ASBESTOSIS AND DIFFUSE PLEURAL THICKENING:
A guide to compensation
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Introduction

This is a brief guide to compensation for men and women who suffer from two non-cancerous asbestos diseases, asbestosis and diffuse pleural thickening. The malignant conditions which can be caused by exposure to asbestos, lung cancer and mesothelioma, are not covered here. They are the subjects of separate guides. This guide does not discuss pleural plaques because if the only exposure to asbestos took place in England or Wales, compensation is not available for this condition.¹

What is asbestosis?

It is a fibrosis (or scarring) within the lungs caused by heavy exposure to asbestos dust. It is usually a progressive disease, although the rate at which it grows can vary greatly. It causes breathlessness which can become be severe.

What is diffuse pleural thickening?

This is a scarring of the outside lining of the lungs (the pleura). It causes varying degrees of breathlessness and can result from exposure to lower levels of asbestos than asbestosis.

Both asbestosis and pleural thickening have a long latency period (the time which must pass between the exposure to asbestos which has caused the condition and the development of symptoms). This is at least 10 years.

¹ Someone who has pleural plaques and who had some exposure to asbestos in Scotland or Northern Ireland may be able to make a civil claim for damages. (This applies even if the individual was also exposed to asbestos in England or Wales). The Scottish and Northern Ireland parliaments have passed laws which allow pleural plaques cases to proceed. The time limit for issuing court proceedings in civil claims (explained at page 14) applies to men and women with pleural plaques who had some exposure to asbestos in Scotland and/or Northern Ireland. It is important that people in this category contact a solicitor as soon as possible.

Both conditions can result from exposure to blue, brown or white asbestos - although white is the least dangerous type, in many cases it has been proven to have caused asbestosis or pleural thickening.

There are two types of compensation for asbestosis or pleural thickening. The first is welfare benefits, paid by the Department for Work & Pensions. The second is a lump sum, known as “damages”, which can be claimed using a solicitor from one or more of the companies or organisations responsible for the individual’s exposure to asbestos. The right to claim each type of compensation is separate from the other. In other words, if someone receives welfare benefits for his/her asbestos condition he/she can still claim damages, and vice versa.

Welfare benefits and a lump sum payment from the Department for Work and Pensions (DWP)

There are several welfare benefits, which are paid weekly or every four weeks, and a lump sum payment from the DWP which someone with asbestosis or pleural thickening may qualify for. Applications should be made as soon as possible, as delay will reduce the amount an individual is entitled to.

Industrial Injuries Disablement Benefit (IIDB)

There are two sets of qualifying conditions for this benefit which apply to men and women with asbestosis or pleural thickening. The first concerns how he/she was exposed to asbestos. IIDB is only paid to individuals who have been exposed to asbestos dust when working as employees or as apprentices. People whose only exposure to asbestos took place when working on a self-employed basis or outside of a working environment (e.g. domestically, from asbestos dust brought home by another member of the family, or through living near an asbestos factory) are not eligible. (If someone was exposed both as an employee/apprentice and outside his/her employment/apprenticeship, he/she is entitled to IIDB.)

The second condition concerns the extent of the individual’s asbestos disease and the level of the disablement it causes. These issues are assessed at a medical
he/she can apply for an increase in IID B by submitting a change of circumstances form. The applicant will have a further medical examination and, if the DWP finds that his/her asbestos-related disablement has got worse so that it comes within a higher band, IID B will be increased.

No income tax is paid on IID B.

There is no age limit for applications. These can be made after the individual has retired.

An award of IID B does not affect an individual’s right to continue to receive other non-means tested benefits. It is, however, taken into account in assessing entitlement to means tested benefits; namely Universal Credit, Income Support, Jobseeker’s Allowance, income related Employment and Support Allowance, Housing Benefit, Council Tax Benefit and Pension Credit. Someone who is receiving any of these benefits may lose or have his/her entitlement to them reduced if he/she starts to receive IID B. It is recommended that these individuals take advice from the Citizens Advice Bureau or an Asbestos Victims Support Group before applying for IID B on whether an award of the benefit would leave them better or worse off taking into account the effect it would have on their means tested and associated "passport" benefits.

**Application form**

This is the B1100-PD, is pink in colour, and can be obtained from any Jobcentre Plus office, the UK government website (at www.gov.uk), or by phone from the applicant’s Industrial Injuries Disablement Centre (0845 603 1358 or 0845 758 5433).

The DWP classes asbestosis as pneumoconiosis and the code for this condition, for IID B purposes, is PDD1. The code for pleural thickening is PDD9.
**Applications**

The way of applying for PIP which is preferred by the DWP is by phone on 0800 917 2222. The application form is PIP1.

For AA the form is the AA1A. This can be obtained from any Jobcentre Plus office, the UK government website (at www.gov.uk) or the Attendance Allowance helpline 0845 712 3456.

**Statutory Sick Pay (SSP)**

Someone with asbestosis or pleural thickening who was employed before the symptoms of his/her condition began and who has to stop working because of the disease may qualify for SSP. This is paid by the individual's employer for a maximum of 28 weeks. The employee should inform his/her employer that he/she is sick and do this within seven days of the start of the period of absence (unless the employer has set a different time limit under the person's employment contract).

If, at the end of the 28 week period of entitlement to SSP the individual is still incapable of work, he/she should consider applying for Employment Support Allowance and/or Universal Credit.

**Employment and Support Allowance (ESA) and Universal Credit (UC)**

This benefit is paid to people who are unable to work due to disability.

Applicants must be under the retirement age for a State pension (currently 65 for men and between 60 and 65 for women). 

As stated in the previous section, someone who was receiving SSP should claim ESA for the period after his/her 28 weeks of entitlement to SSP end. Someone

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1 The State pension age for women born after 6 April 1950 is being increased in stages from 60 to 65 between April 2010 and November 2018. A woman who wants to find out exactly when she will reach State pension age can do so by contacting the Pension Service (contact details at end of this guide).
who does not qualify for SSP should apply for ESA from the beginning of the period when he/she cannot work.

If awarded, ESA is paid for two phases, each of which has its own payment rates. The first is the work capability assessment phase which lasts up to 13 weeks. The second period, the main phase, is paid at higher rates.

There are two types of ESA; namely contributions based and income related. The former is paid if the applicant has made or been credited with sufficient National Insurance contributions. The latter is means-tested and is calculated taking into account the claimant’s and his/her partner’s other income and capital.¹

Income-related ESA is being replaced by Universal Credit (UC) between April 2013 and April 2014. UC is being rolled out nationally, area by area. Once it has been introduced into an applicant’s region, he/she will have to apply for UC rather than income-related ESA. The introduction of UC does not affect contributory ESA and an application for this part of the benefit can still be made.

Applications

The DWP’s preferred method of claiming ESA is by phone to a Jobcentre Plus contact centre on 0800 0556688. Alternatively, an application can be made by completing the claim form ESA1. This can be downloaded at www.gov.uk.

In most cases, applications for UC must be made online at: www.gov.uk/universalcredit.

Carer’s Allowance (CA)

This benefit is paid to individuals who are caring for someone who is severely disabled and may be relevant in severe cases of asbestosis or pleural thickening. One of the qualifying conditions is that the person being cared for must be receiving either rate of the Daily Living Component of PIP, the highest or middle rate of DLA Care Component, AA, CAA in respect of IIDB, or a War Disablement Pension (see pages 15-16).

If the person being cared for meets this first condition, the conditions which the carer (rather than the person being cared for) has to satisfy are that he/she:

- must provide care for 35 hours or more per week;
- must not be working and earning more than £100 per week or be in full-time education (i.e. studying for more than 21 hours per week); and
- must be 16 or over.

CA is taken into account in assessing the carer’s entitlement to means tested benefits. A carer who is already receiving one or more such benefits should, therefore, before applying for CA, take advice about whether the reduction in or loss of means tested benefits which would result from payment makes an application for CA worthwhile.

Application forms

The application form is DS700(1) or, if the carer is receiving a State Retirement Pension, DS700(SP). These are available from any Jobcentre Plus office, the UK government website (at www.gov.uk) and the Carer’s Allowance Unit on 0845 608 4321.

Lump sum payment from the Department for Work and Pensions (DWP)

This may be paid under the Pneumoconiosis etc (Workers’ Compensation) Act 1979 (the 1979 Act). The amount of the lump sum is calculated according to a scale based on the applicant’s age and on the assessment of his/her disablement which was made in the application for IIDB: the younger he/she is and the higher his/her disablement, the larger the award.

To be eligible for a lump sum under the 1979 Act:

- the applicant must have been awarded IIDB for his/her asbestosis or pleural thickening; and

¹ A man or woman and/or his/her partner who has/have savings of over £16,000 will not qualify, and the amount of ESA is tapered if savings are between £6,001 and £16,000.
If someone is awarded a lump sum from the DWP for asbestosis or pleural thickening and that condition later deteriorates, he/she cannot apply for an increase in the lump sum. The 1979 Act allows only one payment in respect of each condition. This contrasts with IIDB, in respect of which a claim for an increase can be made if the asbestos condition for which the benefit was paid subsequently worsens. If, however, someone has received a lump sum from the DWP for asbestosis or pleural thickening and later develops a different asbestos condition (for example, mesothelioma) an application for a further lump sum can be made in respect of the new condition.

Application form

This is the PWCI and is available from the following address, which is also to where completed application forms should be sent:

PWC Team
Jobcentre Plus
Barrow IIDB Centre
Pittman Way
Preston
PR1 1 2AB

Freephone: 0800 279 2322

A claim through a solicitor

In addition to claiming benefits and a lump sum from the Department for Work and Pensions (DWP), someone with asbestosis or pleural thickening should consider making a claim through a solicitor. This is for a lump sum of compensation, known as damages.

As most cases of asbestos disease occur because of exposure to asbestos in work, claims are usually pursued against the individual’s employer/employers. Damages claims can sometimes also be made if an individual who has asbestosis or pleural thickening was exposed to asbestos at home (because another member of the
family brought home asbestos dust on his/her working clothes) or through living near an asbestos factory.

If someone has received a lump sum from the DWP and/or welfare benefits for his/her asbestos condition, he/she is still entitled to damages. Their value is usually higher than the total of the benefits and the lump sum a man/woman with asbestosis or pleural thickening is awarded. The amounts of the benefits and lump sum which have been paid are taken into account and deducted, in part or in whole (according to the particular circumstances of the case), from any damages an individual receives.

A claim for damages is more complicated than and almost always takes longer than claims for welfare benefits and the DWP lump sum. It is important, therefore, to contact a solicitor who specialises in asbestos claims and to do this as soon as possible.

Sometimes, men and women who have an asbestos disease do not want to contact a solicitor because, for example:

- they think that the company which exposed them to asbestos no longer exists;
- they did not work with asbestos directly, but only near others who did;
- their exposure to asbestos happened tens of years ago; and/or
- they think that at the time of exposure to asbestos no-one knew that it was dangerous.

In fact, claims in which people initially say these types of things often succeed. This is another reason why it is advisable to see a specialist solicitor promptly. Most will offer an initial interview at the claimant's home free of charge.

How is a claim valued?

If it is successful, a lump sum will be awarded. There are two parts to this: first, an amount for the pain and suffering caused by the asbestosis or pleural thickening and; second, compensation for the financial consequences of the disease (e.g. loss of earnings and/or pension and the cost/value of nursing care and equipment).

Damages are not subject to Income Tax. An award does not affect a claimant's right to continue to receive non-means tested welfare benefits (e.g. Industrial Injuries Disablement Benefit, Personal Independence Payment/Attendance Allowance).

Someone who is receiving means tested benefits can set up a trust into which his/her damages are paid. This is a straightforward procedure and ensures that the individual can still receive means tested benefits after an award of damages.

**Full and final or provisional damages**

A claimant with asbestosis or pleural thickening is at risk of his/her current asbestos disease worsening and/or of developing a further asbestos condition. The conventional basis for civil claims is for "full and final" damages. This approach allows a claimant to make only one claim for asbestos disease. Full and final damages include a payment for the possibilities in the future of deterioration in the claimant's asbestos condition, of the development of a different asbestos disease and/or of asbestos-related cancer. The amount of this payment is significantly less than the damages which would be awarded if a more serious or a malignant asbestos disease were to develop. Thus, if a claimant accepts full and final damages there is a chance that he/she will be undercompensated. This would become real if, for example, the claimant contracted mesothelioma or asbestos-related lung cancer. To avoid this risk someone with asbestosis or pleural thickening can claim "provisional damages". On this basis, awards are made for the claimant's current asbestos condition only, ignoring the risks that in the future it may deteriorate and that a different asbestos condition and/or an asbestos-related cancer may develop. If any of these risks were to occur, the claimant could then make a further claim for damages.

What information will the solicitor need?

The solicitor will need to meet the claimant, ideally in person at his/her home, to take a detailed statement about how he/she came into contact with asbestos dust, and to obtain a general overview of his/her working history and personal and financial situation. After this meeting, in many cases, contact between the solicitor
and client can be limited to phone calls and letters.

**How is a claim funded?**

If, after an initial free interview, the solicitor thinks that the claim has a reasonably strong chance of succeeding, he/she should offer to act under a "no win-no fee" agreement. This arrangement means that there is no financial risk to the claimant or his/her family if the claim is not successful.

**How long will a claim take?**

Cases which turn out to be straightforward sometimes settle without court proceedings being issued, within about six months of the solicitor starting work. If an early settlement is not possible and court proceedings are issued (which does not necessarily mean that there will be a trial), these will usually conclude within about a year of issue.

**What happens if the claimant dies before the claim is concluded?**

The executors or administrators of his/her estate can pursue the claim.

**Does the claimant have to appear in court?**

This is a possibility, but a very remote one. Nearly all asbestos disease claims conclude with a negotiated settlement before the date of the court hearing. Probably less than 1% are decided at a trial. Even if there is a court hearing, the claimant will be represented by a barrister who will prepare him/her thoroughly for it. The judge will also almost certainly be sympathetic to his/her situation.

**What is the time limit for claims?**

The law requires court proceedings to be issued within three years of the date that a person was first informed he/she had an asbestos-related disease. The courts have a discretion to allow claims to go ahead even if they are issued outside the three year period, but there can be no guarantee that this will be exercised in any given case. It is, therefore, advisable to contact a solicitor as soon as possible after the diagnosis of an asbestos-related disease.

**Should a man or woman with asbestosis or pleural thickening make a will or, if he/she already has one, review this?**

Yes. This is especially important if he/she has a partner but is not married.

**Men and women with asbestosis or pleural thickening who were exposed to asbestos when serving in the armed forces**

Men and women with an asbestos-related disease whose only exposure to asbestos dust took place when they served in one of the Armed Forces are precluded from bringing a civil claim for damages unless they were exposed to asbestos dust after 15 May 1987. In place of this right, ex-servicemen and women may be entitled to a War Disablement Pension and other benefits. These are administered by the Service Personnel and Veterans Agency (SPVA).

It should be stressed that the prohibition on civil claim only applies to service personnel and not to civilian employees who worked for the Armed Forces. Civilians are entitled to make a claim for damages against the Ministry of Defence.

The branch of the Armed Forces which has been most affected by asbestos diseases is the Royal Navy. It is the policy of the SPVA not to require proof of exposure to asbestos in the case of men and women who served in the Royal Navy in a sea going capacity between 1939 and 1971. Ex-servicemen and women in this category only have to prove that they served at sea in this period and that they have an asbestos-related disease which meets the SPVA’s criteria to receive a War Disablement Pension.

Benefits paid by the SPVA roughly mirror welfare benefits. For example, War Disablement Benefit has a similar framework to Industrial Injuries Disablement Benefit. The rates of its benefits are, however, somewhat higher than the corresponding welfare benefits.
Also, if an ex-serviceman/woman who was awarded War Disablement Benefit for an asbestos condition is found to have died from this disease and leaves a widow/widower, she/he is entitled to a War Widow’s/Widower’s Pension. This contrasts with Industrial Injuries Disablement Benefit, to which entitlement ends on the death of the person with an asbestos disease, even if he/she leaves a widow/widower.

If someone was exposed to asbestos dust both as a serviceman/woman and as a civilian outside the Armed Forces he/she can pursue a civil claim for damages against the defendant/s in question. If the claim were successful, he/she would still be entitled to a War Disablement Pension but the amount of this would be reduced to take account of the award of damages.

**Application forms**

These are available from:

The Service Personnel and Veterans Agency
Norcross
Thornton Cleveleys
Lancashire
FY5 3WP

Telephone: 0800 1692277
Forms can also be downloaded from the SPVA website at www.veterans-uk.info

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**Useful contacts**

Jobcentre Plus PWC Team
Freephone. 0800 279 2322 (deals with applications for lump sum payments under the Pneumoconiosis Act 1979)

The Pension Service
Tel. 0845 60 60 265
www.thepensionservice.gov.uk

National Association of Citizens Advice Bureaux
www.citizensadvice.org.uk

Asbestos Victims Support Groups Forum
Tel. 0161 636 7555
www.asbestosforum.org