

# State Payments for Mesothelioma

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# Overview

## **Pneumoconiosis, etc. Act 1979**

- Disablement because of the disease, every relevant employer has ceased to carry on business, no DMPS or civil claim brought
- Payments range from £3,305 - £93,827

## **Diffuse Mesothelioma Scheme 2008**

- Covers the self employed / those with secondary and environmental exposure
- Claims must be made within 12 months
- Payments range from £14,578 - £93,827 for sufferers and £8,084 - 48,829 for their dependants

## **Diffuse Mesothelioma Payment Scheme 2014**

- **Subject of today's webinar!**

# Background to the DMPS Scheme

## 3 Key Differences compared to the 2008 Scheme

- (i) The scheme is not financed by the state but by way of a levy on currently active insurance companies;
- (ii) The awards are considerably higher than those under the 1979 Act and the 2008 Scheme (the aim being to approach the average awards made in civil claims);
- (iii) More restrictive eligibility criteria, the self-employed and those subject to secondary and environmental exposure not included.



## DMPS Scheme Eligibility (s.2 Mesothelioma Act 2014)

- ▶ Diagnosed with diffuse mesothelioma
- ▶ Relevant **employer** has **negligently or in breach of statutory** duty caused or permitted the asbestos exposure
- ▶ the person was first diagnosed with the disease on or after 25 July 2012
- ▶ No action for damages brought against the relevant employer or any insurer
- ▶ **Unable to bring an action for damages ...against any employer** of the person **or any insurer ...**(because they **cannot be found** or **no longer exist** or **for any other reason**)
- ▶ No damages / specified payment received in respect of the disease and not eligible to receive a specified payment.

Claims must be brought within 3 years of diagnosis (both for sufferers & dependants),  
r.9 DMPS Regulations 2014

# “Unable to bring an action for damages”

- ▶ Because the employer / their insurer cannot be found / or for any other reason (i.e. an ELTO search does not reveal a relevant insurer)
- ▶ reg. 7 sets out certain circumstances in which a person is treated as unable to bring an action, **namely when an employer** against whom they are able to bring an action in respect of diffuse mesothelioma can be found / exists but is **insolvent**
- ▶ ... or for “**any other reason**”

## DP v Topmark [2020] UKUT 0106 (AAC)

- ▶ This is the only decision of the Upper Tribunal that considers the DMPS scheme 2014. Tribunal decisions are not-binding and not reported.
- ▶ Unusual and tragic circumstances. Deceased, JP, died aged 37, she had worked in a residential care home since the age of 19. Works were carried out in the loft of the home as a result of which she was exposed to asbestos.
- ▶ The Judge, Kate Markus QC, rejected the Appellant's submission that expiry of primary limitation came within the meaning of "any other reason". This was based in part on the fact that expiry of limitation is no bar to litigation if it is not pleaded by the defendant, and that even if it is, the claimant can raise section 33 of the Limitation Act 1980 in reply.
- ▶ The Judge accepted the Respondent's submissions that **the opening words of section 3(1)(c) of the 2014 Act were concerned with the ability to bring a claim in the first place, not the merits or prospects of a claim:** since limitation related to the latter not the former, issues associated with it were not intended to fall within the ambit of the provision.



## How are applications determined?

- ▶ TopMark Claims Management Ltd are the appointed administrators of the 2014 scheme.
- ▶ The administrator must apply the **normal civil standard of proof** (the balance of probabilities) **when deciding all matters of fact** which require evidence to establish them. It is not necessary for the application to prove causation in a civil liability sense – the applicant only needs to establish the mesothelioma diagnosis against a background of wrongful exposure. (although one the main reasons claimed were denied in 2016/2017 was a failure to prove negligent exposure)
- ▶ On making a determination, the administrator must send a written notice to the applicant or his personal representatives – stating the reasons for determination in a case where there is a refusal to pay under the scheme.
- ▶ **Repayment** of the whole sum or any part of the it may be required where the payment was made in error, **due to a misrepresentation or failure to disclose a material fact**, where the applicant was not in fact eligible under ss.2 and 3 or where the sum was miscalculated

# Top Tips!

- ▶ Gather evidence of employment status if the applicant's name is not on the HMRC record such as witness statements – ideally from colleagues, if not spouse.
- ▶ Put your application in as soon as possible to Topmark! This can be done by way of an email. The application can then be stayed whilst a civil claim is investigated. Even for dependants **the strict 3-year time limit from diagnosis does not restart on death.**
- ▶ ... Especially if there are no dependants as otherwise any claim dies with the applicant.
- ▶ When drafting a statement if there is a dependant partner ensure the statement mentions them and how long they have lived with the applicant. Then if the dependant brings a claim there is the necessary proof they have lived together.
- ▶ Where a payment is made under the scheme, the scheme administrator may help a person to bring relevant proceedings (for example by conducting proceedings or by giving advice or financial help), s.10 Mesothelioma Act 2014.



...I'm afraid that's all  
we've got time for!

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