



Diffuse Mesothelioma Payment Scheme (DMPS) Oversight Committee Meeting minutes

Date: 13 May 2020
Time: 2pm to 3.30pm
Location: Microsoft Teams Dial In (Hosted by TopMark)

Attendees

Oversight Committee Members

Baroness Rita Donaghy	Chair
Laurence Besemer	Forum of Insurance Lawyers
Joanne Gordon	Asbestos Victim Support Group Forum
Mary Bell	Zurich Insurance plc
Kevin Rowan	Trade Union Congress
Neil McKinley	Association of Personal Injury Lawyers

DWP Secretariat

Stuart Whitney
Dawn Harrison

DWP

Tammy Fevrier

Scheme Administrator Representative

Susan Jeffrey	TopMark
Sandra Williamson	TopMark

Apologies

Kevin Rowan	Trade Union Congress
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Agenda item

1) Welcome and Introduction to all and New Members

Lead: Chair

The Chair welcomed everyone to the meeting. For the benefit of the new members, the Chair requested brief introductions from all attendees.

2) Minutes of the Meeting 17th December 2019

Lead: Chair

The Chair and the Committee Members agreed the Minutes as an accurate record of the previous meeting held on the 17th December 2019.

3) Action Log

Lead: Chair

DWP stated that there was only one outstanding action relative to the Management Information (MI).

For the benefit of the Committee and the new members in particular, DWP stated that 'closed' actions remained on the log to highlight the scope of work and the level of scrutiny that has been done by the Committee over the time that the DMPS has been in operation.

However, the action log will be reviewed with the view of removing the closed actions at a future date.

DWP requested permission from the Chair to discuss in this item the possibility of issuing the MI to the Committee electronically.

- **Management Information (Reference Agenda Item 6 – bullet point 2)**
- **Frequency of Distribution of MI (Reference Agenda Item 6 – bullet point 3)**

DWP provided an explanation, regarding the current process for distributing hard-copy MI via the post to the Oversight Committee members and why this was the case.

DWP stated that monthly hard-copy MI was distributed by registered mail. Also, that under normal circumstances MI and supporting documentation was circulated to members in advance of OC meetings, so that members had the time to read and digest the information and raise questions accordingly. DWP apologised that in this instance, due to Covid-19 situation this could not be done.

However, DWP stated that (as the action log states), MI is distributed on a monthly basis, but due to Covid-19 situation, and the fact that DWP employees were having to work from home, this was no longer possible as there was no access to secure printers because employees could not go into their normal workplace and are not permitted to print DWP information from personal, home printers.

Therefore, as an interim solution, DWP requested to the Committee, the possibility of receiving MI securely and electronically on a quarterly basis and, that TopMark had kindly offered to facilitate this.

The Chair asked Members to e-mail their preferences regarding receipt of MI to both DWP and TopMark so, that during Covid-19, as a contingency, appropriate arrangements could be made to facilitate future circulation of the MI.

DWP raised the point that prior to distribution of any future 'hard-copy' MI, should that continue to be the preferred method for any of the Members, under the GDPR, if Members are in agreement to providing their personal names and addresses to DWP and TopMark. That to be done in writing via e-mail. DWP provided assurances to the Committee that this information remains with DWP and TopMark and is not shared with any other parties.

Action Point:

The Chair and Oversight Committee Members to provide TopMark and DWP with;

- i) personal addresses**
- ii) acknowledgement that they are in agreement to provide this information**
- iii) preference to receipt and frequency of receipt of MI**

Once collated, TopMark / DWP to confirm MI distribution process during Covid 19 situation.

The Chair raised a question regarding one of the previous action points regarding the breakdown of solicitor / individual led cases and the DWP policy position relating to this with regards to negligence.

DWP confirmed that as the Scheme has progressed in this area it has become less of an issue and subsequently this action has been closed. The Chair acknowledged this.

4) Covid-19 Impacts

Lead: All

Business Resilience and Continuity

DWP provided assurance to the Committee that DWP and TopMark are working jointly to ensure that business and service delivery is running as usual and that contingencies are in place to mitigate any potential risks that come from the Covid 19 situation.

DWP stated that the two DMPS contracted service providers have provided updated (relevant to Covid 19) business resilience and continuity plans to support this.

Management Information

DWP stated that as previously discussed under Agenda Item 3, options are being explored as to how and at what frequency MI is to be distributed.

Future Outlook

DWP stated that as it was unclear as to how long the pandemic would continue, DWP is working very closely with the DPMS service providers to ensure that business will continue as usual. However, if there are any interruptions in service delivery any subsequent impacts will be duly actioned and communicated to the Committee accordingly.

TopMark provided further assurances regarding postal applications from claimants and that these are continued to being administered, processed and paid, even though there is limited resources in the offices and TopMark employees having to work from home.

The Chair acknowledged the hard work and commitment of everyone and expressed her gratitude and thanks during these difficult times.

DWP stated that the Department is affected by redeployment of employees into other roles, However, the Scheme has been flagged as priority to the Department and the importance of sufferers being paid on time, of which DWP senior management have acknowledged, so ensured that staff retention in this area has been agreed to enable the Scheme to continue to operate effectively.

5) DMPS Levy Update

Lead: DWP

DWP confirmed (for the benefit of the new members), that the Levy for the Scheme is announced by the Minister in Parliament in January each year and that following this the contracted levy collector starts the process of collecting the levy payments from the active Employment Liability (EL) Insurers.

DWP confirmed that the value of the Levy for the current year is £33.3 million.

DWP stated that the amount of the levy for the current year is effectively the position of two years ago. However, there were two significant impacts on the calculation of the value of the levy set for the previous year (£39.8million).

- i) Transition from the previous contracted Scheme Administrator to TopMark and,
- ii) Volume of younger people making claims through the Scheme

The Chair raised a question regarding the Tariff Review (for individual claims) although this is a separate issue to the normal process for announcing the levy. DWP confirmed that if the tariff increases then the levy would also likely increase and that under the Scheme legislation the active EL Insurers would still have to pay their calculated share each year.

A Member raised a question regarding the future funding of the levy.

DWP stated that the insurers had to be active in the EL insurance market in the relevant calendar year prior to the announcement of the levy in January. However, if an insurer falls out of the EL Market, subsequently, they will at some stage no longer be required to contribute to the Levy.

DWP stated that it is the responsibility of the insurer and Employers Liability Tracing Office (ELTO) to ascertain this and establish the insurers liability for contributing towards the Scheme Levy.

DWP stated that the Tariff Review and any changes to the level of Scheme payments would mean that the legislation would need to be amended.

DWP stated that due to the current Covid-19 situation, the Tariff Review has been suspended. However, it was commented that as it is not a straightforward process and involves a significant amount of work - which would impact the legislation, assurances were given to the Committee that DWP (in consultation with the OC and Association of British Insurers (ABI)), are committed to undertaking the Tariff Review and the processes that will be put in place to do this.

6) DMPS - Scheme Administration & MI

Lead: DWP / TopMark

MI from October 2019 to March 2020 (End of Year)

April 2020 MI

TopMark shared the latest set of MI with members via MS Teams and for the benefit of the new members, provided a comprehensive explanation regarding the key points of information.

i) MI Type 1 – Bi Annual Report;

TopMark explained the difference between the MI received at DWP – including the Bridging Report compared to that issued to the Committee.

The number of applications to the scheme were compared on a month by month basis to the end of March 2020 highlighting the number of:

- successful claims
- discounted claims
- unsuccessful claims
- outstanding / pending claims

to 31st March 2020.

TopMark further explained that each time the Bi-Annual Report is issued, the monthly figures shall change accordingly to reflect the figures and information against the fluctuation in volumes of claims received and each claim processed.

TopMark highlighted that out of the 119 claims transitioned in 2018 from the previous administrator, there were now only 4 outstanding inherited claims that remain open pending further investigation and subsequent outcomes:

- Successful Claim – payment pending
- Unsuccessful Upper Tier Tribunal case – awaiting any further appeal
- First Tier Tribunal case
- Civil Claim case – remains open because if the civil claim is unsuccessful, this case will fall back into the remits of the DMPS

TopMark stated that as shown by the MI the total number of claims for the year 19/20 had decreased as compared to the previous year, but are unsure of the reason for this. One explanation is possibly that claimants are pursuing more civil claims which are then successful, negating the need for them to use the Scheme.

TopMark also explained that there is an increase in claims coming in throughout April as lawyers appear to be now adapting to working from home and sending claims through to TopMark.

TopMark compared the number of successful claims against the unsuccessful claims – mainly due to two reasons:

- the fact the employees' previous employer's insurers had been traced enabling them to pursue civil claims rather than being dependent on the fall - back position of claiming via the Scheme.

- Negligent exposure to asbestos could not be finally proven under the rules of the Scheme.

TopMark explained that in view of unsuccessful claims, they are seeking more legal advice from their legal team to ensure that decisions made against unsuccessful claims are justifiable.

TopMark highlighted the difference in the decrease in average payment to claimants in year 19/20 compared to year 18/19 – this being due to an increase in the number of younger (ie claimants under the age of 64) successful applicants.

TopMark stated that there was an increase in the number of unrepresented applicants in the year 19/20 compared to the previous years – this being due to information regarding the Scheme being given to patients from hospitals and doctors etc at the time of diagnosis.

TopMark stated that they also provide unrepresented applicants with additional support, advice and guidance pertaining to ELTO searches and how applicants can contact EL Insurers and suitable lawyers where necessary to pursue their claims.

TopMark stated that there had been a decrease in the number of case reviews carried out in the year 19/20 compared to that of year 18/20. This was due to the fact that TopMark and their legal team have become more experienced over time with handling claims and liaising more closely with applicants, ensuring that the right information and evidence is obtained in order to inform correct decision making against each case as early as possible. Therefore, to alleviate stress on applicants during the initial claims stages and negate the need for any further review stage or FTT appeal stage.

The Chair raised a question regarding Mesothelioma cases falling into the Covid-19 Vulnerable cases and whether this had affected the number of applications to the Scheme.

TopMark responded by stating that the Scheme was running as normal. However, possibly due to the lockdown restrictions imposed in March '20, people have been more reluctant to leave their homes to speak with solicitors. This could also have contributed to a decrease in applications in the month of April '20.

The Chair raised a question regarding the number of cases of Self-Employed claimants compared to those claimants in Employment and how these are identified.

TopMark responded by stating that as they had more sound legal advice in this area, they were able to act with a more uniform approach.

DWP acknowledged the fact that TopMark are in receipt of excellent legal advice from their contracted lawyers and that TopMark provide an excellent service by taking a proactive approach to effectively administer the Scheme – including the outstanding cases.

7) Outcome of the Upper Tier Tribunal Case

Lead: DWP/TopMark

TopMark provided a brief history of the nature of this case and the regulations and legislation under the Scheme that brought the case to this stage.

TopMark explained that following an unsuccessful claim at First Tier Tribunal (FTT) stage, this case was referred to the Upper Tier Tribunal (UTT) and was the first case of its kind for the Judge to preside over. The Judge upheld the decision against the applicant. However, this case still falls within the “further appeal” time period should the unsuccessful applicant wish to pursue this option through the “Free Representation Unit”.

DWP commented that the decision was very pleasing as it confirmed the Department’s longstanding interpretation and policy intent around what is meant by, “for any other reason”, in the legislation that sets out the criteria for making a claim.

8) Annual Publication of *Statistics*

Lead: DWP / TopMark

DWP raised this as an item for the Committee’s attention and explained the current arrangements regarding the annual publication of the Scheme statistics by DWP.

DWP explained that the Department’s Analysts have now requested that this area of work be de-commissioned from an Official Statistics Publication in order to provide analytical resources elsewhere for the Department.

Although this is subject to consultation, DWP provided assurances that the publication of statistics will continue to be done annually - alongside the Annual Review in November (as opposed to being published in August), and that DWP is working with TopMark to produce the statistical report in a format that will make this more informative and user friendly.

DWP also provided assurances to the Committee that prior to publication of the statistics, DWP will quality assure the content and reiterated that there will be a consultation to comment on.

The Chair welcomed this approach as a positive regarding the timeliness and content of the information and an improvement to the existing processes.

9) Annual Audit Review

Lead: DWP

DWP explained that under normal circumstances an external body is commissioned to undertake an Annual Audit Review of the Scheme during March / April. The purpose of this is to audit the Scheme Administrator's key controls and processes and provide assurances to the ABI and the EL Insurers, that the levy is being spent appropriately.

However, due to the Covid-19 situation this cannot be done this year.

DWP provided assurances that the ABI will be notified and that new ways will be explored as to how this process can be improved to make it smarter and more cost effective.

10) Any Other Business

Lead: All

DWP raised the point regarding the Committee's "regular redacted sample cases exercise", and the next one being due circa February 2021.

DWP asked the Chair if this was to be an Agenda Item for discussion at the next OC Meeting and what the content should include and the timetable to undertake.

The Chair agreed and acknowledged the usefulness of this exercise to the Committee.

11) Date of Next Meeting

Lead: Chair

The next Oversight Committee Meeting will be held on 18th November 2020 at 2pm. This usually takes place in the House of Lords. However, Members are to note that if this is not possible due to the Covid-19 restrictions, TopMark will facilitate the meeting via Microsoft Teams access.