

**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 condition¹.

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 15) 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.

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 be or can become severe.

What is diffuse pleural thickening?

It 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 those found in cases of asbestosis.

Both asbestosis and pleural thickening have a long latency period between when the exposure to asbestos took place and when symptoms develop. This is at least 10 years.

Both conditions can result from exposure to blue, brown or white asbestos. Although white is the least dangerous type, it has sometimes 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 and a lump sum paid by the Department for Work & Pensions (DWP). The second is a different lump sum, known as “damages”, which can be claimed, using a solicitor, from one or more of the businesses or organisations (defendants) responsible for the individual’s exposure to asbestos. The right to claim damages exists independently from the right to claim compensation from the DWP. In other words, if someone receives welfare benefits and the lump sum for his/her asbestos condition he/she can usually still claim damages.

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 qualifying conditions for this benefit. The first is that the applicant must have been exposed to asbestos dust when working as an **employee** or as an **apprentice**. People whose only exposure to asbestos took place when working on a self-employed basis are not eligible. Someone who was exposed to asbestos both as an employee/apprentice and when self-employed 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 examination carried out for the DWP, which includes an X-ray.

The requirements of the second condition in relation to asbestosis are straightforward. If the DWP finds this disease to be present, IIDB is paid if disablement is assessed at 1% or more.

For pleural thickening, the requirements are more complicated. IIDB is payable if this:

- is on both lungs (i.e. bilateral); or
- on one lung only (i.e. unilateral);
- is diffuse (i.e. the thickening extends to a thickness of 5mm or more at some point in the part of the chest wall affected by the disease);
- obliterates the costophrenic angle; and if
- the level of disablement caused by the pleural thickening is assessed at 14% or more;

and if the applicant's work in which he/she was exposed to asbestos involved:

- the working or handling of asbestos or of a mixture which contained asbestos;
- or

- the manufacture or repair of asbestos textiles or of other products which were made from or contained asbestos; or
- the cleaning of any machinery or plant used in any operation involved in any of the activities in the two bullet points above; or
- the cleaning of any chambers, fixtures and appliances used for the collection of asbestos dust; or
- work which was not directly involved in any of the tasks in any of the four bullet points above but, through being carried near such work, involved exposure to substantial levels of asbestos dust.

IIDB is paid according to a scale which places levels of disablement in bands (e.g. 21%–30% etc.): the higher the band, the higher the payment.

Awards are made either on a final basis or on a provisional basis for a defined period. In the latter situation, the applicant will have a further medical examination at the end of the period to assess whether his/her asbestos-related disability has got worse.

If a final award is made and the individual's disability later increases, he/she can apply for an increase in IIDB 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 now comes within a higher band, IIDB will be increased.

No income tax is paid on IIDB.

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

An award of IIDB 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 IIDB. People in this situation should take advice from the Citizens Advice Bureau or an Asbestos Victims Support Group before applying for IIDB 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, and can be obtained from any Jobcentre Plus office, the UK Government website (www.gov.uk), or by phone from the Industrial Injuries Disablement Benefit Centre (0345 758 5433).

The DWP classes asbestosis as pneumoconiosis and the IIDB code for this condition is PDD1. The code for pleural thickening is PDD9.

Constant Attendance Allowance (CAA) and Exceptionally Severe Disablement Allowance (ESDA)

In the most severe cases of asbestosis or pleural thickening, in which disablement for IIDB has been assessed at 100%, these benefits may be paid in addition to IIDB.

CAA is awarded if the applicant needs daily care and attention (e.g. home nursing). There are four rates of CAA.

ESDA is paid in addition if CAA has been awarded at its highest or second highest rate and if CAA is likely to be paid on a permanent basis.

Personal Independence Payment (PIP) and Attendance Allowance (AA)

These are benefits for people with care and mobility needs. They are not paid specifically for asbestos diseases, but men and women with asbestosis or pleural thickening may, depending on the extent of their disability, qualify for one or other of the benefits.

PIP was introduced in 2013 to replace Disability Living Allowance (DLA). It is paid to people who are under 65. AA is paid to people who are 65 or over.

There are two components of PIP; Daily Living and Mobility. Only one application is made for both components and each component has two rates: standard and enhanced.

There is only one component of AA and this has two rates.

An award of PIP or AA does not affect an individual's right to receive other means tested benefits.

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 the AA, the form is the AA1A. This can be obtained from DWP offices, the UK Government website (www.gov.uk) or the AA helpline on 0345 605 6055.

Statutory Sick Pay (SSP)

Someone with asbestosis or pleural thickening who was working as an employee 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 apply for Employment Support Allowance and/or Universal Credit (see below).

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

These benefits are 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 women²).

As stated in the section above, someone who was receiving SSP should claim ESA after his/her 28 week period of entitlement to SSP ends. Someone who does not qualify for SSP should apply for ESA from the start of the period when he/she cannot work.

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

² 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).

There are two types of ESA: contributory; and income-related. The first type is paid if the applicant has made or been credited with sufficient National Insurance contributions. The second type is means tested and is calculated taking into account the claimant's and his/her partner's other income and capital³.

Income-related ESA is being replaced by Universal Credit (UC). UC has so far been introduced in limited areas of the country. The Government plans to extend UC so that between 2017 and 2019 most people who receive income-related ESA and new applicants for means tested benefits are transferred to and paid UC. The introduction of UC does not affect contributory ESA. The Government is not planning to replace this benefit and an application for it can still be made.

Applications

The DWP's preferred way of claiming ESA is by phone on 0800 055 6688. 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/apply-universal-credit.

Carer's Allowance (CA)

This benefit can be paid to an individual who is caring for a man or woman who is very disabled and may be relevant in severe cases of asbestosis or pleural thickening. The carer does not have to be a relative of the man or woman or to live with him/her.

The first qualifying condition 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 page 16).

If the person being cared for meets this first condition, the carer (rather than the person being cared for) must also meet certain conditions. He/she:

- must provide care for 35 hours or more per week;
- must not be working and earning more than £110 per week or be in full time education (i.e. studying for 21 hours or more per week); and
- must be 16 or over.

CA is taken into account in assessing the carer's entitlement to means tested benefits.

³ 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.

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 an award make an application for CA worthwhile.

Application forms

This form is DS700 or, if the carer is receiving a State Retirement Pension, DS700(SP). These are available from any Jobcentre Plus office, the UK Government website (www.gov.uk) and the Carer's Allowance Unit on 0345 608 4321. Applications can also be made online at www.gov.uk/carers-allowance/how-to-claim.

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

This is sometimes awarded 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 qualify for a lump sum under the 1979 Act:

- the applicant must have been awarded IIDB for his/her asbestosis or pleural thickening; and
- the applicant must not have issued court proceedings in a civil claim for damages (see page 13 the 'A claim through a solicitor' section); and
- the employer/employers which allowed him/her to be exposed to asbestos dust must have stopped trading; or,
- if the employer/employers is/are still trading, there must be no realistic chance of receiving damages in a civil claim; or
- the employment/employments in which the applicant was exposed to asbestos dust must have ended more than 20 years ago.

The condition that IIDB must have been awarded limits the category of individuals with asbestosis or pleural thickening who qualify for a payment under the 1979 Act to men and women who were exposed to asbestos dust when working as employees or apprentices.

Payment of the lump sum by the DWP does not bar someone from later starting a court action in a civil claim for damages. Conversely, if court proceedings have already been issued, an application for the DWP lump sum cannot be made. It is advisable, therefore, to apply for the lump sum as soon as possible. This application will then almost certainly be processed before a solicitor is ready to issue court proceedings in a civil claim.

Applications under the 1979 Act must be made within 12 months of the date of the award of IIDB. If the applicant dies within this period, the time limit is extended and applications can be made within 12 months of the date of death. The amount paid in posthumous claims under the 1979 Act is, however, lower than in applications made on a living basis. Also, if a man or woman with asbestosis or pleural thickening applies for a payment while he/she is alive, but dies before this is processed, the award is still made at the rates which apply to living claims. These are more reasons why it is advisable to apply for a 1979 Act payment as soon as possible.

If, after receiving a lump sum under the 1979 Act someone with asbestosis or pleural thickening is awarded damages in a civil claim, the lump sum does not have to be paid back to the DWP. Rather, the civil damages are reduced by the amount of the lump sum received.

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 for each condition. If, however, a different asbestos condition (for example, mesothelioma) later develops, an application for a further lump sum can be made for the new condition.

Application form

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

Industrial Injuries Disablement Benefit Centre
Barrow Benefit Centre
Post Handling Site B
Wolverhampton
WV99 1RX

Telephone: 0345 603 1358

A claim through a solicitor

As well as 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 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 and/or welfare benefits from the DWP for his/her asbestos condition, he/she is still entitled to damages. The amount of damages is usually more than the benefits and the lump sum a man/woman with asbestosis or pleural thickening is awarded. 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 DWP benefits and the lump sum. It is important, therefore, to contact a solicitor who specialises in asbestos claims and to do this as soon as possible. A solicitor should offer an initial interview at the claimant's home free of charge.

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 themselves, but only near others who did;
- their exposure to asbestos happened many 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 say things like this at first, often succeed. This is another reason why it is advisable to see a specialist solicitor promptly.

How is a claim valued?

In a successful claim a lump sum is 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).

Income Tax is not paid on damages.

An award of damages 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 and pay his/her damages into this. This is a straightforward process and ensures that damages are ignored in assessing entitlement to means tested benefits.

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 traditional basis of a claim is for "full and final" damages. This allows a claimant to make only one claim for asbestos disease. Full and final damages include compensation for the risk in the future of developing a different asbestos disease and/or asbestos-related cancer. The amount paid for these risks is much less than the damages which would be awarded if a more serious or a malignant asbestos disease were actually to develop. Thus, if a claimant accepts full and final damages there is a chance that he/she will be under compensated. This would become a reality if, for example, the claimant contracted mesothelioma.

To avoid this risk of being under compensated 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 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 get an overview of his/her working history and personal and financial situation. After this meeting, in many cases, contact between the solicitor and client 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?

Straightforward cases 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. Even if there is a hearing, the claimant will be represented by a barrister who will prepare him/her thoroughly for it. The judge will almost certainly be sympathetic to the claimant’s situation.

What is the time limit for claims?

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

What happens if the defendant has been dissolved and its insurers cannot be identified?

If the defendants have been dissolved, this does not necessarily mean that a claim cannot be made. If the defendants’ insurers can be identified, the claim can effectively be brought against them.

Sometimes, however, the relevant insurance companies cannot be located because records have been lost or destroyed. A civil claim for damages cannot, then, be pursued.

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 not allowed to bring 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 Veterans UK, part of the Ministry of Defence.

It should be stressed that the bar on civil claims only applies to service personnel and not to civilian employees who worked for the Armed Forces. Employees and former employees 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 Veterans UK not to require proof of exposure to asbestos in the case of men who served in the Royal Navy in a sea going capacity between 1939 and 1971. Ex-servicemen in this category only have to prove that they served at sea during this period and that they have an asbestos-related disease which meets Veterans UK's criteria in order to receive a War Disablement Pension.

Benefits paid by Veterans UK roughly mirror welfare benefits. For example, War Disablement Benefit has a similar framework to Industrial Injuries Disablement Benefit. The rates of Veterans UK's benefits are 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 outside the Armed Forces he/she can make a civil claim for damages against the defendant/s in question. If the claim is successful, he/she is still 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:

Veterans UK
Ministry of Defence
Norcross
Thornton Cleveleys
Lancashire
FY5 3WP

Telephone: 0808 1914 218

Forms can also be downloaded from Veterans UK's website at:
www.veterans-uk.info

Useful Contacts

Industrial Injuries Disablement Benefit Centre

(deals with applications for lump sum payments under the Pneumoconiosis Act 1979).

Telephone: 0345 603 1358

The Pension Service

Telephone: 0800 731 7898

www.gov.uk/contact-pension-service

National Association of Citizens Advice Bureaux

www.citizensadvice.org.uk

Asbestos Victims Support Groups Forum UK

www.asbestosforum.org.uk

023 8071 8000 info@mooreblatch.com
www.mooreblatch.com

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