



Department  
for Work &  
Pensions

# Diffuse Mesothelioma Payment Scheme

Annual Review 2018-2019



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## EXECUTIVE SUMMARY



I am pleased to publish the annual review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2018 to 5 April 2019 (the financial year 2018/2019). This review covers the Scheme's activities in its fifth year of operation.

This report sets out key performance data and assesses the extent to which the Scheme's objectives have been met. It also provides more information on the levy that funds the DMPS and discusses the recommendations of the Oversight Committee.

The average (mean) award to successful applicants in the Scheme's fifth year of operation was around £148,000, an increase from £145,000 on the previous year. Since the Scheme was launched in April 2014 it has helped over 1300 sufferers of mesothelioma with £172.6 million awarded in compensation.

TopMark Claims Management Ltd was appointed as the administrator for the DMPS from 1 April 2018 and I would like to thank them for the work they have done in their first year and Tracing Services Ltd. for their commitment and hard work in collecting the levy since the Scheme began operations. I would also like to thank the insurance industry for its continued support of the Scheme via the levy. Finally, I would like to thank the members of the DMPS Oversight Committee for giving up their time to help review the performance of the Scheme and assess its effectiveness.

**Justin Tomlinson**

**Minister for Disabled People, Health and Work**

# Introduction

## BACKGROUND

The Diffuse Mesothelioma Payment Scheme (DMPS) was launched in April 2014 and began taking applications from July 2014. This report covers the DMPS's fifth year of operation, for the financial year 2018/19.

The DMPS was set up to provide payments to sufferers of mesothelioma who were negligently exposed to asbestos at work but are unable to pursue a civil claim because their former employer no longer exists and their former employer's insurer cannot be traced. In this the fifth year of operation, the scheme has paid out £38.9 million in compensation to over 200 successful applicants with the average (mean) award being around £148,000.

The insurance industry acknowledged its failure to keep adequate records and therefore agreed to fund the DMPS via a levy on active employers' liability insurers. The levy is set and paid annually, and varies in amount depending on the number and age of applicants. To ensure the insurers, and not employers fund the DMPS, Government agreed that the levy would not exceed 3 per cent of the employers' liability market in any one year.

Until 31 March 2018, Gallagher Bassett International Ltd. were contracted to administer the DPMS. Following an open competition, TopMark Claims Management Ltd. took over the administration the Scheme from 1 April 2018.

## DIFFUSE MESOTHELIOMA: CAUSES AND CONSEQUENCES

Mesothelioma is a cancer arising in the mesothelium, which is a layer of tissue that surrounds organs of the chest, abdominal cavity and pelvis. Diffuse mesothelioma is a condition describing the primary tumours that arise in the mesothelium. This cancer is commonly found in the lungs and is heavily linked to asbestos exposure. It is a "long-latent" disease, where symptoms may not appear for a significant period, sometimes thirty to forty years post-exposure.

## THE ROLE OF EMPLOYERS AND THE INSURANCE INDUSTRY

### Employers

The Employers' Liability (Compulsory Insurance) Act 1969 requires all employers in Great Britain to insure liability to their employees for injury or diseases sustained throughout the course of their employment.

This 1969 Act provides that employees who sustain injuries at work have a right to compensation from their past or present employers. Despite this, many claims are difficult to bring. In the case of a "long-latent" disease this can be due to the difficulty in finding employers' insurance policies in order to bring proceedings in the courts.

### Insurance Industry

To address this, the insurance industry agreed to finance a scheme that pays a lump sum to individuals exposed to asbestos by their employers, whether negligently or as a result of a breach of a statutory duty, and who are unable to bring an action for damages through the courts against past employers or their employers' insurers. This Scheme is one of last resort and is exclusively for those who have not received any payment or been able to take any civil action against their employer as a result of the disease.

## THE LEVY

The DMPS is funded by an annual levy paid by the insurance industry. The Diffuse Mesothelioma Payment Scheme (Levy) Regulations 2014 place an obligation on active insurers in the employers' liability insurance market to pay towards the cost of the levy based on their relative market share. As the DMPS is demand-led, the levy is recalculated each year to take account of any changes in the number of applications. Should applications increase, the levy will rise, and should they decrease the levy will fall. The age of successful applicants is also a factor in calculating the levy.

To ensure the insurers and not employers fund the DMPS, Government agreed that the levy would not exceed 3 per cent of the employers' liability market in any one year.

Tracing Services Ltd. (a subsidiary of the Motor Insurers' Bureau) is currently under contract to collect the levy on behalf of the Department.

The DMPS levy of £39.8 million to be charged for 2018-19 was announced on 23 January 2019. This was payable by active insurers by the end of March 2019 and although higher than last year, is below the 3% employers' liability gross written premium

The levy for 2017-18 was £33.5 million following agreement with the Association of British Insurers (ABI) and active Employers' Liability (EL) insurers and this was given as an indicative figure for the subsequent two years. However, as there is a requirement by legislation to announce the levy each year, there was flexibility to revise the £33.5 million if there was an unexpected spike up or down in the number of successful applications. When setting the levy for 2017-18 it was agreed to go back to the ABI and the active EL insurers if there was a spike of around £2m up or down to inform them of what that meant for the following year's levy.

Even though there was only a shortfall of £0.9 million on the actual cost of the DMPS for 2017/18, including compensation payments and scheme administration, compared to the levy charged, it was agreed there was a need to revise and change the amount of the levy to be collected for 2018/19. This was because the Scheme Management Information (MI) for 2018/19 indicated the Scheme expected to pay out significantly more money in 2018/19 than the previous year and what was previously estimated in December 2017.

This was largely due to the average (mean) Scheme compensation payments increasing based on the MI as a result of an increase in the percentage of younger applicants to the Scheme, and more open cases than anticipated transferring from the previous Scheme administrator in April 2018. This then impacted on the overall numbers for 2018/19 applications.

It was therefore estimated that the net levy on insurers for 2018-19 would be £39.8 million, which has been calculated as follows:

- the estimated cost of the scheme this year of around £41.3m; minus
- a surplus of £0.3m after rounding from 2017/18; minus
- the remaining surplus from 2016/17 of £1.15m rounded to £1.2m.

The projected total payments were calculated using management information provided by the scheme administrator from the preceding 12 months. All costs incurred by the DMPS are included in the calculation.

## **SCHEME RULES**

In order to receive a payment, applicants must demonstrate that they meet all the eligibility criteria. An applicant must make a claim to the scheme administrator and supply information and supporting evidence on his or her individual circumstances. The application form is available electronically via the DMPS website: <https://www.mesoscheme.org.uk> or

in paper format by calling the scheme administrator on 0330 058 3930. The evidence required to support the application should typically include:

- a copy of the diagnosis of diffuse mesothelioma;
- proof of employment history;
- a witness statement detailing how the exposure to asbestos occurred; and/or
- confirmation that they are unable to make a civil claim (the results from an Employers' Liability Tracing Office search).

DMPS payments are subject to recovery of benefits rules. This means any relevant social security or government lump sum payments already paid in respect of diffuse mesothelioma are recoverable from any DMPS payments. This is to ensure that, in line with other benefits, a person does not receive a payment twice for the same condition.

Dependants of sufferers who have died may also be eligible for a payment under the scheme.

## SCHEME OBJECTIVES

The DMPS has two main objectives

- a) To provide a Scheme of last resort for individuals who are unable to bring an action for damages against a negligent employer or the employer's insurer and who have not received damages or a specified payment in respect of diffuse mesothelioma.

A key principle behind the DMPS is that it is specifically for sufferers unable to obtain compensation by civil proceedings. The DMPS is not meant to be a replacement for civil claims. It should never undermine civil procedures nor become sufferers' primary port of call for a lump sum payment in respect of their diffuse mesothelioma. It is the Scheme Administrator's responsibility to ensure rigorous checks are made for all claims and to ensure all alternative options have been pursued.

- b) To provide an application and decision making process that is simple, impartial, quick and sensitive to the circumstances of sufferers and their dependants.

The short life expectancy of sufferers engaging with the Scheme means timely and accurate processing is necessary. This requires systems that produce swift and accurate decision-making. These systems should then be supplemented with an application process that is simple, straightforward and does not cause unnecessary distress to the applicant or delay an eventual payment.



To achieve this the Scheme Administrator must have a good understanding of the disease and its effects; be sensitive in interactions with applicants and their dependants or representatives; and carry out its functions quickly and efficiently. The Scheme Administrator must provide a value for money service.

# Scheme Monitoring and Performance

This chapter provides an assessment of how the DMPS has delivered against its objectives during its fifth year of operation, and looks in more detail at the high level data.

## SCHEME MONITORING

The Department's overall assessment of performance draws upon a number of sources:

- monthly management information provided by the Scheme Administrator;
- performance against agreed service standards; and
- official statistics for 2018/2019<sup>1</sup> published in August 2019.

The Department held meetings with TopMark Claims Management Ltd, the scheme administrator every two months to scrutinise the scheme administration against key performance indicators. The management information provided typically included the following:

- number of applications received;
- whether those applications were successful or unsuccessful and the reason for rejecting unsuccessful applications;
- method of application (via the website or post);
- average (mean) award to successful applicants;
- breakdown of age and gender of applicants;
- number of reviews requested and their outcome;
- number of reviews that are subsequently referred to First Tier Tribunal;
- timescale relating to different elements of the process.

During the year TopMark also reviewed and updated the management information it provides to the Oversight Committee in line with the Committee's request. As a result, the Committee found the revised management information to be more relevant in scrutinising how the scheme is working.

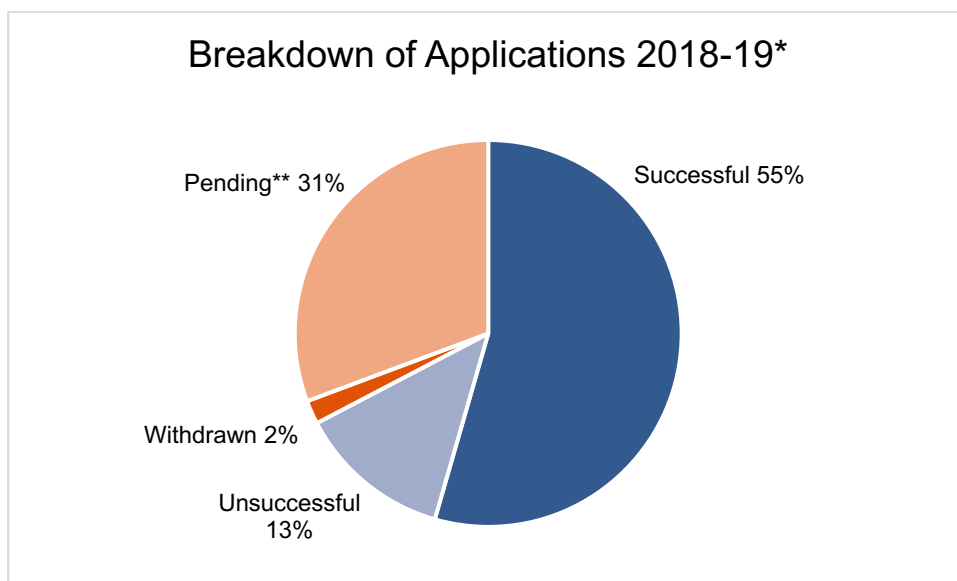
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<sup>1</sup> <https://www.gov.uk/government/statistics/diffuse-mesothelioma-payment-scheme-statistics>

## OFFICIAL STATISTICS

Key findings from the official statistics published in August 2019:

- average (mean) award to successful applicants was around £148,000 in the financial year 2018/2019.
- 370 applications were received in the financial year April 2018/March 2019;
- 200 applicants were successful\*\*;
- 13% of applications were unsuccessful;
- 2% of applications were withdrawn; and
- 31% of applications were pending a decision (as at April 2019).

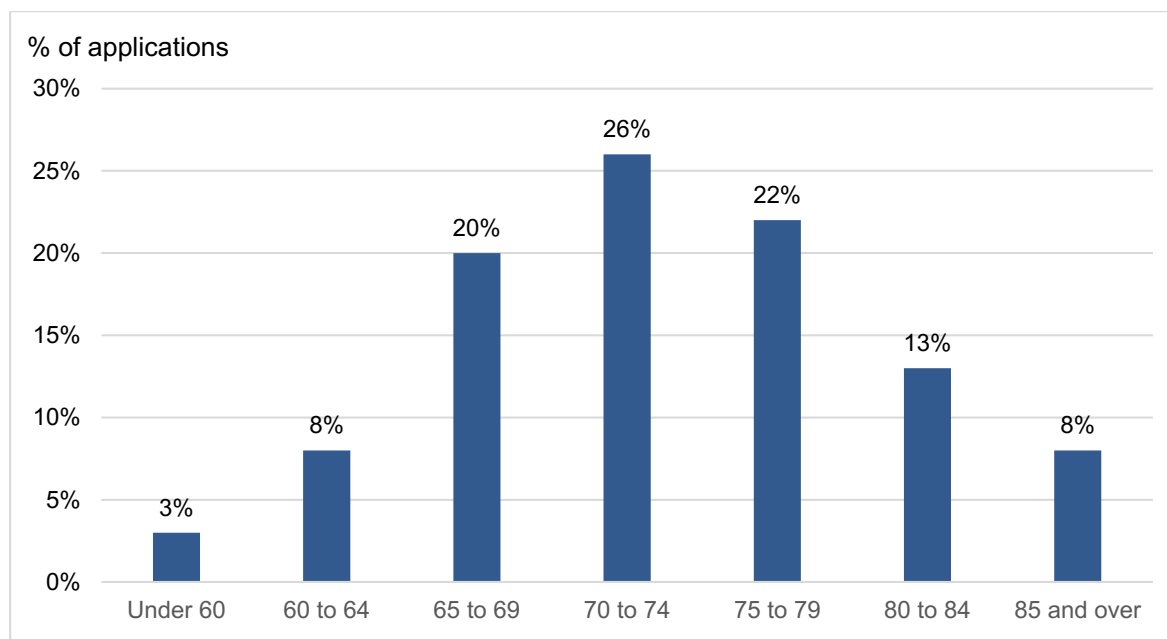


\*Please note all figures are rounded.

\*\* The final four months of the year (December 2018 – March 2019) were significantly impacted by pending applications. However, when pending applications turn into successful or unsuccessful claims, this will be recorded under the month the application was received. Excluding these four months, around 67 per cent of all applications received between April 2018 and March 2019 have been successful. This is consistent with 67 per cent across all months since the scheme began in April 2014.

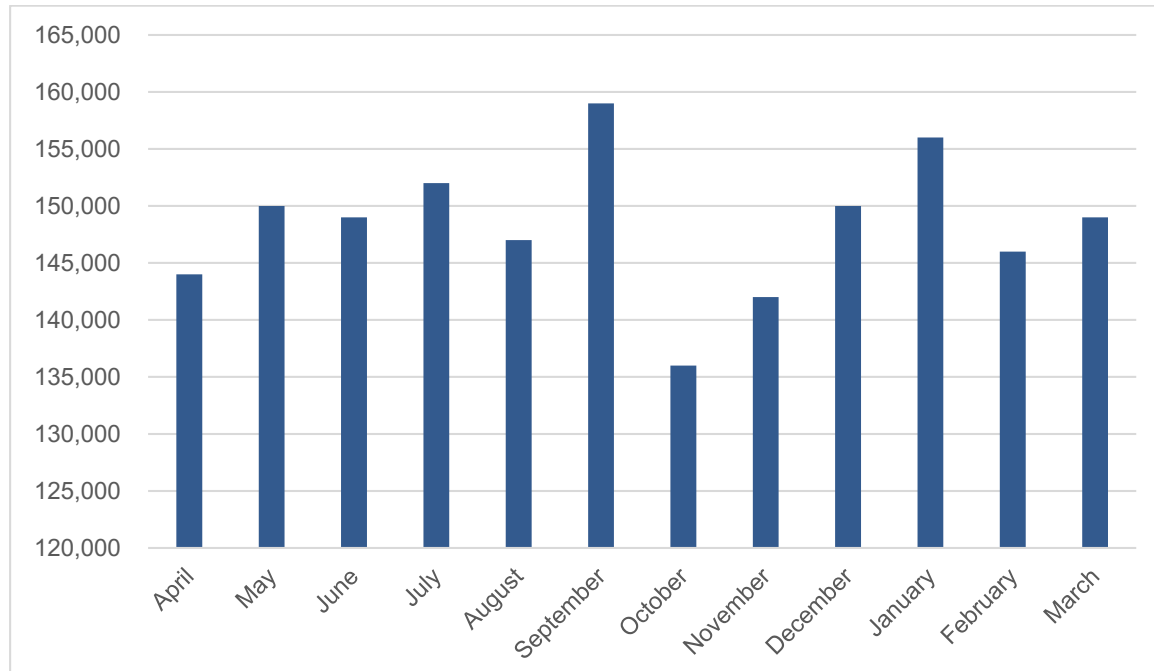
Excluding pending applicants altogether, 79 per cent of applications received in the last 12 months were successful. This figure is 72 per cent across all months since the scheme began.

### Successful applicant's age at diagnosis 2018-19



In 2018-19, over two thirds of successful applicants (68 per cent) were aged between 65 and 79.

### Average (mean) payments (£) 2018-19



The average (mean) payment to successful applicants in the 12 months to March 2019 was £148,000. Since April 2014, a total of £172.6 million has been paid out.

The fluctuation of average payments is down to a small variation in successful applications over different months. Also, the age of the sufferer at the date of diagnosis can vary each

month. For example, an increase in younger sufferers in any given month will result in a higher average award.

### **INDEPENDENT REVIEW OF KEY CONTROLS AND PROCESSES OF THE DMPS**

PricewaterhouseCoopers (PwC) carried out its independent review of the design and operating effectiveness of the key controls implemented by TopMark, the first since it took over the administration of the scheme on 1 April 2018.

Subject to a couple of minor recommendations around delegated authority in claims processing and the approval of claims for payment, which TopMark are implementing, their sample testing indicated that TopMark established a sound control environment mitigating many of the risks related to running the scheme.

# ANNUAL REPORT OF THE OVERSIGHT COMMITTEE

## TERMS OF REFERENCE

The Oversight Committee serves as an independent advisory service to the Department of Work and Pensions (DWP) providing stakeholder perspective on the Scheme and complementing the monitoring function carried out by the DWP, ensuring that eligible people are receiving payments through a reasonable and efficient process, and ensuring that the Scheme receives sufficient scrutiny.

The full [Terms of Reference](#) are on the Gov.uk website

## MEMBERSHIP

The membership of the Oversight Committee is made up of representatives from key interest groups with links to stakeholders and end users:

Graham Dring	Asbestos Victims Support Groups Forum UK (AVSGF-UK)
Hugh Robertson	Trades Union Congress (TUC)
Steve Bellingham	Association of British Insurers (ABI) and Royal Sun Alliance
Bridget Collier	Association of Personal Injury Lawyers (APIL)
Laurence Besemer	Forum of Insurance Lawyers (FOIL)
Baroness Donaghy	Independent Chair

## STATUS OF OVERSIGHT COMMITTEE

The Oversight Committee's legal status is a stakeholder group/forum (Cabinet Office category E2).

The DWP retains formal responsibility for monitoring the performance and administration of the Scheme. The DWP is not bound to accept nor act upon any of the findings of the

Oversight Committee. Contract management activities in relation to the administration of the Scheme remain the sole responsibility of DWP.

Appropriate secretarial support for the Oversight Committee is provided by the relevant policy team within the DWP.

## **FUNDING**

Members of the Oversight Committee give their time on a voluntary basis.

## **ACTIVITIES**

The Oversight Committee has held two meetings during its fifth year (2018 – 2019) on 22 May 2018 and 6 November 2018. Minutes are available on the Gov.uk website:

<https://www.gov.uk/government/groups/diffuse-mesothelioma-payment-scheme-oversight-committee#minutes>

The Committee continued to conduct much of its work off-line including consideration of the monthly Management Information (MI) Reports from the Scheme Administrator, Top Mark. The Committee does not deal directly with Scheme users. However, it continued to monitor the processes of Top Mark and the DWP and the timetable for dealing with cases. As it is the fifth year of the Scheme the processes and information systems are well established. Any matters arising were recorded in an action log provided by the DWP Secretariat.

## **SUMMARY OF MANAGEMENT INFORMATION**

Since April 2018, 370 applications were received, with 200 accepted, 13% denied, 2% withdrawn and 31% of decisions pending as at April 2019. Some of the applications denied were taken through other routes but the Committee does not have statistics on their eventual outcome. The total compensation paid out was £38.9m. Of this, the Compensation Recovery Unit (CRU) received £5.9m. The average (mean) award to successful applicants was around £148,000 in the last financial year, an increase from £145,000 on the previous year.

A more detailed analysis of the statistics for the total period of the Scheme is on the website:

<https://www.gov.uk/government/statistics/diffuse-mesothelioma-payment-scheme-statistics>

## **REVIEWS AND COMPLAINTS**

There were no formal complaints, but there were 15 reviews of the 50 unsuccessful applications in 2018-19. This resulted in a different outcome in 5 cases, often because additional information was supplied by the applicant that had not been available to the Scheme Administrator at the time of the first decision.

There have been a small number of applications made to First Tier Tribunals (FTTs), the results of which the Committee continued to monitor. The Committee recognized that the Tribunal outcomes continued to show good decision-making by the Scheme Administrator.

## **OUTLINE OF WORK AND COMMENTS**

Top Mark, the new Scheme administrator, attended the meetings for the first time and agreed a review of management information. The Committee visited Top Marks' offices in Glasgow to receive presentations and review processes and call-handling. The data provided on reviews of unsuccessful cases was welcomed. This will continue to be provided as well as reports of First Tier Tribunal outcomes. The DWP consulted the Committee about changing the presentation of the official Scheme statistics to enable greater clarity in the underlying data. The Committee agreed to undertake a further review of a sample of redacted cases. The Committee is satisfied that it received full cooperation and appropriate information in order to carry out its work. It accepted that compensation was being paid in a timely manner.

## **SECRETARIAT**

The Committee is grateful for the support of the DWP policy team in providing a part-time secretariat, facilitating communication between various agencies and servicing Committee meetings. Particular thanks are due to Stuart Whitney, and Margaret Russell.

## **CONCLUSIONS BY THE CHAIR**

This is the fifth year of the Scheme and of the Committee's work. The Committee consists of volunteers representing very different organisations and I am grateful to all members for their collegiate approach and their hard work.

Rita Donaghy

November 2019