Out of Hours
Can I get compensation, doctor?

Patients with possible occupational illness may ask their doctors about compensation. Here we describe two scenarios, osteoarthritis of the knee and asthma, in which this issue may arise, giving guidance on how to advise the patient.

The patients. Mr White, aged 58 years, has difficulty climbing ladders at work from a painful right knee. Examination shows signs of osteoarthritis, later confirmed radiographically. He has worked for 35 years as a building labourer, and enquires about compensation. Mrs Brown, aged 45 years, presents with intermittent asthma symptoms over 2 months, gradually worsening. Some of her colleagues in the factory where she works have had similar symptoms, and she wonders if it is work-related and compensable.

Two common conditions. How do you handle the compensation issue? First, establish a diagnosis and assess its influence on the patient's life and job. This leads to a decision on management. It is necessary to consider causation, since if the work were responsible return might be inadvisable.[1] Mr White's job involves much climbing while carrying loads as well as kneeling. Mrs Brown recounts exposure to fumes from metal-working machines, and has noticed improvement when off work. It seems possible that both conditions are work-related.

Compensation. Compensation implies disablement that may be alleviated by financial support. Two pathways are available: statutory Industrial Injuries Disablement Benefit (IIDB) or Civil Law compensation. In both the compensation is assessed in terms of the severity of the injury or impairment, but they differ fundamentally.

In civil litigation the patient must prove the illness was caused or materially contributed to by the work they do, and that this was more likely than not a consequence of employer negligence. This requires consulting a lawyer. Advice may be had from a trade union or from Citizen's Advice, and the lawyer may operate a no-win-no-fee service. It is wise simply to inform patients of these facts so that they can decide whether to proceed.

IIDB is managed by the Department for Work and Pensions (DWP) to compensate people for work-related injury or illness, without implying fault or negligence. It was originally instituted for employed workers (the self-employed are not eligible) who could not afford a lawyer, and was limited to injuries and a few classical occupational diseases (for example, lead poisoning or anthrax). Since then many other known occupational diseases have been added. These have been grouped together under causes: physical (A), biological (B), chemical (C), and miscellaneous (D).

More recently the list has been expanded to include some diseases and conditions that occur commonly in the general population but may also be caused by work, notably chronic obstructive pulmonary disease (COPD), asthma, and osteoarthritis of the knee. It has been necessary to devise an equitable way of determining whether the disease or condition is more likely than not to have resulted from exposure in a specific trade or occupation. Sometimes this is possible from individual proof, as when a claimant has evidence of asthma being caused by a specific agent, but in most cases, say of suspected industrial cancers or knee arthritis, it has been necessary to obtain sufficient epidemiological evidence to show that risk of the disease or condition in question is doubled in a particular trade for that occupation to be 'prescribed'. This allows the assumption of causation to be made, so a worker with the disease in that trade does not have to provide individual proof of work causation. However, occupations in which there may be some evidence of increased risk, short of doubling, do not make it onto the schedule of prescribed diseases. Thus coal miners may obtain compensation for COPD whereas workers exposed to dusts in occupations in which there is insufficient epidemiological evidence are not. The scheduled diseases, occupations, and how to apply are easily found online.[2]

The regulations are under constant review in the light of current knowledge by the independent Industrial Injuries Advisory Council,[3] which advises the minister. Changes may result from investigations of the literature, not infrequently following approaches by others including doctors, trades unions, MPs, and members of the public.

CONCLUSION

Knee osteoarthritis is prescribed only in coal mining and carpet laying (A14),[2] both trades that carry a high risk from repeated kneeling. Construction workers are not included as there is at present insufficient evidence on specific occupations within this broad group. Mr White's only means of obtaining compensation is through Civil Law and, if he believes his employer has been negligent, he should consult a solicitor.

Mrs Brown has been exposed to cutting oils while working at the factory and this is a recognised cause of asthma. The website does not yet name this specific exposure but it comes under the group of 'known sensitising agents' (D4x);[2] she can therefore be advised to make a claim through the DWP. The website gives information on how to do this. She may also be advised that it is her right to consult a solicitor on possible civil action against her employer.

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Competing interests
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