

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

ADMINISTRATIVE COURT

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

B E T W E E N:

THE QUEEN (on the application of THE ASBESTOS VICTIMS SUPPORT
GROUPS' FORUM UK)

Claimant

-and-

THE LORD CHANCELLOR

Defendant

WITNESS STATEMENT OF THE LORD ALTON OF LIVERPOOL

I, David Patrick Paul Alton the Lord Alton of Liverpool hereby states as follows:

1. For the purpose of making this statement make references to the Parliamentary debates on the passage of the LASPO Bill. References such as "[D655]" are to pages in the Defendant's bundle for judicial review.
2. Throughout the debates in the House of Lords on the LASPO Bill I was a staunch proponent of an amendment to the Bill that would have allowed claims for damages for respiratory disease and illness (whether or not resulting in death) arising from industrial exposure to harmful substance to be exempted from the LASPO reforms (see Hansard 30 Jan 2012 Col 1413 [D550]; 14th March 2012 Col 309 [D554]).
3. This amendment had strong cross party support and was debated frequently between January and April 2012.

4. The nature and scope of the debate as it had crystallised by 23rd April 2012 may be seen in the debate on Motion E1 on the evening of Monday 23rd April 2012, when by nine votes, my amending motion was carried, insisting upon an exception being created in the bill for asbestos illness cases.
5. I considered then (and still consider) that it was iniquitous that sufferers of respiratory diseases arising from industrial exposure to harmful substances should have to surrender up to 25 per cent of the damages they have been awarded (see Hansard 25 April 2012 Col 1817).
6. As indicated above, my amending motion had substantial cross-party support and culminated in ministerial meetings with the then Parliamentary Under Secretary of State Mr Johnathan Djangoly (see Hansard 24 April Col. 830) [D636]. The result was a compromise position whereby the then Government put forward an amendment (31A) under which "diffuse mesothelioma" was excluded from the LASPO provisions but not other respiratory diseases. This amendment shortly afterwards became law.
7. As I stated in the House of Lords on 25 April 2012 Col. 1817 at the time:

"Although it has not been possible for us to achieve all of the things that we would have wished to achieve during the proceedings, it speaks well of your Lordships' House that we were willing to send back to the House of Commons for the second time, on Monday, the provisions in the Bill which relate to men and women who have been exposed to asbestos and, as a result, have developed the fatal illness of mesothelioma.

Yesterday in another place, Mr Jonathan Djanogly, the Parliamentary Under-Secretary of State, moved an amendment in lieu of Amendment 31, which was agreed in the other place, as the noble Lord has told us, without Division. The amendment specifies that the mesothelioma provisions may not be brought into force until the Lord Chancellor has carried out a full review of their potential impact and has published a report on the conclusions of the review.

.....[extract attached]

8. I am informed that this judicial review is about the adequacy of the Government's LASPO post-implementation review, and in particular whether that post-implementation review has adequately (or at all) assessed the effects of the LASPO changes on those who suffer from asbestos related industrial disease (asbestosis, pleural plaques etc.) but who do not fall within the exemption in s.46-48 of the Act.
9. In assessing the adequacy of that review I consider it is important to bear in mind that so far as I am aware, none of the concerns which were made in the

debates prior to LASPO coming into force in support of other asbestos related diseases being exempted from LASPO have abated. In particular I am speaking about the concerns about asbestos victims being required to surrender as much as 25% of their damages for pain and suffering to pay for legal costs, and concerns that access to justice is being denied to them because they or their solicitors are deterred from taking their cases (see e.g. Hansard House of Lords 14 March 2012 Col. 309-331) [555].

10. One of the purposes of the implementation review, which I am informed was promised to be in the nature of an impact assessment ((see Legal Aid Sentencing and Punishment of Offenders Act 2012: Post Legislative Memorandum (Cm 9468, October 2017)) necessarily must have been to assess whether the legitimate concerns raised about asbestos sufferers (and those suffering from related industrial respiratory diseases) losing 25% of their damages, and being denied access to justice because of difficulties in finding solicitors to accept their cases, had proved to be true.
11. I am not aware of any evidence that those concerns have been assessed (either fully or at all) by any post-implementation review whether it be the review that was promised in relation to the mesothelioma exception by way of primary legislation or the LASPO post-implementation review. Thus it remains the case that the concerns which I along with others was raising during the passage of the LASPO bill remain valid in relation to claims brought by asbestos victims who are not caught by the exception in ss.46-48 of the Act.
12. Unless or until a proper impact assessment has been carried out by the Government which demonstrates that the concerns about the effects of the LASPO reforms on such cases are without proper foundation, then I remain of the view that such cases should not be subject to the LASPO regime. It is imperative therefore that a proper impact assessment is carried out which can be the basis for Parliament to review.
13. I believe that the facts stated in this witness statement are true.

Signed:.....*David Alton*.....

Date:.....10/3/20.....