

Asbestos

Newsletter Autumn 2008

Important News For Mesothelioma Sufferers

New Government Mesothelioma Lump Sum Payments

A new Government scheme¹ comes into operation on 1 October 2008 and aims to provide a lump sum payment to mesothelioma sufferers exposed to asbestos other than in employment within 6 weeks of making a claim. It is estimated that 600 people a year who do not currently qualify for a payment will now receive one.

Currently, under the existing Government scheme² only mesothelioma sufferers who can prove a link with asbestos exposure from their employment are eligible for a lump sum payment subject to being in receipt of Industrial Injuries Disablement Benefit and not having already received compensation for that exposure.

Under the new scheme, if a mesothelioma sufferer has been exposed to asbestos dust as a result of contact with a relative's dust covered overalls, or as a result of living near an asbestos factory, or through self employment, or through DIY activities³, they should be eligible for a payment but this will be at a slightly lower rate than those who were exposed in their employment.

The amounts payable to sufferers will be slightly lower under the new scheme (where the exposure is other than in employment) but it is hoped that after about 3 years the payments will be at the same level as those exposed through employment.

Applications can also be made by a dependant of a mesothelioma sufferer after the sufferer's death under both schemes. The payments are significantly lower than to living claimants – for example at age 65 the payments are £3,451 under the existing scheme or £2,752 under the new scheme.

The Department for Work and Pensions Jobcentre Plus office in Barrow-in-Furness, Cumbria will administer both the existing scheme and the new scheme. There will be one new application form to be completed for applications under both schemes and time limits will apply.

If the sufferer also pursues a civil claim for damages against their employer and is successful, then it will be for the employer / their insurance company to repay the Government for the early lump sum payment when the compensation from the civil claim for damages is paid. This means that the scheme will be self-financing.

Amounts payable where the mesothelioma sufferer applies in their lifetime

Age of the sufferer	Payment under the existing 1979 Scheme (exposure in employment)	Payment under the new 2008 Scheme (exposure other than in employment)
Age 50	£52,464.00	£40,781.00
Age 55	£44,822.00	£34,841.00
Age 60	£31,903.00	£24,799.00
Age 65	£18,720.00	£14,551.00
Age 70	£13,216.00	£10,273.00
Age 75	£11,269.00	£ 8,759.00

There is a full sliding scale from age 37 and under, to age 77 and over, with a specific amount payable for each age.

We would be pleased to meet with you and your colleagues to explain more about the practical workings of the scheme, for example at a MDT meeting or a local lung cancer nurses meeting. Please contact us on 0870 1500 300 or e-mail your nearest representative (address overleaf) to make arrangements. We would also like to update you on other developments in mesothelioma or lung cancer cases, more of which we mention overleaf.

New Court Mesothelioma Practice Direction

The Court in England and Wales has implemented new guidance for dealing with all mesothelioma claims. The guidance, in the form of a Practice Direction, ensures that all mesothelioma claims for compensation are progressed quickly once Court proceedings have been commenced. The Direction follows the procedure which a specialist judge in London, Senior Master Whitaker, has adopted over the last few years, and aims to ensure that Courts around the country follow the same procedure. The particular requirements are as follows:

- A specialist judge at each Court centre around the country will deal with all mesothelioma claims.
- Once the defendant company has filed a defence at Court, the judge will fix a short hearing date (referred to as a case management conference) usually within about 4 weeks.
- At this first hearing the defendant has to give good reasons why Judgement should not be entered against them, in the claimant's favour, and an interim payment of £47,000 made to the claimant.
- A trial date will be fixed, for the final hearing, generally not more than 6 months from starting the court action.

This means that many more mesothelioma claims are capable of settlement during the sufferer's lifetime. In cases where the defendant company is known and is still trading, there is no reason why Court proceedings cannot be started quickly (often within 2 to 3 months of the patient first contacting us) and thereafter for the claim to be concluded within 4 months of the court proceedings being issued. Most cases settle before the final Court hearing date.

There are still some cases where it is difficult to trace the Defendant company or their insurers, for example, where the employer went out of business many years ago. These cases will still take longer but the new Court Practice Direction is good news for patients.

Please contact us on:

Birmingham	
alida.coates@irwinmitchell.com	0121 214 5281
Leeds	
ian.bailey@irwinmitchell.com	0113 220 6233
London	
guy.darlaston@irwinmitchell.com	0207 421 3897
Manchester	
geraldine.coombs@irwinmitchell.com	0161 838 3061
Newcastle	
roger.maddocks@irwinmitchell.com	0191 279 0095
Sheffield	
adrian.budgen@irwinmitchell.com	0114 274 4420

¹ The new Government scheme is set up under The Child Maintenance and other Payments Act 2008 and the Mesothelioma Lump Sum Payment (Conditions and Amounts) Regulations 2008.

² The existing Government scheme is under the Pneumoconiosis etc (Workers Compensation) Act 1979 and is often referred to as the "1979 Act Scheme" or the "PWCA Scheme". To be eligible a sufferer has to be in receipt of Industrial Injuries Disablement Benefit and has to show that he/she can not pursue a civil claim for damages because their former employer is no longer in existence.

³ Service personnel are unlikely to qualify.



irwinmitchell ^(IM)
solicitors

telephone **0870 1500 300**

irwinmitchell.com/personalinjury

Irwin Mitchell Solicitors [Birmingham](#) [Glasgow](#) [Leeds](#) [London](#) [Manchester](#) [Newcastle](#) [Sheffield](#)

Irwin Mitchell Abogados [Madrid](#) [Málaga](#)