



HOW THE MESOTHELIOMA BILL WILL IMPROVE SUPPORT FOR MESOTHELIOMA SUFFERERS

FREQUENTLY ASKED QUESTIONS

May 2013

The Mesothelioma Bill announced in the Queen's Speech on 8 May is part of a wider package of measures to provide more support for mesothelioma sufferers, which should be in place by July 2014.

The Bill introduces two key elements for reform: improvements to the search system for employers' liability insurers; and a payment scheme to provide support to mesothelioma sufferers exposed at work who are unable to trace a solvent employer or relevant employers' liability insurer to claim against.

The Ministry of Justice will consult later this year on other parts of the reform package, including a simpler more streamlined online claims process for all mesothelioma claims, with set timescales and fixed legal costs.

What exactly is mesothelioma?

Mesothelioma is a rare cancer of the thin membrane which protects internal organs in the chest, such as the lungs. Ultimately mesothelioma is fatal, with the average life expectancy after diagnosis of no more than two years.

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.

What are mesothelioma sufferers currently entitled to?

Mesothelioma sufferers are entitled to specific state benefits. 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.

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. If a compensator has been identified, the legal process can be slow and frustrating, and often involves the mesothelioma sufferer going to court. Finally, if no compensator is identified, currently the sufferer will only receive state benefits.

How will the package of proposals help mesothelioma sufferers?

The package of proposals includes four elements:

- a pre-action protocol to ensure all mesothelioma claims are processed quickly and cost effectively without the need to go to court, and with set timescales and fixed legal costs (Ministry of Justice consultation);
- a central mesothelioma claims gateway to facilitate the registration of all mesothelioma claims, provide more information to sufferers and deliver a speedier claims process (Ministry of Justice consultation);
- further improvements to the existing search facility – the Employers' Liability Tracing Office - to ensure that where a relevant insurer can be identified, they pay the claim (Mesothelioma Bill);
- a scheme to provide financial support to mesothelioma claimants exposed at work and who are still unable to trace a solvent employer or insurer to claim against. This will be funded by an annual levy on EL insurers, of around £35m a year (Mesothelioma Bill).

On average how much more quickly will mesothelioma sufferers receive payments under these measures?

Currently it can take one to two years from someone being diagnosed with mesothelioma to settling their claim. We expect the introduction of a mesothelioma pre-action protocol and portal to speed up claims where there is a traced employer or insurer, with some cases able to be resolved within 3 months. Similarly we expect eligible claimants where there is no traced employer or insurer to receive payments within 3-5 months.

Who will be eligible for a payment from the new payment scheme?

Mesothelioma sufferers who would have been exposed to asbestos in the course of their employment, in other words, those who would have been covered by employers' liability insurance, but cannot find an employer or insurer to claim against, will be eligible for this scheme. Sufferers who were diagnosed after 25 July 2012 – when the scheme was announced by Government – will be eligible to apply.

How much will mesothelioma sufferers receive from the new payment scheme?

Mesothelioma sufferers will receive payments at a similar but lower level to awards from civil claims, and which will, in line with civil damages, decrease with age. Payments will be made on a simple age-based tariff, to ensure the process for making payments is straightforward and quick.

Why will payments by the new scheme be less than civil damages?

While ensuring that claimants receive an amount that reflects the terrible nature of their disease, the aim is to maintain an incentive for people to trace a relevant insurer to claim against. Setting the tariff below that of civil damages ensures that claims will only be brought to the scheme once all other avenues are exhausted, and that the cost on the insurers paying into the scheme is sustainable for the long term.

In the light of this announcement what action do mesothelioma claimants and their legal advisers with claims being processed need to take?

Mesothelioma sufferers and their representatives should be doing all they can to identify an employer or insurer to claim against, in the same way they do now. If those enquiries are unsuccessful, they may well be eligible for the scheme. Further details will be announced in due course about registering claims for the scheme.

What about someone who was diagnosed on 24 July 2012?

Eligibility needs to start on a specific date, and we have ensured that anyone diagnosed after 25 July 2012 will be eligible to claim even though the scheme will not be in operation until July 2014. For these sufferers, and for the sufferers diagnosed before the date, we will do all we can to help them to trace a liable employer or employers' liability insurer so that they can receive full civil compensation.

What about mesothelioma claimants who did not contract the disease through a negligent employer – what help can they expect?

Employers' liability insurance has been compulsory for almost all employers to buy since 1972, whereas other types of insurance such as public liability are not compulsory. As employers' liability insurers will be funding the scheme, payments from the scheme will only be made to those who would have been covered by employers' liability insurance.

Why aren't other terminally ill or severely sick people being included in the new scheme?

There is a special case for paying people with mesothelioma given the nature of this terrible disease. It is unlike other conditions in that it is always fatal and almost exclusively caused through exposure to asbestos. There is need for urgent action due to mesothelioma deaths peaking soon after 2015.

How many mesothelioma claimants will be eligible to claim under the new scheme?

We estimate that 200-300 claimants will be eligible to claim every year. However, we expect these numbers to reduce over time as tracing of employers' liability policies improves with ELTO.

Will the package of reforms apply to all parts of the UK?

Yes. The Mesothelioma Bill will require Legislative Consent Motions being passed by the Scottish and Northern Irish legislatures. The civil justice reforms – the pre-action protocol and claims gateway – may need separate consultations in Scotland and Northern Ireland. The ABI is in discussion with officials and key leading members in each territory to deal with any issues that arise on delivery of the reforms.

How will the search system for insurers improve?

The Employers' Liability Tracing Office (ELTO) currently runs an online tracing service for claimants and their representatives to help find an insurer where the employer is no longer in existence. It was set up in April 2011 and is funded by the insurance industry, which has so far invested £4m in it. ELTO has a membership of 153 firms that currently sell, or have sold in the past, employers' liability insurance. These members send employers' liability policies

to a database, which currently contains over 8 million records, of which over 4 million pre-date 2011. Claimants submit searches online which are checked against the database of policies in the first instance and then are sent to insurers to check against their own records. ELTO handles around 160 enquiries per day on behalf of claimants.

Under the legislation, a Technical Committee will be introduced into ELTO. This will allow claimants to bring forward evidence that their former employer was covered by a particular insurer. The decision of the Technical Committee on whether cover was in place will be binding on the insurer. This avoids the need for the claimant to take this evidence to court, and should result in more claims being paid by insurers.