

LUNG CANCER AND ASBESTOS: A GUIDE TO COMPENSATION

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Introduction

The link between asbestos exposure and lung cancer was established as long ago as 1955. It is also well known that smoking (and other substances) can cause lung cancer. Compensation is sometimes paid to a man or woman with lung cancer who has been exposed to asbestos, even if he/she is or has also been a smoker.

There are two types of compensation for asbestos-related lung cancer. The first is welfare benefits and a lump sum, paid by the Department for Work & Pensions (DWP). The second is a different lump sum, known as “damages”, which can be claimed, using a solicitor, from one or more of the businesses or organisations responsible for the individual's exposure to asbestos. The right to claim damages exists independently from the right to claim compensation from the DWP. In other words, even if someone receives welfare benefits and the lump sum for his/her asbestos-related lung cancer, he/she can still claim damages.

Welfare benefits and a lump sum payment from the Department for Work and Pensions (DWP)

Although the time after diagnosis is very difficult and traumatic, there are several welfare benefits and a lump sum payment from the DWP which are relevant in cases of lung cancer. Applications should be made as soon as possible, as delay may reduce the amount which an individual is entitled to.

The main welfare benefits, which are paid weekly or every four weeks, are summarised below.

Personal Independence Payment (PIP) and Attendance Allowance (AA)

These are benefits for people with care and mobility needs. They are not paid specifically for asbestos diseases, but many men and women with lung cancer qualify for one or other of the benefits.

PIP was introduced in 2013 to replace Disability Living allowance (DLA). It is paid to people who are under 65. AA is paid to people who are 65 or over. With both benefits, claims of applicants with lung cancer whose prognosis is poor are dealt with under “special rules”. Claimants in this category must send with their application a form DS 1500, completed by their GP, Consultant or Lung Cancer Nurse Specialist, confirming the prognosis.

There are two components of PIP: Daily Living; and Mobility. Only one application is made for both components. Men and women with lung cancer who qualify under “special rules” automatically receive the Daily Living Component at the enhanced rate, the higher of the two rates payable. The Mobility Component is not awarded automatically. For this to be paid, the applicant must satisfy the disability conditions which apply to this component. He/she is likely to be asked questions about his/her mobility needs but will not be asked to complete a questionnaire or to attend a face to face consultation. The Mobility Component of PIP has two rates: standard; and enhanced.

There is only one component of AA. Men and women with lung cancer who qualify under “special rules” automatically receive this benefit at the higher of the two rates payable.

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

Applications

The way of applying for PIP which is preferred by the DWP is by phone on 0800 917 2222. The application form is PIP 1.

For AA the form is the AA1A. This can be obtained from DWP offices, the UK Government website (at www.gov.uk) or the AA Service Centre on 0345 605 6055.

For both PIP and AA claims which are made under “special rules”, the applicant must also send in a form DS 1500 (see above).

Industrial Injuries Disablement Benefit (IIDB)

There are two sets of qualifying conditions for this benefit. The first requires that the applicant must have been exposed to asbestos dust when working as an employee or as an apprentice. Men and women who were only exposed to asbestos when working on a self-employed basis are not eligible. Someone who was exposed to asbestos both as an employee/apprentice and when self-employed is entitled to IIDB.

The second condition is that the exposure to asbestos must have taken place in certain types of work. With regard to this point, a distinction is made between lung cancer where asbestosis is also present and lung cancer without asbestosis.

IIDB is paid in cases of lung cancer and asbestosis if the applicant’s work in which he/she was exposed to asbestos involved:

- the working or handling of asbestos or of a mixture which contained asbestos; or
- the manufacture or repair of asbestos textiles or of other products which were made from or contained asbestos; or
- the cleaning of any machinery or plant used in any operation involved in any of the activities in the two bullet points above; or
- the cleaning of any chambers, fixtures and appliances used for the collection of asbestos dust; or
- work which was not directly involved in any of the tasks in any of the bullet points above but which, through being carried on near such work, involved exposure to substantial levels of asbestos dust.

Much more restrictive conditions apply in cases of lung cancer where there is no asbestosis present. IIDB is only paid if exposure to asbestos dust took place in one of four types of work and lasted for a specified length of time. The precise requirements are that the exposure to asbestos occurred in:

- the manufacture of asbestos textiles; or
- spraying asbestos; or
- asbestos insulation work; or
- applying or removing materials containing asbestos in the course of shipbuilding; and,
- if all or some of the exposure took place before 1975, that the applicant was in the listed occupations for at least five years in total; or,
- if all the exposure took place after 1975, that the applicant was in one of the listed occupations for at least 10 years in total.

There is no age limit for applications. These can be made after the individual has retired.

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

No Income Tax is paid on IIDB.

An award of IIDB does not affect an individual's right to continue to receive other non-means tested benefits. It is, however, taken into account in assessing eligibility for means tested benefits: namely, Universal Credit, 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. It is recommended that people in this situation take advice from the Citizens Advice Bureau or an Asbestos Victim Support Group before applying for IIDB about 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 B1100-PD and can be obtained from any Jobcentre Plus office, the UK Government website at www.gov.uk, or by phone from the Industrial Injuries Disablement Centre on 0345 603 1358. In addition, the applicant's doctor or specialist nurse must complete a form B1100-PN(A) confirming the diagnosis of lung cancer and this must be sent with the completed B1100-PD.

The IIDB disease code for lung cancer with asbestosis is PDD8 and for lung cancer without asbestosis it is PDD8A.

Constant Attendance Allowance (CAA) and Exceptionally Severe Disablement Benefit (ESDA)

These are benefits which are sometimes paid as a supplement to IIDB. On the basis of the information which the applicant's doctor or specialist nurse provides in the proof of diagnosis form B1100 PN(A) (see Application form section at page 7), the DWP will consider whether to pay these benefits. A separate application does not have to be made for them.

CAA is awarded if the doctor or specialist nurse says that the applicant needs daily care and attention because of his/her disability. There are four rates of CAA. ESDA is paid in addition if CAA has been awarded at its highest or second highest rates.

Someone who does not have attendance needs when he/she applies for IIDB but whose condition worsens so that constant attendance is required can apply for CAA at that stage. The application form is B1107 and can be obtained by phone from the Industrial Injuries Disablement Centre on 0345 603 1358.

Statutory Sick Pay (SSP)

Someone with lung cancer who was employed before his/her symptoms 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 employee should inform his/her employer that he/she is sick and do this within seven days of the start of the period of absence (unless the employer has set a different time limit under the individual's employment contract).

At the end of the 28 week period of entitlement to SSP, assuming the employee is still incapable of work, he/she should apply for Employment Support Allowance or Universal Credit (see below).

Employment and Support Allowance (ESA) and Universal Credit (UC)

These benefits are paid to people who are unable to work due to disability.

Applicants must be under the retirement age for a State pension (currently 65 for men and between 60 and 65 for women¹).

¹ The State pension age for women born after 6 April 1950 is being increased in stages from 60 to 65 between April 2010 and November 2018. A woman who wants to find out exactly when she will reach State pension age can do so by contacting the Pension Service (contact details at end of this Guide).

As stated in the section above, someone who was receiving SSP should claim ESA after his/her 28 week period of entitlement to SSP ends.

Someone who does not qualify for SSP should apply for ESA from the start of the period when he/she cannot work.

Applications for ESA by men and women with lung cancer who have a poor prognosis are “fast tracked” and dealt with under “special rules”. This means that the benefit is paid at its higher “main phase” rate from the start of the award period. Proof of the diagnosis, in a form DSI500 completed by the individual’s doctor or specialist nurse, must be provided with the application. (This is the same form as that required for PIP and AA and if a DSI500 has been submitted when applying for either of those benefits, a further form in support of the ESA application is not needed.)

There are two types of ESA: contributory; and income related. The first type is paid if the applicant has made or been credited with sufficient National Insurance contributions. The second type is means related and is worked out taking into account the claimant’s and his/her partner’s other income and capital².

Income-related ESA is being replaced by Universal Credit (UC). UC has so far been introduced only in limited areas of the country. The Government plans to extend UC so that between 2017 and 2019 most people who receive income related ESA and new applicants for means tested benefits are transferred to and paid UC. The introduction of UC does not affect contributory ESA. The Government is not planning to replace this benefit and an application for it can still be made.

Applications

The DWP’s preferred way of claiming ESA is by phone to a Jobcentre Plus contact centre on 0800 055 6688. Alternatively, an application can be made by completing the form ESA1. This can be downloaded at www.gov.uk. (With fast track lung cancer cases, the applicant’s doctor must also complete a form DSI500 confirming the diagnosis.)

In most cases, applications for UC must be made online at www.gov.uk/apply-universal-credit.

² 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 £6,001 and £16,000.

Carer’s Allowance (CA)

This benefit can be paid to someone who is caring for a man or woman who is severely disabled. The carer does not have to be a relative of the man or woman or to live with him/her.

The first qualifying condition is that **the person being cared for** must be receiving either rate of the Daily Living Component of PIP, the highest or middle rate of DLA Care Component, AA, CAA in respect of IIDB, or a War Disablement Pension (see page 16). Men and women with lung cancer often qualify for one of these benefits. Somebody who is caring for a person who has lung cancer should, therefore, consider whether to apply for it.

The second condition concerns **the carer** (rather than the person being cared for). He/she:

- must provide care for 35 hours or more per week;
- must not be working and earning more than £110 per week or be in full time education (i.e. studying for 21 hours or more per week); and
- must be 16 or over.

CA is taken into account in assessing the carer’s entitlement to means tested benefits. 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 forms

This is DS700 or, if the carer is receiving a State Retirement Pension, DS700(SP). These are available from any Jobcentre Plus office, the UK Government website (at www.gov.uk) and the Carer’s Allowance Unit on 0345 608 4321. Applications can also be made online at www.gov.uk/carers-allowance/how-to-claim.

Lump sum payment from the Department for Work and Pensions (DWP)

This is sometimes awarded under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 (the 1979 Act). It is a condition of payment that the applicant has been awarded IIDB for his/her lung cancer. As explained at pages 6–7, the categories of men and women with lung cancer who qualify for IIDB are limited. The applicant must have been exposed to asbestos when working as an employee or apprentice and in one of types of work specified (as well as, in cases where asbestosis is not present, for the length of time required).

There are further conditions which an applicant must satisfy to qualify for a payment under the 1979 Act. These are that:

- he/she must not have issued court proceedings in a civil claim for damages (see the 'A claim through a solicitor' section page 13–15); 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.

Payment of the lump sum by the DWP does not bar a man or woman with asbestos-related lung cancer from later issuing court proceedings in a civil claim for damages. Conversely, if proceedings have already been issued, he/she is not entitled to the lump sum. It is advisable, therefore, to apply for this as soon as possible. The application will be "fast tracked" by the DWP and, if made promptly, this is almost certain to be processed before a solicitor is ready to issue court proceedings in a civil claim. Payment of the lump sum is usually made within about a month of the application.

The amount of the lump sum is calculated according to a scale based on the applicant's age: the younger he/she is, the larger the award.

Applications under the 1979 Act must be made within 12 months of the date of the award of IIDB. If the applicant dies within this period, the time limit is extended and an application can be made within 12 months of the date of death. The amount paid in a

posthumous claim is, however, lower than in a claim on a living basis. Also, if a man or woman with lung cancer 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. These are more reasons why it is advisable to apply for a 1979 Act payment as soon as possible.

Even though it is a qualifying condition for a payment under the 1979 Act that IIDB has been awarded, a man or woman who has lung cancer does not have to wait until then to apply for the lump sum. Indeed, the DWP specifically advises against waiting for the result of an application for IIDB before applying for a 1979 Act payment. It is good practice to make both applications at the same time.

If, after receiving a lump sum under the 1979 Act, a man or woman with lung cancer is awarded damages in a civil claim, the lump sum does not have to be paid back to the DWP. Rather, the civil damages paid to the claimant are reduced by the amount of the lump sum received.

Application form

This is the PWC1. It is available from the following address, which is also where the completed application form should be sent to:

Industrial Injuries Disablement Benefit Centre
Barrow Benefit Centre
Post Handling Site B
Wolverhampton
WV99 1RX

Telephone: 0345 603 1358

A claim through a solicitor

As well as claiming benefits and the lump sum from the Department for Work and Pensions (DWP), someone who has asbestos-related lung cancer should consider making a civil claim through a solicitor. This would be for a lump sum of compensation, known as damages.

It is not disputed in civil claims that asbestos exposure is the cause of lung cancer where there is also asbestosis present, even if the claimant has been a smoker. Current practice, however, is for judges to make a deduction in successful cases, generally of about 20–30% of the damages awarded, where the claimant was a smoker.

It is more difficult to succeed in a civil claim when lung cancer is not accompanied by asbestosis. In these cases, the grounds on which the courts are prepared to attribute lung cancer to asbestos exposure are technical and complex. In short, however, if someone with lung cancer has had heavy exposure to asbestos for a prolonged period (unlikely to be less than one year, except in cases involving extremely high levels of asbestos) or moderate exposure for more than five years, there is a reasonable chance of succeeding in obtaining damages, even if the claimant has been a smoker. A solicitor should be prepared to investigate this type of case.

If someone has received the lump sum and/or benefits from the DWP for his/her lung cancer, he/she is still entitled to damages. The amount of damages is nearly always more than the benefits and the lump sum which an individual has been awarded. The benefits and lump sum are taken into account and deducted, in whole or in part (depending on the particular circumstances of the case), from any damages received.

A claim for damages is more complicated and takes longer than claims for DWP benefits and the lump sum. It is important, therefore, to contact a solicitor who specialises in asbestos claims and to do this as soon as possible. A solicitor should offer an initial interview free of charge.

Sometimes, men and women with lung cancer 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 themselves, but only near others who did;
- their exposure to asbestos happened many years ago; and/or
- they think that at the time they were exposed to asbestos no-one knew that it was dangerous.

In fact, claims in which men and women initially say things like this sometimes succeed. This is another reason why it is advisable to see a specialist solicitor promptly.

How is a claim valued?

In a successful claim a lump sum is awarded. This made up of two parts: first, an amount, usually between £50,000 and £75,000, for the pain and suffering caused by lung cancer; 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). As stated earlier, a deduction, generally of about 20–30% of the damages, is usually made if the claimant has been a smoker.

Damages are not subject to Income Tax.

An award of damages does not affect an individual's right to continue to receive non-means tested welfare benefits (e.g. Industrial Injuries Disablement Benefit, Personal Independence Payment/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 process and ensures that damages are ignored in assessing entitlement to means tested benefits.

What information will the solicitor need?

The solicitor will need to meet the claimant, 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 an overview of his/her working history and 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 an initial free interview, the solicitor thinks that a claim has a reasonably strong chance of succeeding, he/she should offer to act under a conditional fee (“no win no fee”) agreement. This arrangement means that there is no financial risk to the claimant or his/her family if the claim is not successful.

How long will a claim take?

Straightforward cases sometimes settle without court proceedings being issued, within about four 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 asbestos cancer claims. This aims to conclude cases within about four to six months of issue. Sometimes, this procedure also requires the defendant to make a payment on account of damages (usually of £50,000) within about two months of issue.

What happens if the claimant dies before the claim is concluded?

The executors or administrators of his/her estate can pursue the claim.

Does the claimant have to appear in court?

This is a possibility, but a remote one. Nearly all lung cancer claims conclude with a negotiated settlement before the date of the court hearing. Even if there is a hearing, the claimant will be represented by a barrister who will prepare him/her thoroughly for it. Also, the judge will almost certainly be sympathetic to the claimant’s situation.

What is the time limit for claims?

Court proceedings are usually required to be issued within three years of the date that a man or woman with lung cancer was first informed he/she had an asbestos related disease. The courts have a discretion to allow claims to go ahead even if proceedings 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, very important to contact a solicitor as soon as possible after the diagnosis of lung cancer.

What happens if the defendant has been dissolved and its insurers cannot be identified?

If the defendants have been dissolved, this does not necessarily mean that a claim cannot be made. If the defendants’ insurers can be identified, the claim can effectively be brought against them.

Sometimes, however, the relevant insurance companies cannot be located because records have been lost or destroyed. A civil claim for damages cannot then be pursued.

Should someone with lung cancer make a will or, if he/she already has one, review this?

Yes. This is especially important if he/she has a partner but is not married.

Men and women with lung cancer who were exposed to asbestos when serving in the Armed Forces

Someone with lung cancer whose only exposure to asbestos dust took place when he/she served in one of the Armed Forces is not allowed to bring a civil claim for damages unless he/she was 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 Veterans UK, part of the Ministry of Defence.

It should be stressed that the bar on civil claims only applies to service personnel and not to civilian employees who worked for the Armed Forces. Employees and former employees 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 Veterans UK not to require proof of exposure to asbestos in the case of men who served in the Royal Navy in a sea-going capacity between 1939 and 1971. Ex-servicemen in this category only have to prove that they served at sea during this period and that they have lung cancer caused by exposure to asbestos in order to receive a War Disablement Pension.

Benefits paid by Veterans UK roughly mirror welfare benefits. For example, War Disablement Benefit has a similar framework to Industrial Injuries Disablement Benefit. 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 lung cancer 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 Industrial Injuries Disablement Benefit, to which entitlement ends on the death of the individual who has lung cancer, even if he/she leaves a widow/widower.

If someone was exposed to asbestos dust, both as a serviceman/woman and outside the Armed Forces, he/she can make a civil claim for damages against the defendant/s in question. If the claim is successful, he/she is still entitled to a War Disablement Pension, but the amount of this would be reduced to take account of the award of damages.

Application forms

These are available from:

Veterans UK
Ministry of Defence
Norcross
Thornton Cleveleys
Lancashire
FY5 3WP

Telephone: 0808 1914 218

Forms can also be downloaded from Veterans UK's website at:

www.veterans-uk.info

Useful contacts

Industrial Injuries Disablement Benefit Centre

(deals with applications for lump sum payments under the Pneumoconiosis Act 1979)

Telephone: 0345 603 1358

The Pension Service

Telephone: 0800 731 7898

www.gov.uk/contact-pension-service

National Association of Citizens Advice Bureaux

www.citizensadvice.org.uk

Asbestos Victims Support Groups Forum UK

www.asbestosforum.org.uk

Macmillan Cancer Support

Telephone: 0808 808 0000

www.macmillan.org.uk

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