



Department  
for Work &  
Pensions

# Diffuse Mesothelioma Payment Scheme

Annual Review 2017-2018



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Any enquiries regarding this publication should be sent to us at:

Private Pensions and Arm's Length Body Partnership Team

Diffuse Mesothelioma Payment Scheme

Department for Work & Pensions

Caxton House, 1st Floor

Tothill Street

London

SW1A 9NA

Email: [CAXTONHOUSE.DMPS@DWP.GSI.GOV.UK](mailto:CAXTONHOUSE.DMPS@DWP.GSI.GOV.UK)

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## EXECUTIVE SUMMARY



I am pleased to publish the annual review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2017 to 5 April 2018 (the financial year 2017/2018). This review covers the Scheme's activities in its fourth 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 recommendations of the Oversight Committee.

The average (mean) award to successful applicants in the Scheme's fourth year of operation was around £145,000, an increase from £141,000 on the previous year. Since the Scheme was launched in April 2014 it has helped just under 1,000 sufferers of mesothelioma with £133.8 million awarded in compensation.

From 1 April 2018, TopMark Claims Management Ltd became the appointed administrator of the DMPS. I would like to thank Gallagher Bassett International Ltd., the out-going 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 their time to help review the performance of the Scheme and assess its effectiveness. Finally, I would like to thank the insurance industry for its continued support of the Scheme via the levy.

**Sarah Newton**

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

# Introduction

## BACKGROUND

The Diffuse Mesothelioma Payment Scheme (DMPS) was launched in April 2014 and began taking applications from July 2014. This report covers the DMPS's fourth year of operation, for the financial year 2017/18.

The DMPS was set up to provide payments to sufferers of mesothelioma who were negligently exposed to asbestos at work but are unable to pursue a civil claim because their former employer no longer exists and their former employer's insurer cannot be traced. In this the fourth year of operation, the scheme has paid out £36 million in compensation to 200 successful applicants with the average (mean) award being around £145,000.

The insurance industry acknowledged its failure to keep adequate records and therefore agreed to fund the DMPS via a levy on active employers' liability insurers. The levy is set and paid annually, and varies in amount depending on the number and age of applicants. 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.

Until 31 March 2018, Gallagher Bassett International Ltd. held the contract to administer the DPMS. TopMark Claims Management Ltd. were awarded the contract, through a competed framework, to administer the Scheme from 1 April 2018.

## DIFFUSE MESOTHELIOMA: CAUSES AND CONSEQUENCES

Mesothelioma is a cancer arising in the mesothelium, which 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-latent" 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

### Employers

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 a “long-latent” disease this can be due to the difficulty in finding employers’ insurance policies in order to bring proceedings in the courts.

### **Insurance Industry**

To address this, the insurance industry agreed to finance a scheme that 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. The age of successful applicants is also a factor in calculating the levy.

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.

On 18 January 2018 the Government announced the total sum of the fourth annual DMPS levy of £33.5 million, the vast majority of which is to be collected during 2018-19. This levy was based on data from the third year of operation.

In 2016-17 there was a surplus of £3.45 million, as the levy charged for 2016/17 turned out to be more than the final cost of the scheme. With the agreement of the insurance industry, the surplus figure of £3.45 million has been divided equally over the next three years.

Therefore £1.15 million has been taken into account in calculating the levy for 2017/18.

The Government gave the insurers who pay the levy three options for how the annual adjustment of the levy should be treated, after allowing for the surplus from 2016/17. The

insurers opted for the levy to be a figure midway between the higher and lower estimate of total costs. The calculation of the levy in year 4 was made as follows:

- the gross estimated payments out of the scheme during 2016/17; less
- a surplus of £1.15m
- the midway point between the higher and lower estimates of total cost

The projected total payments were calculated using management information provided by the scheme administrator from the preceding 12 months. All costs incurred by the DMPS are included in the calculation.

The Department was able to agree the amount of the levy with the insurers who pay it using this method as a result of the agreement reached with HM Treasury referred to in last year's annual review. This allowed the Department to retain, on its balance sheet, any over- or under-levy from the insurance industry rather than returning it to HM Treasury. This allows the Department to give the Employers' Liability Insurers an earlier indication, than in previous years, of the amount of the levy not only for 2017/18 but for the following two years. This is something the insurers have requested in order to give them certainty, as early as possible, of the amount they are required to pay.

## SCHEME RULES

In order to receive a payment, applicants must demonstrate that they meet all the eligibility criteria. An applicant must make a claim to the scheme administrator and supply information and supporting evidence on his or her individual circumstances. The application form is available electronically via the DMPS website: <https://www.mesoscheme.org.uk> or in paper format by calling the scheme administrator on 0330 058 3930. The evidence required to support the application should typically include:

- a copy of the diagnosis of diffuse mesothelioma;
- proof of employment history;
- a witness statement detailing how the exposure to asbestos occurred; and/or
- 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 or government lump sum payments already paid in respect of diffuse mesothelioma are recoverable from any DMPS payments. This is to ensure that, in line with other benefits, a person does not receive a payment twice for the same condition.

Dependants of sufferers who have died may also be eligible for a payment.

## 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 the employer's insurer and who have 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 nor become sufferers' primary port of call for a lump sum payment in respect of their diffuse mesothelioma. 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 decision making process that is simple, impartial, quick and sensitive to the circumstances of sufferers and their dependants.

The short life expectancy of sufferers engaging with the Scheme means timely and accurate processing is necessary. This requires systems that produce swift and 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. The Scheme Administrator must provide a value for money service.

# Scheme Monitoring and Performance

This chapter provides an assessment of how the DMPS has delivered against its objectives during its fourth year of operation, 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; and
- official statistics for 2017/2018<sup>1</sup> published in August 2018.

The Department holds meetings with the Scheme Administrator every two months to scrutinise the scheme administration against key performance indicators. 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);
- average (mean) award to successful applicants;
- 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.

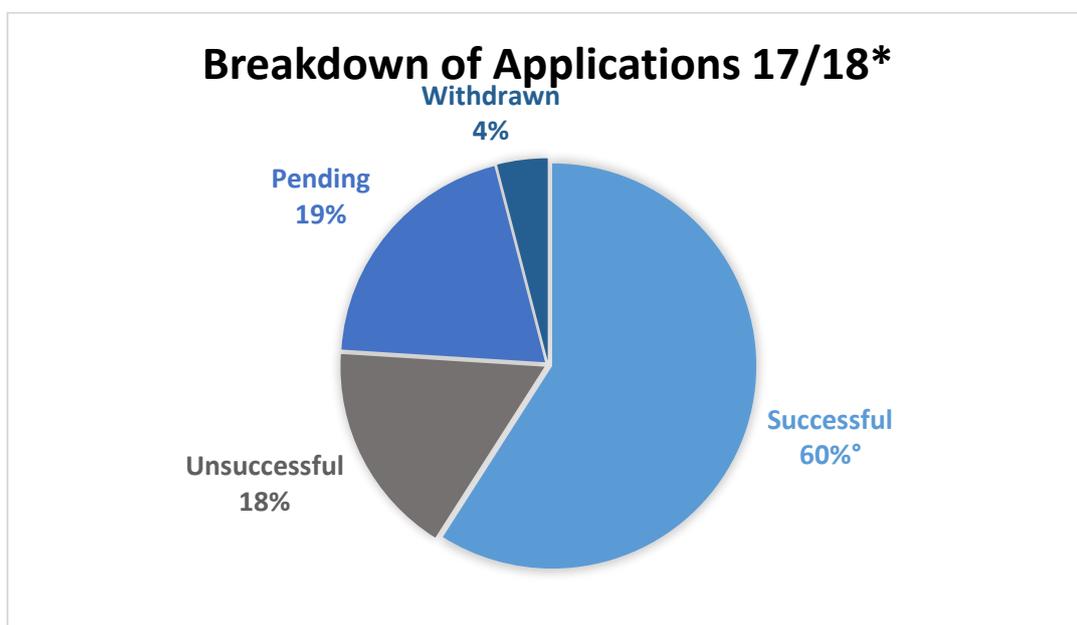
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<sup>1</sup> <https://www.gov.uk/government/statistics/diffuse-mesothelioma-payment-scheme-statistics>

## OFFICIAL STATISTICS

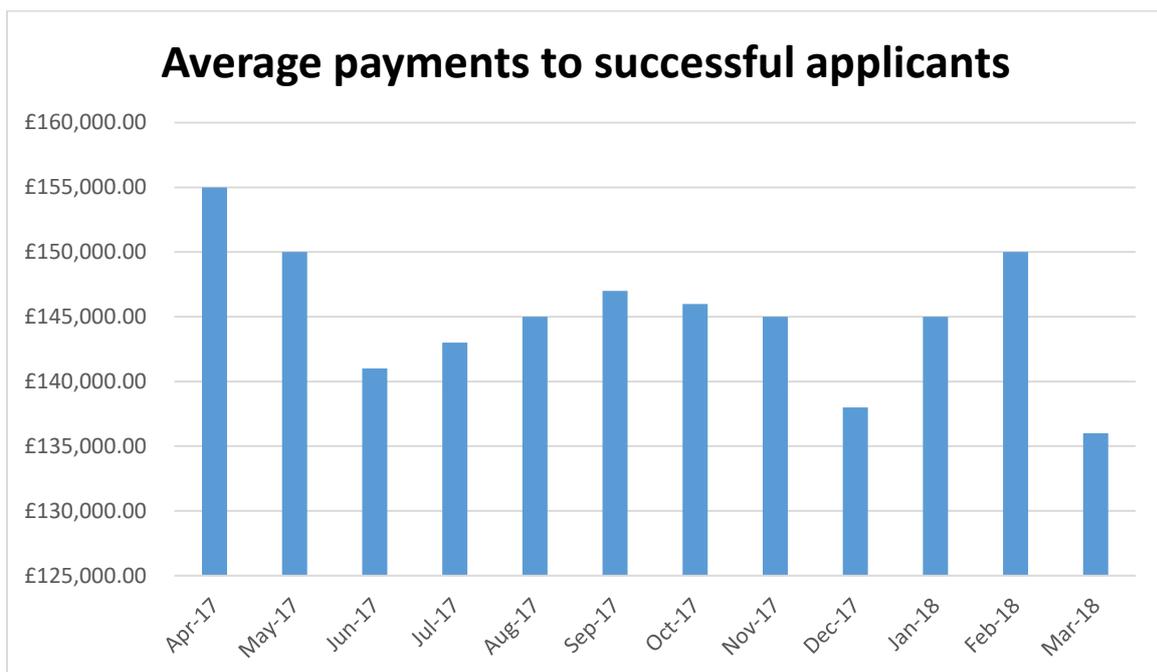
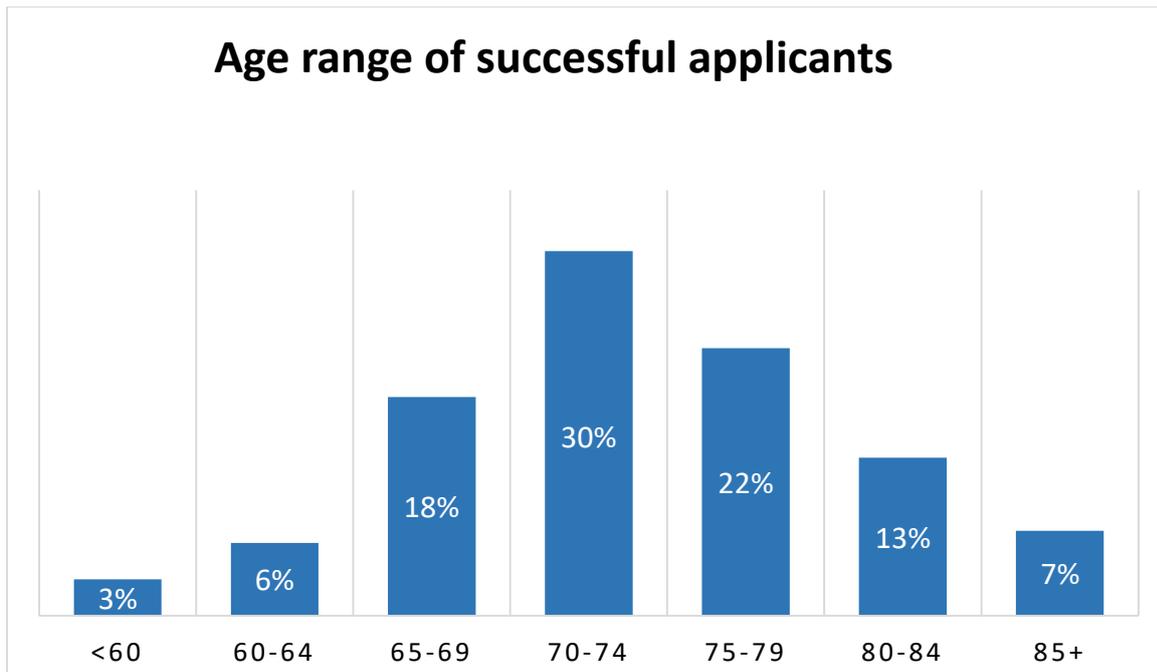
Key findings from the official statistics published in August 2018:

- average (mean) award to successful applicants was around £145,000 in the financial year 2017/2018 , an increase from £141,000 on the previous 12 months;
- 360 applications were received in the financial year 2017/2018;
- 215 applications were successful;
- 65 applications unsuccessful;
- 70 applications pending a decision; and
- 15 withdrawn applications.



\*Please note all figures are rounded.

°Removing pending applicants, 74 per cent of applications received in the last 12 months were successful.



The fluctuation of average payments is down to a small variation in successful applications over different months. Also the age of the sufferer at the date of diagnosis can vary each month. For example, a small increase in younger sufferers in any given month will lead to a higher average tariff awarded.

## **INDEPENDENT AUDIT**

In previous years, PricewaterhouseCoopers (PwC) has carried out an independent audit of the DPMS during the summer months. The last audit was conducted in 2017. As TopMark took over administration of the Scheme from 1 April 2018, it was not appropriate for an audit of TopMark's activity to be carried out during the summer of 2018. It is intended that PwC will carry out the first independent audit of TopMark's administration of the Scheme during the coming winter. This will be reported in due course.

# ANNUAL REPORT OF THE OVERSIGHT COMMITTEE

## TERMS OF REFERENCE

The Oversight Committee 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

## MEMBERSHIP

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

Graham Dring	Asbestos Victims Support Groups Forum UK (AVSGF-UK)
Hugh Robertson	Trades Union Congress (TUC)
Steve Bellingham	Association of British Insurers (ABI) and Royal Sun Alliance
Bridget Collier	Association of Personal Injury Lawyers (APIL)
Laurence Besemer	Forum of Insurance Lawyers (FOIL)
Baroness Donaghy	Independent Chair

## STATUS OF OVERSIGHT COMMITTEE

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

The DWP retains formal responsibility for monitoring the performance and administration of the Scheme. The DWP is not bound to accept nor 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 the DWP.

## **FUNDING**

Members of the Oversight Committee give their time on a voluntary basis.

## **ACTIVITIES**

The Oversight Committee has held two meetings during its fourth year (2017 – 2018) on 9 May 2017 and 31 October 2017 and Minutes are available on the Gov.uk website:

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

The Committee continued to conduct much of its work off-line including consideration of the monthly Management Information (MI) Reports from the Scheme Administrator, Gallagher Bassett International (GBI). The Committee does not deal directly with Scheme users. However, it continued to monitor the processes of GBI and the DWP and the timetable for dealing with cases. As it is the fourth year of the Scheme the processes and information systems are well established. Any matters arising were recorded in an action log provided by the DWP Secretariat. This included topics such as legal representation, and publicity and communications as they applied to the Scheme.

## **SUMMARY OF MANAGEMENT INFORMATION**

In the financial year 6 April 2017 to 5 April 2018, 360 applications were received, with 215 accepted, 65 denied, 15 withdrawn and 65 decisions pending. Some of the applications denied were taken through other routes but the Committee does not have statistics on their eventual outcome. The total compensation paid out was £36m. Of this, the Compensation Recovery Unit (CRU) received £5.3m. The average (mean) award to successful applicants was around £145,000 in the last financial year, an increase from £141,000 on the previous year.

A more detailed analysis of the statistics for the total period of the Scheme is on the website:

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

## REVIEWS AND COMPLAINTS

There were no formal complaints, but there were 25 reviews of the 65 unsuccessful applications in 2017-18. This resulted in a different outcome in 5 cases, 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.

A total of 10 applications have been made to First Tier Tribunals (FTTs), the results of which the Committee continued to monitor. The Committee recognized that the Tribunal outcomes continued to show good decision-making by the Scheme Administrator.

## OUTLINE OF WORK AND COMMENTS

The Committee reviewed the question of self-employment and the difficulties surrounding legal definitions which had led to some applications being rejected. It was satisfied that such applications were dealt with on a case by case basis. It was observed that there had been an increase in the number of applications from Northern Ireland. This seems to have been connected to a cut-off date and a leaflet campaign. As a result of a query from a Committee member about whether the compensation awards were gross or nett, it was agreed to clarify this in future statistics. The Committee was informed that official statistics would be moving to annual publication from July 2018. The Committee was content that efforts were being made to publicise clearer and more informative statistics.

The Committee and the DWP continue to monitor unsuccessful applications involving allegations of negligence. It also reviewed what constituted a complaint. GBI agreed to share its complaints procedure with the Committee. The Committee did not review a sample of redacted cases this year.

The Committee is satisfied that it received full cooperation and appropriate information in order to carry out its work. It accepted that compensation was being paid in a timely manner. The Committee has continued to monitor the DWP's publicity strategies to ensure that all possible steps were being taken to make the scheme's existence known to eligible applicants. The Committee continued to be impressed by the quality of service provided by the Scheme Administrator, GBI. The company was 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, Annette Loakes, Hazel Norton-Hale and Catherine Hegarty.

## **CONCLUSIONS BY THE CHAIR**

This is the fourth year of the Scheme and of the Committee's work. The Committee consists of volunteers representing very different organisations and I am grateful to all members for their collegiate approach and their hard work.

Rita Donaghy

November 2018