National Insurance Adjudication

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The National Insurance scheme is contained in the National Insurance Act (Northern Ireland), 1946, several amending statutes, and scores of regulations made under all those Acts

Some of the phrases used in the Acts and regulations seem especially designed to cause disputes as to their meaning and in their application In fact, they were probably intended as a compromise between an indication of policy and flexibility in the application of the policy to individual cases For example, the rate of a man's sickness benefit may depend on whether he is " residing with " or " wholly or mainly maintaining " his wife , a woman's sickness benefit may depend on whether her husband is incapable of self-support " for a prolonged period " , and the efficacy of any claim made out of due time will be determined by asking whether there was " good cause " for the delay

This is not merely an addition to the chorus of disapproval of legislative draftsmanship It may further the objects of the scheme to employ terminology which gives the adjudicator a wide discretion that depends on whether the adjudicator exercises his discretion with the policy in mind The point is that there are countless expressions strewn around the legislation whose application in any particular case will be the result of a policy preference by the adjudicator, and not the result of a lexical investigation Even the question of whether a person is sick or unemployed can be a policy question

The general outline and working of the scheme are clear It is probable that in the vast majority of claims payment must without doubt be made or refused But it is in the peripheral areas that friction and discontent are likely to occur Much of the detail of the scheme will therefore depend not on a reference to the words of statutes or regulations but on the way in which the adjudicating bodies resolve what are called " questions "

Questions are divided into three categories First, some questions, e g , the age of a child, which also arise in connection with family allowances, are determined in the same way as under the Family Allowances Act (Northern Ireland), 1945 Secondly, a few questions are within the sole competence of the Ministry of Labour and National Insurance to decide, e g , a person's contribution record Finally, most disputes go through the three-tier procedure The first step is made by an insured person claiming benefit from the ministry The question is decided by an insurance officer, or referred by him to a local tribunal If the insurance officer decides against the applicant, an appeal lies to a local tribunal Either side may appeal from a local

tribunal to the umpire Questions of law may be taken to the courts, but never have been It is with the decisions of the umpire that this paper will be chiefly concerned

Naturally, most claims never get further than the insurance officer, and of those which go on appeal to the local tribunal few reach the umpire The only known method of finding out how insurance officers do their work is to ask them, and to ask all the persons who have made claims, and try to make something out of the conflicting answers Much the same is true of the local tribunals These consist of an employers' representative, an employees' representative, and a legal chairman Their proceedings are private, and legal representation is not allowed A lawyer cannot enter to do justice or to watch it being done (This is not a complaint merely an explanation of the shortage of information) These local tribunals have to record their decisions in writing, and must give reasons The decisions are not published, and are not available for inspection To judge from reports of cases which go on appeal to the umpire, these grounds tend to be of the sketchiest variety If the tribunals operate in the same way as do local appeal tribunals under the National Insurance (Industrial Injuries) Act (Northern Ireland), 1946, the standard of care with which they determine questions varies tremendously from one set of personnel to another

Either side may appeal from a local tribunal to the umpire, who may give his decision on the papers or conduct an oral hearing At this stage legal representation is allowed Decisions of the umpire, like those of local tribunals, have to be given in writing but are not published Selected umpire's decisions are duplicated and circulated for the guidance of local tribunals They are very similar to law reports in style, but tend to be much shorter (and could be shorter still if much repetition of statutory provisions were omitted) They generally consist of a statement of the relevant facts (so far as these are known), the decision of the local tribunal and the grounds for it, the submissions made to the umpire, and his decision and reasons for arriving at it Attempts to persuade publication in the public interest have so far failed The fact that a more durable record of the decisions than that at present made would greatly help officials concerned with administering the scheme has also failed to induce publication This is partly a matter of economy But the Ministry's refusal to publish is backed up by a statement that the umpire has not departed significantly from the published decisions of the commissioners under similar schemes in Great Britain One might retort that there is no reason for taking the Ministry's statement on trust One might also retort that it is necessary to see the decisions in order to decide whether the umpire has given reasons which justify taking the same line as in Great Britain Moreover, the umpire and his colleagues across the water do not in fact always see quite eye to eye For example, in case C I 71/50, the commissioner in Great Britain decided that there was no time limit for claiming a disablement gratuity under the industrial injuries scheme In decision 1/51 (I I), the Northern Ireland umpire decided that a gratuity must be claimed within a month or forfeiture would result In two later decisions (R (I) 27/52 and R (I) 51/53), the commissioner in Great Britain followed the precedent of 1950 Many people would probably prefer the logic of

the Northern Ireland umpire, but all claimants would prefer the Great Britain result

The general outline of the scheme is set out in the legislation The Acts and regulations give enough detail to constitute a comprehensive (and frequently comprehensible) guide for those who have to utter the final word There are many national insurance problems which can be answered by a session with the enactments There are many that can't For these, one must also be able to guess what the adjudicator is likely to do In many spheres, the umpire decides what the national insurance scheme provides Two important questions therefore are— (i) what and how has the umpire decided so far ? (ii) how ought the umpire to decide questions ? One might start by having a look at the largest class of questions to reach the umpire claims for unemployment benefit

II

The following is a table of the umpire's circulated decisions on unemployment benefit (other than on claims for increases of benefit) during the first seven years of the national insurance scheme

Matter in dispute	Decided against claimant	Decided in favour of claimant	Total
Whether claimant unemployed (note 1)	17	7	24
Whether claimant available for employment	13	7	20
Whether claimant voluntarily quitted his employment without just cause	16	2	18
Whether claimant a seasonal worker (note 2)	6	2	8
Whether unemployment due to stoppage in consequence of trade dispute (note 3)	6	0	6
Whether claimant dismissed for industrial misconduct	3	2	5
Whether claimant on holiday with pay	3	1	4
Whether claim made too late	1½	½	2
Whether claimant properly refused training (note 4)	1	0	1
Allegations of procedural errors	1	4	5
TOTAL	66½	25½	92

Note 1 The people as to whom it was doubtful whether they were unemployed or not were farmers (6), schoolteachers in school holidays (3), a university kitchen maid in vacation, shore fishermen (2), a watchman, a fitter at a spinning mill, a deserter from the forces, a college student, a church organist, a tractor owner (who stood hopelessly by, waiting for hirers in a hirers' market), a newspaper reporter, a dock labourer, a gentleman who did unpaid repairs to a school playground at the request of the parish priest, and others with unstated ways of working during unemployment (3) A comparison of the case of the university kitchen maid—No 3/54 (U B)—with one of the schoolteacher cases—No 20/50 (U B)—is helpful in showing the umpire's approach [1]

[1] See p 35

Note 2 A seasonal worker can be roughly described as someone who works part of each year and claims unemployment benefit the rest of the time He doesn't get it The eight whose cases reached the umpire comprised odd job men (2), a turf cutter, a roadman, a school dinner attendant, a flax scutcher and grower, and two unstated professions

Note 3 Where a person is unemployed as a result of a stoppage of work due to a trade dispute, no benefit (subject to certain qualifications) is payable The extent of the deprivation is indicated by decision No 115/51 (U B) In this case, the stoppage resulted from a lock-out, yet the employee was held disqualified

Note 4 This case—No 5/54 (U B)—shows how exasperating the task of the administrator can be The applicant said "I am not willing to accept this training now as my friend who was also going has now refused and I would not go by myself"

General Comment

The first noticeable feature, perhaps, is that of 92 claims only 25 were wholly successful, with 1 allowed in part A speculation as to the plausible reasons for the high percentage of casualties suggests the following possibilities —

(1) Insurance officers are so accurate in their assessments, or so favourable to claimants, that appeals tend to be extravagant gestures on the part of claimants with little merit
(2) As a variant of the first possibility local tribunals are so accurate or favourable to claimants, and insurance officers so reluctant to appeal, that cases reaching the umpire are largely hopeless endeavours by meritless claimants
(3) Claimants' cases are badly presented
(4) The umpire is biased against claimants
(5) It is an accident of the selection of decisions for duplication and circulation

(1) As has already been suggested, the vast majority of claims made to insurance officers must be clear cut for success or failure Where the claim is allowed at this stage, no more will be heard of it (unless circumstances change) If it is disallowed, the insurance officer is likely to be right Moreover, in the case of many insured persons there is a preliminary sieve before the insurance officer is reached Trade unions, and in particular the large unions, offer advice to their members on national insurance matters Officials of the unions, if not exactly expert (in the way you would expect an accountant to be an expert on taxation), do spend a fair amount of time trying to master the details of the scheme, sit on local tribunals, and represent members at hearings They can therefore give knowledgeable advice But of course not everyone belongs to a trade union, not everyone who does belong seeks advice from officials, and not everyone who receives advice takes it

That this first suggestion has some truth in it can be supported by examples from the circulated decisions Some appeals to the umpire are devoid of prospects of success An instance of this is Umpire's Decision No 5/54 (U B) [2] The young woman concerned

[2] See note 4, above

failed all the way up A sociable young thing may find it psychologically impossible to leave home and go alone to a provincial training centre in a strange country, but it is clear that the policy of the scheme is to take no account of such factors

(2) There is some, if slight, ground for believing that local tribunals are more favourably disposed towards claimants than is the umpire Taking the total number of circulated umpire's decisions on unemployment benefit in which the local tribunal's attitude is also known (78 cases in the first seven years of the scheme) the local tribunal decided in favour of the claimant 39 times, and the umpire 22½ times The significance of these figures is slightly altered by knowing that the two adjudicating authorities were agreed in favour of the claimant in only 7 cases Similarly, while the local tribunal decided against the claimant 39 times to the umpire's 55½, they were agreed against the claimant in only 23½ cases A striking feature of the situation is that the umpire disagreed with the local tribunal in well over half the cases reaching him This at least suggests that frivolous appeals are rare, but one wonders how many umpire's decisions would be reversed if there were a further appellate stage Possibly the discrepancies can be partially attributed to the fact that the umpire is a legal specialist, while the local tribunal consists of two laymen and a lawyer who devotes occasional hours to national insurance adjudication, and partially in some cases to the fuller factual information available to the umpire The following table sets out the position in more detail —

Total number of U B cases reaching umpire	97
Cases not appeals or where local tribunal decision not known	19
Cases where local tribunal decision known	78
Cases where local tribunal and umpire agreed	30½
Cases of agreement in favour of claimant	7
Cases of agreement against claimant	23½
Cases where local tribunal and umpire disagreed	47½
Cases of disagreement where umpire favoured claimant	15½
Cases of disagreement where umpire against claimant	32

While it is possible to show that local tribunals find in favour of claimants more often than the umpire, it cannot be shown that insurance officers are reluctant to appeal in such cases In 39 cases out of 78, the matter came before the umpire by way of the insurance officer appealing against a finding favourable to the claimant by the local tribunal (In some other cases, the insurance officer in substance appealed against a tribunal decision unfavourable to the claimant)

(3) Before local tribunals, claimants must either conduct their own cases or be represented by a friend (who may be anyone except a lawyer) Many of the claimants are not of sufficient intellectual calibre to ask their trade union for representation, and those who appear in person make no attempt to struggle with points of law They are also unable to marshal facts or to appreciate what sort of evidence to bring with them Their technique appears to consist of coming along to the tribunal and nothing more (though they do not always do that) Having arrived, they often cast the onus of con-

ducting the case entirely upon the tribunal Occasionally they are prolific complainers or demanders, but seldom if ever do they present a case Many claimants are represented by trade union officials, but the unions do not maintain full-time staff for the job The advocate of this kind will spend only part of his time on national insurance and only part of that time in advocacy He will sometimes be sent down to the tribunal at a moment's notice, and given his only information about the case by the claimant during five minutes while they wait for the case to be called The standard of performance of the trade union officials who do this work varies a lot Some cannot marshal facts comprehensibly Many are inadequately equipped with supporting evidence Some do perform these tasks efficiently, and argue tenaciously But few (if any) of them can argue points of law other than those well known to be raised by tribunals They do not take the initiative in legal argument They do not make novel or subtle submissions They are too prone to accept previous decisions as incontrovertible, and they do not appreciate the distinction between what an earlier adjudicator decided and what he said They are disposed to treat umpire's decisions, word by word, in the same way as statutes and regulations are used

Legal representation is allowed before the umpire, but is comparatively rare There is no legal aid scheme Paradoxically, the man who least needs national insurance benefits—the one who can afford a lawyer—is the most likely to put up a plausible argument to get them from the umpire Actually, solicitors sometimes do appear without a fee

If the policy of the Acts is to secure to claimants what they are entitled to under the scheme (and not to allow the Ministry to get away with paying as little as possible), then equality of presentation of cases is required as far as attainable And it must be remembered that many of the people concerned as claimants are ill-educated, illiterate, dull-witted, or mentally deficient So far insufficient attention has been paid by the Ministry to this problem What is needed is a perpetually available panel of lawyers, without their procedural technicalities, without their rules of evidence, and without their fees There are no such people The trade unions might provide specialists, but some are perhaps too small to afford the service, while none would probably be willing to cater for non-members The Ministry could provide people to do this Or solicitors or counsel, coupled with a system whereby their clients did not have to pay, could be employed It is not enough that insurance officers strive to be impartial, even when making submissions to tribunals and the umpire It is not enough if the adjudicator tries to see the claimant's arguments At best they can only frame his submissions for him on the basis of the facts he gives them This marshalling of the relevant facts is an expert job How badly it is often done is testified to by the frequency with which the umpire has to speculate Many of the duplicated decisions show that important facts were undetermined This is not pleading for a new law-mine to be opened to the legal profession, but an effort to point out the need for expert presentation of claims The object to be achieved is justice in accordance with the policy of the scheme The elements which have to be compromised are speed, informality, economy, and competence

(4) To suggest that the umpire is biased against claimants is a mud-slinging operation, I do not suggest it is so, and anyway it is best to stick to the facts, which are (*a*) the umpire does not usually see his task as one which includes discerning and advancing policy, but as one solely of grammar and logic, (*b*) the umpire tends to regard the claimant as a plaintiff who must discharge a burden of proof

Umpire's Decision 115/51 (U B)[3] can be taken as the first example It will be noticed that the umpire gives no reason for holding the view that a person unemployed because locked out is disqualified from receiving unemployment benefit All he says is that a stoppage may be due to a trade dispute whether it is a strike or a lock-out That may be colloquial language it does not follow that that is the meaning of " stoppage due to a trade dispute " in the Act The question the umpire should have asked himself was what is the object of the Act in enacting this disqualification ? To this, he may have found a couple of possible answers (*a*) to make sure that the state does not finance strikes, (*b*) to make sure that the state does not finance any party to any trade dispute, resulting in strike or lock-out In favour of the first, it could be said that employers would find it unfair to contribute to a fund which may be used to strengthen the hand of their industrial opponents In favour of the second, it may be said that if workmen are to be disqualified by striking but not when locked out they will always try to drive the employer into locking them out Another argument is that humane employers will be more disposed to lock out workmen if the latter will thereupon receive payments from the state This sort of point was made in the Senate when the bill was going through in 1946 These arguments in favour of the second answer may seem a little far-fetched Against it, it can be pointed out that there is a separate disqualification for industrial misconduct, also, that employed persons should not suffer because they have a Blimpish employer The first answer is minimal the second debatable The criticism here of the umpire is not for adopting the wider interpretation, but for the manner in which he did so

This section can be ended by a comparison of Umpire's Decision No 3/54 (U B) with No 20/50 (U B) In 20/50 (U B), a part-time schoolteacher, who received no pay during school holidays, and was free to return for each new term or not as she pleased, was held unemployed in holiday time In 3/54 (U B), a university kitchen-maid, who received £2 16s 0d in respect of the Easter and Christmas vacations and £10 in respect of the summer vacation, in each case if she returned for each new term, which she was free to do or not as she pleased, was held to receive these sums as wages, and therefore to be employed !

III

The pattern of far more claimants being unsuccessful than successful before the umpire is maintained throughout all the other benefits available under the National Insurance Act, 1946 The following tables, which do not include claims for increases of benefit, show the types of dispute and the results

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[3] See p 32

Benefit and Type of case	Total	Claimant successful	Claimant unsuccessful
Retirement pension			
Whether claimant has retired	21	6	15
Procedural errors	2	2	—
Relevance of evidence	1	—	1
TOTAL	24	8	16
Sickness benefit			
Late claim	17	3	14
Whether claimant incapable of work	14½	2	12½
Procedural errors	6	1½	4½
Whether claimant working	3½	—	3½
Absence from Northern Ireland			
Whether for treatment	3	—	3
Failure to attend medical examination	1	1	—
Overlapping benefits	1	—	1
TOTAL	46	7½	38½
Maternity benefit			
Whether confined at home	1	—	1
TOTAL	1	—	1
Death grant			
Whether expenses incurred	1	—	1
Death outside Northern Ireland	1	—	1
Not cashing order within six months	1	—	1
Claim by body corporate	1	—	1
Late claim	1	1	—
TOTAL	5	1	4
Widows benefit			
Widowed mother's allowance whether reduced by earnings	1	—	1
TOTAL	1	—	1
Guardian's allowance			
Whether relevant child an orphan	1	—	1
TOTAL	1	—	1
Unemployment benefit			
Unemployment benefit (see earlier table for details)	92	25½	66½
All benefit			
Total of all kinds of benefits	170	42	128

Out of all these cases under the National Insurance Act which went before the umpire during the first seven years of the scheme and were considered worth duplicating, less than a quarter were decided in favour of the claimant The five main possible explanations considered in connection with unemployment benefit are all relevant here They need not be considered all over again But the criticism of the

umpire's method of determining questions can be developed by taking examples from the major areas of friction

Looking at the table on sickness benefit, it will be seen that the largest casualty rate was for claiming outside the prescribed time, a catastrophe which is absent or insignificant in the case of the other benefits This may be due to a combination of the short time allowed for claims and the umpire's restrictive attitude to what constitutes good cause for delay Until March, 1952 a person had either to claim sickness benefit or give notice to the ministry of his incapacity within three days If he gave notice, he had to claim within ten days from the day of sickness That is still the position except for persons making their first claim to sickness benefit As from April, 1952, they have twenty-one days in which to claim

In all seventeen cases reaching the umpire on late claims for sickness benefit, the issue (or one of the issues) was whether the claimant had shown good cause for delay (which would result in the period for claiming being extended) In no less than ten of these cases the umpire ruled that ignorance of the prescribed time was not good cause for failure to claim within the time The other grounds considered were —

(*a*) The claimant being misled by the ministry is good cause (one case)

(*b*) Wrong advice about claiming given by a doctor is not good cause (one case)

(*c*) Being misled by the employer (a government department) giving the impression it has a special arrangement with the Ministry of Labour and National Insurance is good cause (one case)

(*d*) The employer or a friendly society demanding first look at the doctor's certificate (so that it cannot be sent to the ministry in time) is not good cause (two cases)

(*e*) Belief by the claimant that his solicitor is attending to the matter is not good cause (one case)

(*f*) That the claimant would find it inconvenient to claim (one case) or does not claim through thoughtlessness, negligence, or indifference (one case) is not good cause

(*g*) That the claimant mistakenly believes he will be ill for only a very short period is not good cause (one case)

(*h*) That the claimant mistakenly believes he will get full pay during sickness is not good cause (two cases)

(*i*) That the employer tells the claimant he will get full pay during sickness, and then refuses to pay, is good cause (one case)

(*j*) Being too ill to attend to claiming (two cases) or any other physical hindrance beyond the claimant's control (one case) is good cause

Obviously all the items listed are causes for delay What is a good cause ? The umpire seems to have thought that a cause was good where it would operate on a reasonable and knowledgeable person intending to take full advantage of his rights under the scheme

Why should this be ? Is forfeiture for delay a punishment from which a supplicant must exculpate himself ? There is nothing to show it was meant to be The umpire's decisions may all be right there is no way of determining how he arrived at them He may have considered the policy of the legislation without disclosing that to the careful reader, he may be biased against claimants, he may simply have followed decisions under other schemes

My submission is that what the umpire ought to do is to ask himself what is the object to be achieved by imposing a time limit for claims Having given himself the answer, he should hold any cause for delay good if the result is consistent with that object, or where some more important object requires the admission of the claim The object of the time limit may be one or more of the following —

(*a*) To put an obstacle in the way of fraudulent claims by making sure of medical examination at the time of the illness or shortly after

(*b*) Administrative convenience A fairly constant rate of sickness can be assumed, and a very short time limit will on that assumption result in a fairly constant rate of claims

(*c*) To save the fund money

(*d*) To make sure that anyone who might otherwise be in doubt whether to claim or not decides, without time to think in favour of claiming

(*e*) To keep people on their toes by putting in a perfectly arbitrary but entertaining rule, like going down snakes and up ladders

The most stringent rules would result from (*b*), (*c*), or (*e*), and good cause could not be consistent with them It would then have to be cause in circumstances in which the umpire thought allowing the claim would further some policy more important than (*b*), (*c*), or (*e*) The object (*c*) seems inconsistent with the general objectives of the scheme (i e , it seems unlikely the legislators hoped for late claims), while the number of late claims would hardly seem significant in relation to (*b*) The object (*d*) seems queer Where a person is being paid in full during sickness, is the policy to encourage him to claim sickness benefit as well ? Maybe it ought to be, but there is no reason to think it is A decision not to claim would be regarded by most people as laudable Yet the umpire is driving people to claim in those circumstances It seems that objects (*a*) and (*b*) are the true ones, and that good cause is any cause for delay which results in a delay not making it any more difficult to test the validity of the invalid, or where to allow the claim would further some policy preferred by the legislation to that of safeguarding against fraud, and in each case where the administrative inconvenience is less than the inconvenience which would be caused to the claimant by disallowing the claim Thus, for example, any case where the claimant has got a certificate of incapacity within three days ought to be decided in favour of the claimant Naturally, it is cause which must be good, and mere unexplained failure to claim is not cause, good or otherwise [4]

[4] An interesting article on this subject in " The Manchester Guardian " of 30th September, 1955, was followed by letters to the editor on 4th, 6th, 7th, 8th, 10th, 14th, 20th, 28th, and 29th October

The other large class of sickness benefit cases is concerned with the question whether the claimant's illness renders him incapable of work The housework cases and the availability of work cases deserve comment

Umpire's Decision No 1/53 (S B) is an example of the housework cases The umpire's decision was that a woman capable of doing light housework at home was capable of work and so not entitled to benefit Here is a claimant whose illness left her incapable of doing anything but light housework What should the policy be ? To encourage her to perform those duties for her family ? Or to force her out to work, to do those kinds of work for an employer ? In the latter case, she will probably be unable to do her housework at home as well Moreover, one might ask is it realistic to say that there are prospective employers for women capable of doing only light housework ? That touches on the availability of work question

Umpire's Decision No 921/49 (S B) shows the umpire's attitude to a person who is incapacitated from his normal work and finds it very difficult to get into anything else The umpire said " A person is incapable of work, if having regard to his age, education, experience, state of health and other personal factors, there is no type of work which he can reasonably be expected to do The fact that there is no such work locally or that owing to the state of the labour market, the claimant has only a remote chance of obtaining it, or that there is none in the occupation in which he has previously been employed, does not prove that he is incapable of work within the meaning of Section 10 of the National Insurance Act (Northern Ireland), 1946 " What policy is the umpire trying to achieve in withholding benefit in these cases ? Not to force the claimant into work, because the hypothesis is that the claimant has failed to get any It it simply that the umpire finds it difficult to distinguish between genuine claimants and those who are trying it on ? Perhaps he is pursuing a policy of pushing people towards work with the utmost vigour because he fears that a little relenting on his part would let in a bevy of claimants who ensured that they were fit only for work which was not available This is only a guess If it is right, some people would still reply that the state can afford to lose a little money in abuse of its services in order to ensure full benefit to all genuinely in need of them

IV

The contention here is that the function of the umpire should be to discern the policy behind every legislative provision which faces him, and then to decide the question in the way which will most advance that policy He may have to choose between policies This is not to ask for a mode of statutory interpretation which has been irrevocably discarded The courts of law have not favoured this approach recently One may hope that that attitude is not permanent,[5] but in any case it is not relevant The determination of questions under social security legislation was confided to administrative tribunals for various reasons, of which an important one was suspicion of the way courts

[5] It was not Two days before this paper was read, the House of Lords, by a majority of three to two, applied to a statute exactly the mode of interpretation contended for here see *Galloway* v *Galloway* [1956 A C

interpreted statutes Administrative tribunals have often done no more than approach statutes in the same way as do courts, but not with the same high degree of competence as High Court judges Perhaps the government have hoped to buy independence in adjudication by appointing lawyers to the task Sometimes the results have been free from reproach, but often they have got technocrats, with dubious technique I suppose I must make it quite clear that I am not assailing all administrative tribunals, and that I am not hostile to the idea of such tribunals They are usually attacked for being too little like courts The trouble can be that they try too hard to be like courts That the umpire should decide a case under the National Insurance (Industrial Injuries) Act solely by reference to Court of Appeal authority under the Workmen's Compensation Acts can only be described as grotesque

DISCUSSION

Mr D G Neill In proposing the vote of thanks to Dr Sheridan, Mr Neill commented on the value of such pioneer studies that this paper represented in the light of the reluctance of the Ministry of Labour in Northern Ireland to publish an annual report giving information about the actions of the administrative tribunals which Dr Sheridan had examined and in view of the very limited circulation of the decisions of the umpire in these cases This continues to be a serious limitation on the right of the public and incidentally the research worker to know what is happening in this field Similarly the absence of separate Advisory Councils for Northern Ireland and the inadequate representation of the Province on the councils in Britain make it difficult for public opinion to influence policy

Dr Sheridan has been somewhat unfair in his consideration of the rôle of the umpire and his implied assumption that the umpire can use an administrative tribunal to interpret regulations in favour of the claimant Policy is determined ultimately by Parliament and immediately by the regulations issued by the Minister under the authority of Parliament Is it fair to expect the umpire to stretch the regulations by interpretation beyond the intentions of Parliament ?

It cannot be claimed that the circulated decisions are truly representative of all the cases decided and a number of cases not mentioned by Dr Sheridan might have been taken to indicate an alternative bias on the part of the umpire , in which he might be considered to have favoured the claimant It is doubtful whether legal representations, open hearings and other possible remedies would fundamentally alter the existing situation where interpretation of regulations is the function of tribunals and not the determination of policy

Mr D Lofts seconded the vote of thanks to Dr Sheridan, for his valuable paper, but questioned his conclusions as to the proper functions of the umpire in determining disputes under the National Insurance Acts

Dr Sheridan contends that the umpire's approach to adjudication should be " to discern the policy behind every legislative provision which faces him and then decide the question in the way which will most advance this policy "

This view attaches functions to the umpire which, in my opinion, it was not intended he should possess and which it is not necessarily

desirable he should possess Parliament intended him to be a substitute for adjudication by the ordinary courts, and thus he rightly attempts to operate within the more traditional concepts of legal interpretation, including principles of precedent based on decided cases

There is considerable substance in the view that this is the wrong approach to adjudication in administering a social service But it does not seem to me that it is the umpire's function to evolve new principles of interpretation based on "discerning and advancing policy" This is properly the function of a Minister responsible to Parliament, and not of the umpire In addition to the need for preserving political responsibility in this way, the proposal that the umpire determines "the policy behind every legislative provision" involves other difficulties insufficiently stressed in the paper For example what "policy" is being sought ? The intentions of Parliament when it passed the Act, the policy of the present Government, or the administrative policy of the Department ? Again—how do you discover this "policy" ? From the White Papers which preceded legislation, from Parliamentary Debates, Ministerial speeches or departmental files ? Finally—is the current "policy" to be publicly announced and administratively reviewed, or simply to emerge by individual case decisions ?

Whilst disagreeing with the view that the umpire's functions should be widened, I feel Dr Sheridan's research provides valuable and ample evidence of the desirability of increasing the publicity given to the umpire's decisions, and considering other means whereby the limitations of a traditional approach to interpretation can be removed