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HAZARDS CONFERENCE 2013 LEGAL REFORMS – KEY POINTS

Personal Injury

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FACTS AND FIGURES

- The number of cases of mesothelioma, caused by asbestos, has risen over the last few decades to approximately 2,300 in the UK last year
- A further 40,000 people are likely to develop the condition between now and 2050

CURRENT HURDLES FOR THE CLAIMANT

- Proving exposure to asbestos dust due to negligence or breach of statutory duty on the part of the Defendant (usually the employer)
- Claims are often ignored initially, and then disputed by insurers who deny negligence or that the exposure caused the condition; and they invariably dispute the amount of compensation due
- Many victims are, initially at least, unable to identify the source of their exposure

CURRENT HURDLES FOR THE CLAIMANT

- Victims are not limited to those who have worked in industries where heavy exposure is well recognised
- Evidence from witnesses may be crucial and identifying and tracing them can be far from straightforward, given that it can often be between 30-40 years since the victim was initially exposed to asbestos
- Compensation will only be recovered if the employer is still in business or its insurers can be traced.

Government Proposals

1. Mesothelioma Bill 2013
2. Proposed Mesothelioma Portal
3. Pre action Protocol

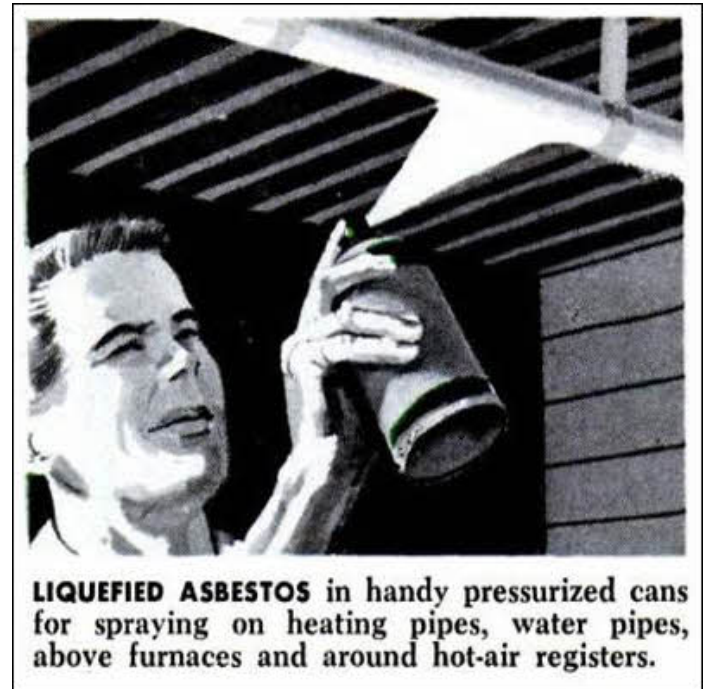


- The new compensation scheme will target those who have developed mesothelioma through exposure at work but
- Who don't have a solvent defendant to pursue.
- This situation occurs if the employer is dissolved or still live but without assets; and
- no Employers Liability (EL) insurer has been identified; or
- there was no EL insurer in the first place.



Mesothelioma Bill 2013

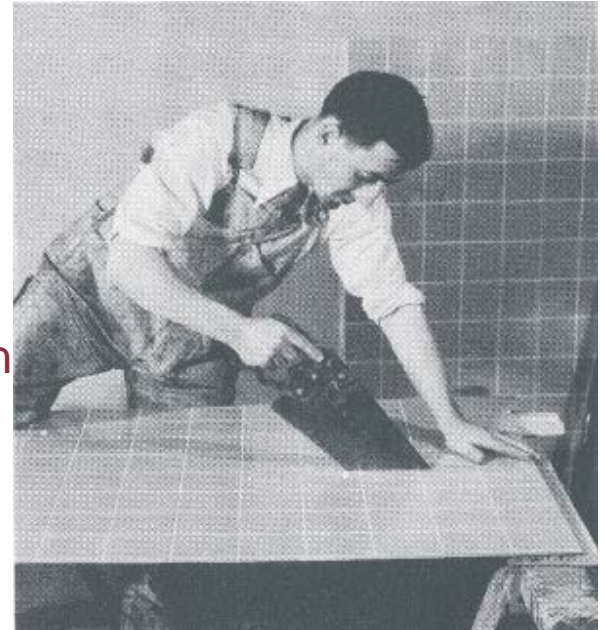
- Mesothelioma Bill 2013, announced in the Queen's Speech on 8 May 2013.
- Offers a limited compensation scheme for some people diagnosed with mesothelioma



- What will the new compensation fund provide:
 1. Is a fund of last resort (where a valid claim was uninsured).
 2. Applies only to those diagnosed with mesothelioma after 25 July 2012.
 3. Includes payment to the dependents of a mesothelioma sufferer.
 4. Evidence of exposure (and fault) still required.
 5. Awards on an aged-based tariff, being about 80% of the value of a claim (as assessed).
 6. MOD personnel negligently exposed to asbestos prior to 1987 are excluded.

Scheme may have limited application in practice:

- Prompted the ELTO to improve its search function.
- Offers reduced levels of compensation.
- Any state benefits received will still have to be given credit for.
- Does not apply to other asbestos related diseases.
- Scheme will not open until 2014.
- Applicants will have to show the insurance searches and they have a valid claim in law.



Mesothelioma Portal Proposal

- The Government has proposed a portal procedure for mesothelioma claims.
- Online process effectively controlled by the Insurers.
- Claimants will have to present all the evidence in their case in advance and the insurers will then decide whether to make a offer.
- Only thereafter Court proceedings can be started.



Mesothelioma Portal Proposal

- Likely to lead to ‘cherry picking’ of cases by insurers.
- Prejudice to the Claimant through unilateral disclosure in some cases.
- A portal already applies for ‘simple’ road traffic cases of under £10,000, and only around 50% of those settle within the portal procedure.
- Will extra layer of bureaucracy speed up the process?
- There are other ways the Government could more easily speed up the claims process.



A PRE-ACTION PROTOCOL

- Specifically for mesothelioma cases
- Agree in principle to make the process run more smoothly and to prevent delays
- Alternatively should be better operation and enforcement of the present system
- Existing Pre Action Protocol for Disease and Illness Claims – a better place to start

FIXED LEGAL FEES

- For mesothelioma victims
- But not for the defendant insurers
- Mesothelioma cases are complex
- Defendant insurers often make things even more so
- Unlevel playing field

OBSERVATIONS

- Delays in concluding cases are caused by insurer behaviour
- In many cases, liability remains in dispute until after commencement of court proceedings
- Common for defendants to concede liability at, or shortly before, the show cause hearing

OBSERVATIONS

- Government could look to address delays in the production of HMRC work histories
- GP and hospital records

OBSERVATIONS

- Difficulties encountered in tracing insurers
- Government could require insurers to provide historic data to the Employer's Liability Tracing Office (ELTO)
- In the need to restore defunct companies to the Companies Register before court proceedings can be commenced

OBSERVATIONS

- No evidence has been produced to show that, overall, the present system is not working well
- Victims groups are not calling for these reforms.
- **No evidence** has been produced to show that a specific Pre Action Protocol for mesothelioma claims is required

THE VICTIMS' PERSPECTIVE

- Mesothelioma victims need to receive compensation early to fund the costs of the care in the final stages of their illness
- Many are anxious to see that final settlement of the claim occurs in their limited lifetime
- Reassurance of knowing that their spouse is provided for financially

THE VICTIMS' PERSPECTIVE

- No dependants, there will be the worry that the value of the claim would be dramatically reduced were they to die if it were not concluded
- Speed of final settlement may not always be desirable

THE VICTIMS' PERSPECTIVE

- Important that the issues of liability and causation are resolved quickly and the claimant is awarded a substantial interim payment
- High Court fast track procedure provides for £50,000 on the entry of judgment and final settlement can be concluded later

HOW YOU CAN HELP

- Proposals prevent many without straightforward claims from being able to pursue a claim
- Causes delay and unfairly prejudices those whose claims are disputed
- Real winners from the proposals will be the insurance industry

HOW YOU CAN HELP

- Support the rights of mesothelioma victims to access legal representation when seeking compensation for their illness
- Write to Justice Minister Helen Grant and/or Justice Secretary, Chris Grayling

Any Questions

Any Questions?

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