



Department  
for Work &  
Pensions

# Diffuse Mesothelioma Payment Scheme

Annual Review 2020-2021



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## EXECUTIVE SUMMARY



I am pleased to publish the seventh Annual Review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2020 to 5 April 2021 (the financial year 2020-2021). This review covers the Scheme's activities in 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 2019-2020.

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 1,650 people with mesothelioma, awarding £231.7 million in compensation payments.

With no change from 2019-20, the average (mean) payment awarded to successful applicants in the

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Scheme's seventh year of operation was £144,000.

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 continued hard work and commitment during the period 2020-2021 and for maintaining diligence and professionalism during the constraints of the Covid-19 pandemic.

Tracing Services Ltd were appointed in 2014 when the Scheme began operations to collect the levy payments (that fund the Scheme) from the employers' liability insurers. I would like to thank them for their endeavours and ensuring that the levy was collected during the Covid-19 pandemic.

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.

**Chloe Smith**  
**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 seventh year of operation, for the financial year 2020-21.

The DMPS was set up to provide compensation payments to people with 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 seventh year of operation, the Scheme has paid out £26.8 million (m) in compensation to 185 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 DPMS. Following a competitive tender, 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 people to pursue civil claims due to the difficulty in tracing employers or their employers' insurance policies in order 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 employers' liability 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.

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

The DMPS levy of £28.9m to be charged for 2020-21, following agreement with Association of British Insurers (ABI) and active employers' liability insurers was announced on 21 January 2021. This was payable by active insurers by the end of March 2021. It is lower than last year, and also below the 3% employers' liability insurance market.

The levy for 2019-20 was £33.3m and the DMPS Annual Review set out how that figure was calculated. There was however, a levy surplus of £2.8m in 2019-20 which should be taken into account when calculating the levy for 2020-21.

The actual cost of the Scheme in 2019-20 was £32.8m compared to the forecast of £35.6m. This was primarily due to a lower volume of claims received than anticipated. This means the actual levy required for 2019-20 after the surplus of £2.3m from 2018-19 was £30.5m (£32.8m - £2.3m). Given the levy charged for 2019-20 was £33.3m we are left with a surplus of £2.8m (£33.3m - £30.5m).

Therefore, the levy on insurers for 2020-21 of £28.9m has been calculated as follows;

- The estimated cost of the Scheme for 2020-21 being £31.7m. This is primarily based on the anticipation that a slightly lower volume of claims will be received during 2020-21, as well as the general administration costs being less than the previous year, minus,
- a surplus of £2.8m from 2019-20.

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 (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 people with mesothelioma 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 people with mesothelioma 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 a person's 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 people with mesothelioma and their dependants.

The short life expectancy of people 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 professional, 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 seventh 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 2020-21, to be published in November 2021 alongside this Review.

The Department held meetings with TopMark Claims Management Ltd, the Scheme Administrator every two months to scrutinise the scheme administration against contracted 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 reviews that are referred to the Upper Tier Tribunal;
- number of formal complaints;
- timescale relating to different elements of the process.

TopMark has continued to provide and distribute the management information securely and in a timely manner to the Oversight Committee (OC) members in line with the Committee's preference.

## **SCHEME STATISTICS**

Following the public consultation and decision to de-classify the official statistics in July 2020, with effect from November 2020<sup>1</sup>, 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;
- 305 applications were received in year 2020-21, (approximately 3% fewer than 2019-20);
- 77% of applications were successful;
- 21% of applications were unsuccessful;
- 2% of applications were withdrawn.

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<sup>1</sup> <https://www.gov.uk/government/publications/diffuse-mesothelioma-payment-scheme-statistics/consultation-on-the-publication-of-diffuse-mesothelioma-payment-scheme-statistics-statistical-notice>



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 has previously been carried out by an appointed third party.

However, as per last year, due to the continuing consequences of the Covid-19 pandemic a review has not been undertaken this reporting year.

TopMark have continued to work collaboratively with the Department to mitigate any associated risks. Both organisations continue to maintain sound business relationships, transitioning to on-line meetings, 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.

TopMark continue to assist applicants who do not have legal representation to access a scheme payment and to signpost claimants to relevant HMRC forms in order for them to obtain a work history. In addition to this, TopMark undertake ELTO searches on behalf of claimants who do not have access to the internet and, are able to provide insurance policy details from positive searches 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:

Joanne Gordon	Asbestos Victims Support Groups Forum UK (AVSGF-UK)
Kevin Rowan	Trades Union Congress (TUC)
Laurence Besemer	Forum of Insurance Lawyers (FOIL)
Mary Bell	Technical Claims Manager Zurich Commercial Insurance
Neil McKinley	Association of Personal Injury Lawyers (APIL)
Baroness Rita 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 seventh year (2020 – 2021), on 13 May 2020 and 18 November 2020.

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 remotely, particularly as this year marked the start of the necessary restrictions during the COVID 19 pandemic. This included consideration of the Monthly Management Information (MI) Reports from the Scheme Administrator, TopMark. The Oversight 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. The processes and systems are now well established. Any matters arising were recorded in an action log provided by the DWP secretariat.

## **SUMMARY OF MANAGEMENT INFORMATION**

Since April 2020, 305 applications were received with 47% (145 applications) accepted, 13% (40 applications) denied, 2% (5 applications) withdrawn and 38% (115 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 £26.8 million. Of this, the Compensation Recovery Unit (CRU) received just under £4.4 million. The average (mean) award to successful applicants was around £144,000 in the last financial year, which is the same as 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, and there were fewer than 5 reviews of the 40 unsuccessful applications in 2020-21. These resulted in the same (original) outcome in all cases. There were no applications made to the First Tier Tribunal (FTT) in 2020-21.

There was one appeal to the Upper Tier Tribunal (UTT) – the case of DP v TopMark Claims Management Ltd (2020). This was the first appeal

to the UTT under the Scheme. The appeal was dismissed.

## **OUTLINE OF WORK AND COMMENTS**

The Oversight Committee is satisfied that the challenges presented to TopMark and the DWP in the first year of the Covid 19 pandemic were potentially serious given the need to handle cases as speedily as possible. Staff in TopMark and DWP were working from home and solicitors were adjusting to different ways of working which explained a drop in the number of cases during April 2020. The security of Management Information Reports and the case handling were dealt with admirably by both TopMark and DWP. The Committee is assured that applications were not disadvantaged during this difficult period.

The Committee conducted its occasional review of (closed) redacted cases and was satisfied that TopMark was diligent in its operational process.

## **SECRETARIAT**

The Committee is grateful for the support of the DWP Team in providing a part-time secretariat, facilitating communication between various agencies and servicing committee meetings. Particular thanks are due to

Stuart Whitney and Dawn Harrison.

## **CONCLUSIONS BY THE CHAIR**

This is the seventh year of the Scheme and of the Committee's work. Members are volunteers representing very different organisations and I thank them for their work and their collegiate approach.

Rita Donaghy  
November 2021