



Department
for Work &
Pensions

Diffuse Mesothelioma Payment Scheme

Annual Review 2019-2020



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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 2019 to 5 April 2020 (the financial year 2019-2020). This review covers the Scheme's activities in its sixth and, what can only be regarded as, a challenging year of operation due to the outbreak of the Covid-19 pandemic at the end of the financial year.

This report sets out key performance and statistical 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.

Since the Scheme was launched in April 2014 it has successfully helped nearly 1,500 sufferers of mesothelioma with £205.2 million awarded in compensation payments.

The average (mean) payment awarded to successful applicants in the Scheme's sixth year of operation was £144,000, a decrease of £4,000 on the previous year.

TopMark Claims Management Ltd was appointed as the administrator for the DMPS from 1 April 2018 and I would like to thank them for their diligence, hard work and commitment during the period 2019-20.

Tracing Services Ltd were appointed in 2014 when the Scheme began operations to collect the levy payments (that fund the Scheme) from the Employer Liability Insurers. I would like to thank them for their endeavours in collecting the levy.

Also, I would like to thank the Employers' Liability Insurance industry and the Association of British Insurers (ABI) for their 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 and scrutinise 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 sixth year of operation, for the financial year 2019/20.

The DMPS was set up to provide compensation 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 sixth year of operation, the Scheme has paid out £32.7 million in compensation to just under 250 successful applicants with the average (mean) payment awarded being around £144,000.

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' insurers liability market in any one year.

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

Tracing Services Ltd (a subsidiary of the Motor Insurance Bureau) was appointed when the Scheme began its operations, to collect the levy payments from the active Employer Liability Insurers in order to fund the DMPS.

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,

in some cases, 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 a right to compensation for employees who sustain injuries at work as a result of negligence from their past or present employers.

However, in the cases of a long-latent disease (as with diffuse mesothelioma), it can be problematic for sufferers to pursue civil claims due to the difficulty in tracing employers or their employers' insurance policies to bring proceedings to the courts.

Insurance Industry

To address this, the insurance industry agreed to finance a scheme that pays a lump sum payment 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 other payment or been able to take any civil action against their employer as a result of the disease.

THE SCHEME LEVY

The DMPS is funded by an annual levy paid by the Employer's Liability (EL) 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 that it is the insurers and not employers who fund the DMPS, the Government agreed that the levy would not exceed 3 per cent of the employers' liability insurance market in any one year.

Tracing Services Ltd. is currently under contract to collect the levy on behalf of the Department.

The DMPS levy of £33.3 million to be charged for 2019-20, following agreement with Association of British Insurers (ABI) and active Employers' Liability (EL) insurers was announced on 29 January 2020. This was payable by active insurers by the end of March 2020 and is lower than last year, also below the 3% employers' liability gross written premium.

The levy for 2018-19 was £39.8 million. This was an increase of £6.3 million from the 2017-18 levy of £33.5 million. The 2017-18 levy amount was intended to be used as an indicative figure for the subsequent two years, consequently the 2018-19 DMPS Annual Review set out the cause of the unexpected increase of £6.3 million.

However, the levy on insurers for 2019-20 of £33.3 million is in the region of the indicative figure the Department had previously estimated. This has been calculated as follows;

- the estimated cost of the scheme this year of around £35.6m, minus,
- a surplus of £2.3m (after rounding) from 2018-19¹

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.

¹ This is arrived at due to the actual cost of the Scheme in 2018-19 amounted to £39m less the surplus from 2017-18 of £1.5m, meaning the actual levy required for 2018-19 was £37.5m. When compared to the £39.8m actually charged, this creates a surplus of £2.3m

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 (ELTO) 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 the main objectives, 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 quality and value for money service.

SCHEME MONITORING AND PERFORMANCE

This chapter provides an assessment of how the DMPS has delivered against its objectives during its sixth 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 key performance indicators;

- annual statistics for 2019-2020, for the first time published in November 2020 alongside this Review.

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;
- number of formal complaints;
- timescale relating to different elements of the process.

During the year TopMark reviewed and updated the management information it provides to the Oversight Committee (OC) in line with the Committee's request.

Also, due to the outbreak of the Covid-19 pandemic, there was a need to review how the management information was to be distributed to ensure that OC members could continue to be informed about the Scheme's performance.

Both TopMark and DWP worked collaboratively to provide a solution and as a result, TopMark were able to securely issue the monthly MI to OC members in a timely manner.

SCHEME STATISTICS

Following the public consultation and decision to de-classify the official statistics in July 2020, with effect from November 2020², TopMark will produce the Scheme's annual statistical information for publication on the Gov.uk website.

Key findings from the DMPS scheme annual statistics (published as part of this year's Review) indicate:

- an average (mean) award to successful applicants of around £144,000 in the financial year 2019-2020;
- 315 applications were received in the financial year April 2019-March 2020;
- 79% of applications were successful;

² <https://www.gov.uk/government/publications/diffuse-mesothelioma-payment-scheme-statistics/consultation-on-the-publication-of-diffuse-mesothelioma-payment-scheme-statistics-statistical-notice>

- 18% of applications were unsuccessful;
- 3% of applications were withdrawn.

Further details can be found at;

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

INDEPENDENT REVIEW OF KEY CONTROLS AND PROCESSES OF THE DMPS

An independent review of the design and operational effectiveness of the key controls implemented by the Scheme Administrator is usually carried out on an annual basis by an appointed third party.

Due to the consequences of the Covid-19 pandemic this review has been suspended for this reporting year.

However, TopMark have continued to work collaboratively with the Department to mitigate any associated risks. Both organisations have maintained sound business relationships transitioning to more technologically advanced methods of communication – mainly via Microsoft Teams, to ensure that business continuity has not been affected by the constraints of the pandemic and, ultimately, that successful claimants receive

their compensation owed in an efficient and timely manner.

Furthermore, TopMark have been able to continue assisting applicants who did not have legal representation to access a scheme payment and signpost claimants to relevant HMRC forms in order for them to obtain a work history. In addition to this, TopMark have undertaken ELTO searches on behalf of claimants who have not had access to the internet, and been able to provide insurance policy details to unsuccessful claimants in order for them to pursue any civil claims.

ANNUAL REPORT OF THE OVERSIGHT COMMITTEE

TERMS OF REFERENCE

The Oversight Committee (OC) 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 Scheme administration 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 sixth year (2019 – 2020), on 15 May 2019 and 17 December 2019.

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, TopMark. The Committee does not deal directly with Scheme users.

However, it continued to monitor the processes of TopMark and the DWP and the timetable for dealing with cases. As it is the sixth 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 2019, 315 applications were received with 51% (165 applications) accepted, 12% (35 applications) denied, 2% (5 applications) withdrawn and 35% (110 applications) of decisions pending as at April 2020. Some of the applications denied were taken through other routes but the Committee does not have the

statistics on their eventual outcome. The total compensation paid out was £32.7 million. Of this, the Compensation Recovery Unit (CRU) received just under £5.3m. The average (mean) award to successful applicants was around £144,000 in the last financial year, compared with £148,000 in 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 5 reviews of the 35 unsuccessful applications in 2019-20. This resulted in a different outcome in all 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 fewer than 5 applications made to the First Tier Tribunals (FTTs), the results of which the Committee continued to monitor. The Committee recognised that the Tribunal outcomes continued to show good decision-making by the Scheme Administrator.

There was one appeal to the Upper Tier Tribunal (UTT) but no decision was available as at 31 March 2020.

OUTLINE OF WORK AND COMMENTS

TopMark, the Scheme administrator, have been in attendance at meetings. The data provided on reviews of unsuccessful cases was welcomed. This will continue to be provided as well as reports of the First Tier Tribunal outcomes. The Committee agreed to conduct 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 is accepted that compensation was being made in a timely manner.

SECRETARIAT

The Committee is grateful for the support of the DWP policy team in providing a Secretariat, facilitating communication amongst various agencies and servicing Committee Meetings. Particular thanks are due to Stuart Whitney and Dawn Harrison.

CONCLUSIONS BY THE CHAIR

This is the sixth 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.

Four members of the Committee retired at the end of 2019-2020 – Steve Bellingham, Bridget Collier, Graham Dring and Hugh Robertson. Their contributions have been invaluable and they will be missed. Four new members have since been appointed to the Committee and I am pleased to welcome;

Joanne Gordon – Asbestos Victim Support Group
Forum- UK

Neil McKinley – Association of Personal Injury
Lawyers

Mary Bell - Zurich Insurance plc

Kevin Rowan – Trade Union Congress

Rita Donaghy
November 2020