



To

mesothelioma@dwp.gsi.gov.uk

Response from **Amicus the Union** to the Department for Work and Pensions Consultation –

Improving Mesothelioma Claims Handling – A Long Term Solution

Responses sought by 23 November 2006

**Amicus is the UK's second largest trade union, with a greater number of members in the private sector than any other union and it is the fastest growing in the public sector. Now with 1.2 million members, Amicus has members in a range of industries including, manufacturing - which covers men and women particularly affected by exposure to asbestos at work in construction, among engineers and fitters, in heating, ventilating, electrical, and plumbing trades, where our members will be the most at risk from future exposure – as well as financial services, print, media, the voluntary and not for profit sectors, local government and NHS health professionals.**

#### **The Union Legal Service**

Amicus members, in common with many other citizens have a need for legal services. Amicus members in common with the vast majority of other union members in the UK are also provided with advice and assistance in relation to any personal injury claim, whether at work or otherwise and at no cost to the member. This support is also available to the member's family and importantly to retired members.

From the outset and for decades Amicus has been involved at the forefront in supporting litigation of claims for members, retired members and their families, who have suffered due to exposure to asbestos. Lead cases and a substantial proportion of those that followed were for engineers, who were members of the Amalgamated Engineering Union, or electricians and plumbers and others who together formed the EEPTU. Yet more were members of the National Union of Sheet Metal Workers, Coppersmiths, Heating and Domestic Engineers. The scale of the problem of asbestos exposure is vast and the effects of that exposure are tragic and criminal.

We are now supporting Kenneth Johnston in his appeal to the House of Lords in a test case arising out of his development of pleural plaques following exposure to asbestos with NEI Combustion.

Asbestos remains the greatest single work-related cause of death from ill-health and we recognise that mesothelioma cases are exceptional.

### **Response to Consultation**

1. We take this opportunity to applaud the inclusion of Section 3 in the Compensation Act 2006 which reversed the House of Lords decision in “Barker”.
2. We welcome this initiative and are keen to ensure that any improvements to the procedures at least maintain access to justice and where possible significantly improve it, particularly for the innocent victims of exposure and their families.
3. It is an important element to ensuring those who need to take a claim are fast tracked to the best available specialist support. This involves ensuring that those in trade unions, their families and those who are retired members are made aware of the high quality specialist support available to them from trade union legal services at no cost at any time win or lose.
4. We are aware of and appreciate the efforts of those within the ABI keen to set up and support a more effective employers’ liability insurer tracing scheme. We understand that current success rate, however, is just over 1 in 4 and falling. Records are deteriorating over time. There is much room for improvement.
5. We would like to see an Employers’ Liability Insurers Bureau – akin to the Motor Insurers Bureau – to pay out full damages (and representatives costs reasonably incurred) when the insurers of negligent employers are untraced. This should effectively be funded by the insurance industry from premiums they assessed and

chose to levy in previous years, or which should have been paid by law. It would facilitate interim awards in such cases and encourage tracing.

7. We are vehemently opposed to any alternative “long term disease pool”, which deprives victims and their families of the right to litigate for full compensation and deprives them of proper and effective representation, which is available now.

8. We are aware of the great strides in Master Whitaker’s fast track mesothelioma procedure in the Royal Courts of Justice and the industry wide respect for his approach. We note in particular the value of the “show cause” hearings to determine whether judgment should be entered. We would wish to see more support for the Master at the RCJ and as an alternative specialist members of the judiciary at an appropriate level appointed to follow Master Whitaker’s approach in a number of key regional centres. We also support the moves for a specialist asbestos court.

9. We can see the scope for improvement in the process with:

- An effective protocol for EL insurers and lawyers
- A standard letter of claim
- Greater use of emails – following the example set by Master Whitaker
- Rebuttable guidelines for care and other heads of damage to assist with early interim payments

10. We responded to recent HMCS consultation over the issue of binding admissions. We can see how important it is to have binding admissions in these cases.

11. The payments under the 1979 Act are too low. They should be increased and funded at least in part by allowing the state to recover 1979 Act payments from the compensation via the Compensation Recovery Unit in a successful civil claim. The defendants and their insurers should not be the beneficiaries of the rule against double recovery that applies to the claimant.

12. The procedure for restoring a defunct company should be simplified, which of itself should reduce costs. Service of proceedings should be permitted on the insurer direct.

13. The recommendations of the Law Commission and amendment of Part 8 of the Civil Procedure Rules should be effected as soon as possible to allow for a substantial interim payment during the lifetime, and that the action can later be pursued for the greater sum of damages on behalf of the family. This would also

avoid the problem for the individuals who are about to die having to choose between an interim payment whilst still alive or a greater sum for their dependants following death.

14. The change under paragraph 13 above, should be implemented pending further change to the law so that the dependency claim, funeral expenses and bereavement damages are catered for in the lifetime claim. As an alternative there may be a similar provision as proposed in the Rights of Relatives (Mesothelioma) (Scotland) Bill, whereby the relatives claims can be pursued even if the claim is settled during the lifetime of the victim.

15. The level of compensation for bereavement should also be increased in England and Wales and applied consistently between Scotland and England. Similarly the extent of the class of family members should be widened south of the border.

To conclude, we welcome the opportunity to continue to participate in the efforts to make recovery of compensation for the victims of asbestos exposure generally more straightforward and effective and to reduce costs, whilst victims and their families retain the right to specialist legal representation - as Amicus members do now – which is essential to maintaining access to justice.

Georgina Hirsch

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