

## MESOTHELIOMA: A GUIDE TO COMPENSATION FOR VICTIMS AND THEIR FAMILIES

### What is mesothelioma and how is it caused?

Mesothelioma is a tumour (or cancer) which usually grows in the pleura (the external lining of the lungs) or the peritoneum (the lining of the abdomen).

It was not identified until 1960 and is nearly always caused by exposure to asbestos. There is a long latency period between when the exposure to asbestos took place and when symptoms develop. At its shortest, this is 12-15 years and it is typically about 30 years, although cases of 60-70 years have been reported.

The amount of exposure to asbestos required for mesothelioma to develop is not known, but medical science has not ruled out that very low levels of exposure can cause the disease. Mesothelioma can result from exposure to blue, brown or white asbestos - although white is the least dangerous form, in many cases it has been proven to have caused the disease.

### Welfare Benefits and Lump Sum payments from the Department for Work and Pensions

Although the time after diagnosis of mesothelioma is very difficult and traumatic, there are several welfare benefits and two payments from the Department for Work and Pensions (DWP) which are relevant to victims. In fact, anyone with mesothelioma is eligible for at least one welfare benefit and a lump sum payment. Applications should be made as soon as possible, as delay may reduce the amount a victim is entitled to.

The main welfare benefits, which are paid weekly or monthly, are summarised below.

#### **Disability Living Allowance (DLA) and Attendance Allowance (AA)**

These are benefits for people with care and mobility needs. They are not paid specifically for asbestos diseases, but **all victims of mesothelioma qualify for one or other benefit**. DLA is paid to people who are under 65 and AA to people who are 65 or over. Also, in respect of both benefits, the claims of applicants with mesothelioma are expedited. He/she must send with his/her application a form DS1500, completed by the claimant's GP or consultant, confirming the diagnosis of mesothelioma.

There are two components of DLA: namely Care and Mobility. Only one application is made for both parts. Victims of mesothelioma automatically qualify for the Care Component at the highest of the three rates payable. The application for the Mobility Component is assessed according to the qualifying conditions which generally apply to that part of the benefit.

There is only one component to AA. Victims of mesothelioma automatically qualify for this benefit at the higher of the two rates payable.

An award of DLA or AA does not affect an individual's right to receive other means tested benefits.

#### Application forms

For DLA the application form is DLA1A and for AA this is AA1A. These can be obtained from any Jobcentre Plus office, the UK government website (at [www.direct.gov.uk](http://www.direct.gov.uk)), or the Benefit Enquiry Line on 0800 882 200. Also, the applicant's doctor must complete a form DS1500 (see above).

#### **Industrial Injuries Disablement Benefit (IIDB)**

IIDB is paid to individuals who were exposed to asbestos dust when working as **employees** or as **apprentices**. Men and women who were only exposed to asbestos when working on a self-employed basis are not eligible.

Claims for IIDB in respect of mesothelioma are “fast tracked” and applicants do not have to undergo a medical examination.

#### **Note**

An award of IIDB does not affect the claimant’s right to continue to receive other non-means tested benefits. It is, however, taken into account in assessing entitlement to means tested benefits; namely Income Support, Jobseeker’s Allowance, income related Employment and Support Allowance, Housing Benefit, Council Tax Benefit and Pension Credit. Someone who is receiving any of these benefits may lose or have their entitlement to them reduced if they start to receive IIDB. We recommend that these individuals take advice from the Citizens Advice Bureau or an Asbestos Victims Support Group before applying for IIDB on whether an award of this benefit would leave them better or worse off taking into account the effect it would have on their means tested and associated “passport” benefits.

#### Application form

This is the BI100-PD, is pink in colour, and can be obtained from any Jobcentre Plus office, the UK government website (at [www.direct.gov.uk](http://www.direct.gov.uk)), or the Benefit Enquiry Line on 0800 882 200.

#### **Constant Attendance Allowance (CAA) and Exceptionally Severe Disablement Allowance (ESDA)**

These are benefits which are sometimes paid in addition to IIDB. When it receives an application for IIDB the DWP sends the victim’s doctor a proof of diagnosis form and, on the basis of the information provided by the doctor, the DWP will consider the applicant’s eligibility for these benefits. A separate application for these benefits does not have to be made.

CAA is awarded if the doctor considers that the victim of mesothelioma requires “daily care and attention” because of the disease. There are four rates of CAA.

ESDA is paid in addition to men and women with mesothelioma if they have been awarded CAA at the highest or second highest rate and if the doctor completing the proof of diagnosis form states that he/she needs “permanent and constant care and attention”.

#### **Statutory Sick Pay (SSP)**

A victim of mesothelioma who was employed before the symptoms of his/her mesothelioma began and who has to stop working because of the disease may qualify for SSP. This is paid by the individual’s employer for a maximum of 28 weeks. The victim should inform his/her employer that he/she is sick and do this within 7 days of the start of the period of absence (unless the employer has set a different time limit under the individual’s employment contract).

If, at the end of the 28 week period of entitlement to SSP, the victim is still incapable of work, he/she should consider applying for Employment Support Allowance.

#### **Employment and Support Allowance (ESA)**

This benefit is paid to people whose ability to work is limited for health reasons. It replaced Incapacity Benefit, in respect of new applications, on 27 October 2008. (Individuals who were before that date awarded Incapacity Benefit continue, at present, to receive that form of payment.)

Applicants must be under the retirement age for a State pension (currently 65 for men and 60 for women).

As stated in the previous section, someone who was receiving SSP should claim ESA for the period after his/her 28 week period of entitlement to SSP ends. Someone who does not qualify for SSP should apply for ESA from the beginning of the period when he/she cannot work.

Applications for ESA by victims of mesothelioma are “fast tracked” and dealt with under special rules. These mean that it is paid at its higher “main phase” rates from the start of the award period. Proof of the diagnosis, in a form DS1500 completed by the individual’s doctor, must be provided with the

application. (This is the same form as is required for DLA and, if a DS1500 has been submitted when applying for that benefit, a separate form in support of the ESA application is not required.)

ESA has two rates: namely contributions based and income related. The former is paid if the applicant has made sufficient National Insurance contributions (a record of Class 1 contributions throughout the previous three years is sufficient to qualify) while the amount of the latter is calculated taking into account the claimant's and any partner's other income and capital.<sup>1</sup>

#### Application form

This is the ESA1 and can be obtained from the Employment and Support section on 0800 055 66 88, any Jobcentre Plus office or the UK government website at [www.direct.gov.uk](http://www.direct.gov.uk).

#### **Carer's Allowance (CA)**

This benefit is paid to individuals who are caring for someone who is severely disabled. One of the qualifying conditions is that the person being cared for must be receiving the highest or middle rate of DLA Care Component, AA or CAA in respect of IIDB, or a War Disablement Pension (see further below). As explained above, victims of mesothelioma automatically qualify for the highest rate of DLA Care Component or the higher rate of AA. Thus, this first qualifying condition for this benefit is satisfied in cases of mesothelioma and somebody who is caring for someone with the disease should consider applying for it. The conditions which the **carer** (rather than the person being cared for) has to satisfy are that he/she:

- must provide care for 35 hours or more per week;
- must not be gainfully employed or in full time education (satisfied if the carer does not earn more than the lower limit for NI contributions (£95.00 per week for 2008/09), or does not study for more than 21 hours per week); and
- must be 16 or over.

CA is taken into account in assessing the carer's entitlement to means tested benefits. As is similar to the case with IIDB, a carer who is already receiving one or more such benefits should, therefore, before applying for CA, take advice about whether the reduction in or loss of means tested benefits which would result from an award makes an application for CA worthwhile.

#### Application form

The application form is DS700(1) or, if the carer is receiving a State Retirement Pension, DS700(SP). These are available from any Jobcentre Plus office, the Benefit Enquiry Line on 0800 88 22 00, the UK government website (at [www.direct.gov.uk](http://www.direct.gov.uk)) and the Carer's Allowance Unit on 01253 856123.

#### **Lump Sum Payments from the Department of Work and Pensions (DWP)**

**All victims of mesothelioma are entitled to a lump sum payment provided they have not already received compensation in a civil claim for damages.** Payment of a lump sum by the DWP does not bar a victim from subsequently making a civil claim for damages. It is advisable, therefore, to apply for the lump sum from the DWP as soon as possible. This application will almost certainly be processed and paid before a claim for civil damages is concluded. Applications for a lump sum are "fast tracked" and payment is usually received within about a month of the application.

Lump sums are paid under two schemes: namely the Pneumoconiosis etc (Workers' Compensation Act) 1979 (the 1979 Act) and the 2008 Diffuse Mesothelioma Scheme (the 2008 Scheme).

The amount of the lump sum is assessed according to the applicant's age: the younger he/she is, the larger the award. Payments under the 1979 Act are higher than under the 2008 Scheme, but there are conditions which limit the class of mesothelioma victims which qualifies for a payment under the 1979 Act.

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<sup>1</sup> A man or woman and/or his/her partner who has/have savings of over £16,000 will not qualify, and the amount of ESA is tapered if savings are between £6,000 and £16,000.

To be eligible for a lump sum under the 1979 Act (in addition to not having already received civil damages):

- the applicant must have been awarded IIDB for his/her mesothelioma; and
- the employer/employers which allowed him/her to be exposed to asbestos dust must have stopped trading; or
- if the employer/employers is/are still trading, there must be no realistic chance of receiving damages in a civil claim; or
- the employment/employments in which the applicant was exposed to asbestos dust must have ended more than 20 years ago.

The condition that IIDB must have been awarded limits the category of victims of mesothelioma who qualify for a payment under the 1979 Act to men and women who were exposed to asbestos dust when working as an employee or apprentice.

The 2008 Scheme pays a lump sum to all victims of mesothelioma who do not qualify under the 1979 Act.

Applications under the 1979 Act must be made within 12 months of the date of the award of IIDB and applications under the 2008 Scheme within 12 months of the diagnosis of mesothelioma. If the victim dies within either of these periods, the time limit is extended and applications can be made within 12 months of the date of death. The amount paid in posthumous claims under both the 1979 Act and the 2008 Scheme is, however, lower than in applications made on a living basis. Also, if a mesothelioma victim applies for a payment while he/she is alive, but dies before this is processed, the award is still made at the rates which apply to living claims. For these reasons, it is advisable to apply for a payment under the 1979 Act or the 2008 Scheme as soon as possible.

Even though it is a qualifying condition for a payment under the 1979 Act that IIDB has been awarded, a mesothelioma victim does not have to wait until then to apply for this lump sum. Indeed, the DWP specifically advises against waiting for the result of an application for IIDB before applying for a 1979 Act payment.

If, after receiving a lump sum under the 1979 Act or 2008 Scheme, a mesothelioma victim is awarded damages in a civil claim, the lump sum does not have to be paid back to the DWP. Rather, the civil damages are reduced by the amount of the lump sum received.

#### Application form

For both the 1979 Act and the 2008 Scheme the form is the same, the PWC1. This is available from the following address, which is also to where completed application forms should be sent:

PWC Team  
Jobcentre Plus  
Barrow IIDB Centre  
Pittman Way  
Preston  
PR11 2AB

Freephone: 0800 279 2322

#### **A Claim through a Solicitor**

In addition to claiming benefits and a lump sum from the Department for Work and Pensions (DWP), a mesothelioma victim should consider making a claim through a solicitor. This would be for a lump sum of compensation, known as damages. As most cases of mesothelioma occur because of exposure to asbestos in work, most claims are pursued against the individual's employer/employers. Damages claims can sometimes also be made if a victim was exposed to asbestos at home (because another member of the family brought home asbestos dust on his/her working clothes) or through living near an asbestos factory.

If someone has received welfare benefits and/or a lump sum from the DWP for his/her mesothelioma, he/she is still entitled to damages. Their value is nearly always higher than the welfare benefits and

the Government lump sum a victim is awarded. The amounts of the benefits and lump sum which have been paid are taken into account and often deducted from any damages an individual receives.

A claim for damages is more complicated and takes longer than claims for welfare benefits and the Government lump sum. It is important, therefore, to contact a solicitor who specialises in asbestos claims and to do this as soon as possible.

Sometimes, victims do not want to contact a solicitor because, for example:

- they think that the company which exposed them to asbestos no longer exists;
- they did not work with asbestos directly, but only near others who did;
- their exposure to asbestos happened tens of years ago; and/or
- they think that at the time of exposure to asbestos no-one knew that it was dangerous.

In fact, claims in which victims initially say these types of things often succeed. This is a reason why it is advisable to see a specialist solicitor promptly. Most will offer an initial interview at the victim's home free of charge.

### **How is a claim valued?**

If it is successful, a lump sum will be awarded. There are two parts to this: first, an amount, usually between £50,000 and £75,000, for the pain and suffering caused by mesothelioma and; second, compensation for the financial consequences of the disease (e.g. loss of earnings and/or pension and the cost/value of nursing care and equipment).

Damages are tax free. An award does not affect the sufferer's right to continue to receive non-means tested welfare benefits (e.g. Industrial Injuries Disablement Benefit, Disability Living Allowance/Attendance Allowance). Someone who is receiving means tested benefits can set up a trust and pay his/her damages into this. This is a straightforward procedure and ensures that the individual can still receive means tested benefits after an award of damages.

### **What information will the solicitor need?**

The solicitor will need to meet the victim, ideally in person at his/her home, to take a detailed statement about how he/she came into contact with asbestos dust, and to obtain a general overview of the individual's working history and his/her personal and financial situation. After this meeting, in many cases, contact between the solicitor and client is limited to phone calls and letters.

### **How is a claim funded?**

If, after the initial free interview, the solicitor thinks that a claim has reasonably strong chance of succeeding, he/she should offer to act under a conditional fee ("no win-no fee") agreement. This arrangement should mean that there is no financial risk to the victim or his/her family if the claim is not successful. If successful, the costs paid by the claimant should be limited to a few hundred pounds, at most.

Someone who is or has been a member of a trades union may be entitled to representation by the union's solicitor.

### **How long will a claim take?**

Cases which turn out to be straightforward sometimes settle without court proceedings being issued, within about 4 months of the solicitor starting work. If an early settlement is not possible and court proceedings are issued (which does not necessarily mean that there will be a trial), these will follow a "fast track" procedure specifically for mesothelioma claims. This aims to conclude cases within about 4 months of issue. Often, this procedure also requires the defendant to make a payment on account of damages (usually of £47,000) within about 2 months of issue.

### **What happens if the victim dies before the claim is concluded?**

The executors or administrators of a victim's estate can pursue the claim.

### **Does the Claimant have to appear in Court?**

This is a possibility, but a very remote one. Nearly all mesothelioma claims conclude with a negotiated settlement before the date of the court hearing. Probably less than 1% are decided at a trial. Even if there is a court hearing, the victim will be represented by a barrister who will prepare him/her thoroughly for it. The judge will also almost certainly be sympathetic to the claimant's situation.

### **What is the time limit for claims?**

The law which applies to civil claims requires court proceedings to be issued within three years of the date that the victim of mesothelioma was first informed he/she had an asbestos-related disease. The courts have a discretion to allow claims to go ahead even if they are issued outside the three year period, but there can be no guarantee that this will be exercised in any given case. It is, therefore, advisable to contact a solicitor as soon as possible after the diagnosis of mesothelioma.

### **Should a victim make a Will or, if he/she already has one, review this?**

Yes. This is especially important if the victim has a partner but is not married.

### **Victims of mesothelioma who were exposed to asbestos when serving in the Armed Forces**

Men and women with mesothelioma whose only exposure to asbestos dust took place when they served in one of the Armed Forces are precluded from bringing a civil claim for damages unless they were exposed to asbestos dust after 15 May 1987. In place of this right, ex-servicemen and women may be entitled to a War Disablement Pension and other benefits. These are administered by the Service Personnel and Veterans Agency (SPVA). It should be stressed that the prohibition on civil claims only applies to service personnel and not to civilian employees who worked for the Armed Forces. Civilians are entitled to make a claim for damages against the Ministry of Defence.

The branch of the Armed Forces which has been most affected by asbestos diseases is the Royal Navy. It is the policy of the SPVA not to require proof of exposure to asbestos in the case of men and women who served in the Royal Navy in a sea going capacity between 1939 and 1971. Ex-servicemen and women in this category only have to prove that they served at sea in his period and that they have mesothelioma in order to receive a War Disablement Pension.

Benefits paid by the SPVA roughly mirror welfare benefits (for example War Disablement Benefit is paid on similar grounds to IIDB). The rates of its benefits are, however, somewhat higher than the corresponding welfare benefits. Also, if an ex-serviceman/woman who was awarded War Disablement Benefit for mesothelioma is found to have died from this disease and leaves a widow/widower, she/he is entitled to a War Widow's/Widower's Pension. This contrasts with IIDB, to which entitlement ends on the death of the mesothelioma victim, even if he/she leaves a widow/widower.

If someone was exposed to asbestos dust both as a serviceman/woman and as a civilian outside the Armed Forces he/she can pursue a civil claim for damages against the relevant defendant. He/she is entitled to a War Disablement Pension but the amount of this would be reduced if civil damages were received.

#### Application forms

These are available from:

The Service Personnel and Veterans Agency  
Norcross  
Thornton Cleveleys

Lancashire  
FY5 3WP

Telephone: 0800 1692277

Forms can also be downloaded from the SPVA website at [www.veteransagency.org.uk](http://www.veteransagency.org.uk)

### **Useful Contacts**

Department for Work and Pensions Benefit Enquiry Line: 0800 88 22 00

Jobcentre Plus PWC Team freephone: 0800 279 2322 (deals with applications for lump sum payments under the Pneumoconiosis Act 1979 and the 2008 Mesothelioma Scheme)

National Association of Citizens Advice Bureaux: [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)

Asbestos Victims Support Groups Forum: tel. 0161 636 7555; [www.asbestosforum.org](http://www.asbestosforum.org)

Macmillan Cancer Support: tel. 0808 808 00 00; [www.macmillan.org.uk](http://www.macmillan.org.uk)

### **For further information:**

**Making a claim may seem like a daunting task but our expert lawyers will make your claim as straightforward as possible and support you throughout your claim. We will be happy to see you in your home, at work or even in hospital in order to explain matters further and complete the paperwork for you.**

**Find out now if you have a claim - simply call our freephone 24/7 helpline number 0800 731 2586, or complete the online enquiry form for totally confidential, free, no obligation expert advice.**

**We offer a “no win no fee service” and you will receive 100% of your compensation.**