

Reforming mesothelioma claims

RESPONSE TO MINISTRY OF JUSTICE CONSULTATION

Date: October 2013

About Thompsons

Thompsons only acts for trade union members and the victims of injury, never for employers or insurance companies. At any one time, the firm will be running 70,000 personal injury claims including approximately 600 mesothelioma cases. We have the largest specialist dedicated national asbestos litigation team in the UK with unrivalled experience from representing thousands of mesothelioma sufferers and their families.

We established the first successful compensation claim for asbestos disease in 1972 and have been at the forefront of ground breaking legal challenges in asbestos litigation ever since. In the last decade we acted for the representative asbestos victim in T&N Plc v RSA in the Companies Court, the Barker appeals and Pleural Plaques Test Litigation in the House of Lords and most recently brought the only trade union backed lead case, on behalf of Unite, in the successful Mesothelioma Employer's Liability 'trigger issue' Litigation in the Supreme Court.

The firm participates regularly in government consultations.

Joint Experts' Response

Submitted with this response at Annexe A is a joint experts' response which Thompsons was heavily involved in producing. We adopt that response in its entirety. The following commentary is the firm's view of the process leading to the consultation and the true intent behind it.

Introduction

Summary – a corrupted consultation

Many consultations are cynical; this one has been corrupted by the relationship between the Conservative led Government and the Insurance Industry. In adopting, without modification, a series of proposals made by the Association of British Insurers, this is not, as the Government claims, an attempt to 'fix', improve or speed up the system for compensating the terminally ill victims of asbestos disease. That system by and large works well, and elements of it (the RCJ 'show-cause' fast track, for instance) are exemplary.

This consultation's naked intent is to reduce the amount of money paid by insurance companies. That will be by far the most significant result of these changes. All the outcomes for dying mesothelioma patients and their

families will be worse: a more bureaucratic, more onerous and inherently unfair process, which takes longer and will yield lower settlements for the painfully dying and the recently bereaved.

Constructing a rationale which superficially conceals this intent has required the deliberate manipulation of data. The consultation's central premises are based on secondary analysis of an undisclosed data set repeated requests for which have been consistently refused by Government.

The starting point is thus a set of inaccurate assertions derived from the manipulation of undisclosed statistics which fly in the face of overwhelming contrary evidence from every stakeholder group except insurance companies and those who represent them.

Every single asbestos victim support group is implacably opposed to all of these proposals.

The consultation's spurious raison d'être

The Ministerial foreword states that the Government "recognises that there is a special and urgent case" for reforming the way mesothelioma claims are handled. This is a specious assertion, which is not based on any independent and therefore reliable evidence.

The only stakeholders lobbying for these "reforms" are the insurance companies and their representatives. Insurers have a fiduciary responsibility to maximise profit; they are not responsible for the fair treatment of the dying and the recently bereaved. That is the responsibility of the ultimate regulator and moderator of business excess – the Government. It is a responsibility wholly neglected by this consultation.

The Minister also claims that "our priority is to ensure that mesothelioma claims are settled quickly and fairly". Neither of these assertions are true since the real purpose and effect of these proposals will be to make the mesothelioma claims process more unfair for victims, more onerous and slow and, by reducing the cost of claims, more favourable to insurance companies.

The consultation offers no explanation at all of how the Government reached the conclusion that there is "a special and urgent case" for "reform".

Proper analysis would show that the current system (the High Court specialist mesothelioma list) is swift, cost-effective and fair. So much so that it ought to be used as a model for the litigation of other kinds of claim. Yet there is no analysis of it in this consultation, rather it is bizarrely treated as axiomatic that this innovative, quick, cost-effective system must be undermined.

The only party which benefits from undermining the existing system is the insurance companies.

The consultation's corrupted process

The consultation simply adopts - without modification or any critical assessment by the MoJ - a series of proposals drafted by the Association of British Insurers. At the same time, the MoJ has refused to include proposals made by the Asbestos Victims Support Groups' Forum UK, the highly respected body comprised of organisations representing sufferers throughout the UK.

Taken together, this amounts to a process which goes beyond being flawed – it is a sham. The MoJ has repeatedly refused requests to release its base data and better, indispensable, sources made available to the MoJ have been ignored.

The consultation relies on data from only two main sources: (1) secondary analysis by the MoJ of an interim data set provided by NIESR for a different purpose and (2) a limited survey by the British Lung Foundation.

The statistical evidence presented from the interim data set is demonstrably unreliable. The BLF survey is purely anecdotal and has been used in a highly selective and misleading way.

These inadequate sources and misrepresented data do not support the core assumptions within the consultation: first that around 50% of cases take more than 12 months to settle, and second that the average value of litigated cases is not significantly more than non-litigated cases.

More imaginary problems, and the real causes of actual delay

Though successful and sound at its core, the current system for settling mesothelioma claims is not impervious to improvement. Like any process, it could be beneficially refined. But because this consultation has adopted the false axiom that major delays are such a serious problem that the current system must be undermined, it makes no attempt to investigate the real causes of such delays as do occur or how they could be resolved.

The consultation assumes a main cause of delay to be the failure by claimant solicitors to gather necessary information. This is not true. There is no evidence whatsoever that this is true, and none is adduced by the Government. Even the BLF survey identifies defendant/insurer behaviour as overwhelmingly the most frequent cause of delay. The failure of solicitors swiftly to collect information was not adduced by any participant in the BLF survey as even a possible cause of delay.

Yet the first aim of the proposed Mesothelioma Pre-action Protocol - and the focus of many of its provisions - is to “encourage the provision of early and full information about the claim”. An elaborate protocol – drafted by insurance companies and adopted verbatim by the Government - is created in order to solve an artificial problem of delay. It places onerous and one-sided new duties on the painfully dying and recently bereaved and will have the effect of slowing down the process and reducing the cost of claims payable by insurance companies.

The consultation has fundamentally misrepresented the reality and chosen to ignore the real causes of delay.

The real causes of delay

In our experience, the current system (i.e. the High Court specialist mesothelioma list) generally works very well. Mesothelioma sufferers tend to be represented by specialist and experienced practitioners who understand what is required to establish a claim and where they're not, the Master controlling the court process overtly 'licks them into shape', ensuring that issues in dispute are narrowed and that tight timetables are observed.

The root of almost all delay that does occur is simple, obvious: cynical delaying tactics as part of the deliberate strategy of almost every insurance company at every turn. Proper analysis would have made clear that delay is the central mechanism of a sophisticated machine constructed by insurers to avoid or limit paying compensation to the victims of mesothelioma.

Bluster as they may in protest, it is axiomatic that early settlement for the full and proper value of the claim is most insurance companies' least favoured option. The longest possible delay in the issuing of even the most inevitable proceedings and settlement at the lowest possible level is their strongest preference. So they deliberately delay settlement, in order to wear down the dying or recently bereaved claimant, using uncertainty, anxiety, stress and risk as tactics.

Those tactics have powerful harmful effects on the painfully dying and those coping with recent bereavement and thus often succeed in driving down the figure they are prepared to accept in order to achieve closure; to 'get the thing over with'. The proposals in this consultation are intended to make this strategy of attrition easier to operate and more ruthlessly efficient in its outcome. We have no doubt that, if implemented, it will achieve that aim. Beleaguered families and dying individuals will settle for less.

To achieve prompt settlement of claims on reasonable terms the only effective leverage against insurance companies is litigation, and the imminent threat of litigation. These proposals are designed to postpone the stage at which that leverage can be applied.

The Government should recognise that the default setting of almost all insurers in almost all mesothelioma cases is to value below a reasonable level at every stage, never to admit liability unless faced with incontrovertible evidence, never to settle until forced to do so by court proceedings or the imminent threat of proceedings. In other words, one party to almost every case is a systematically disingenuous interlocutor. How can the Government – if it is concerned with improving the claimant's experience and the outcome for them - not apprehend this as the primary, systemic cause of delay?

The way to improve the system would be to restrict insurance companies' ability to obfuscate and delay – whereas these proposals institutionalise and extend it. Which is not surprising, as they were drafted by the Association of British Insurers.

Squeezing victims by fixing costs

Costs are not fixed; they inevitably vary according to many factors, not least among which is insurer behaviour. That is why, when costs are disputed, they need to be independently and expertly controlled, as they currently are, by court managed costs budgeting and costs judges. In truth, concern about unnecessary legal work is not really the reason the insurance industry, through its Conservative Government proxy, is proposing a fixed recoverable costs regime. The real agenda, and likely consequence, is to use price as a mechanism to drive down the quality and experience of claimant representation and impose the burden of unrecovered legal costs on the victim and their family

Because mesothelioma cases are complex, mesothelioma sufferers need particularly experienced, specialist solicitors. A fixed cost regime militates in precisely the opposite direction: towards the use of inexperienced solicitors, with the inevitably commensurate diminution in the quality of representation for victims, and the commensurate benefit to insurers.

A costs regime which is fixed is particularly unsuited to a legal environment which is increasingly dynamic. Mesothelioma cases are becoming more complex as the preponderant nature and extent of asbestos exposure shifts away from the direct correlation typical of traditional industrial environments to the indirect and intermittent exposure commonplace in construction trades and workplaces. Thus greater, not lesser, expertise is more vital than ever if claimants are to have access to justice and equality of arms.

A fixed costs regime would remove one of the most potent incentives for a defendant to settle quickly. On the contrary, it would encourage even greater defendant obstruction and delay, putting even more pressure on claimants to accept lower settlements than they would otherwise, contrary to the avowed aims of this consultation, but in line with its true intent.

A fixed costs regime is wholly at odds with justice, efficiency and the decent treatment of the painfully dying and recently bereaved.

The law currently incentivises settling after death

Other things being equal, claims should obviously be processed as quickly as possible. There are some occasions, though, when the swiftest settlement is not the fairest. Such instances mainly result from a quite extensive set of legal anomalies which can make it financially advantageous to claimants to settle after the victim has died. It would be better if these anomalies were removed. Until they are, though, when speed of settlement and fairness are at odds, fairness should have primacy.

Final resolution during the victim's life will often represent a significant under-settlement of the claim, and deprive dependants (usually widows) of a substantial portion of the damages they could otherwise expect to recover in a posthumous claim.

The reasons centre around bereavement damages and funeral expenses not being payable during life, and the better treatment of bereaved dependants under the Fatal Accidents Act 1976. (This is set out in more detail in the joint experts report, which we accept and adopt).

The effect, though, is that mesothelioma sufferers are often forced to choose between settling for less during life, or dying with the uncertainty of an outstanding claim.

The obvious solutions are either to align damages for living claimants with those recoverable in claims for dependency under the 1976 Act, or to enact legislation comparable to the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007.

A Government serious about addressing actual problems, rather than motivated merely to protect the insurance industry, would be pursuing one of the above courses, rather than adopting the measures proposed in this consultation.

In the absence of this kind of full and fair compensation for living victims, though, there should at least be some standard provisions in the pre-action stage, where the claimant wishes, for early resolution of all issues of liability and causation; a meaningful interim payment during life; and a stay of the claim until after death.

The law should not put terminally-ill claimants in this position. But while it does, the issue must be taken into account if victims and their families are to be treated fairly and with a modicum of decency.

Conclusion

This consultation has been corrupted by the Government's craven acceptance of a series of proposals drafted by the Association of British Insurers designed to drive down the cost of claims paid by insurance companies.

No victim group, claimant lawyers, trade union or doctor identified or accepts the need for "reform". The only party advocating it is the only party which benefits from it – insurance companies.

The Government has adopted the Association of British Insurers' proposals without modification or any critical assessment. At the same time, the MoJ has refused to consult on proposals put forward by those representing sufferers and their interests.

The assumptions underlying the proposals drafted by the insurance companies are wrong. They are based on unsound statistical evidence and misrepresentation of anecdotal survey evidence. The MoJ has acquiesced entirely to the agenda of The Association of British Insurers.

As the MoJ has refused to supply its raw data, the consultation uses secondary analysis of an interim data set, which has been provided by the insurance industry and withheld from everybody else.

The MoJ has made no attempt to examine the real causes of such delays as do occur.

The proposed Secure Mesothelioma Claims Gateway (SMCG), or electronic portal, will not speed up mesothelioma cases. In fact, it is likely to cause further delay and confusion. Given the complaints about the RTA Portal - a significantly more basic system than the proposed SMCG – there is very real reason to doubt its likely functional effectiveness whereas the current use of email and fax is a proven successful means of transacting business quickly and efficiently. The claimed benefits of the SMCG, such as assisting clinical research, are incoherent, speculative and entirely unconvincing. There are also serious concerns about data protection and the inappropriate collateral use of information uploaded onto the SMCG.

Fixed costs are a disingenuous attempt to drive down the quality of victims' representation. The principle deliberately misunderstands the complexity of mesothelioma cases; and its implementation would remove a significant incentive to defendants to settle early - completely contrary to the avowed intention of these proposals.

This consultation is in no sense a review of the LASPO provisions. Nor can it be seen as consultation on the results of a review. The Minister is on record in Hansard as having undertaken to carry out a review when he exempted mesothelioma claims by delaying implementation of sections 44 and 46 of the LASPO Bill. S.48 requires those results to be published.

For it to be a proper review rather than what is before us - a deal stitched up with insurers behind closed doors - all stakeholders, including asbestos groups and mesothelioma charities, trade unions and their representatives should be able to participate fully, and it should be subject to Parliamentary scrutiny.

The Government presents the ABI proposals as a comprehensive package. In truth, there is no connection between the draft protocol, the proposed fixed costs regime and the review of the LASPO exemption other than to serve the commercial interest of insurance companies at the expense of mesothelioma sufferers and their families.

The stated aims of these proposals are not what this consultation is about. The real objectives are the opposite of what is claimed. Neither efficiency, nor cost-effectiveness, nor speed of resolution, nor the rights and comforts of the painfully dying and recently bereaved are the objects of these proposals. The single true object is to drive down the costs of claims for the benefit of insurance companies. Everything else stems from that.

This consultation is a nakedly unethical attempt to undermine and circumvent an efficient, cost-effective and fair system with no conceivably positive outcome for the interests of those suffering the tragedy of mesothelioma with whom the Government purports to be concerned. Instead the legitimate views of asbestos victims and their representatives have been treated with arrogance and disdain.

Contact details/further information:

Thompsons Solicitors
Congress House
Great Russell Street
London
WC1B 3LW

IanMcFall@thompsons.law.co.uk

Annexe A

RESPONSE TO MINISTRY OF JUSTICE CONSULTATION “REFORMING MESOTHELIOMA CLAIMS”

EXECUTIVE SUMMARY – 25 September 2013

This consultation has made no attempt to explore or understand the reasons for delay in mesothelioma claims. The proposals demonstrate a serious lack of understanding of the real needs of mesothelioma sufferers. If implemented, the effect of the reforms will be the exact opposite of the stated aim of speeding up mesothelioma claims.

The MoJ has adopted a series of proposals made by the ABI, but refused to consult on alternative proposals presented by representatives of mesothelioma sufferers.

The assumptions that underpin the consultation proposals (including the frequently repeated assertion that “around 50%” of mesothelioma claims take over 12 months to settle and that the value of litigated cases is not significantly greater than non-litigated cases) are based on a partial and seriously flawed statistical analysis, and are invalid.

There is no need for a specific mesothelioma pre-action protocol. The current pre-action protocol for Industrial Disease Claims applies to mesothelioma claims and works well combined with the specialist QBD fast track and show-cause procedure in the RCJ. The process envisaged by the protocol drafted by the ABI would be a retrograde step in the conduct of mesothelioma claims. Its actual effect would be to delay settlement and impose an unbearable pressure on mesothelioma sufferers either to accept unreasonable settlements or die without compensation.

A secure mesothelioma claims gateway (SMCG), or electronic portal, will not assist the stated aim of speeding up mesothelioma cases and is likely to cause further delay and confusion. There are serious concerns about whether a SMCG would be either secure or practical. We consider that a SMCG has no useful role.

Fixed recoverable costs will operate to the detriment of mesothelioma claimants by removing a major incentive for insurers to settle early, resulting in claims being under settled by inexperienced case handlers engaged by law firms competing to undertake this work at the lowest cost to maximise profitability.

Nothing in the consultation proposals eliminates or modifies the continuing need for the protection of mesothelioma victims from the adverse effects of LASPO or justifies the removal of s 46 and 48 exemption.

Respondees

David Allan QC, Byrom Street Chambers
Harminder Bains, Partner, Leigh Day
Frank Burton QC, 12 King’s Bench Walk
Paul Glanville, Partner, John Pickering & Partners LLP
Sir Sydney Kentridge QC, Brick Court Chambers
Ian McFall, Partner, Thompsons Solicitors LLP
Dr Robin Rudd, Consultant Physician
Harry Steinberg, Barrister, 12 King’s Bench Walk
Patrick Walsh, Partner, Pannone LLP

RESPONSE TO MINISTRY OF JUSTICE CONSULTATION “REFORMING MESOTHELIOMA CLAIMS”

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INTRODUCTION

1. The views set out below represent the opinions and experiences of the respondees only. It is submitted without prejudice to our contention that the Consultation process is seriously flawed. The Consultation has adopted, without modification, a series of proposals made by the Association of British Insurers.
2. We do not accept the validity of the statistical assumptions that underpin the proposals, including (a) the frequently repeated assertion that “around 50%” of mesothelioma claims take over 12 months to settle and (b) that the value of litigated cases is not significantly greater than non-litigated cases.
3. These key assumptions – premises on which the whole Consultation is built - are based on secondary analysis of an undisclosed data set. The analysis is riddled with mistakes and is statistically unreliable.
4. Accordingly, we have requested disclosure of the raw data – to enable us to subject the secondary analysis and assumptions to independent expert scrutiny – but these requests have been refused by the Government.
5. It is difficult to resist the conclusion, from the distortion of the process by statistical inaccuracy and the Government’s unwillingness to allow access to data which would show the fragility of their underlying assumptions, that the outcome is pre-determined in favour of the ABI proposals.
6. Our overall opinion, derived from decades of experience in handling mesothelioma claims on behalf of the sufferers and their families, is that
 - (1) the proposals demonstrate a serious lack of understanding of the real needs of mesothelioma sufferers;
 - (2) the process has made no attempt to explore or understand the reasons for delay in mesothelioma litigation; and

- (3) the effect of the proposals will in fact be the exact opposite of the stated aim of speeding up mesothelioma claims.
7. We know from discussions with various asbestos victim-support groups that they are, without exception to our knowledge, implacably opposed to all of these proposals. We anticipate that this will be borne out by any submissions they make in response.
8. If the real aim of the Consultation proposal is to help mesothelioma sufferers, the MoJ should listen to those who represent the victims, rather than the ABI, which most certainly does not.

The aims

9. The Ministerial foreword states that “... Our priority is to ensure that mesothelioma claims are settled quickly and fairly”.
10. Yet the proposals set out in the Consultation paper would have exactly the opposite effect.
11. We would support any proposed measure that helped to resolve mesothelioma claims quickly and fairly. We would endorse any proposal that promised to improve the lot of mesothelioma sufferers and their families. We would be particularly keen on measures that helped them to achieve fair settlement during life.
12. The ABI proposals will frustrate rather than promote these objectives.
13. The foreword further suggests that the Government “... *recognises that there is a special and urgent case*” for reforming the way mesothelioma claims are handled.
14. This assumption of an existing problem with mesothelioma claims is not based on any evidence and merely seems to be a credulous repetition of ABI lobbying. It is not explained how and on what basis the Government has now come to this conclusion.
15. We strongly believe that proper analysis would show that the current system (i.e. High Court specialist mesothelioma list) is swift, cost-effective and fair. If anything, it ought to be used as

a model for the litigation of other claims. It is a great pity there has been no such analysis of it in advance of this Consultation.

16. Equally, we find it difficult to believe that the ABI's concern is anything other than the cost of mesothelioma litigation to the insurance industry and, more specifically, the insurers' outlay.

The Consultation process is flawed

17. The Consultation process is fundamentally flawed:

- (1) The MoJ has adopted a series of proposals made by the ABI, but refused to consult on alternative proposals presented by representatives of mesothelioma sufferers;
- (2) The sources of information are limited and unreliable. Better, essential, sources have been ignored. The key assumptions underlying the proposals are based on a statistically flawed secondary analysis of undisclosed data;
- (3) The MoJ has repeatedly refused requests to supply the raw data to allow the assumptions to be properly scrutinised.
- (4) The Consultation makes no attempt to investigate the real reason for delay in these cases and, therefore, cannot realistically hope to achieve its purported aim;
- (5) The underlying premise is simplistic and misunderstands the real needs of mesothelioma sufferers.

18. Accordingly, the Consultation is misdirected and will not help to achieve its purported aim of providing swift and fair resolution of mesothelioma claims.

Wholesale adoption of the ABI proposals

19. The Consultation is a recitation of a series of proposals drafted by the ABI.
20. It would be naïve, bordering on absurd, to think that these proposals represented anything other than the interests of those they represent.

21. These proposals have been adopted without any modification and seemingly without any critical assessment by the MoJ.
22. Further, the MoJ has refused to include proposals made by the Asbestos Victims Support Groups Forum UK, a highly respected body which is comprised of many organisations who represent sufferers across the UK.
23. The refusal to consider the Forum's proposals is inexplicable and incompatible with the stated aim.
24. If the Government wishes to help mesothelioma sufferers, it should listen to those who represent them, such as the Forum, rather than those who represent the defendant insurers.

The Consultation sources are limited and unreliable; essential sources have been ignored

25. In essence, the Consultation paper presents data from only two main sources: (1) secondary analysis by the MoJ of an interim data set provided by NIESR for a different purpose and (2) a survey by the British Lung Foundation.
26. The statistical evidence presented from the interim data set is demonstrably unreliable. The BLF survey is anecdotal evidence with a very low response rate and has been used in a selective and misleading way.
27. The sources were inadequate and do not support the key assumptions (a) that around 50% of cases take more than 12 months to settle and (b) that the average value of litigated cases is not significantly more than non-litigated cases.
28. If, which appears to be the case, that these assumptions are unreliable and probably incorrect, the whole Consultation process is undermined.
29. The MoJ analysis has also been too simplistic to be of any use.
30. Further, it appears that no attempt has been made to consult with the QBD Masters who run the specialist mesothelioma list. It is difficult to imagine a more experienced and

knowledgeable source of information on the manner in which mesothelioma claims are routinely handled and determined.

31. At **appendix 1** we attach (1) expert analysis from three statistical experts and (2) our brief **appendix 1** summary of the statistical flaws in the MoJ analysis of the interim data set and the misuse of the BLF survey data.

Refusal to provide raw data

32. Numerous requests have been made by the Asbestos Victims Support Groups Forum UK and others for disclosure of the raw data set from the NIESR to enable interested parties to make a proper response to this Consultation.
33. The MoJ has repeatedly refused these requests without, in our opinion, any adequate or justifiable reason.
34. The result is a Consultation paper that is based on the MoJ's secondary analysis of an interim data set, provided by the insurance industry, which has been kept secret from everybody else.

The assumptions about delay

35. The Consultation makes no attempt to investigate the real causes of delay in mesothelioma cases. If the MoJ does not understand why these cases are sometimes delayed, and is not prepared to take steps to find out, then it cannot realistically hope to achieve the purported aim.
36. It appears that the misleading presentation of the BLF survey by the ABI has led the MoJ to misunderstand the real causes of delay.
37. The Consultation papers assume a main cause of delay to be the failure by claimant solicitors to gather necessary information. So the first aim of the MPAP - and the focus of many of its provisions - is to "*encourage the provision of early and full information about the claim*".
38. In fact, the BLF survey reveals that defendant/insurer behaviour was, by some considerable margin, the most frequent complaint of those respondees who had experienced delay. Not a

single respondent cited a failure of their solicitors to collect information from them in a timely manner.

39. The MoJ has failed to appreciate the main causes of delays (summarised below) and nothing in the ABI protocol addresses these matters. The ABI protocol is therefore directed at solving imaginary / minor causes of delay at the expense of solving the real / major causes of delay. It will not increase the speed and efficiency of the claims process.

The real causes of delay

40. In our experience, the current system (i.e. High Court specialist mesothelioma list) generally works very well. Mesothelioma sufferers tend to be represented by specialist and experienced practitioners who understand what is required to establish a claim.
41. Where delay arises, it is usually for one or more of the following reasons:
 - (1) Insurers and employers benefit from holding on to money for as long as possible, even where settlement is inevitable. The insurance industry shows little appetite for early settlement as distinct from delaying issue of proceedings;
 - (2) Individuals handling mesothelioma claims for insurance companies tend to be less experienced, without authority to make swift decisions. By contrast, the solicitors engaged by the insurers are more experienced and able to progress cases even where disagreements remain;
 - (3) Insurers often deliberately delay settlement for tactical reasons. This may be part of a strategy of attrition, to wear down the claimant and to induce anxiety about their prospects of success, which, in turn, drives down the likely settlement figure. This will be very much easier to achieve and will increase if the ABI protocol is introduced;
 - (4) Sometimes the reason for delaying settlement will be yet more cynical; a claimant with no spouse, or other dependants, will lose a substantial part of the claim (i.e. for the so-called "lost years") if they die before the settlement. Insurers are alive to this potential windfall;

- (5) Taking these factors into account, insurers almost invariably value these cases below a reasonable level. This is inevitably reflected in offers made, if any, in the pre-litigation stage;
- (6) Very often, there will be numerous issues in dispute (life expectancy but for the illness, life expectancy of dependants, etc). Insurers frequently insist on obtaining their own expert evidence on such issues (from one or two particularly favoured experts and, therefore, very busy experts) and will not be prepared to reach agreement until they have done so;
- (7) Frequently, there is more than one defendant involved and more than one insurer for each defendant. They seemingly find it difficult to agree apportionment and insurance liability cover even in simple cases. They also undertake extensive investigations to find others to whom they can pass on some or all of their responsibilities or to claim contribution;
- (8) Insurers will invariably not admit cover unless presented with incontrovertible evidence;
- (9) If the insurer is insolvent (i.e. Chester Street or similar), the FSCS becomes involved and the claim will take additional time to “validate”, while other potential paymasters are sought;
- (10) Many insurers have kept no records and, in many cases, the records have been systematically destroyed (this failure to keep records has been recognised in Parliamentary debate and is one of the reasons for the proposal of the Mesothelioma Bill);
- (11) It can be difficult to identify exposures to asbestos dust which by the standards of the time amount to a breach of duty;
- (12) There is often significant dispute between parties’ expert witnesses as to whether a particular set of facts amounts to an exposure which is both in breach of duty and causative of the disease.

42. None of these issues is addressed, or will be solved, by the ABI protocol.

43. An additional cause of delay is the relatively frequent occurrence of test cases which have been taken to the appellate courts by the insurers to try to reduce their liabilities or the compensation payable to mesothelioma victims. There has been many. In **Fairchild**, for instance, where two insurers argued that if they had each negligently exposed a mesothelioma victim to asbestos, it would be impossible to ascertain who had caused the illness and, therefore, that they should both escape liability. Or in **Barker**, where the insurers argued a victims damages should be reduced if he or she had been also been exposed to asbestos while self-employed. Or in **Durham**, the so-called trigger litigation, where the insurers argued that the policy would cover the victim only if the onset of the disease was during the period of cover (an impossibility in most cases).
44. These cases, and others like them, took years to resolve and many mesothelioma victims had to wait until they did. Many died before resolution.
45. There does not appear to have been any attempt to analyse what effect this insurer-led targeting of mesothelioma claims has had on the perception of delay.
46. It is difficult to accept or believe that the barrier to swift and fair settlement of mesothelioma claims is for want of a procedural timetable drafted by the ABI.
47. We believe that the single most effective way to increase the speed and efficiency of mesothelioma claims would be to discourage unmeritorious defences that are purely designed to drive down the value of a case.
48. It is unsurprising that the ABI-drafted protocol does not address this issue; but it is surprising that the MoJ has not.

The Consultation is too simplistic and misunderstands the needs of mesothelioma sufferers

49. The central premise - that all mesothelioma cases should be resolved quickly – is understandable but, within the constraints of the law as it currently stands, too simplistic.
50. For reasons which we will outline briefly, final resolution during the victim’s life will often represent a significant under-settlement of the claim, and deprive dependants (usually

widows) of a substantial portion of the damages they could otherwise expect to recover in a posthumous claim.

51. This is principally because:

- (1) Bereavement damages (currently at £12,980) are not payable during life;
- (2) A claimant cannot recover for funeral expenses during life, even where death is around the corner;
- (3) At common law, a living claimant cannot recover damages for services that he or she would have provided to dependants after his or her death. But this is recoverable as “services dependency” in a claim under the **Fatal Accidents Act 1976**;
- (4) A claim for income dependency under the **Fatal Accidents Act 1976** is usually substantially more valuable – assuming the same basic factors of income and life expectancy but for the illness – than a claim for “lost years” at common law. The anomaly arises out of the different treatment of living expenses.
- (5) Typically, in our experience, a claim brought by a widow will be about 20% more valuable than the equivalent claim during life.
- (6) A mesothelioma sufferer will often face this dilemma: the resolution of the claim during life at a substantially reduced level or dying without any recompense for the illness and with the uncertainty of an unresolved claim.

52. The obvious solution would be to align damages for living claimants with those recoverable in claims for dependency under the 1976 Act. Alternatively, comparable legislation to the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 could be enacted. Whilst mesothelioma sufferers in England and Wales have to make the invidious choice of staying their claim until after their death in order that their families might be more financially secure, in Scotland this is not the case. A case may be settled in life and, after death, dependency payments can be made.

53. In 2007, the Department for Constitutional Affairs issued a consultation paper, CP 9/07, providing options to achieve the outcome envisioned in the then Rights of Relatives to

Damages (Mesothelioma) (Scotland) Bill. However, nothing has been done to achieve parity with Scottish mesothelioma sufferers since then.

54. The Government could act, indeed could have acted long ago, to give dying mesothelioma sufferers the solace of knowing that their claim would be settled in life without jeopardising their families' financial security.
55. These matters ought to have been considered in the Consultation. The failure to do so undermines the stated intention to provide settlements that are not only quick but also fair.
56. This is another example of how a failure to understand the causes of delay has prevented the Government from devising reforms that address the real problems for mesothelioma sufferers in the current process.
57. In the absence of full and fair compensation for living victims, we suggest that in the pre-action stage that there should be some standard provisions, in appropriate cases and where the claimant so wishes, for the following:
 - (1) Early resolution of all issues of liability and causation;
 - (2) A substantial interim payment to meet the claimant's needs during life (in accordance with the Minister's recognition that early compensation is necessary to ease the sufferings of victims); and
 - (3) A stay of the claim until after death, so as to allow the final value of the claim to be assessed on a full basis.
58. The law should not place terminally-ill claimants in this position. But this issue must be understood, and dealt with effectively, if swift justice is not to degenerate merely into quick processing.

Conclusion

59. The ABI has produced a series of proposals drafted for the benefit of its members/stakeholders.

60. The MoJ has adopted these proposals without modification or any critical assessment. At the same time, the MoJ has refused to consult on proposals put forward by those who represent the interests of the sufferers.
61. The assumptions underlying the Consultation are distorted and incorrect. They are based on flawed statistical evidence and a selective, misleading and unfair presentation of anecdotal survey evidence.
62. Real and essential sources have been systematically ignored.
63. The MoJ has refused to supply the raw data and so this Consultation proceeds on the basis of secondary analysis of an interim data set, which has been provided by the insurance industry and kept secret from everybody else.
64. The Consultation is misdirected and wrong-headed.
65. The failure to consider the reasons for delay undermines the whole process. If the MoJ is not prepared to explore the reasons for delay, it cannot seriously hope to avoid that delay.
66. The proposed SMCG will not assist with achieving the goal of speeding up mesothelioma cases and is likely to cause further delays and confusion. It is difficult to see how it will expedite the exchange of information over and above the use of email and fax which is already commonplace. It is likely to suffer from significant functional failures, particularly given the complaints about the RTA Portal which is a significantly more basic system than the proposed SMCG.
67. The cited benefits of the SMCG, such as assisting clinical research, are flawed and speculative at best. They appear to be nothing more than a window dressing exercise by the ABI to sell the SMCG which will be of no benefit to mesothelioma sufferers. In addition, there are serious and significant concerns about data protection and the inappropriate collateral use of information uploaded onto the SMCG.

68. The FRC proposals are entirely inappropriate in principle and calculation. The principle of a FRC misunderstands the complexity and difficulties presented by mesothelioma cases. The creation of a FRC would remove a significant incentive to encourage defendants to settle early, which is completely contrary to the stated intentions of this Consultation.
69. No explanation has been given to explain how the proposed fixed levels have been calculated and this seems to have been done without any consultation with the stakeholders with the benefit of actuarial evidence. This is wholly unsatisfactory. All stakeholders, including asbestos and mesothelioma charities would be able to participate fully, albeit the precise structure of the review was not made clear.
70. This Consultation is entirely incapable of being a proper, fair or comprehensive review of the LASPO provisions and should not be treated as such.
71. Reassurances were sought, and given in, Parliamentary debates about the LASPO Bill. A full and proper review was to be conducted before sections 44 and 46 were brought into force and s. 48 requires those results to be published. All stakeholders, including asbestos and mesothelioma charities, should be able to participate fully in any review which should be subject to Parliamentary overview. This Consultation only incorporates the proposals of one stakeholder, the ABI, and is based on inaccurate data and misconceived assumptions. It cannot be viewed as a review nor a publication of the results of a review.
72. The ABI proposals are presented as a package that will cure all ills. In reality, the connection between the protocol, the introduction of LASPO and the proposed fixed costs regime is flimsy and not based on any evidence.
73. These proposals will not help to achieve the stated aim. Instead, they are a blatant attempt to destroy an existing system which is efficient, cost-effective and fair.
74. If the Government is genuinely interested in the plight of mesothelioma sufferers, it ought to listen to those who represent them and not those who represent the insurance industry.

RESPONSE TO SPECIFIC QUESTIONS

Question 1: What in your view are the benefits and disadvantages of the current DPAP for resolving mesothelioma claims quickly and fairly?

Benefits of the current DPAP

- 1.1 The DPAP and litigation are not separate procedures; they are different stages of the same process. They cannot sensibly be considered in isolation if the real aim of the Consultation is to promote swift justice.
- 1.2 In its current form, the DPAP expressly acknowledges that its timescales may not be suitable for mesothelioma sufferers with unpredictable and short life expectancies. It requires the parties to act with appropriate urgency. This includes the provision of early disclosure of information by the claimant and swift responses by the defendant.
- 1.3 The DPAP sets out good practice, but recognises the need for flexibility in this type of case.
- 1.4 In the light of the obvious time constraints, and the unpredictability of the condition, best practice dictates immediate and full investigation. A defendant may make an offer at any stage after notification of the claim and knows that a failure to make an early reasonable offer may lead to litigation.
- 1.5 The real benefit is that it, in appropriate cases, it (a) allows the early issue of proceedings and access to the specialist mesothelioma list and/or show-cause procedure and therefore (b) discourages plainly unmeritorious defences, by which defendant insurers may exert pressure on mesothelioma sufferers to settle their claim below fair value and which, if unchecked, has the effect of slowing down the process.
- 1.6 The show cause procedure is quick, efficient and fair. It has revolutionised the conduct of mesothelioma claims for the benefit of the sufferers.

- 1.7 For example, we understand that the specialist list in London deals with about 1,200 mesothelioma cases every year. Most of these take up no more than half an hour of the Court's time. The vast majority settle and only a tiny proportion (probably fewer than 20 per year) proceed to any kind of trial or assessment of damages.
- 1.8 The show-cause procedure is invaluable to mesothelioma sufferers with a short life expectancy. A defendant with a real defence is given proper opportunity to pursue it. But the process cuts through unmeritorious, time-wasting defences, and forces the parties to deal with the real issues expeditiously.
- 1.9 Its very existence actively encourages defendants to take a more realistic approach to mesothelioma claims, speeds up the process and, crucially, discourages litigation.
- 1.10 We are surprised that the Government and MoJ have made no attempt to analyse the efficacy of this existing specialist list in preparation for a consultation with the expressed aim of improving the ways in which claims are handled.
- 1.11 It is equally surprising that the QBD Masters who run the list (who are possibly the most experienced in the administration of mesothelioma claims) do not appear to have been consulted. This lack of consultation with the QBD Master is particularly poignant as one of the ABI's arguments is the specialist list is over utilised and is leading to a delay in claims being processed. No efforts appears to have been taken to confirm with the QBD Masters whether this premises is correct or invite suggestions as to how funding or resources could help address any such problems.
- 1.12 There are a number of key factors underlying the marked success of the specialist list:
- (1) Summary judgment on liability, with the show-cause procedure, which shifts the evidential burden to the defendant after the claimant has produced sufficient evidence to establish exposure in breach of duty. The essence of the summary judgment system is the early elimination of liability as an issue so that an interim payment of damages and costs can be ordered. This is vital for many sufferers. But in most cases, it is the existence, rather than the use of the procedure, which promotes the early determination of liability issues and the elimination of wasteful disputes.

- (2) Universal use of telephone Case Management Conferences
- (3) Extensive use of email for the promulgation of documents by parties and by the Court
- (4) The standardisation of procedures
- (5) The certainty of outcomes that tends to be produced by a consistent expert approach to the management of the claims.

1.13 It is the very success of this system in providing speedy and fair outcomes for mesothelioma sufferers that appears to have precipitated this latest assault by the insurance industry.

1.14 The early availability of Court proceedings ensures control and efficiency

1.15 The ABI proposals, if adopted, would lead to the destruction of this system. This would be a backward step that will cause significant harm to mesothelioma sufferers.

Disadvantages

1.16 There are numerous of improvements that could be implemented if the Government is serious about its stated aim. They include:

- (1) The implementation of the **Third Parties (Rights Against Insurers) Act 2010** which would enable mesothelioma sufferers to enforce their rights directly against insurers and so eliminate much unnecessary waste and delay (as recommended by the Law Commission in 2001);
- (2) Additional investment in the specialist RCJ mesothelioma list.

1.17 But we do not perceive any specific disadvantages arising from the DPAP itself to mesothelioma sufferers.

Question 2: How far do you think that a new dedicated MPAP would address the problems and meet the objectives set out above?

- 2.1 Not at all.
- 2.2 The alleged problem is one of delay. The Consultation paper frequently asserts that around 50% of claims take more than 12 months to settle and that non-litigated claims take almost as long to settle as litigated claims.
- 2.3 For the reasons outlined in the introduction section, we think that these assumptions are statistically unreliable.
- 2.4 But the ABI protocol cannot hope to solve this purported problem because it is based on an obvious misunderstanding of its underlying causes.
- 2.5 This failure to understand the causes of delay may be due, in part, to the choice and use of source material in the Consultation paper.

The case for a specific protocol

- 2.6 In our opinion, there is simply no need for a specific pre-action protocol for mesothelioma cases.
- 2.7 The pre-action protocol for Industrial Disease Claims applies to mesothelioma claims and, combined with the list run by specialist QBD Masters and the show-cause procedure, works well. The existing protocol realistically acknowledges that the basic timetable may not be suitable for living mesothelioma claims.
- 2.8 We do not accept the characterisation of an underlying problem of delay in the handling of mesothelioma claims. It is based on flawed analysis of statistically unreliable data. Essential sources have been systematically ignored.

- 2.9 For such data to be meaningful, typical settlement times must be analysed closely and in context. Does the data include, for instance, the enormous delays that were generated by the insurance industry in its wholesale attempt to avoid employers' liability policies, and compensation to mesothelioma sufferers, in the trigger litigation?
- 2.10 It is necessary to take into account the preference of some claimants to delay settlement of their claims until after their death, so that their dependants may receive full compensation (see the introduction above).
- 2.11 It is our experience that such delays that do arise, are more usually the product of the defendant/insurers approach to litigation of this type: ie, to admit little or nothing, to put the claimant to proof on every issue and, wherever possible, to raise any and every conceivable defence, regardless of its likely merits or prospects of success.
- 2.12 The underlying intention of such conduct is to drive down settlement values. This widespread practice was the reason for the foundation of the show-cause procedure; refer to White Book CPR3D-PD.
- 2.13 The way to combat such time-wasting tactics is not to impose procedures which will introduce (a) further opportunities for delay and (b) a greater burden of pre-action disclosure on terminally-ill claimants, but (c) to reinforce and improve access to the show-cause procedure.
- 2.14 The ABI protocol would effectively restrict the access of mesothelioma sufferers to the courts and to the show-cause procedure. The inevitable outcome of that alone is increased delay and a transparent denial of the sufferers' access to justice.
- 2.15 Ultimately, the consequences of the proposed protocol would be to encourage unmeritorious defences and to introduce numerous opportunities for stalling and delay; the exact opposite of the central aim.
- 2.16 We have not seen any evidence that would necessitate, or even justify, the proposed departure from the current system.

Reasons for delay of settlement

- 2.17 The proposed protocol seems to anticipate that mesothelioma claims will be compensated without proceedings. It is designed to restrain Court proceedings until a number of potentially onerous procedural steps have been taken and a claimant has unilaterally disclosed substantial volumes of information.
- 2.18 Whether or not sufficient information has been provided will be open to argument and is likely to result in further delay.
- 2.19 In conducting this type of claim, the aim should be to achieve reasonable settlement as quickly as possible. A reasonable settlement, in this sense, we define as being what a judge would typically award on the available evidence, applying conventional common-law principles.
- 2.20 Our shared experience of mesothelioma cases, sadly, is that these cases are usually not settled, or not settled on reasonable terms, until proceedings have been issued.
- 2.21 There is no credible reason to believe that this will change. The difference will be that typically it will take longer, and be more costly, to reach that stage.
- 2.22 The real reasons for delay in settlement have been summarised in the introduction section above. The ABI protocol will do nothing to rectify the real problems.
- 2.23 The fundamental point is that insurers want to change the current procedure, and to introduce a protocol of this type, in order to prohibit the issuing of proceedings, not to promote early settlement.
- 2.24 Ultimately, insurers will rarely be prepared to value or settle a case on anything remotely resembling a reasonable basis until proceedings have been issued.

Necessary steps before issue

- 2.25 Bearing in mind the short life expectancy of mesothelioma sufferers, it is already sufficiently difficult and time-consuming to issue proceedings.

2.26 A solicitor handling the case must deal with the following:

- (1) Application for a lump sum payment under the 1979 Act or the 2008 Mesothelioma Scheme. It is necessary to obtain a decision on entitlement before proceedings can be issued;
- (2) Insurers' requests for information. These are often voluminous, time-consuming and impossible to answer. Some insurers use standard (and lengthy) lists of questions that have little or nothing to do with the case in hand, but will complain vociferously if each and every request is not considered. Frequently, these requests add nothing to anyone's understanding of the issues in the case. But this approach would be institutionalised by the proposed protocol;
- (3) Investigations as to methods of funding; for instance, it is necessary to consider whether household insurance policies provide legal expenses cover and, if so, whether it is suitable for a case of this type;
- (4) Proof of exposure. A claimant will be devastated by the diagnosis and, at first, may find it difficult to provide comprehensive instructions. They may often be in a state of shock, trying to remember events that took place many years before. Usually, it is necessary to visit the claimant at home more than once. Insurers are usually reluctant to accept the claimant's own account and will demand corroborative evidence. This may be difficult and time-consuming to provide. Sometimes the claimant will know of potential witnesses (former colleagues and friends). But, as often as not, they will not, and it becomes necessary to pursue other avenues, such as local asbestos-support groups or advertisements in the local press;
- (5) Obtaining medical records and GP notes (usually several sets, in different batches). This takes up to 2 months. Often, pleural biopsy reports will be missing and it is necessary to make follow-up requests. The draft protocol envisages that any Court action will be delayed until a full set of records has been obtained. In fact, the defendant does not even need to provide its reasoned answer, including to issue of liability, until the records have been made available;

- (6) It is impossible to obtain a medical report until these notes have been obtained;
- (7) Company and insurance searches, to establish appropriate defendants and, equally important, that there is a potential paymaster. If the insurers can be identified, they will usually embark on their own investigations to try to apportion or share responsibility with others. This can continue for a long time. If the protocol imposes an obligation on a claimant to help insurers complete this process before issuing, then a large proportion of the sufferers will die in the process;
- (8) The client's deteriorating state of health. The sufferer will often be distracted by the shock of diagnosis and be in great pain. This makes each of the above the steps more difficult.

2.27 The draft protocol does not take into account the practical realities of litigating mesothelioma cases. The short life expectancy of the sufferer, and the unpredictable and rapid progression of the disease, make it necessary to allow a claimant's solicitor the flexibility to respond quickly in the pre-litigation stage.

2.28 Potential claimants in this desperate situation should be able to issue proceedings without fear of sanctions and losing substantial proportions of their damages as costs to the insurers. This is made more poignant by the fact that most claimants will die before their claim is settled and they will be understandably concerned that their actions may affect their estate and, consequently, the dependents they leave behind. Sanctions may dissuade mesothelioma sufferers from even making a claim for compensation, which is extremely concerning.

2.29 The protocol will entrench existing difficulties and make them mandatory steps in the pre-litigation process. It will eat into the short time remaining for these claimants.

The proposed timetable

2.30 The main difficulty with the timetable produced by the draft is that it does not adequately take into account:

- (1) the very short life expectancy of this cohort of claimants;

(2) the inherent unpredictability of the progression of the disease; and

(3) as a consequence, the absolute necessity of an inbuilt flexibility.

2.31 The attached letter from Dr RM Rudd, dated 9 September 2013 (**appendix 2**), encapsulates appendix 2
the problem from a medical perspective:

“It is completely inappropriate to base a protocol upon the assumption that a medical expert can predict reliably that a patient will survive long enough for a timetable to be worked through”.

2.32 In reality, any prescriptive procedural timetable, which fails to recognise the peculiar features of the disease, will not be suitable.

2.33 The ABI protocol does not appear to recognise the medical reality that a patient’s condition may change and deteriorate rapidly. In a living claim, because of the short life expectancy periods, the timetable is highly unlikely ever to be appropriate.

2.34 In a fatal claim, it would simply work to impose a number of non-reciprocal and potentially unfair disclosure obligations on the claimant. A presumably unintended consequence of the proposed protocol is that it will confer a significant tactical advantage on the defendant in disputed liability claims.

2.35 We attach an analysis of how the proposed pre-action protocol might work in practice and, for the sake of comparison, the typical progress of a case under current procedures (**appendix 3**). appendix 3
This is then measured against the mortality rates from the date of diagnosis (as set out in Dr Rudd’s letter). This assumes that it takes a patient about a month from the date of diagnosis to find and instruct a solicitor.

2.36 There are a number of disturbing conclusions that can be drawn from this comparative exercise.

2.37 For instance, assuming that (a) the timetable runs smoothly, (b) third parties provide documents when requested and (c) defendants cooperate fully (and do not seek further

documents or make extensive and time-consuming requests for further information), about 44% of claimants will have died by the time a defendant is obliged to provide the “reasoned answer”.

2.38 In a difficult liability case, a claimant is unlikely to want to embark on any kind of litigation unless and until a favourable report has been obtained on the issue. Under the proposed timetable, most claimants will be dead before the protocol permits the issue of proceedings. More than half will have died by about the time the claimant can reasonably expect to obtain expert liability evidence.

2.39 This would be a serious backward step in the litigation of mesothelioma claims. The unpredictability of the disease necessitates flexibility, a system which permits the claimants solicitors to respond quickly (and without fear of unreasonable sanctions) to a sometimes rapidly changing medical situation. Frequently, there is no time to follow a series of pre-defined and potentially lengthy procedures.

2.40 Instead, the proposed draft would introduce inbuilt layers of delay, each of which will coincide with a significant and inexorable depletion of the cohort.

Summary

2.41 The process envisaged by the draft protocol would be a retrograde step in the conduct of mesothelioma claims and its actual effect is likely to be the exact opposite of what is intended.

2.42 We do not see how this protocol, or anything similar, could do anything other than have a substantial detrimental effect on this vulnerable and desperately ill group of people.

2.43 In summary, the main problems with the protocol are as follows:

- (1) The disease is more urgent than is recognised by the protocol. About half of the sufferers will die before the protocol permits access to the Court system;

- (2) At the same time, as a group, these cases are too complicated and difficult to fit neatly into the protocol as drafted. There is, for instance, a wide range of expert evidence that may be necessary;
- (3) The protocol does not take into account the difference in the valuation of living and fatal claims. This anomaly creates the unavoidable and difficult conclusion that an early settlement is not always a fair settlement;
- (4) The sufferers will often be shocked by their diagnosis, in great pain and deteriorating rapidly. The flexibility in the current systems which allows them to take the necessary steps at an early stage, is crucial;
- (5) The current system allows claimants, where necessary, to cut through time-wasting and delaying tactics. In restricting access to the mesothelioma list and the show-cause procedure, the protocol will inevitably encourage unmeritorious defences and further delay. This means that more sufferers not have their claims settled during life;
- (6) The reality of mesothelioma claims is that defendants/insurers will not settle on reasonable terms without the realistic prospect of litigation in the background. This was our direct experience before the introduction of the show-cause procedure and is acknowledged in the ABI's proposals where it recognised that defendants often file a defence as a matter of course;
- (7) The draft protocol would recalibrate the present system, and the balance that has been achieved by the show-cause procedure, to allow insurers once again to use the sufferer's illness and short life expectancy as part of their litigation strategy;
- (8) Those claimants who are prepared to take the risk – to try to circumvent the almost inevitable delay – will seemingly be at risk of losing a substantial part of their damages. They will be subject to invidious scrutiny as to whether or not their life expectancy was short enough to justify their conduct;
- (9) The protocol is unrealistic and potentially open-ended. The potential for delay and dispute is obvious;

- (10) The defendants/insurers will be able to delay proceedings, and access to the show-cause procedure, by making extended requests for further information and rejecting letters of claim on the grounds of non-compliance. This will inevitably generate satellite litigation;
- (11) The protocol will impose unilateral and potentially unfair obligations of disclosure on claimants. This will confer a significant tactical advantage on defendants where liability is in dispute;
- (12) The protocol will not speed-up justice. Quite the reverse, it will delay settlement and impose an unbearable pressure on mesothelioma sufferers to either accept unreasonable settlements or to die without any compensation.

2.44 We do not think that there is any convincing case for change and certainly not a change in accordance with the ABI proposals.

2.45 The ABI protocol will increase delay and uncertainty for mesothelioma sufferers. Its effect will be the exact opposite of what is apparently intended.

Question 3: What are your detailed views on the ABI’s proposed MPAP at Annex B? What further issues might it address? Do you think the criteria for entering the MPAP are the appropriate ones? If not, what criteria would you suggest and why? In what circumstances, if any, should a case fall out of the MPAP?

3.1 Our opinion on the ABI protocol is set out in large part in answer to question 2.

3(a) Detailed views on the MPAP

3.2 In addition to our general points, we have a number of specific concerns about the contents of the draft. The list below is representative rather than exhaustive:

- Para 1.2 – this asserts that the protocol establishes a reasonable process and timetable for the exchange of relevant information. We fundamentally disagree. The protocol suggests that the anticipated timescales “reflect a need for particular urgency”. We

agree with the sentiment, but cannot share the expectation that this will be achieved by the protocol. We think that even in cases where a claimant elects to have his or her case valued posthumously, there should be a standard provision which enables the liability issues to be dealt with quickly and fairly during life. The protocol, as drafted, is likely to frustrate this aim in the majority of cases. Mesothelioma cases are simply too urgent and complex to be the subject of a rigid timetable;

- Para 1.3 – refers to sanctions for failure to comply, without providing any details of the nature of these sanctions or the circumstances in which they will apply. We have tried to show why it is that in the majority of living mesothelioma cases, the proposed timetable will simply be inappropriate and unworkable. The threat of litigation is perhaps the only effective weapon open to the claimant against all too frequently intransigent defendants. But it appears that there will be a presumption that sanctions will be imposed on the claimant who, desperate to have the case resolved during life, takes the step of initiating Court proceedings. Access to the specialist list and the show-cause procedure is a vital part of the process. The Consultation fails to recognise this, probably because no attempt has been made to properly analyse the effects of the show-cause procedure or consult the QBD Masters on it;
- Para 2.1.2 – one of the objectives of the protocol is to avoid litigation. In our experience, nearly every mesothelioma sufferer wishes to avoid litigation, but not at any cost. We suggest that the principle objective of the protocol should be to ensure reasonable and fair settlement;
- Para 4.2 – this imposes a unilateral obligation on the claimant to disclose a binding statement. In many cases, liability will be disputed, and this is potentially unfair. The imposition of unilateral disclosure creates an inbuilt inequality because a claimant will effectively lose any control over the disclosure of evidence, which is then ceded completely to the defendant/insurer. To be clear, we would ordinarily always advise a claimant in these cases to disclose a statement at the earliest possible stage. But this should not be a mandatory requirement. It undermines a basic element of our judicial system, which allows each party a reasonable opportunity to present its case under conditions that do not place one at a disadvantage against the other. Therefore it

should be the claimant's choice as to whether or not a statement is disclosed unilaterally;

- Para 4.2.1 – Under section 3 of the **Compensation Act 2006**, a mesothelioma victim is entitled to full damages from any tortfeasor who is responsible for a material increase in the risk of the disease. That defendant can then seek a contribution from other responsible parties. But this paragraph contains a requirement on the victim, in the pre-litigation stage, to provide details of all other sources of asbestos exposure. This is onerous, unreasonable and inconsistent with the aim of the protocol. The sole intention of this provision is to help one guilty party in making a claim against another;
- Para 4.4 – the requirement to provide all of these documents, in the pre-litigation stage, is unrealistic. The records will not be in the claimant's possession or control. The knock-on effect of making the provision of these documents a necessary preliminary stage, will be to prevent many claims from being settled within the lifetime of the victim;
- Para 4.5 – This is very worrying for a living claimant. Defendants frequently assert that they are unable to determine liability and quantum. Very often, without any obvious justification. They may simply mean that they are not prepared to settle. So how is this to be assessed? Who will determine whether this is reasonable? When? Does the timetable stop if such a request is made? This is open-ended and a potential source for further delay and dispute;
- Para 4.6 – Again, this is open-ended and a recipe for disputes. Who is to determine what documents are reasonably necessary;
- Paras 5.1-5.3 – The time period for the defendant's "reasoned answer" is almost 3 months (i.e. 3 weeks for acknowledgement, plus a further 2 months) from a compliant letter of claim. This is unrealistic and unjustifiable in this context, where a period of 3 months will represent more than half the median life expectancy from the letter of claim (and will coincide with a mortality rate of about 19%). We cannot understand why the protocol envisages such a leisurely timescale for the defendant's investigations;

- Para 5.5 – This is unrealistic. The parties will rarely be able to agree on a reasonable deadline;
- Para 5.6 – This is extremely worrying and a recipe for delay and dispute. It is potentially disastrous for mesothelioma sufferers who wish to have their claims settled during life. This provision makes the protocol open-ended. The claimant will rarely be in a position to allow more time. But the defendant need only contend, by the end of the already lengthy period for investigation, that it has been unable to complete its enquiries. A claimant will then seemingly be at risk of losing a substantial portion of his or her damages in costs to the party responsible for causing the illness;
- Para 6.4 – This does not specify, as we suggest it should, that an unsuccessful party will ultimately pay the expert’s fees;
- Para 6.5 – The meaning of this paragraph is unclear. Does this mean that the claimant is not entitled to obtain expert evidence about a dependant’s life expectancy without a request from the defendant? If the defendant wants to obtain such evidence, the onus is placed on the claimant to provide it. Who will bear the costs in the first place?
- Para 6.6 – This is unrealistic. Expert liability evidence is increasingly important. Under the proposed timetable, it will not be permissible until more than half of the cohort have died (**appendix 3**);
- Para 8.1 – A living mesothelioma claimant will almost always have a severely limited life expectancy. It will also be unpredictable. Accordingly, it appears that the protocol, by its own terms, will not be appropriate for such claims.

appendix 3

3.3 It is notable that the ABI draft protocol was first seen by the respondees in about February 2013. At that stage, the ABI, and consequently the MoJ, was working on the assumption that the median life expectancy was about 2 years. That assumption was wrong and has now been corrected, in accordance with Dr Rudd’s evidence, to 7 to 9 months.

3.4 Remarkably, however, the ABI draft, which was prepared on a very significant misunderstanding and overestimate of median life expectancy evidence, does not appear to

have been changed in any way to reflect this mistake The ABI protocol was not suitable when the median life expectancy was assumed to be 2 years. It is even less suitable when the real median life expectancy is considered. However, it is manifestly unsuitable because it removes the flexibility inherent in the current DPAP by presupposing, contrary to expert medical opinion, that a median survival period can be applied with accuracy to an individual claim.

3(b) What further issues should the MPAP address?

3.5 In our opinion, in addition to tackling the real causes of delay, the MPAP should have attempted to deal with the following:

- (1) **Prompt payment of damages:** the BLF survey (at question 39) reveals that in over 56% of cases the time-lag between agreement and payment is more than two months. This is unacceptable. Payment should be within 14 days and interest at the judgment rate should be automatic for all periods over 14 days.
- (2) **Incentives for settlement:** there should be meaningful incentives for defendants to admit liability early on, for example by stipulating that defendants have 21 days to respond to the letter of claim admitting liability, in default of which court proceedings be commenced.
- (3) **Provision for post-death valuation:** there should be some standard provisions in appropriate cases (and where the claimant so wishes) for:
 - early resolution of all issues of liability and causation;
 - a substantial interim payment to meet the claimant's needs during life; and
 - a stay of the claim until after death so as to allow the final value of the claim to be assessed on a full basis.
- (4) **Robust case management:** the spectre of robust judicial case management should be introduced from the earliest possible stage, for example:

- requiring that all mesothelioma cases are issued at the earliest possible stage out of the RCJ and case managed robustly, as well as
- updating Practice Direction 3 to allow for trial/assessment of damages hearings at local trial centres but with centralised management of procedural steps.

3(c) What should be the criteria for entering/falling out of the MPAP?

3.6 Any sensible protocol should apply to all mesothelioma cases; it should not be a matter of falling into or out of the MPAP.

3.7 The ABI protocol, however, is neither sensible nor suitable for mesothelioma sufferers.

Question 4: To what extent do you think the proposed MPAP will result in reduced legal costs in mesothelioma claims?

4.1 We do not believe that the proposed MPAP will result in reduced legal costs.

4.2 As a preliminary point, the MPAP appears to be based on the assumption that the majority of mesothelioma cases are straightforward. This is a fallacy. The introduction to this response sets out the many misconceptions upon which this Consultation appears to be based.

4.3 Mesothelioma sufferers will still need to undertake investigations to identify the defendants that exposed them to mesothelioma so they know who to proceed against. There are some cases where this evidence may be easily obtained but these are in the minority.

4.4 Often mesothelioma sufferers have worked for several different employers with varying levels of exposure which sometimes may be limited or secondary to their main employment. This is compounded by the long and carried latency period of mesothelioma. As a consequence, most cases are extremely difficult and liability is often contentious. The introduction above sets out the numerous attempts over the years to resist liability. Such attempts are likely to continue.

- 4.5 The proposed intimation letter is only marginally different to the current early notification letter set out in Annex D of the current DPAP save that it requires additional details of the Claimant's net weekly income in living cases; otherwise, details of the dependants. It is difficult to understand how that additional information is intended to assist defendants with their investigations into liability. It is not clear how the proposed intimation letter improves expediency when compared with the early notification letter currently required under the DPAP.
- 4.6 The suggested MPAP claim form requires a significant front loading of information at the outset of the process. The letter of claim in the MPAP requires:
- 1) a witness statement of the Claimant's employment and exposure history including the identity of all employers and third parties where exposure is alleged to have occurred;
 - 2) other witness statements supporting exposure;
 - 3) all medical records;
 - 4) all records of benefits applications made to the DWP; and
 - 5) in dependency cases, a death certificate, marriage certificate and letters of administration or grant of probate.
- 4.7 This will require much more extensive, or at the very least the same level of, work to be undertaken just to commence the MPAP. This will not reduce costs. It will not save time.
- 4.8 The proposed MPAP sets out that expert evidence on breach of duty should not be obtained until the relevant Defendant has provided a reasoned response within 2 months of the claim. However, this lacks insight into the investigations that are often required in mesothelioma cases. Expert evidence is often needed so that the Claimant can properly identify the appropriate defendants to proceed against. It will not speed up the process if the Claimant is unable to obtain such evidence to identify who to bring proceedings against and, instead, has to proceed against a number of defendants before then obtaining expert evidence to identify which of them is appropriate. This sort of scatter gun approach is unlikely to save costs but is likely to delay the process further which is contrary to the stated intentions of this Consultation.

- 4.9 It must not be forgotten that the invidious nature of mesothelioma means that its sufferers can deteriorate very quickly and medical practitioners can only give a general, and inherently inaccurate, guideline as to likely life expectancy. Many mesothelioma sufferers will not survive to the stage of the MPAP where obtaining expert evidence becomes permissible. Depriving claimants of obtaining this information at an early stage when they are fit enough to do so will cause a grave injustice to them as well as their dependants if they do not survive. Many mesothelioma sufferers will not survive to the stage of the MPAP where obtaining expert evidence becomes permissible.
- 4.10 The MPAP also allows defendants to raise requests for clarification. There is no indication in the MPAP what effect this will have on the remaining MPAP timetable, particularly when such requests are onerous or require significant investigation. Currently, defendants tend to send claimants onerous, and often unreasonable, questions and requests for information without any indication or admission on liability. Under the MPAP, it is likely this practice will continue (there is certainly no reason why it will not continue) resulting in significant time being spent responding to these questions.
- 4.11 It is anticipated that defendants will ask questions as to whether the asbestos exposure was blue, brown or white asbestos, as they already do. If a claimant responds that it was white, the defendant will invariably seek to argue that the exposure was *de minimis* as the exposure by other defendants would have resulted in exposure to blue asbestos which is far more harmful than white asbestos and more likely to have caused the mesothelioma.
- 4.12 It is also anticipated that claimants will be expected to answer detailed questions about the levels of exposure to which claimants will not, without recourse to an expert on liability such as a consultant forensic scientist, be able to properly respond. In accordance with the MPAP, if a claimant fails to respond to the defendant's request and issues a claim form, then the defendant will ask that costs sanctions be imposed against the claimant.

- 4.13 Under the current RCJ fast track mesothelioma system (to which the ABI agreed in 2008), it is up to defendants to prove to a Master at the first CMC that the questions are relevant and should have been responded to. It is noted that the ABI have acknowledged in its proposals at paragraph 14.1 that in the majority of cases in the fast track system, leave is not given to the defend the claim because sufficient proof has not been provided. Under the proposed MPAP, if the claimant does not respond to the defendant's request and issue proceedings, there will be cost sanctions imposed upon the claimant and/or the claimant's solicitor.
- 4.14 This provides no incentive for defendants to admit liability at an early stage.
- 4.15 On the contrary, it prevents claimants from fast access to the court system which enables them to reach a speedy resolution of the issue of liability and access to an interim payment to assist them and their family at an extremely difficult time. Most living mesothelioma claimants will die before the determination of that issue and may be concerned that the costs sanctions will affect their estate and consequently their dependents. This may discourage claimants from bringing perfectly proper claims at all which is extremely concerning and certainly contrary to the stated intentions of this Consultation.
- 4.16 The primary cause of delay in settling claims is defendants or their insurers failing to admit liability. This is effectively conceded in the ABI's "Reforming the civil justice system for mesothelioma" at paragraph 1.13 where it is acknowledges a common practice for defendants to raise defences as a matter of course and paragraph 1.14 where it is acknowledges that in the majority of cases utilising the "fast-track" mesothelioma court procedure, leave is not given to defendants to defend the claim. If the court was required to determine whether or not to grant leave to defend at a show cause hearing, then the defendant clearly had not admitted liability even at that late stage. Moreover, in the majority of those cases the defendants were not granted leave to defend, no doubt because they had no reasonable grounds to do so. This acknowledged systematic failure by defendants to admit liability, even where there are no reasonable grounds to defend, highlights the real need for robust judicial case management to secure judgment on liability at an early stage to reduce costs and prevent delay. The MPAP will not satisfy this need.

- 4.17 The proposed MPAP provides no incentive to encourage defendants to settle early and it is our view that it in fact reduces the number of incentives for defendants to settle and provides defendants with more ammunition to dispute liability or undertake investigations into other potential tortfeasors which will cause delay to the process (e.g. requiring a witness statement setting out all of the alleged exposure to all other employers and third parties).
- 4.18 Accordingly, it is unlikely that the proposed MPAP will reduce cost and there is a real risk that it will lead to an increase in delay and an increase in costs, particularly to mesothelioma sufferers.
- 4.19 It is extremely concerning that the MoJ in publishing this Consultation have done so without any apparent attempt to identify the actual causes of delays in mesothelioma cases. The failure to take this fundamental first step prevents that the MoJ from undertaking any sensible analysis of the reasons for delay, and consequently, the appropriate and effective measures to prevent them.
- 4.20 This concern is further compounded by the seeming wholesale adoption of the ABI's proposals in this Consultation when defendants and their insurers are the primary cause of delay.

Question 5: To what extent do you think a SMCG will help achieve the Government's objective of ensuring that claims are settled quickly and fairly?

- 5.1 We do not believe that the SMGC will help to achieve earlier or fairer settlement.
- 5.2 It is unlikely that the submission of medical and other records in electronic form will realise the savings in terms of time and money that the ABI envisages. Medical experts generally work from paper documents. Further, capturing what may well be handwritten and/or very old paper records relating to claimants will be far from straightforward or economic.
- 5.3 The MPAP requires all of the medical records to be provided which will often include voluminous documentation relating to other medical conditions throughout the lifetime of the patient which may be relevant to valuing the claim or considering causation. The task of scanning these and uploading them would be time consuming, expensive, if not impossible.

- 5.4 Obtaining medical records from all GPs and hospitals that the claimant has attended is time consuming (each medical organisation will have 40 days to comply with such requests). Often medical records are missing (e.g. when they are stored within different departments in the same organisation) and these records have to be collated and reviewed for these missing records to be identified and requested which takes additional time.
- 5.5 Medical records, more often than not, comprise over 1000 pages. The claimant's solicitor has to consider these in detail. It is extremely difficult if not impossible to consider these in detail on the computer screen due to the fact that medical practitioners do not, as a rule, type the entries, but handwrite the entries. It is difficult enough to decipher what has been recorded when looking at hard copies. It will be extremely difficult if not impossible to decipher what has been entered when looking at 1000+ pages on a computer screen.
- 5.6 Claimants are entitled to have their legal advisors review all of their medical records prior to providing them to defendants as they may contain irrelevant yet highly sensitive and personal medical history that the claimant is entitled to withhold (for example, history of rape, abortion, domestic violence). The claimants will not necessarily know what information is contained within their records and, therefore, a review of all the records would be necessary so this can be properly considered.
- 5.7 Medical experts need to prepare a chronology separating the clinical notes from the test results. It is impossible to do so whilst thousands of pages are on the screen. It is our experience that medical experts have in the past returned notes sent to them on computer disc confirming that either, they are unable to access it or that they refuse to prepare the medical report unless hard copies of notes are sent as they too find it impossible to consider thousands of pages on screen.
- 5.8 Further, radiology documents are extremely relevant in mesothelioma cases. Images of scans are often supplied on password protected CDs which include specific software required to view them. The software used will vary significantly among the health organisations. Trying to upload the images would be extremely difficult and time consuming, if in fact at all possible.

5.9 It is noteworthy that there is no current system in personal injury cases which require this sort of information to be sent electronically. The closest to this system is the RTA Portal which is used on cases of up to £25,000 in damages. But the nature of these claims (typically, slip and trip or whiplash cases) are usually completely different to mesothelioma cases where exposure has potentially occurred 10 – 50 years prior to diagnosis and the claimant's health is rapidly deteriorating.

5.10 All claims under £25,000 are submitted via the RTA Portal and only the following personal details are required:

The following information is required to be sent electronically:

- (a) the Claimant's full name;
- (b) address (but not telephone number);
- (c) date of birth;
- (d) National Insurance Number;
- (e) occupation; and
- (f) medical report (not medical records).

5.11 In RTA/EL/PL portal cases, medical records are not usually obtained and medical reports are prepared on examination of the Claimant. In contrast, the use of medical records (which, as set out above, are often voluminous) is vital in mesothelioma cases.

5.12 The RTA Portal has been in existence for a few years and even this much more basic system has generated complaints in respect of the restrictions on the capacity of senders/receivers' computer servers to send and receive documents, leading to documents being rejected causing both the sender and receiver great frustration and wasting time.

5.13 It is extremely likely that similar problems will arise and on a much greater scale given the volume of documentation that the MPAP expects to be uploaded which will may lead to even more delay and is not in the interests of mesothelioma sufferers.

5.14 It is also not understood how this unsecure and undoubtedly expensive SMCG will help expedite the exchange of information over and above the use of email or fax which is common place and can be easily agreed between the parties depending on their resources, location and preference.

Question 6: How should the SMCG work (if at all) with the MPAP and procedure in traced mesothelioma cases generally, and what features should the SMCG have in order to complement those procedures effectively and efficiently?

6.1 As set out above, the SMCG will not assist with achieving the goal of speeding up mesothelioma cases and is likely to cause further delays and confusion. In addition, there are serious and significant concerns with the SMCG which are set out below. Accordingly, we consider that SMGG should play no role in any MPAP, should one be implemented.

6.2 The insurance industry's failure to keep proper records in the past preventing the identification of relevant insurers has been acknowledged in parliamentary debate and has prompted the Mesothelioma Bill to correct these failings (e.g. see Hansard: HC Deb, 20 May 2013, c897, per Iain Duncan Smith).

6.3 If the insurance industry wishes to establish an electronic database or industry-wide scheme to enable it to correct these failures for future cases then this is laudable. However, it is entirely a matter for the insurance industry to get its house in order and mesothelioma sufferers should not be required to be involved in that process and especially not at the detriment of the speedy resolution of their claims.

Question 7: What do you see as the risks of a SMCG and what safeguards might be required?

7.1 The important issue of data protection and safeguarding does not appear to have been considered at all by the MoJ in this Consultation and it is concerning that the proposals for the SMCG seem to have been adopted from the ABI's proposals without any real consideration of the implications.

- 7.2 As the SMCG will receive and hold medical records, which are sensitive personal data accorded the highest level of protection under the Data Protection Act 1998 ('DPA'), a very high level of data security will need to be implemented. Fears that breaches of data security may occur are well-founded and need to be assuaged by provision of full details of the data security measures proposed for use with the SCMG prior to any decision being taken to move forward with the proposal. There have been a number of high-profile recent incidents in which personal data has been lost or accidentally disclosed by major organisations one would have expected to act with more care. We would refer you to the cases involving the HMRC, DWP and the MoD.
- 7.3 It is not clear from the proposals who is to act as the controller of the data submitted to the SMCG for the purposes of the DPA (which will of course have to apply to the handling of the data). It would be highly inappropriate for the data controller to be the ABI or any of its members or representatives. Any data controller should be fully independent. Consequently, it is not clear whether the ABI will be willing to fund the cost of a fully independent data handler, or the actual cost of such entity and, if not, who will fund it.
- 7.4 It is stated that the SMCG is not intended to be compulsory. However, the stated aims of the SMCG are unlikely to be achieved unless everyone uses it. Otherwise, it simply becomes another means by which a claim can be submitted and may add further levels of confusion, complication and delay. It is envisaged that, if implemented, the ABI will seek to make the SMCG compulsory. Indeed, this already seems to be its intended aim in relation to untraced claims (in contradiction to its assertion that it will not be compulsory).
- 7.5 The SMCG should not be compulsory. If it is made compulsory, there is a serious risk that this will have the effect of limiting access to justice, by making it difficult for some claimants and/or their representatives to comply with the requirements of the SMCG.
- 7.6 As the SMCG is proposed to be voluntary, its use will need to be subject to terms and conditions to be defined in a Privacy Policy. A fully informed decision on whether to submit data to the SMCG, or to support the proposal as a whole, cannot be taken without sight of the intended Privacy Policy.

- 7.7 As regards the use of the SMCG to enable industry-wide statistics to be captured “for actuarial use and reporting to the relevant authorities”, as contemplated in bullet point 5 of paragraph 39, it is far from clear what is contemplated here. A wide range of potential uses appears to be covered. A clear definition of each and every proposed use should be provided before anyone can be expected to properly consider and agree to use of the SMCG in principle.
- 7.8 In particular, it should be made clear whether the statistical uses envisaged will involve the processing of any sensitive personal data. As such the processing of any such data relating to a particular claimant for purposes other than that claimant’s own case would not be ‘necessary’ as required under paragraph 6 of Schedule 3 to the DPA (the Schedule which sets out the conditions for lawful processing of sensitive personal data), it will require the data subject’s explicit consent to be lawful (under paragraph 1 of the Schedule). Further, it appears that the benefits of the gathering of this information are extremely unlikely to accrue to claimants, rather than insurers.
- 7.9 The information may be of use to insurers in relation to determination of their legal strategies for minimising their liabilities and this is extremely concerning. There is no reason why claimants should be expected to provide any such information.
- 7.10 In relation to the use of information provided to the SMCG for the purposes of clinical research, it is not clear what information it is intended might be released for research purposes or whether there is any proposed limitation on the fields that might be covered by the research. Different considerations will arise if the information to be provided is not anonymised first. The risk of leakage of sensitive personal data will be significantly raised if the information is made available for clinical research, particularly if some or all of it is not anonymised.
- 7.11 In addition, there are strict rules that govern the use of patient data for medical research. A specific protocol would have to be approved by a research ethics committee. Each patient whose data was to be used would need to sign a detailed consent form, approved by the relevant committee, which would need to set out the research aims and guarantees confidentiality in use of patient data.

7.12 In the absence of any concrete detail, this supposed benefit is too speculative to properly be taken into account and smacks of window-dressing included to help the ABI sell their proposal, which has been adopted wholesale in this Consultation with no adequate consideration of the significant potential consequences.

Question 8: Do you agree that a fixed recoverable costs regime should be introduced to support a dedicated MPAP? If so should this apply primarily to claimant costs? Should any measures also apply to defendant costs? If so what form might they take?

8.1 A FRC regime should not be introduced.

8.2 It is surprising that a FRC regime is contemplated at all as costs are assessed by cost judges whose job it is to ensure that no costs are awarded for any work over and above that necessary in a case. It appears that concern about unnecessary legal work is not the reason for a FRC regime, but rather an intention to drive costs down regardless of the consequences this might have on claimants.

8.3 Mesothelioma cases are often complex (see the introduction above and the answer to question 10). Given the difficulties that can arise in relation to identifying defendants, breach of duty and causation, as well as the rapid deterioration in health caused by the disease, mesothelioma sufferers should have access to highly experienced specialist solicitors. If the MoJ's suggested fixed cost regime is implemented then there is a real risk that victims of mesothelioma may be deprived access to experienced solicitors or, to the extent that the reasonable cost of pursuing their claim is less than the fixed recoverable costs, victims will face paying the difference from their compensation. The introduction of fixed recoverable costs is therefore only likely to benefit insurers to the detriment of mesothelioma claimants.

- 8.4 Further, mesothelioma cases are likely to become more complex because the proportion of claimants who worked with asbestos directly such as in factories, shipyards and docks are declining but the proportion of new cases of mesothelioma involving claimants who were exposed to asbestos indirectly, such as in public buildings, schools and shops, are increasing. This indirect exposure to asbestos has been a fertile ground for recent insurance industry legal challenges and is likely to give rise to further complex legal disputes. It is imperative that mesothelioma sufferers are entitled to have access to highly experienced solicitors who will have the experience and awareness of the issues to be able to secure an efficacious and fair resolution of their claims.
- 8.5 If fixed costs are not commensurate with the increased front-loaded work, we fear that other firms will compete by engaging inexperienced staff to take over work currently undertaken by experienced solicitors, leading to poor decisions, and early acceptance of offers, lack of and poor judgement about complexity of cases.
- 8.6 There is also a concern that firms of solicitors new to this type of case will see an opportunity to get a guaranteed payment for quick work, settling cases on first offers, unable or unwilling to confront the complexity of this type of legal work.
- 8.7 Importantly, as identified above, the Consultation fails to recognise the main cause of delays is insurers refusing to accept liability and pay compensation. The threat of litigation, robust judicial case management and costs are the only incentives to encourage or compel defendants to pay compensation on reasonable terms.
- 8.8 A FRC would negate any incentive for a defendant to settle quickly. On the contrary, it would encourage a defendant to delay and be obstructive. Such tactics would serve to pressurise claimants into accepting lower offers for compensation to their detriment which would be contrary to the stated aim of this Consultation.
- 8.9 In relation to applying any FRC to defendants as well as claimants, this would be appropriate in principle to try and ensure fairness. However, in practice it would have no effect on the amount that insurers with deep pockets could spend on the litigation. It would only affect the level of recoverability of such costs. It is doubted that this would make any difference to the behaviour of defendants.

Question 9: Which proposed design of fixed recoverable costs structure do you support? Please explain your answer.

9.1 None of the fixed recoverable costs structures are supported for the reasons set out above in response to question 8.

Question 10: What are the key drivers of legal costs, both fixed and variable costs, and how strong are these drivers?

10.1 It is not apparent how the 'drivers' affecting the cost of mesothelioma cases are supposed to be expressed in terms of strength and this question appears to misunderstand the fundamental nature of mesothelioma cases.

10.2 The key drivers of legal costs are defendant behaviour and the complexity of the case both quantum and liability.

10.3 The more complex a case the greater the legal costs that will be incurred. The more issues that a Defendant decides and is allowed to run the greater the legal costs that will be incurred.

10.4 The key drivers remain the same whether costs are fixed or variable.

Question 11: Do you have any views on what the level of fixed recoverable costs should be, in relation to your favoured design? Please explain your answer.

11.1 As is set out above, any form of fixed recoverable costs is entirely inappropriate for mesothelioma cases and, accordingly, is opposed. Further, it is not understood how the proposed fixed fee levels have been determined and no explanation has been given to explain the determination of the fees, making any proper response to this question impossible.

Question 12: Do you agree that the fixed recoverable costs regime should apply only to cases which fall under the MPAP?

12.1 As is set out above, our primary view is that any form of fixed recoverable costs is entirely inappropriate for mesothelioma cases and, accordingly, is opposed.

12.2 If fixed fees were to be imposed contrary to the interests of mesothelioma sufferers and the stated intentions of this Consultation, then they should only apply to cases within the MPAP and not cases falling out of it. For the avoidance of doubt, fixed costs should not apply to any claims where it is necessary to issue proceedings, including proceeding to a show cause hearing under the fast track mesothelioma system.

12.3 Defendants will know that there will be further costs incurred by them delaying the litigation or continuing to defend without making sensible offers to settle. They will know that any such delay will cause further difficulties to mesothelioma sufferers and their legal advisors and are likely to use such delays to try and force claimants into accepting lower and inadequate settlements, depriving them of the appropriate level of compensation. This is a wholly unacceptable and significantly detrimental consequence to mesothelioma sufferers and is completely contrary to the stated aims of this Consultation.

Question 13: To what extent do you think the reforms apply to small and micro businesses?

13.1 We assume this question relates to small and micro businesses undertaking legal work on behalf of mesothelioma claimants.

13.2 Based on this assumption, the main concerns relating to small and micro businesses and the effects of the proposed reforms are that it will encourage inexperienced legal providers entering the market to take on mesothelioma claims. Such firms would have a financial incentive to encourage or permit claimants to accept low offers rather than challenge a defendant through the court process because they lack experience, and/or it will be less profitable, to do so.

Question 14: To what extent do you think the reforms might generate differential impacts (both benefits and costs) for small and micro businesses? How might any differential costs be mitigated?

14.1 We have no response to this question.

Question 15: Do you agree that sections 44 and 46 of the LASPO Act 2012 should be brought into force in relation to mesothelioma claims, in the light of the proposed reforms described in this Consultation, the increase in general damages and costs protection described above, and the Mesothelioma Bill?

15.1 No

15.2 This Consultation is not an adequate or comprehensive review. We understood from parliamentary debates that a comprehensive review would be conducted before sections 44 and 46 were implemented. We refer to one such debate in the House of Lords on 25 April 2012 when clarification and assurances were sought from Lord Alton and Lord Avebury in relation to the format of the review and Lord McNally's response included:

"...it is very difficult to give firm commitments, but given the list of usual suspects interested in this case we are not going to be in the business of trying to put forward some kind of whitewash scheme. We will make sure that this is a proper review and that Parliament has a proper opportunity to see the outcome. If asbestos victims want to contribute to such a review, it makes sense that they should do so. Certainly, I would not want a barrier to that".

15.3 Accordingly it was expected that all stakeholders, including asbestos and mesothelioma charities would be able to participate fully, albeit the precise structure of the review was not made clear.

15.4 We understand as a result of a meeting with the MoJ and the Asbestos Victims Support Groups Forum UK on 23 September 2013 that the Government is now seeking to impose sections 44 and 46 by way of a commencement order and thus avoiding a full and proper review. This contradicts what had been stated to parliamentarians in the past and is yet another example of the MoJ ignoring the views of asbestos victims support groups and those who have experience with dealing with mesothelioma sufferers.

15.5 This Consultation together with the Mesothelioma Bill is not a comprehensive review of sections 44 and 46. Nothing in the consultation proposals eliminates or modifies the continuing need for the protection of mesothelioma victims from the adverse effects of LASPO or justifies the removal of the section 48 exemption.

15.6 The LASPO reforms of 10% uplift of general damages and One Way Qualified Cost Shifting will not be sufficient to cover the costs of paying for ATE insurance and disbursements and therefore victims of mesothelioma will be worse off as they will pay for these from their own pockets.

Respondees

David Allan QC, Byrom Street Chambers
Harminder Bains, Partner, Leigh Day
Frank Burton QC, 12 King's Bench Walk
Paul Glanville, Partner, John Pickering & Partners LLP
Sir Sydney Kentridge QC, Brick Court Chambers
Ian McFall, Partner, Thompsons Solicitors LLP
Dr Robin Rudd, Consultant Physician
Harry Steinberg, Barrister, 12 King's Bench Walk
Patrick Walsh, Partner, Pannone LLP

APPENDIX 1

SUMMARY OF ANALYSIS OF CONSULTATION SOURCES

75. The Consultation paper presents data from only two main sources (1) secondary analysis by MoJ of an interim data set provided by NIESR obtained for a different purpose (i.e. the recent Mesothelioma Bill) and (2) a survey by the British Lung Foundation.
76. The statistical evidence presented from the interim dataset is unreliable. The BLF survey is more or less anecdotal evidence with very low response rates, and has been used in a selective and potentially misleading way.
77. These sources were inadequate and do not support the assumptions underlying the Consultation.
78. In preparing this response, we have sought the assistance of experts in statistical analysis. Statistician Professor Steven Gilmour, Epidemiologist Professor Tony Fletcher and Data Analyst Mr Ben Hickman have identified various problems with the interim dataset and the NIESR study. Their preliminary papers are attached (**appendix 1**) and make a number of important and powerful criticisms of the data that has been presented by the MoJ in the Consultation. The first part of this document is only a summary of their analysis and is no substitute for the consideration of their reports. appendix 1
79. The second part refers to the BLF survey.
80. It appears that no attempt has been made to consult with the QBD Masters who run the specialist mesothelioma list. It is difficult to imagine a more experienced and knowledgeable source of information on the manner in which mesothelioma claims are routinely handled and determined.

Part 1: NIESR study

81. These problems arise from the manner in which the data has been selected, analysed and presented.

82. The way the data has been selected is problematic in that:

- (1) The NIESR study only covers private sector cases between 2007 and 2012. It is not census material.
- (2) Of those private sector cases, 3,477 were selected from the CRU for inclusion in the study. It not known on what basis they were selected.
- (3) Of the 3,477 cases selected, only 2,076 had responses returned.
- (4) *“The sample [of respondees] was skewed, with insurers more likely to provide cases”* and those insurers who responded only provided some of their cases, not all that were requested (Hickman). Further, the responses were significantly skewed towards older claimants.
- (5) Finally, and perhaps most disconcertingly, the statistics in the Consultation paper are not derived directly from the independent NIESR study but from secondary analysis of a partially sourced interim dataset.
 - This is problematic because the data in the NIESR study and the interim dataset are not the same. *“9.3% of the cases included in the interim dataset have not been analysed in the NIESR study and therefore severely affect the extent to which the NIESR study can provide legitimacy to the MoJ secondary analysis”* (Hickman).
 - One of the known differences between the two datasets is that the interim dataset includes only English cases, whereas the NIESR data includes English and Scottish cases. Curiously, although the average compensation is shown to be higher in Scotland than in England, the English-only claims in the interim dataset have higher compensation on average than the English and Scottish claims in the NIESR data. *“This apparent contradiction is suspicious and needs some explanation”* (Fletcher) and *“raises critical questions about the interim dataset and the analysis undertaken by MoJ”* (Hickman).

- No adequate explanation has been provided as to why the Government has relied on secondary analysis of this interim dataset instead of the independent research that was commissioned to examine mesothelioma cases or why the public is not allowed to see it.

83. The way that the data has been analysed is troubling and contains significant biases. For example:

(1) The NIESR study fails to separate variables affecting duration of claims – such as the claimant’s age, jurisdiction, whether or not the case is litigated etc (i.e. it uses single linear regressions rather than multiple linear regressions). The use of linear regression models is a *“severe limitation in the usefulness of the analysis”* (Hickman) and it would be inappropriate to draw from them any conclusions about the relationship between the factors cited in the study (Gilmour).

(2) The NIESR study only examines how characteristics of cases affect compensation levels, and fails to address variables affecting duration of claims – such as the claimant’s age, jurisdiction, whether or not the case is litigated etc. The data presented in the Consultation are simple descriptives that take no account of sample bias and make no attempt to properly evaluate the strength of any relationships between variables:

- One effect of this is to suggest that non-litigated cases take almost as long to conclude as litigated ones. But the results are potentially misleading, because other factors - such as jurisdiction, age etc – may well affect the results.
- As Hickman notes, the NIESR study only really shows how the age of the claimant affects the amount of compensation; whereas *“there are some very interesting relationships that are particularly relevant to the current Consultation (e.g. characteristics affecting length of case) that are overlooked”*.

- (3) The NIESR study has excluded the top and bottom 1% of compensation values. The top 1% is likely to contain more litigated than settled cases. Thus, one effect of the exclusion is artificially to diminish what would otherwise be the apparent benefit of litigation to the claimant; it fails to show the extent to which litigation increases the damages received. This use of trimmed data is, according to Gilmour, “*even more worrying*” than the use of linear regression models.
- (4) The interim data used in the Consultation does not use weightings to correct for sampling bias. This means that the interim data will contain the very sample biases that the NIESR study warns against. “*This will almost certainly have the effect of lowering the levels of compensation observed...It may also have more significant biases in terms of the complexity and severity of cases*” (Hickman).
- (5) The above examples are basic methodological shortcomings that one would expect undergraduate economists and social scientists to be familiar (Gilmour).

84. Finally, the way that the data is presented is unhelpful in that, for example:

- (1) We do not know whether cases from the specialist list have been included in the data. Thus it is impossible to compare these cases with those not on the specialist list (and indeed settled) cases. It is particularly important to be able make such comparisons. The show-cause procedure was set up as a unique pilot scheme aimed at speeding up the claims process;
- (2) If the Government is intent on speeding up the claims process then it is critical to evaluate the success or otherwise of this scheme.
- (3) The data is not broken down year by year. This means that it is impossible to observe whether or not delays have reduced over time and, if so, what factors might have affected this. If there has been a reduction in delays year-on-year this should be acknowledged and the reasons for it explored.

(4) The data does not show in which cases an interim payment was made. This is an important variable, since delays in agreeing a final settlement are less problematic in cases where substantial interim payments have been made early on and in the claimant's lifetime.

85. It is not possible to understand the alleged problem of delay in the current system and to devise a new system without transparent, reliable and relevant data.

86. Such data has not been identified by the Government. It is simply not clear from the interim dataset and the NIESR study what factors are causing delays and whether or not delays are reducing. Before implementing a new protocol the Government should provide data that does make this clear and that gives stronger statistical support for its proposals.

Part 2: BLF Survey

87. The Consultation paper assumes that a major source of delays is claimant solicitors failing to collect information from clients in a timely manner.

88. This conclusion appears to be based on selective use of the BFI Survey (**appendix 4**) in the ABI report, which the MoJ appears to accept without any critical assessment or analysis of the actual survey data. appendix 4

89. The ABI report provides three quotes from respondees to the BFI Survey that touch on the subject of delay and its causes. All three quotes give the impression that delays are caused by claimants' solicitors:

90. In fact, a fair reading of the BLF Survey shows that the main reported causes of delay are defendant behaviour and problems tracing employers / insurers.

91. Half of the respondees to the BLF Survey reported delays in the claims process. Of those who complained about delays:

(1) 38.8% attributed delays to defendant behaviour:

- Employer / insurer did not accept liability for the claim (13.3%)
- Employer / insurer requested further documentation (7.8%)
- Trigger litigation (5.6%)
- Employer / insurer did not accept that I was exposed to asbestos by them or at all (4.4%)
- Employer /insurer did not accept responsibility (4.4%)
- Employer / insurer did not accept that I was employed by them (1.1%)
- Delay with interim payment (1.1%)
- Defendant tended to leave everything generally until it had to be dealt with (1.1%).

(2) 27.8% attributed delays to difficulties identifying employers / insurers.

(3) 6.7% cited the death of the claimant.

(4) 3.3% attributed delays to the quality of their solicitors / being passed between different solicitors

(5) Not a single one blamed the failure of their solicitors to collect information from them in a timely manner.

92. More generally, the BLF survey is littered with references to defendants dragging their heels on issues of liability, on payment of damages, and relying on test cases. A summary of representative quotations from the BLF survey are as follows:

Question 38: At the point the settlement amount was agreed, how did you feel about the time it took to get to that point?

Because of uncertainty of the outcome of the Fairchild case, my husband died before his claim was settled, not knowing if his family would be able to survive financially.

Claim was delayed several times due to appeals from insurers. Solicitor kept us informed but felt distressed at delays thinking there was no end to things.

Company would still not accept liability.

I was more than happy with Thompsons. The delay was by the other side. My wife had died when it was settled.

Insurance company refused to pay until the trigger liability issue was settled via High Court, Court of Appeal and Supreme Court.

It was obvious to all concerned that the employer was not cooperating.

Solicitor very helpful but we were thwarted at every turn by uncooperative attitude of insurance companies.

Question 40: At the point the payment was actually paid, how did you feel about the time it took to get to that point?

Felt insurance company were not taking responsibility and trying to dodge paying the claim, even after employer admitted liability in exposing person to asbestos which killed them.

Not happened yet but feel I cannot move on and grieve properly as still on-going. It is almost a year since my husband died, over a year since the case started. Although they admitted liability which was a relief, I expected it to be over before now. I want to be left alone to grieve.

Very unhappy that payment was deferred because of tactics of insurance co. We had definite proof of where and how my husband contracted this awful painful disease.

Question 44: From your experience, what would you suggest the most important improvements to the mesothelioma claims process could be?

A time limit set on insurance companies to reach a reasonable settlement

Felt claims process was very good our only point is delay from insurers in payment

For employers who have proved negligible to be unable to fight

Insurers penalised for missing paperwork and a 12 month limit from start to finish

Make the process quicker and less stress for the patient and family. Insurers should be accountable for the damage they have done and not delay proceeding by trying to find delays to put in the way of paying out

More contact and insurer not playing games with our feelings. Just as we thought we were near end Insurers wanted more info. Very distressing.

Once diagnosed should be an interim payment to help with living with this dreadful cancer

The defendant can prevaricate and leave responses to the last minute so that the process is drawn out longer than necessary

The time to settlement is too long, the defendants insurers constantly delayed responding to letters so we had to continually chase. There should be more stringent time limits applied.

They should be dealt with more quickly by the courts and those being sued should be made to move quickly in these cases, my husband did not live to see the result of his case.

Tracing insurers seems to be a big problem. Insurers should not be allowed to prolong the procedures.

93. The ABI report largely ignored these references and the actual causes of delay as outlined by respondees as above. The MoJ has obligingly repeated this misleading presentation.

Leigh Day
Priory House
25 St John's Lane
London EC1M 4LB

20 September 2013

Dear Sirs

Re: Consultation Reforming Mesothelioma Claims 24 July 2013

We have reviewed the NIESR report, the results of further analyses of the same data presented within the consultative document and the impact assessment document and we have prepared individual responses, appended hereto.

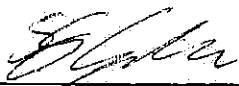
We all concur in our opinions that access to the raw data i.e. interim data set is essential as a minimum to allow consultees to make a sufficiently informed response to the consultation based on the data already collected. However data are incomplete and an adequate description of trends and determinants of current settlement levels would require access to the complete data also including access to the mesothelioma case files issued in the Senior Master's specialist mesothelioma list held at the Royal Courts of Justice, London.

Signatories



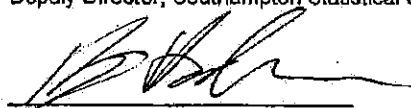
Dr Tony Fletcher

Department of Social and Environmental Health Research, London School of Hygiene & Tropical Medicine & Adjunct Research Professor in Environmental Health, Boston University



Professor Steven Gilmour

Professor of Statistics,
Head of Statistics, School of Mathematical Sciences
Deputy Director, Southampton Statistical Sciences Research Institute, University of Southampton



Ben Hickman

Independent Data Analyst

London School of Hygiene & Tropical Medicine (University of London)

15-17, Tavistock Place, London, WC1H 9SH, UK

Tel Unit: 020-7927 2415 Tel Direct: 020-7927 2429

Email: Tony.Fletcher@lshtm.ac.uk



Department of Department of Social and Environmental Health Faculty of Public Health and Policy

Leigh Day
Priory House
25 St John's Lane
London EC1M 4LB

18 Sept 2013

Comments on NIESR report on civil compensation cases

I have reviewed the NIESR report, and the results of further analyses of the same data presented in the consultative document and the impact assessment document.

I have also seen the comments from Dr Hickman and Prof Gilmour, which I agree with.

There seem to be major limitations in the analyses.

Overview

As currently presented the only persuasive conclusion that can be drawn from the data are that many past cases have taken too long with about half of cases included in the analyses and settled during 2007-2012 taking over 12 months.

The NIESR report states that its aims are to analyse both the compensation amounts and legal costs by year, jurisdiction, whether the claimant was alive or dead and whether litigation was involved. The report then fails to present any results on legal costs and provides some tables of results of compensation by the categories above.

The report shows that compensation levels fall by age, go up with year of settlement, are lower for those deceased by the end of the award, higher in Scotland, and higher if litigation is involved. The length of case was associated with compensation level when considered alone (with longer cases receiving more money), but in the model with statistical adjustment for all variables there is no difference by claim duration.

The consultation document is about a change in the legal arrangements for settling cases and one would have expected that the analyses carried out should have been informative for this, but they are not fit for this purpose, for the following 5 reasons.

- 1) The data that have been analysed appear to be missing key elements of information, an oversight that may be a mistake or more worryingly, intentionally to render misleading results.
- 2) The aims of the analysis contracted out to NIESR are inadequate to yield useful information for the consultative document
- 3) The analyses carried out to meet even those inadequate aims were not sufficiently thorough
- 4) The additional analyses carried out by a dataset supplied by NIESR to DWP/MoJ have been further analysed using methods that are not made clear
- 5) From the results of these analyses presented in the consultative document and the impact assessment, they are not appropriately carried out and are misleading.

These concerns are explained in more detail below.

Use made of statistics

The consultative document did not make much use of the (poor) statistical analyses carried out. However, two instances stand out:

- A) A claim in para 29 drawing on some reported patterns of duration by litigation status:

“29) Secondary analysis on case duration from the NIESR dataset and research from the British Lung Foundation reflects that the system currently might not operate to provide any clear incentive in terms of better timescales for seeking to settle a mesothelioma claim outside of court.”

- B) Some analyses of settlements and various costs in relation to litigation status, which are misleading and may influence how respondents answer questions about potential costs and benefits

Recommended analyses

Although the results as presented are not helpful for the PAP consultation it is possible to envisage some analyses of which would be helpful:

Data used: More relevant would be to compare the patterns of payments and time to provide payments between the three categories of claims: the specialist mesothelioma list (currently absent), and the two categories discussed. Such a comparison would surely be of more relevance given that most cases are passing through that procedure.

Aims of the analyses: the two principle analyses of interest should be to investigate the patterns and explanatory factors for different durations of settlement (to offer insight to explain unreasonable delays) and patterns and explanatory factors for the settlements and costs (to help estimate the likely costs and savings for any changes in the procedures). While these analyses cannot fully answer why the long delays happen (which would need interviews with claimants and other stakeholders), more appropriate analyses could provide objective data to better inform these interpretations.

Methods for the analyses: a more thorough statistical analysis, separating out the correlated factors of litigation status, death of claimant, country of settlement and date of settlement would allow the relative impacts of each of these to be assessed, in a way that is currently impossible from the results as presented. Once the data are assembled for the missing data for the specialist mesothelioma list cases, this could be done quite rapidly.

Problems in the analyses in more detail

1 Missing data

In para 28 it is explained that “the majority of mesothelioma cases are either dropping out of the DPAP procedure or by-passing it altogether and proceeding straight to litigation via the Royal Courts of Justice specialist mesothelioma procedure. These are apparently excluded from the sample analysed as it is stated that ‘special’ cases are excluded. If they were indeed excluded then this seems very perverse as a) they are now the majority of cases so are an increasingly important part, and b) would appear to be potentially very informative as a more speedy model to address the main concern, that payment takes too long.

Second there are some cases among a number sampled who were not returned, and while they are not very different on the characteristics reported (age, sex etc in Table 2.3/2.4) they may have differed on key attributes (duration of claim and amount awarded) which could bias the results presented. Some discussion of the potential for these missing cases to bias results should have been included.

Third the “subset” of English claims seems to have an average compensation level which is more than the total of English+Scottish claims, even though the Scottish average is higher. This apparent contradiction is suspicious and needs some explanation.

2 Aims

The stated aim of reporting claimant legal costs seems to have been ignored. These should either be met or dropped. The aims should have been to analyse the dependence of both compensation payments and duration of claim on the various categories of information collected, with careful investigation and control for correlation and interaction between these factors. The methods should have been set out for all the analyses including the “supplementary” analyses.

3 Analyses

The NIESR analyses clearly demonstrate associations between variables (eg the duration of case and the date of case), thus the results of analyses only looking at one factor at a time (tables 3.2 -3.9, and ALL of the tables in the consultation and impact documents) can give quite misleading associations, placing any reliance them is not wise. One wonders if it is an oversight because the people responsible did not ask people with sufficient skills or if they knowingly presented figures which were (possibly) biased to support a particular position. Two associations of particular interest – the payments in relation to duration of case and in relation to litigation status change dramatically when the multi-variable model (table 3.10) is applied, presumably due them being correlated with country and/or age which both having strong effects. Thus the supplementary tables which appear to be analysed without multiple variables should be considered unreliable, perhaps misleading.

The exclusion of the top and bottom 1% may have some appeal to statisticians by making the models fit statistically a bit better, but this process is likely to bias the results. We know from the figures in the impact assessment (eg table 2) that some of the highest litigated cases were much higher than non-litigated. Thus the 1% exclusions served to reduce the apparent benefit of litigation to the claimant. A more satisfactory solution may be to fit the multivariable model of table 3.10 to the logarithm of compensation (as for age it gives a closer fit than no log-transforming - comparing models 4 to 1 in table 3.3). By so doing you are estimating for each factor age, sex, date etc, the %age affect on the compensation, not pounds added. So compensation drops by 3% per year in the log model, rather than £4000 per year in the non log model. This is a reasonable way to analyse these data and may give more reliable results. At the very least for all analyses the results after excluding the 1% should be placed alongside the results for the complete dataset.

Analyses by litigation status should compare non-litigated, litigated, and specialist ("Whitaker") cases to present the full range of options.

The pattern of settlements is changing over time. Apart from the increasing proportion of specialist cases the proportion of litigated cases vs non-litigated may be changing. This poses some challenge to the analysis but is also of potential interest: for example practice in 2011-12 is of more relevance to what may happen next year than what was happening in 2007-8. It would have been more informative if some attempt to discern these trends had been attempted. This is not straightforward as we do not know how many cases are starting each year (and in particular how many are still in process, as the dataset is only completed cases). The number settled per year depends on both how many cases have been started in the past and how long they took. The increase of cases from 2007 to 2008 may be because the data collection started part way through the year, the number of cases was increasing or that the duration of settlement was getting shorter, bringing forward cases that might have taken longer. Similarly the constant number of cases per year from 2008-2011 may reflect an increase in cases overall, balanced by an increasing proportion who transfer out as specialist cases. It would have been helpful to have got some insight as to what trends there in these data: we cannot know from these data how many long cases are still being processed, but the trend in the number of short cases (and the compensation level) could be presented.

The results in the consultative document looking at duration and payment level in relation to whether or not there is litigation are very unsatisfactory: these should be analysed with suitable adjustment for year, age and jurisdiction (if including Scotland).

Jurisdiction : it may be there are different impacts of court proceedings in different contexts. The approach of adjusting for other variables adjusts for the correlation of variables (eg more legal actions in Scotland), but it does not address if the role of court proceedings vary by jurisdiction. Thus it may be that there is a different effect size of jurisdiction in England or Scotland, which could be useful to know.

Dying in process: it would help if those who died after the claim was lodged were distinguished from those who died before the claim was lodged, as this can have different effect on the process.

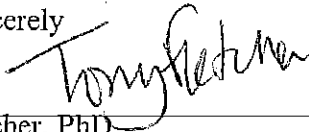
Cause and effect: Did court proceedings start because of delays or did court proceedings introduce delays; Did the evidently more tricky cases (which would take longer) lead to court

proceedings. All these interpretations are possible, but the inference that those with court proceedings are taking longer simply because of there being court proceedings, does not appear to be justified.

Conclusions

I would conclude that the analyses are not helpful for the consultation and may be misleading for the reasons detailed above. However one can identify fairly readily the fuller data and better analyses which could provide helpful information.

Yours sincerely

A handwritten signature in cursive script that reads "Tony Fletcher". The signature is written in black ink and is positioned above a horizontal line.

Tony Fletcher, PhD

Leigh Day
Priory House
25 St John's Lane
London EC1M 4LB

Comments on the Statistical Methodology Used in the NIESR Report "Study into average civil compensation in mesothelioma cases: statistical note"

Steven G. Gilmour
Professor of Statistics
Director, Statistical Sciences Research Institute
University of Southampton

1 September 2013

The following comments are on the report from the National Institute of Economic and Social Research (NIESR) dated 23 April 2013. They are restricted to comments on the statistical methods used and how they might lead to correct or incorrect conclusions and not on the correctness of the conclusions themselves. For me to comment on the latter, it is necessary that I have access to the raw data.

The first point is that the main analysis relies on *linear regression models* which study the relationship between one characteristic factor at a time, along with age, and the total compensation paid. This is a reasonable first step in an analysis, as it gives a rough idea of which might be the most important factors. However, looking at one factor at a time might obscure the effects of different factors which are themselves related. In particular, it is not appropriate to draw conclusions about the evidence of relationships between these factors and the total compensation paid on the basis of simple linear regressions. It is essential to use a *multiple linear regression*, which allows all factors to be studied simultaneously and can also allow complex joint effects of more than one factor to be detected.

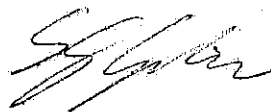
Another point, perhaps even more worrying, relates to Table 3.7 in the NIESR report. It seems that the data with the lowest and highest 1% of awards have been excluded, while looking at all data points together. If those with no court proceedings tend to have lower awards, it could be that most of the lowest awards excluded are in this category, while most of the highest awards excluded are those which went through court proceedings. If this is true, then the true mean difference could be considerably larger than appears from this table. Even if the data are not extreme as this, it is almost certainly the case that this methodology has led to a *biased* comparison between awards from court proceedings and those which did not go through court proceedings. (Note: *biased* is technical statistical term meaning that the estimation procedure used will not, on average, give the correct answer. In this case the method for estimating the difference between compensation from court proceedings and without court proceedings is *negatively biased*, i.e. on average it will underestimate the difference.)

The justification for using the trimmed data (excluding the highest and lowest 1% of values) is that the distribution of compensation totals is positively skewed and so does not follow a normal distribution. However, the overall shape of this distribution is irrelevant to regression modelling. The required assumption is that the *error terms* (i.e. the random component after allowing for the systematic relationships between total compensation and the factors) follows a normal distribution. This cannot be assessed from the raw data, but only by doing model checking, usually through *residual analysis*, after having fitted plausible regression models. It might well be that the residuals are also positively skewed (but I cannot know without analysing the raw data). However, the appropriate way to deal with this is certainly not by excluding the highest and lowest 1% of values. The most commonly used method is to *transform* the dependent variable, e.g. by using the logarithm, as in Model 4 in the NIESR report. Again, the appropriateness of any such transformation must be checked, usually by residual analysis. Since this is not reported, to check this would again require access to the raw data.

None of the above comments refer to particularly advanced statistical methodology. They are all covered in the introductory statistics courses we give to economists and social scientists at the undergraduate level and I would expect them to be followed in any quantitative study in the social sciences.

Although the NIESR report appears to have used the most complete data set available, it is surprising that the Ministry of Justice consultation document uses mainly a secondary analysis based on an interim dataset covering only England and Wales. This uses data which do not use the weightings to correct for sampling bias and so will, as stated clearly in the NIESR report, clearly lead to biased estimates. Without access to the raw data it is impossible to know how great this bias is.

I have also read the more detailed critique written by B. Hickman and I fully endorse all of the comments given there.

A handwritten signature in black ink, appearing to be 'G. G. G.', is located in the lower right quadrant of the page.

Critique of the use of data in the MoJ Mesothelioma consultation

The aim of this paper is to provide an overview of the use of data to inform the Ministry of Justice (MoJ) consultation on reforming mesothelioma cases. The key data sources used in the consultation are:

- NIESR Study into average civil compensation in mesothelioma cases
- British Lung Foundation (BLF) Mesothelioma Compensation Survey 2013

This paper will focus predominantly on the former as it is the most widely quoted and also has the most potential to provide a reliable statistical perspective of mesothelioma cases.

NIESR Study

Aim

The stated aim of the paper was to provide key findings on average levels of compensation by:

- age
- year (2007-2012)
- Scottish and other legal jurisdictions
- whether litigation was involved
- whether the victim was alive or not at the date of award.

Methodology

1. The study covers 4,216 settled liability claims in the private sector. A sample of 3,477 cases was selected from the CRU (Compensation Recovery Unit) for inclusion in the survey. It is unclear how these were selected and so there may be issues of sample bias (although the CRU does not hold compensation data).
2. The coverage does not include public sector.

Response

3. The study covered 43 organisations, of which only 25 responded. The original 4,216 claims came from 140 organisations which meant that the study is based on responses from only 18% of organisations.
4. A total of 2,076 cases were provided with the required data and permissions of use, which accounts for 49% of cases.
5. The sample was skewed, with insurers more likely to provide cases. Interestingly *all* insurers only provided *some* cases, and not all that were requested.
6. Table 2.4 provides a comparison of the profile of returned and non-returned cases which would suggest that returned cases were more likely to have an older age profile than the total population. This is interesting as the paper establishes that compensation decreases with age. This suggests that the

unweighted dataset has significant sample bias that skews it towards cases with lower compensation levels.

Weighting

7. The weighting reportedly takes account of this by “a probability of selection weight to reflect...the oversampling...of victims aged over 65”ⁱⁱ. This weight also takes account of the sampling cap and the oversampling of Scotland.
8. A non-response weight by year of settlement was also applied. The weighted sample compared to the total population shows a higher level of insurer response. What is not provided is whether the weighting skews whether court proceedings were issued and whether the claimant was alive at time of settlement.
9. As these are shown to have an effect on the average compensation this is an oversight that should be addressed, either by additions to table 2.3 to show there is no weighting bias or by a change to the weight itself to take account of these features.

Non-normal distribution and trimming

10. In section 3.3 the non-normal distribution of the compensation data is highlighted – “the distribution of compensation values has a long and sparsely populated upper tail”ⁱⁱⁱ.
11. When examining the relationship between the age of the claimant and the level of compensation the resultant regression model excludes 1st and 99th percentiles. This moves the distribution of compensation closer to normality and thus strengthens the observed correlation between age and compensation.
12. Unfortunately the 1-99% trimming is then applied to all descriptive statistics provided thereafter, despite the fact that the compensation data is not normally distributed and therefore the long upper tail is a unique and important feature of the data. It is likely that this results in lower reported averages.
13. The trimmed averages are also likely to skew observed relationships between groups. For example, if the upper tail is made up a majority of one group (e.g. litigated cases) then their exclusion will disproportionately reduce the mean average of that group in comparison with the other.
14. It may be that the trimmed mean provides a better representation of the data and the relationship between groups but without the provision of an un-trimmed mean alongside it is impossible to judge the effects of trimming of check for any skewing that may have occurred.

Regression modelling

15. The fact that the regression model is based around age is not surprising – it is the only categorical variable upon which to base the regression model and it has an obvious correlation (although it would be useful to see a scatter plot of age by compensation with a line of best fit to illustrate this).
16. However the fact that the paper only presents the statistical relationship of other characteristics (year of settlement, whether case was litigated, etc.)

within the chosen regression model is a severe limitation in the usefulness of the analysis.

17. It would have been helpful to have some initial analysis of the individual relationships (probably via one way ANOVA testing) that would have shown the strength of individual relationships. This would also have helped in the development of the final regression model and ensured the weights did not create bias.

Reporting

18. The paper clearly shows a correlation between whether the claimant was alive at the time of settlement and whether court proceedings had been brought but does not explore these as fully as it should.
19. While the aim of the study is to provide average compensation by age, year of settlement, whether litigation was involved, etc. it actually provides very little information other than about average compensation by age.
20. If trimmed means were indeed the best presentational format (something I would strongly dispute) then it would have been useful to see the mean trimmed within groups and not across them for each descriptive table.
21. It is also a great pity the paper focused solely on the relationship between case characteristics and compensation levels. There are some very interesting relationships that are particularly pertinent to the current consultation (e.g. characteristics affecting length of case) that are overlooked.

Use of the NIESR research in the MoJ Consultation

22. Having commissioned the NIESR to conduct the study to provide "more recent, robust, independent estimates of mesothelioma compensation" it is interesting that the majority of data presented in the consultation document comes from secondary analysis undertaken by the MoJ on an interim dataset provided by NIESR (covering only England and Wales).
23. The impact assessment is based almost exclusively on limited analysis of the secondary dataset provided by NIESR. This data is unweighted and therefore maintains the sample bias identified within the NIESR paper. This will almost certainly have the effect of lowering the levels of compensation observed as the sample provided by insurers was typically of an older (and therefore lower compensation) profile. It may also have more significant biases in terms of the complexity and severity of cases but without further analysis it is not possible to confirm or deny this.
24. While the MoJ consultation and impact assessment is upfront about the NIESR dataset being both interim and unweighted it fails to highlight that the NIESR study identifies significant sample bias and therefore the data presented is known to be unrepresentative of the overall population.
25. This also means that the MoJ's intention to provide independent estimates to inform the consultation has resulted in an unpublished interim dataset being analysed by the MoJ itself with no published methodology or statistical note.

26. The volume of cases identified in the impact assessment appears to total 2,122. The NIESR study covers a total of 2,076 cases, of which 7.3% (or about 151) were from Scotland. This means that the NIESR study provides approximately 1,925 cases from England and Wales. This leaves 197 cases that were included in the interim dataset that were not covered in the NIESR study. These are likely cases for which permission to link to CRU data was not given (as these cases were not included in the NIESR study).
27. This means that 9.3% of the cases included in the interim dataset have not been analysed in the NIESR study and therefore severely affect the extent to which the NIESR study can provide legitimacy to the MoJ secondary analysis.
28. Table 1ⁱⁱⁱ in the consultation shows that 48% of non-litigated claims take longer than a year to settle compared to 51% of litigated cases. Without further analysis it is impossible to know for sure but this slight difference is not suggestive of a significant difference in case length between litigated and non-litigated cases.
29. Without further analysis it is impossible to know whether other characteristics affect the length of settlement of litigated and non-litigated cases.
30. The mean average settlement amount stated in the consultation (from the MoJ analysis of the interim NIESR dataset) is £156,600. The mean average in the NIESR paper was £153,531. As the only difference in datasets should be that the NIESR paper includes Scotland this is a surprising difference. In the NIESR paper awards in Scotland were, on average, £60,000 higher than in England and Wales. As such it is unclear how the mean compensation increases by excluding Scotland. This raises critical questions about the interim dataset and the analysis undertaken by MoJ.
31. It is also unclear how the impact assessment can state that “no costs to claimants are anticipated”¹ when the NIESR study clearly identifies a link between compensation levels and both whether or not the case was litigated and the case duration. If the aim of the reforms is to reduce the cases duration then it is not unreasonable, given the data presented in the NIESR study, to assume this will have a negative effect on the overall levels of compensation.
32. The main criticisms of the MoJ data presented in the consultation are summarised as follows:
 - a. Despite commissioning an independent study the data presented is an interim dataset analysed by MoJ.
 - b. The data is known to contain significant sample bias but is presented both unweighted and with no mention of the known bias.
 - c. The provided analysis is very limited and provides little insight into the characteristics that actually impact on case duration.

Other Research

1. In the ABI briefing note sent to parliamentarians it states that “cases where proceedings are issued take an average of 5 months longer than those that

¹ MoJ consultation impact assessment p. 8 para 2.17

are settled pre-action^{iv}. This was based on a study of 363 claims. It is a shame that the MoJ did not take the opportunity to provide a more robust figure within the consultation.

2. The British Lung Foundation (BLF) Mesothelioma Compensation Survey 2013 provides a patient perspective of the claims process. Half of all respondents stated there was no delay in their claim. Where a delay was reported the main reasons were problems tracing employers (26% of reported delays) and employer/Insurer did not accept liability for the claim until Court proceedings were started (13%). In total 31% of all delays directly involved action/inaction by the employer/insurer.^v
3. Of the claims that went to court, 73% of claimants were glad that they went to court. At the point of settlement, 57% of responders were either satisfied or happy about the time it took to get to that point.^{vi}



Ben Hickman

1st September 2013

Independent Analyst on behalf of Leigh Day

ⁱ NIESR paper, p 16

ⁱⁱ NIESR paper, p 6

ⁱⁱⁱ Consultation, p.14

^{iv} ABI briefing p 9

^v Secondary analysis of BLF survey data, p 31

^{vi} BLF survey, p 33

**Appendix 2 to the Response dated 25 September 2013
to Ministry of Justice Consultation “Reforming Mesothelioma Claims”**

I am Dr Robin Rudd, a consultant physician with a special interest in research into and treatment of mesothelioma. I have been looking after patients with mesothelioma and providing reports for the Court in relation to claims for damages for more than 30 years. I have given evidence in several major cases, arising from attempts by insurers to avoid paying damages to mesothelioma victims, which set precedents or resulted in changes to the law, including Fairchild and the mesothelioma 'trigger litigation'.

Clinical Features

Pleural mesothelioma arises in the chest cavity. It typically presents with rapid onset of breathlessness due to development of a pleural effusion and or chest pain of insidious onset. Loss of appetite, weight loss, general malaise and profuse sweats, particularly at night, often occur. As the mesothelioma progresses the affected side of the chest becomes contracted causing curvature of the spine. Pain usually becomes progressively worse due to infiltration of nerve roots or other tissues of the chest wall. Painful chest wall nodules and masses may develop. Large doses of morphine and other pain relieving drugs are needed, frequently causing side effects of constipation and sedation. Oxygen is commonly needed for breathlessness.

Late features may include venous obstruction causing gross swelling of the face and upper body. The mesothelioma may involve the heart causing increased breathlessness and swelling of the legs and abdomen. The mesothelioma may spread through the diaphragm to the abdominal cavity and may metastasise widely to all areas including the lung, lymph nodes, liver, bone and brain.

In a minority of cases mesothelioma starts in the peritoneum, the lining of the abdominal cavity. Peritoneal mesothelioma commonly presents with ill defined symptoms extending over months. Gross abdominal distension due to accumulation of fluid is commonly the development which leads to the diagnosis. Progression causes intestinal obstruction resulting in pain, nausea, vomiting and constipation.

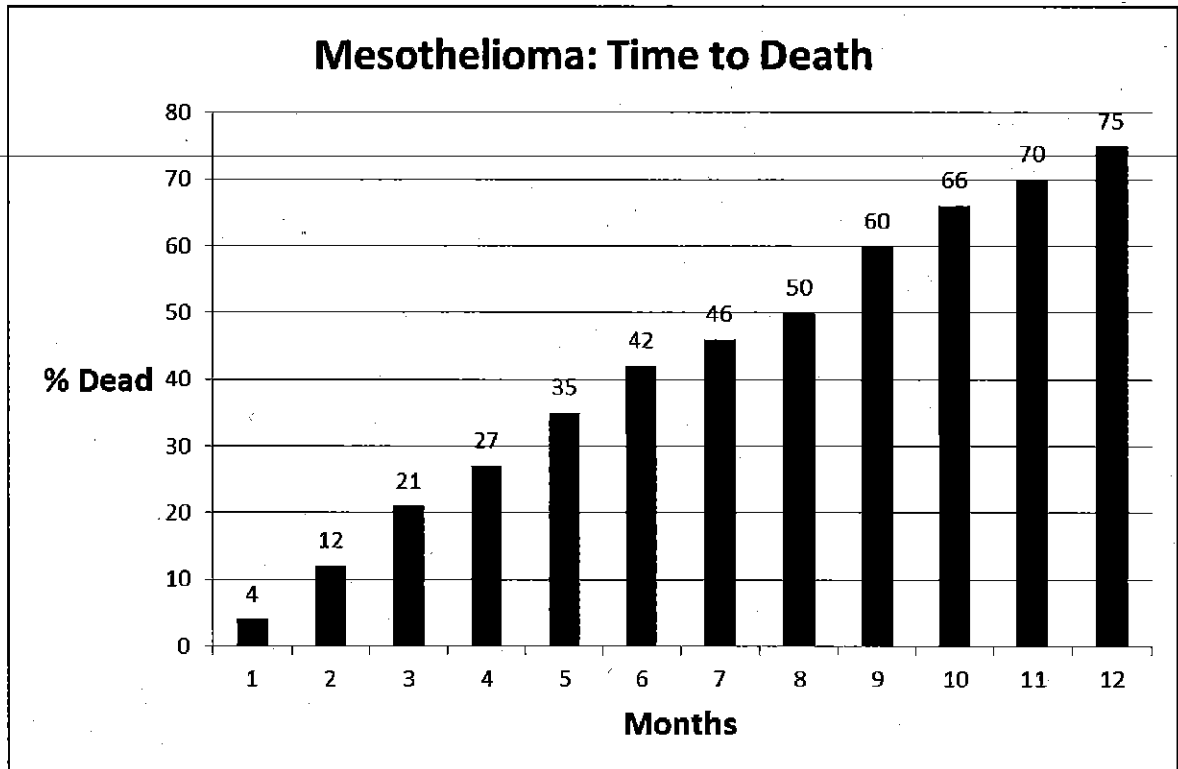
Treatment

Often supportive care only is appropriate because the patient is too ill for specific treatment. In many cases deterioration is rapid. Repeated drainage of pleural fluid from the chest is often necessary and sometimes a tube is left in the chest permanently. Major surgery is sometimes used but is often of little or no benefit. Chemotherapy may be used and commonly causes toxicity including nausea, vomiting, mouth ulcers, fatigue and infection. Radiotherapy may be used to shrink chest wall masses and for pain relief. For intractable severe pain cordotomy, ie cutting the pain pathway in the spinal cord, may be used.

Survival In Malignant Pleural Mesothelioma

A recent study of all 146 patients presenting to a district service in Leeds between 2002 and 2005 reported median survival from diagnosis of 8.9 months (Chapman A et al 2008). Only 18% of patients received chemotherapy either because they were not fit to receive it or because they declined it. This is reasonably representative of the situation in the UK currently.

In a multi-centre randomized trial of chemotherapy versus supportive care carried out across the UK which included 409 patients the median survival for patients who received supportive care was 7.6 months and for those who received chemotherapy it was 8.5 months, a non-significant advantage (Muers MF et al 2008). The chart shows the percentage of patients who received supportive care who had died at various time points.



Prediction of Survival In An Individual Case

When a medical expert estimates likely survival in an individual case he is really saying this would be the average survival among a large group of patients with the characteristics of this patient. Among that group there will be a large range of survival times. Consider the chart above: the median survival is 8 months but for most patients survival is less than or more than 8 months. It is salutary to realise that in most cases the physician's estimate for an individual will necessarily be wrong

Compensation

From my experience of treating thousands of patients with mesothelioma over more than 30 years I can say that a major priority for many patients is to have their claim for damages concluded before they die. Knowing that their illness will inevitably prove fatal soon, patients wish to know that their loved ones will be provided for. There can be no situation which more poignantly illustrates the veracity of the maxim that justice delayed is justice denied. Having experienced lawyers handling their claims rapidly and sensitively alleviates anxiety and improves quality of life for patients and their families.

In recent years I have noticed that many mesothelioma claims have been settling more rapidly and I believe this is a result of the Mesothelioma Fast Track procedure set up by Senior Master Whitaker and operated by him and his colleagues. In cases dealt with through the Fast Track I am less frequently asked to comment on arguments raised by Defendants on liability and causation which are without merit and with no realistic prospect of standing up to scrutiny. From a medical perspective the Fast Track has greatly assisted mesothelioma sufferers and it would be a major setback for them if it were to be dismantled as a result of the proposed protocol. All that is needed to achieve the stated aim of speeding up mesothelioma claims is to extend the Mesothelioma Fast Track to all mesothelioma claims.

Specific Comments on the Protocol

1. It is completely inappropriate to base a protocol upon the assumption that a medical expert can predict reliably that a patient will survive long enough for a timetable to be worked through. The most rapid possible settlement of every claim must be the goal.
2. The proposal that a required stage in the process should involve medical records being uploaded to a website is of considerable concern for several reasons.
 - 2.1 It often takes months for hospitals to make records available and an initial medical report needed to set a claim in motion has to be prepared on the basis of limited records, often those provided by the general practitioner, or sometimes even just copies of hospital letters in the possession of the patient, with supplementary reports later as more information becomes available.
 - 2.2 The records in mesothelioma cases are often voluminous, documenting not only the illness due to mesothelioma but also other medical conditions throughout the lifetime of the patient which have to be considered for the purpose of valuing the claim. Records amounting to more than 1000 pages are common. The task of scanning these and uploading them would be time consuming and expensive.
 - 2.3 To prepare a medical report it is necessary to sort relevant documents from different sections of the records, eg clinical notes, both hand written and typed, pathology and radiology reports, and collate them into chronological order in order to construct a coherent account. It is much more time consuming to review medical records on computer than in paper form, and almost impossible if the records are very extensive. For this reason if I receive records in computerised form I have them printed out before I attempt to review them.
 - 2.4 It is also necessary for the medical expert to review all the radiology which may comprise thousands of images. A single CT scan commonly includes hundreds of separate images and the patient usually has several such scans during the course of the illness. The images are supplied on password protected CDs or DVDs which include software for viewing the images. There are many different software systems in use in the NHS which are mutually incompatible. Some are incompatible with current versions of operating systems such as Windows 7 and have to be viewed using older versions of Windows. It commonly takes many minutes, sometimes as long as 20

to 30 minutes, for all the images on a disc to download onto a PC. Uploading all of the radiographic images from multiple sources to a website and ensuring that they can be viewed adequately would be at best a complex and time consuming exercise and at worst impossible.

- 2.5 Specific patient consent to the process would have to be sought and many patients would be reluctant to consent because of justifiable concerns about maintenance of confidentiality of medical records and images uploaded to a website.
 3. The suggestion that data gathered through the protocol could be used for medical research is unrealistic. Firstly, the data collected in this process would be of little, if any, value for medical research. Secondly, there are strict rules governing use of patient data for medical research; a specific protocol has to be approved by a Research Ethics Committee (REC) and each patient whose data is to be used has to sign a detailed consent form, approved by the REC, which sets out the research aims and guarantees confidentiality in use of patient data.
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Chapman A, Mulrennan S, Ladd B, Muers MF. Population based epidemiology and prognosis of mesothelioma in Leeds, UK. *Thorax* 2008;63:435-9.

Muers MF, Stephens RJ, Fisher P, Darlison L, Higgs CM, Lowry E, Nicholson AG, O'Brien M, Peake M, Rudd R, Snee M, Steele J, Girling DJ, Nankivell M, Pugh C, Parmar MK; MS01 Trial Management Group. Active symptom control with or without chemotherapy in the treatment of patients with malignant pleural mesothelioma (MS01): a multicentre randomised trial. *Lancet* 2008;371:1685-94.

Dr Robin Rudd 9 September 2013

**Appendix 3 to the Response dated 25 September 2013
to Ministry of Justice Consultation "Reforming Mesothelioma Claims"**

Period from diagnosis	Statistical prediction of survival for patients with pleural mesothelioma who have received supportive care ¹	Current system	Draft Pre-Action Protocol for Claims for Damages for Mesothelioma ("the draft PAP").	Comment
Assuming C seeks legal advice and retains solicitor about month following diagnosis		<p>PD 3D, Para.9</p> <p><u>Compliance with pre-action protocols</u></p> <p>In living mesothelioma claims, the Court may decide not to require strict adherence to Practice Direction (Pre-Action Conduct) and any otherwise relevant pre-action protocol.</p>	<p><u>Introduction</u></p> <p>Paragraph 8 of the draft PAP:</p> <p><u>General provisions</u></p> <p>In living claims involving a severely limited life expectancy it may not always be possible to follow the protocol. All parties should still attempt to comply with the provisions and the spirit of the protocol so far as that is reasonably possible. In such cases all parties are under a duty to raise and answer requests for information as quickly as possible. Where the Claimant's life expectancy as anticipated by his expert is likely to permit this protocol to be followed it should be. All parties are under a duty to deal with living mesothelioma claims as quickly as possible and to regard the timetables in this protocol as minimum requirements rather than targets.</p>	
Week 5	6% dead	<p>Preliminary steps:</p> <ul style="list-style-type: none"> Obtain preliminary details over the telephone (date of diagnosis and employment history); 	No change.	

¹ A study of all 146 patients presenting to a district service in Leeds between 2002 and 2005 reported median survival from diagnosis of 8.9 months (Chapman, A et al 2008). Only 18% of patients received chemotherapy either because they were not fit to receive it or because they declined it. This is reasonably representative of the situation in the UK currently.

In a multi-centre randomized trial of chemotherapy versus supportive care carried out across the UK which included 409 patients the median survival for patients who received supportive care was 7.6 months and for those who received chemotherapy it was 8.5 months, a non-significant advantage (Muers MF et al 2008). The chart shows the percentage dead at various time points who received supportive care.

			<ul style="list-style-type: none"> • Arrange appointment with client; • Quick search of database for proposed defendant insurer; • Check for previous claims; • ELTO searches; • Company searches; • Draft CFA terms; • Prepare client care documents; • Prepare forms of authority for HMRC/DWP/medical records 			
Week 6	8% dead		<p>Visit client:</p> <ul style="list-style-type: none"> • Take initial statement dealing with exposure and financial impact; • Review client's methods of funding legal claim and advise and sign CFA and ATE insurance documents; • Signed forms of authority; • Check whether there were witnesses to the exposure; • Other documents relevant to proof of losses (p60s / bank statements / receipts etc). 	No change.		
Week 6	8% dead		<p>Next steps and Letter of claim:</p> <ul style="list-style-type: none"> • Dictate statement; • Write off for medical records; • Fax HMRC for work history; • Write to DWP for records; • Write to employers/pension providers; • Once viable defendant has been identified, and employers liability insurers located, prepare letter of instructions for: <ul style="list-style-type: none"> a. Expert medical report; b. Consultant engineer (if breach of duty likely to be an issue); c. Expert nursing care report; d. Expert accountancy report (if required); e. Counsel (if appropriate); • Arrange for all lay witnesses to be 	<p>Letter of intimation [Para 3 of the draft]</p> <ul style="list-style-type: none"> • C cannot send a compliant letter of claim until the information set out in para 4.1 - 4.4 has been obtained • There is therefore an inbuilt delay from this stage until that information is to hand 		

			<p>interviewed;</p> <ul style="list-style-type: none"> • Prepare preliminary schedule of loss in so far as possible at this stage; • Obtain ATE insurance; • Serve letter of claim once the necessary information has been obtained ; 			
Week 10	16% dead		<p>Invite insurers to admit breach:</p> <ul style="list-style-type: none"> • Receipt of HMRC letter (should be 10 days from faxed authority with proof of diagnosis but typically now takes about 4 weeks); • Amend statement to include all employers listed by HMRC (either by telephone or meeting with client); • Send amended statement to client to check and sign; • Forward all available and relevant documents to insurers with invitation for them to admit breach; 			
Week 11	19% dead		<p>Medical records to expert:</p> <ul style="list-style-type: none"> • Receipt of medical records typically 4-6 weeks for hospitals to process request). • Send medical records to expert 			
Week 15	25% dead		<p>Service of medical report and other documents:</p> <ul style="list-style-type: none"> • Upon receipt of medical report and indication of life expectancy, prepare schedule of loss; • Serve schedule, medical evidence, draft claim form, particulars of claim, supporting documents, nursing care report, engineer's report. 	<p>Letter of claim</p> <ul style="list-style-type: none"> • By now, C probably in position to send letter of claim; • ie. if no unforeseen problems, C may have necessary information & records • But this is not necessarily the case & C is reliant on a number of third parties acting expeditiously 		
Week 15	25% dead		<p>Issue and service of claim:</p>			

		<ul style="list-style-type: none"> • If no admission of liability or reasonable offer to settle • Wait for defence; • No extensions agreed because of urgency of case; • Show cause hearing listed by court. 			
Week 18	31% dead		<p>Defendant's letter of acknowledgement</p> <ul style="list-style-type: none"> • Defendant must acknowledge letter of claim within 21 days (Para. 5.1) • If no acknowledgment, C may issue Claim Form 		
Week 26	44% dead		<p>Defendant's reasoned answer to the claim</p> <ul style="list-style-type: none"> • D must provide a "reasoned answer" to the claim within 2 months of a letter of acknowledgment • Where it is not reasonably possible for D to complete enquiries, D must notify C within 2 months and attempt to agree "appropriate extension" • C should not obtain expert liability evidence until the reasoned answer has been given 	Approx. 44% will die before D is required to respond to the allegations contained in C's letter of claim	
Week 34	55% dead		<p>Claimant obtains expert liability evidence [para 6.6]</p> <p>Expert evidence on issues relating to breach of duty should not normally be obtained until after the time given for the relevant Defendant's response under 5.3 (2 months). Where C anticipates that such evidence may be necessary in any given claim he should notify the Defendant explaining the reasons for the instruction.</p>	Assuming 2 months to obtain expert liability (very optimistic). More than half dead before C permitted to obtain expert liability evidence	

Week?	?				<p>If the letter of claim is not compliant, or D is unable to complete its own enquiries, the pre-action protocol is essentially open-ended.</p> <p>There are many potential obstacles to a fully compliant letter. Many of these will simply be beyond C's control, eg records held by third parties, medical reports which require access to medical records etc.</p> <p>The potential for delay, argument and, ultimately satellite litigation, is enormous</p>		
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**Appendix 4 to the Response dated 25 September 2013
to Ministry of Justice Consultation "Reforming Mesothelioma Claims"**



British Lung Foundation Mesothelioma Compensation Survey 2013

DRAFT V1

patient
PERSPECTIVE

EXECUTIVE SUMMARY

- 240 patients and carers **responded to the survey**, carried out in March and April 2013.
 - 80% of respondents were the bereaved carer/family member of the person with mesothelioma
 - The largest occupations given for the person with mesothelioma were electrician (15%) and shipyard worker (9%)
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1 Introduction

The British Lung Foundation (BLF) supports people affected by lung disease, promotes greater understanding of lung disease and campaigns for change in the nation's lung health. The foundation funds vital research so that new treatments and cures can help to save lives.

The BLF commissioned *Patient Perspective* to conduct this survey to give mesothelioma patients, carers and those bereaved an opportunity to describe their experiences of claiming compensation regarding mesothelioma.

Patient Perspective is a specialist provider of patient surveys and is approved by the Care Quality Commission (CQC) to conduct patient surveys and report the findings.

2 Survey method

Topics covered

The self-completion survey comprised 57 "closed" questions, for which patients were asked to choose a response option. Many questions had an open ended response box for additional comments. The topics covered included experiences of:

- Diagnosis
- Asbestos exposure
- Welfare benefits
- The legal process
- Medical care
- Demographic questions

Where possible, open-ended comments have been included in the relevant section of this report.

Invitations to participate

The survey was conducted by post and via the internet.

- Paper copies of the questionnaire (with Freepost return envelopes) were sent by post on 6th March 2013. A closing date of 4th April was given although responses received later were accepted.
- The web survey was disseminated on a number of mesothelioma dedicated Facebook pages, included in the Mesothelioma UK members newsletter, emailed directly to BLF supporters and emailed to members of the Mick Knighton Mesothelioma Research Fund.

3 Who completed the survey?

In total, 240 responses were received, 179 by post and 61 online.

Thirteen percent of the respondents had mesothelioma themselves, 6% were the carer/family member of a person with mesothelioma and 80% were the bereaved carer/family member of the person with mesothelioma.

Do you have mesothelioma?	Number of responders	%
Yes	31	13
No, I am the carer/family member of the person with mesothelioma	15	6
No, I am the bereaved carer/family member of the person with mesothelioma	188	80
Total	234	100

4 About the person with mesothelioma

Gender

Overall, 82% of the people with Mesothelioma were male and 18% female.

What is the gender of the person with mesothelioma?	Number of responders	%
Male	192	82
Female	42	18
Total	234	100

Occupation

The largest occupations given were an electrician (15%), worked in shipyard (9%) and a plumber/pipe fitter (8%).

The occupation of the person with mesothelioma?	Number of responders	%
A Plumber/pipe fitter	18	8
A Plasterer	2	1
A General builder	8	4
Worked in shipyard	19	9
A Lagger	2	1
A Boiler maker	1	1
An Electrician	32	15
A Joiner	12	6
A Carpenter	7	3
A Motor mechanic	5	2
Armed services	2	1
Teacher	7	3
Health Care worker	2	1
Power station worker	4	2
Other	93	43
Total	214	100

Of the 43% that gave the occupation as "Other", the following were given:

"Other" occupation		
A moulder core maker	Accountant	Accounts clerk/secretary
Administrator	Apprentice engineer with British Rail	Architect and artist
Architect/surveyor	Car assembler	Bakery, Bank worker/secretary
Chartered electrical engineer,	Chartered surveyor	Chief Engineer
Cleaner	Cleaner/Shop assistant	Coach builder
Company Director	Company Secretary/Head of Finance	CSR, Customs Officer
Daughter of asbestos worker	Decorator	Docker
Electrical Design Engineer	Electrical engineer	Electrician & power station worker
Engineer	Engineer Miller	Engineer (industrial)
Engineer in chemical industry	Factory worker	Farm estate maintenance man
Fireman	Foundry Stereotyper (Printing)	Fund Manager
General Manager	Geophysicist	Glass cutter
Hairdresser / housewife	Head of New Products in Asbestos company	Heating engineer
Housewife	Housewife of carpenter	IT consultant
IT salesman	Joiners mate	General office work most of my life
Lived near asbestos heap	Manager in Royal Mail sorting office	Managing Director
Marine Engineer	Mechanical Engineer	Nursing auxiliary/Post woman
Office and family employed	Office job	secretary
Office secretarial	PA	Painter and decorator
Plasterer	fabricator	pipelines inspection
Printer	Publisher	Refrigeration Engineer
Research technician working on gas turbines	Royal Navy	Sales manager for engineering company
Scaffolder	Secretary	Secretary to Paper Mill CEO
Ship's Engineer	Shorthand typist	Small holder
Soap and detergent manufacturing	Sold asbestos in 1970's,	Sprayer
Steel erector	Steel worker for 20 years after Navy	Technical researcher
Telephone engineer	Theatre lighting technician	Train driver
Underground government office worker	Wages clerk, Turner & Newall	Waitress then office worker
Waitress then receptionist	Warehouse man	Worked as a metallurgist assistant
Worked at Asbestos Factory	Turner and Newall Washington	Worked in shipyard & power station
Sheeter asbestos		

Location

Responders were asked to give the first part of their postcode which was mapped to region, as follows:

Which region does the patient live in?	%
East Midlands	12
East of England	7
Greater London	5
North East	34
North West England	6
Northern Ireland	1
Scotland	4
South East England	20
South West England	8
Wales	1
West Midlands	1
Yorkshire and the Humber	9
Total	100

5 Diagnosis

Age

Ten percent of patients were aged under 50 when they were diagnosed with mesothelioma, 50% were aged 51-65 years old and 40% were aged over 65 years.

Time since diagnosis

Most patients (68%) were diagnosed with mesothelioma more than 3 years ago, with 6% being diagnosed in the last 6 months, 6% in the last 6-12 months, 10% in more than 1 year and 11% in more than 2 years.

Time from first appearance of symptoms

Mesothelioma was diagnosed within 6 months of symptoms appearing for 65% of patients, and within 6-12 months for an additional 19%. However, 9% were diagnosed in 1-2 years and 7% in more than 2 years.

Confirmation of diagnosis

For almost all patients (95%) the mesothelioma diagnosis was confirmed by a hospital doctor, for less than 1% by a hospital nurse, 2% by a GP and 3% by someone else. Responders that reported that "someone else" else gave the diagnosis included a *coroner at the inquest* and a *specialist in a pathology laboratory* as giving the diagnosis.

Biopsy to confirm the diagnosis

Ninety-one percent of patients had a biopsy done to confirm the diagnosis, 4% did not and 2% did not know. Three percent responded as "Other" including two respondents that commented that the biopsy was carried after the death of the patient.

Diagnosis confirmed and documented

Seventy-four percent of patients had the diagnosis confirmed face-to-face, and 6% by letter. An additional 15% were told face-to-face and received a letter. One patient had never officially had their diagnosis confirmed.

In addition, 3 patients were informed of their diagnosis by telephone, one at an inquest and one through the autopsy results.

6 Asbestos exposure

Identifying the source of mesothelioma

Around the time of being diagnosed with mesothelioma, 44% of the responders felt that they already knew where their asbestos exposure had occurred. Forty-nine per cent were helped to identify the source of the exposure (8% by a doctor or nurse, 6% by an asbestos support group, 30% by a solicitor and 5% by *someone else*), and 7% said they were not helped to identify where the exposure had occurred.

Responders that indicated that “someone else” had helped, added the following:

At the factory where my brother worked

Dad tracked down past colleagues to determine where the exposure took place.

Department for Work and Pensions

Family Member

Foreman told me

Husband's work friend

Professor at Birmingham Chest Clinic

The patient told the hospital

Work partner

How the asbestos exposure occurred

Most patients (78%) had been exposed to asbestos through their occupation, an additional 8% through a family member's occupation and 1% through the environment. Ten percent did not know where exposure occurred.

7 Benefits

Were welfare benefits claimed?

Most of the patients (86%) claimed welfare benefits, although 14% did not.

Help with claiming welfare benefits

Of the patients that did claim benefits, 85% had help with their application – 34% from a health professional, 23% from a local asbestos support group, 4% from a health charity, 18% from a legal firm and 6% from a friend. Eleven percent did not receive help.

Small numbers of patients also reported receiving help from social services, MacMillan nurses and from hospice staff.

The quality of help with applying for benefits was described as excellent by 57% of patients, good by 29% and average by 7%. Five percent described the help as poor and 2% as terrible.

Of patients given help with their application, 34% said they application would have been made without such help, and 34% said that they would not have made the application without help. Twenty-eight percent did not know.

Reasons for not claiming welfare benefits

For those patients that did not claim benefits, the most common reason was that they were unaware of eligibility to claim benefits (33%). Reasons for not claiming were:

If benefits were not claimed, why was this?	%
Financially stable/did not need the money	7
Unaware of eligibility to claim benefits	33
Didn't understand the process	3
Not someone who would normally claim benefits from the government	20
Expected larger award from employer/insurer if I had not previously claimed benefits	3
Compensation from the employer/insurer expected quickly and so did not need benefits in the meantime	3
Was not eligible	10
Other	20
Financially stable/did not need the money	7
Total	100

8 Legal Process

Was a legal claim for compensation for asbestos exposure made?

Sixty-five percent of responders had made a legal claim for compensation for asbestos exposure in the past, 25% were in the process of claiming now, and 10% had not made a claim.

Help with making a legal claim for compensation for asbestos exposure

The first suggestion to make a claim for compensation was most likely to come from a hospital doctor (29%), lung nurse (26%) or local support group (14%):

Who first suggested it might be possible to make a claim for compensation?	%
The GP	3
The hospital doctor	29
The lung nurse	26
Local support group	14
Health charity	1
An internet search	3
Trade Union	8
We were contacted by a legal firm	4
Other	13
Total	100

Where responders specified "other", this included: Chris Knighton Mesothelioma Research Fund, coroner, family member, fellow victim, friend who was a lawyer, booklet from hospital, were already aware, MacMillan nurse.

Help with finding a solicitor to contact about making a compensation claim was most likely to come from a local support group (26%), lung nurse (21%) or Trade Union (14%):

Who helped find details of a solicitor to contact?	%
GP	1
Hospital doctor	8
Lung nurse	21
Local support group	26
Health charity	1
An internet search	5
Trade Union	14
We were contacted by a legal firm	1
Other	22
Total	100

Where responders specified "other", this included: friends, family members, already aware, fellow patient, hospital booklet, MacMillan Nurse, Mick Knighton Mesothelioma Research Fund, newspaper advert, hospice.

The solicitor

Forty-eight percent of patients made contact with a solicitor immediately on diagnosis, 30% within 3 months and 11% in 4-6 months. Five percent made contact in 7-12 months, 4% in 1-2 years and 2% in more than 2 years.

The solicitor was a mesothelioma specialist for 83% of patients and was not a specialist for 5%, with 12% not knowing.

Of the legal firm names given by responders, the most commonly used were Thompsons (40%), Irwin Mitchell (15%) and Browell Smith (5%). In total 48 different solicitor's names were given.

The area in the UK where the claim process took place was as follows:

Which region does the patient live in?	%
East Midlands	6
East of England	4
London	10
North East	41
North West England	7
Outside UK	1
Scotland	5
South East England	10
South West England	3
Wales	1
West Midlands	2
Yorkshire and the Humber	10
Total	100

Information to and from the solicitor

Fourteen percent of responders were asked to provide information to their solicitor just once, 19% were asked 2 or 3 times, 20% asked 4-6 times and 29% asked 7 times or more. For those that stated "Other", comments included "Endless", "it felt at times as if I was doing their job", "over 20" and "still on-going".

Seven percent of responders were updated by the solicitors weekly, 10% fortnightly, 21% monthly and 21% every 1-3 months. However, 15% said they were communicated with irregularly and 4% had to chase the solicitor to get information. For those that stated "Other" most reported getting information as and when required.

The following information was requested by solicitors:

What information was requested by the solicitor?	%
Witness statement	17%
Employment history	26%
Pay slips	10%
Proof of diagnosis	21%
Information on care and dependants	15%
Receipts for equipment, house repairs and maintenance undertaken	10%
Other	1%

For those that stated "Other", details of hospital appointments, medical records, nursing care costs, bank statements and details of DIY jobs undertaken were also requested.

In 77% of cases, the solicitor visited the claimant's home. They visited once for 31% of responders, 2-3 times for 50%, 4-5 times for 16% and 6-7 times for 4%.

Making a claim

For 45% of claimants, the solicitor formally started the claim immediately, with a further 23% having the claim start within 3 months and 8% in 4-6 months. One percent waited 7-12 months and 2% more than one year for the claim to start.

Over half of the court proceedings (51%) were started by the solicitor, and 33% were not. The remaining 15% did not know who started proceedings.

The venue for proceedings started by a solicitor were the Royal Courts of Justice - Mesothelioma Fast Track for 29% of responders, the Local High Court for 12%, the Local County Court for 7% and Other for 9%, with 44% not knowing.

For those responders that gave "other" as the venue, the following were listed: *Court of session, Edinburgh* and *at home as my husband too ill to travel to court*.

Delays in the claim process

Fifty percent of responders reported a delay in the claims process, the main reason being problems tracing the employer:

Have there been any delays in your claims process?	%
Yes, missing paperwork	2
Yes, problems tracing employer/s	13
Yes, employer/Insurer did not accept that I was employed by them	1
Yes, employer/Insurer did not accept that I was exposed to asbestos by them or at all	2
Yes, employer/Insurer requested further documentation	4
Yes, employer/Insurer did not accept responsibility	2
Yes, employer/Insurer did not accept liability for the claim until Court proceedings were started	7
No, there were no delays	50

For those responders that gave "other" as the reason for the delay, the following were listed:

*Husband too ill. Did not want to worry so set claim in motion to proceed at later date.
My husband had also worked as a marine engineer. The solicitor was informed by a barrister that only proof of one exposure was necessary. Time had been wasted.
My husband passed away 18 months after diagnosis, which has delayed his claim.
Passed from solicitor to solicitor.
Solicitor hasn't been very helpful.
Solicitor said there was a 6-9 month delay waiting for paperwork from hospital.*

Outcome of the claims process

For 66% of claimants the claim was settled out of court. Eight percent went to court and were awarded compensation and none went to court and were unsuccessful. An additional 8% were unable to proceed with a claim and 14% were still in the process of making a claim.

Claims that went to trial

Seventy-three percent of claimants were glad they went to court and 27% were not.

Claims that were settled out of court

For responders that settled out of court, 12% felt under pressure to do so and 76% did not. For the 4% that stated "other", comments included "settled on Barristers advice" and "I felt legally blackmailed that I should accept the offer otherwise it could be reduced"

Most responders (66%) felt the settlement was fair, with 21% reporting that it was unfair. A further 13% stated "other", and this included the following comments

But felt like blood money. Nothing or no amount of money would make the pain of losing my husband any easier to bear.

Deceased partner felt it was unfair.

Hard to argue when you have no idea what value to expect. Impossible to put a value on your life.

Money seemed very unimportant at the time but on reflection took at least one worry away.

Money is never compensation for loss of life.

My husband was close to death when the insurers agreed a sum. More would have had to be paid if I'd waited until [name removed] died. The claim had been reduced by £20,000 but we didn't want to appeal. I was keen to settle while [name removed] was alive to give him peace of mind. That was worth any sum of money.

No amount of money is fair. My brother was only 54 years. It should not have happened.

No, but only because a life had been taken, and it seemed a small amount to attribute to a life, although any amount would have seemed trivial.

Not initially. Refused first offer. Second offer better but still would have made more money if I hadn't got condition and worked to retirement age as planned

Not really two people in my family had died because of the defendant's negligence.

Not sure really. Solicitor said it was fair and might not have got amount if went to court. Can you put a price on a life?

Nothing compensates for my husband.

Nothing is ever enough for a life

Nothing would seem like a "fair settlement" my husband dies.

The amount was fair but it was too late for my partner to benefit from it.

We would have been given a larger sum of compensation if we had gone to court but I didn't want to put my husband through such an ordeal. We were happy with the settlement we received.

What price compensates a human life!

Time taken to settle the claim

The time from the solicitor was first contracted until the settlement amount was up to 6 months for 21% of claimants, 7-12 months for 30%, 1-2 years for 30% and more than 2 years for 18%.

One respondent stated that the time taken was 4 years and another 6 years.

At the point the settlement amount was agreed, 21% of responders were deeply distressed about the experience, 22% were unhappy, 49% were satisfied and 8% happy.

When asked to explain more about how they felt, the following comments were given:

At first I was not going to claim and then I thought of my family and the years I would lose with them.

Because it was too late for my partner to benefit from it.

Because of uncertainty of the outcome of the Fairchild case, my husband died before his claim was settled, not knowing if his family would be able to survive financially.

But disappointed at the value of life.

But took a long time as a lot of work was involved.

But unfortunately, the claimant died before the case was settled.

Claim was delayed several times due to appeals from insurers. Solicitor kept us informed but felt distressed at delays thinking there was no end to things.

Company would still not accept liability.

Distraught, cheated and angry that it took over three years to finalise and that my husband's life was worth so little. After nearly three years of forever providing information there had previously been a test case in London whereby everything was on hold and there was a strong possibility that after three years of hell that the case would be cancelled, I felt overwhelmed with stress.

Firm didn't take part and had no claim in it, as they said I had not been exposed, but I had.

For me, the settlement ran smoothly.

Given the claim was on the basis of probability, I was very satisfied with the settlement.

I felt at the time I was chasing the solicitor. When the solicitor felt he could win the claim it moved quickly.

It was distressing going over the diagnosis, treatments and researching, it was a constant reminder of what had happened to my husband. Even though the solicitor was fantastic.

I was more than happy with Thompsons. The delay was by the other side. My wife had died when it was settled.

If we had left the case open, we would have had a lot more than we did.

Insurance company refused to pay until the trigger liability issue was settled via High Court, Court of Appeal and Supreme Court.

It felt to me like a consolation for something that, in the end, was going to kill my father.

It was a fair amount but it would never bring my husband back

It was obvious to all concerned that the employer was not cooperating.

Money gave us security that is all my husband wanted for me. It does nothing to help the pain and torture my husband suffered. It is a very cruel disease.

My husband died before the claim was settled.

My husband had signed several statements whenever small changes were made. We thought it would have been easier to get all the information together first. My husband was tempted to drop the claim as it took so long.

My husband sadly died before settlement was agreed. The claim then became mine. It was a very distressing time, having nursed my husband for 6 months and him never knowing the outcome.

My husband was no longer alive and died without knowing the outcome of the claim.

My husband was relieved when the legal process finished. The solicitors were very good but he did not like being reminded how ill he was.

My husband was very ill before settlement was reached and only had weeks left of life.

No amount of money would compensate for my otherwise very healthy father being diagnosed with this awful disease that he contracted from working many years before in the docks. He had a photo of himself covered in asbestos and although the MOD could not argue I think the time until settlement was appalling.

Process took place during chemo and caused additional stress when my husband was feeling very ill. Also took time and effort when he was feeling better and trying to make most of the time left. Relieved that my son's boys (then 7 and 9) would have some security.

Seemed my husband was just a number to his former employers.

Solicitor very helpful but we were thwarted at every turn by uncooperative attitude of insurance companies.

The case was unusual because it involved a second solicitor taking the first solicitor to court for losing the file and then saying we were out of time to make a claim, so it was damages against the first solicitor.

The claim was started while my husband was alive, settlement was received 18 months after his death.

The money did not seem important compared to his illness.

To me, it was blood money. I did not want to claim. No money would bring my husband back and he was only 52 years old. He only worked with asbestos for 3 months and lost his life.

Told to take offer, i.e. If went to court could lose out.

Too much hassle for someone who is already too ill.

Very hard to grieve when you have to relive all the details of mesothelioma and caring for a loved one suffering in pain and visiting solicitors giving details.

Work partner was pursuing a claim so all information was on hand. This took shorter time. He was also successful.

The time taken from when payment was agreed until the payment was actually made was under 1 month for 37% of claimants, 1-2 months for 28%, 3-6 months for 13%, 6-12 months for 4% and over a year for 4%. Eight percent were still waiting at the time of completing this survey.

At the time the payment was actually paid, 20% of responders were deeply distressed about the experience, 20% were unhappy, 51% were satisfied, 8% happy and 1% delighted. Comments to support this were as follows:

After nearly 3 years I was just pleased it was over because i felt i could finally try and get on with my life. Easier said than done. The money means nothing to me.

All the time my husband was ill, it was unhappy and difficult and a distressing time.

Because a successful claim had been reached when we were originally told we didn't have a good chance because it would be difficult to prove the source.

Can never try to get on with life. Always hanging over you.

Felt insurance company were not taking responsibility and trying to dodge paying the claim, even after employer admitted liability in exposing person to asbestos which killed them.

Felt that it had been completed quickly.

For me, it wasn't about the money. We were ok. It was about getting justice for my husband and brother. I was numb, not elated. How can you feel happy at the loss of loved ones? I didn't touch the money for 2 years.

How can you put a price on someone's life? I would rather have nothing and live in a field just to be with my husband, but now I think he's still looking after me.

I almost gave up, as it had taken so much time and my husband had already died. I just wanted an end to the process.

I was very impressed with Thompsons. I could not fault them.

It felt to me like a consolation for something that, in the end, was going to kill my father.

It was a distressing time dealing with the grief, and it was 'strange' money.

It was a very stressful time trying to cope with the disease and treatment and all the information was required

It was over 3 years before a settlement was made.

It was so quick I couldn't believe it was over.

It wasn't as important as having the justice done.

Money doesn't replace life.

My deceased partner felt he shouldn't ever have been in a position to have to make a claim because he should never have been diagnosed with mesothelioma through exposure at work.

My Granddad was happy to be able to have the money to pass to family. As his carer, no amount of money was worth his life.

My husband died before the claim came through as the court case had to be changed to myself his wife to start proceedings afresh

My husband managed to get benefits of chairlift, scooter, special chair, holiday, etc. to make life as comfortable as possible.

My partner had died before the settlement was paid.

No public liability insurance, solicitor has tried everything possible. My family are never going to receive this money

Not happened yet but feel I cannot move on and grieve properly as still on-going. It is almost a year since my husband died, over a year since the case started. Although they admitted liability which was a relief, I expected it to be over before now. I want to be left alone to grieve.

Once discussed and agreed with solicitor, payment was made very quickly.

Patient did apprenticeship as a plumber with local firm that went bankrupt. On submarine after that as a mechanical engineer, working with asbestos on both jobs.

Relieved and very thankful.

Relieved it was finally over but thankful that my husband who lived only 13 weeks after diagnosis didn't see how little his life was valued. I feel very bitter about it all.
Satisfied because my husband received his compensation before he died.
Some relief, but serious health issues deeply distressing.
This was finally paid 2 weeks before my husband died.
Time and amount were irrelevant.
Told to take offer, i.e. If went to court could lose out.
Very unhappy that payment was deferred because of tactics of insurance co. We had definite proof of where and how my husband contracted this awful painful disease.
We wanted the claim to be dealt with quickly so as to avoid the distress of prolonged action
We were satisfied, although the amount was nothing compared to the death sentence my husband had received.
Worst time to be fighting for compensation
You are going through enough trauma with the illness. You can do without this struggle to get justice.

Interim payments

Almost half of those making a successful claim (48%) received an interim payment. The interim payment was made within 21 days of starting a claim for 19% of claimants, made when the case went before a judge or master in court for 23% of claimants and at some other time for 46%.

Responders unable to make a claim

For those responders unable to make a claim, for 29% it was because of lack of evidence, 8% due to not being able to trace an employer and 5% unable to trace an insurer. For 13% it wasn't worth proceeding, for a variety of reason, including:

Coroner's verdict natural causes. Solicitor dropped the case.
Exposure unknown.
My father was only 100% sure of the employer that could not be traced and would not proceed with the other employer on moral grounds
No positive way of knowing where asbestos was.
Not able to clarify where mesothelioma was contacted.
Over 2 years had elapsed from my brother's death and the first solicitor lost the file!!
Terry Pride solicitors withdrew, due to Proctor and Gamble denial.
They denied use of asbestos.
Unable to find source that offered reasonable chance of success.

An additional 13% gave another reason for not proceeding with a claim, including:

First solicitor didn't pursue claim because of insurer, John Pickering did but still couldn't find public liability insurance
Original employer had changed hands and they claimed they weren't responsible. They couldn't locate a "paymaster" Also because my Dad's exposure was only for 6 months, they claimed that this wasn't long enough to be significant.

Improvements to the claims process

Sixty-one percent of responders felt that no changes were necessary to the claims process. Of the 39% who suggested improvements were required, the main area for improvement was the speed of the claims process needed to be improved.

Medical Care

Five percent of responders had privately funded care.

Of those that didn't have private care, 71% did not want or need it, 14% were unable to fund it and 16% had other reasons, including: there was not enough time to consider private cover, it was never mentioned or offered, it was against their principles or that sufficient care was provided.

9 In General

Main source of support and information

The main sources of support for responders were the lung nurse (12%) and the local patient support group (12%), although 12% didn't feel they had any support:

Who would you consider your main source of support?	%
My local patient support group	12
My GP	8
My hospital doctor	6
My lung nurse	14
Other patients/carers	5
Social networking	5
A friend	4
My solicitor	5
Health Charity	3
I didn't feel I had any support	12
Other	26

Included under "Other", were family members, MacMillan Nurses, District Nurses and Hospice staff.

The biggest source of health information for responders was the hospital doctor (28%) and the lung nurse (19%):

Who would you consider your main source of health information?	%
My local patient support group	9
My GP	9
My hospital doctor	28
My lung nurse	19
Other patients/carers	4
Social networking	6
A friend	2
My solicitor	2
Health Charity	4
I haven't received or looked for information	5
Other	13

Again, included under "Other", were family members, MacMillan Nurses, District Nurses and Hospice staff.

Research Funding and Campaigns

The majority of responders (70%) feel that the government is ultimately responsible for funding research into mesothelioma, with 15% believing the insurance industry to be responsible, 7% charities and 8% Other. Suggestions under "Other" included combinations of the above groups and manufacturers and users of asbestos.

Almost all responders (99%) felt that there is a need for further campaigns in warning the public about the risk posed by asbestos.

The rating of existing campaigns in warning the public about the risk posed by asbestos is that they are very bad (32%), bad (27%) or average (32%). Ten percent of responders rated them as good or very good.

Improvements required

The main areas identified as being absolutely essential for improvement are research into new treatments and cures (93% of respondents), followed by the need for improvement in the diagnosis process (69%), in health care support (58%), in the legal claims process (47%) and in the benefits system (41%).

When asked what single thing could make the biggest difference to people living with mesothelioma, for 77% it was continued research to find a cure, 12% more specialist care, 5% more support, and 5% other.

Acknowledgements

The British Lung Foundation would like to thank patients and carers for completing the survey.

WHO ELSE

Contact Details for British Lung Foundation



British Lung Foundation

73-75 Goswell Road

London EC1V 7ER

Helpline ☎ 03000 030 555

Email enquiries@blf.org.uk

Website www.blf.org.uk

Appendix – Full tables of survey responses

Q1 Do you have mesothelioma?

		Frequency	Percent
Valid	Yes	31	13.2
	No, I am the carer/family member of the person with mesothelioma	15	6.4
	No, I am the bereaved carer/family member of the person with mesothelioma	188	80.3
	Total	234	100.0
Other	Not answered	6	
Total		240	

Q2 What is the gender of the person with mesothelioma?

		Frequency	Percent
Valid	Male	192	82.1
	Female	42	17.9
	Total	234	100.0
Other	Not answered	6	
Total		240	

Q3 What is/was the occupation of the person with mesothelioma?

		Frequency	Percent
Valid	A Plumber/pipe fitter	18	8.4
	A Plasterer	2	.9
	A General builder	8	3.7
	Worked in shipyard	19	8.9
	A Lagger	2	.9
	A Boiler maker	1	.5
	An Electrician	32	15.0
	A Joiner	12	5.6
	A Carpenter	7	3.3
	A Motor mechanic	5	2.3
	Armed services	2	.9
	Teacher	7	3.3
	Health Care worker	2	.9
	Power station worker	4	1.9
	Other	93	43.5
	Total	214	100.0
	Other	Not answered	26
Total		240	

Q5 What was the age of the mesothelioma patient at diagnosis?

		Frequency	Valid Percent
Valid	26-35	1	.4
	36-50	23	9.8
	51-65	117	49.8
	66-70	46	19.6
	71-75	35	14.9
	76-80	10	4.3
	81-85	2	.9
	86+	1	.4
	Total	235	100.0
Other	Not answered	5	
Total		240	

Q6 How long ago was the mesothelioma diagnosed?

		Frequency	Valid Percent
Valid	In the last 6 months	13	5.6
	In the last 6 to 12 months	13	5.6
	More than 1 year ago	23	9.9
	More than 2 years ago	25	10.8
	More than 3 years ago	158	68.1
	Total	232	100.0
Other	Not answered	8	
Total		240	

Q7 How long did it take for the mesothelioma to be diagnosed from the first appearance of symptoms?

		Frequency	Valid Percent
Valid	0-6 months	151	65.4
	7-12 months	43	18.6
	1-2 years	20	8.7
	More than 2 years	17	7.4
	Total	231	100.0
Other	Don't know	1	
	Not answered	8	
	Total	9	
Total		240	

Q8 Who confirmed the mesothelioma diagnosis?

		Frequency	Valid Percent
Valid	A hospital doctor	217	94.8
	A hospital nurse	1	.4
	A GP (family doctor)	5	2.2
	Someone else	6	2.6
	Total	229	100.0
Other	Don't know	1	
	Not answered	10	
	Total	11	
Total		240	

Q9 Was a biopsy done to confirm diagnosis?

		Frequency	Valid Percent
Valid	Yes	213	91.0
	No	9	3.8
	Don't know	5	2.1
	Other	7	3.0
	Total	234	100.0
Other	Not answered	6	
Total		240	

Q10 Was the diagnosis confirmed and documented?

		Frequency	Valid Percent
Valid	Yes, we received a letter	14	6.1
	Yes, we were told face to face	169	73.8
	Yes, we were told face to face and received a letter	35	15.3
	It was never officially confirmed	1	.4
	Don't know	3	1.3
	Other	7	3.1
	Total	229	100.0
Other	Not answered	11	
Total		240	

Q11 Did someone help to identify where asbestos exposure may have occurred?

		Frequency	Valid Percent
Valid	We already knew	120	44.0
	Yes, a doctor or nurse	23	8.4
	Yes, by asbestos support group	16	5.9
	Yes, by a solicitor	82	30.0
	Yes, by someone else	14	5.1
	No help was given	18	6.6
	Total	273	100.0

(Tick all that apply question)

Q12 Do you know how the asbestos exposure occurred?

		Frequency	Valid Percent
Valid	Yes, through occupation	182	77.8
	Yes, through the environment	3	1.3
	Yes, through a family members occupation	20	8.5
	No, don't know	24	10.3
	Other	5	2.1
	Total	234	100.0
Other	Not answered	6	
Total		240	

Q13 Does/did the patient claim benefits?

		Frequency	Valid Percent
Valid	Yes	194	86.2
	No	31	13.8
	Total	225	100.0
Other	Not answered	15	
	Total	240	

Q14 Was any help provided from any of the following in making the application for the payment?

		Frequency	Valid Percent
Valid	Health professional	54	33.8
	Local asbestos support group	37	23.1
	Health charity	6	3.8
	Legal firm	29	18.1
	Friend	10	6.3
	Didn't receive help	18	11.3
	Other	6	3.8
	Total	160	100.0
Other	Not Applicable	31	
	Not answered	49	
	Total	80	
Total	240		

Q15 What was the quality of the help received?

		Frequency	Valid Percent
Valid	Excellent	111	57.5
	Good	56	29.0
	Average	14	7.3
	Poor	9	4.7
	Terrible	3	1.6
	Total	193	100.0
Other	Not Applicable	31	
	Not answered	16	
	Total	47	
Total	240		

Q16 Would the application have been made without such help?

		Frequency	Valid Percent
Valid	Yes	67	34.5
	No	67	34.5
	Don't know	54	27.8
	Other	6	3.1
	Total	194	100.0
Other	Not Applicable	31	
	Not answered	15	
	Total	46	
Total	240		

Q17 If benefits were not claimed, why was this?

		Frequency	Valid Percent
Valid	Financially stable/did not need the money	2	6.7
	Unaware of eligibility to claim benefits	10	33.3
	Didn't understand the process	1	3.3
	Not someone who would normally claim benefits from the government	6	20.0
	Expected larger award from employer/insurer if I had not previously claimed benefits	1	3.3
	Compensation from the employer/insurer expected quickly and so did not need benefits in the meantime	1	3.3
	Was not eligible	3	10.0
Other	Other	6	20.0
	Total	30	100.0
Other	Not Applicable	31	
	Not answered	179	
	Total	210	
Total		240	

Q18 Was a legal claim for compensation made for the asbestos exposure?

		Frequency	Valid Percent
Valid	Yes, in the process of making a claim now	57	24.9
	Yes, made a claim in the past	148	64.6
	No	24	10.5
	Total	229	100.0
Other	Not answered	11	
Total		240	

Q19 Who first suggested it might be possible to make a claim for compensation?

		Frequency	Valid Percent
Valid	The GP	5	3
	The hospital doctor	57	29
	The lung nurse	50	26
	Local support group	28	14
	Health charity	2	1
	An internet search	6	3
	Trade Union	15	8
	We were contacted by a legal firm	7	4
	Other	25	13
	Total	195	100.0
	Other	Not applicable	24
Not answered		21	
Total		45	
Total		240	

Q20 Who helped find details of a solicitor to contact?

		Frequency	Valid Percent
Valid	GP	2	1.0
	Hospital doctor	16	8.4
	Lung nurse	40	20.9
	Local support group	50	26.2
	Health charity	1	.5
	An internet search	10	5.2
	Trade Union	27	14.1
	We were contacted by a legal firm	2	1.0
	Other	43	22.5
	Total	191	100.0
	Other	Don't know	9
Not applicable		24	
Not answered		16	
Total	49		
Total	240		

Q21 How long after diagnosis was contact made with a solicitor?

		Frequency	Valid Percent
Valid	Immediately	98	47.8
	Up to 3 months	61	29.8
	4-6 months	23	11.2
	7-12 months	10	4.9
	1-2 years	9	4.4
	More than 2 years	4	2.0
	Total	205	100.0
Other	Don't know	6	
	Not applicable	24	
	Not answered	5	
	Total	35	
Total	240		

Q22 Was the solicitor a mesothelioma specialist?

		Frequency	Valid Percent
Valid	Yes	172	83.1
	No	11	5.3
	Don't know	24	11.6
	Total	207	100.0
Other	Not applicable	24	
	Not answered	9	
	Total	33	
Total	240		

Q25 On how many occasions were you asked to provide information to the solicitor?

		Frequency	Valid Percent
Valid	Just once	29	14.0
	2-3	40	19.3
	4-6	42	20.3
	7 or more	60	29.0
	Don't know	27	13.0
	Other	9	4.3
	Total	207	100.0
Other	Not applicable	24	
	Not answered	9	
	Total	33	
Total		240	

Q26 How regularly was information about the claim communicated from the solicitor?

		Frequency	Valid Percent
Valid	Weekly	14	7.0
	Fortnightly	21	10.5
	Monthly	42	21.0
	Every 1-3 months	43	21.5
	Irregularly	31	15.5
	Solicitor had to be chased to get information	9	4.5
	Don't know	24	12.0
	Other	16	8.0
	Total	200	100.0
	Other	Not applicable	24
Not answered		16	
Total		40	
Total		240	

Q27 What information was requested by the solicitor?

	Frequency	Valid Percent
Witness statement	116	17
Employment history	180	26
Pay slips	70	10
Proof of diagnosis	146	21
Information on care and dependants	108	15
Receipts for equipment, house repairs and maintenance undertaken	70	10
Other	8	1
Total	698	100

(Tick all that apply question)

Q28 Did the solicitor visit the claimants home at any point during the claim process?

		Frequency	Valid Percent
Valid	Yes	160	76.9
	No	39	18.8
	Don't know	9	4.3
	Total	208	100.0
Other	Not applicable	24	
	Not answered	8	
	Total	32	
Total		240	

Q29 How long did it take the solicitor to formally start the claim? (i.e. send the letter of claim to the other party)

		Frequency	Valid Percent
Valid	Immediately	91	45.0
	Up to 3 months	46	22.8
	4-6 months	16	7.9
	7-12 months	3	1.5
	More than one year	5	2.5
	Don't know	41	20.3
	Total	202	100.0
Other	Not applicable	24	
	Not answered	14	
	Total	38	
Total		240	

Q30 Did the solicitor start court proceedings?

		Frequency	Valid Percent
Valid	Yes	103	51.0
	No	67	33.2
	Don't know	32	15.8
	Total	202	100.0
Other	Not applicable	24	
	Not answered	14	
	Total	38	
Total		240	

Q31 If the solicitor started court proceedings, what was the venue for the claim?

		Frequency	Valid Percent
Valid	Royal Courts of Justice - Mesothelioma Fast Track	30	29.1
	Local High Court	12	11.7
	Local County Court	7	6.8
	Don't know	45	43.7
	Other	9	8.7
	Total	103	100.0
Other	Not applicable	123	
	Not answered	14	
	Total	137	
Total		240	

Q32 Have there been any delays in your claims process?

		Frequency	Valid Percent
Valid	Yes, missing paperwork	3	1.7
	Yes, problems tracing employer/s	23	12.8
	Yes, employer/Insurer did not accept that I was employed by them	1	.6
	Yes, employer/Insurer did not accept that I was exposed to asbestos by them or at all	4	2.2
	Yes, employer/Insurer requested further documentation	7	3.9
	Yes, employer/Insurer did not accept responsibility	4	2.2
	Yes, employer/Insurer did not accept liability for the claim until Court proceedings were started	12	6.7
	No, there were no delays	90	50.0
	Other	36	20.0
	Total	180	100.0
Other	Not applicable	24	
	Not answered	36	
	Total	60	
Total	240		

Q33 What was the outcome of the claims process?

		Frequency	Valid Percent
Valid	Settled out of court	133	65.8
	Went to court and was awarded compensation	17	8.4
	Unable to proceed with claim	16	7.9
	Still in process of making claim	29	14.4
	Other	7	3.5
	Total	202	100.0
Other	Not applicable	24	
	Not answered	14	
	Total	38	
Total	240		

Q34 If your claim went to trial at court, how did you feel?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	We were glad we went to court	11	4.6	73.3	73.3
	We were not happy to go to court	4	1.7	26.7	100.0
	Total	15	6.3	100.0	
Missing	Other	8	3.3		
	Not applicable	24	10.0		
	Not answered	193	80.4		
	Total	225	93.8		
Total	240	100.0			

Q35 If the claim was settled out of court, was there any pressure to do so?

		Frequency	Valid Percent
Valid	Yes	16	11.8
	No	103	75.7
	Don't know	12	8.8
	Other	5	3.7
	Total	136	100.0
Other	Not Applicable	24	
	Not answered	80	
	Total	104	
Total	240		

Q36 If the claim settled out of court, did it feel like a fair settlement?

		Frequency	Valid Percent
Valid	Yes	88	65.7
	No	28	20.9
	Other	18	13.4
	Total	134	100.0
Other	Not applicable	24	
	Not answered	82	
	Total	106	
Total	240		

Q37 If the claim was successful, how long did it take from the time the solicitor was contacted to the time the settlement amount was agreed?

		Frequency	Valid Percent
Valid	Up to 6 months	28	20.7
	7-12 months	41	30.4
	1-2 years	41	30.4
	More than 2 years	25	18.5
	Total	135	100.0
Other	Not yet complete	7	
	Don't know	12	
	Other	4	
	Not applicable	24	
	Not answered	58	
	Total	105	
Total	240		

Q38 At the point the settlement amount was agreed, how did you feel about the time it took to get to that point?

		Frequency	Valid Percent
Valid	Deeply distressed	34	21.5
	Unhappy	35	22.2
	Satisfied	77	48.7
	Happy	12	7.6
	Total	158	100.0
Other	Not applicable	24	
	System	58	
	Total	82	
Total		240	

Q39 How long did it take from the time payment was agreed to actually be paid the claim?

		Frequency	Valid Percent
Valid	One month	50	37.3
	Two months	38	28.4
	3-6 months	17	12.7
	6-12 months	5	3.7
	Over 1 year	5	3.7
	Still waiting	11	8.2
	Other	8	6.0
	Total	134	100.0
Other	Don't know	18	
	System	88	
	Total	106	
Total		240	

Q40 At the point the payment was actually paid, how did you feel about the time it took to get to that point?

		Frequency	Valid Percent
Valid	Deeply distressed	31	20.1
	Unhappy	30	19.5
	Satisfied	79	51.3
	Happy	12	7.8
	Delighted	2	1.3
	Total	154	100.0
Other	Not applicable	24	
	System	62	
	Total	86	
Total		240	

Q41 Was an interim payment from the responsible employer or insurer provided?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	57	23.8	48.3	48.3
	No	61	25.4	51.7	100.0
	Total	118	49.2	100.0	
Missing	Don't know	36	15.0		
	Not applicable	24	10.0		
	Not answered	62	25.8		
	Total	122	50.8		
Total		240	100.0		

Q42 Do you know when this payment was made?

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Within about 21 days of starting a claim	8	3.3	18.6	18.6
	When the case went before a Judge or Master in Court	10	4.2	23.3	41.9
	At some other time	20	8.3	46.5	88.4
	Other	5	2.1	11.6	100.0
	Total	43	17.9	100.0	
Missing	Don't know	58	24.2		
	Not applicable	24	10.0		
	Not answered	115	47.9		
	Total	197	82.1		
Total		240	100.0		

Q43 If unable to proceed with a claim, what reason was given for this?

		Frequency	Valid Percent
Valid	Not enough evidence	11	28.9
	Unable to trace employer	3	7.9
	Unable to trace insurer	2	5.3
	Don't know	12	31.6
	It wasn't worth proceeding	5	13.2
	Other	5	13.2
	Total	38	100.0
Other	Not applicable	24	
	Not answered	178	
	Total	202	
Total		240	

Q44 From your experience, what would you suggest the most important improvements to the mesothelioma claims process could be?

		Frequency	Valid Percent
Valid	No changes necessary, I was very happy with it	101	61.2
	I would suggest the following:	64	38.8
	Total	165	100.0
Other	Not applicable	24	
	Not answered	51	
	Total	75	
Total		240	

Q45 Did you have any privately funded care (e.g. care at home that you had to pay for yourself)?

		Frequency	Valid Percent
Valid	Yes	11	5.2
	No	202	94.8
	Total	213	100.0
Other	Don't know	1	
	Not answered	26	
	Total	27	
Total		240	

Q46 If you did not have any privately funded care, was this because:

		Frequency	Valid Percent
Valid	We didn't need it/want it	135	70.7
	We were unable to pay for it	26	13.6
	Other	30	15.7
	Total	191	100.0
Other	Not answered	49	
Total		240	

Q47 Who would you consider your main source of support?

		Frequency	Valid Percent
Valid	My local patient support group	19	12
	My GP	12	8
	My hospital doctor	10	6
	My lung nurse	22	14
	Other patients/carers	8	5
	Social networking	7	5
	A friend	6	4
	My solicitor	7	5
	Health Charity	5	3
	I didn't feel I had any support	19	12
	Other	40	26
	Total	155	100.0
Other	Not answered	85	
Total		240	

Q48 Who would you consider your main source of health information?

		Frequency	Valid Percent
Valid	My local patient support group	14	8.6
	My GP	15	9.2
	My hospital doctor	46	28.2
	My lung nurse	31	19.0
	Other patients/carers	6	3.7
	Social networking	10	6.1
	A friend	3	1.8
	My solicitor	3	1.8
	Health Charity	6	3.7
	I haven't received or looked for information	8	4.9
	Other	21	12.9
	Total	163	100.0
Other	Not answered	77	
Total		240	

Q49 Who do you believe is ultimately responsible for funding research into mesothelioma?

		Frequency	Valid Percent
Valid	I believe the Government is responsible	147	69.7
	I believe the Insurance industry is responsible	32	15.2
	I believe health charities are responsible	14	6.6
	Other	18	8.5
	Total	211	100.0
Other	Not answered	29	
Total		240	

Q50 Do you feel there is a need for further campaigns in warning the public about the risk posed by asbestos?

		Frequency	Valid Percent
Valid	Yes	232	98.7
	No	3	1.3
	Total	235	100.0
Other	Don't know	1	
	Not answered	4	
	Total	5	
Total		240	

Q51 How would you rate the effectiveness of the existing campaigns in warning the public about the risks posed by asbestos?

		Frequency	Valid Percent
Valid	Very bad	74	31.6
	Bad	63	26.9
	Average	74	31.6
	Good	20	8.5
	Very good	3	1.3
	Total	234	100.0
Other	Not answered	5	
	System	1	
	Total	6	
Total		240	

Q52 From your experience, how important do you rate the need for improvement in the benefits system?

		Frequency	Valid Percent
Valid	Absolutely essential	93	41.2
	Great need	36	15.9
	Important	74	32.7
	Not as important	17	7.5
	Unimportant	6	2.7
	Total	226	100.0
Other	Not answered	14	
Total		240	

Q53 From your experience, how important do you rate the need for improvement in research into new treatments and cures?

		Frequency	Valid Percent
Valid	Absolutely essential	216	93.5
	Great need	7	3.0
	Important	6	2.6
	Unimportant	2	.9
	Total	231	100.0
Other	Not answered	9	
Total		240	

Q54 From your experience, how important do you rate the need for improvement in the legal claims process?

		Frequency	Valid Percent
Valid	Absolutely essential	107	46.7
	Great need	37	16.2
	Important	69	30.1
	Not as important	14	6.1
	Unimportant	2	.9
	Total	229	100.0
Other	Not answered	11	
Total		240	

Q55 From your experience, how important do you rate the need for improvement in health care support?

		Frequency	Valid Percent
Valid	Absolutely essential	134	57.8
	Great need	38	16.4
	Important	51	22.0
	Not as important	7	3.0
	Unimportant	2	.9
	Total	232	100.0
Other	Not answered	8	
Total		240	

Q56 From your experience, how important do you rate the need for improvement in the diagnosis process?

		Frequency	Valid Percent
Valid	Absolutely essential	160	68.7
	Great need	32	13.7
	Important	37	15.9
	Not as important	1	.4
	Unimportant	3	1.3
	Total	233	100.0
Other	Not answered	7	
Total		240	

Q57 What single thing do you believe could make the biggest difference to people living with mesothelioma?

		Frequency	Valid Percent
Valid	Continued research to find a cure	151	76.6
	More support	9	4.6
	More information	2	1.0
	More nurses	1	.5
	More specialist care	23	11.7
	Other	11	5.6
	Total	197	100.0
Other	Not answered	43	
Total		240	

Q1 Do you have mesothelioma?

	Frequency	
Yes	31	13.2
No, I am the carer/family member of the person with	15	6.4
No, I am the bereaved carer/family member of the person	188	80.3
Total	234	100.0
Not answered	6	
Total	240	

Q2 What is the gender of the person with mesothelioma?

Male	192	82.1
Female	42	17.9
Total	234	100.0
Not answered	6	
Total	240	

Q3 What is/was the occupation of the person with mesothelioma?

A Plumber/pipe fitter	18	8.4
A Plasterer	2	.9
A General builder	8	3.7
Worked in shipyard	19	8.9
A Lagger	2	.9
A Boiler maker	1	.5
An Electrician	32	15.0
A Joiner	12	5.6
A Carpenter	7	3.3
A Motor mechanic	5	2.3
Armed services	2	.9
Teacher	7	3.3
Health Care worker	2	.9
Power station worker	4	1.9
Other	93	43.5
Total	214	100.0
Not answered	26	
Total	240	

Q3Other What is/was the occupation of the person with mesothelioma: Other

	138	57.5
A moulder core maker	1	.4
Accountant	1	.4
Accounts clerk/secretary	1	.4
Administrator	1	.4
Apprentice engineer with British Rail	1	.4
Architect and artist	1	.4
Architect/surveyor	1	.4
Bakery	1	.4
Bank worker/secretary	1	.4
Car assembler	1	.4
Chartered electrical engineer in power generation	1	.4
Chartered surveyor	1	.4
Chief Engineer M.N	1	.4

Cleaner	1	.4
Cleaner / Shop assistant	1	.4
Coach builder	1	.4
Company Director	2	.8
Company Secretary\Head of Finance	1	.4
CSR	2	.8
Customs Officer	1	.4
Daughter of asbestos worker	1	.4
Decorator	1	.4
Docker	1	.4
Electrical Design Engineer	1	.4
Electrical engineer	1	.4
Electrician and power station worker	1	.4
Engineer	3	1.3
Engineer Miller	1	.4
Engineer (industrial)	1	.4
Engineer in chemical industry	1	.4
Factory worker	1	.4
Farm estate maintenance man. 20 houses on farm.	1	.4
Fireman	1	.4
Foundry Stereotyper (Printing)	1	.4
Fund Manager	1	.4
General Manager	1	.4
Geophysicist	1	.4
Glass cutter, then wages clerk for English Electric Co.	1	.4
Hairdresser / housewife	1	.4
Head of New Products in Asbestos company	1	.4
Heating engineer	1	.4
Housewife	2	.8
Housewife of carpenter washed his clothes	1	.4
IT consultant	1	.4
IT salesman	1	.4
Joiners mate	1	.4
Just general office work most of my life	1	.4
Lived near asbestos heap	1	.4
Manager in Royal Mail sorting office	1	.4
Managing Director	1	.4
Marine Engineer	1	.4
Mechanical Engineer	1	.4
Mother of mesothelioma victim	1	.4
Nursing auxiliary/Post woman	1	.4
Office and family employed	1	.4
Office job, secretary	1	.4
Office secretarial	1	.4
PA	1	.4
Painter / Decorator	2	.8
Painter and decorator	4	1.7
Plater, fabricator, pipelines inspection	1	.4
Printer	2	.8
Publisher	1	.4
Refrigeration Engineer	1	.4
Research technician working on gas turbines	1	.4
Retired	1	.4
Royal Navy	1	.4
Sales manager for engineering company	1	.4

Scaffolder	1	.4
Secretary	2	.8
Secretary to Paper Mill CEO	1	.4
Ship's Engineer	1	.4
Shorthand typist	1	.4
Small holder	1	.4
Soap and detergent manufacturing	1	.4
Sold asbestos in 1970's	1	.4
Sprayer	1	.4
Steel erector	1	.4
steel worker for 20 years after Navy	1	.4
Technical researcher	1	.4
Telephone engineer	1	.4
Theatre lighting technician	1	.4
Train driver	1	.4
Underground government office worker	1	.4
Wages clerk Turner & Newall	1	.4
Waitress, then office worker	1	.4
Waitress, then receptionist	1	.4
Warehouse man	1	.4
Worked as a metallurgist assistant for 6 months before	1	.4
Worked at Asbestos Factory, Turner and Newalls	1	.4
Worked in shipyard and power station worker. Sheeter	1	.4
Total	240	100.0

Q4 What is the first half of your postcode? (e.g. OX2, NE12 etc)

Total	18	7.5
Total	240	100.0

Q5 What was the age of the mesothelioma patient at diagnosis?

26-35	1	.4
36-50	23	9.8
51-65	117	49.8
66-70	46	19.6
71-75	35	14.9
76-80	10	4.3
81-85	2	.9
86+	1	.4
Total	235	100.0
Not answered	5	
Total	240	

Q6 How long ago was the mesothelioma diagnosed?

In the last 6 months	13	5.6
In the last 6 to 12 months	13	5.6
More than 1 year ago	23	9.9
More than 2 years ago	25	10.8
More than 3 years ago	158	68.1
Total	232	100.0
Not answered	8	
Total	240	

Q7 How long did it take for the mesothelioma to be diagnosed from the first appearance of

	Frequency	
0-6 months	151	65.4
7-12 months	43	18.6
1-2 years	20	8.7
More than 2 years	17	7.4
Total	231	100.0
Dont know	1	
Not answered	8	
Total	9	
Total	240	

Q8 Who confirmed the mesothelioma diagnosis?

A hospital doctor	217	94.8
A hospital nurse	1	.4
A GP (family doctor)	5	2.2
Someone else	6	2.6
Total	229	100.0
Dont know	1	
Not answered	10	
Total	11	
Total	240	

Q8Other Who confirmed the mesothelioma diagnosis: Other

	232	96.7
[consultant name], Glenfield Hospital	1	.4
And Postmortem	1	.4
Chest consultant	1	.4
Consultant	1	.4
Coroner at Inquest.	1	.4
Information from London Chest Hospital	1	.4
Lung specialist	1	.4
Specialist in pathology lab.	1	.4
Total	240	100.0

Q9 Was a biopsy done to confirm diagnosis?

Yes	213	91.0
No	9	3.8
Dont know	5	2.1
Other	7	3.0
Total	234	100.0
Not answered	6	
Total	240	

Q9Other Was a biopsy done to confirm diagnosis: Other

	232	96.7
After death	1	.4
After several attempts	1	.4
Biopsy done but diagnosis not made on biopsy they just	1	.4
Biopsy inconclusive, diagnosis from fluid drawn from lung	1	.4
Blind biopsy in ward done. Decided it was a virus. 2.5	1	.4

Post Mortem Done.	1	.4
Scan	2	.8
Total	240	100.0

Q10 Was the diagnosis confirmed and documented?

Yes, we received a letter	14	6.1
Yes, we were told face to face	169	73.8
Yes, we were told face to face and received a letter	35	15.3
It was never officially confirmed	1	.4
Dont know	3	1.3
Other	7	3.1
Total	229	100.0
Not answered	11	
Total	240	

Q10Other Was the diagnosis confirmed and documented: Other

	234	97.5
Attended inquest	1	.4
By autopsy results	1	.4
By telephone due to 2 weeks wait for appointment.	1	.4
Given a script to have mesomark blood test.confirming	1	.4
Phone call	1	.4
Telephone call	1	.4
Total	240	100.0

Q11a Did someone help to identify where asbestos exposure may have occurred: We already

Yes	120	100.0
Not answered	120	
Total	240	

Q11b Did someone help to identify where asbestos exposure may have occurred: Yes, by a

Yes	23	100.0
Not answered	217	
Total	240	

Q11c Did someone help to identify where asbestos exposure may have occurred: Yes, by

Yes	16	100.0
Not answered	224	
Total	240	

Q11d Did someone help to identify where asbestos exposure may have occurred: Yes, by a

Yes	82	100.0
Not answered	158	
Total	240	

Q11e Did someone help to identify where asbestos exposure may have occurred: Yes, by some

Yes	14	100.0
Not answered	226	

Total	240
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Q11f Did someone help to identify where asbestos exposure may have occurred: No help was

Yes	18	100.0
Not answered	222	
Total	240	

Q11Other Did someone help to identify where asbestos exposure may have occurred: Someone

	225	93.8
At the factory where my brother worked.	1	.4
Dad tracked down past colleagues to determine where	1	.4
Department for Work and Pensions	1	.4
Did not follow through claim as no positive outcome.	1	.4
Family Member	1	.4
Foreman told me	1	.4
Husband's work friend	1	.4
I HAVE MY LATE HUSBANDS CERTIFICATE OF	1	.4
MacMillan lung nurse specialist	1	.4
Military comrades warned of fort mcclans al closer.	1	.4
Professor at Birmingham Chest Clinic	1	.4
Still working on that.	1	.4
The patient told the hospital	1	.4
We are still trying but the business my husband worked	1	.4
Work partner	1	.4
Total	240	100.0

Q12 Do you know how the asbestos exposure occurred?

Yes, through occupation	182	77.8
Yes, through the environment	3	1.3
Yes, through a family members occupation	20	8.5
No, dont know	24	10.3
Other	5	2.1
Total	234	100.0
Not answered	6	
Total	240	

Q12 Do you know how the asbestos exposure occurred?

	1
	1
At the Inquest I was told my mum contracted it from the ovens where she had worked in the 1970s	1
	1
while he was a Panel Beater	1
	1
have been anywhere.	1

My grandfather was an Asbestos Moulder. Dad breathed in the dust when my grandfather came home in his overalls. My grandfather also died of Meso	1
Patient worked with asbestos in 1959	1
The workplace building was expanded and the company continued business whilst the alterations were being carried out.	1
Total	9

Q13 Does/did the patient claim benefits?

Yes	194	86.2
No	31	13.8
Total	225	100.0
Not answered	15	
Total	240	

Q14 Was any help provided from any of the following in making the application for the payment?

Health professional	54	33.8
Local asbestos support group	37	23.1
Health charity	6	3.8
Legal firm	29	18.1
Friend	10	6.3
Didnt receive help	18	11.3
Other	6	3.8
Total	160	100.0
Not Applicable	31	
Not answered	49	
Total	80	
Total	240	

Q14Other Was any help provided from any of the following in making the application for the

	227	94.6
Family member: daughter	1	.4
I did it all for my mum	1	.4
LOCAL HOSPICE	1	.4
MacMillan benefits advisor	1	.4
MacMillan nurse	1	.4
Macmillan nurse and solicitor	1	.4
MacMillan nurse from hospice helped.	1	.4
Nonlocal asbestos support group	1	.4
Our daughter	1	.4
Social services	1	.4
Social Services	1	.4
Solicitor helped with government lump sum	1	.4

veterans welfare officer	1	.4
Total	240	100.0

Q15 What was the quality of the help received?

Excellent	111	57.5
Good	56	29.0
Average	14	7.3
Poor	9	4.7
Terrible	3	1.6
Total	193	100.0
Not Applicable	31	
Not answered	16	
Total	47	
Total	240	

Q16 Would the application have been made without such help?

Yes	67	34.5
No	67	34.5
Dont know	54	27.8
Other	6	3.1
Total	194	100.0
Not Applicable	31	
Not answered	15	
Total	46	
Total	240	

Q16Other Would the application have been made without such help: Other

	232	96.7
As stated above none was received we had to do it all	1	.4
Didn't consider claiming.	1	.4
Found out ourselves about Lump Sum and Attendance	1	.4
I made the application	1	.4
Probably	1	.4
Probably because I tried and Aberdeen local group first	1	.4
Probably eventually but with great difficulty and stress.	1	.4
With difficulty	1	.4
Total	240	100.0

Q17 If benefits were not claimed, why was this?

Financially stable/did not need the money	2	6.7
Unaware of eligibility to claim benefits	10	33.3
Didnt understand the process	1	3.3
Not someone who would normally claim benefits from the	6	20.0
Expected larger award from employer/insurer if I had not	1	3.3
Compensation from the employer/insurer expected	1	3.3
Was not eligible	3	10.0
Other	6	20.0
Total	30	100.0
Not Applicable	31	
Not answered	179	
Total	210	

Total	240
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Q17 Other If benefits were not claimed, why was this: Other

	233	97.1
Attendance allowance.	1	.4
Benefit was claimed, see above	1	.4
Benefits claimed	1	.4
did claim	1	.4
Initially turned down for benefits. Had to appeal. Took 2	1	.4
Solicitor	1	.4
Solicitor sorted it	1	.4
Total	240	100.0

Q18 Was a legal claim for compensation made for the asbestos exposure?

Yes, in the process of making a claim now	57	24.9
Yes, made a claim in the past	148	64.6
No	24	10.5
Total	229	100.0
Not answered	11	
Total	240	

Q19 Who first suggested it might be possible to make a claim for compensation?

The GP	5	2.6
The hospital doctor	57	29.2
The lung nurse	50	25.6
Local support group	28	14.4
Health charity	2	1.0
An internet search	6	3.1
Trade Union	15	7.7
We were contacted by a legal firm	7	3.6
Other	25	12.8
Total	195	100.0
Not applicable	24	
Not answered	21	
Total	45	
Total	240	

Q19 Other Who first suggested it might be possible to make a claim for compensation: Other

	216	90.0
A fellow mesothelioma sufferer we met at Glenfield	1	.4
Can't remember	1	.4
Chris Knighton	1	.4
Coroner	1	.4
Family	1	.4
Family member	1	.4
Fellow victim	1	.4
Friend who was a lawyer	1	.4
Got booklet from hospital	1	.4
i knew as father died from meso	1	.4
I made the claim after my mum was refused	1	.4
MacMillan nurse at hospital during diagnosis	1	.4

MacMillan nurse from hospital.	1	.4
McMillan nurse	1	.4
My husband already knew he could.	1	.4
Own knowledge	1	.4
Tayside Asbestos Atcion	1	.4
We contacted solicitors.	1	.4
We found out info.	1	.4
We knew he was entitled.	1	.4
we sort compensation	1	.4
We were aware of this	1	.4
We were aware, as previous family member died.	1	.4
We were aware.	1	.4
Total	240	100.0

Q20 Who helped find details of a solicitor to contact?

GP	2	1.0
Hospital doctor	16	8.4
Lung nurse	40	20.9
Local support group	50	26.2
Health charity	1	.5
An internet search	10	5.2
Trade Union	27	14.1
We were contacted by a legal firm	2	1.0
Other	43	22.5
Total	191	100.0
Dont know	9	
Not applicable	24	
Not answered	16	
Total	49	
Total	240	

Q20Other Who helped find details of a solicitor to contact: Other

	193	80.4
A friend recommended the solicitor we eventually used.	1	.4
Already aware of firm specialising in these matters	1	.4
Asbestos support based in Cheshire, 70 miles away.	1	.4
Coroner	2	.8
Daughter	1	.4
Daughter works for a solicitor	1	.4
Family	2	.8
Family contact	1	.4
Family member	2	.8
Family member (myself)	1	.4
Family solicitor	1	.4
Fellow patient recommended his solicitor	1	.4
Friend	2	.8
friend recommended	1	.4
Hospital booklet	1	.4
Husband's brother	1	.4
I already knew a solicitors practice	1	.4
I contacted solicitors after my husband's death.	1	.4

I contacted the law society on behalf of my husband	1	.4
I used one from MKMRF site	1	.4
MacMillan nurse	2	.8
Mesothelioma society	1	.4
Mick Knighton Meso Research Fund	1	.4
My brother	1	.4
My friend who was a practice manager.	1	.4
My sons	1	.4
Newspaper advert	1	.4
On our own	1	.4
oncologist	1	.4
Our son	1	.4
Ourselves	1	.4
Ourselves Pot luck	1	.4
Recommended by another solicitor.	1	.4
Recommended by other patients	1	.4
Saw ad in paper	1	.4
St. Joseph's Hospice and the support group.	1	.4
Tayside Asbestos Action	1	.4
Trade Union originally and then I later researched another firm	1	.4
We already knew of a solicitor	1	.4
We chose our family solicitor.	1	.4
We knew who we wanted	1	.4
We sorted it out ourselves	1	.4
Total	240	100.0

Q21 How long after diagnosis was contact made with a solicitor?

Immediately	98	47.8
Up to 3 months	61	29.8
4-6 months	23	11.2
7-12 months	10	4.9
1-2 years	9	4.4
More than 2 years	4	2.0
Total	205	100.0
Dont know	6	
Not applicable	24	
Not answered	5	
Total	35	
Total	240	

Q22 Was the solicitor a mesothelioma specialist?

Yes	172	83.1
No	11	5.3
Dont know	24	11.6
Total	207	100.0
Not applicable	24	
Not answered	9	
Total	33	
Total	240	

Q23 Which solicitor did you use?

	Frequency	
	37	15.4
Alan Care	1	.4
Anthony Coombs	2	.8
Beecham and Peacock	1	.4
Birchall Blackwell	1	.4
Blackett, Hart & Pratt	1	.4
Bond Pearce	3	1.3
Boyes Turner	4	1.7
Browell Smith & Co.	8	3.3
BTMK	1	.4
Burroughs Day	1	.4
Corries	1	.4
Danone	1	.4
Davies & Partners, Bristol	1	.4
Deaney & Co. Belfast	1	.4
Digby Brown	2	.8
Don't know	24	10.0
Early Luccarelli Strauss	1	.4
Erwin Mitchell	1	.4
Field Fisher Waterhouse	5	2.1
Grayson's	1	.4
Hamowell & [unreadable comment] York	1	.4
Humphreys & Co.	1	.4
Irwin Mitchell	25	10.4
Irwin Mitchell Newcastle	1	.4
Irwin Mitchell, Sheffield	1	.4
JMW Solicitors	1	.4
John Donkin	1	.4
John Pickering & Partners	4	1.7
John Pickering & Partners LLP, Liverpool	1	.4
joseph skinner	1	.4
Lamport Bassett	2	.8
Larcombes	1	.4
Larcomes Solicitors	1	.4
Lawford Kidd	1	.4
Leigh day	1	.4
Leigh Day & Co.	2	.8
Longden, Walker, Renney, Sunderland	1	.4
Marsden	1	.4
McCool Patterson	1	.4
mph	1	.4
Oliver & Co.	1	.4
Pannone	3	1.3
Patrick Murphy	1	.4
pattinson and brewer originally then changed to john	1	.4
Pattison and Brewer	1	.4
Penny Woods	1	.4
Pickering Manchester	1	.4
Price Fisher Waterhouse	1	.4
Rowley Ashworth	3	1.3
Russell Jones & Walker	3	1.3
Simpson et al.	1	.4
Simpsons & Brooke	1	.4
Sintons	1	.4

Thompsons	70	29.2
Thompsons Birmingham	1	.4
Trade and General Washers Union, then Woods, then	1	.4
Trade Union	1	.4
Trainor & Sons	1	.4
Total	240	100.0

Q24 In which part of the UK did the claim process take place?

	39	16.3
Total	240	100.0

Q25 On how many occasions were you asked to provide information to the solicitor?

Just once	29	14.0
2-3	40	19.3
4-6	42	20.3
7 or more	60	29.0
Dont know	27	13.0
Other	9	4.3
Total	207	100.0
Not applicable	24	
Not answered	9	
Total	33	
Total	240	

Q25Other On how many occasions were you asked to provide information to the solicitor: Other

	230	95.8
A few	1	.4
A number of times	1	.4
Endless, it felt at times as if I was doing their job	1	.4
Gave what information I could.	1	.4
Many	1	.4
many over 3 years	1	.4
On loads of occasions	1	.4
Over 20 Still ongoing.	1	.4
Thompsons put undue pressure to do the work for them.	1	.4
We had a vist and a few calls & emails	1	.4
Total	240	100.0

Q26 How regularly was information about the claim communicated from the solicitor?

Weekly	14	7.0
Fortnightly	21	10.5
Monthly	42	21.0
Every 1-3 months	43	21.5
Irregularly	31	15.5
Solicitor had to be chased to get information	9	4.5
Dont know	24	12.0
Other	16	8.0
Total	200	100.0
Not applicable	24	

Not answered	16
Total	40
Total	240

Q26 Other How regularly was information about the claim communicated from the solicitor:

	221	92.1
As and when info was required from us	1	.4
As and when necessary	2	.8
As and when necessary.	1	.4
Can't remember, but it was regular.	1	.4
Every time there was anything to report	1	.4
Frequently	1	.4
In contact when needed, wonderful solicitor	1	.4
My father decided not to proceed as he was not 100% sure of which employer.	1	.4
Only got in touch a couple of times.	1	.4
Regular contact, time varied.	1	.4
Regularly when any changes needed to be made.	1	.4
Regularly when information received from other parties, excellent communication	1	.4
Regularly, as available.	1	.4
Solicitor had to be chased to get information	1	.4
Sporadic and had to be chased	1	.4
Very efficient as and when necessary	1	.4
Very straightforward, communicated once.	1	.4
When necessary	1	.4
Total	240	100.0

Q27a What information was requested: Witness statement?

Yes	116	100.0
Not applicable	24	
Not answered	100	
Total	124	
Total	240	

Q27b What information was requested: Employment history?

Yes	180	100.0
Not applicable	24	
Not answered	36	
Total	60	
Total	240	

Q27c What information was requested: Pay slips?

Yes	70	100.0
Not applicable	24	
Not answered	146	
Total	170	
Total	240	

Q27d What information was requested: Proof of diagnosis?

	Frequency	
Yes	146	100.0
Not applicable	24	
Not answered	70	
Total	94	
Total	240	

Q27e What information was requested: Information on care and dependents?

Yes	108	100.0
Not applicable	24	
Not answered	108	
Total	132	
Total	240	

Q27f What information was requested: Receipts for equipment, house repairs and maintenance

Yes	70	100.0
Not applicable	24	
Not answered	146	
Total	170	
Total	240	

Q27g What information was requested: Dont know?

Yes	12	100.0
Not applicable	24	
Not answered	204	
Total	228	
Total	240	

Q27h What information was requested: Other?

Yes	8	100.0
Not applicable	24	
Not answered	208	
Total	232	
Total	240	

Q27Other What information was requested: Other?

	232	96.7
Details of all DIY jobs my husband did.	1	.4
Hospital appointments, Dad's work history	1	.4
Medical Records, Bank statements etc	1	.4
Might have been other information requested	1	.4
My grandfathers employment history.	1	.4
Nursing care costs	1	.4
There may have been other pieces of information requested	1	.4
We had no idea when or where my husband was contaminated. He had no long term exposure to asbestos but being a surveyor, he did go into buildings where it would have been.	1	.4

Total	240	100.0
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Q28 Did the solicitor visit the claimants home at any point during the claim process?

Yes	160	76.9
No	39	18.8
Dont know	9	4.3
Total	208	100.0
Not applicable	24	
Not answered	8	
Total	32	
Total	240	

Q28 Did the solicitor visit the claimants home at any point during the claim process?

	136	56.7
1	32	13.3
2	25	10.4
2 or 3	1	.4
2-3	5	2.1
3	14	5.8
3-4	1	.4
4	9	3.8
4-5	3	1.3
5	4	1.7
6	3	1.3
6-7	1	.4
Always	1	.4
Don't know	1	.4
I only know of one visit that lasted about 2.5 hours, but	1	.4
Ongoing	1	.4
Several	1	.4
Still ongoing	1	.4
Total	240	100.0

Q29 How long did it take the solicitor to formally start the claim? (i.e. send the letter of claim to

Immediately	91	45.0
Up to 3 months	46	22.8
4-6 months	16	7.9
7-12 months	3	1.5
More than one year	5	2.5
Dont know	41	20.3
Total	202	100.0
Not applicable	24	
Not answered	14	
Total	38	
Total	240	

Q30 Did the solicitor start court proceedings?

Yes	103	51.0
No	67	33.2
Dont know	32	15.8
Total	202	100.0

Not applicable	24
Not answered	14
Total	38
Total	240

Q31 If the solicitor started court proceedings, what was the venue for the claim?

Royal Courts of Justice - Mesothelioma Fast Track	30	29.1
Local High Court	12	11.7
Local County Court	7	6.8
Dont know	45	43.7
Other	9	8.7
Total	103	100.0
Not applicable	123	
Not answered	14	
Total	137	
Total	240	

Q31Other If the solicitor started court proceedings, what was the venue for the claim: Other

	230	95.8
court of session edinburgh	1	.4
Court of session, edinburgh	1	.4
COURT PROCEEDINGS WERE STARTED AT MY HOME AS MY HUSBAND TO ILL TO TRAVEL TO COURT	1	.4
Federal court	1	.4
High court of justice	1	.4
London	1	.4
Never went to court as husband died before date set.	1	.4
Not needed yet as admitted liability.	1	.4
Not sure yet	1	.4
Settled out of court.	1	.4
Total	240	100.0

Q32 Have there been any delays in your claims process?

Yes, missing paperwork	3	1.7
Yes, problems tracing employer/s	23	12.8
Yes, employer/Insurer did not accept that I was employed	1	.6
Yes, employer/Insurer did not accept that I was exposed	4	2.2
Yes, employer/Insurer requested further documentation	7	3.9
Yes, employer/Insurer did not accept responsibility	4	2.2
Yes, employer/Insurer did not accept liability for the claim	12	6.7
No, there were no delays	90	50.0
Other	36	20.0
Total	180	100.0
Not applicable	24	
Not answered	36	
Total	60	
Total	240	

Q32Other Have there been any delays in your claims process: Other

	Frequency	
	205	85.4
As self employed, there were delays but as I stated before, the solicitors were no good and it was a mistake to have them.	1	.4
Claim ongoing	1	.4
Claim was dropped.	1	.4
Could not identify insurer	1	.4
Couldn't find insurer. Trigger litigation.	1	.4
Defendant tended to leave everything generally until it had to be dealt with	1	.4
Didn't go anywhere.	1	.4
Don't know. Dad dealt with it.	1	.4
Fairchild High Court claim.	1	.4
Fairchild Report	1	.4
Firm went bankrupt. Received £6000, might be more I don't know. Now getting war widow's pension.	1	.4
He died in process.	1	.4
Husband too ill. Did not want to worry so set claim in motion to proceed at later date.	1	.4
My husband did not work for many people so a couple of compsnies did not exist any more	1	.4
My husband had also worked as a marine engineer. The solicitor was informed by a barrister that only proof of one exposure was necessary. Time had been wasted.	1	.4
My husband passed away 18 months after diagnosis, which has delayed his claim.	1	.4
My husband passed away so i am claiming on his behalf	1	.4
Only delay with interim payment.	1	.4
Passed from solicitor to solicitor.	1	.4
Problems tracing insurers	2	.8
Settled out of court on day started	1	.4
Solicitor hasn't been very helpful.	1	.4
Solicitor said there was a 69mth delay waiting for paperwork from hospital	1	.4
Step dad diagnosed in March 2012, Passed away November 2012,. Still waiting on confirmation re claim against TATA STEEL.	1	.4
Still in progress	1	.4
Still waiting	1	.4
To late for information, Father died etc, no proof	1	.4
Trigger issue	1	.4
Unable to identify source of asbestos exposure.	1	.4
Unable to proceed with claim.	1	.4
Value of claim due to mum's death.	1	.4
Waited for Turner & Newall to set aside fund for claimants as parent company , FederalMogul were in administration.	1	.4
Yes hospital notes were missing for 3 weeks	1	.4
yes, trigger litigation	1	.4

Total	240	100.0
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Q33 What was the outcome of the claims process?

Settled out of court	133	65.8
Went to court and was awarded compensation	17	8.4
Unable to proceed with claim	16	7.9
Still in process of making claim	29	14.4
Other	7	3.5
Total	202	100.0
Not applicable	24	
Not answered	14	
Total	38	
Total	240	

Q33Other What was the outcome of the claims process: Other

	234	97.5
No insurer, no claim	1	.4
No outcome.	1	.4
Ongoing	2	.8
Still looking for insurer.	1	.4
To be decided	1	.4
Total	240	100.0

Q34 If your claim went to trial at court, how did you feel?

We were glad we went to court	11	47.8
We were not happy to go to court	4	17.4
Other	8	34.8
Total	23	100.0
Not applicable	24	
Not answered	193	
Total	217	
Total	240	

Q34Other If your claim went to trial at court, how did you feel: Other

	235	97.9
Didn't attend. Judgement made on paperwork.	1	.4
Hasn't gone yet. Been adjourned.	1	.4
Needed closure of some kind.	1	.4
Still working on that.	1	.4
Waiting for a date	1	.4
Total	240	100.0

Q35 If the claim was settled out of court, was there any pressure to do so?

Yes	16	11.8
No	103	75.7
Dont know	12	8.8
Other	5	3.7
Total	136	100.0
Not Applicable	24	
Not answered	80	

Total	104
Total	240

Q35 Other If the claim was settled out of court, was there any pressure to do so: Other

	236	98.3
Advised to.	1	.4
Barrister Advice	1	.4
Defendant settled two days before court case	1	.4
I felt legally blackmail that I should accept the offer	1	.4
Total	240	100.0

Q36 If the claim settled out of court, did it feel like a fair settlement?

Yes	88	65.7
No	28	20.9
Other	18	13.4
Total	134	100.0
Not applicable	24	
Not answered	82	
Total	106	
Total	240	

Q36 Other If the claim settled out of court, did it feel like a fair settlement: Other

	222	92.5
As was to expect at the time, to get less as it went on.	1	.4
But felt like blood money. Nothing or no amount of money would make the pain of losing my husband any easier to bear.	1	.4
Deceased partner felt it was unfair.	1	.4
Hard to argue when you have no idea what value to expect. Impossible to put a value on your life. Money seemed very unimportant at the time but on reflection took at least one worry away.	1	.4
I felt BHP didn't understand fully as to how my late husband worked due to overseas contracts and future employment thereby losing me and my family what he was due.	1	.4
Money is never compensation for loss of life.	1	.4
My husband was close to death when the insurers agreed a sum. More would have had to be paid if I'd waited until [name removed] died. The claim had been reduced by £20,000 but we didn't want to appeal. I was keen to settle while [name removed] was alive to give him peace of mind. That was worth any sum of money.	1	.4
No amount of money is fair. My brother was only 54 years. It should not have happened.	1	.4
No, but only because a life had been taken, and it seemed a small amount to attribute to a life, although any amount would have seemed trivial.	1	.4

Not initially. Refused first offer. Second offer better but still would have made more money if I hadnt got condition and worked to retirement age as planned	1	.4
Not really two people in my family had died because of the defendant's negligence.	1	.4
Not sure really. Solicitor said it was fair and might not have got amount if went to court. Can you put a price on a life?	1	.4
Nothing compensates for my husband.	1	.4
Nothing is ever enough for a life	1	.4
Nothing would seem like a "fair settlement" my husband dies.	1	.4
The amount was fair but it was too late for my partner to benefit from it.	1	.4
We would have been given a larger sum of compensation if we had gone to court but I didn't want to put my husband through such an ordeal. We were happy with the settlement we received.	1	.4
What price compensates a human life!	1	.4
Total	240	100.0

Q37 If the claim was successful, how long did it take from the time the solicitor was contacted to

Up to 6 months	28	20.7
7-12 months	41	30.4
1-2 years	41	30.4
More than 2 years	25	18.5
Total	135	100.0
Not yet complete	7	
Dont know	12	
Other	4	
Not applicable	24	
Not answered	58	
Total	105	
Total	240	

Q37Other If the claim was successful, how long did it take from the time the solicitor was

	237	98.8
6 years	1	.4
Four years	1	.4
Original solicitor did not go to court, john pickerings did	1	.4
Total	240	100.0

Q38 At the point the settlement amount was agreed, how did you feel about the time it took to

Deeply distressed	34	21.5
Unhappy	35	22.2
Satisfied	77	48.7
Happy	12	7.6
Total	158	100.0
Not applicable	24	
System	58	
Total	82	

Total

240

Q38 At the point the settlement amount was agreed, how did you feel about the time it took to

	191	79.6
As the firm he worked for did not seem to have been insured.	1	.4
At first I was not going to claim and then I thought of my family and the years I would lose with them.	1	.4
Because it was too late for my partner to benefit from it.	1	.4
Because of uncertainty of the outcome of the Fairchild case, my husband died before his claim was settled, not knowing if his family would be able to survive financially.	1	.4
But disappointed at the value of life.	1	.4
But took a long time as a lot of work was involved.	1	.4
But unfortunately, the claimant died before the case was settled.	1	.4
Case was put back on a couple of occasions because I was well	1	.4
Claim was delayed several times due to appeals from insurers. Solicitor kept us informed but felt distressed at delays thinking there was no end to things.	1	.4
Company would still not accept liability.	1	.4
Did a lot of investigation myself	1	.4
Distraught, cheated and angry that it took over three years to finalise and that my husbands life was worth so little. After nearly three years of forever providing information there had previously been a test case in London whereby everything was on hold and there was a strong possibility that after three years of hell that the case would be cancelled, I felt overwhelmed with stress	1	.4
Firm didn't take part and had no claim in it, as they said I had not been exposed, but I had.	1	.4
For me, the settlement ran smoothly.	1	.4
Given the claim was on the basis of probability, I was very satisfied with the settlement.	1	.4
Has not been settled	1	.4
I felt at the time I was chasing the solicitor. When the solicitor felt he could win the claim it moved quickly.	1	.4
I was distrssing going over the diagnosis, treatments and researching, it was a constant reminder of what had happened to my husband. Even thought the solitor was fantastic.	1	.4
I was more than happy with Thompsons. The delay was by the other side. My wife had died when it was settled.	1	.4
I wish I did still have back with me at this time	1	.4
If we had left the case open, we would have had a lot more than we did.	1	.4

Insurance company refused to pay until the trigger liability issue was settled via High Court, Court of Appeal and Supreme Court.	1	.4
It felt to me like a consolation for something that, in the end, was going to kill my father.	1	.4
It was a fair amount but it would never bring my husband back	1	.4
It was obvious to all concerned that the employer was not cooperating.	1	.4
Money gave us security that is all my husband wanted for me. It does nothing to help the pain and torture my husband suffered. It is a very cruel disease.	1	.4
My husband died before the claim was settled.	1	.4
My husband had signed several statements whenever small changes were made. We thought it would have been easier to get all the information together first. My husband was tempted to drop the claim as it took so long.	1	.4
My husband sadly died before settlement was agreed. The claim then became mine. It was a very distressing time, having nursed my husband for 6 months and him never knowing the outcome.	1	.4
My husband was no longer alive and died without knowing the outcome of the claim.	1	.4
My husband was relieved when the legal process finished. The solicitors were very good but he did not like being reminded how ill he was.	1	.4
My husband was very ill before settlement was reached and only had weeks left of life.	1	.4
No amount of money would compensate for my otherwise very healthy father being diagnosed with this awful disease that he contracted from working many years before in the docks. He had a photo of himself covered in asbestos and although the MOD could not argue I think the time until settlement was appalling.	1	.4
Not yet there	1	.4
Process took place during chemo and caused additional stress when my husband was feeling very ill. Also took time and effort when he was feeling better and trying to make most of the time left.	1	.4
Relieved that my son's boys (then 7 and 9) would have some security.	1	.4
Seemed my husband was just a number to his former employers.	1	.4
Solicitor very helpful but we were thwarted at every turn by uncooperative attitude of insurance companies.	1	.4
Still ongoing	1	.4
Still working on that.	1	.4

The case was unusual because it involved a second solicitor taking the first solicitor to court for losing the file and then saying we were out of time to make a claim, so it was damages against the first solicitor.	1	.4
The claim was started while my husband was alive, settlement was received 18 months after his death.	1	.4
The money did not seem important compared to his illness.	1	.4
The settlement has not been agreed yet.	1	.4
To me, it was blood money. I did not want to claim. No money would bring my husband back and he was only 52 years old. He only worked with asbestos for 3 months and lost his life.	1	.4
Told to take offer, i.e. If went to court could lose out.	1	.4
Too much hassle for someone who is already too ill.	1	.4
Very hard to grieve when you have to relive all the details of mesothelioma and caring for a loved one suffering in pain and visiting solicitors giving details.	1	.4
Work partner was pursuing a claim so all information was on hand. This took shorter time. He was also successful.	1	.4
Total	240	100.0

Q39 How long did it take from the time payment was agreed to actually be paid the claim?

One month	50	37.3
Two months	38	28.4
3-6 months	17	12.7
6-12 months	5	3.7
Over 1 year	5	3.7
Still waiting	11	8.2
Other	8	6.0
Total	134	100.0
Dont know	18	
System	88	
Total	106	
Total	240	

Q39Other How long did it take from the time payment was agreed to actually be paid the claim:

	230	95.8
Around two weeks	1	.4
Cant remember but we had to wait for the outcome of the	1	.4
Cheques came in at different times as various employers	1	.4
Immediate	1	.4
No money as company involved is dormant and it	1	.4
Not sure. Fairly rapidly.	1	.4
Payment was made at different intervals	1	.4
Payment was paid very quickly.	1	.4
Received in instalments	1	.4
We appealed as he got a general payment and we asked	1	.4

Total	240	100.0
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Q40 At the point the payment was actually paid, how did you feel about the time it took to get to

Deeply distressed	31	20.1
Unhappy	30	19.5
Satisfied	79	51.3
Happy	12	7.8
Delighted	2	1.3
Total	154	100.0
Not applicable	24	
System	62	
Total	86	
Total	240	

Q40 At the point the payment was actually paid, how did you feel about the time it took to get to

	197	82.1
After nearly 3 years i was just pleased it was over because i felt i could finally try and get on with my life. Easy said then done. The money means nothing to me.	1	.4
All the time my husband was ill, it was unhappy and difficult and a distressing time.	1	.4
Because a successful claim had been reached when we were originally told we didn't have a good chance because it would be difficult to prove the source.	1	.4
Can never try to get on with life. Always hanging over you.	1	.4
Felt insurance company were not taking responsibility and trying to dodge paying the claim, even after employer admitted liability in exposing person to asbestos which killed them.	1	.4
Felt that it had been completed quickly.	1	.4
For me, it wasn't about the money. We were ok. It was about getting justice for my husband and brother. I was numb, not elated. How can you feel happy at the loss of loved ones? I didn't touch the money for 2 years.	1	.4
How can you put a price on someone's life? I would rather have nothing and live in a field just to be with my husband, but now I think he's still looking after me.	1	.4
I almost gave up, as it had taken so much time and my husband had already died. I just wanted an end to the process.	1	.4
I was very impressed with Thompsons. I could not fault them.	1	.4
It felt to me like a consolation for something that, in the end, was going to kill my father.	1	.4
It was a distressing time dealing with the grief, and it was 'strange' money.	1	.4

It was a very stressful time trying to cope with the disease and treatment and all the information was required	1	.4
It was over 3 years before a settlement was made.	1	.4
It was so quick I couldn't believe it was over.	1	.4
It wasn't as important as having the justice done.	1	.4
Money doesn't replace life.	1	.4
My deceased partner felt he shouldn't ever have been in a position to have to make a claim because he should never have been diagnosed with mesothelioma through exposure at work.	1	.4
My Granddad was happy to be able to have the money to pass to family. As his carer, no amount of money was worth his life.	1	.4
My husband died before the claim came through as the court case had to be changed to myself his wife to start proceedings afresh	1	.4
My husband managed to get benefits of chairlift, scooter, special chair, holiday, etc. to make life as comfortable as possible.	1	.4
My partner had died before the settlement was paid.	1	.4
No public liability insurance, solicitor has tried everything possible. My family are never going to receive this money	1	.4
Not been settled yet	1	.4
Not happened yet but feel I cannot move on and grieve properly as still ongoing. It is almost a year since my husband died, over a year since the case started.	1	.4
Although they admitted liability which was a relief, I expected it to be over before now. I want to be left alone to grieve.		
Once discussed and agreed with solicitor, payment was made very quickly.	1	.4
Patient did apprenticeship as a plumber with local firm that went bankrupt. On submarine after that as a mechanical engineer, working with asbestos on both jobs.	1	.4
Relieved and very thankful.	1	.4
Relieved it was finally over but thankful that my husband who lived only 13 weeks after diagnosis didn't see how little his life was valued. I feel very bitter about it all.	1	.4
Satisfied because my husband received his compensation before he died.	1	.4
Some relief, but serious health issues deeply distressing.	1	.4
Still ongoing	1	.4
Still waiting	1	.4
Still waiting for payment	1	.4
Still working on that.	1	.4
This was finally paid 2 weeks before my husband died.	1	.4
Time and amount were irrelevant.	1	.4

Told to take offer, i.e. If went to court could lose out.	1	.4
Very unhappy that payment was deferred because of tactics of insurance co. We had definite proof of where and how my husband contracted this awful painful disease.	1	.4
We wanted the claim to be dealt with quickly so as to avoid the distress of prolonged action	1	.4
We were satisfied, although the amount was nothing compared to the death sentence my husband had received.	1	.4
Worst time to be fighting for compensation	1	.4
You are going through enough trauma with the illness.	1	.4
You can do without this struggle to get justice.		
Total	240	100.0

Q41 Was an interim payment from the responsible employer or insurer provided?

Yes	57	37.0
No	61	39.6
Dont know	36	23.4
Total	154	100.0
Not applicable	24	
Not answered	62	
Total	86	
Total	240	

Q42 Do you know when this payment was made?

Within about 21 days of starting a claim	8	7.9
When the case went before a Judge or Master in Court	10	9.9
At some other time	20	19.8
Dont know	58	57.4
Other	5	5.0
Total	101	100.0
Not applicable	24	
Not answered	115	
Total	139	
Total	240	

Q42 Do you know when this payment was made: Other

	233	97.1
14 months.	1	.4
About 3 weeks before final payment	1	.4
About 6 weeks.	1	.4
About 9 months after starting claim	1	.4
After long delay at insistence of solicitor.	1	.4
didnt get one	1	.4
I believe well over a year	1	.4
Total	240	100.0

Q43 If unable to proceed with a claim, what reason was given for this?

Not enough evidence	11	28.9
Unable to trace employer	3	7.9
Unable to trace insurer	2	5.3
Dont know	12	31.6
It wasnt worth proceeding	5	13.2
Other	5	13.2
Total	38	100.0
Not applicable	24	
Not answered	178	
Total	202	
Total	240	

Q43 If unable to proceed with a claim, what reason was given for this: Not worth proceeding

	228	95.0
Coroner's verdict natural causes. Solicitor dropped the	1	.4
Exposure unknown.	1	.4
I would like the system to improve	1	.4
My father was only 100% sure of the employer that could	1	.4
No positive way of knowing where asbestos was.	1	.4
Not able to clarify where mesothelioma was contacted.	1	.4
not applicable	1	.4
Over 2 years had elapsed from my brother's death and	1	.4
Terry Pride solicitors withdrew, due to Proctor and	1	.4
They denied use of asbestos.	1	.4
Unable to find source that offered reasonable chance of	1	.4
We proceeded with a claim	1	.4
Total	240	100.0

Q43 If unable to proceed with a claim, what reason was given for this: Other

	235	97.9
Case still ongoing to date.	1	.4
First solicitor didn't pursue claim because of insurer, john	1	.4
Original employer had changed hands and they claimed	1	.4
Still waiting news from solicitor.	1	.4
Working at past income	1	.4
Total	240	100.0

Q44 From your experience, what would you suggest the most important improvements to the

No changes necessary, I was very happy with it	101	61.2
I would suggest the following:	64	38.8
Total	165	100.0
Not applicable	24	
Not answered	51	
Total	75	
Total	240	

Q44 From your experience, what would you suggest the most important improvements to the

	154	64.2
A much more rapid conclusion, compensation should be	1	.4
within the claimants life time if at all possible.		

A quicker claims process	1	.4
A regional specialist to help the patient before solicitor contacts at time of diagnosis to explain what's involved.	1	.4
A time limit set on insurance companies to reach a reasonable settlement.	1	.4
Apart from immediate family, how does the death of a son/daughter affect elderly parents and siblings, who also may become homeless without their help?	1	.4
At a time when the family were trying to come to terms with the prognosis, it was cruel having to continuously provide evidence of contact with asbestos and it became worse as the cancer progressed and my husband was too ill to deal with this.	1	.4
Be put in touch with a specialist charity. Mick Knighton Fund were great.	1	.4
Better information and help contacts.	1	.4
Claimants need settlement immediately diagnosis is confirmed.	1	.4
Claims to be settled more quickly.	1	.4
xxx were sensitive and efficient when helping my mum.	1	.4
An amazing team, thank you.		
Empathy and compassion from the solicitor acting for the claimant.	1	.4
Everything made easier and quicker.	1	.4
Faster process	1	.4
Faster settlements.	1	.4
Fastrack help from a solicitor with proven success with tracking mesothelioma illness.	1	.4
Felt claim process was very good our only point is delay from insurers in payment	1	.4
For a speedy process, rather than the case to go on over years which has the most adverse effect on the bereaved family.	1	.4
For employers who have been proved negligible to be unable to fight it.	1	.4
For the claim to be a lot quicker, especially when you are financially worse off.	1	.4
I didn't think it worth pursuing at the time and when I did I found out there was a time limit on claiming, I wish I had known before starting. I should have been more prepared if going ahead for a claim	1	.4
I understand/know that in the 11 years since my husband died, there have been changes for a good time, but insurers and government have created a lot of stress for sufferers and families.	1	.4
I was asked to consent to having my life expectancy calculated by my doctor so compensation could be adjusted if it was lower than my deceased husband. Deeply distressing.	1	.4

I was fortunately dealt with speedily and sympathetically. For others, process should be dealt with as quickly as possible.	1	.4
I would like the system to improve	1	.4
If the solicitor cant find the employers as in my husbands case then where can the solicitor go from there. I dont know how much time they are allocating to my husbands case. There is no way that we can tell. It is disapointing that there seems to be no more that they can do. My husband died on the 14th April 2012 and I believe they have still very little information to go on.	1	.4
If you have a proven case surely the outcome should not take so long.	1	.4
ignore above, can't continue without tickingi would like laws to change so i could chase the parent company of a dormant company. mine is owned by pilkingtons but no chance of compensation	1	.4
Improvement in the time it takes.	1	.4
In my experience, it ran smoothly.	1	.4
Information at diagnosis.	1	.4
Insurers penalised for missing paperwork and a 12 month limit from start to finish.	1	.4
It should be fast tracked as my claim lasted two years	1	.4
It shouldn't take so long. It's such a difficult time in any case.	1	.4
Kept informed.	1	.4
Less paperwork. Phone calls etc. Maybe someone to take charge of it all.	1	.4
Make it faster, too much dragging along. Think about the family and patient who are still very shell shocked and dealing with the diagnosis.	1	.4
Make the process quicker and less stress for the patient and family. Insurers should be accountable for the damage they have done and not delay proceeding by trying to find delays to put in the way of paying out.	1	.4
More communication with solicitor it goes very quiet once the claim is going ahead , and with no communication you dont know what is going on, perhaps a monthly update.	1	.4
More contact and insurer not playing games with our feelings. Just as we thought we were near end. Insurers wanted more info. Very distressing.	1	.4
More face to face contact. My husband died 9 months after claim was settled. No one ever told us his illness was terminal. They said prognosis was good.	1	.4
More help with finding a specialist solicitor	1	.4
More information once diagnosed regarding claims and benefits procedure and more awareness of mesothelioma.	1	.4
More speedy conclusion.	1	.4

More thorough communication between all parties.	1	.4
My dad didn't want to make a claim as he knew that it wouldn't change the outcome. However, I think he felt pressurised by the hospital into making a claim to highlight the issue of mesothelioma. It didn't change the outcome and the case dragged on for two years after his death before it was thrown out. This caused distress to my mum who kept being reminded of her loss. So possibly speed up the process so that sufferers may actually see the result before they die!	1	.4
Not sure you can change in the hands of others. Maybe government could take some responsibility.	1	.4
Not to take so long.	1	.4
Once diagnosed, should be an interim payment to help with living with this dreadful cancer.	1	.4
Once liability is accepted the process should have a time limit for completion.	1	.4
One dedicated point of contact for all queries for the whole of the country be it, solicitors, benefits, medical etc thereby relieving the stress of not knowing who to speak with and being passed from pillar to post	1	.4
paperwork seems to be duplicated. Some information was asked for towards the end of the claim would have appreciated being asked for this in the beginning when it was still fresh in my mind.	1	.4
Should be made much quicker. My husband died 11.5 years ago. I understand that things have improved since then.	1	.4
Should get a solicitor who is experienced in this field	1	.4
Simplify it! Ability to access documents before starting formal claim like FOI request.	1	.4
Solicitors take on the work, not expect the client to do groundwork for them.	1	.4
Speed up the process so that those suffering with mesothelioma can benefit before they die.	1	.4
Speed up the process. My brother only lived one year after receiving his claim and most of that time he was not well enough to use it for a holiday.	1	.4
Speed.	1	.4
SPEEDIER PROCESS IN ALL AREAS FROM START TO FINISH	1	.4
Suggest it's an industrial disease and compensate sufferers for just being diagnosed with it.	1	.4
That claims are process as quickly as possible because the stress caused is unfair the the sufferer and the family	1	.4
That every mesothelioma victim is treated the same. Everyone contracts the disease from asbestos, which is an industrial carcinogen. It doesn't matter where it comes from.	1	.4

That insurers are made to supply information about which companies they have insured in the past.	1	.4
That the patient does not do the claim through a solicitor who is based a distance away.	1	.4
That the victim could get the government payment before claim settled, then pay that back once claim settled. This way my husband would have seen some of his compensation.	1	.4
The defendant can prevaricate and leave responses to the last minute so that the process is drawn out longer than necessary.	1	.4
The DWP should offer more info. I was not aware of half of the benefits we were entitled to, i.e. disabled parking blue badge, motorability, etc. It's a maze!	1	.4
The process should be faster. My mum didn't need the money, but others with mortgages, etc, would be struggling without the money. We had a wonderful solicitor who supported my mum throughout. More information should be out there.	1	.4
The speed	1	.4
The time to settlement takes too long, the defendants insurers constantly delayed responding to letters so we had to continually chase. There should be more stringent time limits applied.	1	.4
There should be a Government Scheme to pay Mesothelioma victims compensation when they are still alive	1	.4
They should be dealt with quickly by the courts and those being sued should be made to move quickly in these cases, my husband did not live to see the result of his case	1	.4
Things had to improve greatly after my experience 1989/1992. We were isolated with an unhelpful GP (rude) and all doors remained shut.	1	.4
This is not directly claims process, but public bodies, such as schools, need to keep and make available detailed records of asbestos use.	1	.4
This questionnaire is based on my sisterinlaw's experience with my brother, who died of mesothelioma in 1994. Things have improved greatly since then. I had a lot more support when my husband died in 2004.	1	.4
Time between claim and payment is very slow. This should be easier to get.	1	.4
Time in process. Less intimate intrusion.	1	.4
To be resolved quicker.	1	.4
To get diagnosis when out of breath after getting fluid in lungs three times.	1	.4
To make sure that everybody who works with asbestos is covered by insurance by the companies involved.	1	.4
Tracing insurance companies	1	.4

Tracing insurers seems to be a big problem. Insurers should not be allowed to prolong the procedures	1	.4
We were advised with a mesothelioma case it would be resolved quickly because it was terminal. That was not the case. I had to click no as the form would not let me move to the next page	1	.4
Where the exposure is unknown but diagnosis given, there should be a fund to help families receive the equivalent compensation to those able to claim against an employer.	1	.4
Yes most definitely. It is so hard when you feel sick after someones passed to have to deal with deadlines etc	1	.4
Total	240	100.0

Q45 Did you have any privately funded care (e.g. care at home that you had to pay for yourself)?

Yes	11	5.2
No	202	94.8
Total	213	100.0
Dont know	1	
Not answered	26	
Total	27	
Total	240	

Q46 If you did not have any privately funded care, was this because:

We didnt need it/want it	135	70.7
We were unable to pay for it	26	13.6
Other	30	15.7
Total	191	100.0
Not answered	49	
Total	240	

Q46 other

	210	87.5
4 weeks from diagnosis until death.	1	.4
Against principles.	1	.4
All care was provided	1	.4
Care was paid for by government grant	1	.4
Didn't know we could.	1	.4
Died 5 days after diagnosis.	1	.4
Everything happened so quickly.	1	.4
Free care was provided.	1	.4
Hospital.	1	.4
I cared for my husband alone	1	.4
I was able to carry out this care myself	1	.4
It happened so quickly there was no time to get things underway.	1	.4
It was never mentioned.	1	.4
It was never offered.	1	.4

My dad was nursed at home by my mum. From thinking he had just a hernia he was diagnosed with this awful disease and died within 3 months	1	.4
My father died before this could be provided	1	.4
My husband had a bronchoscope on 8th April 2009. In less than 4 weeks he died not knowing he had mesothelioma. Misdiagnosed. No time to put care in place.	1	.4
My husband satisfied with NHS.	1	.4
My son and I managed to care for my husband till the end.	1	.4
Never suggested.	1	.4
NHS agreed to cover care costs because it was classed as industrial. I was not asked to pay anything towards costs.	1	.4
Not aware that we could.	1	.4
Not enough time. Too advanced meso.	1	.4
The time from diagnosis to death was 6 weeks in total. Therefore, no privately funded care occurred as patient remained in hospital.	1	.4
Thought he was healthy.	1	.4
We cared for the patient ourselves	1	.4
We had MacMillan nurses.	1	.4
We had the MacMillan nurse, local authority carers, district nurses, and myself.	1	.4
We were never offered it so myself and my son took care of my husband ourselves. We had a Palliative care nurse come in to check his medication and make sure he was alright but no care at home	1	.4
Weren't informed about what was available.	1	.4
Total	240	100.0

Q47 Who would you consider your main source of support?

My local patient support group	19	12.3
My GP	12	7.7
My hospital doctor	10	6.5
My lung nurse	22	14.2
Other patients/carers	8	5.2
Social networking	7	4.5
A friend	6	3.9
My solicitor	7	4.5
Health Charity	5	3.2
I didnt feel I had any support	19	12.3
Other	40	25.8
Total	155	100.0
Not answered	85	
Total	240	

Q48 Who would you consider your main source of health information?

My local patient support group	14	8.6
My GP	15	9.2

My hospital doctor	46	28.2
My lung nurse	31	19.0
Other patients/carers	6	3.7
Social networking	10	6.1
A friend	3	1.8
My solicitor	3	1.8
Health Charity	6	3.7
I havent received or looked for information	8	4.9
Other	21	12.9
Total	163	100.0
Not answered	77	
Total	240	

Q49 Who do you believe is ultimately responsible for funding research into mesothelioma?

I believe the Government is responsible	147	69.7
I believe the Insurance industry is responsible	32	15.2
I believe health charities are responsible	14	6.6
Other	18	8.5
Total	211	100.0
Not answered	29	
Total	240	

Q49Other Who do you believe is ultimately responsible for funding research into mesothelioma:

	223	92.9
A mixture	1	.4
All 3.	1	.4
All of the above.	1	.4
All of the above.it takes a village of warriors to contain a disease	1	.4
Anybody that can give money to help raise funds to research this horrid illness.	1	.4
Both 1 and 2	1	.4
Employer	1	.4
I also think there should be more union support for research	1	.4
I don't think that anyone is responsible	1	.4
Ideally, 1 and 2. Realistically, 3.	1	.4
Mesothelioma UK and Mick Knighton Mesothelioma research fund	1	.4
No idea	1	.4
The makers and users of asbestos!	1	.4
Universities offer bursaries for research. I believe these are the best resource.	1	.4
Volunteers should not have to give up their lives to raise funds for research, especially when the cancer is the consequence of government negligence in the past.	1	.4
Whoever allowed Asbestos to be made, without be properly checked in the first place is responsible. So the government and the Insurance industry.	1	.4

Whoever gave permission for asbestos to be created and used in buildings, insulation of pipes, etc. many years ago.	1	.4
Total	240	100.0

Q50 Do you feel there is a need for further campaigns in warning the public about the risk posed

Yes	232	98.7
No	3	1.3
Total	235	100.0
Dont know	1	
Not answered	4	
Total	5	
Total	240	

Q51 How would you rate the effectiveness of the existing campaigns in warning the public about

Very bad	74	31.6
Bad	63	26.9
Average	74	31.6
Good	20	8.5
Very good	3	1.3
Total	234	100.0
Not answered	5	
System	1	
Total	6	
Total	240	

Q52 From your experience, how important do you rate the need for improvement in the benefits

Absolutely essential	93	41.2
Great need	36	15.9
Important	74	32.7
Not as important	17	7.5
Unimportant	6	2.7
Total	226	100.0
Not answered	14	
Total	240	

Q53 From your experience, how important do you rate the need for improvement in research into

Absolutely essential	216	93.5
Great need	7	3.0
Important	6	2.6
Unimportant	2	.9
Total	231	100.0
Not answered	9	
Total	240	

Q54 From your experience, how important do you rate the need for improvement in the legal

Absolutely essential	107	46.7
Great need	37	16.2
Important	69	30.1
Not as important	14	6.1

Unimportant	2	.9
Total	229	100.0
Not answered	11	
Total	240	

Q55 From your experience, how important do you rate the need for improvement in health care

Absolutely essential	134	57.8
Great need	38	16.4
Important	51	22.0
Not as important	7	3.0
Unimportant	2	.9
Total	232	100.0
Not answered	8	
Total	240	

Q56 From your experience, how important do you rate the need for improvement in the

Absolutely essential	160	68.7
Great need	32	13.7
Important	37	15.9
Not as important	1	.4
Unimportant	3	1.3
Total	233	100.0
Not answered	7	
Total	240	

Q57 What single thing do you believe could make the biggest difference to people living with

Continued research to find a cure	151	76.6
More support	9	4.6
More information	2	1.0
More nurses	1	.5
More specialist care	23	11.7
Other	11	5.6
Total	197	100.0
Not answered	43	
Total	240	

Q57Other What single thing do you believe could make the biggest difference to people living

	227	94.6
A more holistic approach to illness, diet, budwig protocol.	1	.4
All above	1	.4
Earlier diagnosis and the same specialist treatment for all, not just pot luck	1	.4
Financial help for treatments supplied abroad and not available here.	1	.4
Giving these people hope!!! As at the moment there is none.	1	.4

I am organising events and frequently raising awareness in the paper. I have to be careful that it's not seen to be about me. I think if I told the story, it may relieve my tension but hurt my daughter in law and sensitive children and siblings.	1	.4
I can't chose one thing. I needed all those.	1	.4
Less politics ..more actions to manage symptoms	1	.4
More specialists who understand this cancer isn't like any other and who are willing to work with you to stay alive.	1	.4
More support more infomation. Everything we had and did was from a Facbook page. A FACKBOOK page !!!! unbelievable. In xxx Meso is rare noone really new how to help	1	.4
Ongoing supply of information at relevant times. Not all at once.	1	.4
Palliative care	1	.4
Patients need to know who's responsible for their care. This doesn't happen until the hospice is involved. Too late!	1	.4
Total	240	100.0

B1 Are you the bereaved carer/loved one of the person with mesothelioma?

Yes	43	74.1
No	15	25.9
Total	58	100.0
Not answered	182	
Total	240	

B2 At any point were you or your carer told that a coroner would need to be involved?

Yes, we were told by a health professional	18	46.2
Yes, we were told by a support group	1	2.6
Yes, we were told be a solicitor	4	10.3
We read about it on a website	7	17.9
We read about it in a patient information leaflet	2	5.1
We were never told	7	17.9
Total	39	100.0
Not applicable	15	
Not answered	186	
Total	201	
Total	240	

B2 At any point were you or your carer told that a coroner would need to be involved: Other

	233	97.1
As my Dad had a biopsy, we were told he wouldnt need a coroner to be involved. Which turned out	1	.4
At or immediately after initial diagnosis	1	.4
I was told by the coroners office when my husband was taken for an autopsy	1	.4
Informed the day before death	1	.4

My father died in France where a coroner was not needed	1	.4
Told at my mum's death by Hospice	1	.4
We suggested to the doctor that this was a notifiable disease as a result of previous experience	1	.4
Total	240	100.0

B3 At what point were you informed about the involvement of the coroner?

At or immediately after initial diagnosis	4	11.4
At some point during the illness	12	34.3
Just before the death of the patient	4	11.4
Just after the death of the patient	15	42.9
Total	35	100.0
Not applicable	15	
Not answered	190	
Total	205	
Total	240	

B3 At what point were you informed about the involvement of the coroner: Other

NEVER told	238	99.2
Was already aware that the coroner would be involved	1	.4
Total	240	100.0

B4 Who attended the patient at the time of their death: Doctor or paramedic

Yes	29	100.0
Not applicable	15	
Not answered	196	
Total	211	
Total	240	

B4 Who attended the patient at the time of their death: Coroner staff

Not applicable	15	
Not answered	225	
Total	240	

B4 Who attended the patient at the time of their death: Police (non-uniformed)

Not applicable	15	
Not answered	225	
Total	240	

B4 Who attended the patient at the time of their death: Police (in uniform)

Yes	7	100.0
Not applicable	15	
Not answered	218	
Total	233	
Total	240	

B4 Who attended the patient at the time of their death: None of the above

	Frequency	
Yes	1	100.0
Not applicable	15	
Not answered	224	
Total	239	
Total	240	

B4 Who attended the patient at the time of their death: Other

	228	95.0
Community nurse	1	.4
Hospice	1	.4
HOSPICE DOCTOR	1	.4
Marie curie nurses, followed by undertakers.	1	.4
Mum died at 4.30 am. We were interviewed by policeman at 9.00 am	1	.4
My husband was in the hospice and cared for by MacMillan nurses	1	.4
Myself (daughter) and my mother	1	.4
Myself and my sister, then the out of hours health team	1	.4
Myself and two daughters	1	.4
nurse	1	.4
nurse at the hospice	1	.4
Nurses in Hospice	1	.4
Total	240	100.0

B5 At what time did the patient pass away?

During office hours	12	35.3
Overnight	17	50.0
Weekend	5	14.7
Total	34	100.0
Not applicable	15	
Not answered	191	
Total	206	
Total	240	

B5Other At what time did the patient pass away:Other

	231	96.3
0830 on a Wednesday morning	1	.4
1555 local time	1	.4
4.50 am	1	.4
8.30pm	1	.4
8AM	1	.4
early evening	1	.4
Early hours of the morning	1	.4
evening	1	.4
friday 8pm	1	.4
Total	240	100.0

B6 Where was the patient when they passed away

	Frequency	
Hospital	11	25.6
Hospice	12	27.9
At home	19	44.2
Other	1	2.3
Total	43	100.0
Not applicable	15	
Not answered	182	
Total	197	
Total	240	

B6Other Where was the patient when they passed away:Other

	239	99.6
Nursing Home	1	.4
Total	240	100.0

B7 Were you asked to identify the body?

Yes	12	28.6
No	30	71.4
Total	42	100.0
Not applicable	15	
Not answered	183	
Total	198	
Total	240	

B8 What information was requested from family members at the scene of the death?

Personal details only	10	27.0
Personal details and basic information about medical	7	18.9
No information was requested	20	54.1
Total	37	100.0
Not applicable	15	
Not answered	188	
Total	203	
Total	240	

B8Other What information was requested from family members at the scene of the death:Other

	236	98.3
cant remember as it was a very painful time for all the family	1	.4
I was with my husband when the life support was closed down. The ICU consultant confirmed the death.	1	.4
information was not requested as myself and my son and other family members was with my huband at his bedside in the hospital when he passed away	1	.4
Not sure wasn't there when he died	1	.4
Total	240	100.0

B9 Were you given information regarding the coroner process after the death?

	Frequency	
Yes, we were told what would happen next	20	47.6
Yes, we were given a leaflet to explain what would happen next	1	2.4
Yes, it was explained to us what would happen next	8	19.0
No we did not know what would happen next	13	31.0
Total	42	100.0
Not applicable	15	
Not answered	183	
Total	198	
Total	240	

B9Other Were you given information regarding the coroner process after the death:Other

	240	100.0
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B10 Did this information answer all of your questions?

Yes, we did not need any additional information	25	86.2
No, we made further inquiries and were given the	3	10.3
No, we made further inquiries but were still not given the	1	3.4
Total	29	100.0
Not applicable	15	
Not answered	196	
Total	211	
Total	240	

B10Other Did this information answer all of your questions:Other

	239	99.6
No information was requested	1	.4
Total	240	100.0

B11 Was a post-mortem (autopsy) carried out?

Yes	19	45.2
No	23	54.8
Total	42	100.0
Not applicable	15	
Not answered	183	
Total	198	
Total	240	

B12 How long did it take for the inquest to be completed?

0-2 months	11	27.5
3-5 months	15	37.5
6 months to a year	6	15.0
There was no inquest	5	12.5
Dont know	3	7.5
Total	40	100.0
Not applicable	15	
Not answered	185	
Total	200	

Total	240
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B13 How would you rate your experience of the coroner process in terms of how sensitively it

Very bad	2	5.1
Average	8	20.5
Good	15	38.5
Very good	14	35.9
Total	39	100.0
Not applicable	15	
Not answered	186	
Total	201	
Total	240	

B14 From your experience, how important do you rate the need for improvement in the coroners

Unimportant	12	31.6
There are other priorities	12	31.6
Important	10	26.3
Great need	1	2.6
Absolutely essential	3	7.9
Total	38	100.0
Not applicable	15	
Not answered	187	
Total	202	
Total	240	