

# DMPS: THE DIFFUSE MESOTHELIOMA PAYMENT SCHEME

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# The Diffuse Mesothelioma Payment Scheme

## What is it?

The Mesothelioma Act 2014 received Royal Assent on Thursday 30th January 2014. The Act allows the Secretary of State to set up a "Diffuse Mesothelioma Payment Scheme". This is a Scheme to make substantial payment to some mesothelioma sufferers in some circumstances. Various insurers will contribute about £350m to fund the Scheme between 2014 and 2024, with the Government providing funding loans at the outset.

DMPS began accepting applications in April 2014 and began making payments in 1 July 2014.

## What is it for?

Mesothelioma is a cancer that is caused by exposure to asbestos.

Most people suffering from mesothelioma were exposed to asbestos at work and have been able to pursue claims against employers, though not always successfully.

In many cases, though, these employers have ceased trading by the time the mesothelioma appears, so that the sufferer has no employer to sue and cannot obtain compensation for his pain, suffering and for his own and his family's loss of income without having access to Employer's Liability insurance.

Although insurance has been compulsory for employers since 1972, records are patchy and incomplete so that mesothelioma sufferers are sometimes unable to obtain compensation even when they have meritorious claims.

DMPS provides funds to meet meritorious claims in some circumstances.

## What does it replace?

Currently, someone who has mesothelioma following asbestos exposure, for instance from washing their husband's overalls or from living near an asbestos factory or from employment, is entitled to a payment under the 2008 Diffuse Mesothelioma Scheme.

In addition, where no employer or insurer can be found, someone suffering mesothelioma following workplace exposure is entitled to a payment under the Pneumoconiosis etc. (Workers' Compensation) Act 1979. With some minor exceptions, the payments made under the 2008 Scheme match the payments made under the 1979 Act.

These are both "no fault" arrangements, where there is no need to prove negligence.

It is not possible to receive payments under the DMPS as well as under the 1979 Act or the 2008 Scheme. Careful advice is needed before deciding which path to take: sufferers cannot make an application under the 1979 Act if they have made an application to the DMPS and an application under the 2008 Scheme will not succeed if there has already been a payment under the DMPS. Although the awards under DMPS are much higher than the awards under the 1979 Act and the 2008 Scheme, there may be advantages in applying for these lower payments in cases where liability will be difficult to prove.

## Who can apply?

People who have mesothelioma can apply

Provided:

- they suffered asbestos exposure in employment.
- diagnosis has been within 3 years of the application.

"Eligible Dependants" can apply if the sufferer has died.

Eligible Dependants include:

- the spouse
- the deceased's children (if there is no surviving spouse; provided they are either under 16; or under 21 and not gainfully employed; or permanently incapable of self-support)
- a "reputed spouse" (if there are no children)
- some other relative (who is wholly or mainly dependant on the deceased; if there is no spouse nor children nor reputed spouse)

## How is the award calculated?

The DMPS will make payments to the sufferer according to his age when he was first diagnosed or to his Dependants according to his age at death.

Awards made to Dependants will be split equally between all eligible Dependants.

## What does an applicant need to prove?

The DMPS is a "merits based" scheme.

The applicant will have to prove that he was exposed to asbestos in his employment as a result of his employer's negligence.

He will need to prove he has mesothelioma: form BI 100 PN (A) or DS 1500 from his Lung Cancer Nurse or treating consultant, or possibly a letter from his GP, will satisfy the Scheme Administrators.

He will need to demonstrate that he has taken steps to find his employer's insurer but without success

## Who runs the scheme?

The Secretary of State has appointed an Administrator to run the scheme. The Scheme will be funded by means of a levy on the insurance industry.

## Will state benefits be deductible from DMPS payments?

S.11 of the Mesothelioma Act allows state benefits to be deducted from Scheme payments in full and to be repaid to the Government.

## What if the claim is not accepted?

If it is clear that the asbestos exposure occurred in employment then there are ways a claim might fail.

# DMPS payments

Firstly, the Administrator might decide that the exposure was not negligent.

An applicant who is not happy with the Administrator's decision can ask for a "Review" and then an "Appeal" to the "First Tier Tribunal". It seems likely that the decisions of the DMPS Administrator are capable of judicial review.

Secondly, the Administrator might decide that he cannot deal with the application because there is an insurer after all. For that purpose the Act set up the "Technical Committee" which can make a binding ruling on the supposed insurer and upon the applicant.

The Technical Committee can rule:

- that the applicant can pursue an insurer and so cannot make a DMPS claim, or
- that there is no traced insurer so the applicant can make a DMPS claim.

In either case, the applicant will have to prove negligent exposure.

Thirdly, the Administrator might decide that there was other exposure, where an insurer is available. It is not clear whether the Administrator is entitled to reject a claim in these circumstances.

Fourthly, the Administrator might decide that the asbestos exposure was not significant.

## Time limits

Applications must be made within 3 years of diagnosis. The Administrator may be able to impose other time limits for taking steps in connection with any claim. Claims brought by Dependents must be lodged within the same time period (i.e. within 3 years of diagnosis). There are significant differences, therefore, between the limitation provisions governing DMPS and

governing civil claims under Limitations Act 1980.

The Scheme Administrator may extend these time limits where there is "good reason" for failure to comply with these time limits and for any subsequent delay. This differs from the broad "discretion" enjoyed by a court under S.33 of the 1980 Act.

## What evidence is needed?

The applicant must provide evidence of

- negligence
- the employer's identity
- medical diagnosis

in every case, together with evidence that steps have been taken to trace the employer's insurer(s).

The Administrator can direct an applicant or a Third Party (such as an insurer) to produce certain kinds of evidence or documents and can impose time limits.

## What if an insurer is found later on?

The Administrator can require the applicant (or his estate) to cooperate in a claim against that insurer. If that claim is successful then the DMPS will recover its outlay and the applicant (or his estate) will likely obtain a further payment, to match the difference between a "full value" award of compensation in the courts and the lower payments available in the DMPS.

## Applicant's legal costs

The DMPS provides for payments to be made according to an age-related tariff (see below). The tariff figures include an element of £7,000 to go towards the applicant's legal costs.

Age of the person with diffuse mesothelioma	Scheme Payment
40 and under	£271,120
41	£267,439
42	£263,758
43	£260,078
44	£256,396
45	£252,715
46	£249,034
47	£245,353
48	£241,671
49	£237,990
50	£234,309
51	£230,628
52	£226,946
53	£223,265
54	£219,584
55	£215,903
56	£212,221
57	£208,540
58	£204,859
59	£201,179
60	£197,498
61	£193,816
62	£190,135
63	£186,454
64	£182,773
65	£179,091
66	£175,410
67	£171,729
68	£168,048

Age of the person with diffuse mesothelioma	Scheme Payment
69	£164,366
70	£160,685
71	£157,004
72	£153,323
73	£149,641
74	£145,960
75	£142,279
76	£138,599
77	£134,918
78	£131,236
79	£127,555
80	£123,874
81	£120,193
82	£116,511
83	£112,830
84	£109,149
85	£105,468
86	£101,786
87	£98,105
88	£94,424
89	£90,743
90 and over	£87,061

## See

Mesothelioma Act 2014

Diffuse Mesothelioma Payment Scheme Regulations 2014 (SI 2014/916)

Diffuse Mesothelioma Payment Scheme (Amendment) Regulations 2014 (SI 2014/917)

# Meet the Team

## Peter Williams

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**Peter is head of the group.** He has specialised in asbestos-related disease claims for over 30 years and he gives annual talks to solicitors on the issues. In legal directories, Peter is described as:

*'Peter Williams is a ruthless analyst of the other side's weaknesses and has very high client-care skills' and is seen by market sources as "a true expert" with "very detailed knowledge.'*

## Bridget Collier

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**Bridget heads up our mesothelioma and asbestos claims practice in the North of England.** Bridget has over 20 years' experience in conducting asbestos, industrial disease and employer liability claims. She sat on the Executive Committee of APIL and the Oversight Committee of the DMPS. Bridget is an APIL accredited specialist asbestos claims solicitor.

## Shaheen Mosquera

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**Shaheen is a Partner in our asbestos disease team.** She has been representing victims of asbestos and in particular those diagnosed with mesothelioma for many years. She is an APIL accredited Senior Litigator and Specialist in Occupational and Asbestos Disease claims. She has recovered millions of pounds in damages for those diagnosed with mesothelioma and other asbestos related diseases.

## Charlotte Thorpe

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**Charlotte joined Fieldfisher's asbestos disease team in 2021.** Charlotte has experience acting for those exposed to asbestos, and specialises in mesothelioma and asbestos disease claims.

## Andrew Morgan

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**Andrew has specialised in asbestos disease claims since 1993.** He is a past coordinator of the Occupational Health Group of the Association of Personal Injury Lawyers (APIL) and is an APIL Fellow. In legal directories, Andrew is described as:

*Andrew has "a strong reputation for his expertise in handling industrial disease work, particularly mesothelioma cases" and sources describe him as "true specialist" and "a very talented lawyer".*

## Natalie Amara

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**Natalie joined Fieldfisher's asbestos disease team in 2022.** She places great emphasis on client care, ensuring she keeps clients and their loved ones as informed and involved as possible in all stages of their case.

## Dushal Mehta

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**Dushal is a Partner at Fieldfisher and specialises in acting for clients with mesothelioma and other asbestos related diseases.** He is recognised in all the leading legal directories for his expertise.

*'Dushal is described by sources as "extremely hard-working and willing to take on difficult cases'*

## Abby Bennett

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**Abby Bennett joined Fieldfisher's asbestos disease team in 2023.** She has experience in personal injury claims, with a particular interest in asbestos related disease claims.

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