

# **Diffuse Mesothelioma Payment Scheme (DMPS) Oversight Committee Meeting 22 May 2024**

**Date:** Wednesday 22 May 2024

**Time:** 2pm to 3.30pm

**Location:** Meeting via Microsoft Teams and Caxton House

## **Attendees**

### **Oversight Committee Members**

Baroness Rita Donaghy – Chair

Laurence Besemer – Forum of Insurance Lawyers

David Ellis – Asbestos Victim Support Group Forum

Shelly Asquith – Trade Union Congress

Richard Thompson – Zurich Commercial Occupational Disease Claims Unit

Kevin Johnson – Leigh Day Association of Personal Injury Lawyers

### **DWP Secretariat**

Stuart Whitney

Dawn Harrison (Minutes)

### **TopMark Scheme Administrator Representatives**

Sandra Williamson

Christopher Burns

Tony Fagan

### **Guest Observers**

Mohammed Patel – DWP

### **Apologies**

Penny Higgins – DWP

Andrew Baxter – DWP

David Smith – TopMark

## **1. Welcome, introductions and apologies**

### **Lead: Chair**

The Chair welcomed everyone and made apologies for absent attendees and guest observers.

## **2. (i) Acknowledgment of resignation – Rob Rayner (Greater Manchester Asbestos Victim Support Group) (ii) Affirmation and introduction to new member – David Ellis**

**Lead: Chair**

The Chair welcomed new member David Ellis – representing the Asbestos Victim Support Group (ASVG) to the committee and affirmed him as a new member.

The Chair acknowledged Rob Rayner's (ASVG) resignation and personally thanked him for the contributions made during his time as a committee member.

## **3. Matters arising from the minutes of the meeting 8 November 2023**

**Lead: Chair**

There were no matters arising from the minutes of the meeting held 8<sup>th</sup> November 2023 and all agreed the content as an accurate account of that meeting.

DWP confirmed that the minutes of this meeting had been published on GOV.UK.

## **4. Review of action log**

**Lead: Chair**

The Chair confirmed two live action points held on the Action Log – both pertaining to the Tariff Review and stated that these would remain until the Review is completed. All noted and agreed.

## **5. Review of DMPS Scheme Administration MI**

**Lead: TopMark**

A general discussion took place regarding the MI and TopMark presented the latest information for the period 1 November 2023 to 31 March 2024. The main points included:

- 176 new applications received
- applicants aged over 80 years old - 53 – 8 being successful
- applicants aged 70 -79 years old – 96 – 19 being successful
- applicants under the age of 70 years old – 27 – 3 being successful

- number of female applicants – 19, 11% average year on year
- average success rates – 86%
- unsuccessful or withdrawn applications stands at 14%
- 1 review request resulted in a FTT case, later withdrawn

Period 1 April 2023 to 31 March 2024 include:

- 405 new applications received 23/24 compared to 328 for 22/23 – the largest increase in applications since TopMark started administering the Scheme
- one of the main reasons for the increase is that solicitors are becoming more aware of the fact that their clients can make “protected” applications to the Scheme whilst pursuing a civil claim
- long outstanding cases (open for 3 months or more) are reported monthly – increased by 157 from 31<sup>st</sup> March 2023 to 276 as of 31<sup>st</sup> March 2024
- 36% of applicants are aged over 80 years old 22/23 compared to 33% for applicants the same age at 23/24 – the majority of applicants being people who started working in the 1950’s and 1960’s.
- 83% of applicants at 23/24 being over the age of 70
- average age of successful applicants is 76 years
- 62% of applications were successful in 22/23 compared to 72% in 23/24
- 32% of successful applicants in 22/23 compared to 22% for 23/24
- 40% of applications made in 23/24 have had decisions made
- over 50 % of claims made in 22/23 were unsuccessful – mainly due to insurers being traced
- 10 review requests were received 23/24 – 5 of which were referred to FTT
- of the 5 FTT cases, 3 decisions were overturned – due to exposure occurring before 1969
- small decrease in the number of unrepresented applications from 7% in 22/23 to 5% in 23/24
- £140k is the average payment for successful claims for 22/23 and 23/24
- £115k is the average payment following CRU deductions

The Chair thanked TopMark for the comprehensive overview of the MI and a general discussion took place regarding protected claims.

The Chair expressed her interest regarding the number of “protected” claims and the average time taken to progress these, observing with concern that in some instances TopMark are unaware of the status of these claims whilst the civil route is still being pursued and what the eventual outcome is. The Chair also commented that for the purpose of the statistics these claims are regarded as unsuccessful when in some cases, they are successful in the event of an insurer being traced. The Chair asked TopMark for further comments on this matter.

TopMark responded by stating that protected case numbers are recorded for statistical purposes and that updates from solicitors are requested on a regular basis, but in some cases the solicitors fail to reply. Also, TopMark noted that protected cases that have been open for longer than three months that the civil

cases are taking longer, but unsure as to why this is, and often solicitors do not inform TopMark if a civil claim is successful.

DWP reinforced the fact that it can be viewed as a positive approach for applicants to make a protected claim whilst pursuing a civil claim so that there is no delay to the DMPS application if the civil claim is taking a long time to progress.

TopMark provided assurances that these (civil) cases are constantly reviewed, and updates are requested from the relevant solicitors on a regular basis. The Chair acknowledged that the process for making a “protected” claim, whilst taking longer to progress, is extremely beneficial to an applicant who is also pursuing a civil claim.

A member stated that under the terms of the regulations, having the ability to lodge a “protected” claim is really appreciated by solicitors and beneficial to applicants and their eligible dependants. He suggested that with these cases for better monitoring purposes, that solicitors should ensure that they have all the necessary information in the first instances to progress a timely civil claim. All agreed.

Another member queried the opportunity to flag the majority of cases that are protected applications to the Scheme within the MI.

TopMark stated that this was a possibility of including this on their system and that they would look into this with their digital team. But currently, it is preferable to keep these cases recorded as “open” so that updates and amendments can be administered easily.

**Action point:**

**TopMark to look at identifying protected applications to the Scheme and recording this on the MI**

## **6. Tariff review updates**

**Lead: DWP**

For the benefit of the new member, DWP provided a brief overview of the purpose of the tariff review and then went on to provide the latest updates. The main points included;

- data obtained from the CRU register had been analysed and an initial draft report produced
- legal fee data obtained from APIL members had also been analysed and a separate initial draft report produced
- two members have been sighted with the legal fee data analysis
- DWP have liaised with their legal representative

- DWP have engaged with their governance and legislation team to progress the next stages of the review
- preparation is underway to lay a Statutory Instrument in Parliament
- DWP will provide an updated timeline in relation to the next stages

A member raised a point in relation to the application of legal costs and thanked DWP for considering this. He went on to express his views around the application of other costs like treatment and appeal costs and recovery of other costs (that are not available on the NHS), to be considered during future tariff reviews.

The member also stated that he was awaiting further comments for discussion from APIL members, and that application of legal costs should be consistent with those applied to civil cases. He commented on the level of legal data provided by APIL members and felt that more information could have been provided to DWP when requested.

The member finally commented on the timing of future tariff reviews being aligned to other government schemes that are reviewed on an annual basis, for example, the Pneumoconiosis, etc (Workers' Compensation) Act 1979 and, that payments should remain commensurate with those awarded for civil cases. The Chair agreed that pledges should be made by DWP for future tariff uprating.

Another member raised and referred to exchanges made regarding the uplift of legal costs within the Scheme with the Association of British Insurers (ABI), stating that initial figures produced by DWP were of no concern to the ABI and there was no proposal for the ABI to intervene at this stage. He also commented that with regards to any future reviews, the data requested should be sufficient, relevant, and concise.

One member asked that in the event of an increase to the tariff, will there be the potential for retrospective compensation payments.

DWP stated that retrospective compensation awards cannot be made due to the Scheme's regulations, but data had been gathered for the period 2015 to 2021 to ensure that any tariff uprating is reflective of average payments awarded for civil claims to date.

The Chair expressed her sincere thanks to DWP, members and other stakeholders for the hard work and goodwill progressing the tariff review to date and hope for a positive outcome. All agreed.

## **7. Any other business**

**Lead: All**

A member queried the Scheme's complaints procedure and how this is publicised – expressing concerns regarding the transparency of the procedure and the remedial action available to applicants.

TopMark stated that whilst there is an active complaints procedure within the Scheme that operates within their contractual obligations, it perhaps is not that clear on their DMPS website. Therefore, TopMark agreed to review their website and clarify the complaints procedure.

**Action point:**

**TopMark to review the complaints procedure and ensure that the process is clarified on their website for the benefit of members of the public.**

## **8. Date of next meeting**

**Lead: Chair**

Wednesday 6 November 2024 at 12pm to 1.30pm via MS Teams.