



Association of British Insurers

Helping People with Mesothelioma

January 2013



Introduction

Mesothelioma is a devastating disease which has a terrible impact on sufferers, their family and friends. Insurers recognise that they have an important role to play in helping people with mesothelioma and their families get the support that they need. The Government and insurers have worked together to create a new package of proposals which will help to make the process to claim compensation quicker and easier for sufferers.

Mesothelioma

Mesothelioma is a rare cancer of the thin membrane which protects internal organs in the chest, and which can also occur in the stomach cavity. Sufferers experience shortness of breath, pain, weight loss, fatigue and lethargy. Ultimately mesothelioma is fatal.

Mesothelioma is almost always caused by exposure to asbestos, a natural mineral which was used extensively from the 1850s to the 1980s and continued to be used in the UK into the 1990s. Although exposure originally took place in trades such as construction, ship building, and heavy industry, more recent exposure has taken place in employment such as plumbing and electrical work.

It takes decades for symptoms to appear after exposure but sufferers rarely live longer than two years after diagnosis. Each year around 2,400 people die from mesothelioma in the UK, and the number of cases has not yet peaked. There is currently no known cure and treatment is primarily palliative, focussing on relieving symptoms and improving quality of life.

Difficulties with getting compensation

Mesothelioma sufferers are rightly entitled to financial support in recognition of their condition. All sufferers are entitled to specific state benefits for mesothelioma. In addition, people who have been exposed to asbestos at work can claim compensation from the employers who negligently exposed them. If these employers no longer exist, they can claim directly from the insurance companies who provided employers' liability insurance to their former employers.

However, the process for making a mesothelioma claim is not always straightforward and can take many months, even years, to complete. Where the exposure took place decades previously and employers have gone out of business, it has sometimes been difficult to find out who the insurers were. This is because records held by both the employers and the insurers may be lost or incomplete. Once a compensator has been identified, the legal process can also be slow and frustrating.

At the moment it can take up to two years from someone being diagnosed with mesothelioma to receiving compensation. All too often people with mesothelioma have died or are in the advanced stages of cancer before that happens.

Action to help people with mesothelioma

Insurers take their responsibilities towards mesothelioma sufferers seriously. For the past two years the Association of British Insurers (ABI) has been working with the UK Government to develop a package of proposals which will make sure people with mesothelioma get the support they need as quickly as possible.



Medical research

There is currently no cure for mesothelioma, but research scientists continue to seek a breakthrough. Over the last three years, insurers have donated £3m to the British Lung Foundation for their mesothelioma research programme, the first time that significant funding has consistently been put into mesothelioma research. This funding has allowed them to undertake a variety of projects including:

- the establishment of the first UK mesothelioma tissue bank in Cambridge, allowing scientists in the UK and globally to easily access samples for research
- research on the genetic make-up of mesothelioma cells and the means of restricting their growth
- the support of future national and international research into a cure for mesothelioma
- studies into improving palliative care for mesothelioma sufferers.

The insurance industry will continue to work on ways to support the British Lung Foundation in the future so that their funding is secure.

Awareness-raising about asbestos

Many buildings in the UK still contain asbestos. This is not dangerous if it is well managed and not disturbed. However, some sections of society are still vulnerable to asbestos exposure because of a lack of knowledge about disturbing asbestos materials. For example, tradesmen such as electricians and plumbers may accidentally disturb asbestos while working in houses or office buildings. People doing DIY at home may also be exposing themselves to asbestos if they do not know what to look out for.

The funding to the British Lung Foundation has also allowed them to run a 'Take Five and Stay Alive' campaign aimed at those considered at highest risk of exposure, such as people undertaking DIY and tradesmen. They have used TV advertising, radio shows, websites and advertising in homeware shops to help raise awareness, and have had good response rates and positive reactions to the campaigns. However, there is more to be done to raise awareness across the UK and the insurance industry will continue to support the British Lung Foundation, government departments and other stakeholders as they continue to do this work.

Employers' Liability Tracing Office

In April 2011 the insurance industry established the Employers' Liability Tracing Office (ELTO). This organisation provides a facility that is free to use for all people who have a disease or injury caused in the workplace. ELTO helps these people to establish who their employer's insurer was, if their employer is no longer in existence, so that they are able to claim compensation from that insurer. To date, ELTO has:

- built a database of over 8 million insurance policy records from 154 firms which sell, or used to sell, employers' liability insurance (99% of the market)
- facilitated over 100 searches of the database every day and directed any unsuccessful searches to insurers to check against their own records
- handled 4,051 searches relating to mesothelioma of which 2,354 have been successful.*

*Figures are for May 2011 – April 2012

ELTO is already a significant improvement on the previous system that existed for finding employers' liability insurers, but we are proposing further changes to ensure its continued success. We want membership to be compulsory for all insurers who currently sell, or who have ever sold, employers' liability insurance. This means that there will be a single database of historical insurance records which sufferers can use, and a back-up system for checking any unsuccessful searches with all relevant insurers.

ELTO will also have a new Technical Committee for mesothelioma cases where the insurance cover is disputed because of missing or incomplete records. For example, many employers will have lost or destroyed the insurance certificates they got back in the 1950s, 1960s or 1970s, but the sufferer may have access to evidence to show that the employer bought insurance from a particular insurer. The Technical Committee will consider written evidence from relevant parties so that it can make a decision on whether that employer was insured by that insurer when the person in question was exposed to asbestos.

Improvements to the legal system

Mesothelioma cases can be complex, and we recommend that someone with mesothelioma should always find a lawyer to help them through the process of making a claim. We believe there are necessary improvements to the legal system which would help mesothelioma sufferers settle their cases quicker and more easily, without the need to go to court. We are proposing a new, tailored pre-action protocol for mesothelioma. Pre-action protocols are court guidelines on how to handle similar types of claim, which ensure the efficient progress of a case through the legal system.

Under the new pre-action protocol, there will be a compulsory set of information that each side must provide, and agreed timescales for doing so. Lawyers acting for people with mesothelioma and insurers would both know exactly what they need to do and when – for example finding out the employment history of a mesothelioma sufferer early on. There is a pre-action protocol for disease cases more generally, but this is not dedicated to the special needs of mesothelioma cases. What we propose would put the mesothelioma sufferer at the heart of the process so that every step is geared towards delivering a quick resolution of the claim for them.



Mesothelioma portal

To help streamline the legal process for mesothelioma sufferers, the insurance industry proposes to build an online portal – accessible through a website based at www.mesosupport.org.uk. This will provide a quick and secure way of capturing key information in one place, speeding up claims and ensuring people with mesothelioma know their case is being handled efficiently by all parties.

Mesothelioma support scheme

It is inevitable that some people with mesothelioma, who have been negligently exposed to asbestos at work, will not be able to establish who to claim compensation from. It may be that the records, both the original employer's and their insurers', have been destroyed. The sufferer's employer may not have had employers' liability insurance (as it was not compulsory until 1972). This may mean that insurance cover cannot be found, despite the best efforts of ELTO and insurers.

We have suggested that these mesothelioma sufferers should be able to access financial support in addition to the benefits they are entitled to. We envisage this will be through a new body that will make payments to sufferers, according to a simple tariff based on the person's age. This should give them a straightforward payment that would go some way to providing the level of funds achievable had a civil compensation claim against an employer or insurer been possible.

To put this new body on a stable footing, we are proposing that these payments be funded by a levy of around £30-35m per year on insurers who currently offer employers' liability insurance. We expect the scheme to run for around 40 years, until mesothelioma cases no longer arise, and that around 3,000 mesothelioma sufferers will receive over £300m in total over the next 10 years.



Delivery across the UK by 2014

The aim is to deliver all of these proposals in the next two years. We need the support of all interested parties to make this happen.

We hope that the legislation underpinning the proposals will be announced in the next Queen's Speech in May 2013.

- The Ministry of Justice will consult publicly on the mesothelioma pre-action protocol, fixed costs and an electronic portal in spring 2013. The ABI will work with the Scottish Parliament and Northern Ireland Assembly on introducing changes similar to the mesothelioma pre-action protocol within their legal systems
- The Technical Committee of ELTO will be introduced in 2013. Abiding by its rules will be compulsory when legislation makes membership compulsory for all insurers who sell, or have sold, employers' liability insurance
- The mesothelioma portal will be in operation by 2014
- The Mesothelioma Support Scheme will be in operation from July 2014, although those diagnosed with mesothelioma after 25 July 2012 will also be eligible to apply.

This package of proposals is intended to help people with mesothelioma across the UK. The legislation needed for the Mesothelioma Support Scheme will be UK-wide, but may need legislative consent orders in Scotland and Northern Ireland. The ABI will work with the Scottish Parliament, Welsh Assembly and Northern Ireland Assembly to ensure that mesothelioma sufferers in these jurisdictions benefit from the proposals.

Further information

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