

MESOTHELIOMA: A GUIDE TO COMPENSATION

Contents

What is mesothelioma and how is it caused?	4
Welfare benefits and a lump sum payment from the Department for Work and Pensions	5
– Personal Independent Payment and Attendance Allowance	5
– Industrial Injuries Disablement Benefit	6
– Constant Attendance Allowance and Exceptionally Severe Disablement Allowance	7
– Statutory Sick Pay	7
– Employment and Support Allowance and Universal Credit	7
– Carer's Allowance	8
Lump sum payments from the Department of Work and Pensions	10
– Pneumoconiosis etc. (Workers' Compensation) Act 1979	10
– 2008 Diffuse Mesothelioma Scheme	10
A claim through a solicitor	12
– How is a claim valued?	13
– What information will the solicitor need?	13
– How is a claim funded?	13
– How long will a claim take?	13
– What happens if the claimant dies before the claim is concluded?	14
– Does the claimant have to appear in court?	14
– What is the time limit for claims?	14
– Should a man or woman with mesothelioma make a Will or if he/she already has one, review this?	14
– What happens if the defendant has been dissolved and its insurers cannot be identified?	14
Diffuse Mesothelioma Payment Scheme	15
Men and women with mesothelioma who were exposed to asbestos when serving in the Armed Forces	16
Useful contacts	18

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 generally recognised until the late 1950s 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 30–40 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 or brown asbestos. White asbestos is less dangerous than these two types of asbestos but there is a lot of evidence which indicates that it can cause mesothelioma.

There are three types of compensation for mesothelioma. 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 (Defendants) responsible for the individual’s exposure to asbestos. The third type of compensation is the Diffuse Mesothelioma Payment Scheme (DMPS). This sometimes applies when a damages claim cannot be made because the Defendants have been dissolved and their insurers cannot be found. The DMPS was set up in 2014 and makes a payment, based on the value of a damages claim, from a fund which insurance companies contribute to.

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

There are several welfare benefits and two payments from the DWP which are relevant in cases of mesothelioma. In fact, anyone with the disease is eligible for at least one welfare benefit and a lump sum payment. Although the time after diagnosis with mesothelioma is very difficult and traumatic, 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 Independent 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 all men and women with mesothelioma qualify for one or other of these benefits.**

PIP was introduced in 2013 to replace Disability Living Allowance (DLA). It is paid to people who are under 65 and AA is paid to people who are 65 or over. With both benefits, claims of applicants with mesothelioma are expedited. A claimant must send with his/her application the form DS1500, completed by his/her GP, Consultant or Lung Cancer Nurse Specialist, confirming the diagnosis of mesothelioma.

There are two components of PIP: Daily Living; and Mobility. Only one application is made for both components. Men and women with mesothelioma automatically qualify for 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 to AA. Men and women with mesothelioma automatically qualify for 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 PIP1.

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 helpline on 0345 605 6055.

For both PIP and AA the applicant must send in a form DS 1500 (see above).

Industrial Injuries Disablement Benefit (IIDB)

IIDB is paid to individuals who were exposed to asbestos dust when working as employees or apprentices. 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.

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

Claims for IIDB in respect of mesothelioma 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 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, 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 his/her entitlement to them reduced if he/she starts to receive IIDB. People in this situation should take advice from the Citizens Advice Bureau or an Asbestos Victims Support Group before applying for IIDB on whether an award of the 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 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 Benefit Centre on 0345 603 1358. In addition, the applicant's doctor or specialist nurse should complete a form BI100-PN(A) confirming the diagnosis of mesothelioma and this must be sent with the completed BI100-PD.

The IIDB disease code for mesothelioma is PDD3.

Constant Attendance Allowance (CAA) and Exceptionally Severe Disablement Allowance (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, BI100 PN(A) (see Application form section on previous page), 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 attendance because of her/his 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 later required can apply for CAA at that stage. The application form is BI107 and can be obtained by phone from the Industrial Injuries Disablement Centre on 0345 603 1358.

Statutory Sick Pay (SSP)

Someone with mesothelioma who was working as an employee 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 and/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).

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.

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).

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 mesothelioma are dealt with under special rules. This means that it is paid at its higher "main phase" rate from the start of the award period.

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 tested 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 on 0800 055 6688. Alternatively, an application can be made by completing the claim form ESA1. This can be downloaded at www.gov.uk. (The applicant's doctor will also have to complete form DS1500 confirming the diagnosis of mesothelioma.)

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

Carer's Allowance (CA)

This benefit can be paid to an individual 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 DLA Care Component, AA, CAA in respect of IIDB, or a War Disablement Pension

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.

(see page 16). Men and women with mesothelioma automatically meet one or more of these conditions. Someone who is caring for a person who has mesothelioma should, therefore, consider applying 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 form

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 payments from the Department for Work and Pensions (DWP)

All men and women who have mesothelioma are entitled to a lump sum payment as long as court proceedings have not been issued in a civil claim for damages (see below).

Payment of a lump sum by the DWP does not bar an individual from later starting court proceedings. It is advisable, therefore, to make an application for the lump sum as soon as possible. This will almost certainly be processed and paid before a solicitor is ready to issue court proceedings in a civil claim. Payment of the lump sum is "fast tracked" and is usually received within about a month of the application.

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

The lump sum is calculated according to a scale based on the applicant's age: the younger he/she is, the larger the award. The amounts of payments under the 1979 Act and under the 2008 Scheme are the same.

To qualify for a lump sum under the 1979 Act (in addition to not having already issued court proceedings in a civil claim):

- the applicant must have been awarded IIDB for mesothelioma;
- 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 men and women with mesothelioma who qualify under the 1979 Act to individuals who were exposed to asbestos dust when working as employees or apprentices.

The 2008 Scheme pays a lump sum to all men and women with mesothelioma who do not qualify under the 1979 Act. Also, the condition under the 1979 Act that a payment

cannot be made if court proceedings have been issued does not apply under the 2008 Scheme. Someone who has mesothelioma is entitled to a lump sum even if a court case has been started, as long as damages have not yet been paid.

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 date of diagnosis of mesothelioma. If the applicant 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 man or woman with mesothelioma 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 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 man or woman with mesothelioma 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 or the 2008 Scheme, an individual who has mesothelioma 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

The same form is used for both the 1979 Act and the 2008 Scheme. 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 a lump sum from the Department for Work and Pensions (DWP), someone who has mesothelioma should consider making a claim through a solicitor. This is for a lump sum of compensation, known as damages. As most cases of mesothelioma result from exposure to asbestos in work, most claims are made against the individual's employer/employers. Damages claims are sometimes possible if someone was exposed to asbestos at home (because another member of the family brought asbestos dust into the home on his/her working clothes) or through living near an asbestos factory.

If someone has received a lump sum and/or welfare benefits from the DWP for his/her mesothelioma, he/she is still entitled to claim damages. The amount of damages is nearly always higher than the amount of the benefits and lump sum a claimant is awarded. The benefits and lump sum which have been paid are taken into account and deducted in whole or in part (according to the particular circumstances of the case) from any damages an individual receives.

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 at the claimant's home free of charge.

Sometimes, men and women with mesothelioma 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, cases in which claimants say things like this at first often 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. There are two parts to this: first, an amount, usually between £50,000 and £90,000, 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).

Income Tax is not paid on damages.

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 get an 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 an initial free interview, the solicitor thinks that the 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 and that, if the claim succeeds, the claimant receives the whole of the amount of damages awarded, without any deductions being made.

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 mesothelioma claims. This aims to conclude cases within about four months of issue. Often, this procedure also requires the defendant to make a payment on account of damages (usually £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 very remote one. Nearly all mesothelioma 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 mesothelioma was first informed that he/she had an asbestos-related disease. The courts have the 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, very important to contact a solicitor as soon as possible after the diagnosis of mesothelioma.

Should a man or woman with mesothelioma 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.

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

If the defendants to a claim 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. Consequently, a civil claim for damages cannot be pursued. A claim under the Diffuse Mesothelioma Payment Scheme should then be made (see next page).

Diffuse Mesothelioma Payment Scheme (DMPS)

It had long been recognised that not being able to make a civil claim for damages because the defendant/defendants has/have all been dissolved and because the insurers could not be identified represented a serious injustice: someone with mesothelioma could have a very strong case on legal principles but not be able to make a claim solely because there was no defendant or insurer which could pay damages.

The DMPS has been set up to remedy this situation. It makes compensation payments from a fund which insurance companies pay in to. There are some important limitations on the Scheme which do not apply to damages claims. These are:

- The diagnosis of mesothelioma must have been made on 25 July 2012 or later;
- The individual's exposure to asbestos must have taken place when he/she was an employee (i.e. not in self-employment or domestically);
- If the exposure to asbestos was with more than one employer, all of these businesses/organisations must have been dissolved and none of their insurers been identified; and
- If the person with mesothelioma has already died, a payment is usually only made if he/she left a widow/widower.

The sum awarded is calculated according to a scale based on the applicant's age. This is based on the average value of a civil claim for damages for claimants in each age group. For example, a claimant aged 70 would receive £153,685.

It is extremely important that someone who does not have a spouse should apply under the DMPS as soon as possible after diagnosis of mesothelioma. Applications on behalf of men and women in this category are not generally allowed after death. (If an application is made during the individual's lifetime but is not processed before his/her death, a payment can still be made, to the person's estate.) Even if an applicant has a spouse, it is still important to apply for a DMPS payment promptly. This is because the total amount of welfare benefits and any DWP payment received is deducted from a DMPS award. The earlier the application is made, therefore, the lower the deduction which will apply.

Making a claim for welfare benefits and a lump sum payment from the DWP does not prevent someone from later applying for a DMPS payment.

The time limit for making a claim under the DMPS is three years from the date of diagnosis of mesothelioma. It is not extended, as it is in civil damages claims, if the applicant dies within three years of the date of diagnosis.

Men and women with mesothelioma who were exposed to asbestos when serving with the Armed Forces

Someone with mesothelioma 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 related 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 seagoing 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 mesothelioma 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 Veterans UK's benefits are somewhat higher than the corresponding welfare benefits.

Also, if an ex-serviceman/woman who has been awarded War Disablement Benefit for mesothelioma dies 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 person who has mesothelioma, 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

Telephone: 0345 603 1358

(deals with applications for payments under the Pneumoconiosis Act 1979 and the 2008 Mesothelioma Scheme).

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 00 00

www.macmillan.org.uk

Mesothelioma UK

(a national resource centre which provides information and support)

Telephone: 0800 169 2409

www.mesothelioma.uk.com

This guide has been produced by Moore Blatch LLP. This guide is intended to set out general information, it is not intended to be a replacement for detailed legal advice.

To the extent permitted by law, Moore Blatch LLP will not be liable by reason of breach of contract, negligence or otherwise, for any loss or consequential loss occasioned to any person acting, omitting to act, or refraining from acting in reliance upon this material, or arising from or connected with any error or omission in this material. Consequential loss means any loss of anticipated profits, damage to reputation or goodwill, loss of expected future business, damages, costs or expenses payable to any third party or any other indirect losses.

© Moore Blatch LLP

Authorized and regulated by the Solicitors Regulation Authority.

MOORE BLATCH
solicitors

Richmond • Southampton • City • Lymington

023 8071 8000 info@mooreblatch.com

www.mooreblatch.com