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MESOTHELIOMA HEADS OF AGREEMENT

13 JULY 2012

HER MAJESTY'S GOVERNMENT

and

THE ASSOCIATION OF BRITISH INSURERS

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In 2010 the Department for Work and Pensions published the consultation *Accessing Compensation - Supporting people who need to trace Employers' Liability Insurance*. The consultation looked at ways to help people trace insurance cover, and pay them compensation 'where cover could not be found, with particular emphasis on helping those suffering from mesothelioma. In response to the first part of the consultation, the ABI created the Employers' Liability Tracing Office (ELTO), building a database of Employers' Liability insurance policies to help people trace cover. This document outlines a package of proposals to respond to the second part of the consultation — to, provide support to those with mesothelioma who cannot trace Employers' Liability insurance cover - and to improve the claims process for mesothelioma sufferers more widely.

This document outlines terms as agreed by the Government and the ABI, and only remains in force during the term of the Conservative/Liberal Democrat Coalition Government. The indivisible package is intended to provide payments for untraced mesothelioma claimants, funded by a levy on Employers' Liability insurers based on their Gross Written Premium. The industry's levy will fund age-based tariff payments as set out in Table 1 below. Any material deviation on the costs of the Scheme will require the Government and industry to review the Scheme in its totality. The package benefits claimants across the United Kingdom and the terms of the package apply across the United Kingdom.

Aim: to ensure mesothelioma claimants negligently exposed to asbestos as an employee in the United Kingdom receive appropriate support through an expedited process. This to be delivered through an indivisible package of proposals, including an Untraced Mesothelioma Scheme, Mesothelioma Pre-Action Protocol, Mesothelioma Portal, and Technical Committee. See Annex A for the overall proposed claims process.

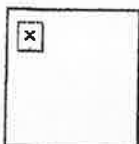
Achieving this aim requires commitment and delivery from the insurance industry and from Government.

Industry delivers:

- Set up and management of an Untraced Mesothelioma Scheme (the Scheme)
- Set up of a new Mesothelioma Body to run the Scheme, with membership of all current Employers' Liability underwriters. The intention is to levy members of the Body to fund the Scheme. The amount of the levy in any year will be based on individual insurers' share of Employers' Liability Gross Written Premium of the previous year.
- Set up and management of a specific Mesothelioma Portal
- Set up and management of a Technical Committee, within an enhanced ELTO

Government delivers:

- Announcement of the whole and indivisible package, by agreement the Government and the ABI
- Intention to introduce primary legislation when parliamentary time allows to underpin the whole package. Legislation to compel membership of a Mesothelioma Body running the Scheme for all current Employers' Liability underwriters, and membership of ELTO (with new Technical Committee) for all current and past Employers' Liability underwriters. Legislation to cover the whole of the United Kingdom (while recognising jurisdictional differences in civil law systems). Government to endeavour to ensure legislation progresses through Parliament unamended.
- The Government and ABI are mindful of the potentially distortive effect on the employers' liability insurance market of raising the full cost of the Scheme in the first year. We agree it is desirable that a mechanism be introduced over the first five years of operation of the Scheme to smooth the impact of the levy by keeping it to around 3% of Employers' Liability Gross Written Premium. The Minister will use his best endeavours to support the delivery of such a mechanism and will provide a definitive answer by 31 October 2012.
- Necessary changes to Civil Procedure Rules to support the Mesothelioma Pre-Action Protocol
- Recognition that the cost of civil litigation is too high, including in mesothelioma claims, and will seek to address this
- Commitment to conduct the review of the applicability of provisions of the Legal Aid, Sentencing and Punishment of Offenders Act to mesothelioma claims as soon as appropriate and in line with the overall intention of the Mesothelioma package
- Investigation into medical diagnosis, records, research and treatment with a view to standardisation of diagnosis procedure in mesothelioma cases
- Investigation into improvements of the provision of HMRC schedules and DWP state benefit information including the embodiment of a Scheme payment in the CRU certificate to allow for Scheme recoupment.
- Effective introduction of the Third Parties (Rights Against Insurers) Act 2010, while preserving insurers' rights to pursue contribution
- Intention to improve awareness-raising of ongoing asbestos exposure in the workplace and the home



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A. Untraced Mesothelioma Scheme

Purpose: to make a payment to mesothelioma claimants negligently exposed to asbestos as an employee in the United Kingdom who cannot trace employers' liability insurance or a solvent wrongdoer.

Underlying principles:

- Fund of last resort
- Will operate for decades, so structure must be flexible to encompass changes (in claim trends, legal/medical developments) while remaining true to Purpose
- Should be as free as possible from legal challenge while preserving transparency and confidence of all stakeholders/users
- Any material deviation on the costs of the Scheme will require the Government and industry to review the Scheme in its totality

'To make a payment': (i) The claimant receives an age-based tariff payment from the Scheme to incentivise the use of the Scheme as a last resort only. Having considered damages amounts across England & Wales, Scotland and Northern Ireland, the tariff is based on approximately 70% of damages in England & Wales. Indicative payments for 2012 are shown in Table 1 below. These are based on ABI figures and are subject to further refinement, with the aim of finalising the amounts by 31 October 2012. (ii) The Scheme will make payments net of the relevant state benefits, and the Government will then be able to recover these state benefits from the Scheme. (iii) For the first three years of claims received (two years of retroactive claims and claims from the first year of operation), the Government will refund the amount of state benefits recovered to the Scheme. (iv) The payments will be indexed in future years. The current intention is that they should be increased in line with the Pneumoconiosis (Workers Compensation) Act 1979 payments, but the precise mechanism will be set out in the Rules of the Scheme.

Table 1: Untraced Mesothelioma Scheme Tariff

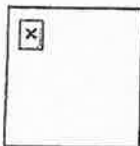
Age Group	Payment
Up to 49	£190,000
50-54	£170,000
55-59	£155,000
60-64	£140,000
65-69	£125,000
70-74	£110,000
75-79	£95,000
80-84	£75,000
85+	£60,000

Scope

'Sufferers from mesothelioma': mesothelioma is an especially distressing disease, almost entirely associated with asbestos exposure. Its exceptional nature is recognised in statute/common law.

'Caused by negligent workplace exposure':

- As a fund of last resort the Scheme cannot set a lower liability bar than the courts so it must be based on a fault system. There will be a dispute resolution process where a claimant does not accept liability denial.
- The Scheme will possess a discretionary power to support claimants in pursuing other wrongdoers, disputing insurers or other third parties consistent with the Scheme Purpose.
- The Scheme will not cover instances of environmental exposure. It will not cover cases where the wrongdoer's duty of care is not that of an employer.
- In cases where the claimant has contributed significantly to their own exposure e.g. in self-employment, the Scheme may have a right to make a deduction for contributory negligence.



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'Who cannot trace Employers' Liability Insurance or a solvent wrongdoer'

- In cases where a compensator is identified after scheme payment has been made, the Scheme will have a power of recoupment (Inclusion on CRU certificate).
- In cases where the claimant does not want to pursue another wrongdoer, the Scheme will have a power to stand in the claimant's shoes and pursue recoupment.

Retroactivity:

- The Scheme will make payments to mesothelioma claimants diagnosed on or after the date of the announcement, or those claimants' estates.

B. Mesothelioma Pre-Action Protocol (PAP)

Purpose: To ensure that swift claim resolution is the key driver of all mesothelioma cases, with early disclosure of evidence enabling defendants to make swift decisions about liability and resolve claims earlier.

Underlying principles:

- Use of the pre-action protocol for all mesothelioma claims, enforced by cost penalties and pre-action directions
- Standardised forms/reports for claims process
- Complete witness statements provided at early stage
- Fixed timescales and costs for different stages
- Requires initial registration of all claims on a portal

C. Mesothelioma Portal

Purpose: To provide parties involved in the claims process with the means to exchange information in a secure electronic way that complements the Mesothelioma Pre-Action Protocol.

Underlying principles:

- Unified, fast and efficient means at communicating between parties involved in a claim
- System functionality is not dependent on the Pre-Action Protocol, which may change
- Secure environment with controlled user access and permissions
- Single point for receipt of occupational mesothelioma claims
- Simple design for transacting information; not a claims management solution

D. Technical Committee (and enhanced ELTO)

Purpose: to investigate cover on behalf of the claimant and, where evidence of cover is found, to establish whether the evidence is sufficient to make a binding ruling against the insurer concerned to pay the claim.

Underlying principles:

- Enhanced ELTO helps claimant investigate potential Employers' Liability cover but does not represent claimant
- Mandated membership of ELTO for current and past underwriters of Employers' Liability insurance ensures all insurers trace historic policies effectively in accordance with ELTO Rules

Technical Committee:

- Has authority to make binding rulings on insurers
- Claimant has an interest in such a decision and so will have the right to make submissions. This power would be distinct from his right to pursue an insurer using his statutory rights under the 1930 and (when effective) 2010 Acts.
- Over time, will lay down a recognised insurance industry approach to evidential issues; insurers will then anticipate these and reach more rapid claim settlement.



Streamlined Process - Annex A

