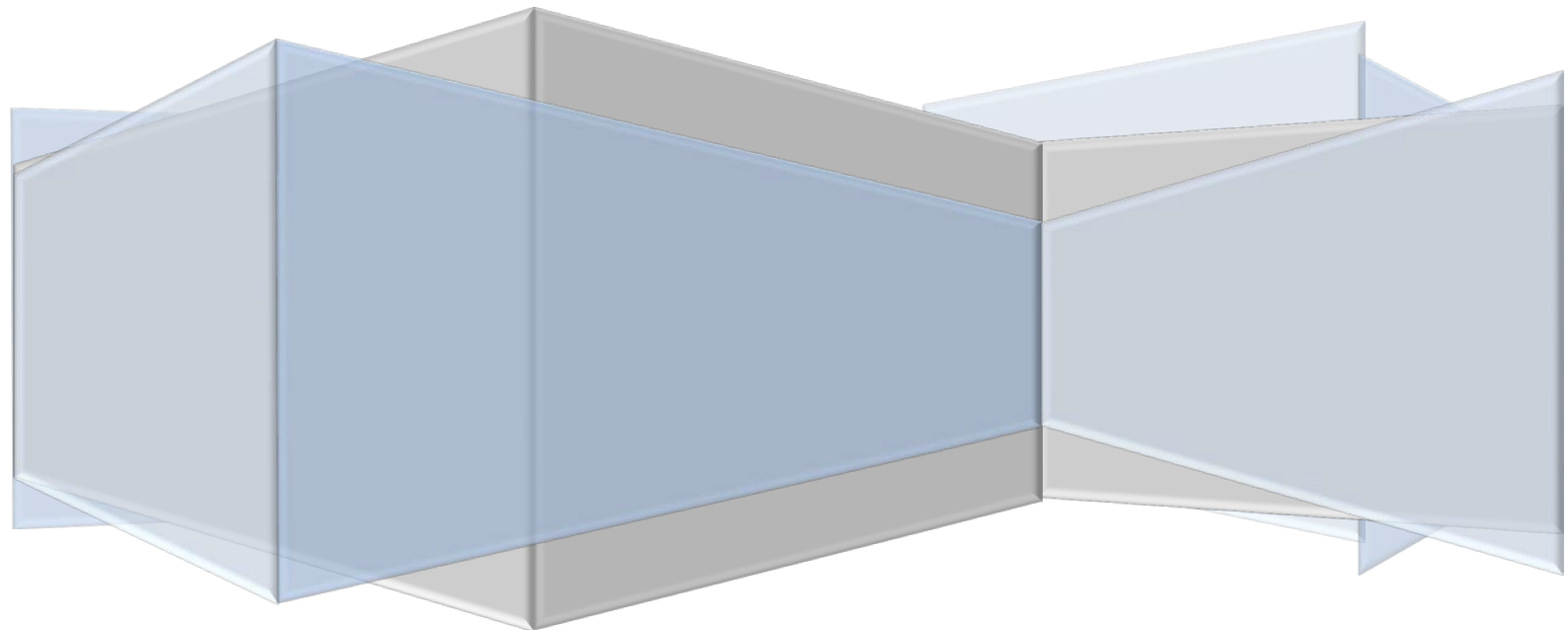




Department  
for Work &  
Pensions

# Diffuse Mesothelioma Payment Scheme

Annual Review 2015/16





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## Table of Contents

Executive Summary.....	3
Background .....	4
Diffuse Mesothelioma: Causes and consequences.....	4
The role of employers and the insurance industry.....	4
The Levy .....	5
Scheme Rules .....	5
Scheme Monitoring.....	7
High-level data .....	8
Financial performance .....	9
Complaints, reviews and appeals .....	10
Performance against objectives.....	10
Levy calculation.....	12
Terms of reference.....	14
Membership.....	14
Status of Oversight Committee .....	15
Funding .....	15
Activities.....	15
The Committee’s Approach .....	15
Comments .....	15
Conclusion by the Chair .....	17
Flow Chart of Application Process .....	

## **Executive Summary**

I am pleased to publish the annual review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2015 to 5 April 2016 (the financial year 2015/2016). This review covers the scheme's activities in its second year of operation.



This report sets out key performance data and assesses the extent to which the scheme's objectives have been met. It also provides more information on the levy that funds the DMPS and discusses the results of the PricewaterhouseCoopers (PwC) audit and the recommendations of the Oversight Committee. This year's report also contains a helpful flowchart of the application process.

I would like to thank Gallagher Bassett International Ltd., the scheme administrator, and Tracing Services Ltd., who collect the scheme's levy, for their commitment and hard work since the scheme began operations. I would also like to thank the members of the DMPS Oversight Committee for giving up time to help review the performance of the scheme and assess its effectiveness. Finally, I would like to thank the insurance industry for their support of the scheme via the levy.

**Penny Mordaunt**

**Minister for Disabled People, Health and Work**

# Introduction

# 1

## Background

The Diffuse Mesothelioma Payment Scheme (DMPS) was established to ensure sufferers (or eligible dependants) whose employers had negligently, or in breach of a statutory duty, exposed them to asbestos and who were unable to bring an action for damages in the civil courts could still receive a payment in compensation.

This report sets out the findings of the second annual review of the DMPS, in accordance with the Diffuse Mesothelioma Payment Scheme Regulations 2014 (regulation 27) and assesses the scheme's performance against objectives.

The report considers key data related to the scheme, details of the levy and the calculation used, and includes the annual report produced by the Oversight Committee.

## Diffuse Mesothelioma: Causes and consequences

Mesothelioma is a cancer arising in the mesothelium. The mesothelium is a layer of tissue that surrounds organs of the chest, abdominal cavity and pelvis. Diffuse mesothelioma is a condition describing the primary tumours that arise in the mesothelium. This cancer is commonly found in the lungs and is heavily linked to asbestos exposure. It is a "long-tail" disease, where symptoms may not appear for a significant period, sometimes thirty to forty years post-exposure.

## The role of employers and the insurance industry

The Employers' Liability (Compulsory Insurance) Act 1969 requires all employers in Great Britain to insure liability to their employees for injury or diseases sustained throughout the course of their employment.

This 1969 Act provides that employees who sustain injuries at work have a right to compensation from their past or present employers. Despite this, many claims are difficult to bring. In the case of "long-tail" disease this can be due to the difficulty in finding employer's insurance policies in order to bring proceedings in the courts.

To address this, the insurance industry agreed to finance a scheme which pays a lump sum to individuals exposed to asbestos by their employers whether negligently or as a result of a breach of a statutory duty, and who are unable to bring an action for damages through the courts against past employers or their employers' insurers. This scheme is one of last resort and is exclusively for those who have not received

any payment or been able to take any civil action against their employer as a result of the disease.

### **The Levy**

The DMPS is funded by an annual levy paid by the insurance industry. The Diffuse Mesothelioma Payment Scheme (Levy) Regulations 2014 place an obligation on active insurers in the employers' liability insurance market to pay towards the cost of the levy based on their relative market share. As the DMPS is demand led, the levy is recalculated each year to take account of any changes in the number of applications. Should applications increase, the levy will rise, and should they decrease the levy will fall.

To ensure the insurers and not employers fund the DMPS, Government agreed that the levy would not exceed 3 per cent of the employers' liability market in any one year.

Tracing Services Ltd. (a subsidiary of the Motor Insurers' Bureau) is currently under contract to collect the levy on behalf of the Department.

### **Scheme Rules**

In order to receive a payment, applicants must demonstrate how they meet all the eligibility criteria. An applicant must make a claim to the scheme administrator and supply information and supporting evidence on their individual circumstances. The application form is available electronically via the DMPS website (<https://mesoscheme.org.uk>) or in paper format by calling the scheme administrator on 01786 455888. The evidence required to support the application typically includes:

- a copy of the diagnosis of diffuse mesothelioma;
- proof of employment history;
- a witness statement detailing how the exposure to asbestos occurred; and
- confirmation that they are unable to make a civil claim (the results from an Employers' Liability Tracing Office search).

DMPS payments are subject to recovery of benefits rules. This means any relevant social security and government lump sum already paid, in respect of diffuse mesothelioma, are recoverable from any DMPS payments. This is to ensure, in line with other benefits, that a person does not receive a payment twice for the same condition. Payments that can be recouped are set out in Schedule 1 to the Mesothelioma Act 2014.<sup>1</sup>

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<sup>1</sup> <http://www.legislation.gov.uk/ukdsi/2014/9780111109106/note>

## Scheme Objectives

The DMPS has two main objectives

- a) To provide a scheme of last resort for individuals who are unable to bring an action for damages against a negligent employer or their insurer and who have also not received damages or a specified payment in respect of diffuse mesothelioma.

A key principle behind the DMPS is that it is specifically for sufferers unable to obtain compensation by civil proceedings. The DMPS is not meant to be a replacement for civil claims. It should never undermine civil procedures or become sufferers' primary port of call for a lump sum payment in respect of their diffuse mesothelioma. Therefore it is the scheme administrator's responsibility to ensure rigorous checks are made for all claims and to ensure all alternative options have been pursued.

- b) To provide an application and determination process which is simple, impartial, quick and sensitive to sufferers' and their dependants' circumstances.

The short life expectancy of patients engaging with by the scheme requires timely and accurate processing. This requires systems that produce swift but accurate decision-making. These systems should then be supplemented with an application process that is simple, straightforward and does not cause unnecessary distress to the applicant or delay an eventual payment.

To achieve this the scheme administrator must have a good understanding of the disease and its effects; be sensitive in interactions with applicants and their dependants or representatives; and carry out its functions quickly and efficiently. Delivering upon this objective also means the scheme administrator must provide a value for money service.

# Scheme monitoring and performance

# 2

This chapter sets out how the DMPS's performance has been monitored during the second year of operation. The chapter provides an assessment of how the DMPS has delivered against its objectives and looks in more detail at the high level data.

## Scheme Monitoring

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

- monthly management information provided by the scheme administrator;
- performance against agreed service standards;
- official statistics for the financial year 2015/2016;
- independent audit undertaken by PricewaterhouseCoopers (PwC).

Throughout the year the Department holds meetings with the scheme administrator on a bi-monthly basis to scrutinise the scheme administrator's performance. At these meetings, information related to the scheme's performance management is discussed. Issues raised in the past year included the scheme administrator's contractual, financial and operational performance. The management information provided typically included the following:

- number of applications received;
- whether those applications were successful or unsuccessful and the reason for rejecting unsuccessful applications;
- method of application (via the website or post);
- breakdown of age and gender of applicants;
- number of reviews requested and their outcome;
- number of reviews that are subsequently referred to First-tier Tribunal;
- timescale relating to different elements of the process; and
- number of complaints.

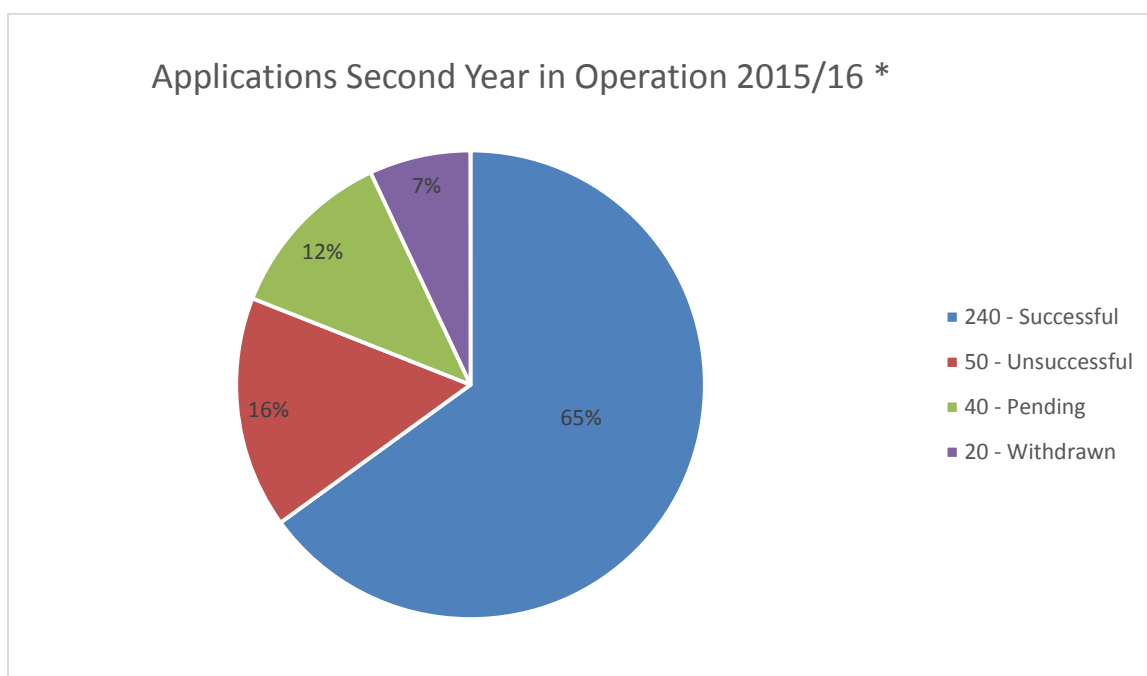


## High-level data

### Applications

Detailed information relating to DMPS performance was released as official statistics in July 2016.<sup>2</sup> These statistics (all published statistics rounded to the nearest 5) showed that the scheme received 375 applications during the financial year 2015/2016. This is a slight decrease from last year's 405 applications. Of these claims:

- 240 applicants almost two thirds (65 per cent) were successful;
- 50 (16 per cent) were unsuccessful;
- 40 (12 per cent) were pending a decision; and
- 20 (7 per cent) were withdrawn.



\*Please note all figures are rounded

Compared to the previous year the total number of applicants has reduced as those waiting for the scheme to open are likely to have made their application in the initial year of the scheme. Additionally, the number of unsuccessful applicants has decreased from 22 per cent to 16 per cent. This may be due to increased awareness of the scheme's eligibility rules (specifically among the legal profession) as alongside this, the number who go on to withdraw their application has also increased from 2 per cent to 7 per cent.

The majority of applicants (92 per cent) are male, broadly reflecting the gender imbalances of the occupations where asbestos exposure, and subsequent risk of

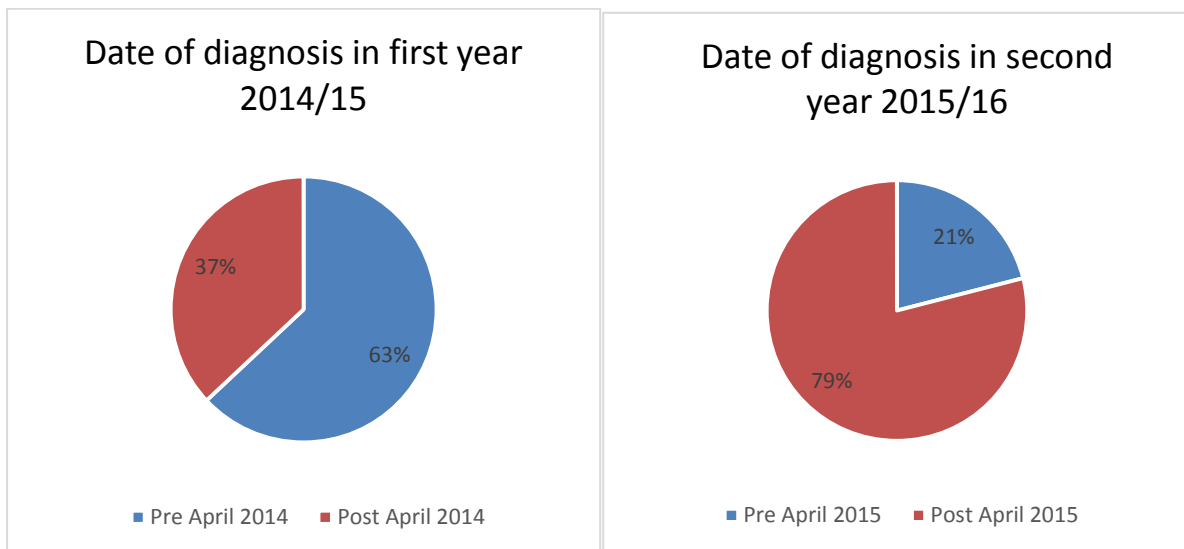
<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/536693/diffuse-mesothelioma-statistics-apr-2014-mar-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536693/diffuse-mesothelioma-statistics-apr-2014-mar-2016.pdf)

diffuse mesothelioma, were high. The majority of sufferers worked in the plumbing, electrical and construction industries.

In terms of the average age of applicants, the majority (65 per cent) were between the ages 65 and 79. This reflects of the long latency of the disease.

### Timing of Diagnosis

In the first year the initial bulk of applications received were related to diagnoses pre-6 April 2014. This reflected the “stock” of eligible people (or their dependants) diagnosed since 25 July 2012, who were waiting for the scheme to open. This year the majority of applicants were diagnosed post 5 April 2015.



### Financial performance

In 2015/16 a total of £42.8 million was awarded to successful applicants. This figure represents the total of all tariff payments before previous diffuse mesothelioma-related benefits had been deducted. Taking this into account, £36.5 million was made in direct payments to successful applicants and £6.3 million was repaid to the Taxpayer as compensation recoveries. The compensation recovery amount is determined by the Department’s Compensation Recovery Unit, as cases are identified at the initial stages of the application process.

The average (mean) DMPS award in 2015/2016 was just over £135,000. This was an increase from £122,000 last year. This was mainly due to the increase in tariff amounts from 80 to 100 per cent of the average equivalent civil compensation payments, which came into effect on 10 February 2015.<sup>3</sup>

<sup>3</sup> Source:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/536689/tables-diffuse-](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536689/tables-diffuse-)

## Complaints, reviews and appeals

The scheme administrator has received no complaints since the scheme began operating. During monthly performance meetings with the Department, the scheme administrator was able to provide substantial evidence of attempts to ensure the best customer service was provided. The evidence showed that considerable efforts were made to ensure all applicants, whether sufferers, dependants or their representatives, were given clear information on the process, treated sensitively and provided with as much support as possible.

A quarter of unsuccessful applicants (15 out of 60) requested a review of the decision made by the scheme administrator during 2015/2016. In around a third of these cases the review resulted in a different outcome. This was mainly due to the provision of additional information by the applicant. Had this information been provided earlier in the process the scheme administrator would have made a different determination in the initial assessment of the claim.

During 2015/2016 there were 5 cases that were appealed to the First-tier Tribunal, with the majority of these still pending by 31 March 2016. This is a reduction from the 15 cases that were appealed to the First-tier Tribunal in the first year of the scheme.

## Performance against objectives

The Department believes the DMPS has met both its key objectives in its second year of operation.

- a) To provide a scheme of last resort for individuals who are unable to bring an action for damages from a negligent employer or their insurer and who have also not received damages or a specified payment in respect of diffuse mesothelioma.

The second PwC audit of the DMPS provided evidence demonstrating that the scheme administrator has effective mechanisms and controls in place to ensure applicants meet all the relevant criteria.

Management information shows that, for the majority of unsuccessful applications an employer or insurer had been identified via the Employer's Liability Tracing Office (ELTO) search. These applicants may then go on to make civil claims through the courts.

This chapter shows evidence that the scheme is helping a significant number of people. Of 375 applicants in 2015/16, 240 applicants received lump sum payments averaging £135,000 to which they would not otherwise have had access. By March 2016, the scheme had paid out £36.5m to successful applicants during 2015/16.

- b) To provide an application and determination process which is simple, impartial, quick and sensitive to sufferers' and their dependants' circumstances.

Evidence was shown through the management information that the scheme administrator is providing a quick and efficient service with over 95 per cent of applicants being paid within six weeks upon receipt of GBI's decision to award a payment.

The PwC audit this year also confirmed that effective controls and a clear, structured system were in place as expected as set out in GBI's contractual and legal obligations.

# The DMPS Levy

# 3

On 12 January 2016 the Government announced the amount of the second annual DMPS levy to Parliament. This levy was based on data from the second year of operation. In its initial year of operation the Department levy estimate exceeded the full costs of the scheme. This was due to fewer applicants than expected applying in the first year. This excess amount was taken into account in the second year's estimates.

Additionally, in the first year's calculation the levy was reduced by the amount recovered by the Compensation Recovery Unit. In year two, the insurance industry bore the full cost of the scheme.

## Levy calculation

The calculation of the levy in year 2 was made as follows:

**Projected total payments + Administrative costs – Over levy (yr 1) = Total year 2 levy**

£30,800,000 + £160,000 - £7,800,000 = £23,160,000 (rounded to £23.2m)

The projected total payments were calculated using management information provided by the scheme administrator from the preceding 12 months.

Looking ahead, there remain challenges in accurately setting the levy amount where relatively small numbers claims are involved. Factors such as an unexpected rise in the number (albeit slight) of younger applicants to the scheme lead to difficulties in estimating overall payment amounts precisely. Additionally, those eligible to claim the tariff payments at 100 per cent of the civil compensation payment equivalent are now the majority of those individuals making a claim to the scheme, meaning the overall average amount of payments to sufferers has increased. All costs incurred by the DMPS are included in the calculation.<sup>4</sup>

<sup>4</sup> More information on actual costs will be published in December 2016 when the levy for 2016/2017 will be announced.

# Changes to the DMPS in 2015/16

# 4

This chapter sets out changes made to the DMPS during the second year of operation, in particular the response to Pricewaterhouse Coopers (PwC) recommendations on potential changes to consider in the future.

In August 2016, PwC conducted a further independent audit of the DMPS scheme. During 2015, GBI had moved offices from Edinburgh to Stirling after a team restructure. The audit noted despite obvious operational challenges that “good progress had been made in addressing many of the control issues that had been raised in the previous audit”.

Amongst the recommended improvements to the service, GBI had:

- Added restrictions to IT system in-box access to improve claim security;
- Strengthened the supervisory reviews across all claims;
- Introduced a further review mechanism prior to approving payments to successful claimants, and;
- Introduced a new system to scan all postal applications and transfer to GBI's IT systems.

This year's report praises the scheme administrator for addressing these suggestions and notes that there was clear evidence to show that the key controls were operating as expected. PwC did observe that further improvements might be made to:

- Strengthen claim security so as to build prevention mechanisms to deter fraudulent claims;
- Improve annotation and narrative to IT systems to explain claim progression and key actions taken;
- Improve system checks on medical evidence to establish further checks that might identify potential fraudulent claims.

GBI welcomed the auditor's observations and recommendations. The scheme administrator continuously strives to improve their service and with respect to this year's audit is working to implement all changes recommended by PwC.

# Annex A Oversight Committee 6 April 2015 – 5 April 2016

# 5

## Terms of reference

The Oversight Committee<sup>5</sup> serves as an independent advisory service to the Department of Work and Pensions (DWP) providing stakeholder perspective on the Scheme and complementing the monitoring function carried out by the DWP, ensuring that eligible people are receiving payments through a reasonable and efficient process, and ensuring that the Scheme receives sufficient scrutiny.

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

<https://www.gov.uk/government/groups/diffuse-mesothelioma-payment-scheme-oversight-committee>

## Membership

The membership of the Oversight Committee is made up of representatives from key interest groups with links to stakeholders and end users:

Independent Chair	Baroness Rita Donaghy
Asbestos Victims Support Group (AVSG)	Doug Jewell (To 14 October 2015) Graham Dring (From 15 October 2015 onwards)
Trades Union Congress (TUC)	Hugh Robertson
Insurance Industry	Steve Bellingham (Royal Sun Alliance)
Association of Personal Injury Lawyers (API)	Bridget Collier
Forum of Insurance Lawyers (FOIL)	Laurence Bessemer

<sup>5</sup> This section is the Oversight Committee's own report on the DMPS scheme.

### **Status of Oversight Committee**

The Oversight Committee's legal status is a stakeholder group/forum (Cabinet Office category E2);

DWP retains formal responsibility for monitoring the performance and administration of the Scheme. DWP is not bound to accept or act upon any of the findings of the Oversight Committee. Contract management activities in relation to the administration of the Scheme remain the sole responsibility of DWP.

Appropriate secretarial support for the Oversight Committee is provided by the relevant policy team within DWP.

### **Funding**

Members give their time on a voluntary basis.

### **Activities**

The Oversight Committee has held two meetings during its second year (2015 – 2016) and Minutes are available on the DWP website:

<https://www.gov.uk/government/groups/diffuse-mesothelioma-payment-scheme-oversight-committee>

Much of the Committee's work was conducted off-line. The Committee considered the monthly Management Information Reports from the Scheme Administrator, Gallagher Bassett International (GBI). Although the Committee did not deal directly with Scheme users, it wished to satisfy itself that the agreed processes relating to DWP, the Scheme Administrator (GBI), the Compensation Recovery Unit (CRU), the Employers Liability Tracing Office (ELTO) and First Tier Tribunals were adequate.

### **The Committee's Approach**

In the second year of the Scheme the Committee saw its role as monitoring the information and processes established during its first year. This was recorded in an action log provided by the DWP secretariat. Issues which it continued to consider were the extent of legal representation, the number of rejected applicants who were eligible to apply under different existing schemes, and publicity and communications as they applied to the Committee.

The Committee has agreed to conduct a second review of a small sample of redacted cases. In addition, the Committee has agreed to look in more detail at a number of solicitor-led versus claimant-led DMPS applications and review respective outcomes in 2016-17.

### **Comments**

The Committee is satisfied that it received full cooperation and appropriate information in order to carry out its work.



Management Information<sup>6</sup> – the total number of applications received during 2015/16 was 375 with 240 claims accepted, 50 denied, 20 withdrawn and 40 decisions pending. The total compensation paid out was £36.5m.

More detailed analysis of the statistics for the total period of the Scheme is on the DWP website:

<https://www.gov.uk/government/statistics/diffuse-mesothelioma-payment-scheme-statistics>

### **Compensation Payments**

The Committee was satisfied that compensation payments were being made in a timely manner.

### **Publicity**

Although publicity was not part of the Oversight Committee's terms of reference, it wished to satisfy itself that all possible steps were being taken to ensure that eligible applicants were aware of the Scheme. The increasing use of the website provided by the Scheme Administrator and developing publicity strategies by the DWP were considered helpful.

### **Reviews and Complaints**

There were no formal complaints.

Of the 60 unsuccessful applicants in the previous twelve months there have been 15 reviews. 5 reviewed decisions resulted in a different outcome. This was often because additional information was supplied by the applicant that had not been available to the Scheme Administrator at the time of the first decision.

### **First Tier Tribunals**

A total of 5 applications have been made to First Tier Tribunals. The Committee continues to monitor the position and is content that the Tribunal outcomes were showing good decision-making by the Scheme Administrator.

### **Scheme Administrator**

The Committee continues to be impressed by the quality of service provided by the Scheme Administrator, Gallagher Bassett International. The company continued to be open and informative about its work and gave full cooperation to the Committee.

### **Secretariat**

The Committee is grateful for the support of the DWP policy team in providing a part-time secretariat, facilitating communication between various agencies and servicing committee meetings. Particular thanks are due to Stuart Whitney, Rebecca Murphy and Annette Loakes.

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<sup>6</sup> All published statistics are rounded to the nearest 5.

**Conclusion by the Chair**

This is the second year of the Scheme and our monitoring work continues. The Committee consists of volunteers representing very different organisations with an enormous range of knowledge and experience. Our thanks to Doug Jewell from the AVSG for his important contribution. We were able to welcome Graham Dring from the AVSG as his successor. I am most grateful to all members of the Committee for their support and hard work.

Rita Donaghy (Chair)

November 2016

## Flow Chart of Application Process

