

Improving Claims Handling for Mesothelioma Cases
Consultation Report

Part	Description	Page
1	Introduction	
2	Consultation	
3	Summary of responses	
4	Conclusions and next steps	
Annex A	Secretary of State Announcement	
Annex B	Those attending meetings held	
Annex C	Responses to the consultation	
Annex D	Numbers suggesting main topics	

Part 1

Introduction

1. On 16 May the Secretary of State, John Hutton, announced that the Department for Work and Pensions (DWP), the Association of British Insurers (ABI), the Association of Personal Injury Lawyers (APIL), and the Department for Constitutional Affairs (DCA) had agreed to work together to urgently identify ways to speed the settlement of claims for those with mesothelioma. The Secretary of State said he would report on progress before Parliament rose for the summer recess.
2. On 20 July 2006, to fulfil this promise, the Secretary of State announced a number of interim measures to ensure faster compensation for those with mesothelioma, as well as his intention to put in place a long term solution.
3. A copy of this announcement is attached at Annex A.
4. In developing this long term solution, the Secretary of State also announced that the Government is committed to having a full dialogue with interested parties. This consultation was the first part of this dialogue.
5. Initial views were sought on ideas for improving support for those with mesothelioma, both by improving the systems for dealing with these claims, and the better focusing of government support.
6. The main aim was to find solutions that use the existing resources of employers, insurers and government to deliver adequate compensation more quickly and more effectively.

Part 2

Consultation

7. Officials wrote to stakeholders on 1 September 2006 to ask for initial views and ideas to provide a long term solution for improving support for those with mesothelioma. In addition to the formal consultation, officials met with a number of key stakeholder groups (in London, Leeds and Glasgow) to discuss the long term solution. A list of those who attended these meetings is at Annex B.
8. The consultation ended on 23 November 2006.
9. DWP would like to thank all those who responded to the consultation document and attended the stakeholder meetings.

What this report does

10. Part 3 of this report provides a summary of the issues raised by consultees, which will inform the development of policy proposals. It captures the key issues raised by respondents during the consultation period. We have not, of course, been able to include absolutely every point raised or quotations from every organisation. But we have considered every contribution to ensure that this report provides a fair representation of the feedback.
11. Part 4 summarises the conclusions and sets out the next steps.

Part 3

Summary of responses

12. The Government's overarching aim is to ensure that mesothelioma sufferers:

- Have financial security as soon as possible after the disease is diagnosed and
- Retain the right to take legal action.

13. None of the respondents felt that doing nothing is an option.

14. Eighty-five consultation letters were sent out and fifty-six responses were received to the consultation from individuals, firms or representative bodies from the insurer, employer, legal communities and support groups. A list of those responding to the consultation who did not ask for their response to be kept confidential is attached at Annex C.

15. Respondents were, in general terms, supportive of the recent Government changes in the Compensation Act 2006 that reversed the effects of the Law Lords ruling on *Barker v Corus*.

16. Most respondents suggested a customer-focused "end to end" prescribed claims handling process through the lifecycle of a claim for both state benefits and civil compensation.

Industrial Injuries Advisory Council (IIAC)

17. The Industrial Injuries Advisory Council (IIAC) was also consulted. IIAC has a statutory duty to advise the Secretary of State for the Department for Work and Pensions and the Northern Ireland Department for Social Development on the prescription of industrial diseases, industrial accidents and any other matters relating to Industrial Injuries benefit.

18. IIAC consists of independent medical, scientific and legal experts, and representatives of employers and employed earners

19. IIAC suggested a number of initiatives:

- Industrial Injuries Disablement Benefit (IIDB) should be paid to mesothelioma cases as a lump sum during the lifetime of the case
- As a minimum, this should be no less than the total currently paid (i.e. circa £10,000)
- The lump sum payment should include 80% of the pension lost by a 66 year old [the mean age of death] (i.e. £50,000)
- A lump sum of anything less than £40,000 would be unreasonably low
- Cases of mesothelioma who receive IIDB should not lose means tested benefits because IIDB is compensation for personal injury not income replacement.

20. The council said

“IIAC considers mesothelioma to be an exceptional case, deserving of more generous consideration than other conditions currently eligible for IIDB. Therefore the approach we have recommended to a lump sum payment should not necessarily be considered as setting a precedent for payments for other conditions.”

National Health Service (NHS)

21. Many of the respondents were in agreement that the medical professionals could help speed the process by making patients aware of the benefits and damages at common law that they may be able to claim. The preference was for this to be done by the Nurse Specialists rather than the Consultant. A leaflet detailing specific benefits and compensation that are available is being developed for use both by the patient and the nurse.

Civil Compensation

22. The majority of respondents were in favour of building on current best practice and in providing interim payments as soon as possible.

Mesothelioma fast track system in the Royal Courts of Justice

23. There was a lot of support for the fast track system in the Royal Courts of Justice where claims can be concluded within three months. There were calls from support groups, solicitors and unions to replicate or extend this process across the country, whilst ensuring the service currently provided was not fettered in anyway. Some went further and suggested the setting up of a specialist court. For example, AMICUS the union said

“We are aware of the great strides in Master Whitaker’s fast track mesothelioma procedure in the Royal Courts of Justice and the industry wide respect for his approach. We note in particular the value of the “show cause” hearings to determine whether judgment should be entered. We would wish to see more support for the Master at the RCJ and as an alternative specialist members of the judiciary at an appropriate level appointed to follow Master Whitaker’s approach in a number of key regional centres. We also support the moves for a specialist asbestos court.”

Employers’ Liability Compulsory Insurance (ELCI)

24. There was a strong call for a publicly accessible database listing all ELCI policies. For example, Pattinson and Brewer Solicitors said

“Such insurance details must be logged centrally and taken out of the hands of the insurance industry, as is the case for car insurance. A central database must be set up as a matter of urgency. With the passage of time, the likelihood is that more information will be mislaid or destroyed”

Trigger issue.

25. A number of respondents were concerned about the issue of ELCI policies on a loss occurring basis rather than a loss caused basis.
26. Many respondents expressed a strong view that sufferers should always have the option of litigation and that this would always get the best and quickest deal.

Respondents suggesting an Independent Board

Solicitors support groups and unions

27. Around a third of respondents in these groups suggested a Motor Insurance Bureau (MIB) type arbitration scheme, although views on exactly how the Board would operate and be funded varied. However, a concern was expressed that such a scheme might tempt insurers to rely on the scheme rather than make full and proper enquiries into existing cover.

Insurers

28. The views of insurers varied. ABI, representing many active insurers, was against any scheme funded by insurers, but did suggest a Government funded scheme that would also reverse the use of Crown indemnity for mesothelioma sufferers employed by the state. Royal Sun Alliance, though, recommended the establishment of a mesothelioma board broadly based on the PIAB¹ type arbitration scheme with independent assessment of employers' liability compensation financed largely by the insurance industry and other compensators such as the FSCS.

Benefit provisions

One claim

29. There were suggestions for a "one claim" measure in varying forms across the piece. For example a support group suggested that as IIDB is a qualifying benefit for a claim under the Pneumoconiosis etc (Workers' Compensation) Act 1979 ("the 1979 Act"), the IIDB claim should be treated as a claim under the 1979 Act. Other respondents preferred one claim to trigger the award of all benefits relevant to the person's circumstances.

The 1979 Act

Immediate payment

30. There were suggestions for changes to be made to the 1979 Act so that all mesothelioma sufferers would be paid automatically and for that compensation to be recovered later from civil damages. The research

¹ Personal Injuries Assessment Board (in Ireland)

provided by one of the support groups using national IIDB and 1979 Act statistics leads them to believe that the cost could be either neutral or a saving. According to their research 83% of people awarded IIDB for mesothelioma are awarded a payment under the 1979 Act. They suggest changes to the law that would allow 1979 Act payments to be recovered by the Department's Compensation Recovery Unit (CRU) from any subsequent award of damages at common law.

Equalisation of rates

31. Strong support existed among all the groups that sufferers and dependants should be paid at the same rate and the money recouped by CRU.

Para-occupational exposure

32. There were many suggestions from solicitors and support groups for payment to **all** mesothelioma sufferers. One group of solicitors made the argument that occupational, para-occupational², and environmental exposures are essentially all industrial exposures so there is an argument for compensating. Some groups pointed out that there are very few para-occupational exposures – less than 5%.

33. Another argument put forward was that there is an increasing number of women with mesothelioma due to working in an industrial environment so the assumption should not be that their exposure was para-occupational exposure.

34. Other respondents suggested that para-occupational exposures should be catered for by separate benefit.

Industrial Injuries Disablement Benefit (IIDB)

Immediate payment of CAA

35. A number of people raised the issue of immediate payment of Constant Attendance Allowance (CAA) and/or Exceptionally Severe disablement Allowance (ESDA) in mesothelioma cases. Most respondents saw this working along the lines of the rules for Attendance Allowance (AA)/Disability Living Allowance (DLA)³ terminally ill claimants and linked the two benefits to one claim form.

Income related benefits

² Para occupational – disease not caused by employment e.g. exposure to asbestos brought home by a member of the family on their clothes.

³ The higher rate of AA or the highest rate of DLA is automatically paid to people who are terminally ill with a progressive disease and can reasonably be expected to die within the next six months.

36. There were several requests that IIDB should be disregarded for income assessment purposes. The view put forward was that IIDB is not an income replacement benefit but is "compensation for loss of faculty". As such it should be completely disregarded or at least a percentage of it disregarded for Income Support and Pension Credit purposes.

37. It was felt that an unacceptable number of people do not claim IIDB because of loss of Housing Benefit and Council Tax rebate.

Part 4

Conclusions and next steps

38. It is clear that there is no one solution that will incorporate all the suggestions made by stakeholders.

39. The majority of suggestions were for changes to improve the current civil and state schemes with civil compensation as the main thrust, with only about a third of respondents suggesting more radical approaches.

40. All respondents were keen to see changes to the state benefit in one form or another, the majority suggesting:

- Standardised claims forms
- Better links between claims for the various state benefits available
- Streamlined approach to evidence provision
- Improved provision of information
- Breaking with the occupational link – everyone with mesothelioma accesses money via the 1979 Act
- Payments of relevant benefits triggered on diagnosis
- Payments of both weekly amounts and lump sums recovered from any subsequent civil compensation
- Scheme pays within current budgets – benefit recovery releases funds
- Payments between sufferers and dependants equalised.

41. Most respondents suggested a customer-focused “end to end” prescribed claims handling process through the lifecycle of a claim for both state benefits and civil compensation.

42. Officials are preparing an options paper for consideration at a Mesothelioma Summit.

Mesothelioma Summit

43. Following on from the publication of this report we plan to hold a half day Mesothelioma Summit. This will give us an opportunity to present the options to stakeholders and take on board thoughts and ideas they may have before a final Ministerial decision is taken on the way forward.

44. A paper to inform discussions at the Summit will be sent to attendees beforehand.

45. We are holding the event on 13th March 2007 at the Holiday Inn Hotel, Regents Park, Carburton Street, London W1. Invitations will automatically be sent to those who were invited to respond to this consultation. Although places are limited, others who would like to attend should request an invitation at mesothelioma@dwp.gsi.gov.uk

Annex A

DEPARTMENT FOR WORK AND PENSIONS Improving Claims Handling For Mesothelioma Cases

The Secretary of State for Work and Pensions (John Hutton):

On 16 May I announced that my Department and the Association of British Insurers (ABI), the Association of Personal Injury Lawyers (APIL), and the Department for Constitutional Affairs (DCA) had agreed to work together to identify urgently ways in which we can speed the settlement of claims for those suffering from mesothelioma. I said that I would report on progress before Parliament rises for the Summer recess.

More stakeholders have also been involved in this work, such as the Trades Union Congress (TUC) and the Financial Services Compensation Scheme (FSCS) and we have also kept other interested parties informed.

Since then, the Government has introduced amendments to the Compensation Bill to reverse the effects of the Law Lords ruling on *Barker v Corus*. This would have caused delays in resolving claims and made it more difficult for mesothelioma sufferers to recover full compensation. We are changing the law to make it easier for them to get full compensation as quickly as possible.

These new provisions would also enable certain changes to be made to the Financial Services Compensation Scheme, which should considerably speed up payment of claims to mesothelioma victims and produce a fair outcome for insurers.

Today I announce interim measures to speed up current claims handling for mesothelioma sufferers. I am also confirming that we will put in place a long term solution. This work will start now and I will provide a further update on progress in the autumn. We are committed to having a full dialogue and we will invite comments from all interested parties.

Looking forward, we have identified a number of interim measures that can be implemented relatively quickly and will speed up the settlement of claims across the UK:

- Our partners are developing a Standard Claim Letter that should be in place by October.
- We are drafting a leaflet for those diagnosed with mesothelioma to explain the help available to them and where to find it.
- In July, DWP will clarify with claims handlers best practice for ensuring priority for industrial injuries disablement benefits for those with mesothelioma.

- Also in July, DWP will work with Revenue and Customs to address tracing employer records more quickly.
- To support the Code of Practice for tracing Employers' Liability Compulsory Insurance (ELCI) policies, ABI will introduce a phone enquiries helpline in the autumn and will also issue guidance on how to get the best out of the Code.
- We will review the Code of Practice for tracing ELCI policies to ensure that the Code is comprehensive and has the confidence of users.
- ABI will spread best practice within the wider insurance industry with a claims handling best practice guide.
- Partners will consider further public awareness activity to encourage claimants to use qualified, experienced legal practitioners when making a claim.

We will continue to work with our partners to ensure that these short-term outcomes are delivered quickly as we develop options for future change.

Annex B

CONSULTATION MEETINGS ATTENDEES

Insurers (London 25 October 2006)

Association of British Insurers (ABI)

Association of Run-Off Companies

Lawyers (London 27 October 2006)

Association of Personal Injuries Lawyers (APIL)

Personal Injury Bar Association

Thompsons Solicitors

C & H Jefferson Solicitors

Industry 1 (London 3 November 2006)

EEF

Sufferers (Leeds, 8 November 2006)

Asbestos Support Groups' Forum (England)

Greater Manchester Asbestos Victims Support Group

Merseyside Asbestos Victim Support Group

Cheshire Asbestos Victims Support Group

Derbyshire Asbestos Support Team

Medical (London 16 November 2006)

Mesothelioma UK

Occupational and Environmental Diseases Association (OEDA)

Sufferers (Glasgow 21 November 2006)

Asbestos Action Tayside

Clydeside Action on Asbestos

Thompsons

Clydebank Asbestos Group

Industry 2 (Glasgow, 22 November 2006)

None attended.

Officials (Corunna House Glasgow, 22 November 2006)

Scottish Executive

Jobcentre Plus

Annex C

Name
AMICUS the union
Asbestos Action Tayside
Asbestos Support Groups' Forum (England)
Association of British Insurers (ABI)
Association of Insurance and Risk Management (AIRMIC)
Association of Personal Injuries Lawyers (APIL)
Association of Run-Off Companies
Berrymans Lace Mawer
L Bingham solicitors
British Insurance Brokers Association (BIBA)
British Lung Foundation
British Thoracic Society
Broadbent
Clydeside Action on Asbestos
Confederation of British Industry (CBI)
Anthony Coombs
David Steer QC
Derbyshire Asbestos Support Team
Field Fisher Waterhouse
Forum of Insurance Lawyers (FOIL)
Allan Gore QC
Greater Manchester Asbestos Victims Support Group
GMB
Judge Gosnell
Hartlepool and District Asbestos
Humphrey & Co Solicitors
Industrial Injury Advisory Council (IIAC)
Interesolve
C & H Jefferson solicitors
Judge Holman
JMW solicitors
Kennedy Solicitors
Leigh Day & Co
Liberata Legal costs Management
Consultant Nurse
Lord Presidents office Scotland
Andrew McDonald
Merseyside Asbestos Victim Support Group
Irwin Mitchell
Occupational and Environmental Diseases Association (OEDA)
Pannone LLP
JM Parsons & Co
Pattinson & Brewer
Personal Injury Bar Association
John Pickering & Partners
UK Major ports Group

Port of London Authority
Resolute management response
Royal & Sun Alliance Insurance
Rowley Ashworth
Sheriff Court Rules Council
Thompsons
Trade Union Congress (TUC)
Wales Centre for Health
Weightmans
Master Whitaker

Annex D – Numbers suggesting main topics

Topic	Suggested
NHS professionals can make people aware of their right to claim damages and benefits sooner.	28
Building on current best practice	31
Publicly accessible database listing all ELCI policies.	29
The more radical approach of delivering compensation via an Independent Board.	19
One claim for one or more benefits.	22
Immediate payment under 1979 Act to all mesothelioma sufferers.	26
Equalisation of rates paid under 1979 Act	19