/adapting car	1	2	1	2	1
- parent's/spouse's loss of earnings	*	2	3	6	4
- other	5	5	3	12	6

The columns total more than 100% since more than one response was permitted

As the size of settlements increased, so did the likelihood that respondents would report that various items mentioned to them had been included in their settlements. In band 1, only pain and suffering and compensation for loss of earning were identified by more than half of respondents as being included in their damages. In band 2, there were three items mentioned by more than half of the respondents, with legal costs (53%) being added to the list of pain and suffering and loss of earnings (both 63%).

<sup>15</sup> More detail is provided on this issue in Chapter 11 where the responses of a subsample of those interviewed in the survey are compared with information extracted from their solicitor's case file.

In band 3, the list extends to four, including pain and suffering (74%), loss of earnings (65%), future loss of earnings (62%) and loss of amenities (50%), and with legal costs at just under half (47%). In band 4, the same items plus legal costs are mentioned by more than half of respondents, and the proportion mentioning each of them was greater than for any of the other bands. Of particular note is *future* loss of earnings, which was mentioned by 84% of band 4 recipients, compared with 62% of respondents in band 3, 41% of those in band 2, and only 19% of those in band 1.

The extra expenses that were incurred by accident victims, or are likely to be incurred in the future are described in detail in Chapter 8 (including private nursing, help with daily activities, aids (wheelchair, etc), and assistance (physiotherapy, etc). In some cases, these aids or services were (or will be) provided free, for example, by other family members, social services or charities; however, in some cases the accident victims themselves had to pay (or will have to pay) for this extra care or assistance. If such costs are anticipated before settlement, they should be included in the compensation claim. Table 409 presents information given by respondents about the extent to which these costs were included in settlements, although the small bases for some of these items mean that the results must be treated with caution.

Table 409: *Whether extra costs were covered by compensation for those with extra costs*

Base: All band 2–4 recipients who have paid/will pay for aids/assistance, etc. (unweighted)		All costs	Some of costs	Not included	Can't say
	Base:				
Private medical treatment	112	% n.a.	47	41	12
Private nursing care	17	% 43	21	20	16
Future nursing care	17	% 39	17	30	14
Daily help	34	% 47	21	21	12
Future daily help	34	% 24	24	38	15
Aids or assistance	148	% 38	53	n.a.	9
Future aids/assistance	78	% 25	55	n.a.	20

Note that the percentages in this Table add horizontally to 100%. For private medical treatment, the “some” or “all” responses were combined. For the two categories of aids/assistance, the “some” and “none” respondents were combined.

Respondents reported that all the costs of extra expenses were covered in only a minority of cases, except for private medical treatment and daily help. For each type of expense, between two-fifths and three-fifths of respondents said that at least some of these extra expenses were *not* covered by their damages, and quite often that none of these expenses were covered.

Among those who reported having to pay some of their legal costs, three-fifths (61% in bands 2–4) said their compensation included money for their legal expenses, one-quarter (23%) said no money was included, and the remainder (16%) did not know.

Most victims who were still in pain as a result of their accident at the time of interview reported that their compensation had included money for pain and suffering (71% in bands 2-4); however, a small proportion of those in pain said they did not get any money for pain and suffering (9%, including 7% of those who said they still suffered from severe pain constantly), with the rest unsure (19%).

Among those respondents who were in work at the time of the accident, 75% (in bands 2-4) of those who took time off from work or never returned to their job reported that their settlement included money for earnings lost before the settlement; 16% said no money was included for lost earnings, and 9% could not say. Among those who had *never* returned to work since their accident, 73% said their settlement included money for loss of future earnings, 11% said it did not include any money for this reason, and 16% could not say.

#### **4.12 Satisfaction with compensation at time of settlement**

Respondents were asked how satisfied they were with the amount of compensation they received *at the time of the settlement or award*. In general, at the time they reached their settlement, respondents were about one-and-a-half times more likely to be satisfied than dissatisfied. Among respondents in band 1, 58% were satisfied, and 38% were dissatisfied; in bands 2-4 the equivalent figures were 56% and 40% (Table 410).

In general the figures for band 1 and band 2 were similar. However, there was considerable variation between bands 2, 3 and 4. In band 3 respondents were almost as likely to be dissatisfied (46%) as satisfied (49%), while in band 4, respondents were more than twice as likely to be satisfied (68%) as dissatisfied (30%). Thus at the time of settlement, the greatest satisfaction was felt, not surprisingly, among those receiving the highest damages of £100,000 or more. However, those respondents who had received the lowest settlements of between £5,000 and £19,999 displayed the next highest levels of satisfaction. The greatest level of dissatisfaction at the time of the settlement was among those respondents receiving over £50,000 but less than £100,000. These figures suggest that the extent of satisfaction is not a simple linear relationship with the size of the damages. Rather, levels of satisfaction appear to reside in the interplay between seriousness of injuries, expectations, and actual damages. Those with relatively minor injuries which have not had a long-term effect on their work or daily activities (ie, band 1 victims) presumably have lower expectations and thus are more easily satisfied than those whose injuries have a serious effect on their lives, and especially on their work. Satisfaction at the time of the settlement is also related to the absolute size of the settlement. Many of the respondents to whom we spoke during qualitative interviews referred to the fact that at the time of receiving their damages the amount money seemed enormous.

Table 410: Whether satisfied with settlement at time: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Satisfied at time:</i>	%	%	%	%	%
Yes	58	53	49	68	56
No	38	43	46	30	40
Can't say/not answered	4	4	5	2	4

Those who said that they had not been satisfied with their damages, even at the time of the settlement, were asked why they had agreed to accept an amount with which they were unhappy at the time. In all bands, two in three of the dissatisfied respondents said that their solicitor had advised them to accept the offer. Other reasons included: worries about ending up with less compensation if they carried on; the fact that the claim had already taken so long; they could not afford the legal costs of carrying on; and their health could not take the strain of continued litigation (Table 411).

Table 411: Reason for accepting unsatisfactory level of damages: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Not satisfied at time of settlement (unweighted)	89	69	53	41	163
<i>Reason:</i>	%	%	%	%	%
Advised to accept	64	69	62	68	66
Damages might have been less if carried on	26	33	38	20	32
Period already too long	23	13	17	29	18
Couldn't afford extra legal costs	9	20	11	16	16
Health couldn't stand further negotiations	14	11	11	13	11
Couldn't wait any longer	11	12	8	8	10
Unlikely to get higher damages	13	2	11	1	5
Other reasons	8	4	8	1	5

Examples of the reasons given in the survey for accepting unsatisfactory settlements and categorised in Table 411 are as follows:

*Barrister advised to take it. He thought it was a fair final offer. I didn't agree but you are in awe of these people. We would have been better off in a libel action. You just do what they say.*

*I was told if I didn't accept the case would go to court and I would lose the sum offered or have it halved. This information was received from my solicitor. After a battle the sum reached £110,000 if we were prepared not to go to court.*

*On the advice of my solicitor. Had come to the end of the road. The long drawn out procedure was affecting my health. Couldn't face it. They were keeping surveillance on me. Just wanted to get it over with.*

*He was told by the QC that he could lose it all. Should just accept it. He was too ill to fight.*

*It could have gone to court, gone on for years. Could go to court and be a lot less.*

*If it went to court you might have got less. If I had won would have got the same. Would be liable for all costs.*

*I was absolutely desperate. I was penniless, owed money, and my savings had gone. I was unemployed and not ready for employment. I couldn't get unemployment benefit because I was self-employed and they said I'd been paying the wrong stamp. I could only get invalidity. After a while I was forced off that. I was capable of standing up so could do some sort of light work.*

*We had had enough. The hassle of it all. Emotionally exhausted.*

*Blackmailed into it. Because if went to court have to pay costs – more than amount awarded.*

*Did not want to lose my home to meet costs, or possibly lose the case in trying to fight for what I thought due to me.*

*The chance of losing more than I could gain. It became a gamble.*

*Was told that if went to court could lose some of the money. Savings all went. May have had to pay costs.*

Information from qualitative interviews provides further evidence of the strain of the circumstances under which accident victims often have to make decisions about whether or not to accept offers of settlement:

*They could see that my husband was going to need considerable nursing and who was it going to fall on? Q. Did you realise immediately that the settlement was inadequate? No. I'm afraid that after you've battered somebody for what, 6 years, 7 years, writing letters, receiving letters – at one time if somebody had said 'lick your wounds and get out of it and keep quiet' I would have done it. I was fed up to the teeth with letters coming, letters going, and no reply to letters. The solicitors couldn't even get a reply sometimes, they had to take it in by hand.*

Qualitative interviews also exposed the extent to which many respondents had felt under pressure to accept offers made outside the court room. Court action tended to be seen as a gamble and this feeling was reinforced by the advice of solicitors and barristers. Some respondents also reported feeling pressure to accept at the door of the court without time to reflect and without sufficient advice:

*He [solicitor] said "You've got five minutes before you go in [to court], you have to make up your mind now." I didn't feel as if I had any time to think rationally about the amount they offered – it was so different to what I had expected [£300,000 rather than £600,000]. And I asked my solicitor but I don't think he really knew what to say. (Male, 48, industrial injury, settled for £300,000)*

*Before we went to court...we went to see the barrister who said he'd read through all the papers, a very, very learned gentleman who I was very impressed with. He'd read them through the night before and without looking at them once he knew exactly what had happened to me...He said "Well we can go and we should be in the region of £160,000 in court"...So we came out of there and we thought "Oh, that's not bad"..But on the day he turned round and said "Well they're arguing about this, that and the other. Looking at my figures I may have over-estimated. I'm now advising you to take this figure"...If somebody says to you "There is £100,000, you go through that door and you might lose half of it or you might gain another £50,000", you know it's a big gamble...I couldn't afford to gamble with that. (Male, 33. Industrial injury, settled for £100,000)*

Some of the issues raised in this chapter are discussed again in Chapter 11 which reports respondents' satisfaction with their settlements over the long-term as expressed at the time of the interview.



#### 4.13 Summary.

The survey reveals that the majority of accident victims have to wait for very long periods before they receive their damages. The survey also shows that the length of time waited by respondents before their claims are settled increases with the size of the settlement. Even among the lowest settlements, one in four took more than four years to settle while among the largest claims, one-third took six years or longer to settle. Qualitative interviews provide evidence of the strain of delay, and the financial difficulties experienced during the settlement period.

Respondents generally had received less in damages than they had originally expected with a substantial minority accepting less than one-half of their original expectation.

All but 9% of claims were concluded on the basis of an out of court settlement and most, but not all, respondents reported having rejected at least one offer before settling their claim. Interim payments were received by a majority of respondents in the highest settlement band.

In a handful of cases a receiver had been appointed by the Court of Protection.

Provisional damages were similarly received by a tiny minority of respondents who had received settlements of over £50,000. However, a substantial proportion of respondents in each settlement band felt that, in retrospect, they should have claimed provisional damages. This is a reflection of respondents' post-settlement experience of deterioration in health, their failure to recover as expected, or the now perceived inadequacy of their damages to cover their losses.

Respondents' knowledge of the components of their settlement appeared to be incomplete. Most respondents believed that they had received money for pain and suffering and among those in work the vast majority reported that their settlements included some money for lost earnings before settlement.

In general, the majority of accident victims said that they had been satisfied with their settlement *at the time of settlement*. The greatest degree of satisfaction was among those receiving £100,000 or more (over two-thirds satisfied) and those receiving the lowest settlements between £5,000 and £19,999. The lowest level of satisfaction was among those respondents who had received between £50,000 and £99,999 (49% satisfied). Those respondents who had been dissatisfied at the time of their settlement reported that they had accepted what they believed to be an inadequate settlement because they had been advised to do so by their legal advisers (66%); that they had been worried that they might end up with less if they held out for more (32%); that they were worried about legal costs; or that the claim had already taken so long and their health could not stand further litigation.

Information from survey responses and qualitative interviews provided graphic detail of the pressures on plaintiffs at the time of settlement and the circumstances in which they were faced with sudden advice, sometimes at the door of the court, to settle for substantially less than they had previously been advised their claim was worth.



## CHAPTER 5. THE EFFECT OF THE ACCIDENT ON RESPONDENTS' JOBS

The impact of accidents on victims' health and daily activities was partly described in Chapter 3. This chapter focuses on those accident victims who were in work at the time of their accident and assesses the impact of the accident on their ability to return to the job they were in at the time of the accident. The following chapter describes the impact of accidents on work histories for all compensated accident victims included in the survey. The financial implications of the accident are described in Chapters 7, 8 and 9.

### 5.1 Immediate effect of accident on capacity for work

As described in Chapter 2, the vast majority of respondents (of working age) were in a paid job at the time of the accident with eight in ten of respondents in band 1, and nine in ten respondents in bands 2-4 in work at the time of the accident.

As would be expected, there was a strong association between the size of the settlement and the effect of the accident on victims' capacity for work after the accident (Table 501). Among those who received the smallest settlements (under £20,000), the vast majority eventually returned to their job (73%); however, one-quarter of these accident victims (26%) never returned to the job they were in at the time of their accident. Some of these respondents went to other jobs after their accident, but some never went back to work at all: 16% of respondents in band 1 never returned to any job, and 36% of respondents in bands 2-4 did not return to any work.<sup>1</sup> Nearly all of those who did return to their job took some time off after the accident to recover.

Among those respondents who had received the largest settlements (band 4), three in four (74%) *never* returned to the job they were in at the time of the accident, and only 1% were able to carry on working without taking any time off to recover.

Among the other band sizes, the proportion returning to their job was three-fifths (60%) in band 2, and one-half (47%) in band 3.

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<sup>1</sup> However, as the discussion in Section 5.2 indicates, not all of those respondents who left their job did so as a result of their accident.

Table 501: Whether or not returned to job at time of accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: In work at time of accident (unweighted)	172	150	113	104	367
<i>After accident:</i>	%	%	%	%	%
Carried on working, no time off	4	5	4	1	3
Returned to job at time, but took time off to recover	69	55	43	25	43
Did not return to job at time:	(26)	(40)	(52)	(74)	(54)
– but returned to different job	10	16	20	18	18
– have not returned to any job since accident	16	24	32	54	36
Unclear	1	–	–	–	–

Thus, most respondents who received compensation of less than £50,000 were able to return to the job they were doing at the time of the accident: 73% of respondents in band 1 and 60% of respondents in band 2 did so. Among band 3 respondents (ie, those receiving £50,000 but less than £100,000), just under one-half (47%) returned to the job they were doing at the time of the accident; among those who received £100,000 or more (band 4), only one in four returned to the job that they were doing at the time of the accident.<sup>2</sup>

## 5.2 Leaving the pre-accident job

Respondents who never returned to the job they were in at the time of their accident were asked how long it was before they *formally* left that job (Table 502). Respondents were most likely either to leave immediately after the accident (35% for band 1 and 32% for bands 2-4), or to wait for a year before leaving (18% for band 1 and 37% for bands 2-4). As Table 502 shows, over one-third (37%) of those receiving the largest settlements (band 4) left their job immediately; a similar proportion (40%), however, did not leave their job for over one year.

<sup>2</sup> Given the spread of dates during which the accidents occurred (between 1967 and 1991), it is possible that the likelihood of returning to work depended on the state of the labour market at the time of the accident. For victims who never returned to their job, an analysis of when they left their job by date of accident does not show any clear association, suggesting that labour market conditions did not have a large effect. However, the bases are small especially for the earliest accidents, and these results must therefore be treated with caution.

Table 502: *Period between accident and formally leaving job: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Never returned to job at time of accident (unweighted)	48	61	56	80	197
<i>Time between accident and formally leaving:</i>	%	%	%	%	%
Immediately/within 2 weeks	35	29	27	37	32
2 weeks, up to 3 months	11	1	12	2	5
3 months, up to 6 months	10	12	4	6	7
6 months, up to 1 year	16	10	22	5	12
1 year or later	18	39	32	40	37
Unclear	10	9	3	9	7

Nearly all respondents who left the job they were in at the time of the accident said that they had left *because of the injuries* which resulted from their accident: 83% of band 1 respondents and 97% of those in bands 2-4 left for this reason. Some of those who returned to their job left it at a later date because of their injuries; this is described in the next Chapter in section 6.4.

When asked about the formal terms upon which they had left work, the largest group of respondents said that they had simply decided to leave (37% in band 1; 37% in bands 2-4); about one in four were made redundant (23% in band 1; 24% in bands 2-4); and a smaller number said they retired (16% in band 1; 12% in bands 2-4) or were dismissed (11% in band 1; 10% in bands 2-4).

### 5.3 Returning to the job

#### *Amount of time taken off*

Three in four respondents in band 1, and one-half of those in bands 2-4 returned to the job they were in at the time of their accident. All of those who returned to their job were asked how much time they had taken off work before returning.

The amount of time taken off increases with size of settlement: one-third (34%) of band 1 respondents returned within 3 months of their accident; the equivalent figures for the other bands were 26% for band 2; 15% for band 3; and 6% for band 4. People with larger settlements, on the other hand, were much more likely than those with smaller settlements to take periods of 6 months or more off work before returning (Table 503).

Table 503: Time taken off work before returning: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Returned to work (unweighted)	122	89	57	24	170
<i>Time taken off:</i>	%	%	%	%	%
No time	6	8	9	[4]	7
Less than 4 weeks	7	7	-	[-]	4
4, less than 8 weeks	7	6	-	[-]	3
8, less than 13 weeks	13	6	7	[2]	5
13, less than 26 weeks	34	17	18	[26]	19
26 weeks, less than 1 year	24	25	33	[38]	30
1 year or more	8	30	33	[17]	28
Can't say/not stated	-	2	1	[14]	4

The figures for band 4 should be treated with caution because of the small base

#### *Change in hours*

Those respondents who returned to their job after the accident did not necessarily return to *exactly* the same job, under the same conditions, or for the same pay. For example, a high proportion of respondents worked shorter hours upon their return to work, and the likelihood of this occurring increased along with the size of settlement received. One-third of respondents in band 1 worked shorter hours, compared with one-half (48%) of respondents who received £20,000 or more.

Among those respondents who had been working full-time in their last job (ie, 30 or more hours per week), 17% in bands 2-4 were working *less* than 30 hours per week on their return, and 9% were working *less* than 20 hours per week. However, working shorter hours was only temporary for the vast majority of respondents who did so: one-half (52%) of respondents in band 1, and two-fifths (40%) of those in bands 2-4 worked these shorter hours for less than 6 months. Only 4% of all band 1 respondents and 11% of those in bands 2-4 had worked reduced hours for 2 years or more, or were still doing so at the time of the survey interview.

#### *Change in duties*

Even though the majority of respondents had been able to work their usual hours when they returned to work, the vast majority of respondents said the injuries they had suffered affected the *type of work* they could do. Among those respondents who had returned to their previous employer (and excluding the self-employed), three in four (74%) band 1 respondents, and four in five (85%) in bands 2-4 reported that their injuries had some effect on their work (Table 504).

Although the vast majority of respondents said that the type of work they could do in their job had been affected by their injury, only a small number actually had to do a different job altogether for their employer (14% of band 1 and 20% of band 2–4 respondents).

Table 504: *Effect of injuries on duties in job: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: Returned to employer (unweighted)	110	81	53	21	155
<i>Effect on type of work:</i>	%	%	%	%	%
None	26	20	7	[-]	13
Had effect:					
– changed job	14	18	27	[12]	20
– but did not change job	60	58	65	[88]	65
Unclear	–	4	–	[-]	2

The figures for band 4 should be treated with caution because of the small base

Those respondents who were in manual work were slightly more likely than non-manual employees to report that their duties had been affected and that they had to change jobs (but the differences were not statistically significant).

When asked how their injuries had affected the work that they could do, the most common response involved problems with lifting or strength (60% of band 1 respondents whose work was affected, and 36% in bands 2–4). Other effects included: poorer mobility or problems with walking (14% in band 1, and 26% in bands 2–4); psychological or mental effects (10% in band 1, and 14% in bands 2–4); problems driving (10% in band 1, and 12% bands 2–4); tiring more easily (9% in band 1, 13% in bands 2–4); and experiencing pain (14% in band 1, and 10% in bands 2–4).

Among those who had received larger settlements (bands 2–4), three in five (59%) of those whose work was affected (which is 49% of all those who returned to work) said that their injuries still affected their work and were likely to do so indefinitely; 15% were affected for at least one year; and 17% were affected for less than one year (with 8% unclear). Even among the smaller settlements (under £20,000), two in five (39%) whose work was affected (or 29% of all those returning to the job) said this was likely to continue indefinitely; 13% were affected for at least one year; and 37% were affected for less than one year (with 12% unclear).

Examples of responses to the question “How did your injuries (illness) affect the work you could do?” were as follows:

*It reduced my lifting capacity. I couldn't lift the steel work around and had to ask people to help me. It reduced my mobility. I couldn't get around quickly enough and I couldn't walk for long. I was restricted as regards climbing.*

*I was unable to sit for long periods of time. It was a very sedentary job. I used to sit for 12 hours at a time.*

*I couldn't drive a car the distances I had to cover before the accident. I could not lift or move batteries as required. My power of concentration was greatly diminished. My job was changed to an office job as a tele-sales clerk. The job was created for me, but was not really a viable one, so I was made redundant to qualify for redundancy pay.*

*I wasn't mobile and they put me to work in an office. They thought I'd be able to return to the warehouse after a couple of weeks, but this didn't work out.*

*Couldn't walk about in the shop. I had to have a desk job. If I sat too long I couldn't get going again. I didn't drive for a long time. I lost a lot of concentration. The boss made allowances and looked after me. Basically I could no longer work as I had done so I went into office work.*

*Had to take another job in the factory, no overtime or bonuses. It was a labouring job where there was no dust.*

#### *Change in pay*

It was also quite common for accident victims to suffer a reduction in pay on their return to work. Among those who received less than £20,000 in compensation, one in three (31%) were earning less just after they returned to work. In the main, this reduced pay was received for a short time, with 15% receiving less pay for up to one year, 8% for between 1 and 5 years, and 6% for 5 years or more (or still doing so).

Respondents who had received larger settlements (£20,000 or more) were more likely to receive less pay when they went back to their jobs: over one-half (53%) of those in bands 2-4 did so. These respondents also suffered from a reduction in pay for longer periods of time, with almost one-quarter (23%) receiving less pay for up to one year after their accident, 15% for between 1 and 5 years, and 11% for 5 years or more (or still doing so).

The effect of accidents on pay is described in more detail in Chapter 7.

#### **5.4 The effect of accidents on jobs**

Tables 505 and 506 summarise the effects of the accident on respondents' ability to return to the job they were in at the time of their accident. As can be seen (from Table 505), the likelihood that respondents would not be able to return to the job that they were in at the time of the accident increased significantly with size of settlement from 26% of band 1 respondents who could not return to their job to 74% among respondents in band 4.



Table 505: Effect on work for all those in work at time of accident: by size of settlement

Base: In work at time of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	172	150	113	104	367
<i>Effect on work:</i>	%	%	%	%	%
Never returned to job	26	40	53	74	54
Carried on working, no time off	4	5	4	1	3
Returned, but took time off to recover:					
– under 6 months	45	21	11	7	14
– 6 months to under 1 year	18	15	16	10	14
– 1 year or more	6	18	15	5	13
Unclear	1	1	1	4	2
<i>Returned to job at time of accident:</i>	%	%	%	%	%
– duties affected	54	46	44	23	39
– fewer hours	25	25	26	14	22
– less pay	23	27	29	16	24

In the bottom half of the Table, the columns total more than 100% since more than one response was permitted.

Among those who returned to the job that they were in at the time of the accident, the effect of the injuries on the time taken to return also tended to increase with size of settlement (Table 506). Thus, among the larger settlements the amount of time taken off was greater, with one-third (33%) of respondents in band 3 taking one year or more off work after their accident.

Table 506: *Effect on work for those returning to job they were in at time of accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Returned to job at time of accident (unweighted)	122	89	57	24	170
<i>Time taken off:</i>	%	%	%	%	%
Under 6 months	68	43	33	[31]	38
6 months to under 1 year	24	25	33	[38]	30
1 year or more	8	28	33	[17]	28
Unclear	-	3	1	[14]	4
<i>Effect on job:</i>	%	%	%	%	%
Duties affected	74	77	94	[86]	84
Fewer hours	35	42	55	[52]	48
Less pay	31	46	61	[58]	53

In the bottom half of the Table, the columns total more than 100% since more than one response was permitted.

As Table 506 indicates, among those respondents who returned to the job they were in at the time of the accident, the vast majority reported that their injuries had affected the type of work that they were able to do in their job, regardless of the size of settlement. However, having to work fewer hours and for less pay appeared to be more prevalent among those groups who had received the higher settlements.<sup>3</sup>

## 5.5 Summary

Among victims who were in work at the time of their accident, a handful carried on working without taking any time off, 43% returned to their job after taking some time off, and 54% never returned to the job they were in at the time of the accident (although 18% did eventually return to work in a different job). The likelihood of *not* returning to respondent's pre-accident job increased with the size of settlement from two-fifths in band 2, to over one-half (53%) in band 3, and to three quarters (74%) in band 4.

Nearly all respondents who left the job they were in at the time of their accident said that they had left as a result of the injuries suffered in the accident. Respondents had simply taken a decision to resign from their job, or had been made redundant (one in four), or had retired, or been dismissed.

<sup>3</sup> The figures for band 4 are shown in brackets in Table 506 because of the very small base, and must be treated with caution.

Among those who did return to their job over half (58%) had taken at least 6 months off work before returning. Upon their return, 84% said that their injuries affected the type of work that they could do in their job (especially those who worked in manual jobs which involved physical strength); nearly half (48%) said that they temporarily worked shorter hours; and over half (53%) received lower pay for at least a period after their return.



## CHAPTER 6. WORK HISTORY SINCE ACCIDENT

One of the objectives of the research was to provide information about the effect of accidents on respondents' capacity for work. This chapter describes the work histories of accident victims in the years since their accident. Respondents to the survey were asked detailed questions which established whether they were in work at the time of their accident, whether they returned to the job that they were in at the time of their accident or whether they returned to a different job after their accident, and finally whether they were in work at the time of the interview.<sup>1</sup> The first part of the chapter gives an overview of victims' work histories since their accident, analysed by size of settlement. The following sections describe the job they returned to, reasons for leaving jobs, spells of unemployment and job stability. In the final section, respondents' activity status at the time of interview is described.

The material in this chapter must be set within the context of respondents' perceptions of the extent to which their injuries had affected, and continued to affect, their ability to work. In Chapter 3 we described the immediate and later effects of injuries and found that at the time of the interview two-thirds of respondents with the lowest settlements (£5,000–£19,999 band 1) to nearly all (97%) of those with the highest settlements (£100,000 or more band 4) reported that their injuries still affected their ability to work (Table 317). In Chapter 5 we reported that *nearly all* respondents who left the job they were working in at the time of their accident or illness did so as a result of the injuries suffered, and that among those respondents who returned to their job, the vast majority said that their injuries affected the kind of work they could do, regardless of the size of settlement (see Tables 505 and 506).

### 6.1 Work histories since the accident

#### *Summary histories of those in work at the time of accident*

Information about work history was obtained from all respondents who, in theory, could form part of the labour market, i.e. those aged 16 or more at the time of the interview and those who had not retired before the date of the accident.<sup>2</sup> In order to obtain full information about work histories since the accident, questions about subsequent employment were asked both of respondents who were in work at the time of the accident and those who were not working at the time of the accident, but who may have been in employment since the accident and the date of the interview.

Table 601 and Figure 601 summarise the work histories of survey respondents who had been *in work* at the time of their accident. In later sections the longer-term work histories of those

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<sup>1</sup> For ease of presentation some of the information obtained on these issues has been summarised. Full details of the various sub-groups are given in the survey report published by SCPR (1994) *op cit*.

<sup>2</sup> Since we have *excluded* from this section accident victims who were under 16 at the time of the accident or who had already retired by the date of their accident the numbers in each band upon which the analysis is based are as follows: band 1 = 202; band 2 = 163; band 3 = 126; band 4 = 130.

in work and those not in work at the time of the accident are analysed separately within settlement bands.

The information in Table 601 shows broadly the employment fate of those who were working at the time of their accident up to the time of the interview. As might be expected there is a relationship between the amount of settlement and the likelihood of having any employment since the accident or being in work at the time of the interview. The table shows that the proportions in each band who have been employed since the accident steadily decreases as settlement size increases and there is a similar decrease in the proportions in work at the time of the interview as settlement size increases. What may, perhaps, be unexpected, is the relatively large proportion of accident victims in the lower settlement bands who had not worked since the accident and the fact that almost half the respondents in bands 1 and 2 were not in work at the time of the interview.

Among those receiving lower settlements (bands 1 and 2) it is clear that the majority had some type of paid employment after their accident (83% and 76% respectively). Even within band 3, two-thirds (68%) of respondents had some employment after their accident, although they were more likely than victims in bands 1 and 2 to return to a different job from the one that they had at the time of their accident. Respondents in band 4 who had received over £100,000 in compensation, however, were markedly different, with fewer than half (44%) returning to work at all, and only one-quarter returning to their previous job.

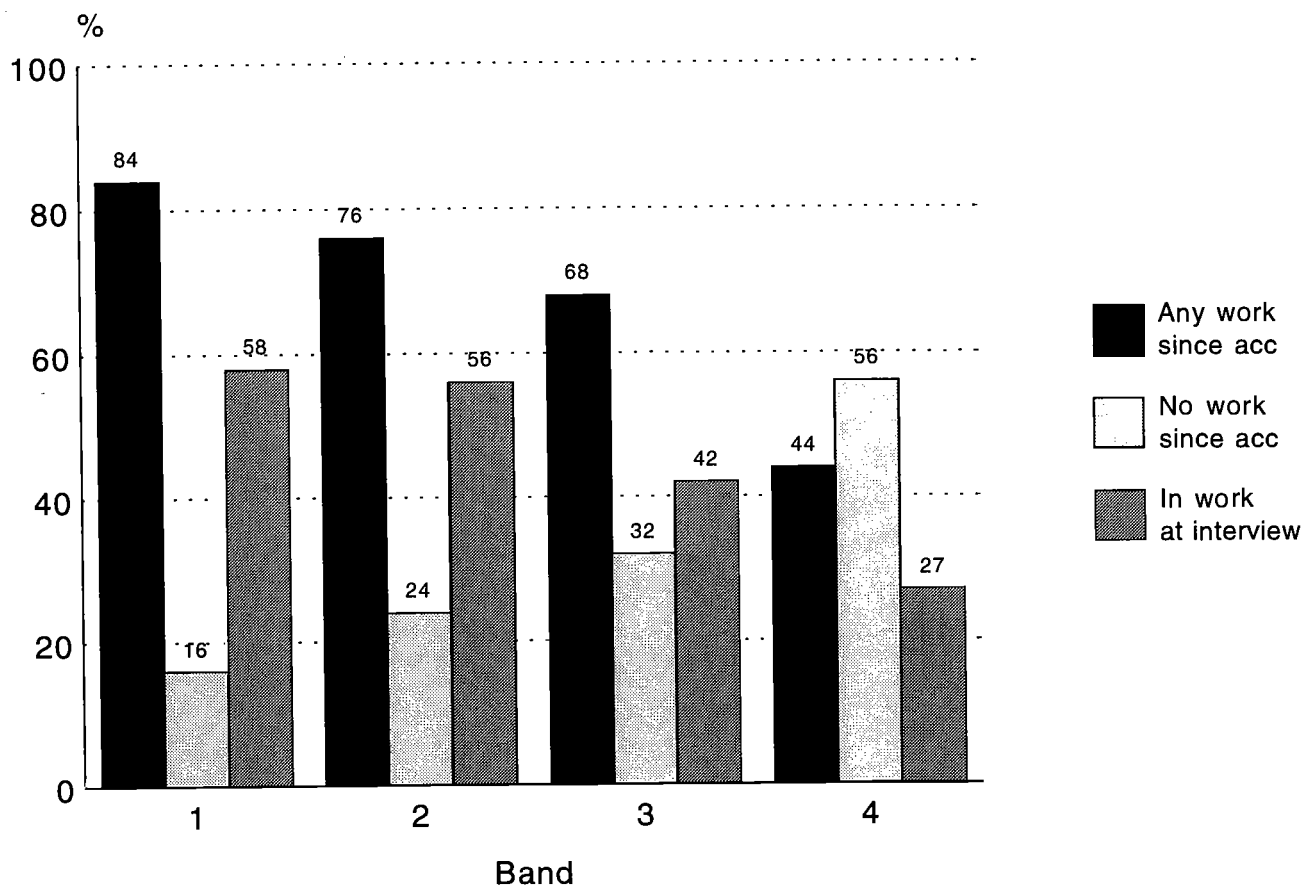
At the time of the interview, the rates of employment among band 1 and band 2 respondents also remained similar with 58% of respondents in band 1 and 56% of respondents in band 2 being in work at that time. However, there is a small reduction in the proportion of respondents in band 3 in work at the time of the interview (42%), while respondents in band 4 were only about half as likely as those in bands 1 and 2 to be working at the time of the interview (27%).

Respondents whose accidents occurred more recently (i.e. since 1985) were slightly more likely than those who suffered accidents before 1985 to have had paid work since their accident (68% compared with 57%), and to have been in work at the time of interview (52% and 33% respectively).

Table 601: Summary of work histories since accident of those who were in work at the time of the accident by size of settlement

Base: Accident victims in work at time of accident	Band 1	Band 2	Band 3	Band 4
	£5,000– £19,999	£20,000– £49,999	£50,000– £99,999	£100,000+
	172	150	113	104
<i>Work history since accident:</i>	%	%	%	%
Had job since accident:	(84)	(76)	(68)	(44)
–returned to job was in at time of accident	74	60	48	26
–returned to different job	10	16	20	18
No job since accident	16	24	32	56
In work at time of interview	58	56	42	27

Figure 601: Work history since accident: by size of settlement



Base: All in work at time of accident



*Work histories of all respondents in band 1 (£5,000 – £19,999)*

The majority (86%) of respondents in band 1 were in work at the time of their accident,<sup>3</sup> and of those in work, three-quarters (73%) returned to the job that they were in at the time of their accident (as described in Section 5.1), and 10% went back to work in another job. Table 602 shows that among those who were *not* in work at the time of their accident, about half (48%) had at least one job since their accident. Thus, nearly four in five (79%) respondents in band 1 had been in some paid work since their accident.

*Table 602: Band 1: Work histories since accident: by activity status before accident<sup>4</sup>*

	All	In work at time of accident	Not working
Base: Aged 16+ and not retired at time of accident (unweighted)	202	172	30
<i>Work history since accident:</i>	%	%	%
Had job since accident:	(79)	(83)	[(48)]
– returned to job was in at time of accident	63	74	–
– different job	16	10	[48]
No job since accident	21	16	[52]
In work at time of interview	54	58	[25]

Despite the high rate of return to some employment since the accident by respondents in band 1, it is nonetheless notable that one in five (21%) respondents in this settlement band did *not work at all* since their accident, even though two-thirds of this group had been in work at the time of the accident. Thus of those respondents in band 1 who had been in work at the time of their accident some 16% did not work again after their accident. Some of these findings may be partially explained by the older profile of accident victims in band 1.<sup>5</sup> For example, the effect of only moderate injury on older victims may be more serious than the effect on

<sup>3</sup> This figure is somewhat higher than that given in Chapter 2, Table 219, because the exclusion of respondents who were retired at the time gives a smaller base than that used for the earlier figure, which is based on all victims aged 16+.

<sup>4</sup> Note that Tables 602–605 include columns for victims not in work at the time of their accident; because of the small bases, the percentages are shown in brackets and must be treated with caution.

<sup>5</sup> The age distribution of the sample is described in Chapter 2. Respondents in band 1 were somewhat older than those who had received larger settlements, with over one-third aged 50 or more at the time of their accident.

younger victims making it more difficult to work; older victims who cannot return to their normal employment may find it more difficult to secure alternative employment on the labour market; and finally, even though it may be clear that an accident victim will not be able to work again, the damages received by those over 50 will be relatively modest because of the reduced period to retirement.

Questions about employment at the time of the interview show substantially fewer members of this group in work: only just over half (54%) of band 1 respondents who were over 16 and not retired at the time of their accident, were in paid work at the time of the interview some years later. It should, however, be noted here that a substantially higher proportion of respondents in band 1 had retired by the time of the interview (see section 6.7, Table 613).

*Work histories of all respondents in Band 2 (£20,000 – £49,999)*

Almost all (91%) respondents in band 2 were in work at the time of their accident. Among them, three-fifths (60%) returned to the job they were in at the time of the accident and 16% went back to work in another job (Table 603). Of those not in work at the time, the same proportion (60%) had a job since their accident. Thus, in all, three-quarters (75%) of band 2 respondents had some paid work since their accident.

*Table 603: Band 2: Work histories since accident: by activity status before accident*

	All	In work at time of accident	Not working
Base: Aged 16+ and not retired at time of accident (unweighted)	163	150	13
<i>Work history since accident:</i>	%	%	%
Had job since accident:	(75)	(76)	[(60)]
– returned to job was in at time of accident	55	60	–
– different job	20	16	[60]
No job since accident	25	24	[40]
In work at time of interview	54	56	[36]

One-quarter (25%) of respondents in band 2 had not had *any paid work* since their accident, and the vast majority (86%) of this group were accident victims who had been in work before their accident.

By the time of the interview, just over one-half (54%) of this group of band 2 respondents were in paid work, which is the same proportion as among respondents in band 1 (Table 602).

*Work histories of all respondents in Band 3 (£50,000 – £99,999)*

The proportion of band 3 respondents who were in work at the time of their accident (91%) is similar to that of band 2 (Table 604): however, compared with band 2, a much smaller proportion (only 48%) returned to the job that they were in at the time of the accident. One-fifth (20%) of this group went to work in another job afterwards. Of those respondents in band 3 who were not in work at the time of the accident, three-quarters (74%) had some employment since their accident. Thus, in all, two-thirds (68%) of band 3 respondents had paid work since their accident.

*Table 604: Band 3: Work histories since accident: by activity status before accident*

	All	In work at time of accident	Not working
Base: Aged 16+ and not retired at time of accident (unweighted)	126	113	13
<i>Work history since accident:</i>	%	%	%
Had job since accident:	(68)	(68)	[(74)]
– returned to job was in at time of accident	43	48	–
– different job	25	20	[74]
No job since accident	32	32	[26]
In work at time of interview	43	42	[47]

Table 604 also shows that as many as one in three (32%) band 3 respondents *had not worked at all* since their accident, although nearly all of this group (93%) had been in work before the accident. By the time of the interview, less than one-half (43%) of this group of band 3 respondents were in paid work.

*Work histories of all respondents in Band 4 (£100,000 +)*

As for each of the other bands, the vast majority (89%) of band 4 respondents were working immediately before their accident. Unlike bands 1–3, however, only a minority of victims returned to the job they were in at the time of their accident (26%), and a further 18% eventually returned to work in a different job. Of those not in work at the time of the accident, just over one-quarter (27%) had some paid work since their accident. In all, then, only two in five (42%) respondents in band 4 had been in any paid work since their accident. The data are summarised in Table 605.

At the time of the interview, one-quarter (27%) of respondents in band 4 were in paid work, which is the same proportion as for respondents in band 3.

Table 605: Band 4: Work histories since accident: by activity status before accident

	All	In work at time of accident	Not working
Base: Aged 16+ and not retired at time of accident (unweighted)	130	104	26
<i>Work history since accident:</i>	%	%	%
Had job since accident:	(42)	(44)	[(27)]
– returned to job was in at time of accident	23	26	–
– different job	19	18	[27]
No job since accident	58	56	[73]
In work at time of interview	27	27	[27]

## 6.2 Returning to work

The amount of time taken off by respondents who returned to the job they were in at the time of the accident was described in Chapter 5. Table 606 demonstrates that those who went back to the job that they were in at the time of the accident were back in work much more quickly than those who started working in a different job. The table also shows that respondents in band 1 returned more quickly than those in bands 2–4, and that those respondents who received the largest settlements took the longest to return to work. In band 4 over half (54%) took one year or more after the accident to begin work.

Table 606: Period between accident and returning to work: by whether returned to previous job or new job within band

Base: Had job since accident (unweighted)	Band 1			Bands 2–4		
	All	Returned to previous job	Different job	All	Returned to previous job	Different job
	155	122	33	260	170	90
<i>Time between accident and starting work:</i>	%	%	%	%	%	%
Less than 1 month	11	13	4	7	11	–
1 month, up to 3 months	18	21	9	5	8	–
3 months, up to 6 months	29	34	9	13	19	1
6 months, up to 1 year	28	24	43	22	30	5
1 year or more	14	8	36	50	28	92
Unclear	–	–	–	3	4	1

### 6.3 First post-accident job

Respondents who did *not* return to the job they were in at the time of the accident were asked to give details about the *first* job they had after their accident. These were classified by occupation group, industry group, and socio-economic group (SEG).<sup>6</sup>

Among those returning to work after the accident, some 29% of respondents in band 1 and 33% in bands 2-4 were classified as non-manual workers, while 71% of band 1 and 66% of bands 2-4 were classified as manual workers (Table 607). When these figures are compared with the pre-accident distributions of jobs within socio-economic groups, we find that respondents were more likely to be in non-manual jobs after the accident and less likely to be carrying out manual work (compare Table 224). The shift from manual to non-manual work is likely to be a reflection of the effect of injury on the ability of respondents to carry out strenuous work.

Table 607: *Socio-economic group (SEG) of the first job after the accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All in work after accident (unweighted)	155	120	88	52	260
<i>Socio-economic group:</i>	%	%	%	%	%
Professional & executive	9	7	14	4	9
Intermediate, junior non-manual	20	21	22	33	24
Skilled manual	38	44	40	37	42
Semi-skilled manual	24	23	19	16	20
Unskilled manual	9	3	5	2	4
Armed forces, unclassifiable	-	1	*	8	2

Table 608 compares those who returned to their previous job with those returning to a different job. In bands 2-4, respondents who went to a different job after their accident were more likely to go into non-manual work than were respondents who returned to the job they were in before the accident; the latter were more likely to be carrying out manual work (especially skilled manual work) after the accident than those who worked in a different job.

<sup>6</sup> Details of occupation and industry groups are contained in the survey report published by SCPR op cit.

Table 608: *Socio-economic group (SEG) of first job after the accident: by whether returned to previous job or new job within band*

Base: All in work after accident (unweighted)	Band 1		Bands 2-4	
	Returned to prev- ious job	Different job	Returned to prev- ious job	Different job
	122	33	170	90
<i>Socio-economic group:</i>	%	%	%	%
Professional & executive	9	7	10	6
Intermediate, junior non-manual	15	40	19	33
Skilled manual	41	27	46	33
Semi-skilled manual	27	13	19	23
Unskilled manual	8	13	3	4
Armed forces, unclassifiable	-	-	3	-

We also analysed the data on socio-economic groups in order to reveal whether there had been any changes in group between the jobs that accident victims had just before their accident and those that they had when they returned to work. The analysis within settlement bands revealed that nearly all respondents in band 1 (95%) who returned to work after their accident had jobs that were classified to the same SEG as their job at the time of the accident. Only a handful of band 1 respondents were in a job classified to a different SEG immediately after the accident and among these, 2% were in a higher SEG after the accident, and 3% were in a lower SEG after their accident.

In bands 2-4 (Table 609), the overall picture is similar, with the vast majority (83%) of respondents in the same SEG both before and after their accident. However, there was a little more movement in these bands, with 9% of respondents in a higher SEG after the accident and 6% in a lower SEG (with 2% unclear).

Table 609: Bands 2-4: Cross-analysis by SEG of previous job and job after accident

Base: All with job at time of accident and job after accident 241 = 100% (unweighted)	Job at time of accident						
	P & E	I J NM	S M	S S M	U S M	O	All
<i>Job after accident:</i>	%	%	%	%	%	%	%
Professional & executive	8	*	-	-	*	-	9
Intermed, jun non-manual	2	17	1	2	-	-	22
Skilled manual	*	*	38	5	*	-	43
Semi-skilled manual	1	*	2	17	*	-	20
Unskilled manual	-	-	*	1	3	-	4
Other	-	-	-	-	-	2	2
All	11	18	42	24	4	2	100

The consistency between pre- and post-accident SEG is largely to be expected, given the fact that a high proportion of those returning to work went back to the job they were in at the time of the accident.

#### Employment status

Most people were working as employees after the accident: 88% of band 1 and 87% of bands 2-4. There was very little movement between employment and self-employment. Among those who had been employees before their accident very few returned to work as self-employed (less than 0.5% of band 1 and 5% of bands 2-4). Similarly, among those who had been self-employed at the time of the accident, about one in six of respondents in bands 2-4 worked as employees after the accident.

#### 6.4 Whether still in job returned to after accident

All those who returned to their previous, or a different, job after their accident were asked if they were still in that job at the time of the interview. Overall, a majority of respondents had left this job by the time of the interview (Table 610): among respondents in band 1, just under half (45%) were still in the same job (or in a different job with the same employer), while 55% had left that job; within bands 2-4, only one-third (36%) were still in the same job (or with the same employer), while two-thirds (63%) had left.

Table 610: Whether still in job returned to: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All in work after accident (unweighted)	155	120	88	52	260
<i>Whether still in job:</i>	%	%	%	%	%
Still in job	37	32	26	21	28
Changed job, still with employer	8	11	7	3	8
Left job	55	54	68	76	63
Died	-	2	-	-	1

People who had returned to the job they were in at the time of their accident were slightly more likely to be in the same job at the time of interview than were those who had returned to a different job (Table 611).

Table 611: Whether still in job returned to: by whether returned to previous job or new job within size of settlement

	Band 1		Bands 2-4	
	Returned to previous job	Different job	Returned to previous job	Different job
Base: All in work after accident (unweighted)	122	33	170	90
<i>Whether still in job:</i>	%	%	%	%
Still in job	41	21	27	30
Changed job, still with employer	9	-	12	1
Left job	50	79	60	69
Died	-	-	1	-

#### Leaving work because of accident

Accident victims who had returned to their previous job but had later stopped working were asked whether the main reason that they had stopped working was connected with the injuries suffered as a result of their accident. Among band 1 respondents two in five (41%) answered positively and among respondents in bands 2-4 seven in ten (71%) answered positively.

It is possible to establish the *total* number of accident victims who left their job as a result of their accident by adding the number who never returned to their job because of their



injuries (described in section 5.2) to those who did return for a while, but subsequently left because of their injuries. The result of this addition is given in Figure 602, which shows a strong correlation with size of settlement. The proportion of accident victims leaving their jobs as a result of their accident rises steadily from one-third (36%) of respondents in band 1, to over half (56%) in band 2, to three-quarters (78%) in band 3, to nearly nine in ten (88%) of those in band 4.

## 6.5 Number of jobs since accident

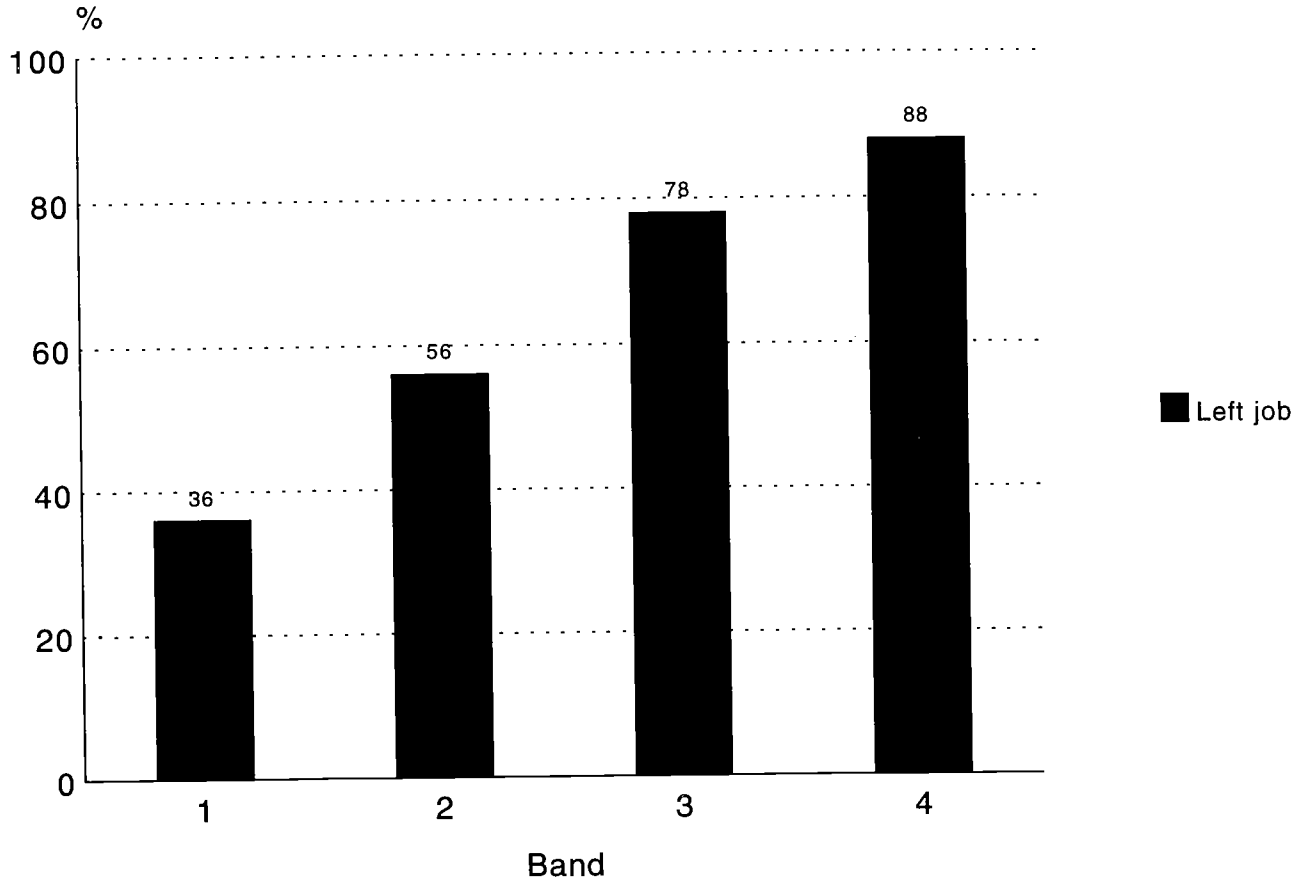
Having left the first job returned to after the accident, it was not uncommon for victims to have subsequent jobs. Among those who left the first job that they had after their accident, three-fifths (57%) in band 1 and nearly two-thirds (63%) in bands 2-4 had a subsequent job.

However, among accident victims as a whole, only about one-quarter of working age respondents had two jobs or more since their accident (Table 612), and only very small numbers had three jobs or more (14% in band 1 and 11% in bands 2-4). The vast majority of those who had had two or more jobs since their accident said that they had been carrying out *different* types of work in their various jobs: among respondents with two or more jobs, two-thirds (66%) of those in band 1 and four-fifths (79%) of those in bands 2-4 had been carrying out different types of work since their accident.

Table 612: Number of jobs since accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Aged 16+ and not retired at time of accident (unweighted)	202	163	126	130	419
<i>Number of jobs:</i>	%	%	%	%	%
None	21	25	32	58	37
One	53	48	42	20	37
Two	12	12	14	17	14
Three	6	4	3	1	3
Four	1	5	5	*	4
Five or more	6	6	4	4	4
Unclear	1	1	-	-	*

Figure 602: Whether left job as a result of accident: by size of settlement



Base: In work at time of accident

## **6.6 Unemployment since the accident**

Just over one-quarter of victims (30% in band 1, and 28% in bands 2-4) had experience of signing on for unemployment benefits since their accident. It seems likely that the proportion would have been greater were it not for such a large proportion leaving the labour force altogether.

Of those who were unemployed, the majority had only one spell of unemployment (17% of respondents in band 1, and 18% of respondents in bands 2-4). Overall, 13% of band 1 respondents had two or more spells of unemployment, as did 11% of those in bands 2-4.

While becoming unemployed was confined to a minority of respondents, those who had signed on tended to have very long spells of unemployment (which could also partly explain why they tended to have few spells). Half (50%) of band 1 respondents who had been unemployed had spent one year or more signing-on since their accident; among respondents in bands 2-4, the number was even higher at 58%. On the other hand, only about one-quarter (26%) of respondents in band 1, and a similar proportion (24%) in bands 2-4, had spent fewer than 6 months unemployed since their accident.

## **6.7. Current employment situation**

Respondents were asked whether they were in paid work at the time of the interview, and if they were not in work, information was collected about their current situation in relation to employment. Table 613 shows the activities of respondents at the time of the interview. There is a clear association between the amount of damages received and activity status, with the likelihood of being in work decreasing as the amount of damages increases: whereas about half of band 1 and band 2 respondents were in work at the time of the interview (49% and 53% respectively), this decreased slightly to two in five (42%) among band 3 respondents and then more sharply to only one in four (27%) among respondents in band 4.

The Table shows a higher proportion of retired respondents in band 1, which is to be expected given the older age profile of this band. The proportion of respondents who were permanently sick increased from one in ten (10%) in band 1 to over half (53%) in band 4.

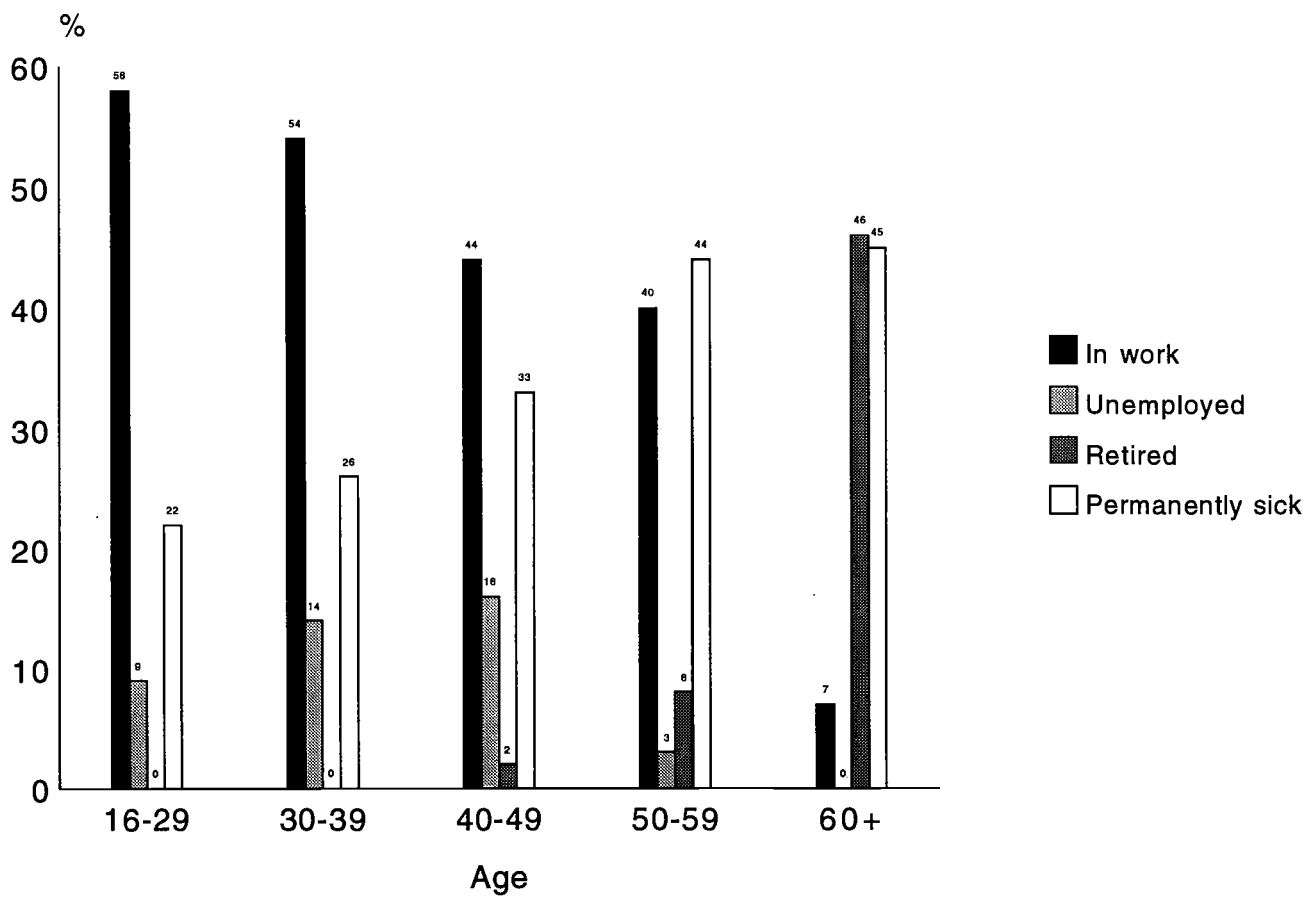
In other respects, for example the proportion unemployed, in full-time education and so on, there were few differences between the bands.

Table 613: Activity status at time of interview: by size of damages

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Aged 16+ (unweighted)	217	169	128	130	427
<i>Activity:</i>	%	%	%	%	%
In paid work	49	53	42	27	42
Unemployed, signing on	8	8	5	4	6
Unemployed, not signing on	2	–	2	4	2
Temporarily sick	1	–	2	2	1
Permanently sick	10	19	33	53	34
Retired/early retirement	21	12	8	5	9
Looking after family	6	4	2	1	2
Full-time education	2	1	2	2	2
Other	1	–	1	–	1
Died	*	2	2	1	2
Unclear	*	1	1	*	*

As Figure 603 shows, activity at the time of interview was closely associated with age. Among respondents of working age within bands 2-4 the proportion in work decreased with age, while the likelihood of being retired or permanently sick or disabled increased with age.

Figure 603: Bands 2-4: Activity at time of interview: by age



Base: Bands 2-4 aged 16+

## 6.8 Current socio-economic group

We also analysed the current socio-economic group classification of those respondents who were in work at the time of the interview. Table 614 shows that there were few differences in the proportions of respondents in non-manual occupations according to size of settlement, except among those with the largest settlements: 36% of respondents in band 1 were in non-manual occupations, as were 31% of respondents band 2, and 41% of respondents in band 3. However, among the relatively small number of respondents in band 4 who were in work at the time of the interview, nearly two-thirds (62%) were in non-manual occupations (although this result must be treated with caution because of the small base).

Respondents in our sample of compensated accident victims were much less likely than the economically active population in general to be classified as non-manual workers (40% in bands 2-4 compared with 55% of the general population), and more likely to be in manual jobs (59% compared with 44%), particularly in skilled manual work.<sup>7</sup>

Table 614: *Socio-economic group (SEG) at time of interview: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: In work at time of interview (unweighted)	105	87	54	32	173
<i>Socio-economic group:</i>	%	%	%	%	%
Professionals, etc.	17	9	23	8	13
Intermediate/junior non-manual	19	22	18	54	27
Skilled manual	37	34	29	28	31
Semi-skilled manual	26	27	18	8	20
Unskilled manual	2	8	12	3	8
Unclear	*	-	-	-	-

A comparison of SEG distributions of respondents who were in work both at the time of interview and at the time of the accident reveals few differences in the distributions (Table 615). Respondents were slightly more likely to be in non-manual socio-economic groups at the time of the interview than at the time of the accident. In particular, the proportion of skilled manual jobs was lower at the time of the interview.

<sup>7</sup> The general population figures are from the 1992 General Household Survey. They apply to all people aged 16+ who are economically active (ie, they include the unemployed as well as those in work).

Table 615: A comparison of socio-economic group at time of interview with socio-economic group at time of accident: by size of settlement

Base: In work at time of interview and worked in year before accident (unweighted)	Band 1		Bands 2-4	
	Job before accident	Job at interview	Job before accident	Job at interview
	100	100	158	158
<i>Socio-economic group:</i>	%	%	%	%
Professionals, etc.	12	16	12	12
Intermediate/junior non-manual	17	18	21	27
Skilled manual	41	37	41	32
Semi-skilled manual	26	27	21	21
Unskilled manual	4	2	3	8
Unclear	-	*	3	-

Analysis at the individual level, however, shows somewhat more change in status. Among respondents in band 1, two in three (68%) were categorised in exactly the same socio-economic group in both jobs; 17% of band 1 respondents had jobs in a 'higher' category at the time of interview compared with their job at the time of the accident, for example, shifting from manual to non-manual work; and 14% had a 'lower' classification at the time of the interview.

Among respondents in bands 2-4 (Table 616), three in five (61%) were in the same socio-economic group at both periods; 14% had moved to a 'higher' group at the time of interview, and some 22% of respondents in bands 2-4 were in a 'lower' socio-economic group than they had been at the time of their accident.

Table 616: Bands 2-4: A cross-analysis of socio-economic group of job at time of accident with job at time of interview

Base: In work at time of interview and worked in year before accident 158 = 100% (unweighted)	Job before accident						All
	P & E	I J M	S M	S S M	U S M	O	
<i>Job at interview:</i>	%	%	%	%	%	%	%
Professionals etc	7	1	2	-	*	1	12
Intermed/jun non-manual	3	16	2	2	2	3	27
Skilled manual	1	1	26	4	-	-	32
Semi-skilled manual	1	2	8	10	-	-	21
Unskilled manual	-	*	3	4	1	-	8
Other	-	-	-	-	-	-	-
All	11	21	41	21	3	4	100

## 6.9 Early retirement

Very few respondents in our sample reported that they had retired earlier than they might have done as a result of their accident. Only 4% of band 1 respondents (aged 16+), and 6% of those in bands 2-4 said that they had retired early.

Most of those who reported that they had retired early, had done so much earlier than expected. Among those respondents who had received damages of £20,000 or more who had retired early, three-fifths (61%) said that they had retired at least 6 years early, and one-third retired at least 10 years before they expected to do so, although these figures should be treated with caution because of the small base. However, early retirement was relatively rare among accident victims as a whole. Only 4% of all respondents who received £20,000 or more in damages had retired six or more years earlier than expected. Among those who had retired since the accident, under half of band 1 respondents (42%) were receiving a pension from a previous employer, while two-thirds of respondents in bands 2-4 (67%) received such a pension.

## 6.10 Looking for work and job search activities

### *Looking for work*

The vast majority of respondents were either in work, permanently sick or disabled, or retired at the time of the interview. Only 20% of band 1 respondents, and 14% of those in bands 2-4 were doing other things such as signing on as unemployed, looking after a family or in full-time education. Among this latter sub-group only 15% in band 1 and 18% of those in



bands 2–4 were looking for paid work. Those not looking for work at the time of the interview were asked why they were not looking. The small number in this sub-group precludes reliable statistics, but the reasons given by respondents included: the injuries they suffered as a result of the accident; being in full-time education; looking after a family; and that there were no jobs available.

Some respondents in this sub-group did plan to look for paid work in future, some did not think they would work again, and others were unable to say if they would ever look for a job again. Respondents who were looking for work or who said that they planned to look for work in the future were asked a series of questions about the likely effect of their injuries on their job search activities. Specifically, they were asked if the effects of the accident would:

- a) limit the number of hours they could work to fewer than 6 per day
- b) limit the type of work they could do
- c) limit the number of days they could work to fewer than 5 days a week
- d) limit the distance they could travel to work each day
- e) reduce the amount of pay they would otherwise be able to earn
- f) make it more difficult for them to get work compared with other people of a similar age and with similar skills and experience.

The results are not statistically reliable because of the size of the subgroup and only an impression of the responses can therefore be given. In general, respondents in all bands were likely to say that their injuries limited the *type of work* they could do. However, respondents in all bands also said that their injuries would *not* limit the number of hours they could work, or the number of days, or the distance they could travel.

Respondents differed, however, in two respects: first, those in bands 2–4 were much more likely than those in band 1 to say that their earnings would be reduced as a result of their injuries; and second, respondents in bands 2–4 were more likely to say that their injuries would make it more difficult for them to find a job in comparison with other people.

## 6.11 Summary

Work histories show that a substantial minority of all accident victims never returned to any paid work after their accident. The figures vary between bands so that the larger the settlement, the less likely respondents were to return to work.

Among band 2 respondents 60% of those in work at the time of their accident returned to their job and 16% eventually returned to work in another job; one-quarter (24%) had not worked since their accident.

The number of respondents who never worked again after their accident increased among band 3 respondents to 32%; half (48%) returned to their job, and 20% subsequently worked in another job.

Those with the largest settlements (band 4) were the least likely to work again; only 44% of those in work at the time of the accident returned to any paid work (26% returning to their job and 18% working in a different job); over half (56%) had not worked since their accident.

Moreover, some of those who did return to their job said that they eventually had to leave because of their injuries. When this group is added to those who never returned to their job, the proportions leaving their job as a result of their accident were: 56% in band 2; 78% in band 3; and 88% in band 4.

Among those who did return to work, the amount of time taken off work before returning increased with settlement size and among those who received £100,000 or more and who eventually returned to work, over one-half took one year or more after their accident to begin work. Where respondents had returned to work there was some shift from predominantly manual work toward non-manual occupations reflecting the effect of injuries on the ability to carry out strenuous work.

At the time of the interview about half of band 1 and band 2 respondents of working age were in work, with the number decreasing with size of settlement to 42% among band 3 respondents and one-quarter (27%) among band 4 respondents. Overall two-fifths of working-age respondents were in work, one in ten were unemployed, one-third were permanently sick or disabled, and one in ten had taken early retirement. Work activity at the time of the interview was closely associated with age. The proportion of respondents in work decreased with age, while the likelihood of being retired or permanently sick or disabled, increased with age.

## CHAPTER 7. THE IMPACT OF ACCIDENTS ON EARNINGS

This chapter looks at the impact of accidents on the earnings of those respondents who were in work at the time of the accident, in the immediate aftermath of the accident and also in the longer-term. As described in the last Chapter, 46% of respondents in bands 2-4 who were in work at the time of their accident returned to the job that they were in at the time of the accident, and 54% did not return to that job. Among the latter group, one-third (33%) eventually returned to work in a different job, while two-thirds (67%, or 36% of all those respondents in work at the time of their accident) had not returned to work at all after their accident. In Part I of this Chapter we describe how much respondents were earning at the time of the accident, the payments received by respondents who did not return to their job, and for those respondents who did return to their job, we describe payments received during time off work and pay received upon return to work. In Part II of this Chapter we describe the longer-term impact of accidents on earnings by comparing earnings at the time of the interview (where respondents were in work) with earnings at the time of the accident.

### I. IMMEDIATE IMPACT OF ACCIDENT ON EARNINGS

#### 7.1 Earnings at time of the accident

All respondents who were in work at the time of the accident were asked to provide details of their usual take-home pay and their usual gross pay before deductions.<sup>1</sup> A small number of respondents (2%) said that they had "no usual pay", but that their pay varied. Respondents with fluctuating earnings were asked to provide pay details for the week before their accident.

Given that the questions about pay referred to a period of time at least two years, and in most cases six to ten years, before the interview, respondents were asked to give approximations of the pay that they had been receiving at the time of the accident if they were unable to remember precise amounts. Despite this flexibility, a fairly high proportion of respondents could not remember their pay details, even approximately: overall, 14% of respondents gave no details for net pay, and 25% could not give their gross pay.

In the analysis of data relating to income from employment, levels of pay were adjusted for inflation,<sup>2</sup> and all figures shown have been standardised to April 1993 pay rates. The level of net pay among respondents in work at the time of the accident is shown in Table 701, and gross pay is shown in Table 702. Since pay can differ considerably according to gender, figures are given separately for men and women. As Table 701 shows, male respondents in our sample of compensated accident victims had higher earnings than female respondents, with mean net weekly pay for men at £262 (bands 2-4) compared with £143 for women. This is partly, but not wholly, explained by the higher proportion of women in part-time

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<sup>1</sup> Respondents were permitted to report their earnings giving weekly, monthly or annual amounts. These figures were standardised during analysis to weekly amounts.

<sup>2</sup> See the Technical Report on the survey and data analysis by SCPR (1994) op cit.

work: if only those in full-time work are included, mean net weekly pay for men (in bands 2-4) remains about the same at £264, while for women it increases to £155. The latter figure is only three-fifths of men's earnings, which is considerably lower than the national picture where women's earnings are more typically about two-thirds of men's.

Among men, respondents in bands 2-4 had higher earnings than did those in band 1 (£264 compared with £226 per week for full-time workers), but a similar difference was not found among women.

Table 701: Usual net weekly pay at time of accident: by gender within band

Base: Returned to job within 1 year of accident (unweighted)	Band 1			Bands 2-4		
	Men	Women	All	Men	Women	All
	124	56	180	313	61	374
<i>Net weekly pay:</i>	%	%	%	%	%	%
Up to £60	1	4	2	1	13	2
£61 - £100	3	14	6	3	20	5
£101 - £150	16	34	21	11	32	14
£151 - £200	24	16	22	21	9	20
£201 - £250	20	3	15	14	5	13
£251 - £300	7	5	7	14	2	12
£301 - £400	6	2	5	14	6	13
£401+	8	-	6	9	1	8
Can't say/not stated	15	22	17	13	12	13
Mean (£)	226	140	201	262	143	246

Table 702: Usual gross weekly pay at time of accident: by gender within band

Base: Returned to job within 1 year of accident (unweighted)	Band 1			Bands 2-4		
	Men	Women	All	Men	Women	All
	124	56	180	313	61	374
<i>Gross weekly pay:</i>	%	%	%	%	%	%
Up to £60	-	4	1	1	4	1
£61 - £100	1	4	2	*	14	2
£101 - £150	5	23	11	4	6	4
£151 - £200	14	12	13	8	16	9
£201 - £250	14	11	13	11	10	11
£251 - £300	14	2	11	12	4	11
£301 - £400	15	3	11	21	7	19
£401+	16	2	12	21	3	18
Can't say/not stated	21	39	27	22	37	24
Mean (£)	309	177	275	350	196	332

It was reported in Chapter 5 that after the accident some 3% of respondents in bands 2-4 carried on working in their job, 43% took time off from work to recover but eventually returned, and 54% did not return to the job they had at the time of the accident. Whether or not respondents returned to their job did not appear to be related to the amount of their pay at the time of the accident: thus, in bands 2-4, those who returned to their job had net earnings of £247 per week on average compared with £264 for those who did not return. (The equivalent figures in band 1 were £206 for returners and £191 for the non-returners.) The next section is concerned with those respondents who did not return to the job they were in at the time of their accident, while section 7.3 looks at the first two groups of respondents who *did* go back to work.

## 7.2 Payments received by those who did not return to their job

### *Pay received before leaving job*

Respondents who did not return to their job were asked about any payments they received before they formally left their job and upon leaving the job.

Overall, about half of respondents (48% in band 1 and 47% in bands 2-4) received no pay after their accident (Table 703); some received full pay during the period before leaving (11% band 1; 14% bands 2-4); others received some full pay and some part-pay (14% band 1; 19% bands 2-4); and some received only part-pay before leaving (18% band 1; 13% bands 2-4).

Table 703: Pay received before formally left job: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Did not return to job at time of accident (unweighted)	48	61	56	80	197
<i>Pay received after accident:</i>	%	%	%	%	%
None received	48	52	47	43	47
Full pay only	11	8	20	15	14
Part-pay only	18	14	9	14	13
Some full pay, some part-pay	14	22	22	15	19
Unclear	10	4	2	14	8

Table 704 shows for how long respondents received their full pay after their accident and Table 705 shows for how long respondents received part-pay.

Table 704: How long full pay received after accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Did not return to job at time of accident (unweighted)	48	61	56	80	197
<i>Period received full pay:</i>	%	%	%	%	%
None received	68	65	57	60	61
Less than 4 weeks	3	5	3	1	3
4 weeks, less than 8 weeks	4	-	5	2	2
8 weeks, less than 13 weeks	7	1	2	6	3
13 weeks, less than 26 weeks	1	4	10	2	5
26 weeks or more	11	18	21	22	21
Unclear	6	7	3	7	6

Those who received the lowest settlements (band 1) were less likely than respondents in bands 2-4 to receive full pay for 3 months or more (12% and 26% respectively). As Table 705 shows, they were also less likely to receive part-pay for a period of 3 months or more after their accident (8% in band 1 and 18% in bands 2-4).

Table 705: How long part-pay received after accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Did not return to job at time of accident (unweighted)	48	61	56	80	197
<i>Period received part-pay:</i>	%	%	%	%	%
None received	65	63	70	66	66
Less than 4 weeks	4	2	-	-	1
4 weeks, less than 8 weeks	4	-	-	1	1
8 weeks, less than 13 weeks	12	-	8	*	3
13 weeks, less than 26 weeks	7	2	3	1	2
26 weeks or more	1	21	12	17	16
Unclear	7	12	8	15	12

### Sickness benefit

Respondents were also asked if they had received sickness benefit after their accident, aside from any pay received from their employer. Table 706 shows that 44% of respondents in band 1 and 34% of respondents in bands 2-4 received some sickness benefit, the majority saying that they had received pay from their employer as well.<sup>3</sup>

<sup>3</sup> While it would have been possible for respondents to receive pay from their employer for a period and then transfer to sickness benefit, it is not possible to receive pay and sickness benefit at the same time; thus there may well have been confusion among some respondents who appeared to receive both pay and sickness benefit at the same time. The numbers shown in receipt of sickness benefit, therefore, may be a slight over-estimate.

Table 706: *Sickness benefit and pay received after accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Did not return to job at time of accident (unweighted)	48	61	56	80	197
<i>Pay and sickness benefit received:</i>	%	%	%	%	%
Pay, no sickness benefit	17	22	36	35	31
Sickness benefit, no pay	11	22	15	4	13
Pay and sickness benefit	33	24	17	22	21
No pay or sickness benefit	36	30	31	39	34
Unclear	3	1	1	1	1

Table 707 shows the period of time during which sickness benefit was received. Most of those receiving sickness benefit reported that they had received it for at least 26 weeks.<sup>4</sup>

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<sup>4</sup> As sickness benefit is paid for a maximum of 28 weeks, the fact that some respondents said they received it for a longer period again illustrates the possible confusion over this topic. This may be partly explained by the fact that, after 28 weeks, sickness benefit is normally converted to invalidity benefit without the recipient necessarily being aware of the change in benefits.



Table 707: How long sickness benefit received after accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Did not return to job at time of accident (unweighted)	48	61	56	80	197
<i>Period received sickness benefit:</i>	%	%	%	%	%
None received	53	52	67	73	65
Less than 4 weeks	1	-	-	-	-
4 weeks, less than 8 weeks	6	-	3	1	1
8 weeks, less than 13 weeks	7	3	-	-	1
13 weeks, less than 26 weeks	1	5	5	5	5
26 weeks or more	18	24	15	13	17
Unclear	14	17	10	8	11

### *Special payments*

Only a minority of respondents received any special payments or lump sums (eg, redundancy pay, retirement pay, back-dated pay) when they left their job: one in five (22%) in band 1 and one in three (35%) in bands 2-4. As Table 708 shows, the likelihood of receiving such a payment, and the size of payments received, tend to increase with the amount of damages.<sup>5</sup>

<sup>5</sup> The figures in Table 708 have been adjusted for inflation and thus refer to April 1993 figures. Since, the exact date the payment was made is unknown, the date of the accident has been used to make these adjustments.

Table 708: Special payments when left job: by size of settlement

Base: Did not return to job at time of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	48	61	56	80	197
<i>Special payments:</i>	%	%	%	%	%
None	71	72	64	51	61
Up to £1,000	3	-	3	-	1
£1,001 - £2,500	3	7	4	15	10
£2,501 - £5,000	8	7	1	5	5
£5,001 - £10,000	5	7	11	11	10
£10,001+	3	5	14	13	11
Unclear	7	1	4	5	3

### 7.3 Payments received by those returning to their job at the time of the accident

#### *Pay received during time taken off work*

Two-fifths (43%) of respondents who were in work at the time of the accident returned to their job after taking some time off. These respondents were asked about any pay or sickness benefit that they might have received during their time off. One-quarter of this group (27% in band 1; 28% in bands 2-4) received no pay during their time off (Table 709); one-third received full pay for part or all of the period taken off (30% band 1; 31% bands 2-4); others received some full pay and some part-pay (13% band 1; 22% bands 2-4); and some received only part-pay (29% band 1; 18% bands 2-4).

Table 709: Pay received during time off work: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Took time off work (unweighted)	116	82	52	23	157
<i>Pay received during time off:</i>	%	%	%	%	%
None received	27	30	17	41	28
Full pay only:					
- entire period off work	30	35	32	11	30
- part of period off work	1	2	4	-	2
Part-pay only	29	20	16	17	18
Some full pay, some part-pay	13	13	31	31	22

Table 710 shows for how long respondents received their full pay while they were off work and Table 711 shows for how long they received only part-pay.

Table 710: How long full pay received during period off work: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Took time off work (unweighted)	116	82	52	23	157
<i>Period received full pay:</i>	%	%	%	%	%
None received	56	50	33	58	46
Less than 4 weeks	9	8	-	-	4
4 weeks, less than 8 weeks	2	9	11	4	8
8 weeks, less than 13 weeks	8	6	19	6	10
13 weeks, less than 26 weeks	14	6	8	10	8
26 weeks or more	11	20	29	10	21
Unclear	-	1	-	12	3

Table 711: How long part-pay received during period off work: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Took time off work (unweighted)	116	82	52	23	157
<i>Period received part-pay:</i>	%	%	%	%	%
None received	57	65	52	52	59
Less than 4 weeks	2	*	*	-	*
4 weeks, less than 8 weeks	2	2	11	4	5
8 weeks, less than 13 weeks	6	5	7	16	8
13 weeks, less than 26 weeks	8	8	4	2	6
26 weeks or more	9	10	2	2	6
Unclear	15	11	25	25	17

There was no clear correlation between the amount of time that respondents took off work and whether or not they received any pay from their employer: among those who took off very short periods from work (less than 8 weeks), about one-half did not get their full pay while off work; the proportion was very similar for those who were off work for between 8 and 26 weeks, and for those with long periods of half a year or more off work.

#### *Sickness benefit*

Those respondents who did return to their job after the accident were also asked if they received any sickness benefit during their time off work, aside from any pay received from their employer. Table 712 shows that 33% of respondents in band 1 and 45% of respondents in bands 2-4 respondents received some sickness benefit.

Table 712: *Sickness benefit received during period off work: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Took time off work (unweighted)	116	82	52	23	157
<i>Pay and sickness benefit received:</i>	%	%	%	%	%
Pay, no sickness benefit	60	49	44	43	47
Sickness benefit, no pay	20	26	10	18	20
Pay and sickness benefit	13	21	39	16	26
No pay or sickness benefit	7	4	7	8	5
Unclear	-	-	-	15	3

Table 713 shows the period of time during which sickness benefit was received by respondents who returned to their job:

Table 713: *Length of period during which sickness benefit received after accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Took time off work (unweighted)	116	82	52	23	157
<i>Period received sickness benefit:</i>	%	%	%	%	%
None received	67	53	51	66	55
Less than 4 weeks	3	1	-	-	1
4 weeks, less than 8 weeks	1	1	-	-	1
8 weeks, less than 13 weeks	3	7	5	-	5
13 weeks, less than 26 weeks	15	10	17	24	15
26 weeks or more	8	23	17	11	19
Unclear	3	4	10	-	5

#### *Reduced pay on return to work*

Finally, all those who returned to work (including the small number who did not take any time off) were asked if, immediately after their return to work, they received less pay in their job *as a result* of their accident.

It was quite common for accident victims to suffer a reduction in pay on their return to work.

Among respondents in band 1, one in three (31%) were earning less just after they returned to work. In most cases, this reduced pay was received for a short time, with 15% of respondents in band 1 receiving less pay for up to one year, 8% receiving less pay for between one and seven years, and 7% of respondents in band 1 receiving less pay for five years or more after their accident (including those still receiving less pay at the time of the interview).

However, among respondents in bands 2-4, over one-half (53%) were paid less when they went back to their jobs. These respondents also suffered a reduction in pay for longer periods of time, with 23% receiving less pay for up to one year, 14% receiving less pay for between one and five years, and 11% receiving less pay for five years or more (including those still receiving less pay at the time of the interview).

Reductions in earnings did not appear to be large. Among those with lower earnings, three-fifths (59%) in band 1 and two-thirds (69%) in bands 2-4 reported less than a 10% reduction in earnings (while most of the other respondents receiving lower pay could not remember how much lower their earnings were).

#### **7.4 Summary of short-term impact of accidents on respondents' earnings**

Given the length of time between the date of the accident and the date of the interview (six to ten years for the majority of respondents), and the consequent problems accident victims would be likely to experience in attempting to remember precise details of income, it was decided not to try to estimate the amount of earnings lost by victims as a result of their accident. Rather, the study focused on the broader questions of how earnings were affected and whether respondents received alternative sources of income.

It is worth noting that about one-tenth of our sample of compensated accident victims in bands 2-4 (one in five in band 1) were not in work at the time of their accident and, therefore, suffered no immediate (as distinct from long-term) loss in earnings *themselves* as a result of the accident. Of course, they may have suffered increased expenses as a result of their accident, and other family members may have suffered a loss of earnings. These issues are discussed in Chapters 8 and 9.

Among those who were in work, 69% of respondents in band 1 and 43% of respondents in bands 2-4 returned to their job, after having taken time off to recover from their accident. Within this group, just under one-third (30% in band 1 and 30% in bands 2-4) received their full pay for the entire period during which they were off work and, thus, could be said to have suffered no loss of earnings. At the other extreme, one-quarter of this group (27% in band 1 and 28% in bands 2-4) received no pay while off work and could be said to have suffered a complete loss of earnings. The other respondents fell in between, either receiving their full pay for part of the period they were off work, or only part of their pay during their time off.

Only a very small number of those returning to their job appear to have lost out completely during the time taken off work: while one-quarter received no pay during time taken off, most of this group received sickness benefit while off work; in all, about one in twelve of those who returned to their job (7% in band 1 and 6% in bands 2-4) said that they received

no pay or sickness benefit.

Loss of earnings appeared to be much greater for the 26% of respondents in band 1 and 54% in bands 2-4 who did not return to the job they were in at the time of the accident. Not only did they lose out by not returning to work, but they were also unlikely to receive much pay from their employer after their accident: nearly one-half (48% in band 1; 47% in bands 2-4) *received no pay* from their employer after their accident. Only a minority (25% in band 1 and 33% in bands 2-4) received their full-pay for any length of time after their accident, with a very small number (18% in band 1 and 13% in bands 2-4) receiving only part of their usual pay.

Moreover, even among those respondents who received some pay after their accident, very few received their usual pay for a long period of time. Of all those respondents who did not return to their job, only 11% in band 1 and 21% in bands 2-4 received their full pay for six months or more.

Compared with those who did return to their job, the non-returners were not only less likely to get pay from their employer, they were also less likely to receive sickness benefit. Only just over one in ten non-returners (11% in band 1 and 13% in bands 2-4) received sickness benefit but no pay from their employer. Thus, over one-third (35% band 1; 34% bands 2-4) of this group received no pay from their employer or sickness benefit in the period just after their accident.

A small minority of those who did not return to their job benefited from a lump sum payment from their former employer. The number receiving a payment of £10,000 or more from their former employer was about one in twelve (7%) of respondents in bands 2-4, and only 3% of respondents in band 1.

The data on the immediate impact of accidents on earnings therefore lead to two conclusions. First, that apart from the small number of victims who received their full pay for the entire period they were off work (20% band 1; 13% bands 2-4), all other victims who were in work lost some pay as a result of their accident. Second, those respondents who lost the most, at least in the short term, were those who did not return to the job they were in at the time of the accident, since they were much less likely than those who eventually returned to their job to receive any pay at all after their accident (let alone full pay for a significant period).

## II. LONGER TERM IMPACT ON EARNINGS

The previous Part of this chapter looked at the impact on earnings in the period just after the accident for those victims who were in work at the time of their accident. This Part looks at the longer-term impact on earnings for the same group of respondents. This is done in two ways: first, some of those who did not return to the job they were in at the time of the accident did eventually return to a different job. Having asked for their earnings when they *first* began this new job, section 7.6 compares these earnings with their pay at the time of the accident. However, as this is a relatively small group (8% of all respondents in band 1 and 16% in bands 2-4), only very limited analysis is possible.

The main part of the analysis, therefore, focuses on all those respondents who were working at the time of the accident, and compares their earnings at the time of the accident with their earnings at the time of the interview.

### 7.5 Returning to a different job

As noted at the beginning of this Chapter, some 46% of victims in bands 2–4 who were in work at the time of their accident returned to the job they were in and 54% did not return. Among the latter, one-third (33%, which represents 18% of all those in work at the time of the accident) eventually returned to work in a *different* job, while two-thirds (67%, or 36% of all those in work at the time of the accident) reported in the survey that they had not worked since their accident. The impact of the accident on earnings for those who returned to their job was described in Section 7.3. In this section we look at the impact of the accident on the earnings of the group that returned to a *different* job.<sup>6</sup>

Table 714 shows earnings in the new job to which respondents returned after their accident. The Table shows that mean weekly take-home pay for those returning to a different job after their accident was £137 for men and £80 for women.<sup>7</sup> Overall, this is *much lower* than the average earnings reported by respondents in the job that they had before the accident (compare Table 701).

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<sup>6</sup> The analysis is limited to those who were in *full-time* work at the time of the accident.

<sup>7</sup> Earnings have been adjusted for inflation and are shown at 1993 rates.



Table 714: Weekly take-home pay for those who returned to a different job: by gender (bands 2-4 only)

Base: In full-time work at time of accident, but returned to different job; bands 2-4 only (unweighted)	Men	Women	All
		57	10
<i>Net weekly pay at start of job:</i>	%	%	%
Up to £60			
£61-£100	10	[40]	15
£101-£150	14	[34]	17
£151-£200	33	[15]	30
£201-£250	23	[ 4]	19
£251-£300	8	[ -]	6
£301+	4	[ -]	3
Unclear	-	[ -]	-
	9	[ 7]	9
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Mean (£)	137	[80]	127

Band 1 respondents were too few in number to include in the Table.  
The figures for women are shown in brackets because of the small base.

Moreover, a direct comparison of earnings before and after the accident for this sub-group of victims shows that a high proportion were earning considerably less after their accident than before it. In their new jobs after their accident, two in three (66%) respondents reported lower earnings compared with their pay at the time of the accident, with two in five (39%) saying that they were earning *less than half* the amount that they were being paid at the time of the accident. Only 15% reported that their earnings were *higher* when they returned to a new job after the accident.<sup>8</sup> The details of these comparisons are shown in Table 715 for those who were in full-time work at the time of the accident.

<sup>8</sup> For the remaining 19% of this group, a comparison cannot be made because of incomplete data; if they are excluded from the base, 82% of those returning to a different job after their accident had *lower* earnings in their new job.

**Table 715:** *A comparison of net earnings after the accident with earnings at the time of the accident for those who returned to a different job: by gender (bands 2-4 only)*

Base: In full-time work at time of accident, but returned to different job; bands 2-4 only (unweighted)	Men	Women	All
	57	10	67
<i>Compared with pay at time of accident, pay in new job was:</i>	%	%	%
Higher by:			
50% or more	7	[18]	9
25%-49%	3	-	3
1%-24%	2	[10]	4
Lower by:			
1%-24%	14	-	11
25%-49%	16	[12]	16
50% or more	38	[43]	39
Unclear	20	[18]	19

Band 1 respondents were too few in number to include in the Table.  
The figures for women are shown in brackets because of the small base.

## 7.6 Current earnings compared with earnings at time of accident

Among those in work at the time of the accident, 58% of respondents in band 1 and 43% of respondents in bands 2-4 were in work at the time of the interview. This section compares their current earnings with their earnings at the time of the accident. Adjustments have been made for inflation, so that all earnings are shown at April 1993 rates. Table 716 shows current net pay by gender for all those in work at the time of the interview.

Table 716: Weekly take-home pay at the time of interview: by gender within band

	Band 1			Bands 2-4		
	Men	Women	All	Men	Women	All
Base: In work at interview (unweighted)	75	30	105	152	21	173
Net weekly pay:	%	%	%	%	%	%
Up to £60	1	6	2	2	6	2
£61-£100	3	27	11	4	31	7
£101-£150	12	15	13	22	7	20
£151-£200	26	7	20	26	23	25
£201-£250	12	9	11	11	5	11
£251-£300	11	-	7	7	8	7
£301-£400	11	4	9	6	-	6
£401+	5	-	4	2	-	2
Unclear	19	32	23	20	21	20
Mean (£)	238	141	212	195	141	189

A number of significant points are highlighted by Table 716. First, the Table clearly shows a large disparity in earnings between male and female respondents in band 1, with women earning only three-fifths of male average earnings. This disparity is explained by the high proportion of women working part-time; if part-timers are excluded from the calculation, women's average weekly earnings increase to £177 per week, which is about three-quarters of men's full-time earnings of £239.

Second, the disparity in pay between men and women in bands 2-4 is not nearly so great, with women in full-time employment earning nearly ninety per cent of the pay earned by men in full-time employment: £202 per week for men as compared with £179 for women.

Third, compensated accident victims had much lower earnings than full-time employees in general in April 1993: the national average for full-time male employees was £354 per week gross, while for women it was £253 per week; sample members in full-time work (in bands 2-4) had gross weekly earnings of £267 among men and £223 among women.<sup>9</sup>

Most importantly, current earnings for male compensated accident victims were, on average, much lower than their earnings prior to the accident. A comparison with Table 701 shows that (in bands 2-4) net weekly pay for men before the accident was £262 compared with £195 afterwards. Although this comparison had been drawn between all those in work at the time of the interview and all those in work at the time of the accident, if we limit the comparison to only victims who were working at both times, the figures are similar, with a mean weekly take-home pay of £262 at the time of the accident and a mean weekly take-

<sup>9</sup> Employment Gazette (1993).

home pay of £196 at the time of the interview, representing three-quarters (75%) of their previous earnings. (The earnings at the time of the interview of those not in work at the time of the accident were somewhat lower, averaging £182 per week.)

Interestingly, this drop in earnings was not found among women: before the accident mean net weekly pay for women was £143, while it was £141 at the time of the interview; and, looking only at women in work at both periods, the figures were similar: £153 at the time of the accident and £145 at the time of the interview. (The figures for women in work are averaged over a very small base and must be treated with caution.)

Changes in earnings over time *at the individual level* are explored more fully in Table 717, which shows the results of calculating the ratio of current earnings to previous earnings for those who were in full-time work at the time of the accident.

Table 717: Comparison of current earnings with earnings at time of accident for those in work at both times: by gender within settlement band

Base: In work at interview and in full-time work at time of accident (unweighted)	Band 1			Bands 2-4		
	Men	Women	All	Men	Women	All
	72	20	92	138	15	153
<i>Compared with pay at time of accident, current pay was:</i>	%	%	%	%	%	%
Higher by:						
50% or more						
25%-49%	12	11	12	8	23	10
1%-24%	13	1	10	11	7	10
	14	6	12	11	1	10
Lower by:						
1%-24%						
25%-49%	38	13	32	14	12	14
50% or more	4	9	5	20	26	21
	1	19	5	17	6	16
Unclear						
	18	41	24	19	25	20

The calculations were based on net pay in both jobs.

Among male respondents,<sup>10</sup> it can be seen that about one-half (43% in band 1; 51% in bands 2-4) reported lower earnings in their current job than in their previous job. In band 1, male respondents were almost as likely to report higher earnings as lower earnings (39% compared with 43%); but in bands 2-4, men were almost twice as likely currently to have lower than

<sup>10</sup> The number of women in work was too small to give reliable results and the number for whom earnings were known smaller still.

higher earnings (51% compared with 30%).<sup>11</sup>

Table 718 shows the difference in absolute terms between pay at the time of interview and pay at the time of the accident for *all* victims who were in (full-time) work at the time of the accident. Respondents who were not in work at the time of the interview had no earnings, so the difference would simply be their pay at the time of the accident.

*Table 718: Comparison of current earnings with earnings at time of accident for those in full-time work at time of accident: by size of settlement*

Base: In full-time work at time of accident (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	158	143	110	98	351
<i>Compared with pay at time of accident, current weekly pay is:</i>	%	%	%	%	%
Higher by:					
£100 or more					
£80-£99	7	3	*	2	2
£60-£79	3	2	3	-	2
£40-£59	3	1	1	3	1
£20-£39	1	6	2	2	3
£1-£19	1	3	1	-	2
	5	5	3	-	3
Lower by:					
£1-£19					
£20-£39	11	4	-	1	2
£40-£59	5	3	5	*	3
£60-£79	3	2	3	1	2
£80-£99	3	3	8	8	6
£100 or more	1	4	1	1	2
	37	49	59	64	57
Unclear					
	20	15	13	19	16
Mean difference (£)	-82	-126	-186	-209	-169

The calculations were based on net pay in both jobs.

It can be seen from Table 718 that, in terms of pay, the position of the vast majority of respondents was worse after the accident: two-thirds of respondents in band 1 (65%) and four-fifths (79%) of respondents in bands 2-4 received lower pay, or had no job, at the time

<sup>11</sup> For the remainder of the sample, one-quarter of band 1 respondents and one-fifth of respondents in bands 2-4, this ratio could not be calculated because either previous or current earnings were unknown.

of the interview. Moreover, the loss in earnings was large. Most of those with lower pay (or those who received no pay) had recorded a drop in earnings of over £100 per week (net). The mean difference ranged from a loss of £82 per week in band 1 to over £200 per week in band 4.

Only a small minority of respondents (20% in band 1 and 13% in bands 2-4) were earning more at the time of the interview than they had been earning at the time of the accident.

Table 719 shows the same calculation with the figures for men and women separated. This table shows that in band 1 there was no difference between men and women in the average amount of lost pay, with men suffering a loss of £82 per week, and women losing £85 per week. However, in bands 2-4, men suffered a much higher loss of earnings than women. Three-fifths (60%) of men lost £100 or more per week compared with one-third (36%) of women; and, on average, men's weekly loss was £177 compared with £108 for women.

*Table 719: Comparison of current earnings with earnings at time of accident for those in full-time work at time of accident: by gender within settlement band*

Base: In full-time work at time of accident (unweighted)	Band 1		Bands 2-4	
	Men	Women	Men	Women
	120	38	301	50
<i>Compared with pay at time of accident, current weekly pay is:</i>	%	%	%	%
Higher by:				
£100 or more	8	3	2	4
£80-£99	3	3	2	-
£60-£79	4	1	2	-
£40-£59	2	-	3	5
£20-£39	-	3	1	3
£1-£19	7	-	3	1
Lower by:				
£1-£19	13	7	2	-
£20-£39	5	6	3	-
£40-£59	4	-	2	6
£60-£79	2	5	3	26
£80-£99	1	*	2	-
£100 or more	35	43	60	37
Unclear	17	28	15	19
Mean difference (£)	-82	-85	-177	-108

The calculations were based on net pay in both jobs.

Although these various comparisons in earnings before and after accidents show evidence of long-term reductions in earnings, it is not suggested that the analysis in this chapter can provide a complete explanation of the *ways in which* injury leads to a reduction in earnings. The Oxford study of the consequences of accidental injury showed that among a sample of accident victims who had received relatively modest sums in damages, the impact of residual disability on the earnings of those who return to full-time work was not particularly strong or significant after controlling for other factors. Rather, the impact of injury was indirect through its effect on prolonged absence from employment which was seen to be a significant factor in reducing earnings.<sup>12</sup> The data from the present study therefore require further analysis in order to establish *precisely* the ways in which the effects of, for example, residual disability and time taken off work after an accident operate to produce the substantial depression of earnings observed among our sample of compensated accident victims.

### 7.7 Summary of longer term impact on earnings

Respondents who returned to the job that they were in at the time of the accident tended to receive somewhat lower pay when they returned (for example through loss of overtime), but only for a relatively short time. By contrast, respondents who never returned to their job, but who eventually returned to a different job, were likely to receive considerably less pay in their new job. A direct comparison of pay at the time of the accident with pay in the first job that this group returned to after the accident, reveals that two-thirds (66%) were receiving less pay after their accident (with 16% receiving more pay and the remainder unclear).

Among those victims who were in work both at the time of the interview and at the time of the accident, a comparison of earnings shows that one-half had lower earnings at the time of the interview, while one-third had higher earnings at that time (with the position of the remainder unclear).

Finally, a comparison of current earnings with earnings at the time of the accident for all of those respondents in work at that time reveals that, on average, compensated accident victims were £169 per week worse off at the time of the interview than at the time of the accident. This difference varied between men and women, with men being worse off by £177 per week and women worse off by £108 per week. Only 13% of respondents were receiving higher earnings at the time of the interview than at the time of their accident, while 79% were receiving lower earnings.

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<sup>12</sup> See the discussion in Harris et al (1984) *op cit*, Chapter 10, especially pp 274–275.





## CHAPTER 8. OTHER COSTS AND LOSSES RESULTING FROM THE ACCIDENT

In addition to loss of earnings, accident victims also often have extra expenses as a result of their accident, for example medical treatment, appliances and assistance. They may also suffer financial losses or other financial consequences, for example having to spend their savings or to stop saving. We therefore attempted in the survey, to assess the types of expenses and other losses that our respondents had suffered as a result of their accidents. We described in Chapter 3 the treatment and care that our respondents required after their accident and their future need for care and treatment. In this chapter we examine the extent to which accident victims had to pay for such care and assistance from their own, or from their family's pocket. Given the difficulties of making reliable estimates of the cost of these expenses, with the exception of private medical treatment and legal expenses we have not attempted to provide estimates of actual cost.

### 8.1 Private medical treatment

In section 3.6 we reported that one-third of respondents in band 1, and two-fifths of those in bands 2-4 received some private medical treatment. Of those who had such treatment, the majority said they had to pay some or all of the costs of their private treatment (59% in band 1; 54% in bands 2-4), while the remainder said they did not have to pay anything for this treatment or that it was all covered by private medical insurance (39% band 1; 46% bands 2-4).<sup>1</sup> Table 801 shows the proportion of respondents within settlement bands who had to pay for private medical treatment. As can be seen, there were no significant differences in the likelihood of paying for private treatment according to size of settlement.<sup>2</sup>

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<sup>1</sup> It is important to note that where costs for private medical treatment were ultimately reimbursed in damages settlements, these costs were categorised as having been paid for by respondents; only those medical costs which were covered by private medical insurance were excluded. It is possible that the number of respondents categorised as having paid for private treatment or tests is an underestimate, since respondents may well have received a private medical examination, the cost of which was simply included in settlements. However, if respondents had not had to pay for such an examination out of their own pocket, they might not have considered this as treatment for which they had to pay.

<sup>2</sup> If respondents who had a medical examination only are excluded, two in three of those in bands 2-4 who had private treatment (which represents 19% of all respondents in bands 2-4) had to pay some of the costs.

Table 801: *Payments for private medical treatment or tests: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Private treatment:</i>	%	%	%	%	%
Any private treatment:					
– any costs paid	20	22	23	27	24
– no costs paid	14	19	25	16	20
No private treatment	66	59	51	57	56
Unclear	*	–	1	–	*

Respondents who said that they had paid for at least some of their private treatment or tests were asked to estimate how much they had paid up to the time of interview. While a high proportion of respondents could not give an estimate, in general costs seemed to be fairly modest:<sup>3</sup> two-thirds (66%) of band 1 respondents, and 43% of those in bands 2-4 paid less than £500 for private medical treatment; on the other hand, 9% in band 1, and 29% in bands 2-4 paid over £1,000 (with 7% of the latter paying over £5,000). Most of those respondents who were able to estimate their private medical expenses felt that their estimate was quite close: 88% of those in band 1 said it was a close estimate, as did 73% of those in bands 2-4.

## 8.2 Home nursing

We reported in section 3.7 that receipt of home nursing was not at all common among accident victims. Table 802 shows that having to pay for private nursing was very rare indeed. None of the respondents in band 1, and only 3% of respondents in bands 2-4 reported that they had paid any money towards the cost of private nursing care (including those cases where the settlement included a sum for nursing care). Based on those who actually received private nursing, 8% of respondents in bands 2-4 had to pay for their care.

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<sup>3</sup> However, it must be noted that some of the costs quoted by respondents could have related to several years prior to the interview. In Table 801 the figures shown are exactly those given by respondents. Since payments for private treatment could have continued over a long period of time, and since no attempt was made during the survey to establish the dates when payments might have been made, it was not possible to adjust the figures to 1993 rates.

Table 802: *Payments for private nursing: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Home nursing:</i>	%	%	%	%	%
Any home nursing:					
– any costs paid	–	1	4	2	3
– no costs paid	11	20	29	35	28
No home nursing	89	79	66	62	70
Unclear	–	–	1	1	*

### 8.3 Extra day-to-day help

In section 3.8 we reported that most respondents had required extra help with their daily activities. However, paying for such help was very uncommon (Table 803). Only one in twenty respondents (in band 1 and in bands 2-4 overall) reported that they had paid for such help.

Table 803: *Payments for extra daily help: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Extra daily help:</i>	%	%	%	%	%
Any extra help:					
– any costs paid	5	3	8	6	5
– no costs paid	72	73	73	86	77
No extra help	23	23	18	8	17
Unclear	–	1	*	*	*

### 8.4 Aids or assistance

Table 804 shows that paying for aids or assistance (including such items as crutches, wheelchairs, hearing aids, and physiotherapy) was the most common extra cost likely to be incurred by respondents (see section 3.9 for a description of the aids or assistance required). Moreover, the need to pay for these aids increased along with the amount of damages received, from one in eight (13%) respondents in band 1 having to pay for necessary aids, to two in five (40%) respondents in band 4.

Table 804: Payments for aids or assistance: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Aids or assistance:</i>	%	%	%	%	%
Any aids or assistance:					
- any costs paid	13	22	32	40	30
- no costs paid	54	54	50	43	49
None needed	33	22	14	13	17
Unclear	1	3	3	5	4

The types of aids or assistance that respondents most often had to pay for which were not included in their damages were: aids for sight or hearing (7% in bands 2-4); aids for mobility/lifting (6%); making alterations to their home (6%); and physiotherapy, etc. (2%).

It therefore appears that the likelihood that compensated accident victims would have had to make payments as a result of their accident for treatment, therapy, aids, or assistance, increases with the size of settlement. While less than one-third (29%) of band 1 respondents had to make such payments the figure rises to two-thirds (64%) of respondents in band 4 who had to make such payments.

### 8.5 Future costs

The likelihood of requiring future treatment, assistance and aids was described in section 3.11. Table 805 shows the numbers of respondents who reported that they would probably have to pay for various types of treatment or aids in the future (whether or not the costs were included in their compensation).

There was a clear association between having to pay for future treatment or aids with amount of damages: whereas nearly nine in ten (88%) respondents in band 1 did *not* expect to make future payments, only half (55%) of those in band 4 did not expect future costs (with 6% unable to say).

Table 805: *Future costs for treatment, assistance or aids: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Likely future costs:</i>	%	%	%	%	%
Private medical treatment	3	3	5	6	5
Private nursing care	-	1	4	2	2
Extra daily help	2	3	5	7	5
Aids or assistance	6	6	11	25	13
None of the above	88	79	74	55	70
Can't say	2	12	5	6	8

The columns add to more than 100% as more than one response was permitted.

In general, respondents were most likely to say that they would need to pay for aids or therapy in future; they were less likely to say they would be paying for private medical treatment or nursing care (except in the lowest bands).

## 8.6 Legal costs

Another expense resulting from an accident is the legal costs incurred in pursuing a claim for damages. All but a handful of respondents used a solicitor to negotiate their claim (see Chapter 4). The majority of respondents reported that they did not have to pay any legal costs at all. About three in four of respondents overall (73% of band 1; 78% in bands 2-4) said that their costs had been completely covered by legal aid or by the defendant, or by a trade union. One-quarter of respondents, however, reported that they did have to make some payment towards their legal costs (25% of respondents in band 1 and 22% of respondents in bands 2-4). The details are shown in Table 806.<sup>4</sup>

<sup>4</sup> See also the material on plaintiffs' legal costs presented in Chapter 11, section 11.12.

Table 806: *Legal costs: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Legal costs:</i>	%	%	%	%	%
None	73	85	72	74	78
Under £500	10	2	9	5	5
£500 – £999	4	2	*	4	2
£1,000 – £4,999	2	4	8	5	5
£5,000+	1	1	2	5	4
Can't say amount	8	5	9	8	7
Unclear if any costs	2	1	–	*	*

The amount paid in legal fees tended to increase along with size of settlement: for compensation recipients in band 1, the amount of legal costs that respondents had to pay tended to be under £1,000; among those in bands 2–4, respondents were as likely to pay more than £1,000 in legal fees as less than £1,000.

### 8.7 Problems paying extra expenses

So far, this chapter has described some of the *extra* costs that respondents had incurred, or were likely to incur in the future, as a direct result of their accident. The financial problems of accident victims following their accident may be compounded by the fact that they have had to stop working, and because their partners or other household members may also have had to stop working, either temporarily or permanently, in order to help care for the accident victim. Thus in the aftermath of an accident, not only do expenses increase, but income may also be less, and in some cases considerably less than it was before the accident.<sup>5</sup>

An attempt was made to estimate the extent of financial difficulties experienced by respondents by showing them two cards: the first listed extra expenses that could result from an accident (such as private medical treatment or nursing, aids or assistance); the other showing normal household bills and expenses (such as mortgage or rent, domestic bills, general living expenses). Respondents were asked if they had experienced *any* problems paying for these types of bills or expenses *before* they received their settlement. Their responses are shown in Table 807.

<sup>5</sup> The impact on respondents' earnings is discussed in detail in Chapter 7.

Table 807: Problems with expenses before settlement: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Problems paying for:</i>	%	%	%	%	%
Private medical treatment/tests	3	4	9	10	7
Private nursing care	-	-	1	1	1
Rehabilitation (eg, physiotherapy)	2	2	7	3	4
Medicines	12	20	23	16	19
Aids (eg, crutches, hearing aids)	2	4	8	11	7
Moving house or altering home (eg, wheel ramps)	3	4	6	20	10
Extra travelling, heating expenses	22	30	45	46	39
Mortgage, rent	18	22	26	28	25
Domestic bills	27	29	41	37	35
General living expenses (eg, food, clothing)	23	21	32	34	28
Loans, HP	9	11	15	21	15
'Luxury' items (eg, holidays, appliances, gifts)	7	15	15	21	17
Other	3	1	3	6	3
No problems	50	49	34	36	40
Can't say	*	-	1	-	*

The likelihood of having experienced problems paying for these types of bills or expenses increased with size of settlement: this is to be expected, given that those with larger settlements were both more likely to have suffered greater loss of earnings (by not being able to work again) and to have incurred higher additional expenses (see Sections 8.1-8.6). Whereas only one-half of respondents in bands 1 and 2 said they had experienced problems in paying for these bills or expenses before they received their damages, two-thirds of those in bands 3 and 4 did so.

Interestingly, the most common problems were *not* with paying for extra expenses which resulted from the accident, but were rather with paying ordinary living expenses, in particular, paying domestic bills (electricity, gas, telephone), general living expenses including food and clothing, and the mortgage or rent. This finding is not unexpected since only a minority of respondents reported that they incurred additional expenses resulting from their accident. However, it should be noted that quite high proportions of respondents said that they had experienced problems in paying for extra travelling or heating expenses which resulted from their accident (39% in bands 2-4), or for medication (19% in bands 2-4).

Those respondents who received free National Health Service treatment, and those who received free assistance with daily activities from their family and friends could not report incurring extra costs for these services and therefore reported no difficulty in paying for them. If we look only at those respondents who said they had paid for private medical treatment, home nursing care, other home help, or for aids or assistance, the proportions experiencing

problems making these payments are somewhat higher. Among those respondents in bands 2–4 who had to pay for such costs, the proportions who reported problems in making those payments were higher: nearly one-third (30%) of those who had to pay for private treatment had difficulty paying for it; one-third (33%) of those paying for private nursing also said they had difficulty with their nursing bills; of those who had to pay for aids or assistance, about one-fifth (18%) said that they had problems paying these bills.

## 8.8 Savings and debts

This final section looks at two other financial consequences that can flow from an accidental injury: the first is having to borrow money or run up debts in order to pay for extra expenses which result from the accident or to pay for normal living expenses which can no longer be met because of reduced earnings; the second is not being able to save money or having to use up savings because of reduced income and/or higher outgoings following an accident.

### *Debts*

Although only a minority of victims had to borrow money or run up debts as a result of their accident, the likelihood of doing so increased with size of settlement, from one-quarter of those in band 1, to two-fifths of those in band 4 (Table 808). The scale of indebtedness tended to be relatively modest for claims under £100,000, with at most one in ten respondents in bands 1–3 borrowing more than £5,000. However, one-fifth (21%) of respondents in band 4 borrowed over £5,000, and 7% accumulated debts of £10,000 or more.<sup>6</sup>

Table 808: *Debts: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: All (unweighted)	220	170	130	134	434
<i>Money borrowed:</i>	%	%	%	%	%
None	75	68	67	60	65
Less than £500	5	3	3	4	3
£500 – £999	5	4	5	–	3
£1,000 – £4,999	8	10	11	13	11
£5,000 – £9,999	3	5	5	14	8
£10,000 or more	3	5	5	7	5
Can't say	1	6	5	3	5

### *Savings*

All respondents were asked if they had either stopped saving or had to spend their savings

<sup>6</sup> See the discussion in Chapter 10 on use of damages to pay off debts incurred between the date of accident and settling the compensation claim.



as a result of their accident. This was much more common than borrowing money, with only half of those in band 1, one-third in bands 2 and 3, and one-quarter of respondents in band 4 saying that their savings were *not* affected.

As Table 809 shows, the amount of savings that victims had to spend after their accident increased with the size of settlement: for example, in band 1, only 9% of respondents reported that they had spent £2,000 or more, but this proportion increased to 22% among respondents in band 4.<sup>7</sup>

Table 809: *Savings: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Savings:</i>	%	%	%	%	%
Not affected	49	34	33	23	30
Stopped saving	22	23	29	32	27
Spent savings:	(39)	(49)	(50)	(54)	(51)
– under £500	4	5	2	*	3
– £500 – £999	5	3	2	2	2
– £1,000 – £1,999	7	7	9	5	7
– £2,000 – £4,999	8	10	12	14	12
– £5,000 – £9,999	1	3	2	5	3
– £10,000+	–	3	6	3	4
– amount unclear	14	19	18	25	20
Can't say	1	3	4	3	3

The columns total more than 100% since more than one response was permitted

## 8.9 Summary

As well as losing earnings from work, accident victims often incur other costs (for example for medical treatment, rehabilitation etc) or suffer other losses. Half of the respondents in our sample had to pay extra costs as a result of their injuries, and the likelihood of having to pay these additional costs increases as the amount of damages received increases. The extra costs for which respondents most often had to make payments were aids or assistance (30%), private medical treatment (24%) and legal costs relating to their claim for compensation (22%). About one-fifth of respondents said that they expected to have to pay for further treatment or aids in the future.

Having to pay extra costs while living on a reduced income resulted in many respondents experiencing financial problems as a result of their accident. Three in five respondents said

<sup>7</sup> See the discussion in Chapter 11 on use of savings by respondents to cover extra expenses.

that they had experienced financial problems *before* their settlement. The problems most often mentioned were: paying for extra travelling or heating expenses (39%); paying domestic bills (35%); paying for general living expenses such as food and clothing (28%); paying the mortgage or rent (25%); and paying for medicines (19%).

About one-third of respondents said that they had borrowed money or accumulated debts as a result of their accident. One-quarter of respondents had to stop saving money, and one-half of respondents had to spend some of their savings in order to cover living expenses and the extra costs resulting from the accident.

## CHAPTER 9. INCOME FROM OTHER SOURCES

In Chapter 7 we looked at the effect of accidents on victims' work-related earnings. This chapter describes the income that respondents may have received after their accident from other potential sources, such as insurance policies, and state benefits. We also look at the effect that accidents had on the earnings of other household members.

### 9.1 Income from insurance policies

Respondents were asked if they had received any payments from several types of insurance policy after their accident: for example, those providing personal accident cover (including cover for mortgage payments); personal accident cover under a comprehensive motor policy; and insurance to cover loss of earnings while off work.

Cover under such policies seemed to be fairly rare, with only about one in ten respondents reporting that they had received payments under a policy of this type (10% in band 1; 8% in bands 2-4). Among those who did receive some payment from an insurance policy, about half received regular weekly or monthly payments, and half received a lump sum. The regular payments ranged from about £10 per week to over £100 per week, with most in the £20 - £60 range.

### 9.2 State benefits

Respondents were shown a card listing over 20 state benefits and were asked if they (or their husband/wife/partner) had received any of the benefits *at any time* since their accident. Their responses are shown in Table 901.

Table 901: State benefits received since accident: by size of damages

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Aged 16+, but not retired at time of accident (unweighted)	202	163	126	130	419
<i>Benefit:</i>	%	%	%	%	%
None of these	25	11	7	7	9
State sickness benefit	41	54	54	58	55
Invalidity benefit	25	47	61	59	55
Disablement benefit	6	10	9	21	13
Disability living allowance (DLA)	2	2	4	15	7
Disability working allowance (DWA)	–	2	2	*	1
Mobility allowance/motability	5	16	24	45	27
Severe disablement allowance	2	4	5	22	10
Invalid care allowance	1	1	1	9	4
Industrial injury benefit/pension	11	21	34	27	27
Lump sum disablement pension	1	2	4	–	2
Attendance allowance	1	2	9	39	16
Reduced earnings allowance	4	8	22	10	13
Income support	19	18	12	16	16
Family credit	3	6	1	1	3
Unemployment benefit	14	13	22	7	14
Housing benefit	13	8	18	15	13
State retirement pension	8	6	3	2	4
Maternity benefit/allowance	7	3	7	2	4
Other	4	5	8	6	6
Unclear	–	–	2	4	2
Mean number of benefits received	1.6	2.3	3.0	3.7	2.9

The columns total more than 100% as more than one response was permitted.

The majority of respondents had received at least one of the benefits shown on the card since their accident, with three in four respondents in band 1, and nine in ten respondents in bands 2-4 receiving benefits. The likelihood of receiving state benefits increased by band, as did the mean number of benefits received (from 1.6 in band 1 to 3.7 in band 4).

In all settlement bands, the benefits received most often by respondents were state sickness benefit and invalidity benefit, with the latter received by three-fifths of respondents who obtained damages of £50,000 or more. In bands 1 and 2, the other benefits received most frequently – income support and unemployment benefit – may have been related to the accident, but not necessarily so. In bands 3 and 4, on the other hand, the benefits received most often appeared to be directly related to the accident, including mobility allowance (or motability), attendance allowance, industrial injury benefit or pension, severe disablement allowance, and disablement benefit.

As Table 902 shows, the picture at the time of the interview is similar, with those in the higher settlement bands more likely than those in the lower bands still to be in receipt of state

benefits, getting more benefits on average, and receiving benefits directly related to their injuries. In all, two in five (42%) of respondents in band 1 and two in three (64%) of those in bands 2-4 were receiving at least one state benefit at the time of the interview. Invalidity benefit, industrial injury benefit and mobility allowance were the most commonly received benefits by respondents in bands 2-4.

Table 902: State benefits received at time of interview: by size of damages

Base: Aged 16+, and not retired (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	202	163	126	130	419
<i>Benefit:</i>	%	%	%	%	%
None of these	58	42	30	27	34
State sickness benefit	3	1	2	5	2
Invalidity benefit	13	25	39	42	35
Disablement benefit	2	6	6	15	9
Disability living allowance (DLA)	2	2	3	13	6
Disability working allowance (DWA)	-	2	-	*	1
Mobility allowance/motability	5	13	15	38	21
Severe disablement allowance	2	2	5	18	8
Invalid care allowance	1	1	1	7	3
Industrial injury benefit/pension	10	16	29	21	21
Attendance allowance	1	*	4	26	9
Reduced earnings allowance	4	8	20	10	12
Income support	11	10	2	5	6
Family credit	2	4	1	*	2
Unemployment benefit	1	*	4	1	2
Housing benefit	6	4	6	5	5
State retirement pension	8	5	3	2	3
Other	3	3	3	5	4
Unclear	-	-	2	4	2
Mean number of benefits received	0.7	1.0	1.4	2.1	1.5

The columns total more than 100% as more than one response was permitted.

Respondents who were most likely to receive any of these benefits were those who said that they were permanently sick or disabled at the time of interview: 97% of this group (in bands 2-4) were receiving state benefits. Most of the respondents in this group were receiving invalidity benefit (80%), with nearly half (46%) receiving mobility allowance, about one-quarter getting industrial injury benefit (27%) and attendance allowance (23%), and one-fifth (19%) receiving severe disablement allowance. Among respondents who returned to work, about one-third (38%) said that they (or their partners) were in receipt of state benefits at the time of the interview; most commonly received were industrial injury benefit (18% in bands 2-4), and the reduced earnings allowance (12%).

Those whose accidents occurred more recently were somewhat less likely to be in receipt of benefits than were those whose accidents occurred some time ago: in bands 2-4, nearly three in five (57%) of those whose accidents took place after 1985 were in receipt of one or more

state benefits at the time of interview compared with 72% of those whose accidents occurred before 1985.

### 9.3 Earnings of other household members

#### *Reduction in income*

Respondents were asked if, as a result of their accident, any other members of their household had given up work, worked shorter hours, changed to a less well paid job, or put off starting a job. Table 903 gives the details of the responses to this question. While very few respondents who had received the lowest settlements reported changes of this kind, as many as one-half of respondents in band 4 reported that another household member had given up a job (39%) or worked shorter hours (11%) as a result of the accident.<sup>1</sup> The proportion of respondents reporting that a family member had given up a job was three times as high among those in band 4 as among respondents in bands 2 or 3; in those bands, respondents were more likely to report other household members working shorter hours rather than giving up work altogether. It appears, therefore, that with less serious injuries, other household members reduce their working hours to care for the victim, but may not usually need to stop work completely; among the worst cases, however, it appears that spouses or other household members frequently have to give up a job as a result of accidents.<sup>2</sup>

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<sup>1</sup> This finding is consistent with the very high rates of dependence on family members for assistance with daily activities reported in Chapter 3, section 3.8 and Table 308.

<sup>2</sup> See also the discussion in Harris et al (1984) op cit, on the impact of accidental injury on household income, in which detailed analysis of labour market behaviour of victim and non-victim household members confirms that "the need to care for the victim takes precedence over the need to maintain household income". Chapter 11, p 313.

Table 903: Reduction in income of other household members: by size of damages

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Other household member:</i>	%	%	%	%	%
Worked shorter hours	9	13	11	11	11
Gave up work	3	12	18	38	22
Changed to less well-paid job	1	-	2	-	1
Put off starting a job	2	1	4	4	3
None of the above	85	75	64	47	63
Not stated	-	-	2	-	*
<i>Reduced weekly income by:</i>	%	%	%	%	%
Nothing	3	4	4	7	5
Up to £49	2	9	5	6	7
£50 - £99	3	4	7	13	8
£100 - £149	1	2	2	4	3
£150+	3	2	4	5	3
Can't say	4	4	12	17	11

Given the greater likelihood of giving up work completely, it is not surprising that respondents in band 4 reported the largest reduction in earnings as a result of other household members giving up work, with 9% reporting losses in weekly income of £100 or more and 22% reporting a loss of £50 or more.<sup>3</sup>

#### *Increased earnings*

Since accident victims often lose their jobs and are unable to return to work, it might be expected that in some cases another household member might attempt to increase their earnings to make up for the loss of earnings suffered by the accident victim. A comparison of Table 904 with Table 903 shows that an increase in earnings by another household member was much less commonly reported than a reduction in earnings. Only 5% of band 1 respondents, and twice as many (10%) in bands 2-4 said that another household member had started a job, worked longer hours or changed to a better paid job as a direct result of the accident. The incidence of increased earnings was therefore very low, with only 2% of respondents in band 1, and 3% of those in bands 2-4 reporting an increase in earnings of £50 per week or more.

<sup>3</sup> It should be recalled that in Section 4.10, Table 407 we reported that only 4% of respondents in bands 2-4 thought that their settlement had included compensation for their parent's or spouse's loss of earnings.

Table 904: Increase in income of other household members: by size of damages

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Other household member:</i>	%	%	%	%	%
Worked longer hours	2	4	7	3	5
Started a job	2	3	2	4	3
Changed to better-paid job	1	1	5	*	2
None of the above	96	91	87	91	90
Not stated	-	-	-	2	1
<i>Increased weekly income by:</i>	%	%	%	%	%
Less than £49	2	5	7	6	6
£50 - £99	1	-	2	*	1
£100+	1	2	3	*	2
Can't say	1	2	1	*	1

#### 9.4 Summary

The most common source of alternative financial assistance for those who had suffered loss of earnings and/or extra expenses as a result of the accident was state benefits. Nine in ten respondents had received state benefits since the date of their accident, and both the likelihood of receiving benefit, and the number of benefits received, increased with size of settlement. The benefits most often received by compensated accident victims were: sickness benefit (55%); invalidity benefit (55%); mobility allowance (27%); and industrial injury benefit (27%).

Only one in ten of our respondents had received any payments from insurance policies providing personal accident cover.

The earnings of other household members represents another potential source of alternative income for those whose income has been affected by an accident. After an accident, the earnings of others in the household may increase to make up for the reduction in the victim's earning, or they may decrease if another household member has to give up work, or reduce the hours they work in order to help care for the victim.

Among our sample there were very few instances of other household members increasing their income by working longer hours or by starting a job (about 10%). The opposite situation was, in fact, considerably more typical. About one-third of accident victims reported that another household member had *given up work altogether* or had worked shorter hours as a result of the victim's accident, thereby causing a *further loss* in household income.



## CHAPTER 10. THE USE OF DAMAGES

A central objective of the research was to obtain relatively detailed information about the use that compensated accident victims had made of the damages received. Some previous evidence on this subject has been provided by the Oxford study of compensation for accidental injury<sup>1</sup> and the more recent work carried out in Edinburgh.<sup>2</sup> However, both of these studies were more limited than the present survey. The Oxford study involved a relatively small sample of compensated accident victims, most of whom had received only modest sums by way of compensation between 1971 and 1976 (the average settlement was about £2,000). The Edinburgh study is more recent and focuses specifically on large claims, using data collected from 83 recipients of settlements over £150,000. That study, however, presents only brief information about the ways that victims of catastrophic injury had used their compensation. The report does conclude, however, that "as far as could be determined, the (often substantial) residue of awards had been placed in savings and/or investments to cover future contingencies.....There were no examples of fiscal improvidence or profligacy. Rather, there were many indications of prudent, future-oriented financial planning."<sup>3</sup>

In the course of our survey of compensated accident victims, and during in-depth interviews, considerable effort was devoted to establishing the variety of ways in which accident victims had used their compensation and the extent to which they had benefited from advice about the use of their damages. We also wished to discover how much of the damages received had been spent by the time of the interview. This chapter therefore presents information collected from respondents about their use of damages; the nature of advice received; and respondents' satisfaction with the use made of their damages and their advisers. We also present respondents' opinions about whether damages should be paid by means of a lump sum or periodic payment; and finally, we describe respondents' attitudes to questions concerning the freedom to choose how damages are spent. The following chapter considers respondents' views on the adequacy of their compensation in the light of their post-settlement experiences and circumstances.

### 10.1 Planning the use of damages

Information about pre-settlement planning for the use of damages was obtained from qualitative interviews, and provides some interesting background to the statistical data that we have collected on the use of damages. These in-depth interviews revealed that although 'fantasy planning' by respondents had been commonplace prior to the receipt of damages, especially where larger settlements were being considered, such fantasies were rapidly exchanged for practical planning based more closely on the reality of respondents' circumstances as an agreed settlement appeared to be coming closer. What should be noted, however, is that the formulation of *concrete* plans for the use of the settlement seemed to be

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<sup>1</sup> Harris et al (1984) op cit, Chapter 3.

<sup>2</sup> Cornes (1993) op cit.

<sup>3</sup> Ibid, p 57.

a relatively rare occurrence. The chief causes of this lack of planning which emerged from qualitative interviews fell into four main categories:

- respondents had little idea of *when* the compensation claim would be settled;
- an expectation that the settlement agreed might vary considerably from the amount that had been calculated by respondents' legal representatives;
- the settlement was expected to be too small to plan for its use;
- a belief that the court would direct respondents to use the settlement in specific ways, particularly where the money was held by the Court of Protection.

There were, however, some exceptions to this rather pervasive failure to undertake detailed advanced planning. For example, a common instance of specific planning was where the respondent had accumulated debts during the generally lengthy period between the accident and the settlement and regarded paying off the debts as the first priority on receipt of settlement (see section 10.11 below). In other cases, respondents had a general plan to use their damages to provide an income, particularly where respondents could no longer work, or could no longer command the level of salary that they had been used to. In several instances respondents had decided that new housing, or adapted housing would be required to meet their future physical condition and constraints on mobility, and therefore planned their spending accordingly.

In general, however, where detailed planning was undertaken, it usually occurred *after* the settlement had been agreed and received, rather than in anticipation of the settlement. For example:

*No-one had ever said "You will get between this band" and narrowed it down to 10, 15, 20 thousand pounds. The figure... had varied so much...And every time I'd said to the solicitor "You must have some idea what this is gonna cost", he would say "I can show you other cases"...On one particular meeting with him he said "Well it could be worth £30,000". And then a few months later he said "Well it could be worth £80,000"...There were no guidelines. You would come out thinking "What can I do with £30,000?" Then after you'd seen him you'd think "What can I do with £80,000?" (Case settled for £100,000 after finally being told to expect £160,000)*

## **10.2 Savings and investment of damages**

In order to obtain information about how money had been saved or invested, all of the respondents in the survey were shown a card which listed different means of savings. Respondents were then asked whether they had invested or saved some of their compensation money in any of the ways shown. The majority of respondents reported that they had saved or invested some of their money. The likelihood of respondents saving or investing part of their damages increased with size of settlement from three in five respondents (61%) in band 1 to over nine in ten respondents (93%) in band 4 (Table 1001). These figures appear to be

somewhat higher than those found in the Oxford study which reported that about 45 per cent of the sample as a whole saved some or all of their money for the future.<sup>4</sup>

Table 1001: *Savings and investments: by size of settlement*

Base: All (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	£5,000- £19,999	£20,000- £49,999	£50,000- £99,999	£100,000+	£20,000+
	220	170	130	134	434
<i>Savings &amp; Investments:</i>	%	%	%	%	%
None	35	17	10	3	10
Building Society account	37	52	53	48	51
National Savings Certificate	3	4	11	20	11
Bank account	17	18	31	31	26
Premium bonds	1	6	2	3	4
(Any savings)	(53)	(68)	(77)	(74)	(72)
Company shares/securities	4	14	21	31	21
Unit/investment trusts	5	17	36	41	30
Government stocks/securities	3	1	10	17	8
(Any stocks/securities/trusts)	(10)	(28)	(47)	(58)	(43)
Property	1	7	2	12	7
Other savings/investments	3	5	13	17	8
Can't say/Not stated	4	2	4	4	3

The columns add to more than 100% since more than one response was permitted.

The most common method of saving compensation by respondents in our survey was to use a building society account, followed by a bank account: among respondents in bands 2-4, the proportions saving in building societies and banks were 51% and 26% respectively. Investments were most likely to be in unit or investment trusts (30% in bands 2-4), followed by company shares or securities (21%). Other types of savings or investments were quite rare, except among those respondents with large settlements. Of those respondents who had received settlements of £100,000 or more, some 20% had invested in national savings certificates, 17% had invested money in government stocks or securities, and 12% had invested in property (other than their own home).<sup>5</sup>

In all bands, respondents were more likely to save their money in bank or building society accounts or in savings certificates than they were to invest in stocks or securities; but as the

<sup>4</sup> Harris et al (1984) op cit, p 122.

<sup>5</sup> The Oxford study found that 32% of the sample banked some of their money, 7 per cent deposited some in a building society, but only 5 per cent put money in other forms of investment. It should be recalled that the majority of cases in the Oxford sample involved relatively small claims.

amount of the damages increased so did the likelihood of investing in stocks and securities. Only about one in ten respondents in band 1 invested some of their compensation money in stocks or securities, compared with six in ten (58%) of respondents in band 4.

The figures on savings and investments show, in general, a concern among respondents to preserve their compensation settlements for the future, as well as a tendency to choose the more conventional and possibly 'safe' means of investing their money.

### 10.3 Satisfaction with savings and investments

Respondents were asked whether they were satisfied with the way that they had saved or invested their money. Among those who did save or invest some of their compensation money, the vast majority said they were satisfied with the savings or investments made: 77% in band 1 and 78% in bands 2-4. However, a fairly substantial minority of savers or investors said they were *not* satisfied: 16% in band 1 and 19% in bands 2-4. (The remainder of respondents – 7% in band 1 and 3% in bands 2-4 – could not say if they were satisfied or dissatisfied.)

The reasons given most often by those who were dissatisfied were that: they regretted the savings or investment choices they had made ((33%) of those in bands 2-4 who were dissatisfied); interest rates were very low (32%); their shares had fallen in value (20%); they had received poor financial advice (15%); and they had only received a low rate of return on their money (7%). In other words, and not surprisingly, respondents were dissatisfied if they had lost money ("shares fell in value") or if they felt that they could have made more money if they had saved or invested differently ("interest rates were too low").

Examples of reasons given by respondents for their dissatisfaction with their savings and investments are presented below. These examples illustrate the very real concern that respondents have about preserving the value of their investments, respondents' lack of experience in investment matters, and the difficulties encountered by some respondents in receiving good quality financial advice (discussed further in section 10.6 below):

#### Regret investment choice

*We did not know anything about investment. A lot of people offered advice but still you really don't know. You just have to hope. They don't know what they are doing. The money is not growing much.*

*Looking back, should not have paid off the mortgage. Should have invested it.*

*Because they are going to invest the money in shares. I am not happy with that. I (the parent) receive monthly payments by the Bank. It would have been better if I had got all the money as I could do the business.*

*Because of the 89/90 crash. A lot of the investments are running on minus profit at the moment because of that reason.*

*Because I put it in and then took it out in less than a year, so I didn't benefit. It cost me to invest. I had a chance to buy a house.*

*The solicitor advised us to go to a financial adviser. She put the money left into that bank that crashed which lost all the money we had in that.*

*Because I was advised to invest in stocks and shares, and lost a lot of money. I have now invested differently. At the beginning the solicitor would not release the cheque until I had seen a Financial Adviser, who advised me wrongly.*

#### Interest rates low

*I was satisfied to start with, but now I'm disappointed because of the drop in the interest rate and the bank charges which have gone up.*

*I'm just a bit disgruntled with the way interest rates are going down.*

*Not very good really. Bad time to invest because of interest rates.*

*The return from my investments are only just keeping up with inflation. I had hoped they would be more substantial.*

#### Shares fallen in value

*I went in at the wrong time (Black Wednesday) and lost a lot off share investments.*

*Badly advised on the way I invested. Two black days on the stock market. Shares have lost about one-third of their value.*

*Because the Unit Trust investments have gone down. He bought high when shares were high and now they've gone down. He invested £60,000 in unit trusts and his investment has gone down. These investments were done about two weeks ago, but before that the investments were not sound at all. They were invested in Abbey Life and we got no interest over 4 years or very little interest. Now we are happier with the investments.*

#### Poor financial advice

*Because it was a new field. You've got money but don't know exactly what to do. Looking for people to help you, but not knowing what sort of people that is. Everyone wants to sell you their own product. No one calculates for the future.*

*I think probably I could have done better. A bit more financial consideration might have improved the income. The financial advisers we consulted didn't do a very good job. First of all the bank gave us duff information which was*

*obviously wrong. The second one is that the bank wanted the sum of £80,000 to be under his complete control and charge us about 5–6% of the total every year. We then went to a broker who was a bigger dead loss. He made certain recommendations and said we would have a 14 days cooling off period and four months later they asked my wife to go for a medical by which time we felt misled...After a lot of trouble we got our money back with interest and then they tried to take £23,000 out of my bank account.*

*My son's award was left in the hands of an independent financial adviser. The result was disastrous and the investment substantially reduced.*

#### **10.4 Reasons for not saving or investing damages**

In each settlement band a minority of respondents had not saved or invested any of their damages. Among those receiving the smallest settlements (band 1) just over one-third (35%) reported that they had not saved any of their damages. The proportion who had not saved any of their money fell substantially as the size of settlement increases. Among respondents in band 2 (those receiving between £20,000 and £49,999) some 17% reported that they had not saved or invested any of their money. Among band 3 respondents (those receiving £50,000 but less than £100,000) one in 10 (10%) respondents had not saved any money. Among those respondents receiving £100,000 or more in damages some 3% reported that they had not saved or invested any of their money.

All of those respondents who had reported that they had not saved or invested any of their damages were asked why they had not done so. Nearly all respondents who failed to save or invest any of their damages reported that there had been no money left over from their compensation that could have been saved, either because on receipt it had to be used to cover past expenses (among non-savers, 42% in band 1 and 33% in bands 2–4), or because the respondent had spent all of the damages received soon afterwards (57% in band 1, and 45% in bands 2–4). In some cases, the damages had been completely used up in buying a house: among the non-savers in band 1, 11% said their money went toward the purchase of a house, as did 22% of non-savers in bands 2–4.

Examples of the reasons given by respondents to the survey for failure to save or invest part of the damages received are given below. The explanations given by respondents for their failure to save reflect the fact that the majority of respondents failing to save were those who had received the lowest settlements.

Used damages to pay past expenses/additional expenses

*Spent it all on paying the bills. Had no money left. Would have invested it if we had had enough compensation paid.*

*Had to pay mortgage and living expenses. Even with the compensation I didn't have enough to pay the mortgage off. I had to pay off back payments that had mounted up through not working, plus debts my husband left before leaving. I wasn't physically fit so my husband left partially due to my accident.*

*I had a substantial loan to the Bank. I had a larger mortgage.*

*We needed the money to pay for expenses due to the change of life style.*

*All used for additional expenses. I always had a company car which I have had to replace privately, with all the associated extra costs.*

Spent all of the money

*I paid off £3,000 towards my mortgage. When I had the injury I had just got back from holidays where I'd spent all my money so I needed the money [damages] to live on.*

*No idea. Paid some bills then wife got pregnant again. Bought everything for the baby.*

Used money to buy house

*Because I bought my house with it and left enough to live on. Daughter's boyfriend got hold of my card and had been getting money out of my bank account. I lost about £4,000 to him.*

*Everything went in our house and getting married. Both our parents couldn't afford a wedding so we paid it all. We bought this house, it was in a bad state. We just put everything into here. Suppose we didn't think about saving, but I wish I had now.*

Non-savers were asked if, looking back, they wished they had saved or invested their damages in the ways described on the card they had been shown. Those with the smallest settlements (band 1) did not appear to regret their choice to have spent rather than saved their damages, with 44% saying they did not wish they had invested any money and 18% unable to say; however, about one-third (35%) of respondents in band 1 who had not saved, did reply that they wished they had saved some of their damages. Thus with the benefit of hindsight, a small but significant proportion of accident victims receiving damages of under £20,000 regretted their failure to save or invest at least some of the damages received for their injury.

Although non-savers in bands 2-4 were more likely to say they did not regret the failure to save or invest than to say they wished they had saved in the ways shown, they were more evenly divided with 44% having no regrets and 42% wishing that they had saved some or all of their damages (the remainder of this group were unable to say or did not answer).

## **10.5 Financial advice received**

All respondents were asked if they had received any advice about how to spend, save or invest their damages from any of the categories of possible adviser listed on a card. As Table 1002 shows, the likelihood of respondents receiving advice increased significantly by size of settlement, from 26% of respondents in band 1 receiving advice, to 84% of respondents in

band 4 receiving advice. Among those respondents who received £20,000 or more in damages (bands 2–4) some two in three (67%) received some form of financial advice.

*Table 1002: Advice on how to spend, save or invest damages: by size of settlement*

Base: All (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2–4
	£5,000– £19,999	£20,000– £49,999	£50,000– £99,999	£100,000+	£20,000+
	220	170	130	134	434
<i>Advised by:</i>	%	%	%	%	%
No advice	72	47	32	16	33
Lawyer	3	8	14	20	14
Accountant	2	3	8	12	7
Bank/building society staff	12	22	38	46	34
Family/friends	8	14	9	12	12
Independent financial adviser, stockbroker, etc	4	16	34	42	30
Other person	2	–	1	3	1
Can't say/Not stated	2	1	1	*	1

The columns add to more than 100% as more than one response was permitted.

Table 1002 shows that bank or building society staff were the most common source of advice for those who received damages (34% of respondents in bands 2–4 received advice from this source); the next most common sources of advice were independent financial advisers (30%), lawyers (14%) and family or friends (12%).

Information from qualitative interviews suggests that the ways in which advice is obtained, or sought, by compensated accident victims can be quite haphazard. Some respondents seem to have been almost overwhelmed by the number of potential advisers offering their services, while others seem to have been left to their own devices. Few compensated accident victims are likely to have had a great deal of pre-settlement experience in handling investments and dealing with advisers, and are therefore in a relatively poor position to judge the value of advice being offered until sometime later when they are able to observe the performance of their investments.

*Some people came out to advise me where to invest it, how to invest it. But there wasn't just one. Everybody seemed to get to know. You know, these people from the bank and investment brokers, they seemed to get to know and they was coming. And so all of a sudden I've got three or four people coming to the house on different days, and basically it was all the same, and it was down to the one I liked... Not because I knew he was better than them, it was just down to your natural instinct... They all seemed to drum up the same portfolio. (Male 38, industrial injury, received £300,000)*



One common response to lack of experience in managing large amounts of money, which is illustrated fairly clearly in Table 1002 and reflected in the following extract from a qualitative interview, is an approach to investment characterised by decision-making that feels 'safe' and a stereotype of banks and bank employees as more reliable and trustworthy than other sorts of financial advisers:

*I asked my solicitor and said "Well we've got this money now or when we do get it, have we got to keep it?". He said that the money is yours now and he said you can spend it all tomorrow or you can put it in the bank tomorrow..He said you can please yourself what you do with it...[the only advice we got was] from the bank. We took the cheque to the bank and they advised us what to do with it and it's still there. We've still taken their advice. The bank's been wonderful, absolutely. We often go in for a talk and he's very good, his advice. (Male 60, medical negligence. £215,000)*

## **10.6 Helpfulness of financial advice**

The vast majority of respondents were satisfied with the advice that they had received: among those in bands 2-4 who received advice 51% said that the advice they had been given was very helpful, and 33% said that it had been fairly helpful; on the other hand, about one in seven said that the advice they had received had not been very helpful (8%) or that the advice had not been at all helpful (6%).

Three main reasons were given for the view that the financial advice received had not been helpful (although the base is small and these results should be treated with caution): first, that respondents had lost money on their investment (this was mentioned by 27% of band 2-4 respondents who said that the advice received had not been helpful); second, some respondents felt that the advice had not been impartial (28% of those who thought advice unhelpful); and, finally, that the advice had not been appropriate to the respondent's circumstances (23% of those who found advice unhelpful).

Examples of the kinds of circumstances in which advice had been seen as "unhelpful" are as follows:

*At the time, the award was to have been held in a cash holding fund on deposit to await the outcome of a turbulent period in the stock market. Later I found that this had not been the case and all the money had allegedly been invested in stocks and shares which collapsed in value.*

*It seemed helpful at the time and proved disastrous over the period because we were advised to put all the money on one thing instead of spreading it about. Really bad advice was given to us.*

*It wasn't helpful because he was trying to sell insurance, not simply financial advice. He wanted the most commission. He took 5% of our money then the policy began to plummet. He advised for his own benefit.*

*Badly advised on the way I invested the money. The shares have lost one-third of their value.*

*He said I wouldn't have to pay tax, but I ended up paying tax.*

Among those who participated in qualitative interviews there was evidence that respondents had taken financial advice from a range of sources, but that there was some dissatisfaction with the quality of investment decisions. A need for greater, independent financial advice emerged. For example:

*I used the financial advisor from the bank I use, and I think he's a bit of a prat actually. But he sold me a lot of his stuff which hasn't really turned out very good. Once they've got you to sign on that bit of paper they just sort of forget it, I think. I would really like to see one independent body, especially for people like me, give advice and help invest the money. (Male 30; industrial injury; working in lower paid job)*

### **10.7 Would financial advice have been helpful?**

Respondents who had not received any financial advice were asked if they thought, in retrospect, that some advice would have been helpful. Among those respondents who had received the smallest settlements (band 1), one in four (25%) said that it would have been helpful to have had advice, while three in five respondents in band 1 thought that it *would not* have been helpful. Among those who had received larger settlements (bands 2-4), respondents appeared to be equally divided in their views. Two in four of respondents in bands 2-4 (44%) thought that financial advice would have been helpful, while the same proportion (44%) thought that financial advice would not have been helpful. Each group was asked to give the reasons for their response.

Those who thought financial advice would have been helpful did so for three main reasons: first, respondents had not known what to do with their money and now felt that it would have been advantageous to have been told about the best ways to invest their money (42% of those in bands 2-4 gave this reason); second, respondents thought that advice would have been helpful to plan and invest for the future (23% gave this reason); and finally, respondents felt that advice would have been helpful in order to achieve a better rate of return on their investments (22% gave this reason).

Examples of respondents' reasons are as follows:

*Obviously there are people who make it their business to know these things. We probably wouldn't have done what we did with the money if we'd had proper advice.*

*I had no idea of what to do with the money. I did not know where to go for help. The solicitor did not suggest any.*

*It would have been useful for the future, so I would have some money to fall back on later in life. I've started my own business, probably if I'd got advice*

*I wouldn't have had to borrow the money the same. Just be able to plan better to get some good advice – too late now its gone.*

*May have done something different with the money. It may have lasted longer.*

*The solicitor said I should invest it, but didn't say any particular place.*

*Because when you receive a sum of money like that and you are not used to it, you need advice on the best way to invest and the pitfalls that occur.*

Those who did not think that financial advice would have been helpful at the time they received their damages also gave three main reasons for saying this: first, that their own choices for saving or investing had proven satisfactory (34% of those in bands 2–4); second, that they felt they had sufficient knowledge to make their own choices, or that they wanted to make decisions themselves (33%); and finally, that they had little or no money left to save or invest (26%). Examples of respondents' reasons are:

*I am financially aware. I knew what I wanted to do.*

*He wouldn't take advice. He thought he would be advised the wrong way. Friends tried to advise him but he wouldn't take it.*

*I have quite strong opinions about what to do with my money. I didn't want advice.*

*Can't be bothered to keep investing. Opted for something straightforward and simple that I could handle myself.*

*I get a good return from the Building Society. If it is in shares you can't get your hands on it.*

*I am quite intelligent. I didn't need any advice.*

*Because I'd already spent it. My wife gives all the advice I need.*

Information from qualitative interviews provided additional information about the circumstances in which compensated accident victims made their own decisions about the use of their damages without having sought any financial advice. The following extract is a good example:

*The solicitor did say to me "Well I can give you advice on how [to spend it] or I can tell you to see a financial adviser on how to spend it to get the best out of it." But at that time we knew what we were going to do because we were mortgaged up to the hilt and we wanted to get rid of the mortgage. We had sat down and talked about it, and we'd said "Well do we pay all the mortgage off, or do we have a little bit of luxury?" and have, you know, we are deserved something – you know to spend and have a bit of a fling. So we*

*decided that we'd pay a good chunk of the mortgage off, have a small mortgage and then I decided to buy a sports car. (£100,000)*

## **10.8 Approach to the use of damages**

Considerable detail was collected in survey interviews and in the longer qualitative interviews about the ways in which accident victims spent their damages. Information from qualitative interviews suggests that some respondents decided how they would use the damages and apportioned their settlement fairly quickly, sometimes within a matter of weeks of receiving the money; others were still considering how they might use the remainder of their settlement a number of years after the damages had been received. Respondents often divided their settlement into money with which to be prudent (often the larger part of the settlement) and money with which to be "*a bit more frivolous – money to enjoy*". Despite suddenly being in receipt of large sums of money, the general approach to the use of the settlement appeared to be one of caution: "*We've been very sensible...after all it's all we have to live on now.*"

Many respondents felt that they had endured considerable losses as a result of their accident. The strain of the process of seeking compensation together with the delays involved had exacerbated these feelings. As well as financial losses and the effects on the ability to continue working in their normal employment, there was also a general feeling that respondents had "*lost part of their lives*", and had experienced, in some cases, considerable emotional and psychological turmoil. With the settlement of their damages respondents now felt entitled to make up for these losses as best they could. For example, some people felt that over the course of their legal action they had had to give up so much that they were now entitled to make up for lost time and provide a treat for themselves and their families. Spending in this way included the purchase of consumer goods, expensive cars, furniture, house alterations and holidays. These purchases usually followed the allocation of damages for investments and housing.

*I invested £100,000 and kept £20,000 to play with. There was a £50,000 split. £25,000 was split between long term gilts with the government, and £25,000 put in guaranteed income bonds to maintain me in good income. There was £50,000 put on deposit with Natwest, on monthly deposits and various deposits, and high interest short term scheme. Which is very risky and very dangerous, but good fun to play with – which was then cut down to £25,000 on it and £25,000 on the stock market. So I had £100,000 used and £20,000 was left on the side. That cleared up odds and ends, this and that. Bought a new television. Bought a car which was £20,000 by the time it was finished with adaptations and everything. I solved a few family money problems, and I lost some benefits because I had money in the bank. (Male 29, paralysed in road accident. £120,000)*

*I invested £200,000; £100,000 in a house...a further £100,000 in investments to give me an income...spent the other £35,000, just blew it..bought a hi-fi, car for myself and my wife, went into Dixons and spent two to three grand, spent £1,000 in the garden centre. It gave me fun at the time and I had a great time for six months...It just made me feel good, made me feel better. (Male 50; medical accident; damages of £235,000)*

For others, the damages simply made up for their loss of future earnings – they purchased those items that they would have done had they retained their earning power.

*I think I've missed out on a lot of things. Like, I lost out six years of my life, so, I just went out [and got it]. I've got everything now, I've got a house – what people work for – I might as well have a decent car. (Male 27; motor-bike accident; lost considerable earnings potential; damages of £125,000)*

### 10.9 How damages were spent

All respondents in the survey were shown a card and asked whether they had spent their damages on any of the items listed on the card. The list of items is shown in Table 1003, together with the replies given by survey respondents. Only a small minority of respondents said that they had *not* spent money on any of the items shown on the card (15% in band 1 and 9% in bands 2–4).<sup>6</sup>

Table 1003: How damages were spent: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2–4
Base: All (unweighted)	220	170	130	134	434
<i>Damages spent on:</i>	%	%	%	%	%
Home improvements/furnishing	44	52	57	69	59
A holiday	24	39	36	42	39
Electrical goods	27	31	35	57	41
Overdraft/loan	23	22	26	31	26
Gifts for family/friends	19	24	24	23	24
Loans for family/friends	7	9	10	19	12
Pay off mortgage	3	8	15	17	13
Purchase of home	11	19	24	43	28
Purchase of car	22	21	16	17	18
Other	2	6	3	4	4
None of the above	15	9	11	6	9
Can't say/unclear	1	1	1	4	2

As the amount of damages received increased, respondents were more likely to spend money on the listed items, and they were more likely to spend money on large items. The clearest example of the latter tendency was the use of damages towards purchasing a home. The

<sup>6</sup> This question attempted to ascertain all of the different ways in which compensation money had been spent, and we had been concerned that the question might have been considered sensitive or intrusive by respondents. However, since no respondent refused to answer the question, and only a small proportion did not admit to spending their money on the items listed on the card, it seems likely that our concerns were largely unfounded.

likelihood that respondents would use all or part of their money on the purchase of a home increased from 11% of respondents in band 1 to 43% of respondents in band 4.

In fact, a majority of respondents spent at least some of their compensation on their home, either on home improvements or furnishings (44% in band 1, 59% in bands 2-4), or towards purchasing a home (11% in band 1, 28% in bands 2-4) or paying off their existing mortgage (3% in band 1, 13% in bands 2-4).

After expenditure on the home, money was most often spent on: electrical goods (27% in band 1, 41% in bands 2-4); a holiday (24% in band 1, 39% in bands 2-4); paying off an overdraft or loan or other debts (23% in band 1 and 26% in bands 2-4); on gifts for family or friends (19% in band 1 and 24% in bands 2-4); and towards the purchase of a car (22% in band 1 and 18% in bands 2-4).

### **10.10 Maintaining and improving the quality of life**

Table 1003 shows the frequency with which damages were used to purchase or improve the home, to obtain consumer goods, and to take holidays. Respondents to qualitative interviews frequently expressed the desire to "*return to as normal a life as possible*". As a result of the experience of the accident, and the difficulties often involved in the litigation process, many were keen to use a portion of their settlement to maintain their lifestyle and, where possible, to improve the quality of their lives in spite of the effects of their injuries. In part, this was achieved by ensuring that they had an income through prudent investments. They also adopted other strategies for ensuring the quality of their lives. New houses were purchased as investments, but also in some cases because respondents felt it gave them "*a bit of luxury*". In other instances housing was bought specifically to allow the respondent (who might have been severely physically injured) freedom of mobility. Many adaptations were made to housing, which ranged from minor changes such as the installation of ramps, through to major changes such as low-level kitchens, adapted bathrooms and the installation of lifts.

In some cases part of the settlement was used to buy a caravan or second home in order to provide respite for the accident victim and or the victim's family. In one case, part of the settlement had been used to purchase a second house in a nearby town that was used to provide respite:

The respondent's husband had been severely injured in a car crash resulting, primarily, in major psychological and personality changes. Originally an outgoing, independent man, he had become very dependent on his wife; he had also become physically and verbally aggressive towards his family. Finding it increasingly difficult to cope with the situation, the respondent arranged for the purchase of a house, furnished it in a similar fashion to the main home and provided enough food for her husband to stay for two days a week. Her husband had come to accept the arrangement; she found this was the only way she could cope. As a solution that had emerged after the settlement had been agreed, the cost of this facility had not been anticipated in the overall compensation settlement.

The opportunity for accident victims and their families to take holidays was also seen as important. Regular short breaks and family holidays were used not only as a "treat" after the

the protracted strain of legal proceedings, but also to provide purpose and variety to people's lives where work was no longer a possibility.

### **10.11 Debt reduction**

In Chapter 8 we reported that in each settlement band respondents had borrowed money as a result of their accident. One-quarter of respondents in band 1 had borrowed money, and one-third (65%) of respondents in bands 2-4 had borrowed money in order to cover losses and expenses during the period between the accident and the time that their claim for compensation was settled.

Table 1003 shows that in each settlement band around one-quarter or more of respondents reported using at least part of their damages to pay off overdrafts or loans. Information from qualitative interviews highlights the common experience amongst respondents of accumulating debts in the form of bank loans, borrowing from relatives and friends, overdrafts, and the use of credit cards, often to their limits. The debts incurred were often substantial, sometimes running into many thousands of pounds. Damages settlements were used to reduce or eradicate these debts. In general, respondents tried to clear all of their debts, although in some cases borrowing was simply reduced to what was felt to be acceptable levels for their changed circumstances

### **10.12 Gifts for family and friends**

Table 1003 also shows that about one-quarter of respondents in bands 2-4 (and about one-fifth in band 1) used some of their damages to provide gifts for family and friends. Responses to the survey and qualitative interviews established that friends and relatives were often the primary sources of help and advice during accident victims' periods of recovery, and often for many years afterwards. Accident victims acknowledged the debt that they felt for this support and many wanted to be able to say "thank you". In part respondents did this by giving money or gifts – amounts of £100 to £200 were usually mentioned. Those who had bought a second home or a holiday home let them out rent-free to friends and relatives as an alternative to the giving of gifts. Holidays for the family were also seen as a means of thanking partners and children for the help and support that they had given during the course of their compensation claim.

There is, however, another aspect to this issue that emerged from some of the qualitative interviews. In addition to feeling gratitude to their friends and relations, accident victims may also have to bear feelings of guilt as a result of their increased dependence and the extent to which their injuries have interfered with normal family life. Although one effect of this is to make compensated accident victims happy to provide gifts, it may also render them vulnerable to requests for financial assistance from family and friends. While accident victims are often overawed by the substantial size of their lump sum, they also realise that this money may have to compensate for loss of earnings for the rest of their lives. Those around them may also view the amount of damages as huge – rather like a pools win – and may not feel concerned about accepting gifts and holidays, or, indeed, asking for more significant financial assistance.

Evidence of this danger was apparent in one case in which a man in his mid-thirties had been blinded in an industrial accident:

The respondent received £300,000 by way of compensation. During the course of his qualitative interview he remarked on the fact that almost half of his damages had disappeared in the first 18 months, much of it spent on contributing towards the purchase of properties for his children and mother, and taking his family on exciting holidays. He appeared to be pleased to be in a position to do these things, but at the very end of the interview remarked that he did not believe that his family would ever become independent whilst he had any money left. He felt that they would always “sponge” off him. He had remarked earlier in the interview that he would have preferred periodic payments to the lump sum. He said: *You can't imagine that you can spend it. You can't spend that kind of money, but obviously I nearly have done. So I know you can. Within 12 months or 18 months that £300,000 was down to about £160,000.*

Another respondent who had been paralysed in a road accident in his early twenties and had received £120,000 in damages, also showed concern at the fact that some of his resources had been used to help out family members:

*I helped a few people out, and I wrote off £10,000 in helping people out. It would be nice to have that back. But at the time I did not worry about it. I was able to help some people. I helped family, so fine. I solved a few family money problems.*

### **10.13 The structure of settlements and actual expenditure**

In Chapter 4 we discussed the fact that survey respondents were rarely able to provide precise information about the items included in their damages settlement. During qualitative interviews this issue was discussed with respondents. Some were not aware that their claim would have been itemised in this way; others were aware, but said that the breakdown of the settlement had never been shown to them. Among those who had received the larger settlements, respondents were generally aware that there were specific components in the settlement, but few were able to be specific about the nature of the components or the amount awarded for each. However, where respondents *were* aware of the items for which damages had been awarded, the use made of the damages seemed to be largely unrelated to the claim and settlement. This appeared to be for two main reasons: first, since the final settlement was usually substantially less than the original claim, respondents felt that the way in which the original claim had been calculated no longer had any relevance; second, a small number of respondents viewed the components of the settlement as only ‘potential’ uses for the money. This interpretation, coupled with resentment about being told how to “*spend my money*”, led to an approach in which decisions about expenditure were based on perceptions of need *now*, rather than on any perception that their need had been *fixed* at the date of the settlement. These issues are discussed further in section 10.15 in relation to respondents’ attitudes towards lump sum and periodic payments.



#### 10.14 Amount of damages spent by time of interview

All respondents were asked at the time of the interview how much of their damages were left. This information provides an opportunity to assess the speed at which damages had been dissipated, both in relation to the period that had elapsed since settlement and the amount of damages received. Tables 1004, 1005 and 1006 present these data in increasing levels of detail.

Table 1004 shows the proportion of damages that respondents had spent at the time of the interview irrespective of the period of time that had elapsed since receipt of damages. From this table it can be seen that by the time of the interview, which was at least two years since the date of settlement, a very small number of respondents (7% in band 1 and 7% in bands 2-4) reported they had not spent any of their damages at all.

On the other hand, respondents who had received the smallest settlements (under £20,000) were much more likely to have spent *all* of their damages by the time of interview. Among band 1 respondents over half (52%) had done so (Table 1004). However, as the size of settlement increased, the likelihood that respondents would have spent all of their damages significantly decreased, to one-third (31%) of respondents in band 2, one-quarter (23%) of respondents in band 3, and only one in ten (9%) of respondents in band 4.

The proportion of respondents with about half or more of their damages still to spend by the time of interview increased from 24% in band 1 to 35% in band 2 and to 53% in band 3, before a slight decrease to 51% in band 4.

Table 1004: How much of damages spent by time of interview: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Amount spent:</i>	%	%	%	%	%
All of it	52	31	23	8	21
Over half	20	28	19	25	24
About half	9	13	15	10	13
Less than half	8	19	26	34	26
None of it	7	3	12	6	7
Can't say/not stated	5	6	5	17	9

As might be expected, the proportion of respondents' damages that had been spent at the time of the interview was related not only to the size of settlements, but also to the period between the date of the settlement and that of the interview (see Table 1005 and Figure 1001). Among the most recent settlements (those cases where damages had been received within three years of the date of the interview), nearly three in four (71%) of those with the smallest settlements (band 1) had spent over half or all of their damages, compared with two-thirds (64%) of respondents in band 2 who had spent over half or all of their damages within three

years of the settlement, half (49%) of respondents in band 3, and one-third (37%) of respondents in band 4. It is also not surprising that the longer the time since the settlement, the smaller the differences become between bands: for settlements that took place four or more years ago, three-fifths (56%) of band 2 respondents had spent over half of their compensation, as had nearly half of those in band 3 (47%) and band 4 (45%).<sup>7</sup>

These figures reflect the conclusions of earlier sections that compensated accident victims, and especially those who receive settlements of over £20,000, are at considerable pains to preserve the value of their damages for the future.

*Table 1005: How much of damages spent by time of interview: by period since settlement and size of settlement*

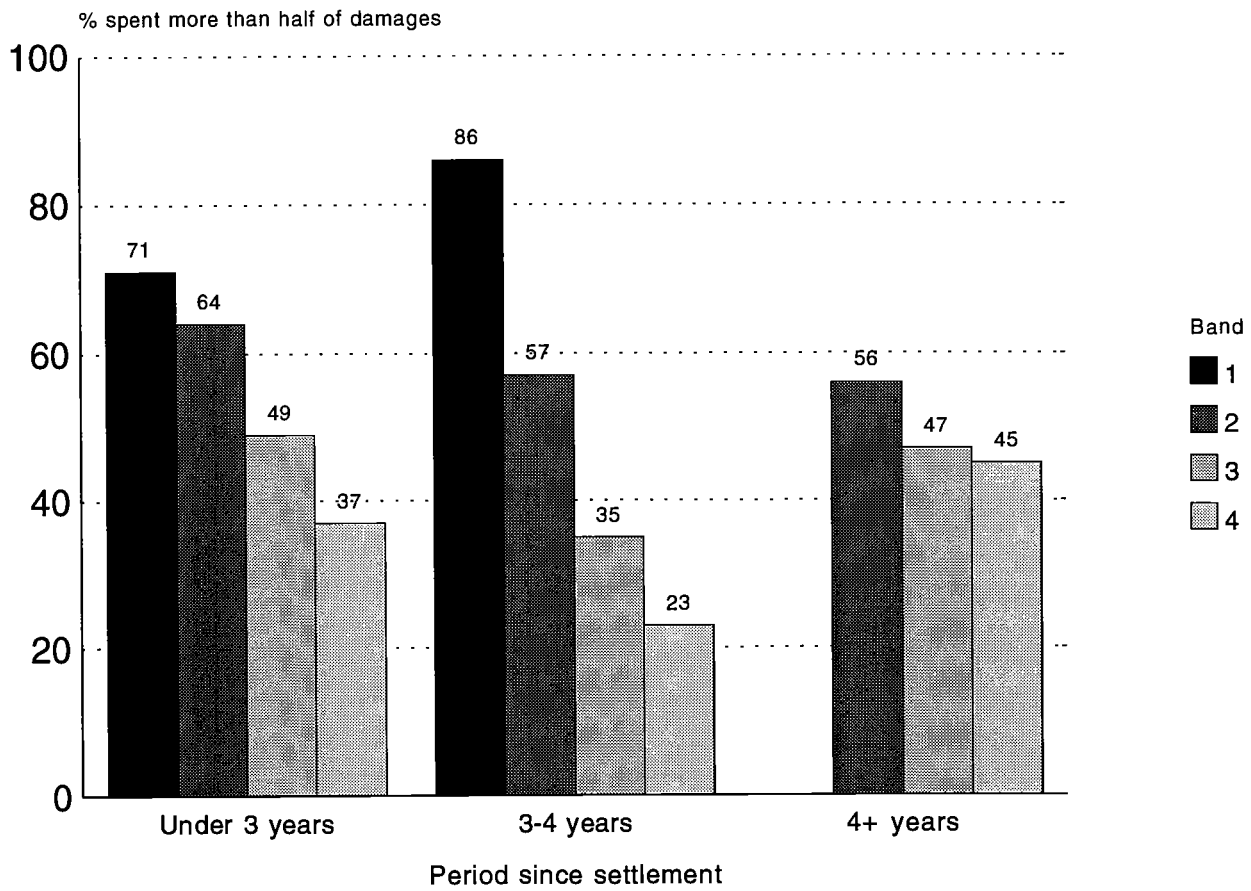
Base: All (unweighted)	Band 1			Bands 2-4			
	Period since settlement			Period since settlement			
	Less than 2 years	2 years less than 3	3 years less than 4	Less than 2 years	2 years less than 3	3 years less than 4	4 years or more
	55	102	42	22	120	182	73
<i>Amount spent:</i>	%	%	%	%	%	%	%
All of it	44	60	67	[17]	31	22	18
Over half	27	15	24	[33]	26	22	38
About half	12	12	1	[-]	14	14	18
Less than half	12	4	6	[44]	24	33	18
None of it	4	8	2	[5]	5	9	8

No figures are given for band 1 cases interviewed four or more years after settlement because the numbers are too small for any analysis to be undertaken. The figures for respondents in bands 2-4 interviewed less than two years since settlement are given in brackets because of the small base, and should be treated with caution.

The data presented in Table 1005 show that among those respondents who had received less than £20,000, interviewed between two and three years after their settlement, almost one-quarter (22%) still had about half or more of their damages. This figure drops to one in ten (9%) among those in band 1 interviewed between three and four years after receipt of damages.

<sup>7</sup> The figure also shows that, within bands, the likelihood of spending over half of the compensation does not increase year by year as would be expected. This is probably due to the wide variation of settlement amounts within bands, and the inability to unravel the relationship because of insufficient sample sizes. However, given the overall picture of the Figure, it seems reasonable to suppose that date of settlement is directly related to how much of the compensation had been spent for a given size of damages.

Figure 1001: Proportion spending more than half of compensation:  
by band within period between settlement and interview



Base: All

Among respondents who received larger settlements similar caution is demonstrated. Table 1006 looks at the amount of damages spent by respondents in bands 2, 3 and 4 who were interviewed four years or more after they had received their damages. Although the numbers are small, and the variations in size of settlement *within* band 4 particularly, makes clear analysis difficult, Table 1006 shows that the proportion of respondents who still had about half or more of their damages unspent at the time of the interview was 40% in band 2, 52% in band 3, and 44% in band 4.

*Table 1006: Amount of damages spent among those respondents interviewed 4 years or more after settlement (bands 2-4 only)*

	Band 2 £20,000– £49,999	Band 3 £50,000– £99,999	Band 4 £100,000+
Base: Respondents in bands 2-4 interviewed 4 years of more after settlement (weighted)	33	32	37
<i>Amount spent:</i>	%	%	%
All of it	25	22	7
Over half	36	27	49
About half	16	25	16
Less than half	21	11	22
None of it	3	16	6

The figures in Tables 1004 to 1006, as well as the information presented in previous sections of this chapter, do not support the suggestion that compensated accident victims squander their damages and that compensation dissipates rapidly. Rather the figures tend to confirm the statements made by respondents reported in earlier sections of this chapter and others, concerning anxiety about the future and the need to preserve capital.

### **10.15 Preference for lump sum or instalments**

In addition to seeking factual information about the experiences and circumstances of compensated accident victims some years after they had received their damages, we also wished to use the opportunity of a representative survey to explore the views of our respondents on a number of issues related to the way in which damages are paid. All respondents to the survey were therefore asked for their views about how compensation payments should be made (lump sum or instalments); and, whether those who received damages in respect of personal injuries should be allowed to spend their damages without restrictions, or whether they should only be allowed to spend the money on the items for which damages were provided in the settlement or award. These are discussed in turn below.

Respondents were given a number of alternative means of receiving compensation and were asked if they would have preferred to have received their damages in monthly or yearly instalments; or whether they thought it was preferable to receive all of their money at once; or whether they thought that a mixture of a lump sum followed by instalments was the most preferable arrangement. Table 1007 shows that the majority of respondents (about three in four overall) in each band preferred a lump sum payment to the other alternatives. There was very little enthusiasm among respondents in any band for being paid by instalments; and about one in five respondents in bands 2-4 (one in seven in band 1) preferred a mixture of lump sum and instalment payments. The remainder had no preference.

In general, then, there was a strong preference for being paid a lump sum, except among respondents who had received settlements of £100,000 or more. Almost one in three (31%) respondents in band 4 favoured a mixture of lump sum and periodic payments, whereas in bands 1-3, respondents were about five times as likely to prefer a lump sum to a mixture.

Table 1007: Preference for lump sum or instalments: by size of settlement

	Band 1	Band 2	Band 3	Band 4	All 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Prefer:</i>	%	%	%	%	%
Lump sum	72	77	76	65	73
Instalments	2	5	4	*	3
Mixture	15	13	17	31	20
No preference/can't say	11	5	3	4	4

Respondents were asked their reason for their preferences and the distribution of reasons given by those preferring a lump sum is shown in Table 1008. Two reasons, mentioned by about two in five of respondents in bands 2-4, predominated: first, respondents felt that a lump sum would ensure that respondents themselves would obtain the benefits of the investments or savings (rather than the insurance company keeping the interest the damages would earn); second, some respondents felt strongly that they should be able to control the money themselves, so that they could spend, save or invest it in any way they thought fit. In other words, respondents felt that they wanted to make their own decisions, and to be in complete control of their budget. Examples of responses given by respondents are as follows:

*It is there if required. It is better in my bank than theirs.*

*Because it's earning me interest if we'd put it in a bank or building society.*

*You need a fresh break. The insurance company should be kinder...It stands to reason, instalments are not paying you out. They keep the interest.*

*I can invest it as I see fit rather than someone else.*

*If you need something (a house or whatever) you've got the money there. You wouldn't benefit in having small sums in dribs and drabs.*

*A bird in the hand. If you've settled for a particular figure there's no earthly reason why you should have it over years.*

*Because the claim is finished and you feel more in control of what you can do with it.*

*I would not waste it. Able to do something with the money you couldn't do with instalments.*

*I can invest it and control it. Decide what to do with it.*

*Because would want to invest wisely. Instalments may be spent bit by bit.*

*Would have spent more if it had been in monthly instalments. With a lump sum I can spend or invest as I please.*

Table 1008: Reasons for preferring lump sum: by size of settlement

	Band 1	Band 2	Band 3	Band 4	All 2-4
Base: Prefer lump sum (unweighted)	150	130	95	76	301
<i>Reason:</i>	%	%	%	%	%
Personal control over money	26	38	44	32	38
For benefits of investments/savings	17	30	44	47	39
Greater purchasing power	19	18	14	20	17
May get less money if instalments	6	12	11	10	11
End of claim process	14	5	10	4	6
Better able to plan future	7	7	8	12	8
Settlement is too small for instalments	14	3	1	-	2
Easier to manage	5	2	2	-	1
Feel more secure	2	2	5	-	2
Other	3	5	-	1	3
Can't say/not stated	3	1	-	*	1

Other reasons included: a lump sum gives greater purchasing power if a large amount of cash is needed, for example, to purchase a house or repay debts (mentioned by 17% of those in bands 2-4); with instalments, victims (and their relatives) may end up with less money, eg, if they died sooner than expected or if something happened to the insurance company (11%); it is easier to plan the future if you know exactly what you have (8%); the claim process is over and done with (often having carried on for years), and it is best to leave it behind (6% in bands 2-4, but 14% in band 1). About one in seven (14%) of those in band 1 also said their settlement was too small to be paid in instalments. For example:

*After the length of time we just wanted to be finished with it. Lump sum is better. You are more likely to spend smaller sums.*

*The situation just drags on. When you've been through so much you just want to put it behind you.*

Among the small number of respondents who said that they would have preferred instalment payments, the chief reasons given were either that respondents valued the security of having regular payments coming in, or because they felt that the money would last longer since they would not be able to spend it all at once or whenever they felt like it. For example:

*Would have liked annual payments. It would have lasted longer. Security for the future. I would not have acted rashly.*

*Because maybe you would not have been affected by the economy. It would have been stated in amounts to be increased at certain dates.*

*I don't think I was ready for that kind of money. It would have been safer. I would have done things a lot different.*

*It does not seem to have gone very far. It might have lasted longer if you got a payment regularly. The money should last longer that way.*

The main reasons given for preferring a mixture of a lump sum followed by periodic payments were: the security of having regular payments come in (58% of those in bands 2-4 saying they preferred a mixture); that the lump sum would help to pay off their debts, and they would then benefit from a regular income (18%); they would be less likely to "fritter" the money away (16%); and, if it was index-linked, it would guard against inflation (16%). Examples of responses are as follows:

*If you've got a lump sum in one go and you owe the bank, they tend to take it all. If you get a lump sum and some instalments, you've got some money for the future if you need any treatment. I got bad advice for the future.*

*I think the lump sum you have to help with debts or expenses, then you have continuous income as a help for years to come.*

*A good lump sum to start with to buy a house and then say over five years get an annual sum, then you can invest your money, knowing it is coming regularly. It should be index linked.*

*Because you need initially a lump sum to purchase a home, and then you can live on instalments, providing these instalments include interest.*

*It would have been a steady income. If I'd had enough to pay off my debts and have some money in the bank I would have preferred instalments to cover living expenses like a pension.*

*The temptation is always there to spend it, whereas if you don't have it you won't spend it.*

All those who expressed a preference for a lump sum or a mixture were asked if they thought that there were any circumstances in which it might be better for a person to be paid in instalments. As Table 1009 shows, most respondents thought that there were such circumstances (with only about one in five saying instalments should never be used).

The example most often given (by two in five of respondents in bands 2–4) was if victims were liable to spend all of the money without regard to their future needs, either because they were “spendthrift”, or had no ability or knowledge about budgeting or saving for the future. Some respondents gave more specific circumstances in which instalments should be used, for example, if the victim is a child (8% of bands 2–4), if the victim is too ill to look after the money themselves (3%) or is mentally incapable of doing so (6%). A substantial number of respondents also thought that instalments should be used when the nature of the injuries meant that victims would require constant financial help in future, or if their condition was likely to get worse (14%).<sup>8</sup>

*Table 1009: Circumstances when instalments may be preferred: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	All 2–4
Base: Prefer lump sum/mixture (unweighted)	212	161	134	139	418
<i>Circumstances:</i>	%	%	%	%	%
None	18	18	21	18	18
Victim is a child	6	4	8	12	8
Victim is mentally incapable	3	3	8	8	6
Victim is too ill	1	4	1	3	3
Victim lacks financial experience	26	41	33	45	40
Other reason can't manage money	5	4	8	2	5
Health condition might worsen	16	16	15	9	14
Money administered by other person	1	–	2	3	2
Very large settlement	14	4	4	1	3
Victim has no other income	5	7	5	5	6
Instalments are index-linked	2	3	5	1	3
Other reasons	10	7	5	5	6
Can't say	13	7	6	8	7

### 10.16 Freedom to choose how damages are used

Respondents were also asked to consider whether those who receive damages for personal injury should be completely free to spend their damages as they choose, or whether they

<sup>8</sup> This is consistent with the large number of respondents who, with hindsight, felt that they should have been awarded provisional damages reported in Chapter 4.



should be required to spend it on the things for which it was given. Two hypothetical cases were put to respondents to elicit their views. The first involved a case where the victim's circumstances had changed – for example, their health had improved so that they no longer needed to spend the money that had been included in the settlement for private medical treatment. The second hypothetical situation (which was not asked of those who agreed that there should be restrictions for the first case) postulated that the victim's circumstances did not change. The results are summarised in Table 1010.

*Table 1010: Whether there should be restrictions on spending the damages: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Victim should:</i>	%	%	%	%	%
Have complete freedom to choose regardless of circumstances	52	63	60	57	60
Be restricted if circumstances change	32	24	24	31	26
Be restricted if circumstances stay the same	7	6	8	7	7
Can't say	8	7	8	7	7

As can be seen from the Table, the largest group of respondents (over half in every band) believed in total freedom to choose; about one-quarter to one-third of respondents thought that there should be restrictions on how to spend the money if circumstances changed; only a very small number of respondents thought that there should be restrictions when there was no change in circumstances (about one in thirteen).

Those with the smallest and largest settlements (bands 1 and 4) were the most likely to favour some restrictions if circumstances changed, but in general, those favouring complete freedom to choose outnumbered those favouring restrictions by roughly two to one. This concern among respondents about the freedom to choose how to spend damages is consistent with the reasons given in Table 1008 for preferring lump sum payments to periodic payments. Table 1008 showed that the need to retain personal control over money was one of the most important considerations in the observed preference for lump sums.

*I don't think that you should be told how to use your money, because that smacks of dictatorship and you are the only one who knows how much you are suffering and what is the best way to even pass the time if you like.*

Those respondents who said that they favoured some restrictions on the use of damages were asked why they did so. Most simply said that victims were not entitled to spend the money on things not included in their damages or that they "just shouldn't do it" (84% of those in bands 2-4 who felt there should be restrictions). A few felt that it could lead to people making dishonest claims or "making a profit" from their accident (6%); and 5% said that their

circumstances might change again and they could need the money in future for the purpose for which it was intended.

*Table 1011: Reasons for restricting how damages are spent: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Not free to choose (unweighted)	87	56	44	37	137
<i>Reason:</i>	%	%	%	%	%
Not entitled to	72	84	84	83	84
Circumstances may change again	7	1	4	9	5
Could encourage false claims	3	7	2	8	6
Someone else pays	3	3	4	-	2
Other reasons	5	3	-	-	1
Can't say/not stated	11	2	6	7	5

The columns total more than 100% since more than one response was permitted

Examples of responses given to this question are as follows:

*If money is given for a particular reason it should be spent on that reason. To stop dishonesty.*

*I think it should be used for the specific thing otherwise it may look as if they have gone into it to make a profit.*

*People are likely to make false claims and then spend the cash on frivolous things.*

*It would be unfair if the State had to supply specific things (e.g. wheelchairs) because the award had not been used for the purpose intended.*

*Should only be used for purpose of something associated with it e.g. transport or crutches instead of wheelchair, but not to blow it on enjoyment.*

*Would be false pretences. Don't believe that is right.*

*It should be spent on the specific item needed or claimed for, because ultimately society as a whole pays for it.*

## 10.17 Summary

Respondents' accounts of the planning and use of damages reveal considerable prudence in the management of their settlements. The majority of respondents reported that they had saved or invested some of their money and the likelihood of respondents doing so increased with the size of the settlement received. Even among those who received the lowest settlements, three in five reported saving some of their money; among those who received £20,000 to £49,999 the figure was 83%; it was 90% for those receiving £50,000–£99,999; and among those who received £100,000 or more 97% reported saving or investing some of their money. The most common method of saving was to use building society and bank accounts. The figures on savings and investments show a concern among respondents to preserve their compensation settlements for the future, as well as a tendency to choose the more conventional and 'safe' means of investing their money. There was evidence that about one in five respondents were unhappy with the choices they had made and with the interest rates received.

Among the minority who had not saved any of their damages (largely those receiving the smallest settlements) nearly all reported that there had been no money left over either because on receipt it had to be used to cover past expenses (about one-third of non-savers) or because it had been spent soon afterwards, for example on buying a house (22% of non-savers in bands 2–4). A proportion of these, however, now regretted their failure to save part of their damages.

Although only one-quarter of respondents receiving settlements of less than £20,000 obtained financial advice after settlement, two-thirds of those receiving £20,000 or more received advice. Such advice was provided most often by bank or building society staff (one-third) and independent financial advisers (30%). The vast majority of respondents were satisfied with the advice they had received although a minority (about one in seven) thought that the advice had been not very helpful or not helpful at all. It is, however, notable that among those receiving settlements of between £20,000 and £49,999 almost one-half (47%) said that they had received no advice about the management of their damages. Among those receiving between £50,000 and £99,999 one-third (32%) received no advice.

Respondents most commonly reported that they had spent some of their damages on their home, either on home improvements or furnishings (59%) or towards purchasing a home (28%) or to pay off their existing mortgage (13%). A large proportion of respondents spent some of their damages on electrical goods (41%); paying off an overdraft, loan or other debts; and on a car (18%). A proportion of respondents in all bands used some of their damages to provide gifts for family and friends.

Information about the amount of damages remaining at the time of the interview revealed that among the most recent settlements (those cases where damages had been received within three years of the date of the interview), nearly three in four (71%) of those with the smallest settlements (band 1) had spent over half or all of their damages, compared with two-thirds (64%) of respondents in band 2, one-half (49%) of respondents in band 3, and one-third (37%) of respondents in band 4. For settlements that took place four or more years ago, the proportion of respondents in bands 2, 3 and 4 who still had half or more of their damages left was 40%, 52% and 44% respectively.

There was a strong preference among compensated accident victims for receiving their damages in a lump sum rather than by instalments or by a mixture of the two. Respondents' reasons for this were most commonly the desire to maintain control of their money, and to have all the benefit of any interest themselves.

Finally, the majority of respondents (60%) felt that accident victims should have complete freedom to choose how to spend their compensation, regardless of circumstances.

## CHAPTER 11. THE ADEQUACY OF DAMAGES

In the course of this research, evidence bearing upon the question of the 'adequacy' of damages was obtained in a number of different ways. Detailed information was collected from respondents about their losses and the extra expenses resulting from their injury both before and after settlement. In addition to specific items of loss or expenditure we also invited respondents to assess in a more general way the extent to which the impact of the injury had changed their financial situation and how far the receipt of damages had ameliorated any longer-term impact. It was clear, however, from the responses provided to survey questions and from the detailed accounts given during in-depth qualitative interviews, that respondents' expectations of damages are not limited to reimbursement for material loss. In addition to recompense, damages have a symbolic value: they signify an acknowledgement of suffering. In many cases, the lives of our respondents had been ruined in the flash of an eye and they understandably saw themselves as blameless victims of terrible misfortune. It would therefore be surprising if many of those interviewed had regarded their damages as 'adequate' compensation in the sense of making up for what had happened to them and to their families.

The material presented in this chapter concerning the issue of the 'adequacy' of damages is divided into two parts. In the first part of the chapter we present respondents' accounts of the extent to which their damages covered the losses and expenses incurred by the time of the interview, their expectations of whether their compensation would be adequate for future needs, and respondents' views about the extent to which damages provided adequate compensation for non-material losses.

In the second part of the chapter we present information obtained from solicitors' files in a separate exercise (described in Chapter 1) designed to provide greater detail on the structure of damages settlements and to check on the extent to which respondents' post-settlement circumstances were consistent with the prognoses upon which settlements had been based some years previously.

### I. INFORMATION FROM SURVEY RESPONDENTS

#### 11.1 Extra costs and expenses already incurred

Respondents were asked whether their damages had been sufficient to cover all the money that they had paid out in extra expenses *as well as* all the money that they (or their family) may have lost, for example by not working, as a result of their accident up to the time of the interview. Table 1101 shows that in every settlement band about three-fifths of respondents thought that their damages had covered all of the expenses and money lost up to the time of the interview.

However, nearly two in five recipients of personal injury damages thought that they *had not* received sufficient damages to compensate all of the losses that they had suffered as a result of their accident. The proportion was similar for settlements of all sizes: among those with

the smallest settlements of under £20,000 (band 1), 38% of respondents said that the amount they had received had not been adequate; the figure for band 2 (£20,000 – £49,999) was 42%; for band 3 (£50,000 – £99,999) it was 39%; and for those with settlements of £100,000 or more (band 4), some 36% of respondents felt that their damages had been inadequate to meet the losses already suffered up to the time of the interview.

*Table 1101: Expenses not covered: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	220	170	130	134	434
<i>Adequacy of damages:</i>	%	%	%	%	%
Covered all money lost and all expenses	62	58	61	64	61
Did not fully cover:	(38)	(42)	(39)	(36)	(39)
– loss of victim's earnings	21	27	25	19	23
– extra travelling expenses	9	7	4	5	5
– loss of other household member's earnings	5	3	–	10	4
– everyday living costs	3	5	5	*	3
– alterations to home	1	2	*	6	3
– inflation	1	3	2	2	2
– purchase of car	2	1	–	3	1
– loss of savings	2	1	1	3	2
– medical costs	3	1	1	1	1
– help in the home	3	–	2	*	1
– special clothing	1	2	1	1	1
– luxuries that previously could afford	1	2	1	*	1
– extra heating costs	2	1	–	1	*
– specified household expenses	1	1	–	1	*
– interest on loan/debt	1	1	–	–	*
– holiday costs	–	1	1	1	*
– other	1	3	2	1	2
– unclear	4	1	5	1	2

The columns add to more than 100% as more than one response was permitted

*Expenses not covered*

The most frequent loss for which respondents felt they had not been fully compensated was their loss of earnings: 21% in band 1 and 23% in bands 2-4. Other expenses for which respondents felt they had not received sufficient money were: extra travelling expenses (5% in bands 2-4); loss of earnings of another household member (4%); higher everyday living

costs which resulted from their accident (3%); having to make alterations to their home (3%); higher prices over the years since the accident which had eroded their damages (2%); and loss of savings (2%). No other expenses were mentioned by more than 1% of respondents in bands 2-4. The details are shown in Table 1101 for each band.

*How much larger should the damages have been?*

Respondents were asked to estimate the amount of money lost or the amount of extra expenses that had not been covered by their damages at the time of the interview. Most respondents were unable to make this assessment and, among those who could, only a very rough estimate was possible.

In absolute terms, respondents in bands 3 and 4 reported the largest amounts of 'uncompensated' losses. However, looked at in relative terms (Table 1102), the extra percentage needed to cover the losses was smaller among high bands than among those receiving lower damages. Nearly one-third of those in bands 1 and 2 said that they needed 50% or more compensation than they had received to cover their extra expenses or losses, compared with one-fifth of those in band 3 and one-seventh in band 4 (although the latter were the least able to say how much more compensation they should have received).

*Table 1102: How much larger should damages have been to cover extra expenses and costs: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Money lost and expenses not all covered (unweighted)	84	71	52	41	164
<i>Damages too little by:</i>	%	%	%	%	%
Under 25%	16	15	14	29	18
25% - 49%	8	7	11	1	7
50% - 99%	12	15	8	-	9
100% or more	18	25	13	12	18
Can't say	46	39	54	58	49

*Reason compensation was inadequate*

Those respondents who reported that their compensation had been inadequate to cover past losses were asked why they thought that they had not received sufficient money. The details of responses are shown in Table 1103. The two most common reasons given were: first, that after the settlement of the claim respondents had incurred extra expenses (such as new medical expenses) or other costs (such as loss of earnings) that had *not* been anticipated at the time of settlement (among those who said that their damages were insufficient, this was mentioned by 26% of respondents in band 1 and 21% of respondents in bands 2-4); second, that they had incurred costs or expenses that had been known about at the time of their

settlement, but had not been taken fully into account in the settlement (22% of respondents in band 1, and 20% of respondents in bands 2-4 gave this reason).

Other reasons given for the shortfall included: poor legal advice or being advised to accept the settlement by their lawyer (14% in band 1, and 11% in bands 2-4); general comments suggesting that respondents had simply not realised that they were accepting a sum that would not cover their losses (e.g. *“at the time, I thought it was enough”* or *“it was not thought through properly”*) (13% in band 1, and 10% in bands 2-4); and increased cost of living or inflation (5% in band 1, and 7% in bands 2-4).

*Table 1103: Reason damages did not cover extra expenses: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Money lost and expenses not all covered (unweighted)	84	71	52	41	164
<i>Reason:</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>	<i>%</i>
Unanticipated expenses/events	26	23	16	23	21
Some things not taken into account	22	17	22	22	20
Poor legal advice	14	12	11	11	11
Lack of foresight	13	8	5	21	10
Inflation	5	3	16	3	7
Insurance policy	4	2	6	-	3
Other reasons	4	6	2	4	4
Vague answers	8	19	24	2	16
Can't say/not answered	10	28	19	19	13

Examples of some of the most frequent reasons given in the survey for the failure of damages to cover losses and extra expenses are as follows:

*Didn't realise the extra expense that would be involved.*

*Alterations to the house were not fully envisaged at the time the claim was made.*

*The cost of living today. It's gone up so much since the award and my wages would have gone up, but this hasn't.*

*The case went on so long (five years). I left my husband and moved to this house, so I had to pay my husband back the money for the car.*

*I can't really say, but I know it doesn't cover bills. I can't get a job or don't seem to be able to now. It just doesn't cover it. I don't know why.*

*Because of an incompetent solicitor. Because I was advised by my solicitor to accept a settlement contained in legal guidelines for such accidents. I*



*suspect many solicitors and mine in particular received a lot of work from insurance companies and are beholden to both client and insurer.*

*Because when you've had an accident and made disabled you have to start life again and everything changes. Don't allow for family, wear and tear on clothes and I have much more washing now.*

*You don't know how much the loss of a leg will affect you. You don't know how much better you will get or how much earnings you will lose because you can't do different jobs.*

*It was unforeseen at the time. My knee-cap now has to be removed so I'll have to go to hospital again. So there will be extra travelling expenses for my wife. I won't be able to work for a while.*

*I don't know. I don't think you think of these things at that time. You approach things in a positive way and say 'my health is going to get better', but five or six years later you find it hasn't happened.*

Information from qualitative interviews provided more detail on respondents' beliefs about why their compensation ultimately appeared to be inadequate to cover their losses and extra expenses. Among these respondents there was a general feeling that the way in which a person's future loss of earnings was calculated did not adequately reflect reality. For example, some felt that the 'multiplier' used in loss of earnings calculations was inadequate. Others felt that potential overtime money had been excluded from the loss of earnings calculations, or that little or no account had been taken of future career progression. For example:

*If I hadn't had this accident I would have had a good job with really good earnings...I'd have had a company car...I'd have been better off if I'd not had the accident...I don't think it does compensate at all really...They could say that if you'd been earning £20,000 a year whereas now you're earning £5,000 so you'll get £15,000 every year for the rest of your life. That would be fair enough.' (Male, 27. £125,000)*

#### *Other sources of funds*

Respondents who said that their compensation had been insufficient were asked where the money came from to pay for the extra expenses or money lost that had not been covered by their damages. A wide range of sources were used (Table 1104). Most commonly, respondents had found the money from their own savings or investments (49% of those in bands 2-4), or they had simply cut back on ordinary day-to-day living expenses (43%) or on 'luxury' items such as holidays, home furnishings and so on (42%).

Other sources of funds included: another family member's earnings (27%) or savings (24%), or having to take out an overdraft or loan (24%). Finally, the respondent's own earnings were used in 20% of the cases where there were extra expenses not covered, a figure which would undoubtedly have been higher were it not for the fact that such a high proportion of

victims never returned to work or earned much less on their return than they had before their accident (see Chapters 5 to 8 and Chapter 9). It is also worth noting that nearly one in ten respondents (9% in bands 2-4) said that the uncovered expenses had not been paid for.

Table 1104: *Source of money to pay for extra expenses not covered by damages: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Money lost, expenses not all covered (unweighted)	84	71	52	41	164
<i>Source:</i>	%	%	%	%	%
Victim's savings/investments	52	47	48	52	49
Spend less on home/holidays/entertainment, etc.	33	39	46	44	42
Spend less on day-to-day living expenses	31	41	53	33	43
Other family member's earnings	37	21	41	37	31
Other family member's savings	23	14	25	50	27
Overdraft/loan	27	19	17	37	24
Victim's own earnings	20	19	11	30	20
Other source	5	8	7	5	7
(Expenses not paid)	7	8	10	10	9
Unclear	-	6	-	5	4

Examples of the ways in which respondents sought to meet the losses and extra costs resulting from the accident are as follows:

*Our savings stopped completely. We were living on our savings. After six years I was £40,000 out of pocket and had lost all of the interest.*

*Used £6,000 on clothes and wheelchair car. Father's savings also spent on heating bills, new bed and building work on the interior of the house.*

*General housekeeping. No idea how much but we had to live on savings and state benefits for five years.*

*Used savings for wife to be able to go away to college to enable her to get a full-time career to support the family. Pay for someone to help with family and clean while wife at college. Met household bills and children's expenses (about £20,000).*

*We had just paid off the house when the illness was diagnosed. By the time we had finished with it all we were about £14,000 in debt and had re-mortgaged the house.*

*Had to break into savings to pay bills for general living. Because I was at home all day, using more food and everything. Stopped saving about £100 per month.*

*We had to draw money from savings for extra heating. Had to pay other people to do jobs he couldn't do.*

*We had to spend all the savings. There was no money coming in. He wasn't working.*

*We certainly stopped saving. Any savings we had got used to pay bills and general upkeep of the house. It was about £1800 to £2000 we used. The house had to be painted and decorated. We had to have someone to do the work.*

## **11.2 Adequacy of damages to cover future expenses and costs**

Respondents were also asked whether they thought that their damages would be sufficient to cover any extra expenses they were likely to incur in the future as a result of their accident. The details are shown in Table 1105.<sup>1</sup>

Those with the lowest settlements (band 1) were the most likely to say that their compensation would be sufficient to cover any anticipated future expenses (or that there would be no future expenses): three in five (59%) said this; however, as many as one-quarter (26%) of this group said that their compensation would *not* cover their anticipated extra expenses (and a further 15% could not say).

Among those who received damages of £20,000 or more (bands 2–4), slightly more than one third (37%) said that they did not think their damages would be sufficient to cover all future expenses, and one-fifth (21%) could not say whether the damages would be sufficient. Respondents in bands 3 and 4 were the most likely to think that their damages would not cover future expenses (41% and 37% respectively).

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<sup>1</sup> Respondents who said that they had spent all of their compensation were asked if they were likely to have any extra expenses in future as a result of their accident. If they did not expect any future expenses, it was assumed their award was sufficient in this respect (and they are included with the "Yes" category in Table 1105); if they did expect extra expenses in future, their award was considered insufficient, and they were included in the "No" category.

Table 1105: Adequacy of damages for future expenses and costs: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
Sufficient for future expenses:	%	%	%	%	%
Yes/no future expenses	59	45	38	42	42
No	26	34	41	37	37
Can't say/not stated	15	21	21	21	21

*Future expenses not covered*

Table 1106 details the nature of the extra expenses that recipients said were not likely to be fully covered by their damages. The most frequently mentioned group of expenses not covered by damages involved an increase in day-to-day living expenses as a result of the injuries: for example higher bills for heating or electricity, increased travelling or clothing expenses, having to pay more for a special diet, and so on. These increased living expenses were mentioned by one-quarter (25%) of all respondents in bands 2-4 (and by 67% of those who said their damages were not sufficient). Other expenses mentioned included extra travelling expenses specifically to a doctor or hospital (19% of all those in bands 2-4); medical expenses, including prescriptions (15%); having to make alterations to the home (13%); having to pay for extra aids or assistance such as a wheelchair, home help, etc (11%); and expenses for physiotherapy or other types of rehabilitation (10%).

Among those respondents who said that they expected to receive private medical treatment or nursing in the future, or who would have to pay for extra care or assistance in the future, the proportions with insufficient damages are much higher. Thus, three in four (74%) of those expecting to receive private medical treatment in future said that their compensation would *not* be sufficient to cover all of their medical expenses; one-half (48%) of those receiving nursing care in their home also said that their compensation would not be sufficient to cover all costs; and two in five (35%) of those reporting that they would need medical assistance in the future did not think that their damages would cover all of these costs.<sup>2</sup> Thus a substantial proportion of those expecting to incur extra expenses did not believe that their damages would cover those costs.

<sup>2</sup> These figures apply to respondents in bands 2-4 only; the results must be treated with caution because of the small bases.

Table 1106: Future expenses and costs not covered by damages: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	119	167	128	132	427
<i>Future expenses not covered:</i>	%	%	%	%	%
Nursing expenses	*	4	7	11	7
Medical expenses	8	13	19	12	15
Rehabilitation (eg, physiotherapy)	9	11	13	5	10
Aids or assistance	7	8	12	14	11
Living expenses	10	22	23	29	25
Travel expenses	12	18	19	21	19
Alterations to home	6	9	14	16	13
Daily help	2	2	1	2	1
New car	*	2	3	-	2
Other	1	1	-	-	*
(No future expenses)	59	45	38	42	42

The columns total more than 100% since more than one response was permitted.

When asked if these extra expenses had been included in their settlement, the vast majority of respondents in band 1 said that they had not been included (71%), with most of the others unsure (23%); only 6% said that some or all of the expenses were included (Table 1107).

The picture was similar, but less extreme, among respondents in bands 2-4: half (50%) said these expenses were *not* included in their settlement, and one quarter (25%) were unsure. Only 11% said all these expenses were included, and a further 14% said some, but not all of them were included.

Table 1107: Inclusion in settlement of future expenses not covered: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Future expenses not covered (unweighted)	63	54	55	52	161
<i>Expenses included in compensation:</i>	%	%	%	%	%
Yes:					
- some expenses	5	10	16	16	14
- all expenses	1	7	8	20	11
No	71	65	48	35	50
Can't say	23	19	28	29	25

*Reasons expenses not included in damages*

Those respondents who said that their compensation had not included money for all of their future expenses were asked why it had not done so. Responses were similar to those described in section 11.1 with respect to the reasons given for damages being insufficient up to the present day. The most common reason given for damages being insufficient to cover *future* losses and expenses was that the victim now faced expenses that had *not* been anticipated at the time of settlement; this was mentioned by 22% of respondents in bands 2–4 (Table 1108). Other reasons given included: that there were some expenses that had been known about but had not been (fully) taken into account in the settlement (16% in bands 2–4); that they were given poor legal advice or told to settle for the amount offered (12%); and that things had not been sufficiently thought through at the time of the claim (11%). However, a large proportion of respondents were unable to give a reason (26%).

*Table 1108: Reason future expenses not included in damages: by size of settlement*

	Band 1	Bands 2–4
Base: Expenses not included in compensation (unweighted)	48	105
<i>Reason:</i>	<i>%</i>	<i>%</i>
Unanticipated expenses/events	16	22
Some things not taken into account	11	16
Poor legal advice	19	12
Lack of foresight	4	11
Inflation	–	4
Other reasons	16	7
Vague answers	20	10
Can't say	21	26

Examples of responses given to this question in the survey are as follows;

*They didn't acknowledge that I had not made a full recovery.*

*The consultant for the other side said I'd be OK when it was all settled...that it was psychological. Although my consultant said the opposite. I've got medical evidence to back it up.*

*Because of my solicitor's incompetence. Some expenditure could perhaps not have been anticipated. My injuries continue to stop me working.*

*Because it was not expected to go on for so long. Eight years.*

*Didn't know my husband would walk out and leave me with the mortgage.*

*Likely source of funds for future expenses*

When asked where the money was likely to come from to pay for these extra expenses in future, respondents were most likely to say that they would be paid for out of savings/investments or their own earnings (47% and 39% respectively for those in bands 2-4). About one-quarter said they would be cutting back on ordinary day-to-day living expenses (28% in bands 2-4) or on 'luxury' expenses such as holidays, home furnishings or entertainment. It was also anticipated that in addition, other family members would help out, either through their earnings (22%) or their savings (14%).

*Table 1109: Source of money to pay for future expenses not covered by damages: by size of settlement*

Base: Future expenses not covered (unweighted)	Band 1	Band 2	Band 3	Band 4	Bands 2-4
	63	54	55	42	161
<i>Source:</i>	%	%	%	%	%
Victim's savings/investments	35	39	54	51	47
Spend less on home/holidays/entertainment	27	20	32	21	24
Spend less on day-to-day living expenses	28	27	35	24	28
Other family member's earnings	19	25	22	19	22
Other family member's savings	13	9	13	21	14
Overdraft/loan	5	12	8	5	9
Victim's own earnings	46	53	37	26	39
Other source	2	2	5	15	8
Can't say/not answered	5	4	6	6	5

The columns add to more than 100% since more than one response was permitted.

**11.3 Adequacy of damages in maintaining standard of living**

*The present situation*

Respondents were asked if they thought that as a direct result of their accident their standard of living at the time of the interview was lower than it had been before their accident. The majority of people in each band (between half and three-fifths) thought that their standard of living was *the same* as before their accident (or better in a few cases).

However, between one-third and two-fifths of all respondents said that their standard of living *had suffered* as a direct result of their accident. The details are shown in Table 1110 by size of settlement. Respondents in band 3 were more likely to say that their standard of living was now worse than to say that it had not suffered as a result of the accident.

Respondents in band 1 and respondents in band 4 (i.e. those with the lowest and highest settlements) were the most likely to say that their standard of living had not changed since their accident, and respondents with the highest settlements were the most likely to say that their standard of living had improved (8%).

*Table 1110: Current standard of living compared with period before accident: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Standard of living is now:</i>	%	%	%	%	%
Lower than before accident	33	44	47	32	41
The same as before (Better than before)	55 4	47 6	41 4	56 8	48 6
Can't say/unclear	9	3	8	5	5

#### *The future*

The situation was quite different, however, when respondents were asked to look forward to their situation in the long-term. Respondents were asked how they thought that their standard of living in about 10 years time would compare with the period before the accident (Table 1111). Except for those in band 1, people were quite pessimistic about the future, with about half in each band saying they expected to have a lower standard of living in 10 years time than they had enjoyed before the accident. (A high proportion of respondents in bands 1-3 could not give a response.)

This seems to indicate that victims were worried that, although their extra expenses would continue, their damages would eventually run out, leading to a reduction in their standard of living. Thus, among those who felt that their damages would not be sufficient for covering all future expenses, three in four (74% in bands 2-4) thought that their standard of living would be lower in 10 years time, and only 15% thought that it would be the same. Among those who did not expect any future expenses, or who thought their compensation was sufficient to cover all future expenses, one-third (36%) still thought that their standard of living would be lower in 10 years time; two in five (42%) thought it would be the same; 6% said they expected it to be higher and 16% could not say.



Table 1111: Long-term standard of living compared with period before accident: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>In long-term, standard of living will be:</i>	%	%	%	%	%
Lower than before accident					
The same as before	30	48	50	50	49
(Better than before)	40	31	25	39	31
Can't say/unclear	5	5	4	3	4
	24	15	21	8	15

Not surprisingly, expected standards of living in the future also varied by how much of their damages respondents had left at the time of the interview. Among those who said that they had spent half or more of their compensation, three in five (59% in bands 2-4) expected a lower standard of living in future and one in five (22%) the same standard; the equivalent figures for those who had spent less than half of their compensation were a third (35%) who thought that their standard of living would get worse over the next ten years and half (48%) who thought that it would stay the same.

Those respondents who had never returned to work were much more likely than those who did work after their accident to expect a lower standard of living in 10 years time, but nearly half of those who did return to work also said that they expected a lower living standard (61% and 45% respectively in bands 2-4).

Information from qualitative interviews provides insights into the ways in which injuries affect the standard of living of victims and their families, despite the receipt of compensation. For example:

*I was living off my pension and my savings, whatever we could get. I was living off my husband's savings, my savings, everything. I just drew what needed to be drawn wherever we'd got it, to keep things going...as it is I did get through it without pawning my wedding ring...My husband was working part-time at that time and of course that job went caput...We've had to take on a bungalow which we wouldn't have moved to because we were very happy where we were. But we had to take on the bungalow which meant that any compensation that we got now has been absorbed in the extra money we've had to pay for a bungalow getting it habitable. So money that should have been to make things easier for us is being absorbed by living here. The money we have to depend on entirely is income and its value is dropping all the time. The value of our savings is dropping, the income from it is going. The bills are higher than they ever were and everything that you look at has not gone up by 1½% inflation like they say, it has gone up considerably more. (Wife of road accident victim now aged 74)*

#### 11.4 General levels of satisfaction with settlement at time of interview

In Chapter 4 information was presented relating to respondents' levels of satisfaction with their damages at the time of settlement. Respondents in all bands said that, looking back, they were more likely to be satisfied than dissatisfied with their settlement *at the time of the settlement* (although this varied considerably by band, with those in band 4 showing the most satisfaction). By the time of the interview, however, respondents' opinions had changed dramatically, with between three-fifths and three-fourths of respondents in each band saying that they were now *dissatisfied* with the level of their damages (Table 1112).

In band 1, 60% of respondents were dissatisfied, and 37% were satisfied with their settlement; the figures for bands 2-4 were 66% dissatisfied and 30% satisfied.

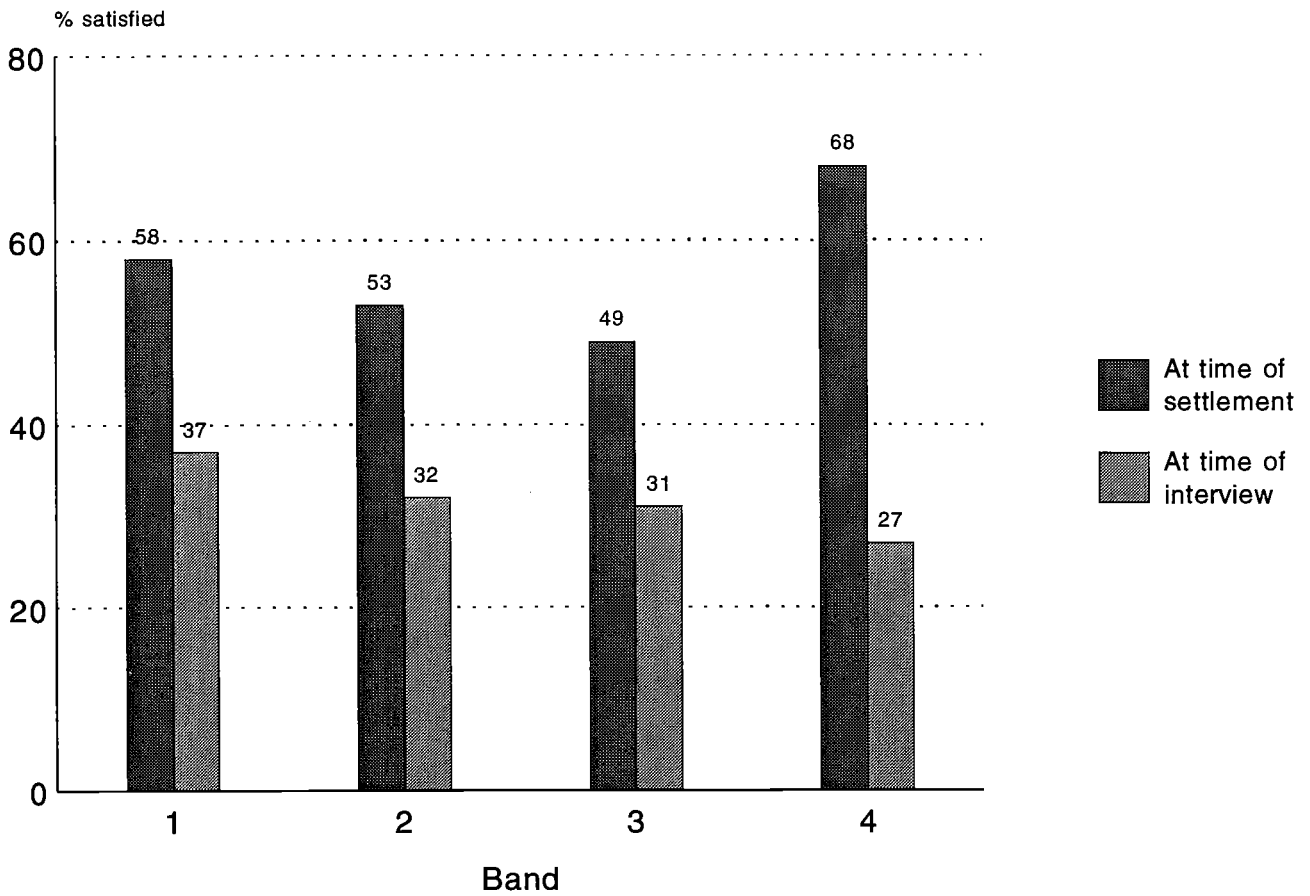
The change in perception was most dramatic among those receiving the highest level of damages: at the time of the settlement, they expressed the highest levels of satisfaction (68%); at the time of the interview, on the other hand, they were the least likely to be satisfied (only 27% were). Most respondents who were dissatisfied with the level of damages at the time of the settlement remained dissatisfied at the time of interview (96% in bands 2-4, with 3% saying they were satisfied at the time of the interview). Most movement was in the opposite direction, with nearly half (46% in bands 2-4) of those who said they were satisfied at the time of settlement changing their views to being dissatisfied by the time of the interview. The likelihood of this change from being satisfied to dissatisfied increased with size of damages from 40% in band 1 to 52% in band 4 (Figure 1101).

Table 1112: Satisfaction with damages at time of interview: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: All (unweighted)	219	167	128	132	427
<i>Current satisfaction:</i>	%	%	%	%	%
Very satisfied	11	5	7	6	6
Fairly satisfied	26	27	24	21	24
Fairly dissatisfied	32	25	35	33	31
Very dissatisfied	28	41	31	32	35
Can't say/neither	4	2	3	8	4

Three main reasons were given by respondents for being dissatisfied with their damages at the time of the interview (Table 1113). The most frequent reason mentioned was that the settlement represented inadequate compensation because their whole way of life had changed or their life was now ruined as a result of their accident (31% in band 1 and 33% in bands 2-4). A similar number said that the damages had not sufficiently made up their losses in earnings, either because they would not be able to work again or could only work in lower paid jobs or for fewer hours each week (23% in band 1 and 31% in bands 2-4). The third reason was that their health condition had not improved as they had expected (25% in band 1 and 27% in bands 2-4).

Figure 1101: Satisfaction with compensation at time of settlement and at time of interview: by size of settlement



Base: All

Table 1113: Reason for current dissatisfaction: by size of settlement

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Currently dissatisfied (unweighted)	133	106	83	87	276
<i>Reason:</i>	%	%	%	%	%
Whole life changed/ruined	31	33	28	38	33
Insufficient for loss in earnings	23	30	36	26	31
Health did not improve as expected	25	28	28	24	27
Settlement lower than others have received	10	17	10	6	11
Insufficient to cover extra expenses	9	6	12	13	10
Settlement was less than expected	9	8	8	12	9
Poor legal advice	18	2	2	7	4
Inflation	1	3	3	11	5
Other reasons	3	2	1	1	1
Unclear	7	6	2	4	4

The columns add to more than 100% since more than one response was permitted.

Other reasons frequently mentioned were that the damages did not cover all their extra expenses which resulted from the accident; other people in similar circumstances had received larger settlements; or that the settlement had been for less than respondents had expected to receive.

Respondents in band 1 were significantly more likely than those in bands 2-4 to say that they had received poor legal advice or were advised to settle for too small an amount (18% in band 1, compared with only 4% in bands 2-4).

Table 1113 also reveals that even among respondents who had received the lowest settlement (band 1) almost one-third gave as a reason for their dissatisfaction the fact that the accident had changed or ruined their whole life. This finding is important for two reasons. First, it underlines the fact that even apparently minor injuries can have profound effects on the lives of victims and their families; and second, that band 1 respondents include some who have suffered injuries with serious effects but who did not receive substantial damages.

Those who received the highest settlements (band 4), were the least likely to be able to work again and the most likely therefore to have to live primarily off their damages. It is therefore unsurprising that they were more likely than those with lower settlements to complain about inflation eroding their spending power (11% mentioned this).

The level of satisfaction expressed was associated with a number of other characteristics. As would be expected, respondents who predicted a lower standard of living for themselves in the long-term were much more likely to be dissatisfied with their damages than those who thought their standard of living would not be affected (in bands 2-4, 82% and 47% respectively said that they were dissatisfied).

Another important factor related to levels of satisfaction was the amount of compensation remaining at the time of the interview: among those respondents who had more than half of their damages left, just over half (55%) expressed dissatisfaction with their compensation. This figure rose to four in five (83%) among those respondents who had already spent all of their damages. Similarly one would expect that those who had extra expenses that were not covered by their compensation would be quite likely to be dissatisfied – and, in fact, over four in five (82%) of this group reported dissatisfaction.

The level of satisfaction expressed was *not* associated with whether or not respondents had returned to work after their accident. Those respondents who had returned to work were nearly as likely to be dissatisfied as those who never worked again (in bands 2–4, 66% and 70% respectively were dissatisfied). However, dissatisfaction was strongly correlated with the extent to which the injuries suffered affected the type of work that respondents could undertake, or their daily activities: those who said that their injuries still affected their work or daily activities at the time of the interview were twice as likely as those whose work was not affected to be dissatisfied with their damages (71% and 35% respectively in bands 2–4).

Examples of the reasons given for dissatisfaction with settlements at the time of the interview that have been summarised in Table 1113 are as follows:

Effect on life:

*Niggly payment right up to about a year before the settlement the other side demanding further medical examinations. Looking back over the hassle we had and what we have been left with, for what we went through, it was low.*

*I expected more. My whole lifestyle has changed. Couldn't do all the usual pursuits.*

*Life's enjoyments are diminished. Even with pain killers, it is very traumatic for me. You lose friends not going out.*

*It had ruined the whole of our lives. Couldn't play with our children or go on holiday.*

*People like me don't realise and we are not told enough at the beginning. The money seems a lot at the time and now its not, considering what I have gone through and will have to go through in the future.*

*I'm now partially sighted. Can't do many things I could do before. Plus emotional depression problems and worries about the future. The money just wasn't enough.*

*No longer in charge of my own destiny. Don't know how much longer I can work. Quality of life has changed. Was very active, and am not now.*

*For what you go through with the pain and suffering no amount of money is enough, but you don't realise what you can't do like sewing or taking the children to football. I can't do any hobbies.*

*The general damages of £40,000 is not sufficient for the injury and suffering and future suffering caused by the accident. Given the choice between the money and the injury it just proves the point.*

*When you see the enjoyment he had before the accident, it's all gone. Money does not compensate anyway. Makes life a little more comfortable.*

#### Insufficient for loss

*By the time we paid the bills for the alterations there was nothing left.*

*Because its diminishing. Prices going up. Need a job to keep up. Not able to work.*

*Because things go up in cost and the money doesn't cover that. Bills go up – nothing stops.*

*Owing to recession my job security is very uncertain. Would find it difficult to get alternative employment because of my disabilities.*

*I settled for half of what my solicitor suggested we should claim. When you consider I have a wife and three children it was not very much.*

*The difficulty I have in finding employment because of my injuries and memory. I only have a job because of father's kindness. Would be spending money I hadn't got if my father hadn't taken me on.*

*The idea was to help through to later life. If I get slung out of work, which is likely, I don't think it will be enough.*

*Because life is a struggle – physically and financially and the stresses and strains. Because of the unforeseeable fact that I eventually had to leave my job. The income awarded, I should have been advised to invest in a better way, as the market is widely fluctuating.*

#### Health did not improve as expected

*I'm still in pain ten years on and going to have another operation. I thought I would be stabilizing by now. I thought I'd be OK.*

*I should have taken it further. Over the years my injuries are not improving and I have now had to take on taxi work to make ends meet.*

*I think it all stems from the orthopaedic consultant for the defence. He said I would be 99% fit and my injuries were not that severe. It's not true. I continue to have orthopaedic surgery and I've lost one inch off my right leg.*

*I didn't think my injuries would go on so long. I thought I could go back to work to earn more money. I had two jobs, one during the day and one at night.*

#### Settlement lower than others have received

*When somebody has had a traumatic experience it seems such a small amount offered in comparison with monies awarded for say libel actions.*

*I see people called nasty names in the newspaper and they get millions and I have a few thousand and I'm still suffering. I think also the insurance people waited till I was 65 and that's as far as they go with earning. But I could have worked another 10 years and I am crippled for life.*

*If we had been in another country such as America we could have got more. You can never receive enough to compensate for this kind of injury. With the amount of insurance paid on a case like this we should have enough money not to worry again. We still worry about money.*

#### Poor legal advice

*Because I feel we were badly let down by my solicitor. A claim for provisional damages should have been made.*

*Because I should have refused the first offer. Would have got a bigger offer. The solicitor told me to accept.*

*Because of the amount of money I lost myself, my own money I'd had in the bank and had to use and because they accepted the cheque on my behalf. The solicitor told me he had the cheque, and as I was desperate I took it.*

*Did not fully take into account my earnings and chance of promotion, loss of pension.*

*I believe it to be well below awards subsequently made for similar injuries. I think I was very badly advised by my solicitor. I have never been told, except in global terms, what the component parts of the award were.*

Finally, those respondents who reported that they were dissatisfied with their settlement at the time of the interview were asked how much larger they thought their settlement should have been. About one-third of respondents could not give an estimate, but of those who did, the

largest group thought that the damages should have been *at least double* the amount that had been received (i.e. 100%+ higher). The responses are shown in Table 1114.<sup>3</sup>

Table 1114: *How much larger should damages have been: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	Bands 2-4
Base: Currently dissatisfied (unweighted)	133	106	83	87	276
<i>Damages should have been higher by:</i>	%	%	%	%	%
Up to 24%	*	5	3	8	5
25% – 49%	17	12	26	8	15
50% – 74%	11	10	9	14	11
75% – 99%	2	9	6	12	9
100% or more	36	36	23	22	28
Can't say/unclear	35	28	34	35	32

### 11.5 Adequacy of damages in relation to non-financial loss

Information from qualitative interviews provides greater depth on some of the issues discussed in the previous sections. With the exception of those respondents who had made a full recovery from their injuries, there was a general view amongst those who were given in-depth interviews that the damages received could not compensate them for their experiences of the accident or the losses they had sustained, both physically and emotionally. Indeed, a number of people said that no amount of money would be adequate compensation in this respect. Respondents expressed their feelings in a wide range of ways: *'You can't cost for my not playing rugby any more...the money can't take away the effects it has had on my family...it doesn't put the clock back...it doesn't bring a person back...it compensates materially but not emotionally.'* The following quotations are extracted from the transcripts of qualitative interviews:

*I would willingly throw the whole lot into the fire if I had my legs back. I would throw every penny of it and burn it if I had my legs back...I don't believe that any money could compensate you for that.* (Male 43; both legs crushed in an industrial accident; £360,000)

*A million pounds wouldn't have been enough. Money wouldn't compensate. They could have this bungalow; they could have everything there is if I could have [wife] normal and me normal.* (Male 57; sustained physical injuries in a

<sup>3</sup> Note that the amounts given here are somewhat higher than those shown in Table 1102. This could be partly explained by the different bases for the Tables – in particular with Table 1114 including only those who said they were dissatisfied with their damages – and partly by the differing context of the questions – with Table 1102 more specifically concerned with expenses and costs not covered, while the figures shown in Table 1114 were not limited in any way.



a car crash; his wife sustained both physical and head injuries and is now unable to walk or communicate; £145,000)

*I don't think any payment can compensate for what you've lost. It doesn't matter how much you get. Basically it can't bring back the quality of life that you've enjoyed before. (Male 30; industrial injury resulting in loss of fingers on both hands; £190,000)*

*How do you put a price on your life? My life is very precious to us, you know. How do you – I mean, if somebody was to come along with an open cheque book and said "Look, I want two years of your life and I want to give you aches and pains, how much do you want for it?" I'm sorry, I couldn't put a figure on it. (Male 33; knocked over by a drunk driver while working; reduced working ability and emotional problems; £100,000)*

*I don't know exactly who's eyes they think they're pulling the wool over but not the average housewife's. So if somebody said to me "Look here, for £120,000 you can have your husband crippled for life, you can nurse him through that, plus through two strokes and when you are 70 your life will be virtually that of a housekeeper, is £120,000 worth it?" I would tell them to go and jump in the nearest lake. Because what we've got compared to what we have had out of life since that accident has not been worth having. It has not been worth having. And then Mr P said "You'll be a very wealthy couple, the money you're getting is a lot of money". Well it isn't to what you are losing, not to what we have lost. He was an active army officer, very, very fit. You should see him now. When they sent him out of hospital, I lost a young man and got an old one. (Wife aged 70 whose husband was crippled in car accident in 1984; £130,000)*

*You know I'm getting x amount of money a week, I've got x amount of money in the bank. I've no need to work, but I have a need to work and I should be working. I mean I was 38 and now I'm 48 and I still should be working. I've just gone to seed. I was in charge of 30-40 men. I was enjoying my work even though I was down the pits. I was really enjoying my work and then all of a sudden I couldn't see and there was somebody telling me you'll have to learn to make baskets. (Male now 48 blinded in industrial accident; £300,000)*

*When we first got the money I put it in the bank and I said 'I don't want to touch it, I don't want to touch it', and we never did nothing with it for...I think it was the upset...in a wheelchair, in a wheelchair...I didn't want the cheque. I wanted to walk. You know, you can keep your cheque all I want to do is walk and this is what you've done to me and it's a very difficult thing to try to explain, but alright it's a cheque and it's money, and it's a lot of money in comparison to some people – but I wanted to walk. And I'm still paying for that. I'm paying that price now although we've got no money problems which millions of people have.... (Male now aged 63; medical negligence in 1982; £215,000)*

In addition to the pain and the loss of individual enjoyment for which compensation could not be adequate, respondents also talked about the impact of their injuries on their social and family relationships. For example:

*My barrister thinks I did well. But there's nothing for the effects on the kids...and there's nothing to compensate me for no relations with my wife...we've no sex life now. (Male 51; medical accident; in pain much of the time; £75,000)*

*It completely wrecked my life at the time. I can blame my divorce directly on that [accident]...it was certainly a factor...it caused a lot of stress and hardship at home...after I was discharged [from the police force], when I was trying to find a new line of work and I could never quite settle...(Policeman 34; shoulder injured during attempted arrest. Accident 1984. Discharged as a result of injury; £75,000)*

The strong and emotional statements made by many respondents about the perceived failure of damages to compensate for non-financial losses were reflected in responses given to more general questions about the appropriateness of awarding compensation for pain and suffering.

## **11.6 Views about compensating pain and suffering**

During the survey interview all respondents were asked for their views about whether some money in respect of pain and suffering should be included in damages payments. Nearly all respondents thought there should be payments for pain and suffering: 94% in band 1 and 96% in bands 2-4, with most of the others unsure (5% in band 1; 2% in bands 2-4); only 1% in band 1 and 2% in bands 2-4 thought there should be no payments made for pain and suffering.

When asked to give a reason for their response, two answers were mentioned most frequently for making payments for pain and suffering (Table 1115). The first related to the impact of pain on the victim's life: for example, the need to compensate victims who may be in constant pain for the rest of their lives, or who can no longer do their normal activities (work or leisure) because of the pain they suffered (mentioned by 45% of those in bands 2-4). The second reason, mentioned by one-third (35%) of those in bands 2-4, is that accident victims are blameless, they do not deserve what happened to them, so they should be given money for pain and suffering which has been caused by another person. Although it is possible that the emphasis on questions of fault in the compensation process heightens perceptions of the "injustice" of accident victims' situation, responses in the survey and in qualitative interviews were notable for their frequent reference to the blamelessness of accident victims.

Other reasons given by respondents for compensating pain and suffering included: "it softens the blow" by making victims feel a little better, or by making life a little easier, after the trauma of what had happened to them (15%); a victim in pain has an impact on the entire family, who also suffer (9%); difficult to measure the effect that pain has on the victim (6%); pain affects the victim's personality or can cause psychological problems (4%); and that pain is the worst effect of an accident (3%).

Table 1115: Reasons for compensating pain and suffering: by size of settlement

	Band 1	Band 2	Band 3	Band 4	All 2-4
Base: Should be paid for pain and suffering (unweighted)	212	163	127	130	420
<i>Reason:</i>	%	%	%	%	%
Should be compensated for another person's mistake	40	31	42	34	35
"Softens the blow"	18	16	14	16	15
Pain is the worst effect	4	2	2	7	3
Can no longer enjoy life as before	42	49	38	48	45
Impact on personality	5	6	1	3	4
Affects other family members	6	10	8	9	9
Problem of measuring pain's effect	2	4	8	6	6
Other reasons	3	5	2	7	4
Can't say	-	1	1	*	1

In Chapter 3 we reported that a very high proportion of respondents in our survey still suffered pain at the time of their interview: some three in four respondents in band 1 and 83% of respondents in bands 2-4 still experienced pain. This widespread experience of continuing pain, even many years after the date of the injury must surely have had a significant influence on respondents' feelings about the practical and symbolic value of compensation for pain and suffering, and responses to questions about the reasons why such payments should be made reflected this depth of feeling. For example:

#### Suffering through another's fault

*Because I have never known such pain in all my life. To know that someone else caused it makes it worse.*

*You have to go through it to understand. You didn't ask for it, so you should be compensated.*

*You are suffering for someone else's mistake, through no fault of your own.*

*When the pain and suffering is not of your own fault and the joy and quality of life that the injured person loses - I feel this should be well compensated.*

*Especially if the person concerned was not responsible for the illness or medical neglect. With constant pain one loses the quality of life, so you should be compensated.*

*Why should you have to go through all that pain if someone else caused it?*

## Softens the blow

*Money can't compensate for pain and suffering but it can be a bit of a sweetener for it. Frequently when there is pain there is added expense to combat pain. Pain killers, medicine, something that makes life more comfortable.*

*The pain and suffering I've had – the money won't compensate, but at least the money can get you extra things to make up for it.*

*Because you can have a holiday now and then and some extra things to help forget the pain.*

*Makes you feel better afterwards to know you have been considered. The practical view is that a holiday will alleviate the suffering which is some compensation for that.*

*If you've been fortunate enough to have good health, no money can compensate for the trauma of living with constant and severe pain – but it does sugar the pill.*

## The effect of pain

*Because it is like going to hell and back. It is the most important part of the compensation. If you hadn't had the accident you wouldn't have the pain.*

*Sometimes I think the pain and suffering is worse than disability. The pain and the boredom are worse than being blind.*

*I've gone through it. You don't know till you go through it. The family suffer too watching and not knowing what to expect each time at the hospital. The pain at times makes you get annoyed. Many things get on your nerves like they never did and you take it out on the family. That's all because of the pain. You upset people.*

*If it wasn't for the injury I wouldn't be in this position now and nobody can put a time limit on how long the pain will last.*

*Because the trauma is with you for the rest of your life. There are long term psychological problems. I still have nightmares as a result of the accident. I am paralysed from the waist down and still suffer pain.*

Respondents were next asked whether they thought that compensation for pain and suffering should be paid in circumstances where accident victims could not benefit from the money themselves because they were unconscious. While the proportion answering negatively is somewhat higher than the earlier question, with 3% of respondents in band 1 and 9% in bands 2–4 saying there should *not* be payments for pain and suffering in these circumstances, the vast majority of respondents still thought that such payments should be made (76% in band

1 and 83% in bands 2-4). A somewhat higher proportion of respondents were undecided: 21% in band 1 and 8% in bands 2-4.

The reasons given by respondents (Table 1116) revealed the belief that money should be provided for other family members because “*they suffer too*”, and because extra money can help families to care for victims or to provide a better standard of care. About one in ten said that unconscious victims deserved the money because they were missing out on life (11%), because they would have the benefit of the money if they ever recovered (9%), or because it was impossible to establish with certainty that unconscious victims were not suffering pain (9%).

Table 1116: *Reasons for compensating pain and suffering even if victim is unconscious: by size of settlement*

	Band 1	Band 2	Band 3	Band 4	All 2-4
Base: Money if unconscious (unweighted)	175	140	110	103	353
<i>Reason:</i>	%	%	%	%	%
Family still suffers	46	53	48	48	50
Provide better care for victim	40	32	28	37	32
Will have money if recovers	17	12	9	7	9
Missing out on life	10	9	14	11	11
May still be suffering even if unconscious	5	9	13	7	9
Other reasons	2	3	4	5	4
Can't say	1	*	-	-	*

Examples of the responses summarised in Table 1116 reflect victims' own experiences and, most particularly, the perceived impact of their own suffering on their family:

*Because they are missing out on life. Their quality of life is not very good. The money could make life much easier for their families and to provide good care.*

*If they are entitled to compensation just because they cannot spend it themselves, someone should be able to spend it on them.*

*Yes, because the family deserve it. It must be terrible for them to watch.*

*I suppose it is for the parents and wives who look after them. For the suffering of the people around who suffer as much.*

*Because their relatives have pain and suffering.*

*For long-term care and for the pain and suffering of their families.*

*Otherwise they would be on their own. The family is also suffering again through someone else's fault. The person may come round at a later stage.*

*How do you know they are not suffering when they are unconscious? It's for the pain and suffering to the family as well.*

*Even if they can't use the money, the parents and relatives looking after them have pain and suffering themselves.*

*The people around them have to look after them and they have gone through the accident as well.*

*Because to compensate the people who look after them – it makes life easier but it doesn't make life better.*

## II. INFORMATION FROM SOLICITORS' FILES

In a separate data collection exercise we sought to gather supplementary information about a subsample of respondents interviewed in the main survey. As described in Chapter 1, the purpose of this exercise was to look more objectively at the issues of adequacy in the light of assumptions made about the victim's future circumstances *at the time* of the settlement. It had been hoped that the exercise would provide a unique opportunity to assess on an *individual* basis the extent to which plaintiffs' circumstances at the time of the interview corresponded with predictions made about the future some years earlier. However, the quality of information on files was so variable that it was not possible to make detailed comparisons as originally envisaged. We were able to extract sufficient data to make broad comparisons in relation to work history and need for nursing care, and at the same time, it was possible to obtain from solicitors' files more information about the course of claims, the expenses and losses for which compensation was claimed and the nature of reductions made as a result of allegations of contributory negligence.

The exercise was therefore designed to gather information from solicitors files under the following headings:

- Details of accident and injuries
- Effects on work, home and social life
- Details of claim including offers, interim payments, breakdown of claim, settlement, contributory negligence, costs
- Details of medical prognosis at time of settlement and assessment of future needs for nursing care, effects of injury on work and social life.

### 11.7 Characteristics of the subsample

Having obtained authorization forms from respondents permitting us to contact their solicitors we wrote to a sample of solicitors advising them about the research project and asking if we

could consult the file relating to their client who had been included in our survey and enclosing the completed authorization form. As a result of the time-lag between settlements and the survey interview, some solicitors had moved or closed down, and others were unable to locate the relevant file. However, in 92 cases correct files were located and examined.<sup>4</sup> The characteristics of the subsample are presented below in Tables 1117 to 1119.<sup>5</sup>

The subsample of cases where survey information was matched with data from solicitors' files comprised 11 fatalities and 81 non-fatal injuries. Among this subsample there were 73 men and 19 women, with a reasonable age range.

*Table 1117: Age-groups in subsample*

	16-25	26-30	31-35	36-40	41-45	46-50	51-55	56-65	66+
	18	8	8	9	11	15	9	13	1
Accidents	16	7	8	8	9	14	7	11	1
Fatalities	2	1	0	1	2	1	2	2	0

Just over half of the subsample were road accident victims, about one-fifth work accidents, and the remainder was split between work illnesses and medical accidents (Table 1118).

*Table 1118: Cause of injuries in subsample*

	Road Accident	Work Accident	Industrial Illness	Medical Accident	Other	Total
	52	23	7	9	1	92
Accidents	48	19	5	8	1	81
Fatalities	4	4	2	1	0	11

The subsample deliberately included a substantial number of large settlements to try and ensure that we would be able to obtain information about future losses and the need for paid care. Thus the subsample comprises one case (1%) where the settlement was of less than £20,000; 27 cases (29%) of settlements between £20,000 and £49,999; 25 cases (27%)

<sup>4</sup> As a result of some missing information in files, the base number in tables varies a little since lack of information in solicitors' files meant that a comparison with interviews could not always be carried out for each case in the subsample.

<sup>5</sup> Because of the small size of the subsample, tables present numbers of cases rather than percentages.

between £50,000 and £99,999; and 39 cases (43%) of settlements of more than £100,000. The largest settlement included in the subsample was of £1,000,000 and the average size of settlement was £127,848 among non-fatal injuries and £67,910 among fatalities (Table 1119).

*Table 1119: Settlement size in subsample*

	£5,000 to £19,999	£20,000 to £49,999	£50,000 to £99,999	£100,000 to £149,000	£150,000 to £199,000	£200,000 to £1,000,000	Total
	1	27	25	19	9	11	92
Accidents	1	22	22	16	9	11	81
Fatalities	0	5	3	3	0	0	11

The majority of cases included in the subsample had been settled between 1988 and 1990. The distribution of cases between those years is as follows : 14% of cases subsampled had been settled in 1988; 30% had settled in 1989; and 34% had settled in 1990. The majority of cases, therefore, included in this 'matching' exercise had settled their claims between about three and five years before the survey interview was carried out. Some 13% of cases included in the subsample had settled six or more years earlier (Table 1121).

*Table 1120: Year of settlement/award of cases included in subsample*

1985	1986	1987	1988	1989	1990	1991	1992	Unclear	Total
1	3	8	13	27	31	6	2	1	92

### **11. 8 Time-lag between accident and settlement in subsample**

One of the justifications for the generally lengthy periods taken to settle personal injury claims is the need for the plaintiff's medical condition sufficiently to have stabilized for reliable predictions about future effects to be made. Data from the subsample of solicitors' files provided an opportunity to look at some of the predictions made about the future in relation to the length of the time-lag between the accident and settlement.

Table 1121 analyses the period between accident and settlement in relation to the size of settlement, and the data suggest that there is no perfect association between the amount of



damages at stake and the length of time taken to settle the claim. Within the subsample, the case that had been settled most quickly was an industrial illness, settled six months after the claim was commenced for a sum of £150,000. In contrast, however, a road accident case that settled for £15,000 had taken seven years and eleven months from the date of the accident to the date of settlement. Table 1121 does, however, indicate that very large cases are more likely to take longer to settle and that among those cases that took more than five years to settle, there is a greater number of large settlements. In the subsample as a whole (which includes only one settlement of less than £20,000), the majority of cases took between four and six years to settle.

*Table 1121: Length of time between accident and settlement within settlement bands (figures in brackets represent fatalities)*

Time between accident and settlement	£5,000 to £19,999	£20,000 to £49,999	£50,000 to £99,999	£100,000 to £149,000	£150,000 to £199,000	£200,000 to £249,999	£250,000 to £1,000,000
	1	20 (4)	18 (3)	15 (3)	10	3	7
Up to 11 mths	-	-	-	-	1	-	-
1 yr- 1 yr 11 mths	-	(1)	-	-	1	-	-
2 yrs-2 yrs 11 mths	-	5	2	1(1)	-	-	-
3 yrs-3 yrs 11 mths	-	4	4(1)	1(1)	1	-	1
4 yrs-4 yrs 11 mths	-	6(2)	3(1)	4	2	-	-
5 yrs-5 yrs 11 mths	-	4	3(1)	6(1)	2	1	3
6 yrs-6 yrs 11 mths	-	(1)	3	-	3	-	1
7 yrs-7 yrs 11 mths	1	-	3	-	-	2	-
8 yrs-8 yrs 11 mths	-	1	-	1	-	-	-
9 years or more	-	-	-	2	-	-	2

Among the non-fatal injuries in this subsample, the longest case took 20 years and 9 months to settle, and the shortest took 6 months. The mean settlement period among non-fatal injuries in this subsample was 5 years and 2 months. Among the fatal accidents in the subsample the longest case took 6 years to settle, the shortest took one year and 10 months, and the average was 4 years.

### 11.9 Claims, offers and settlements

In the planning stages of the project we accepted that the information given by survey respondents to interviewers about the itemisation of their claims and the various heads under which damages had been awarded might vary in quality, and that a more accurate picture of the composition of damages claims could be obtained by looking at solicitors' files. It was also felt that respondents' subjective assessments of the adequacy of their compensation could be usefully supplemented by obtaining reliable information about predictions made at the time of settlement of claims, and about the extent to which claims had been reduced as a result of contributory negligence. The significance of contributory negligence in the context of this research is that where damages have been assessed on the basis of past losses and future

needs, but then reduced as a result of contributory negligence, there can be no 'expectation' that damages would actually cover all past losses and future expenses.

In practice, however, some difficulties were encountered in individual cases in establishing exactly what had been claimed by solicitors on the plaintiff's behalf, and how the eventual settlement figure related to assessments of damages made prior to settlement. These difficulties arose from variation in the level of detail available on files, and some cases where large sections of information were missing from the file. The most frequent problem was that although there may have been a detailed statement of claim on file, there was little subsequent information indicating how the final settlement figure had been calculated, and which elements in the claim had been reduced. If negotiations conducted between the parties' representatives over the telephone, in face-to-face discussions, or at the door of the court had involved reducing *specific* elements in the claim, these were rarely recorded on the files held by plaintiffs' solicitors. We are therefore able to present information about the items and amounts *claimed* among the subsample of cases, and about the size of the eventual settlements reached, but not about the way in which reductions in claims were achieved.

### *Relationship between claim and settlement*

For most cases in the subsample it was possible to compare the amount of damages originally claimed with the eventual sum received in settlement of the claim. Table 1122 lists those cases in which it was possible to make a direct comparison between claim and settlement. The table includes information recorded on solicitors' files about reductions for contributory negligence and the number and size of offers made by defendants prior to settlement that had been recorded in solicitors' files.<sup>6</sup> Table 1122 shows that the amount of the final settlement was often substantially below the amount claimed, even where there is no indication of a reduction as a result of an allegation of contributory negligence. Table 1123 shows that the *larger* the sum claimed by the injured plaintiff the greater the percentage *loss* between claim and settlement. Among *claims* between £20,000 to £49,000, over 80% of cases had settled for 80% or more of the original claim. In the £50,000-£99,999 band 60% of cases had settled for 80% or more of the original claim. In the £100,000-£199,000 band 57% had settled for 80% or more; and for settlements of over £200,000 some 39% of accident victims had settled for 80% or more of the original claim.

Table 1123 also shows how little clear information was found on files relating to contributory negligence. In twelve cases settlements were apparently reduced by between 10% and possibly 75% as a result of allegations of contributory negligence.

### *Offers*

Table 1123 also provides some indication of the level and number of offers received from defendants prior to settlement. These figures should be treated with caution since there may

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<sup>6</sup> The information about offers may not be complete since it is likely that some offers made by defendants were not recorded on the plaintiff's file by the solicitor. A comparison between respondents' recollection of offers and those recorded in files predictably reveals a relatively poor correspondence between these two sources of information resulting either from memory failure or, more probably, from the fact that respondents may never have been given complete information about offers made by defendants.

have been offers made that were not recorded on file. Nonetheless the figures show that in 38% of cases, at least two offers were rejected before settlement was reached, and in 11% of cases at least three offers were rejected before settlement. In some 36% of cases, only one offer was recorded before settlement, and in 22% of case no record of any offers was found in the file. Table 1124 summarise the recorded first offers made by defendants as a percentage of the final settlement and relates this to the size of award. Although there is no consistent pattern, Table 1124 shows that in just under one-quarter of cases the *recorded* first offer represents less than 50% of the final settlement figure.<sup>7</sup> The lack of any clear pattern in offers suggests that decisions about offers are relatively individualistic.

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<sup>7</sup> This can be compared with data from the survey by Harris et al (1984 op cit) which also failed to detect any consistent pattern but found that following rejection of a first offer, second offers tended to be between one-third and one-half more than first offers; whereas the amounts of third offers were on average a little under one-third more than second offers (pp 101-104).

Table 1122: Summary of claims, offers and settlements

CASE #	AMOUNT (£)					
	CLAIM	RECORDED OFFERS (IN ORDER)			SETTLEMENT	CON. NEG.
<b>P.I.</b>						
1	409,637	-	-	-	175,000	50%
2	23,000	7,000	-	-	23,000	-
3	157,287	95,000	-	-	118,000	-
4	290,000	150,000	185,000	200,000	220,000	-
5	131,000	8,000	30,000	50,000	70,000	-
6	387,750	230,000	331,500	-	370,000	-
7	176,500	130,000	-	-	157,645	-
8	80,000	54,000	70,000	72,000	75,000	-
9	513,587	150,000	-	-	180,000	50% +
10	80,000	500	1,000	20,000	30,000	-
11	236,706	24,500	67,500	-	80,000	?
12	24,000	12,500	-	-	15,000	?
13	285,000	25,000	100,000	-	256,500	10%
14	283,440	25,000	100,000	-	50,000	20-75%
15	99,000	-	-	-	70,108	-
16	293,576	244,000	-	-	250,000	-
17	175,000	100,000	105,000	-	112,000	-
18	168,000	12,500	115,000	-	150,000	-
19	22,500	16,000	17,000	20,000	21,000	-
20	76,873	24,000	-	-	43,190	-
21	119,244	-	-	-	95,000	-
22	391,000	155,000	180,000	-	195,000	33%
23	54,000	2,500	-	-	20,000	-
24	150,000	75,000	100,000	-	110,000	?
25	174,000	110,000	-	-	125,000	-
26	50,000	40,000	-	-	50,000	-
27	60,000	-	-	-	63,614	?
28	200,000	103,290	-	-	115,000	-
29	206,450	130,000	-	-	160,000	-
30	100,000	52,100	-	-	57,500	-
31	135,000	-	-	-	135,000	-
32	227,130	-	-	-	200,000	-
33	116,000	70,000	75,000	-	85,000	25%
34	1,100,000	-	-	-	1,000,000	12.5%
35	30,000	-	-	-	20,750	50%
36	99,700	-	-	-	75,000	-
37	165,000	51,000	90,000	-	120,000	-
38	90,000	71,500	-	-	80,000	-
39	38,000	30,500	35,000	-	36,000	-
40	369,060	225,000	-	-	235,000	-
41	115,000	102,750	-	-	103,000	-
42	380,000	223,000	275,000	-	285,000	-
43	35,000	-	-	-	35,000	-
44	25,000	10,000	-	-	20,000	?
45	45,000	21,500	-	-	24,000	-
46	120,000	-	-	-	110,000	-
47	460,000	-	-	-	351,000	-
48	550,000	300,000	464,250	-	500,000	-
49	29,921	-	-	-	27,500	-
50	175,000	135,000	150,000	-	160,000	-
51	40,000	12,500	17,500	30,000	35,000	-
52	22,000	15,000	-	-	20,000	-
53	34,700	-	-	-	32,500	-
54	26,000	15,000	-	-	25,500	-
55	100,000	20,000	22,000	-	50,000	-
56	42,750	32,000	-	-	38,000	-
57	42,000	30,000	-	-	37,500	-
58	172,000	-	-	-	115,000	-
59	83,021	65,000	-	-	75,000	-
60	44,755	2,000	-	-	30,000	20% +
61	122,000	44,750	-	-	60,000	25%
62	50,000	26,250	30,850	46,500	49,300	-
63	116,000	10,875	80,000	-	96,000	-
<b>Fatalities</b>						
1	108,000	-	-	-	54,000	-
2	111,234	90,000	-	-	100,000	-
3	80,000	52,000	76,000	35,000	40,000	-
4	175,000	75,000	-	-	100,000	?
5	202,300	80,500	90,000	-	100,000	33%
6	91,000	65,000	-	-	80,000	-
7	84,000	50,000	75,000	-	85,000	-
8	47,500	30,000	40,000	-	47,500	-
9	74,000	71,185	-	-	46,100	-
10	33,200	22,500	25,000	-	26,500	25%

NOTE: This table has been simplified for the benefit of clarity. Some difficult cases have been omitted.

Table 1123: Settlement<sup>a</sup> as a percentage of claim (figures in brackets represent fatalities)

Claim (£)	Settlement* as a percentage of claim							Total
	0 - 39%	40 - 49%	50 - 59%	60 - 69%	70 - 79%	80 - 89%	90%+	
5,000 - 19,999	-	-	-	1	-	-	-	1
20,000 - 49,999	-	-	1	-	-	4 <sup>b</sup>	9(2)	14(2)
50,000 - 99,999	2	-	1 <sup>c</sup> (1)	-	2 <sup>d</sup>	(1)	7(1)	12(3)
100,000 - 149,999	-	-	3	1	-	3	2(2)	9(2)
150,000 - 199,999	-	-	(1)	2	2 <sup>b</sup>	4	1	9(1)
200,000 - 249,999	1 <sup>e</sup>	(1)	1	-	1	1	-	4(1)
250,000 - 299,999	1 <sup>f</sup>	-	-	-	1	1	1	4
300,000 - 499,999	-	-	-	1	3	1	1	6
500,000 +	-	-	-	-	1	-	2	3
Total	4	(1)	6(2)	5	10	14(1)	23(5)	62(9)

<sup>a</sup> Including 2 awards; <sup>b</sup> Figure includes one case with limitation problems; <sup>c</sup> Change of circumstances; <sup>d</sup> Figure includes one case with causation problems; <sup>e</sup> Counsel's opinion accurate as to final amount; <sup>f</sup> Amount substantially reduced on appeal.

Table 1124: Recorded first offer as a percentage of settlement

Settlement (£)	Recorded First Offer as a Percentage of Settlement (%)									
	1 - 10%	11 - 20%	21 - 30%	31 - 40%	41 - 50%	51 - 60%	61 - 70%	71 - 80%	81 - 90%	91 - 100%
5,000 - 19,999	-	-	-	-	-	-	-	-	1	-
20,000 - 49,999	2	1	1	1(1)	1	3	(1)	5(1)	4(1)	3
50,000 - 99,999	-	2	1	2	1	(1)	1	3	4(1)	6(1)
100,000 - 149,999	1	-	1	-	2	1	1	(2)	4(1)	4
150,000 - 199,999	1	-	-	1	-	-	-	2	4	-
200,000 - 249,999	-	-	-	-	-	-	1	-	-	2
250,000 - 499,999	1	-	-	-	-	-	1	1	-	2
500,000 +	-	-	-	-	-	1	-	-	-	-
Total = 72 (10)	5	3	3	3(1)	4	5(1)	4(1)	11(3)	17(3)	17(1)

## 11.10 The construction of claims

We were also able to compare information given by respondents during the survey interviews about the content of damages claims with the information obtained from solicitors' files. As might be expected, there was a fairly low degree of correspondence between respondents' knowledge of the elements in their claim and the structure of claims as revealed in solicitors' files. Although respondents correctly reported payments in respect of past and future loss of earnings, they appeared to both over- and to under-report payments in respect of other heads of damage. Apart from loss of earnings, the greatest degree of consistency was in the reporting of compensation for pain and suffering. Almost all<sup>8</sup> of the solicitors' files examined indicated a claim in respect of pain and suffering, and 59 survey respondents reported receiving damages for pain and suffering. Among the remaining respondents 17 reported that they did not know whether they had received damages for pain and suffering and 6 reported that they had *not* received such damages. There was also a fairly high degree of consistency between respondents' accounts of receipt of damages for pre-injury and post-injury loss of earnings. The greatest area of inconsistency concerned payments for medical expenses, and for damages in respect of other losses and expenses. Some respondents reported that they had received compensation for medical expenses when no record of this appeared in solicitors' files. Most frequently, however, the statement of claim in solicitors' files suggested claims for a wide range of losses and expenses that were not mentioned by respondents. In more than 40 of the cases reviewed, solicitors' files revealed claims for items that were not mentioned by respondents during their interview, including claims for nursing care. The most frequent expenses and losses that had apparently formed part of the claim for damages but were *not* mentioned by respondents were: travel expenses; loss of earnings of relative; aids and appliances; nursing care; gardening; decorating; alterations to house; holidays.<sup>9</sup>

In analysing the content of claims we had been interested in the frequency with which compensation in respect of nursing care had been claimed and included in settlements. Among the solicitors' files examined there were 17 cases in which nursing care appeared to be a specific item in the claim. However, the lack of detail about final settlements makes it difficult to be precise about the number of cases in which this item was allowed and how much was eventually paid to cover nursing care.<sup>10</sup>

## 11.11 The accuracy of predictions

Information relating to the predicted longer-term effect of injuries on work and family life was also extracted from medical reports and other information contained in solicitors' files. In almost all cases in the subsample sufficient information was available on solicitors' files

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<sup>8</sup> In eight of the solicitors' files examined there was insufficient information about the structure of the claim even to establish whether damages had been paid in respect of pain and suffering.

<sup>9</sup> As a result of the lack of detail in files about the breakdown of final agreed settlements, it is, of course, difficult to know whether the items claimed were ultimately accepted by the defendant and included in the settlement.

<sup>10</sup> Information given by respondents about the purchase of nursing care is reported in Chapters 3 and 8.

to make some comparison between assessments of future circumstances and the current situation reported by survey respondents to interviewers.

The general conclusion drawn from the comparison is of *a relatively high degree of accuracy* in predictions made by plaintiffs' experts relating to future ability to work. For example, assessments of the likelihood that the accident victim would be able to return to work at all, or to similar employment appear largely to have been borne out in the majority of cases that we examined closely. In a substantial minority of cases (14%), however, there appeared to be a clear discrepancy between predictions about the ability to return to work and respondents' circumstances at the time of the interview. In one-third of these cases the prediction had been *less* favourable than the outcome and in the remaining two-thirds the prediction had been *more* favourable than the outcome. Some details of cases involving discrepancies are given below in Table 1125. The table shows that the source of most discrepancies lay in overly-optimistic assumptions about whether the accident victim would be able to return to work. Most usually the prediction was that the victim would be able to return to "sedentary" work when, in fact, the respondent reported in the interview that he or she was permanently disabled and unable to work – directly as a result of the injuries suffered in the accident. It is, of course, impossible to say how market conditions and the limits on accident victims' work capabilities interact to 'render' them unable to work because appropriate work is unavailable, and how many simply could not manage to hold down a full-time job even if one were available.

In four cases the source of the discrepancy between prognosis at settlement and situation at interview was an unnecessarily pessimistic assessment of the accident victim's ability to work in the future. In three of the four cases in this group the prognosis had been that the victim would be unable or unlikely ever to work again. In one case the prediction was that the victim would not be able to carry out full-time work, although at the time of the interview the accident victim was in fact working full-time and had been doing so since some six months after settlement.

Table 1125: *Detail of discrepancies in subsample between employment predictions and outcome*

Victim's gender and age at time of accident	Year of settlement	Period between accident and settlement	Amount of settlement	Prognosis	Ability to work at time of interview
Male 44	1990	2 yrs 1 mth	£75,000	Able to carry out sedentary work or possibly semi-sedentary work	Permanently disabled and unable to work
Female 46	1989	4 yrs 3 mths	£30,000	One year full recovery	Permanently disabled and unable to work
Male 11	1989	4 yrs 7 mths	£50,000 court award reduced on appeal from £230,000	Unlikely ever to work again	In full-time work as porter
Male 35	1990	6 yrs 9 mths	£195,000	Able to carry out sedentary work	Permanently disabled and unable to work
Male 48	1990	7 yrs 10 mths	£80,000	Able to carry out sedentary work	Permanently disabled and unable to work
Male 32	1989	3 yrs 11 mths	£85,000	Possibly able to carry out sedentary work	Permanently disabled and unable to work
Male 46	1987	3 yrs 3 mths	£36,000	Unlikely to be able to work	In work
Male 38	1987	7 yrs 7 mths	£235,000	Able to carry out sedentary work if able to walk around from time to time	Permanently disabled and unable to work
Female 41	1987	1 yr 8 mths	£91,780	Will not be able to manage a full-time job	Working full-time
Male 17	1990	6 yrs 8 mths	£500,000	"Impossible" for victim to work	Working full-time
Male 48	1990	5 yrs 1 mth	£50,000	Should be able to work	Permanently disabled and unable to work
Male 53	1988	5 yrs 10 mths	£60,000	Able to carry out light work	Permanently disabled and unable to work



A comparison of the length of time between the date of accident and the date of settlement (Table 1126) suggests that the accuracy of these predictions was not necessarily greater with a longer time-lag.

*Table 1126: Accuracy of work prognosis in relation to period between accident and settlement*

Accuracy of work prognosis	Number of years between accident and settlement										Total
	Under 1 year	1 less than 2	2 less than 3	3 less than 4	4 less than 5	5 less than 6	6 less than 7	7 less than 8	8 less than 9	9 or more	
	1	1	9	11	18	19	7	6	2	3	
Accurate	1	-	8	9	16	17	5	4	2	3	65
Inaccurate	-	-	1	2	2	2	1	2	-	-	10
Very inaccurate	-	1	-	-	-	-	1	-	-	-	2

Other assessments upon which it was possible to make comparisons concerned the need for nursing care and dependency on other family members. Within the subsample some 57 respondents reported a need for additional assistance from family or friends after their accident or illness. In 32 of the solicitors' files relating to these 57 cases, no information about the need for additional assistance appeared in the claim or breakdown of settlements.

### 11.12 The costs of compensation claims

Information was also collected from the subsampled plaintiffs' files about the legal cost of settling claims. Although these costs exclude disbursements and *do not* include defendants' legal costs they provide an indication of how substantial costs can be. Table 1127 shows that there is considerable variation in the cost of cases although, as would be expected, there is some relationship between the amount of damages at stake, the time taken to settle claims and the plaintiff's costs. Among the subsample, the average amount of legal costs, excluding disbursements, on the plaintiff's side alone was £6,936.

In over one-quarter of the cases in the subsample the costs on the plaintiff's side amounted to £8,000 or more and in 12% of cases the costs were £12,000 or more. If one adds to that an equivalent sum in respect of the defendant's costs, and the money paid out for medical and other expert advice, it is clear that the absolute total cost of settling personal injury claims is very high.

Table 1128 presents a summary of legal costs on the plaintiff's side in the subsample. This shows that the lowest costs amounted to £1,342 and the highest £53,265 (which related to an out of court settlement for £1,000,000).

Table 1127: *Plaintiffs' costs (excluding disbursements)*  
(figures in brackets represent fatalities)

Settlement (£)	Plaintiffs' solicitor's costs (excluding disbursements) (£)							
	Up to 1,999	2,000 - 3,999	4,000 - 5,999	6,000 - 7,999	8,000 - 9,999	10,000 - 11,999	12,000 +	Total
5,000 - 19,999	-	1	-	-	-	-	-	1
20,000 - 49,999	2	16(2)	3(1)	(1)	(1)	-	-	20(5)
50,000 - 99,999	-	5	6(2)	(1)	4	2 <sup>a</sup>	2	19(3)
100,000 - 149,999	-	5(2)	7	2	(1)	-	2	16(3)
150,000 - 199,999	-	1	3	1	1	1	2 <sup>b</sup>	9
200,000 - 249,999	-	-	-	-	1	1	1	3
250,000 - 499,999	-	-	-	2	1	-	2	5
500,000 +	-	-	1	-	-	-	1	2
<b>Total</b>	<b>2</b>	<b>27(4)</b>	<b>20(3)</b>	<b>5(2)</b>	<b>7(2)</b>	<b>4</b>	<b>10</b>	<b>75(11)</b>

\* Including 2 court awards

<sup>a</sup> Figure includes one settlement during appeal

<sup>b</sup> On appeal

Table 1128: *Summary of plaintiffs' costs*

	Total	Highest (£)	Lowest (£)	Average (£)
Accidents	75	53,265	1,342	6,936
Fatalities	11	9,579	2,174	5,266

From Table 1129 it can be seen that in one-third of subsampled cases the plaintiff's legal costs represented less than 5% of the settlement. In another one-third of cases (35%) the costs represented between 5% and 9.9% of the settlement; and in a further one-third (30%) the plaintiff's legal costs represented 10% or more of the settlement (with 12% representing 15% or more of the settlement). The table also shows that, in general, the lower the final settlement the higher the percentage of damages that legal expenses represent. Again, if one assumes that the defendant's legal costs are equal to those of the plaintiff, then the total legal expenses will be twice the percentages shown in Table 1129.

Table 1129: *Plaintiffs' costs as a percentage of settlement  
(figures in brackets represent fatalities)*

Settlement* (£)	Costs as a Percentage of Settlement							Total
	0 - 2.4%	2.5 - 4.9%	5 - 7.4%	7.5 - 9.9%	10 - 12.4%	12.5 - 14.9%	15% +	
5,000 - 19,999	-	-	-	-	-	1	-	1
20,000 - 49,999	-	2	4	3(2)	4(1)	4(1)	3(1)	20(5)
50,000 - 99,999	-	3	7(2)	1(1)	-	3	5 <sup>a</sup>	19(3)
100,000 - 149,999	2(1)	6(1)	6	(1)	2	-	-	16(3)
150,000 - 199,999	1	4	3	-	-	-	1 <sup>b</sup>	9
200,000 - 249,999	-	2	-	1	-	-	-	3
250,000 - 499,999	-	4	1	-	-	-	-	5
500,000 +	1	-	1	-	-	-	-	2
<b>Total</b>	<b>4(1)</b>	<b>21(1)</b>	<b>22(2)</b>	<b>5(4)</b>	<b>6(1)</b>	<b>8(1)</b>	<b>9(1)</b>	<b>75(11)</b>

\* Including 2 awards

<sup>a</sup> Figure includes one settlement during appeal

<sup>b</sup> On appeal

Table 1130 shows that the amount of costs tends to increase with the length of time taken to settle claims. Thus, for example, in all cases where costs were £12,000 or more the cases took five years or more to settle.

Tables 1127 to 1130 establish that although the costs of settling claims is high in absolute terms, it appears that solicitors are basing their charges on work done rather than on a percentage of the final settlement.

Table 1130: *Plaintiffs' costs in relation to length of time taken to settle claim (figures in brackets represent fatalities)*

Time between accident/illness and settlement	Costs (£)							
	Up to 1999	2000 - 3999	4000 - 5999	6000 - 7999	8000 - 9999	10000 - 11999	12000 or more	Total
0 y - 0 y 11 m	-	-	1	-	-	-	-	1
1 y - 1 y 11 m	-	1	-	(1)	-	-	-	1(1)
2 y - 2 y 11 m	2	3(1)	3	-	-	-	-	8(1)
3 y - 3 y 11 m	-	5(1)	2(1)	2	1	1	-	11(2)
4 y - 4 y 11 m	-	7(1)	4(1)	1(1)	3	-	-	15(3)
5 y - 5 y 11 m	-	5	7(1)	-	2(1)	1	4	19(2)
6 y - 6 y 11 m	-	1	2	1	1	1(1)	1	7(1)
7 y - 7 y 11 m	-	2	-	-	1	1	2	6
8 y - 8 y 11 m	-	2	-	-	-	-	-	2
9 y +	-	-	-	2	-	-	2	4
Sample = 74 (10)	2	26(3)	19(3)	6(2)	8(1)	4(1)	9	74(10)

### 11.13 Summary

The majority of respondents (three in five) felt that their damages had been sufficient to cover past losses and expenses. However, two in five said that their damages had not been sufficient to cover past losses and the most frequently cited loss that had been under-compensated was their loss of earnings. The reasons given by respondents for the failure of their damages to cover past losses were that respondents had incurred extra expenses that had not been anticipated at the time of settlement, or that the expenses known about at the time of settlement had not been fully taken into account in the settlement. In order to meet these 'uncovered' expenses, respondents had used their savings, taken loans, and cut back on ordinary living expenses, and holidays.

The picture was similar when contemplating future expenses, with over one-third of respondents in bands 2-4 saying that their damages would not be sufficient to cover future expenses. The most frequently mentioned future expenses that respondents felt would not be covered by their damages were increases in day-to-day living expenses resulting from their injuries.

The majority of respondents in each settlement band thought that their living standard at the time of the interview was the same as before their accident (or better in a few cases). However, between one-third and two-fifths of all respondents said that their standard of living had suffered as a direct result of their accident. Respondents who had received

between £50,000 and £99,999 were the most likely to say that their standard of living was now worse than at the time of the accident. Respondents' anticipation of their future standard of living, however, was quite different. About half in each settlement band thought that their standard of living in ten years' time would be lower than they had enjoyed before the accident.

Respondents' level of satisfaction with their settlement at the time of interview showed a dramatic change from their satisfaction at the time of the settlement, with between three-fifths and three-fourths in each band saying that they were now dissatisfied with the level of their damages. The change in perception was most marked among those receiving the highest level of damages. At the time of settlement, this group expressed the greatest satisfaction (68%): at the time of the interview they were the least likely to be satisfied (27%). The most common reasons for dissatisfaction were that the settlement represented inadequate compensation for the impact of the injuries on their whole way of life, and that the damages had not sufficiently made up their losses in earnings. Interestingly, the level of satisfaction expressed was not associated with whether or not respondents had returned to work after their accident. Those respondents who had returned to work were nearly as likely to be dissatisfied as those who never worked again, although dissatisfaction was strongly correlated with the extent to which the injuries suffered affected the type of work that respondents could undertake or their daily activities.

Among those respondents who were dissatisfied and could estimate how much larger their damages should have been, the most common assessment was that their damages should have been at least double the amount that had been received.

Nearly all respondents believed that compensation should be paid in respect of pain and suffering, even if a victim were unconscious and thus unable to benefit from the money themselves.

Information from solicitors' files about the relationship between claims and final settlements showed that the larger the claim the greater the percentage loss between claim and settlement. The information from files also indicated that respondents had relatively poor knowledge of the components of their settlement, especially in relation to medical expenses and losses other than loss of earnings.

A reading of solicitors' files in cases where there had been large settlements suggested that there had been a relatively high degree of accuracy in the predictions made by plaintiff's experts relating to future ability to work. However, in a substantial minority of cases (14%) there appeared to be a clear discrepancy, and in two-thirds of these cases the prediction had been more favourable than the outcome. A comparison of the length of time between the date of accident and the date of settlement suggests that the accuracy of these predictions was not greater with a longer time-lag.

Solicitors' files also reveal that the legal cost of settling personal injury claims is high and that the longer claims take, the higher are the legal costs. The average amount of plaintiff's legal costs (excluding disbursements) in the subsample was £6,936 with a range of £1,342 to £53,265. The total legal costs (taking into account the defendant's costs) would be at least double that amount.



## CHAPTER 12. STRUCTURED SETTLEMENTS

Since the Law Commission's review of damages involved detailed consideration of structured settlements<sup>1</sup> we attempted during the course of this empirical study to gather information from compensated accident victims who had received structured settlements. A sample of such cases was obtained from insurance company files and qualitative interviews were conducted with nine respondents who had received such settlements. The amounts of the settlements ranged from between £95,000 to £1,000,000. Those who received these settlements had generally sustained very serious injuries, and in several cases the victim was being cared for by partners or parents.

### 12.1 The nature of structured settlements

All but one of the structured settlements in this study comprised a lump sum and an annuity to provide an income. In one instance the lump sum component had been refused as the respondent had not wanted to take any responsibility for administering the money. The respondent's reason for this refusal was "*that it is his, not mine to spend*".

Respondents in receipt of structured settlements reported that the structured settlement had generally been offered to the respondents, rather than being requested by them. One respondent, however, had requested a structured settlement since she had wanted to provide the family with a regular income and financial security for the rest of their lives, and she had felt that a lump sum would not have been able to offer this security.

One respondent had refused the offer of a structured settlement after her husband had been killed in a car accident. She had been awarded £375,000, of which £30,000 was for her two sons, and she had been advised of an alternative investment strategy by her brother which she found "*gives me a comfortable income and allows me to maintain my lifestyle*".

In common with those respondents who had received lump-sum settlements, recipients of structured settlements reported a variety of reasons for accepting the offer made by the insurance company: the stress and frustration at the time taken to settle, their current financial situation, the need for housing adaptations to be carried out, and a desire to return to normality were all mentioned. There were also feelings of being 'obliged to settle' their claim. For example, some respondents felt that they had been strongly advised to accept the offer and its terms. In one instance a structured settlement had been made to appear so attractive through comparison with the investment potential of a lump sum payment for the same amount that the respondent felt she could not refuse it. She commented that "*the figures produced made it impossible not to take a structured settlement.*" Others felt that this type of settlement had been imposed on them. For example one respondent reported that their barrister had explained the situation by saying "*It's either this or they go to court.*"

Although some respondents felt that pressure was being exerted on them by insurance

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<sup>1</sup> Structured Settlements and Interim Provisional Damages (1992) Law Com No 125. Structured Settlements and Interim and Provisional Damages (1994) Law Com No 224.

companies to accept a structured settlement, there were instances when other motives were also suspected. For example:

*It was a real problem to me to know what to do because I knew that [the] people [who] wanted me to take a structured settlement were going to get back-handers [commission]. (Female, 35; daughter disabled in a car crash; £350,000 structured settlement)*

There was also evidence of some confusion about the amount of damages that was being paid through the structured settlement. For example, one respondent confidently said that the compensation awarded had been seven million pounds; in reality the settlement comprised an annuity of £300,000 and a lump sum of £50,000 – the total to be paid out over the lifetime of the respondent was estimated to be around seven million pounds. In addition, some respondents were not sure whether their settlement was index-linked or ‘inflation-proofed’.

## 12.2 The use and advantages of structured settlements

Information from respondents in qualitative interviews suggests that structured settlements were used in very similar ways to lump sum damages payments (as reported in Chapter 10). The annuity portion was seen as providing financial security, the lump sum was used to enhance the respondent’s quality of life and to make up for the losses, both financial and emotional, that they had incurred.

Despite the circumstances under which respondents had accepted the structured settlement, this group of respondents generally expressed very positive views about the settlement that they had received. Indeed, there was general agreement within this group of respondents that this form of compensation was preferable to lump sum payments. This finding can be contrasted with the views of respondents to the main survey, among whom three-quarters of respondents overall expressed a preference for damages to be paid as a lump sum (Chapter 10 section 10.15). Although among those survey respondents who had received damages of £100,000 or more there was slightly greater enthusiasm for a mixture of lump sum and instalment payments (one-third of respondents in this settlement band would have preferred this arrangement), nonetheless two-thirds of this group said that they believed lump sum payments to be preferable.

Among recipients of structured settlements a number of reasons were given for preferring this form of settlement. Some respondents felt that a structured settlement provided security and peace of mind. For example:

*Because I felt it would give us life-long security and we wouldn’t have to, you know, we knew it [the money] would be looked after then and it would give us the peace of mind that we needed. (Male 47; sustained severe physical and mental injuries in a road accident; structured settlement of £425,000)*

*I’d go for a structured settlement really because it’s going to be there when I’m not; that’s top and bottom of it. (Female, 35; daughter disabled in road accident; £350,000 structured settlement)*



Other respondents felt that a structured settlement provided the possibility for an individual to plan financially for the future, and for income to be organised for the future:

*It was the thing of the guaranteed regular income that I liked because it increased my income...security – it's security I want...and I could look to the future. And that was the thing that attracted me. (Female 35; husband died in a road accident; £95,000 structured settlement)*

*It's nice for it to be spread out over the years...you know, it's organised. You know, it's not as though I'm thinking I've got 'X' now and then what in the future...instead of me having to sort out the payment, or the getting of the [income] payment each month. At least it's organised for ever. (Male 47; serious physical and mental injuries as a result of a car accident; structured settlement of £425,000)*

There was also evidence that recipients of structured settlements were relieved at having the responsibility for investing their money taken off their shoulders:

*If I'd taken the lump sum I would have been totally responsible for its investment and I couldn't cope with that. I wouldn't know where to put it to be making the most of it and knowing that it's not going to disappear, you know, with a crash or whatever. If it was in stocks and shares I'd be constantly worried about what they were doing and whether it was in the right place. (Female, 35; daughter disabled in road accident; £350,000 structured settlement)*

This sentiment contrasts sharply with the emphasis on the desirability of control of damages and freedom to choose how to spend or invest money stressed by many of the respondents to the main survey who had received lump sum settlements (section 10.15).

### **12.3 The adequacy of structured settlements**

While the chief benefit of structured settlements was seen to be their ability to provide a considerable degree of financial security, this type of arrangement was not without its problems. Despite the generally positive view held by these recipients of structured settlements of the *form* of the settlement, respondents nonetheless expressed perceptions of the inadequacy of the settlements which were identical to those reported by those who received lump sum payments. Thus among the nine recipients of structured settlements there were complaints that the settlements had represented inadequate compensation for loss of earnings or for extra expenses resulting from the effects of the injuries. For example:

*On the day of the court hearing...I was a bit gobsmacked because this figure of seven million pounds was mentioned and I thought it seemed like an awful lot of money...Now we face the reality of £1,000 a month, I realise it is not a lot of money...Now you come to use it [settlement] and realise what they didn't take account of. You know, they're supposed to have done their sums carefully and we had these wonderful so-called experts in, these nurses who were*

*supposed to cost it all out, the extra cost of bringing up a disabled person. And they missed out some of the most basic things. (Female 35; disabled daughter)*

Another disadvantage of structured settlements mentioned by respondents was the realisation that although the income might be inflation-proofed, it would not keep pace with the needs of the person to whom it was awarded. This was particularly so where the award was made to a child.

Problems were also mentioned in relation to the size of the lump-sum component in the settlement. In the absence of sufficiently large lump sums, there was felt to be a lack of opportunity to use the settlement to purchase a new house (for either mobility or investment purposes); to provide sufficient capital to start a business; or to provide an inheritance for children. One example is that of a respondent who had intended to purchase a new house, for mobility reasons, without the incumbrance of a mortgage, but was unable to do so since the lump sum component of the award was insufficient.

#### **12.4 Summary**

The small number of interviews conducted with recipients of structured settlements reveal considerable satisfaction with this form of damages payment. The chief advantages were seen as providing security for the future and the removal of responsibility for planning and managing investment of capital. However, despite the perceived advantages of the form or payment, recipients of structured settlements nonetheless expressed concerns about the adequacy of the settlements to cover future needs. In common with those who receive lump sum payments, initial satisfaction with the amount of money received at the time of the settlement can often turn to dismay later when, with the benefit of hindsight, compensated accident victims recognise the real costs of physical impairment, the true extent of their losses, and the imprecision of assessments of future needs and expenses at the time of the settlement.

## CHAPTER 13. FATALITIES

In addition to our concerns about the effectiveness of the remedy of damages in relation to non-fatal injuries, we also wished to collect information about the consequences of fatal accidents and the experiences and views of those who had received damages as a result of the accidental death of a relative. In the main survey, therefore, we interviewed 107 respondents who had received compensation as a result of a fatality. Since the post settlement needs and experience of these compensation recipients would be quite different from those who received compensation for their own injuries, a separate questionnaire was used for fatalities. Although the structure of the fatalities questionnaire was very similar to that used for non-fatal injuries, the content differed in that certain questions asked of victims of non-fatal accidents were excluded: for example, questions about health problems suffered by the recipient, future care or assistance for the victim, prospects regarding future work, and so on.

The structure of this chapter, therefore, closely follows that of the previous chapters, and comparisons are frequently drawn between the recipients of compensation for fatal injuries and the main sample of accident victims. However, because the fatality sample was quite small, it is not possible to carry out the analysis at the same level of detail used for the main sample. In particular, the sample is not large enough to permit sub-group analysis among fatality recipients in terms of the size of their settlement.

An important difference between this chapter and the previous chapters, which must be borne in mind when considering the results, is the distinction between the *recipient* of the compensation (usually a surviving spouse) and the *victim*, the person fatally injured in the accident. The first section below describes the characteristics of the compensation *recipients* in the fatality sample at the time of interview. The following section describes the characteristics of the *victims* at the time of their accident.

### 13.1 Characteristics of recipients at the time of interview

#### *The settlement*<sup>1</sup>

Within the sample of 107 fatalities, the distribution of settlements was as follows: 19% of the sample had received damages of under £20,000; 37% of the sample had received damages of between £20,000 and £49,999; 34% received damages of between £50,000 and £99,999; and 11% of recipients in the fatality sample received damages of £100,000 or more.

#### *Gender and age of the recipient*

Nine in ten (89%) recipients were female and one in ten (11%) were male. At the time of interview, their average age was 50. A few recipients were aged below 16 (less than 0.5%); 19% were aged between 16 and 40; one-third (32%) were aged 40-49; 24% were aged 50-

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<sup>1</sup> We originally set the minimum size of settlement for fatalities at £20,000. However, at the data editing stage, it transpired that about one in ten fatality respondents received damages of less than this amount. Because the sample is too small to analyze by size of damages results are described for all fatalities as one group.

59; and 26% were aged 60 or more. Compared with the main sample, therefore, those who received damages as a result of a fatality were somewhat older on average and, in particular, were somewhat more likely to be over retirement age (compare with Table 206).

#### *Marital status of recipients at time of interview*

At the time of interview, about one in five (19%) recipients were married (or living as married), including 17% of those who received their damages due to the death of a spouse. As expected, most had been married for a short time: 72% were married to their current spouse for less than 4 years.

#### *Ethnic group*

All but 2% of fatalities were classified as white (which is similar to the main sample).

#### *Highest qualification*

Compared with the main sample (see Table 218), the fatality sample were more poorly qualified (which may be partly due to their older age profile). Over half (52%) had no qualifications at all (39% for the main sample) and only 12% had A levels or higher (compared with 22% in the main sample).

#### *Household size and composition*

As would be expected, fatality respondents were much more likely than accident victims to live alone: over one-third lived alone (38% compared with only 13% of the main sample); 20% were in two person households; 22% in 3 person households; 14% in 4 person, and 6% in 5 person households.

In terms of household composition at the time of interview, nearly two-fifths (38%) were classed as single adult; just under one-fifth (17%) as two adults; a similar number (16%) as a small family; only 5% as a large family; and just over one-fifth as a large adult household (23%). Compared with the main sample of non-fatalities (see Table 213), fatalities were much more likely to live in single adult households (38% compared with 13%), and were half as likely to live in two adult households (17% and 33% respectively).

#### *Accommodation details*

In common with the main sample, the vast majority of fatality respondents owned their own home (77%), with nearly all others living in local authority accommodation (20%).<sup>2</sup> All but 6% of respondents lived in a house or bungalow, with the remainder living in a purpose-built flat. Four in five (80%) had lived in their current accommodation for at least 5 years, compared with two-thirds of the main sample (see Table 216).

Whereas nearly one-half of the main sample had moved house since the accident, fatality

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<sup>2</sup> Tenure was unclear for 8% of fatalities, who have been excluded from the base for these figures.

respondents were much less likely to have moved since their bereavement, with fewer than one-third (29%) having done so. However, among those who had moved, similar numbers in the main sample and the fatality sample were likely to have done so because of the accident/bereavement (16% among fatalities, and 17% among the main sample).

### **13.2 Circumstances of the victim at the time of accident**

#### *The relationship between the recipient and the accident victim*

Nearly all fatality damages were paid as a result of the death of a spouse (95%); 2% received compensation for the death of a son or daughter; and 3% for the death of a parent or other relative.

Those who had received their compensation because of the death of a spouse were asked how long they had been married before their bereavement. In general, the marriages had tended to be quite lengthy, with two in three (65%) married for at least 16 years. The distribution was as follows: 14% of the sample had been married for up to 5 years at the time of the accident; 14% of the sample for 6 to 10 years; 6% of the sample for 11 to 15 years; 24% of the sample for 16 to 20 years; 21% for 21 to 30 years; and 20% of the sample had been married for 31 years or more at the time of the fatal accident.

#### *Gender and age of the victim*

The vast majority of those who had died were male (86%), with about one in seven fatalities being female (14%).

At the time of death, about one-third (31%) of the deceased were aged under 40, one-quarter (28%) were aged between 40-49, one-third (31%) were aged 50-59, and 9% were aged 60 or more. The average age at the time of death of 45.

#### *Activity status of victim at time of accident*

Nearly all (92%) victims were in work at the time of the accident, the majority in full-time work (88%) with 4% in part-time work (ie, under 30 hours per week). Of the rest, 2% were unemployed, 4% were retired, 2% were looking after a family or home, and 1% were on a government scheme.

#### *Socio-economic group*

The SEG distribution of the fatality victims in their last job was similar to that for the main sample (see Table 224) and is as follows: 15% of fatal accident victims were in professional employment; 13% were in intermediate or junior non-manual employment; 51% were in skilled manual employment; 13% were in semi-skilled manual work; and 8% were in unskilled manual work.

#### *Status and union membership*

Nine in ten (90%) victims were working in employment, and one in ten were self-employed.

Three-fifths (59%) were members of a trade union in their last job, 34% were not members, and union membership was unknown for 7%.

### **13.3 Recipients' activity status and job details at time of accident**

#### *Activity status of recipient at time of accident*

Fatality recipients were much less likely than accident victims to be in work at the time of the accident, although about three in five (60%) of those who received compensation as the result of a fatality did have a paid job at the time of the accident. Recipients were evenly divided between those in full-time work (32%) and those in part-time work (29%).

A large number of recipients were looking after their home or family at the time of the accident (30%). There were smaller numbers who were retired (6%), in full-time education (2%), or unemployed (2%).

#### *Socio-economic group of recipient*

Among those recipients who were working at the time of the accident, the largest group of working recipients were classed as intermediate or junior non-manual (46%), followed by semi-skilled manual (23%), unskilled manual (16%), professional (10%) and skilled manual (6%).

#### *Status*

All but 1% of recipients were working as employees in their job.

### **13.4 Type of accident**

Compared with the main sample, illnesses were much more commonly found among the fatality sample. Among fatality settlements 77% were paid as a result of an accident, and 23% resulted from a work-related illness or disease, as compared with only 4% of work-related illnesses among bands 2-4 in the main sample.

There were also differences in the distribution of work and road accidents. In comparison with the main sample, payments for fatal accidents were less likely to have resulted from motor claims (28%) than from employers' liability (61%) or medical negligence (8%). (A further 3% of claims were either public or private liability.)

### **13.5 Impact of accident on work and earnings**

#### *Victims' earnings at time of accident*

For victims who were in work at the time of the accident, respondents were shown a card containing earnings in broadly banded amounts and asked to estimate what the victims' earnings were at the time. One-third (34%) of respondents could not give an estimate. Among those who could, the net weekly take-home pay reported for victims at the time of their accident was distributed as follows: 16% were earning less than £100 per week; one-

quarter (26%) had earnings of between £100–£149; 18% earned between £150–£199; 17% earned between £200–£249; 9% earned between £250–£299; 9% earned between £300–£399; and 6% earned £400 or more per week.

#### *Recipients' earnings at time of accident*

Recipients who were in work at the time of the accident (ie, about three-fifths of the sample) were asked to estimate their own earnings at that time. Their earnings tended to be considerably lower than those of the victims', which is not surprising given the high proportion of recipients in part-time work. Their net weekly earnings were distributed as follows (after excluding the 7% whose earnings were unknown): two-fifths (39%) were earning less than £50 per week; one-quarter (24%) between £50–£99; one fifth (21%) between £100–£149; 6% from £150–£199; and 10% were earning £200 or more per week.

#### *Impact on work*

As well as losing the (much higher) earnings of the victim, two-fifths of recipients (40%) said that they left the job they were in at the time of the accident because of their bereavement.

A further quarter (27%) were no longer in their job, although the reason they left was *not* related to the fatality. One-third (33%) of respondents were still in their job at the time of the interview.

#### *Leaving the job*

Most of those who had left the job that they were in at the time of the accident did not formally leave that job until one year or more after the accident (52%); however, one-fifth (20%) left within four weeks; a further 16% left between 4 weeks and 3 months after the fatality; and 7% left between 3 months and one year after the fatality.

When asked about the formal terms on which they left their job, two-thirds (63%) said that they decided to leave, 16% were made redundant, 15% said the business they worked for closed down, and 6% gave other reasons including early retirement and being dismissed.

Only one in five respondents (23%) said that they had been given a special payment or lump sum when they left their job: about half of these payments were over £5,000.

#### *Remaining in work*

The one-third of respondents who were still in the job they had been in at the time of the accident were asked about time taken off work and changes in pay. Because of the small numbers, the results must be treated with caution. When asked how much time, if any, they had taken off after the fatal accident, the majority reported that they had taken some time off work, but the majority took off only short periods. Over half (55%) took off less than four weeks; 15% took off between 4 weeks and 3 months; and one quarter (26%) were off work for 6 months or more.

Only 7% mentioned that, on their return to work they received less pay as a result of the fatality.

### *Periods of unemployment*

About one in ten (9%) recipients said they had been unemployed and signed on for benefits at some point since the victim's accident: 8% had signed on for only one spell, and 1% had signed on for 2 spells or more.

### **13.6 Recipients' current activity**

About half of the recipients of compensation for a fatality were in the labour market at the time of interview: two in five (40%) were in work, among whom one-half (20%) were in full-time work and one-half (20%) were in part-time work; 8% were unemployed and looking for work (but not necessarily signing on for unemployment benefits).

The other half of the sample of recipients were not in the labour market, with the majority looking after their family or home (27%) or retired (18%). The remainder were involved in such things as full-time education.

### **13.7 Impact of fatality on earnings**

Since nearly all victims were in full-time work before their accident, their death resulted in a considerable loss of household income for the compensation recipient (very few of whom were in full-time work at that time). Among cases where the victim was the spouse of the recipient, households might have had one or two incomes before the fatality (leaving aside adult children or other household members): as Table 1301 shows, in 25% of cases both the victim and the recipient were in full-time work before the fatality; in 33% of cases, one of the partners (usually the victim) was in full-time work and the other was working part-time, whilst in only 4% of cases, neither the victim nor the recipient was in work; in the rest (38%), one of the partners was in work, and one was not working.

*Table 1301: Activity status of both victim and recipient before the fatality*

Base: Fatality was spouse 101=100% (unweighted)	Victim was in:		
	Full-time work	Part-time work	Not working
<i>Recipient was in:</i>	%	%	%
Full-time work	25	3	4
Part-time work	30	—	—
Not working	33	1	4

A rough estimate of the effect of the fatality on household earnings can be made by looking at the extent to which recipients attempted to make up for their spouse's loss of income by taking up work themselves. Table 1302 analyses the work situation of recipients at the time



of interview in relation to the situation before the fatality for victims who were in work before then (which covers 88% of fatalities).

*Table 1302: Comparison of recipients' activity status at time of interview with activity status before accident*

Base: Fatality was spouse and in paid work 95=100% (unweighted)	Before accident, recipient was in:		
	Full-time work	Part-time work	Not working
<i>At interview, recipient was:</i>	%	%	%
In full-time work	13	5	2
In part-time work	1	16	4
Not working	15	10	30

Activity at interview was unclear for 4% of recipients.

In only one circumstance does it appear that the recipient "made up" for the loss of victims' earnings: when the recipient moved from no work to full-time work, which applied only to 2% of this group. This is only a very rough estimate, and takes no account of actual earnings; it is worth remembering in this context the significant difference in earnings between the sexes, and that, for most fatalities, it was women who had to make up the earnings of a deceased husband.

In two other circumstances, it can be estimated that the lost earnings were partially made up: when the recipient went from part-time to full-time work (5%), or from no work to part-time work (4%).

In all other circumstances, the household income of the recipient would be lower (unless, of course, s/he remarried, and the new partner worked full-time). Where the recipient's circumstances did not change (ie, s/he was in full-time work before the fatality and at the interview, or s/he was in part-time work at both periods, or not working at both periods), the loss in income is equivalent to the earnings of the fatally injured victim. If the recipient's circumstances also changed (eg, the recipient went from working full-time to part-time or to no work at all, or from part-time to no work) the loss would be even greater, including not only the earnings of the accident victim, but also some or all of the recipients' earnings: this applied to a further 26% of recipients, bringing the total number in this group of recipients suffering a loss of earnings to 85%.

Among those recipients who left the job they were in at the time of the accident, most did so because of their bereavement (60%), although for two in five recipients (38%) the reason for leaving was not connected with the fatality.

### **13.8 Other sources of income**

While the previous section gave a rough estimate of the effect of the accident on household

income in terms of earnings from work, this section looks at other sources of income which may have been available to recipients after the accident, such as state benefits, company pension schemes, insurance policies, and the earnings of a spouse (in the case of re-marriage) or other household member.

#### *Income from insurance policies*

Respondents were asked if they received any payments from several types of insurance policy (with the proportion receiving each type shown in brackets): personal accident insurance to cover mortgage payments during illness or after death, including endowment policies (30%); personal accident cover under a comprehensive motor policy (2%); life insurance to cover the death of a spouse or relative (44%); and a private pension scheme (5%). About a third (31%) did not receive payments from any of these types of insurance (and 3% mentioned other types of policy).

Compared with the main sample, the fatality sample were much more likely to receive money from an insurance policy: 67% of the fatality sample received a payment, compared with only 8% of those in bands 2-4 in the main sample.

Looking at *policies* (rather than recipients, as a few received money from two or more policies), nearly all policies paid out a lump sum rather than amounts on a regular basis (eg, monthly or weekly): 96% were lump sum payments and 4% were regular payments.

The size of the payments tended to be quite small: 30% were less than £5,000; 12% were from £5,000 to £9,999; 17% were between £10,000 and £19,999; 12% were from £20,000 to £49,999; 10% were £50,000 or more; and 20% of respondents could not give an amount.

#### *State benefits*

As for the main sample, respondents were shown a card of over 20 state benefits and asked if they had received any of the benefits *at any time* since the victim's accident. Their responses are shown in the left column of Table 1303.

Only about one in ten (9%) said that they had not received any of the benefits shown at any time since the victim's death. Two-thirds (65%) of recipients said they had received widow's benefit. The other benefits most often received were: industrial injury benefit or pension (23%); state sickness benefit (19%); income support (12%); housing benefit and state retirement pension (both at 11%). The mean number of benefits received by the fatality sample was 1.7.

Compared with the main sample, fatality recipients were about as likely as accident victims themselves to have received state benefits. However, fatality recipients received fewer benefits on average than did accident victims in the main sample (1.7 compared with 2.9 for bands 2-4 in the main sample - although the latter includes benefits received by both the accident victim and his/her partner). The types of benefits received by the two samples were also very different: victims from the main sample were more likely to receive benefits related to incapacity for work or with disabilities (eg, invalidity benefit, mobility allowance, etc), while fatality recipients were much more likely to receive widow's benefit.

Table 1303: *Fatality sample: state benefits received at any time since accident: state benefits received at time of interview*

	Ever received	Still receiving
Base: All fatalities (unweighted)	107	107
<i>Benefit:</i>	%	%
None of these	9	25
State sickness benefit	19	1
Invalidity benefit	4	-
Disablement benefit	2	-
Disability living allowance (DLA)	2	-
Disability working allowance (DWA)	-	-
Mobility allowance/motability	3	1
Severe disablement allowance	-	-
Invalid care allowance	1	1
Industrial injury benefit/pension	23	20
Lump sum disablement pension	-	-
Attendance allowance	5	-
Reduced earnings allowance	1	-
Income support	12	8
Family credit	6	1
Unemployment benefit	5	-
Housing benefit	11	4
State retirement pension	11	11
Maternity benefit/allowance	1	-
Widow's benefit	65	49
Other	3	2
Mean number of benefits	1.7	1.0

At the time of interview, about one-half (49%) of the fatality sample were still receiving widow's benefit; one-fifth (20%) were in receipt of industrial injury benefit/pension; and one-tenth (11%) were receiving the state retirement pension. One-quarter (25%) of recipients reported that they were not receiving any state benefits at the time of interview. On average, the mean number of benefits received by the fatality sample at the time of interview was 1 (which is lower than the main sample of victims who were receiving 1.5 benefits on average).

#### *Company pension scheme*

Where the fatality victim was working as an employee at the time of the accident, respondents were asked if s/he was a member of their company's pension scheme. About two in three

of this group were (62%), and one in three were not (32%), with 6% unknown.

Where victims were members of their company pension scheme, recipients nearly always received either a lump sum payment (23%) or regular weekly or monthly payments (44%) or both (30%). Only 3% said they did not receive any money from the victim's pension scheme. The amounts of money received are described below, although the results are based on small numbers, and must therefore be treated with caution.

Among those receiving lump sums, just under one-quarter (22%) were paid less than £10,000; just over one-quarter (28%) received between £10,000 and £29,999; another quarter (25%) received between £30,000 and £39,999; and 13% were paid £40,000 or more (with 11% unable to say).

Among those receiving regular payments from the victim's company pension scheme, 45% were paid less than £50 per week, 31% were receiving £50-£99 per week, and 6% were receiving £100 or more each week (with the amount unknown for the remaining 18%).

#### *Other payments from employers*

Sometimes an employer may make other payments to the spouse (or other relative) of the deceased. One in three (34%) recipients said that they had received money from the victim's employer in the period between the accident and the settlement of the compensation claim. Some of these payments were quite large, with over one-quarter (27%) of those receiving such payments being given £20,000 or more. However, in 40% of cases the amount received was less than £5,000; in 10% of cases the amount was between £5,000 and £19,999; and the amounts were unknown in the remaining 22%. Only 3% of these payments had to be paid back to employers.

#### *Earnings of spouse*

As mentioned in section 13.2, the vast majority of recipients were paid compensation as a result of the death of a spouse or partner; 17% of these recipients had re-married by the time of the interview. Respondents in this group were asked the economic status of their partner at the time of interview. Although the numbers are small and the results must be treated with caution, respondents reported that most new partners were in the labour market, with three-fifths in work (58%) – nearly all full-time – and one fifth (20%) unemployed. The rest were either looking after a family (11%) or retired (11%). Thus, 10% of all fatality recipients (where the victim was a spouse) had earnings from a partner by the time of interview.

#### *Changes in household income*

Respondents were also asked if, as a result of their bereavement, any other household members (apart from the recipient) gave up work, worked shorter hours, changed to a less well paid job, or put off starting a job. Overall, 83% of recipients did not report any of these changes; 8% said that someone in the household had delayed starting a job; 6% reported that someone in the household had given up work; and 3% reported that someone had changed to a less well-paid job. Compared with the main sample, fatality recipients reported fewer changes of this kind. This resulted in a *lower* household income for 7% of fatality recipients.

As for the main sample, very few fatality recipients said that, as a result of the victim's death, other members of the household had to start a job (2%) or work longer hours (2%); 96% reported neither of these changes. This resulted in an increase in household income for only 2% of fatality recipients.

### **13.9 Problems paying costs and expenses**

Unlike the main sample, the fatality sample were not taken through details of any care and treatment the victim may have received as a result of their accident. But they were asked if they had problems paying for any of the extra expenses that may have resulted from the accident, both before and after they received their compensation. The situation relating to the period before they received their damages is described below; the situation after the settlement is described in section 13.12.

#### *Before receiving compensation*

Respondents were shown two cards – the first showing extra expenses that can result from an accident (eg, private medical treatment, nursing costs, funeral expenses, aids or assistance); and the second showing usual bills or expenses that people could have problems paying as a result of an accident or bereavement (eg, mortgage or rent, domestic bills, loans) – and asked if they had any problems paying for these types of bills or expenses before they received their compensation money. Their responses are shown in Table 1304.

The majority of respondents reported that they had not experienced problems in paying for any of the expenses shown (57%). Most of the difficulties that had been experienced related to paying domestic bills (27%), funeral expenses (20%), fees for rehabilitation (also 20%), general living expenses (19%) and the mortgage or rent (17%).

Compared with the main sample, fatality recipients were more likely to say they had no money problems of this sort (57% had no problems compared with 40% of bands 2–4 in the main sample); and, with the obvious exception of funeral expenses, they were less likely to report problems with each of the expenses listed, especially those relating to the treatment and care of the victim.

Table 1304: *Fatality sample: problems with expenses before settlement*

	All
Base: All fatalities (unweighted)	107
<i>Problems paying:</i>	
Funeral expenses	20
Rehabilitation (eg, physiotherapy)	20
Medicines	3
Aids (eg, crutches, hearing aids)	1
Moving house or altering home (eg, wheel ramps)	3
Extra travelling, heating expenses	5
Private medical treatment/tests	–
Private nursing care	–
Counselling or therapy	–
Mortgage, rent	17
Domestic bills	27
General living expenses (eg, food, clothing)	19
Loans, HP	7
'Luxury' items (eg, holidays, appliances)	10
Other	5
No problems	57
Can't say/not stated	3

### 13.10 The compensation claim

#### *Period between bereavement and claim*

One-half (51%) of recipients commenced their claim for damages within three months of their bereavement; 15% of recipients claimed within 3 to 6 months of the accident; 8% waited from 6 months to 1 year, and 12% waited for one year or more (with the period unclear for the rest of the sample).

#### *Use of solicitor*

Nearly all (96%) recipients used a solicitor when making their claim. Only about one in seven (15%) recipients (using a solicitor) had to pay some or all of their legal costs; these were usually quite low: under £1,000 for 7%; between £1,000 and £4,999 for 3%; and £5,000 or more for 3%. The rest had no costs either because they were fully covered by legal aid (25%) or their costs were covered by the other side, a trade union or someone else (57%).

Trade unions covered the legal costs for about one in four recipients (26%); this increased to

60% when looking only at accidents which occurred at work.

### *Expectations when first making claim*

When asked how much in damages they expected to receive when they first made their claim, nearly three in four (72%) could not say (compared with three-fifths of the main sample – see section 13.3). Among the rest, 2% expected less than £20,000; 5% expected £20,000 – £49,999; 7% between £50,000 and £99,999; 6% between £100,000 and £199,999; and 7% expected £200,000 or more.

### *Offers rejected*

Just over half (52%) of the fatality sample rejected at least one offer before final settlement; two-fifths (39%) accepted the first offer (with 9% unable to say). The number of offers rejected were: 1 by 25%; 2 by 18%; 3 or more by 9%.

Compared with the main sample, fatality recipients were more likely to accept the first offer and in general rejected fewer offers (see section 4.5).

### *Interim payments*

Fewer than one in five (18%) fatality recipients knew that they could claim interim payments from the insurance company; a similar number (17%) said they, or their solicitor, requested at least one interim payment to be made. Both these figures are much lower than for the main sample, where three in five (of those in bands 2–4) both knew about, and asked for, interim payments. Some 83% of those recipients who asked for an interim payment received one, which represents 14% of all fatality respondents receiving an interim payment. Only 2% of all fatality recipients received two or more interim payments, while 12% received only one interim payment.

While one-third of the payments were for £10,000 or more, there were too few payments to give an accurate estimate of the size of payments likely to be received by fatality recipients.

Only 15% of those receiving interim payments said that the payment had not been for the amount that they had wanted. Half said the payment was made to enable them to pay for something in particular.

### *The settlement*

One in ten claims (11%) were awarded by a court decision or a judge's ruling, the rest were settled by reaching agreement with the other side (similar figures to the main sample – see section 13.6).

Among those who settled, one-half (49%) said that they would have taken their claim to court if they had felt it necessary, while 21% said that it would depend or were unsure, and 30% said that they would not have gone to court. Thus, fatality recipients were slightly less likely than victims themselves to have been willing to go to court. The reasons given for not wanting to go to court included: that their solicitor had advised them not to (48%); the claim

process had already been too great an emotional or physical strain (31%); it would have taken too long to settle (18%); that it was insulting to put a price on the victim's death (18%); worries about ending up with lower damages (13%); and worries about having to pay legal costs (10%). (These figures must be treated with caution because of the small base.)

About one in ten respondents (9%) said that the victim had been held to be partly responsible for the accident, and that they had received lower damages as a result. The degree of contributory negligence alleged ranged from between 5% and 70% .

The size of settlements for fatalities ranged from £10,000 to £480,000 (with a median of £70,000).

Unlike the main sample, fatality recipients were *not* asked what their settlements included (ie, medical expenses, etc) except if it included any money for counselling. Nearly everyone said it did not (91%) or that they did not know (9%); less than 0.5% said that money for counselling had been included in the settlement.

#### *Satisfaction with compensation at time of settlement*

Among fatality recipients one-half (50%) reported that they had been satisfied with the amount of damages received *at the time that they settled their claim*. Just under one-half (43%) reported that they had not been satisfied at the time of settlement, and the remainder could not say (8%). Thus, compared with the main sample (section 4.12), fatality respondents were somewhat less likely to be satisfied with their damages at the time of settlement.

Those who were dissatisfied were asked why they had accepted an amount with which they were not satisfied. The majority gave as their reason the fact that they had been advised (usually by their solicitor) to accept the offer (50%). Other reasons given were: the possibility of ending up with less money (28%); the emotional strain of carrying on negotiations (25%); the time taken to reach agreement (21%); and not being able to afford legal costs (16%).

### **13.11 Use of damages**

#### *Savings and investments*

Fatality respondents were asked the same series of questions about savings and investments as the main sample (see chapter 10). Their responses were very similar. Thus, all but 12% of respondents said that they had saved or invested some or all of their compensation. The types of savings and investments made most often were: building society account (69%); unit or investment trust (28%); bank account (16%); and company shares or securities (15%).

Respondents were much more likely to be satisfied than dissatisfied with their savings or investments: 86% compared with 11% (with 3% unable to say). The reasons given for being dissatisfied were similar to those for the main sample (see section 10.3).



### *Financial advice*

Fatality recipients were also very similar to the main sample in terms of seeking financial advice: just over half (52%) received such advice, mainly from an independent financial adviser (26%), bank or building society staff (18%), and family or friends (18%).

The advice received was considered to be very helpful by one-half (51%) of the respondents, and fairly helpful (42%) by nearly all the others, with only 2% saying it was not helpful (and the rest unable to say).

Among those who were not given any advice, one-half (51%) thought that it would have been helpful to have had such advice and one-third (35%) thought that it would not have been helpful (with 14% unable to say). The reasons given by both groups are similar to those for the main sample (see section 10.6).

### *Inheritance*

Fatality recipients were also asked if, as a result of the victim's death, they had inherited anything such as a business, stocks or shares, or a property (other than their own home). This was uncommon, with only 9% saying they did have such an inheritance (and none of them could say if their compensation had been reduced as a result of their inheritance).

### *How the damages were spent*

As for the main sample, fatality respondents were shown a card and asked if they had spent their damages on any of the items shown on the card (or on similar items). All but 12% reported that they had spent some of their damages on the types of things shown. This figure is similar to the number in the main sample (9%) (as described in section 10.9).

The types of things purchased with the compensation money were also similar to expenditure in the main sample (see Table 1003) and included: home improvements or furnishings (52% of all fatality respondents); electrical goods (33%); a holiday (32%); gifts for family or friends (30%); overdraft or loan (17%); purchase of home (12%); loans to family or friends (11%); paying off the mortgage (10%); and purchase of a car (2%).

### *Amount of damages spent by time of interview*

By the time of the interview (which was at least 3 years after the settlement date for about three-fifths of respondents),<sup>3</sup> one-fifth (22%) had spent all of their compensation, another fifth (21%) had spent over half, 12% had spent about half of the damages, one-third (32%) had spent less than half, and 11% had not spent any of their damages (with 3% unable to say).

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<sup>3</sup> The date of settlement was unknown for one-quarter of fatalities, so this figure is estimated on the basis of those fatalities where date of settlement was available.

## 13.12 Adequacy of compensation

### *Problems paying expenses after compensation*

In the period before receiving their compensation, two-fifths of fatality recipients reported problems paying bills and expenses resulting from the victim's accident and death (see section 13.9). This decreased significantly after recipients received their compensation to fewer than one in ten (8%) having problems meeting bills or expenses (which is similar to the main sample).

As there were no extra expenses for continuing care and treatment for the victim (unlike for the main sample), the problems experienced after receipt of the damages mainly related to everyday expenses such as paying domestic bills (7%), other general living expenses (6%), 'luxury' expenses such as holidays, home furnishings and so on (5%), the mortgage or rent (4%), and loans or overdrafts (3%). A small number (4%) reported problems paying for counselling or similar treatment.

### *Adequacy of compensation*

Fatality recipients were asked whether they thought that the compensation they had received was sufficient to cover all the money that they had to pay out in extra expenses as well as any money they (or their family) may have lost (eg, by not working) as a result of the victim's death up to the time of the interview.

Respondents were evenly divided, with one-half (52%) saying that it had been sufficient and one-half (48%) saying that the money had not been sufficient. The proportion saying that their compensation had not been sufficient was slightly higher than in the main sample (39% of bands 2-4).

When asked what their compensation did not (fully) cover, respondents most often said that it did not fully cover the loss of the victim's earnings (23% of all fatality respondents) or the lost earnings of another household member (8%). In some cases, the damages were not sufficient to cover household expenses (11%) or luxury items (5%), and 3% felt that inflation had not been adequately taken into account.

When asked how much larger their compensation should have been, most could not say (58%); the others were most likely to give rough estimates which were either 50% to 99% larger (7% of all fatalities), or at least twice as large (10%).

When asked why they thought that the amount they had received had been insufficient, the main reasons given included: that the victim's loss of earnings had not been fully taken into account (22% of those who said that the compensation was insufficient); inflation had eroded the purchasing power of their damages (16%); lack of foresight and not claiming for everything that should have been claimed (12%); and the recipient's loss of earnings not being fully compensated (7%).

Respondents were also asked where the money had come from to pay for the extra expenses or money lost that had not been fully covered by their damages. The most common sources

of funds were: recipients' own savings or investments (49% of those with insufficient compensation); spending less on daily living expenses (39%) or on entertainment or 'luxuries' (37%); recipients' own earnings (34%); another family member's savings (16%) or earnings (15%); and company or private pension payments (13%).

#### *Debts and savings*

Respondents were asked if, as a result of the victim's accident and death, they (or their family) had to borrow money or run up any debts. Three in four (77%) had not done so, 18% had accumulated debts, and 6% were unsure. Debts tended to be relatively modest, with 8% having debts of under £1,000, 5% between £1,000-£4,999, and 5% of £5,000 or more. The likelihood of accumulating debts and the size of debts was smaller among fatality recipients than among the main sample.

When respondents were asked if they had either stopped saving or had to spend their savings as a result of the victim's death, one-half (51%) said they had stopped saving or spent savings, 44% said they had not and 5% could not say. Compared with the main sample, the savings of fatality recipients were less likely to be affected.

Twelve per cent of respondents said they had stopped saving, while 44% had spent money from their savings: among the latter group, most had spent less than £5,000 (16% of all fatality recipients), with 9% spending £5,000 or more (and the rest were unclear).

#### *Adequacy of compensation in maintaining standard of living*

When asked if they thought their standard of living at the time of the interview was the same as before the victim's accident or lower, one-half (51%) of fatality respondents thought that it was the same, and two-fifths (41%) said that it was lower (with 5% saying higher and 3% unable to say). This is very similar to the main sample.

Responses changed when asking about the long-term: only one-third (33%) thought that their standard of living would be the same in 10 years time, while over one-half (54%) thought that it would be lower (with 4% saying that they thought their standard of living would be higher and 8% unable to say). Both the increasing pessimism about the long-term, and the actual numbers in each category, are very similar to the responses given by victims in the main sample.

#### *Satisfaction with compensation at time of interview*

While section 13.10 showed that about half of respondents were satisfied with the size of their compensation at the time of settlement, the extent of satisfaction decreased over time so that only one-third (34%) were satisfied at the time of interview and one-half (53%) were dissatisfied (with 13% unable to say). In this respect, too, fatality respondents closely mirror the answers given by the main sample (although the latter were slightly more likely to be dissatisfied).

The reasons given by respondents for their dissatisfaction with their damages at the time of

the interview fell into several categories: that the damages were not an adequate measure of the value of the deceased (eg, "*s/he was worth more than that*" (35% of those who were dissatisfied gave this reason); that the damages did not fully make up for the victim's lost income (27%); that some expenses had not been (fully) covered by the damages (21%); that the damages agreed were less than had been expected (19%); that the settlement was low compared with other similar claims (11%); that there were restrictions placed on how the money could be spent (eg, by the Court of Protection) (9%); that inflation had not been accounted for (6%); and that the respondent had received poor legal advice (2%).

When dissatisfied respondents were asked how much larger their damages should have been, two-fifths (38%) thought it should have been twice as large, 15% thought that it should have been between 50% and 99% higher, 13% thought that it should have been less than 50% more, and 34% were unsure.

### **13.13 Lump sum or instalments**

Fatality respondents were asked whether they would have preferred to have been paid in monthly or yearly instalments, or if they thought it was better to receive their damages in a lump sum, or if a mixture of a lump sum and damages would have been their preferred option. Their responses indicated a strong preference for a single lump sum payment (and they were similar to the main sample in this respect): 68% favoured a lump sum; 8% preferred instalments; 11% would have preferred a lump sum followed by instalments; and 11% expressed no preference.

The reasons given for preferring a lump sum were similar to those for the main sample (as shown in Table 1008): 46% wanted to benefit from the interest earned on their investments or savings; 31% wanted to have control over the money themselves; 17% wanted the claim process to be over and done with; 11% thought it would be easier to plan the future if they knew exactly what they had; 8% mentioned greater purchasing power (eg, to purchase expensive things such as a car or house); 6% thought that, with instalments, they could end up with less money; and 5% felt more secure having the money all at once.

Those preferring instalments or a mixture either mentioned the increased security of having a regular income or that the money would last longer because it could not be spent all at once.

Finally, all those preferring a lump sum or mixture were asked if they thought there were any circumstances in which it may be better for a person to be paid in instalments. Most thought there were (68%), with one quarter (21%) saying there were not, and 11% without an opinion.

The circumstances most often mentioned as appropriate for instalments were: if the recipient was likely to spend all the money without reference to future needs (47%); if the person had no other income (18%); and if the recipients themselves were in need of care or if their health was expected to deteriorate (7%).

### 13.14 Summary

Among those who received compensation as a result of a fatal accident (referred to as "fatality" recipients), nine in ten were women. The mean age of this group at the time of interview was 50. About one in five were married (including 17% of those who received damages because of the death of a spouse).

In 95% of cases, the recipient was paid compensation because of the death of a spouse. The victims, therefore, were nearly all men; their mean age at the time of death was 45. Nearly all victims were in work at the time of accident; over half were classed as skilled manual and one quarter were non-manual.

About three in five recipients were in work at the time of the accident, although they were as likely to be in part-time as in full-time work. Most of the others were looking after their family or home.

As well as losing the victim's earnings, two-fifths of recipients who were in work said they left their job because of their bereavement (and by the time of interview, a further quarter had left for reasons not connected with the bereavement). At the time of interview, half of recipients were in the labour market, with 40% in work and 8% unemployed. Most of the rest were looking after their home or retired.

It was very rare for a recipient who was either non-working or working part-time at the time of the accident to begin a full-time job after the accident; in general, then, it seems reasonable to conclude that the lost earnings of the victim were not subsequently made up by an increase in earnings on the part of the recipient. However, recipients did have other sources of income, including: insurance policies (about two in three); state benefits (90%); and company pension schemes (two-thirds of those where the victim was working as an employee).

About two in five recipients reported problems paying expenses before their settlement (usually domestic bills and general living expenses).

The overwhelming majority of claims (90%) were settled by reaching agreement with the other side; and one-half of recipients were satisfied with their settlement at the time.

Fatality recipients spent their damages in similar ways to the main sample: half spent it on home improvements; one-third on electrical goods; one-third on gifts for family or friends; and one-fifth paying back an overdraft or loan.

After receiving their compensation, only 8% of recipients said they had any problems paying bills or expenses. However, one-half did not think their compensation had been adequate to cover all losses and expenses and, at the time of interview, levels of satisfaction had decreased to 34%.

In common with the main sample, fatality recipients were strongly in favour of being paid a lump sum (68%) rather than in instalments (8%) or a mixture (11%).



## CHAPTER 14. SUMMARY AND OVERVIEW

### 14.1 Chapter 1 Introduction

The research was designed to elicit information from compensated accident victims about their experiences and circumstances several years after receiving their damages. Information was collected through a representative survey of 761 respondents, 654 of whom had suffered injury in an accident or a work-related illness; and 107 of whom had received damages as a result of the accidental death of a relative (usually a husband). These data were supplemented by in-depth qualitative interviews with 52 accident victims, most of whom had received substantial damages, and by information gathered from the solicitors' files of 92 survey respondents. The survey obtained information about the types of accidents and injuries which led to the claim for personal injury damages; the effects of the injuries (or bereavement) on work, earnings, household income, and future job prospects; the various types of costs and expenses which resulted from the injuries (or bereavement); respondents' use of, and satisfaction with, their compensation; the adequacy of damages in covering past and future losses and expenses resulting from respondents' injuries. Data were analysed within settlement bands as follows:

Band 1	£ 5,000–£19,999
Band 2	£ 20,000–£49,999
Band 3	£ 50,000–£99,999
Band 4	£100,000 or more

### 14.2 Chapter 2 The Survey Respondents

The sample comprised roughly equal proportions of work and road accident victims with a small proportion of victims of medical accidents and public liability cases. Accidents had occurred between 1967 and 1991, while settlements had been reached between 18 months and six years prior to the time of the interview in Spring 1993.

The majority of the sample were men, and the average age of the sample was 44. Some of the largest settlements had been made to the youngest sample members. Most respondents were living in large adult households, in owner-occupied houses.

Although the vast majority of the sample had been in work at the time of the accident, at the time of the interview the proportion in work fell to between one-half, among those in band 1, to one-quarter of respondents in band 4. The survey sample was much less likely to be economically active than the general population, despite having a younger age profile.

### 14.3 Chapter 3 The Aftermath of the Accident

The most common injuries suffered by the sample were broken bones, back and neck injuries and head injuries. Many respondents had spent long periods in hospital and a significant proportion had opted for private health care, including physiotherapy or osteopathy to aid the rehabilitative process.

The majority of the sample had experienced prolonged effects from their injuries such as mobility problems, psychological problems and continuing pain. Although respondents had required substantial care and assistance with daily activities, few had received nursing care in the home. Most of the care required was provided unpaid by relatives, friends and neighbours.

The proportion of the sample reporting that they were in only fair or poor health at the time of the interview increased with size of damages from over one-third of those in band 2 to over one-half of those in band 4. The proportion of the sample suffering from long-term health problems was much higher than the general population. The long-term effects of injuries is evidenced by the high proportion of respondents still suffering pain in all settlement bands. Many respondents reported being in constant pain, which was often severe. The experience of pain and its effects were referred to frequently during interviews.

Respondents were likely to require a high degree of future care, which would be provided by family and friends. At the time of the interview the vast majority of accident victims still found that their injury affected their work and daily activities. An overwhelming majority of those still affected by their injuries expected their condition to remain stable or to deteriorate.

#### 14.4 Chapter 4 The Compensation Claim

The majority of accident victims had to wait for very long periods before they received their damages, and the delay increased with size of the settlement. Among the lowest claims, one in four took more than four years to settle while among the largest claims, one-third took six years or longer to settle.

Respondents generally received less in damages than they had originally expected with a substantial minority accepting less than one-half of their original expectation. All but 9% of claims were concluded on the basis of an out-of-court settlement. Interim payments were received by a majority of respondents in the highest settlement band. Provisional damages were received by a tiny minority of respondents who had received settlements of over £50,000. However, a substantial proportion of respondents in each settlement band felt that they should have claimed provisional damages, reflecting post-settlement deterioration in health, failure to recover as expected, or perceived inadequacy of their damages.

Respondents' knowledge of the components of their settlement appeared to be incomplete. Most respondents believed that they had received money for pain and suffering and among those in work the vast majority reported that their settlements included some money for lost earnings before settlement.

The majority of accident victims had been satisfied with their settlement *at the time of settlement*, with the greatest degree of satisfaction among those receiving £100,000 or more and those receiving between £5,000 and £19,999. The lowest level of satisfaction was expressed by those who had received between £50,000 and £99,999. Despite dissatisfaction, settlements had been accepted primarily because respondents had been advised to accept, or because of fears of ending up with less, or fears of legal costs, or the strain of protracted litigation.



## **14.5 Chapter 5 The Effect of Accidents on Respondents' Jobs**

Among those at work at the time of the accident 43% returned to their job after taking some time off, and 54% never returned to the job they were in at the time of the accident (although 18% did eventually return to work in a different job). The likelihood of *not* returning to pre-accident jobs increased with the size of settlement.

Nearly all respondents who left the job they were in at the time of their accident said that they had left as a result of their injuries. Respondents had simply taken a decision to resign from their job, or had been made redundant (one in four), or had retired, or been dismissed.

Among those who did return to their job, over half had taken at least 6 months off work before returning. Upon their return, most (84%) said that their injuries affected the type of work that they could do in their job; nearly half (48%) temporarily worked shorter hours; and over half (53%) received lower pay for at least a period after their return.

## **14.6 Chapter 6 Work History**

A substantial minority of all accident victims never returned to any paid work after their accident. The larger the settlement, the less likely respondents were to return to work. Moreover, some of those who did return to their job said that they eventually had to leave because of their injuries. When this group is added to those who never returned to their job, the proportions leaving their job as a result of their accident were: 56% in band 2; 78% in band 3; and 88% in band 4.

The amount of time taken off work before returning increased with settlement size. Where respondents had returned to work there was some shift from predominantly manual work toward non-manual occupations, reflecting the effect of injuries on the ability to carry out strenuous work.

At the time of the interview about half of band 1 and band 2 respondents of working age were in work, with the number decreasing with size of settlement to 42% among band 3 respondents and one-quarter (27%) among band 4 respondents. Overall two-fifths of working-age respondents were in work, one in ten were unemployed, one-third were permanently sick or disabled, and one in ten had taken early retirement. Work activity at the time of the interview was closely associated with age. The proportion of respondents in work decreased with age, while the likelihood of being retired or permanently sick or disabled, increased with age.

## **14.7 Chapter 7 The Impact of Accidents on Respondents' Earnings**

Respondents who returned to the job that they were in at the time of the accident tended to receive somewhat lower pay when they returned, but only for a relatively short time. Respondents who never returned to their job, but who eventually returned to a different job, were likely to receive considerably less pay in their new job.

One-half of those victims who were in work both at the time of the interview and at the time of the accident had lower earnings at the time of the interview. A comparison of current

earnings with earnings at the time of the accident for all of those respondents in work at that time reveals that, on average, compensated accident victims were £169 per week worse off at the time of the interview than at the time of the accident. This difference varied between men and women, with men being worse off by £177 per week and women worse off by £108 per week. Only 13% of respondents were receiving higher earnings at the time of the interview than at the time of their accident, while 79% were receiving lower earnings.

#### **14.8. Chapter 8 Other Costs and Losses**

Half of the respondents in our sample had to pay extra costs as a result of their injuries, and the likelihood of having to pay these additional costs increased as size of settlement increased. The extra costs for which respondents most often had to make payments were aids or assistance, private medical treatment, and legal costs relating to their claim for compensation. One-fifth of respondents said that they expected to have to pay for further treatment or aids in the future.

Three in five respondents said that they had experienced financial problems *before* their settlement. The problems most often mentioned were: paying for extra travelling or heating expenses; paying domestic bills; paying for general living expenses such as food and clothing; paying the mortgage or rent; and paying for medicines.

About one-third of respondents said that they had borrowed money or accumulated debts as a result of their accident. One-quarter of respondents had to stop saving money, and one-half of respondents had to spend some of their savings in order to cover living expenses and the extra costs resulting from the accident.

#### **14.9 Chapter 9 Income From Other Sources**

The most common source of alternative financial assistance for those who had suffered loss of earnings and/or extra expenses was state benefits. Nine in ten respondents had received state benefits since the date of their accident, and both the likelihood of receiving benefit, and the number of benefits received, increased with size of settlement.

Only one in ten of our respondents had received any payments from insurance policies providing personal accident cover.

There were very few instances of other household members increasing their income by working longer hours or by starting a job. The opposite situation was, in fact, considerably more typical. About one-third of accident victims reported that another household member had *given up work altogether* or had worked shorter hours as a result of the victim's accident, thereby causing a *further loss* in household income.

#### **14.10 Chapter 10 The Use of Damages**

Accounts of the planning and use of damages revealed considerable prudence in the management of settlements. The majority of respondents reported that they had saved or invested some of their money and the likelihood of respondents doing so increased with the size of the settlement received. Even among those who received the lowest settlements, three

in five reported saving some of their money; among those who received £20,000 to £49,999 the figure was 83%; it was 90% for those receiving £50,000–£99,999; and among those who received £100,000 or more 97% reported saving or investing some of their money. The most common method of saving was to use building society and bank accounts. The figures on savings and investments show a concern among respondents to preserve their compensation settlements for the future, as well as a tendency to choose the more conventional and 'safe' means of investing their money. There was evidence that about one in five respondents were unhappy with the choices they had made and with the interest rates received.

Those who had not saved any of their damages (largely those receiving the smallest settlements) reported that there had been no money left over either because on receipt it had to be used to cover past expenses (about one-third of non-savers) or because it had been spent soon afterwards, for example on buying a house. A proportion of these, however, now regretted their failure to save part of their damages.

Although only one-quarter of respondents receiving settlements of less than £20,000 obtained financial advice after settlement, two-thirds of those receiving £20,000 or more received advice. Such advice was provided most often by bank or building society staff, and independent financial advisers. The vast majority of respondents were satisfied with the advice they had received although a minority (about one in seven) thought that the advice had been not very unhelpful or not helpful at all. It is, however, notable that among those receiving settlements of between £20,000 and £49,999 almost one-half (47%) had not received advice about the management of their damages, and among those receiving between £50,000 and £99,999 one-third (32%) received no advice.

Respondents most commonly reported that they had spent some of their damages on their home, either on home improvements or furnishings, or towards purchasing a home, or to pay off their existing mortgage. A large proportion of respondents spent some of their damages on electrical goods; paying off an overdraft, loan or other debts; and on a car. A proportion of respondents in all bands used some of their damages to provide gifts for family and friends.

Among settlements received within three years of the date of the interview, nearly three in four of those with the smallest settlements had spent over half or all of their damages, compared with two-thirds of respondents in band 2, one-half of respondents in band 3, and one-third of respondents in band 4. For settlements that took place four or more years ago, about half of the respondents in each of bands 2, 3 and 4 still had half or more of the damages left (48%, 52% and 44% respectively).

Respondents showed a strong preference for receiving their damages in a lump sum rather than by instalments or by a mixture of the two. Respondents' reasons for this were most commonly the desire to maintain control of their money, and to have all the benefit of any interest themselves. The majority of respondents (60%) also felt that accident victims should have complete freedom to choose how to spend their compensation, regardless of circumstances.

## 14.11 Chapter 11 The Adequacy of Damages

Three in five respondents felt that their damages had been sufficient to cover past losses and expenses. However, two in five said that their damages had not been sufficient to cover past losses and the most frequently cited loss that had been under-compensated was their loss of earnings. The reasons given by respondents for the failure of their damages to cover past losses were that respondents had incurred extra expenses that had not been anticipated at the time of settlement, or that the expenses known about at the time of settlement had not been fully taken into account in the settlement. In order to meet these 'uncovered' expenses, respondents had used their savings, taken loans, and cut back on ordinary living expenses, and holidays. The picture was similar when contemplating future expenses. The most frequently mentioned future expenses that respondents felt would not be covered by their damages were increases in day-to-day living expenses resulting from their injuries.

The majority of respondents in each settlement band thought that their living standard at the time of the interview was the same as before their accident (or better in a few cases) However, between one-third and two-fifths of all respondents said that their standard of living had suffered as a direct result of their accident. Respondents who had received between £50,000 and £99,999 were the most likely to say that their standard of living was now worse than at the time of the accident. Respondents' anticipation of their future standard of living, however, was quite different. About half in each settlement band thought that their standard of living in ten years' time would be lower than they had enjoyed before the accident.

Respondents' level of satisfaction with their settlement at the time of interview showed a dramatic change from their satisfaction at the time of the settlement, with between three-fifths and three-fourths in each band saying that they were now dissatisfied with the level of their damages. The change in perception was most marked among those receiving the highest level of damages. At the time of settlement this group expressed the greatest satisfaction (68%): at the time of the interview they were the least likely to be satisfied (27%). The most common reasons for dissatisfaction were that the settlement represented inadequate compensation for impact of the injuries on their whole way of life, and that the damages had not sufficiently made up their losses in earnings. Dissatisfaction was strongly correlated with the extent to which the injuries suffered affected the type of work that respondents could undertake or their daily activities.

Nearly all respondents believed that compensation should be paid in respect of pain and suffering, even if a victim were unconscious and thus unable to benefit from the money themselves.

Information from solicitors' files about the relationship between claims and final settlements showed that the larger the claim the greater the percentage loss between claim and settlement. The information from files also indicated that respondents had relatively poor knowledge of the components of their settlement, especially in relation to medical expenses and losses other than loss of earnings.

There appeared to have been a relatively high degree of accuracy in the predictions made by plaintiff's experts relating to future ability to work. However, in a substantial minority of

cases (14%) there was a clear discrepancy, and in two-thirds of these cases the prediction had been more favourable than the outcome. A comparison of the length of time between the date of accident and the date of settlement suggests that the accuracy of these predictions was not greater with a longer time-lag.

Solicitors' files also reveal that the legal cost of settling personal injury claims is high and that the longer claims take, the higher are the legal costs. The average amount of plaintiff's legal costs (excluding disbursements) in the subsample was £6,936 with a range of £1,342 to £53,265. The total legal costs (taking into account the defendant's costs) would be at least double that amount.

#### **14.12 Chapter 12 Structured Settlements**

The small number of interviews conducted with recipients of structured settlements reveal considerable satisfaction with this form of damages payment. The chief advantages were seen as providing security for the future and the removal of responsibility for planning and managing investment of capital. However, despite the perceived advantages of the form of payment, recipients of structured settlements nonetheless expressed concerns about the adequacy of the settlements to cover future needs. In common with those who receive lump sum payments, initial satisfaction with the amount of money received at the time of the settlement can often turn to dismay later when, with the benefit of hindsight, compensated accident victims recognise the real costs of physical impairment, the true extent of their losses, and the imprecision of assessments of future needs and expenses at the time of the settlement.

#### **14.13 Chapter 13 Fatalities**

Among those who received compensation as a result of a fatal accident, nine in ten were women. The mean age of this group at the time of interview was 50. About one in five were married (including 17% of those who received damages because of the death of a spouse). In 95% of cases, the recipient was paid compensation because of the death of a spouse. The victims, therefore, were nearly all men; their mean age at the time of death was 45. Nearly all victims were in work at the time of accident; over half were classed as skilled manual and one-quarter were non-manual workers.

As well as losing the victims' earnings, two-fifths of recipients who were in work said they left their job because of their bereavement. At the time of interview, half of recipients were in the labour market, with 40% in work and 8% unemployed. Most of the rest were looking after their home or retired. Recipients did have other sources of income, including: insurance policies (about two in three); state benefits (90%); and company pension schemes. About two in five recipients reported problems paying expenses before their settlement (usually domestic bills and general living expenses).

One-half of recipients were satisfied with their settlement at the time. Fatality recipients spent their damages in similar ways to the main sample: half spent it on home improvements; one-third on electrical goods; one-third on gifts for family or friends; and one-fifth paying back an overdraft or loan.

After receiving their compensation, only 8% of recipients said that they had experienced problems paying bills or expenses. However, one-half did not think that their compensation had been adequate to cover all losses and expenses and, at the time of interview, levels of satisfaction had decreased to 34%. In common with the main sample, fatality recipients were strongly in favour of being paid a lump sum rather than in instalments, or a mixture.

#### 14.14 Overview of Research Findings

This research has generated a wealth of data about the long-term effects of accidents on jobs, income, family and social life. Against this background an assessment has been presented of the extent to which damages prove to be adequate in meeting past and future losses and extra expenses. This information provides a factual basis upon which the remedy of damages can be appraised and it is worth focusing on some notable findings of the survey, and considering their implications. Before so doing, however, it is important not to lose the sense of the wider context of accidental injury.

##### *Compensated accident victims in context*

In Chapter 1 it was noted that the findings of this Report refer to the population of *compensated* accident victims, and not to *all* accident victims. The accident victims included in this study are those who have made a claim for damages through the tort system and succeeded with that claim. In this respect they may be considered a 'fortunate' minority. It is well known that only a fraction of all victims of accidental injury seek and obtain compensation for their injuries. The most recent estimate of the proportion of accident victims (sustaining more than minor injuries) who obtain damages through the tort system is twelve per cent.<sup>1</sup> The widespread failure to commence a claim for damages, or to succeed with a claim, results from a number of factors including: lack of claims consciousness; lack of knowledge of the legal system; the inability to finance a claim or the unwillingness to risk the substantial cost of losing an action among those ineligible for legal aid; and, importantly, the fact that in many cases the tort system offers no remedy for accident victims because there has been no negligence in the circumstances of the accident. Even among the minority who commence claims for damages, a proportion abandon their claims without achieving a settlement, for example, because of evidential difficulties, or the pressure of mounting legal costs combined with the customary resistance of claims by defendants.

The majority of those who have the misfortune to suffer accidental injury, therefore, do *not* receive damages through the tort system to compensate for their losses and extra expenses. Although their injuries will have the same impact on their ability to work, the same impact on their ability to function independently, and the same impact on their family and social life as the injuries of compensated accident victims, 'uncompensated' accident victims and their families must simply depend on their own savings and social security benefits to cover the losses and extra expenses resulting from their injuries. In focusing on the experiences and perceptions of compensated accident victims, it is important not to lose sight of the wider issues.

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<sup>1</sup> Harris et al (1984) op cit.

### *Delay in the litigation process*

The problem of delay in the civil litigation process has been the subject of comment, research and procedural reform over many years. Few would dissent from the view that the cost and delay of civil proceedings present major challenges to the administration of civil justice. This study confirms that there are substantial delays in the settlement of personal injury claims, and reveals that the larger the amount of damages in issue, the longer accident victims are forced to wait for their compensation. Although some degree of delay is inevitable while the parties wait for the medical condition of the plaintiff to stabilize, it is notable that a substantial proportion of cases, both large and small, remain unresolved four years after the date of the accident. There are a number of important implications of this delay. During the litigation process victims and their families face a prolonged period of financial difficulty during which savings are depleted, debts accumulate and legal costs increase. These extended periods of financial hardship, in addition to physical suffering, affect levels of satisfaction with damages and perceptions of adequacy. Delay in receiving damages also influences choices about the use of money, as accident victims seek to make up for the material comforts that they have lacked in the years while they waited for their case to be settled.

Accident victims whose lives have been shattered in an instant by the carelessness of others feel keenly the unfairness of their misfortune. A system which forces them to wait unacceptably long periods for compensation that will help to rebuild their lives, or at least alleviate financial hardship, appears to compound the unfairness. Equally importantly, the strain of litigation, and uncertainty about the future, may delay recovery, which has an impact on the likelihood that accident victims will eventually be able to return to the labour force and find suitable work.

### *The relationship between injury, effects and damages*

In Chapter 1 attention was drawn to the fact that the amount of damages received by accident victims who succeed with a tort claim is a reflection of past and future losses and expenses, and not a measure of the seriousness of their injury and degree of continuing impairment. The findings of this study highlight the fact that relatively serious injuries may not necessarily result in substantial settlements and that minor injuries may have unexpectedly severe consequences. Within the lower settlement bands there were respondents who had suffered serious injuries that had a substantial impact on their work and family lives, but who had received only modest settlements, for example because of their age, their pre-accident activity status or other factors. Also within the lower settlement bands were respondents who had suffered relatively minor injuries that had resulted in surprisingly serious consequences. This is reflected in the analyses of long-term health problems and work histories following accidents.

### *The failure to return to work and adequacy of damages*

A particular concern is the high proportion of accident victims in all settlement ranges who did not return to work at all after their accident, or who returned for a period and were then forced to leave work as a result of the continuing effects of their injuries. For many of these victims, the amount of damages received did not cover their past losses and will not cover their future loss of earnings and the extra expenses resulting from their injury. It is notable

that many accident victims fail to realise, in the period after settlement, just how little they have received, relative to their potential losses, and for how long they are likely to be affected by their injuries. Accident victims are often not aware of the extent to which they will be dependant on their damages in the future. In this respect, victims of catastrophic injury may be in a more favourable position because their permanent inability to carry out normal work is evident at the time of settlement. For many others, however, it appears that at the time of settlement their own expectations of their ability to return to work in the future are unrealistic. It is not entirely clear whether this is because experts fail to anticipate the extent of future incapacity, or whether the effect of a prolonged recovery period reduces the chances of finding work, or whether appropriate work is unavailable. What is clear, however, is that many respondents are unprepared for the impact of their injuries on their long-term capacity for work.

This problem is reflected clearly in respondents' changing perceptions of the value of damages. Although most respondents are satisfied at settlement when presented with what appears to be a very substantial sum of money, this sense of satisfaction alters dramatically over time as accident victims are faced with the reality of long-term ill-effects of their injuries and a reduced capacity for work.

#### *The need for independent financial advice*

Although most respondents are keen to preserve the value of their damages for the future, the evidence of the survey suggests that accident victims on the whole are not in the best position to yield the maximum returns from their damages. The research indicated that the availability of independent financial advice is patchy; while some respondents were deluged by advisers, others had little idea where to seek advice or from whom. Although the majority of accident victims received some advice, it is striking that among those receiving settlements of between £20,000 and £49,999 almost one-half had not received advice about the management of their damages, and among those receiving between £50,000 and £99,999 one-third received no advice.

There are also questions to be asked about the sources of advice used. The most common source of advice was from banks and building societies and the most common means of saving or investing damages was bank or building society accounts. The responses in the survey and in qualitative interviews suggest that banks are consulted because they are easily accessible, and equally importantly, because banks and building societies are viewed as 'safe' choices. Some of the responses manifest an image of banks as more cosy, more independent and more interested in the individual's well-being than other sources of investment advice. The reality of the investment services offered by banks is, of course, that they operate in a similar way to other institutions and charge for their services. It is not clear, however, that accident victims who simply take their damages in to their local branch necessarily understand this to be the case.

What is clear, is that given the need for the value of damages to be preserved for as long as possible, even those who receive relatively modest settlements would benefit from genuinely independent and expert advice about how to deal with their damages. Although accident victims are not profligate, they may regret the choices that they make, both about savings and expenditure. Good quality advice at an early stage would not reduce the control over



damages that appears to be so valued by accident victims, but it would ensure that decisions about the use of damages were well-informed.

### *The burden of unpaid care*

The research also provides ample evidence of the past and future burden of unpaid care shouldered by the parents, spouses, friends and neighbours of injured victims. Although questions were not asked during the survey about the impact of caring on spouses and relatives, other than to identify situations in which carers had been forced to give up paid employment, information given during qualitative interviews provided evidence about the strain to which long-term carers are exposed. The impact of providing long-term care can be dramatic, damaging the work prospects of those providing the care, and placing carers under considerable physical and emotional strain.

### *Looking forward*

Qualitative interviews revealed a conspicuous lack of advice or counselling for victims of accidental injury. This is true for psychological and emotional difficulties, and for employment difficulties, as well as for the management of damages already discussed. Although accident victims have considerable contact with experts during settlement negotiations, attention at this stage naturally concentrates on those matters relevant to the claim. After years of focus on the circumstances of the accident, on the effects of injuries, on the reduced capacity to work, and the inability to perform hundreds of small daily tasks, there is a need for attention to be constructively diverted toward the future. There is a need for psychological support; there is a need to address the problem of the debilitating effects of pain; and there is a need to re-train those who are no longer able to undertake their normal work. In short, there is a need to help accident victims to adjust to their circumstances and to envisage a useful and productive future for themselves, albeit different from their pre-accident expectations.





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