



Department
for Work &
Pensions



DIFFUSE MESOTHELIOMA PAYMENT SCHEME

ANNUAL REVIEW 2022- 2023

An abstract graphic consisting of several thin, curved lines in shades of blue and grey, extending from the bottom left towards the center of the page.



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EXECUTIVE SUMMARY



I am pleased to publish the ninth Annual Review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2022 to 5 April 2023. The review covers the Scheme's activities during this period.

Since the Scheme was launched in April 2014 it has successfully helped over 1,915 people with mesothelioma, awarding just over £280 million in compensation payments.

The average (mean) payment awarded to successful applicants for the latest year of operations was £142,000.

TopMark Claims Management Ltd (Davies Group Ltd) was appointed as the administrator for the DMPS from 1 April 2018, and following a successful competitive re-tender in February 2022, continue to provide the contracted scheme administration and management services. I would like to thank them for their continued hard work and commitment during the period 2022-2023, and for maintaining diligence and professionalism throughout.

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.

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 - chaired by Baroness Rita Donaghy, 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 ninth year of operation, for the financial year 2022-23.

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 ninth year of operation, the Scheme has paid out £280.2 million in compensation to 1,915 successful applicants with the average (mean) payment awarded being around £142,000.

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. Tracing Services Ltd (a subsidiary of the Motor Insurance Bureau) was appointed, to collect the levy payments from the active employer liability insurers to fund the DMPS.

SCHEME RULES

To receive a payment, applicants must demonstrate that they meet all the eligibility criteria. An applicant must make a claim to the scheme administrator with supporting evidence. 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.

SCHEME PAYMENTS

Payments are ¹tariff based according to the applicants ²age on diagnosis and are also 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.

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

¹ The DMPS Tariff is currently under review by DWP.

² Current Tariff [The Diffuse Mesothelioma Payment Scheme \(Amendment\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

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. 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 £20.3m to be charged for 2022-23, following agreement with Association of British Insurers (ABI) and active employers' liability insurers was announced on 31 January 2023. This was payable by active insurers by the end of March 2023. It is lower than last year, and below the 3% employers' liability insurance market.

The levy for 2021-22 was £22.0m and the DMPS Annual Review set out how that figure was calculated. There was, however, a levy surplus of £3.4m in 2021-22 which should be taken into account when calculating the levy for 2022-23.

The actual cost of the Scheme in 2021-22 was £23.4m compared to the forecast of £26.8m. This cost reduction was primarily due to a lower volume of successful claims being paid than anticipated.

Consequently, the actual levy required for 2021-22, after the 2020-21 surplus of £4.8m, was £18.6m (£23.4m-4.8m). Given the levy charged for 2021-22 was £22.0m we are left with a surplus of £3.4m (£22.0m - £18.6m).

Therefore, the levy on insurers for 2022-23 of £20.3m has been calculated as follows;

- The estimated cost of the Scheme for 2022-23 being £23.7m. This is primarily based on the anticipation that a similar volume of claims will be received, and successful applications paid during 2022-23 as per 2021-22 minus,
- a surplus of £3.4m from 2021-22.

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 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 technical and digital 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 and not aim to gain any profits whatsoever from administering the Scheme.

SCHEME MONITORING AND PERFORMANCE

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

SCHEME MONITORING

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

- monthly management information provided by the Scheme Administrator;
- performance against agreed service standards and key performance indicators;
- annual statistics for 2022-23, to be published in November 2023 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 2020³, TopMark continue to 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 £142,000
- 330 applications were received in year 2022-23, (approximately 2% more than 2021-22);
- 71% of applications were successful;
- 25% of applications were unsuccessful;
- 4% of applications were withdrawn.
- No cases were referred to First Tier Tribunal.

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

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

³ [Diffuse Mesothelioma Payment Scheme statistics - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/dm-ps-statistics)

ONGOING COMMITMENT

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 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 for them to obtain a work history. In addition to this, TopMark undertake Employer's Liability Tracing Office 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 scrutiny and advisory service to the Department for Work and Pensions (DWP).

The Committee provides a stakeholder perspective on the Scheme and complements the monitoring function undertaken by DWP – ensuring that those who are eligible receive payments through simple but thorough and efficient processes.

The Committee also makes any recommendations on how to improve the processes where necessary.

The full Terms of Reference are on the Gov.uk website.

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

Rob Rayner <i>(Replaced Joanne Gordon)</i>	Greater Manchester Asbestos Victims Support Group (GMAVSG)
Shelly Asquith <i>(Replaced Kevin Rowan)</i>	Trades Union Congress (TUC)
Laurence Besemer	Forum of Insurance Lawyers (FOIL)
Richard Thompson	Senior Claims Technician Zurich Commercial Insurance – Complex Disease Unit
Stephen Glynn Kevin Johnson <i>(Replaced Neil McKinley)</i>	Association of Personal Injury Lawyers (APIL) - in a role- share capacity
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 and performance 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 held two meetings during its ninth year (2022 to 2023), on 9 June 2022 and 2 November 2022.

Minutes are available on the GOV.UK website:

[Diffuse Mesothelioma Payment Scheme Oversight Committee - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/diffuse-mesothelioma-payment-scheme-oversight-committee)

Any matters arising from the meetings were recorded on an Action Log provided by the DWP secretariat.

The Committee continued to conduct much of its work remotely. Monthly Management Information (MI) Reports from the Scheme Administrator, TopMark were received in a secure and timely manner throughout the period 2022-23.

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 managing cases. The Committee acknowledged that the processes and systems are well established.

SUMMARY OF MANAGEMENT INFORMATION

Since April 2022, 330 applications were received with 71% (234 applications) successful, 25% (83 applications) denied, and 4% (13 applications) withdrawn. 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 £23.2m. Of this, the Compensation Recovery Unit (CRU) received £3.9m. The average (mean) award to successful applicants was around £142,000 in the last financial year, which was slightly less than the previous year.

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

REVIEWS AND COMPLAINTS

There were no formal complaints, and there were 12 reviews of 91 unsuccessful applications in 2022-23, and 9 reviewed decisions resulted in the same outcome.

There were 2 applications made to the First Tier Tribunal (FTT), and there were no appeals to the Upper Tier Tribunal (UTT) under the Scheme in 2022-23.

OUTLINE OF WORK AND COMMENTS

TopMark have attended meetings and provided detailed Management Information Reports.

The Committee agreed to conduct a further review of several closed, redacted cases and was satisfied that TopMark was diligent in its operational process during 2022-2023 and that compensation was made in a timely manner.

SECRETARIAT

The Committee is grateful for the support of the DWP team in providing a part-time secretariat,

facilitating communication between various agencies and stakeholders, servicing committee meetings and producing and publishing the minutes of the Oversight Committee meetings on Gov.uk website.

Particular thanks are due to Stuart Whitney and Dawn Harrison.

CONCLUSIONS BY THE CHAIR

This is the ninth 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.

Three members of the Committee retired between July 2022 and March 2023 – Kevin Rowan, Neil McKinley and Joanne Gordon. Their contributions have been invaluable, and they will be missed. I was pleased to welcome new members - Shelly Asquith, Kevin Johnson, Stephen Glynn and Rob Rayner to the Committee.

Rita Donaghy
November 2023