



Department
for Work &
Pensions

Diffuse Mesothelioma Payment Scheme

Annual Review 2021-2022



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Contents

Executive Summary	3/4
Background	5/6
Diffuse Mesothelioma: Causes and Consequences	6
The Role of Employers and the Insurance Industry	7
The Levy	8
Scheme Rules	10
Scheme Objectives	11
Scheme Monitoring	13
Scheme Statistics	15
Independent Review	16
Annual Report of the Oversight Committee ...	17
Terms of Reference	18
Membership	18/19
Status of Oversight Committee	19
Funding	19/20
Activities	20/21
Summary of Management Information	21
Reviews and Complaints	22
Outline of Work and Comments	22/23
Secretariat	23
Conclusions by the Chair	24

EXECUTIVE SUMMARY



I am pleased to publish the eighth Annual Review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2021 to 5 April 2022 (the financial year 2021-2022). The review covers the Scheme's activities during this period.

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 scrutiny of the Oversight Committee.

Since the Scheme was launched in April 2014 it has successfully helped over 1,815 people with Mesothelioma, awarding £254.9 million in compensation payments.

The average (mean) payment awarded to successful applicants in the Scheme's eighth 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 2021-2022 and for maintaining diligence and professionalism during the transition to normal business and working life following the constraints of the COVID 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 within the contracted time-frames.

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.

Tom Pursglove MP
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 eighth year of operation, for the financial year 2021 to 2022.

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 eighth year of operation, the Scheme has paid out £254.9 million (m) in compensation to 1815 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 £22m to be charged for 2021-22, following agreement with Association of British Insurers (ABI) and active employers' liability insurers was announced on 29 January 2022. This was payable by active insurers by the end of March 2022. It is lower than last year, and below the 3% employers' liability insurance market.

The levy for 2020-21 was £28.9m and the DMPS Annual Review set out how that figure was calculated. There was, however, a levy surplus of £4.8m in 2020-21 which should be taken into account when calculating the levy for 2021-22.

The actual cost of the Scheme in 2020-21 was £26.9m compared to the forecast of £31.7m. This cost reduction was primarily due to a lower volume of successful claims being paid than anticipated.

During the first wave of the pandemic the Scheme Administrator did not receive all the required information on a number of applications from acting solicitors, possibly as they had not yet adjusted to virtual working in order to make a decision in that period. However, this does not mean there were more unsuccessful claims merely that there were more pending a decision so the

impact of paying those claims once decided will be felt in a future financial year. The actual volume of applications received during the period was almost the same as the previous year.

As a consequence, the actual levy required for 2020-21, after the 2019-20 surplus of £2.8m, was £24.1m (£26.9m-2.8m). Given the levy charged for 2020-21 was £28.9m we are left with a surplus of £4.8m (£28.9m - £24.1m).

Therefore, the levy on insurers for 2021-22 of £22m has been calculated as follows;

- The estimated cost of the Scheme for 2021-22 being £26.8m. This is primarily based on the anticipation that a similar volume of claims will be received during 2021-22, as well as the general administration costs being slightly less than the previous year, minus,
- a surplus of £4.8m from 2020-21.

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:

[Home - TopMark Claims Management \(mesoscheme.org.uk\)](http://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 eighth 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 2021-22, to be published in November 2022 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 2020¹, TopMark will produce the Scheme's annual statistical information for publication on the GOV.UK website.

¹ [Diffuse Mesothelioma Payment Scheme statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Key findings from the DMPS scheme annual statistics

<https://www.gov.uk/government/publications/diffuse-mesothelioma-payment-scheme-annual-review-2021-to-2022>

(published as part of this year's Review) indicate:

- an average (mean) award to successful applicants of around £144,000;
- 325 applications were received in year 2021-22, (approximately 7% more than 2020-21);
- 74% of applications were successful;
- 23% of applications were unsuccessful;
- 3% of applications were withdrawn.

Further details of previous releases of DMPS statistics can be found at;

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

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, due to transitioning from the constraints of the COVID-19 pandemic to business-as-usual and commencement of the Scheme Administration

compulsory re-tender, a review has not been undertaken in 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.

[Diffuse Mesothelioma Payment Scheme Oversight Committee - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

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)

Richard
Thompson
(replacing Mary
Bell during 2021)

Senior Claims Technician
Zurich Commercial
Insurance – Complex
Disease Claims Unit

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 eighth year (2021 – 2022), on 19 May 2021 and 17 November 2021.

Minutes are available on the GOV.UK website: [Diffuse Mesothelioma Payment Scheme Oversight Committee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/organisations/diffuse-mesothelioma-payment-scheme-oversight-committee)

The Committee continued to conduct much of its work remotely, particularly as part of this year marked 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 2021, 325 applications were received with 74% (130 applications) accepted, 23% (40 applications) denied, 3% (5 applications) withdrawn and 47% of decisions pending as at April 2022. 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 £23.3m. Of this, the Compensation Recovery Unit (CRU) received just under £4m. The average (mean) award to successful applicants was around £144,000 in the last financial year, which was the same as the previous year.

A more detailed analysis of the statistics for the total period of the Scheme is on the GOV.UK

website:

<https://www.gov.uk/government/publications/diffuse-mesothelioma-payment-scheme-annual-review-2021-to-2022>

REVIEWS AND COMPLAINTS

There were no formal complaints, and there were less than 10 reviews of the 40 unsuccessful applications in 2021-22, and just over half reviewed decisions resulted in the same outcome.

There were fewer than 5 applications made to the First Tier Tribunal (FTT) in 2021-22.

There were no appeals to the Upper Tier Tribunal (UTT) under the Scheme.

OUTLINE OF WORK AND COMMENTS

The Oversight Committee is satisfied that the challenges presented to TopMark and the DWP in during the COVID-19 pandemic (including the transitioning from the pandemic), were met with speed and efficiency. Staff in TopMark and DWP were working from home and solicitors were adjusting to different ways of working before returning to normal office-based and hybrid working conditions. As people returned to normal working this may explain why there has been a

slight increase in the number of cases during 2021-2022.

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 the period of transition and applications to the Scheme continued to be administered effectively.

The Committee was satisfied that TopMark was diligent in its operational process during 2021-2022.

SECRETARIAT

The Committee is grateful for the support of the DWP Team in providing a part-time secretariat, facilitating communication between various agencies, servicing committee meetings and producing and publishing the minutes of the meetings.

Particular thanks are due to Stuart Whitney and Dawn Harrison.

CONCLUSIONS BY THE CHAIR

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

One member of the Committee retired earlier in 2021 – Mary Bell. Her contributions have been invaluable, and she will be missed. I was pleased to welcome Richard Thompson to the Committee.

Rita Donaghy
November 2022