

Asbestos Victims Support Groups Forum Presentation at the Asbestos Seminar
15 November House of Lords

Legal Aid, Sentencing and Prosecution of Offenders Bill Part 2

Introduction

This large, far-reaching Bill has caused dismay and a deep sense of injustice among many classes of persons affected by it. Many of those have seen their cause championed in the Press and in Parliament.

I would like to speak on behalf of people affected by the Bill who have been completely overlooked in debates so far, yet are deserving of the greatest of attention: those who are dying from the asbestos-related cancer mesothelioma, whose access to justice will be severely curtailed as a result of Sir Rupert Jackson's proposals enshrined in this Bill.

I would like you to hear the voices of mesothelioma sufferers and their families by reproducing just some of the 400 damning statements they provided to us in response to the Forum's questionnaire on the effects of the Bill on future compensation claims.



The voices of those like the gentleman on the left of the photograph who was working in the boiler room in Westminster Hospital, treading on asbestos lagging with no protection, when this photograph was taken in 1968. Three years after the seminal Newhouse

Thompson Report which showed that brief exposure to asbestos could cause mesothelioma, and two years after mesothelioma was listed as a prescribed disease. These working conditions prevailed for decades.

Mesothelioma perceived as a death sentence

Every week, on average, I visit two people newly diagnosed with mesothelioma, in Greater Manchester. Nationally, over 2,400 people were diagnosed in 2008, and the figure is far higher today. When I see sufferers, they and their family are in shock at a diagnosis which is effectively a death sentence. The term 'death sentence' is not mine, it is one regularly employed by mesothelioma sufferers themselves in their replies to our survey.

"Mesothelioma sufferers are victims they don't have any say about their condition they live with a death sentence!!!"

"If people are given a death sentence they don't need the extra stress to claim compensation"

"It is disgraceful to expect victims of mesothelioma to have to pay to receive compensation. Their death sentence should be payment enough!"

It is no wonder many respondents referred to the ultimate price they have to pay when they are asked to pay yet again to make a claim for compensation.

"Due to lack of early regulations men & women have been exposed to asbestos without knowing the risks & now are expected to pay for the privilege of asking for their right for compensation_for the death sentence they've been dealt."

Life expectancy and Trauma

Life expectancy on diagnosis is from 9-12 months. The diagnosis is met with a sense of helplessness and is followed in many cases by intractable pain, severe breathlessness, weakness, and in many cases death within months of diagnosis.

The trauma affecting families who have witnessed desperately hard deaths is a recurring and shocking theme throughout the replies.

"The pain that people go through is indescribable. I have never seen pain like it"

“My husband, Alan died on March 23rd this year and I am still suffering from watching him die of this horrendous disease.”

“No amount of compensation could ever compensate for My husband’s suffering and loss of life. To even contemplate this is wrong. My husband’s suffering has ended but still I have terrible images of his horrific suffering which I cannot erase.”

Outrage at the failure to protect workers and then demand they pay to claim compensation

Asbestos diseases are socially produced diseases. The only known cause of mesothelioma is exposure to asbestos. On average it takes 35 years to develop from first exposure to asbestos, but can take over 50 years. The average age of sufferers is approximately 67 years. Most are working class men who worked in heavy industry and now pay for that hard work with their health and their lives.

They were allowed to work with a dangerous carcinogen without any protection despite the dangers known to successive governments, health and safety agencies and employers. They are the victims of the worst ever occupational health disaster. They are the ‘wounded soldiers of industry’ who helped build the foundation of economic prosperity over many decades.

The expressions of grievance and betrayal, especially at government failure to control the use of asbestos and to ban it much earlier than 1999, are harsh and angry – especially from family members. The very suggestion that they should pay out of their damages for pain and suffering, which are so extreme, is met with first with incredulity, then with outrage.

“The Government taking part of the compensation that we are entitled to, in this case working for the government that caused it! DISGUSTING!!”

“My husband was poisoned going to work. I hope this Government remembers that!”

"It's bad enough to have developed mesothelioma whilst just earning your living but to have to pay these costs when making a claim is doubling the worry and suffering - all totally cruel and criminal."

"I lost my Dad on May 19th just 5 months after diagnosis, he was 63 and worked all his life paying his insurance and taxes. Surely this contribution to the state over 40 years warrants his family the right to claim without the fear of losing out financially."

Insult to Injury

Their outrage is not fundamentally to do with money per se. It is everything to do with fairness, justice and, yes, respect. Respect for the terrible loss they all must endure because of a shocking institutional failure to afford the most elementary protection for decade after decade. The loss of part of their compensation reflects a far bigger and fundamental loss. Compensation is the only tangible acknowledgement that a wrong has been done: no one will be prosecuted and punished for harming them. No apology will be given. Making them pay for their modest compensation diminishes the small sense of justice such a payment stands for – it diminishes them. It adds insult to injury.

"The Bill is **an insult** to people suffering from mesothelioma through no fault of their own. The trauma of seeking compensation and having to pay legal fees out of a successful claim is shocking."

"Being told that you have this ailment is a big shock. Having to pay to get **justice is a slap in the face.**"

Angry reaction to the Government's justification for charging claimants

A profound sense of grievance is caused by the official justification for the reforms. These are found in the ministerial forward to the consultation on Jackson's proposals for reform, in the Press and in letters from ministers.

Two of the Government's main justifications for their reforms are: deterring people from making frivolous claims; and attacking the compensation culture.

"In seeking to rebalance the costs of civil cases, we are endeavouring to ensure: ...that frivolous claims are deterred..."

(MoJ Consultation Paper CP 13/10 Nov. 2010)

"Furthermore, Lord Young of Graffham's recent report to the Prime Minister into health and safety law and the rise of the compensation culture, Common Sense, Common Safety – which has been accepted by the Government – provides a strong endorsement to take forward the recommendations here." (MoJ Consultation Paper CP 13/10 Nov. 2010)

The fundamental problem with this approach is that it is a 'one size fits all' approach which imposes a form of 'collective punishment' on those who are innocent victims and who are "lumped in" with trivial claims and dishonest claimants.

"I can understand the need for legislation to prevent the trivial and no win fee claims but how can the claim of a mesothelioma sufferer be "lumped in" with "ambulance chasers?" Mesothelioma has only one outcome and that is loss of life it is not trivial and patients need help not hindrance."

"I agree with the Government's decision to stop trivial and dishonest claims but in some cases i.e. mesothelioma that is totally wrong."

"Perhaps valid to deter "whiplash" type claims but grossly unfair for medically confirmed terminal illness/disease."

It is a misguided Bill which misses the target. Instead of seeking remedies to deter dishonest and trivial claims it punishes everyone making the innocent guilty.

No wonder one comment should question what offence mesothelioma sufferers have committed!

"It is disgusting that people who have died from mesothelioma and those that are suffering poor health for the same reason should be lumped together in a Bill entitled Legal Aid, Sentencing and Punishment of Offenders. What possible offence can people who have died from mesothelioma have committed?"

Anger at being part of the Compensation Culture.

Despite the fact that Lord Young's report and that of the House of Commons Constitutional Affairs Committee "Compensation Culture" 2005 explicitly state that there is no compensation culture but rather a "perception" of a compensation culture ministers insist on blaming a compensation culture so that it has become a reality for most people.

Furthermore, although personal injury claims are falling, those who have a right to claim are made to feel part of an American style explosion of claims and resent that inference, as can be seen from the comment below.

"If the Government are trying to reduce the claims culture for personal injury that is becoming more and more prevalent in the UK, influenced by America no doubt, it should not include claims for such injuries as industrial injury."

Fear of loss of Access to Justice

Kenneth Clarke says this Bill is not about access to justice – it is.

"I will not set out all the arguments, but I do repeat that this is not a question of access to justice for the sufferers, but a question of how much money should be paid to lawyers...." (Ken Clarke letter to constituent 15 September 2011)

Currently, many mesothelioma sufferers do not claim compensation. They are too tired, weak, and defeated by their disease to contemplate the additional stress of claiming compensation.

In many cases they only do so because we can say that a claim will not cost them anything, they will not risk anything and they will have certainty about the cost of a claim.

"If there had been a risk of me paying costs I would not have tried to claim."

"If we had known that legal costs would have been incurred, with the figures involved, I don't think we would have made a claim."

"My husband Cliff who died from mesothelioma told our solicitor that he would not proceed if there were any costs. He died 17 May 2009."

"In most cases I don't think people would go ahead with claim because of financial implications."

"Many sufferers and their families would not be able to claim if faced with expensive legal costs. My father worked all his life in filthy foundries full of asbestos and earned just enough to exist. He sadly died from lung cancer caused through his working conditions."

It will make no difference whatsoever if we can say that they will only lose a fixed, maximum percentage of their compensation. They will worry and turn aside from claiming— they will settle for the Government lump sum payment as many do now.

I cannot stress enough the effect that this Bill will have on mesothelioma claims. It is not just asbestos victims support groups who say this, mesothelioma sufferers sent in many statements to this effect.

The Real Agenda

Personal injury claimants are being used to discipline solicitors, to force them to keep down their costs.

To impose more stress and anxiety on people who suffer serious industrial diseases, especially mesothelioma, is simply callous, cynical and heartless.

Yes, the cost of litigation will be reduced, but at what cost to justice and fairness?

"I am appalled that yet again the Government is trying to punish the wrong people."

"My life has been turned upside down, and I really didn't want to think about anything except spending my last days with my family. I worked all my life and paid all my N.I. and taxes, so this seems unfair."

**Asbestos Victims Support
Groups Forum UK**

www.asbestosforum.org.uk

asbestos.gmavsg@gmail.com

Tel: 0161 636 7555

Dear Member of the House of Lords,

The Government says defendants bear too much of the risk of litigation and mesothelioma sufferers must now bear their share of the risks by paying up to 25% of their damages for pain and suffering in legal costs.



Photo by kind permission of the family of George Cahill who died from mesothelioma

We think mesothelioma sufferers have risked enough, working with asbestos without protection when government and industry knew of the dangers.

The risk they had to take has cost them their lives. They and their families have endured enough stress and heartache. Many will never claim and get the justice they deserve.

Asbestos Victims Support Groups Forum UK