



Study into average civil compensation in mesothelioma cases

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Key findings¹

The analysis presented here focuses on two principal issues:

- **the total value of compensation awarded to the claimant**, i.e. the actual amount of damages paid to the claimant, plus any amount repaid to the Compensation Recovery Unit (CRU) in respect of benefit recovery; and
- **the total amount of claimant legal costs**, i.e. the total of all sums paid by the compensator(s) to the claimant's legal representatives in respect of legal costs, any success fee, court fees, and all other disbursements (inclusive of VAT).

A number of measures of 'average' were calculated. Using these measures:

- **average compensation** awarded ranged from £137,000 to £153,531;
- **average legal costs** ranged from £22,000 to £28,407.

Compensation awarded and legal costs varied with personal and case characteristics. Using regression analysis to take a number of characteristics into account simultaneously, **the size of the award:**

- decreased with age (on average by £3,500 per year);

- grew between 2007 and 2012 (on average by £17,900);
- was higher in Scotland than in England and Wales (on average by £53,500);
- was higher if court proceedings had been issued (on average by £8,300);
- was higher for those who were alive at settlement (on average by £10,900).

The size of award and the length of the case did not appear to be related.

For legal costs, regression analysis found that legal costs:

- increased by £4, on average, for each additional £100 of compensation;
- were lower for older claimants (on average by £111 per year);
- were higher for claims made after 2008 (on average, between £2,400 to £3,100, depending on the year);
- were lower in Scotland (on average by £18,400);
- were higher if court proceedings were issued (on average by £9,400);
- rose with the length of the case, rising steeply after six months and after two years;
- were higher if the claimant was deceased on award (on average by £2,000).

¹ Results were adjusted to take into account inflation and are in 2012 prices.

Background

Mesothelioma is a cancer of the thin membrane that lines the chest and abdomen. Symptoms often do not develop for 30 to 40 years after exposure to asbestos, but once diagnosed the disease is rapidly terminal. Both the Department for Work and Pensions (DWP) and the Ministry of Justice (MoJ) are working, in relation to mesothelioma, to help victims who cannot trace a liable employer to access compensation and to speed up the settlement process for all victims (i.e. the possible consideration of a pre-action protocol).

To inform the development of these proposals, the DWP and the MoJ commissioned the National Institute of Economic and Social Research to provide estimates of average civil compensation and legal costs for occupational mesothelioma cases.

Methodology

Approach

Estimates of average compensation and average legal costs were based on a survey of 2,334 mesothelioma claims settled between 2007 and 2012. The cases were analysed for Britain (for the DWP scheme) and for England and Wales (for the MoJ).

Survey design

The study covered:

- settled employer liability claims in the private sector (i.e. excluding government, local authority, NHS and unknown cases);
- claims recorded as having been settled between 1 January 2007 and 31 December 2012².

² The questionnaire also asked for date of settlement. For three cases, the survey respondents gave the settlement year as 2005/06. These cases were retained in the sample.

'Special' cases covered by other compensation schemes were excluded. In total 4,216 claims met these three criteria (i.e. private sector liability, settlement date and were not special cases).

A sample of 3,477 cases were selected from the CRU³ register of claims for inclusion in the survey.

The organisations which had registered these claims with CRU ('registrants') were asked to provide details of the selected claims, resulting in 43 organisations (mainly insurance companies and defendant solicitors) being contacted.

The survey was in the field from 22 January 2013 to 8 March 2013.

Response

In total, 2,334 cases which included either an amount for total compensation paid and/or an amount for total legal costs (67 per cent of the total sample) were returned. Twenty-five of the 43 sampled organisations participated.

Weighting

In order to make the survey findings more representative of all claims, the data were adjusted ('weighted') to take into account the way in which the sample had been drawn and the response.

³ CRU is part of the DWP. It recovers, from the defendant, social security benefits and lump sum payments made to the victim pending settlement of the claim. All mesothelioma claims must be registered with CRU. They are registered by the defendant (normally the insurance company or the employer) or their representative (normally a law firm). However, CRU does not hold data on the amount of compensation.

Uprating monetary values to account for inflation

The survey collected information on cases with award dates ranging from 2005–12, although all but three cases awards were made in the period 2007–12. In order to account for inflation over this period, monetary amounts were converted to current (2012) values using the annual All-items Consumer Price Index (CPI).⁴

Findings

Summary statistics are presented to indicate the average amounts of compensation and legal costs. The relationships between compensation or legal costs and the characteristics of the claim or claimant are also explored.

Summary statistics for total compensation

There are a number of ways in which an ‘average’ value may be estimated from a set of survey responses on compensation claims. A range of trimmed means are presented in Table 1, alongside the mean and median.

Table 1 Measures of average compensation (2012 prices)

Measure	Value
Arithmetic mean	£153,531
Median	£137,000
1% trimmed mean	£146,923
5% trimmed mean	£143,734
Interquartile mean	£137,630
Trimean	£138,257

Source: NIESR survey.

The interquartile mean is the mean of all values from the 25th to 75th percentiles inclusive.

The trimean is the average of: the 25th percentile, the 75th percentile and twice the median.

Average compensation varied by £16,531 among the six measures presented in Table 2.

⁴ Office for National Statistics Time-Series Identifier: D7BT.

Summary statistics for legal costs

Among the sample of 2,187 cases with data on total legal costs (including eight cases in which the costs are stated to be zero), the mean value of these costs is estimated at £28,407 (including VAT) in 2012 prices. This mean value has a standard error of £617. This implies that we can be 95 per cent confident that the true mean value for legal costs in mesothelioma cases lies between £27,198 and £29,616.⁵

Table 2 Measures of average legal costs including VAT (2012 prices)

Measure	Value
Arithmetic mean	£28,407
Median	£22,000
1% trimmed mean	£26,601
5% trimmed mean	£24,729
Interquartile mean	£22,477
Trimean	£22,651

Source: NIESR survey.

The relationship between total compensation and characteristics of the claim or claimant

Table 3 shows that compensation awards generally fall with age. The highest awards are typically for those claimants aged under 65, while the lowest awards are typically for those claimants aged 85 and over. The table also shows the percent of claimants within each age band who were awarded more than the mean. This is as low as 40 per cent of claimants for those aged 85 and over and only rises above half for those aged 75 to 79.

⁵ Again, this confidence interval cited in the text is necessarily an approximation since the full series of legal cost values is not normally distributed but has a long upper tail, as shown later.

Table 3 Average compensation (2012 prices), by age of claimant (when the claim was registered)

Age band	Mean award	Percentage of claimants in age band awarded more than the mean
Under 65	£194,466	48
65-69	£160,859	47
70-74	£135,143	48
75-79	£129,223	53
80-84	£110,099	43
85 and over	£95,188	40

Source: NIESR survey.

Note: Excludes compensation values below the 1st percentile of the distribution of compensation values and those above the 99th percentile.

The bivariate (or descriptive) relationships between compensation and other characteristics of the claim or claimant were examined. If we examine those values between the 1st percentile and 99th, we find that awards were:

- around £10,000 higher, on average, after 2008;
- almost £60,000 higher, on average, in Scotland;
- around £20,000 higher, on average, if there had been a formal service of court proceedings;
- around £14,000 higher, on average, if the claimant was still alive at the time of the settlement.

However, there was no clear relationship with the length of the case.

The relationship between legal costs and characteristics of the claim or claimant

The simple bivariate (or descriptive) relationships between legal costs and other characteristics of the claim or claimant were analysed. If we examine those values between the 5th and 95th percentiles, we find that legal costs were:

- negatively associated with the age of claimant (at time of claim registration);
- around £3,000 higher, on average, after 2007;
- almost £10,000 lower, on average, in Scotland;
- around £9,000 higher, on average, if there had been a formal service of court proceedings;
- around £3,000 lower, on average, if the claimant was still alive at the time of the settlement;
- positively associated with the length of the case.

Regression analysis – total compensation

These various characteristics are somewhat inter-related. The independent associations with the amount of compensation were therefore identified by adding each of the characteristics mentioned above. The broad relationships described above were maintained, although the magnitude of those relationships altered somewhat. For instance, the £20,000 premium in favour of claims which had involved court proceedings was reduced to around £8,000 after controlling for other characteristics of the case. There remained no clear relationship between the size of the award and the length of the case.

Using regression analysis to take a number of characteristics into account simultaneously, the size of the award:

- decreased with age (on average by £3,500 per year);
- grew between 2007 and 2012 (on average by £17,900);
- was higher in Scotland than in England and Wales (on average by £53,500);
- was higher if court proceedings had been issued (on average by £8,300);
- was higher for those who were alive at settlement (on average by £10,900).

Regression analysis – legal costs

The regression analysis suggested that legal costs increased by £4, on average, for every additional £100 of compensation. It is perhaps worth noting that the characteristics are better able to explain the variance in legal costs than in the case of total compensation (i.e. the model shown here has a better fit – a higher R-squared – than the model in the previous section).

Legal costs remain positively associated with the length of the case after controlling for other factors, as one might expect.

Using regression analysis to take a number of characteristics into account simultaneously, legal costs:

- increased by £4, on average, for each additional £100 of compensation;
- were lower for older claimants (on average, by £111 per year);
- were higher for claims made after 2008 (on average, between £2,400 to £3,100 higher, depending on the year);

- were lower in Scotland (on average by £18,400);
- were higher if court proceedings were issued (on average by £9,400);
- rose with the length of the case, rising steeply after six months and after two years;
- were higher if the claimant was deceased on award (on average by £2,000).

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The full report of these research findings is published by the Department for Work and Pensions (ISBN 978 1 909532 94 6. Research Report 858. January 2014).

You can download the full report free from: <http://research.dwp.gov.uk/asd/asd5/rrs-index.asp>

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