

fieldfisher

# Mesothelioma & Asbestos Disease Claims

## A guide for clients

Caring for our clients | Commitment to our cases | Cutting edge expertise



# Working with us

We are committed to providing you with the high-quality service you expect and we will make sure that we understand what you want to achieve in order to do this for you. We always work as quickly and efficiently as possible and hope you find us friendly and approachable every step of the way.

You will know from an early stage who will be working on your case and we will make it clear if they are a partner, solicitor or legal executive and whether any assistants will be working on some aspects of your case. We will always try to avoid changing the people who are handling your work, but if it becomes necessary at any stage to transfer the day-to-day conduct or overall supervision of your case to another person within the firm, we will notify you quickly of the change and the reason behind it.

We aim to keep you informed of the progress of your case at all times. We will explain to you the issues raised and advise you of any significant delays we may incur and the reasons behind them. When documents are prepared on your behalf, we will check these with you. We will also advise you whether the likely outcome of your case will justify the likely charges and expenses and risk involved, from time to time, as necessary. In the following pages you can find comprehensive details about working with us which should answer any questions you may have. This is an important document, so please do keep it in a safe place for future reference.

## Communication

We will try to communicate with you by whatever method you request. When appropriate we will contact any involved parties by email or fax, unless you instruct us not to do so. However, please note that we cannot be held responsible for the security of correspondence and documents sent by email or fax.

Our office is open from 9:30am to 5:30pm, Monday to Friday although we are often contactable outside these hours. If the person dealing with your case is unable to take your call, you can leave a message on our voicemail service and we will deal with any enquiry as soon as we can. Alternatively you can fax or email us at any time.

If you wish to see the person dealing with your case in person, please make an appointment before coming into the office to make sure that they are available to see you. We can meet with you outside normal office hours and at your home if that would be more suitable for you. Just contact us and let us know that this is your preference and we will arrange this.

## What you need to do

There are a number of actions that you will need to undertake during the course of your case. This could be, for example, signing court documentation. We will let you know as soon as possible if and when this action is required. You will also need to agree that we can approach such third parties as may be appropriate for information that we consider necessary or desirable to deal with your affairs.

In order to conduct your case we will need you to co-operate by providing all information which may be needed for us to fulfil our obligations under money laundering regulations. Please ensure you keep receipts of any expenses you have as a result of your injury (e.g. prescriptions, travel to and from hospital) and any expenses around the home. It would also be beneficial to keep a diary of the help you need from other people and changes in your condition to assist with your claim.

## Timescales

The nature of legal work, particularly court work, makes it difficult to estimate how long it will take to complete. But when we discuss your requirements with you at the outset, we will also give you an indication of time scales. We do attempt to meet these and are sometimes able to beat them.

Unfortunately, the speed at which we work can often be affected by the level of co-operation we receive from other people, which is outside of our control. You can help facilitate the process by providing us with any documents and information requested promptly. As a general guide, some straightforward claims can be settled in around one to two years, but larger or more difficult claims requiring court action are more likely to take longer.

## Making payments to you

If we obtain any compensation for you or if we have to make any payments to you of any kind, we prefer to take advantage of the security that is offered by the electronic transfer of funds and will use that method unless you tell us not to.

## Our commitment to you

Information passed to us is kept confidential and we will not disclose it to third parties unless authorised by you or required by law. We do reserve the right to disclose our files to regulatory bodies, including our auditors, in the exercise of their powers. We observe the professional rules of the Solicitors Regulation Authority Code of Conduct and accept instructions to act for you on the basis that we will act in accordance with those rules.

We will destroy any papers that we hold relating to your case after a reasonable time, (this will include any papers that legally belong to you) unless otherwise agreed with you. In compliance with the Solicitors Regulation Authority Code of Conduct, this will not usually be until at least six years after we complete your case.

## If you are unhappy with our service

If you have any problems or queries over the way in which your matter is being handled or there is any way in which you feel our services can be improved, please contact us.

Please do raise any concerns or queries and we will do our utmost to address these in order to provide the standard of service you require. If any of your queries or concerns are not resolved in this way, you may use our formal complaints handling procedure, a copy of which can be supplied on request (in accordance with the Solicitors Regulation Authority Code of Conduct)

If you have been through our formal complaints procedure and wish to take matters further, you have the right to complain to the Legal Ombudsman. You must make any such complaint to the Legal Ombudsman within the time limits set out below:

12 months of the problem first occurring or from when you should reasonably have become aware of the problem; and

6 months of receiving our final response in relation to your formal complaint.

The Legal Ombudsman can be contacted on 0300 555 0333. Alternatively, you can write to them at PO Box 6806, Wolverhampton WV1 9WJ.

## Ending our agreement

We may decide to stop acting for you, but would only do so with good reason. Please refer to the terms of the conditional fee agreement, legal expenses insurance policy or legal services funding arrangement for further information. If at any time you are unhappy with our service you may terminate your instructions to use us at any time. You must do this in writing. Please bear in mind that we do have the right to charge you for all work done including expenses and can retain your file of papers until our bill is paid. You will be entitled to ask the court to assess the reasonableness of any fees we charge you.

# The process: How it works

Below is a guide to give you an indication of how the claims process will work. Please note that this is to show you how a typical asbestos disease case would work, but we will not always follow these steps exactly, dependant on whether your case or circumstances require a different approach.

## Step 1 - Establishing if you have a valid claim

Initially we will meet with you to determine whether we think there is a successful claim to be made. In a simple case, we may be able to advise you at an early stage whether to pursue your claim by court action. In a complex case, further work may be necessary before we can do this.

As well as investigating if you have a claim for an asbestos disease, we will consider the likely amount of compensation that a court would award. In many cases we will not seriously consider the amount of compensation until the preliminary medical issues have been investigated, but we will always be able to give a broad outline about the main categories of compensation at the beginning of the case. The investigation into the value of your case may take some time and may involve expert accountants' evidence in complicated cases.

## Step 2 - Agreeing how legal expenses will be paid for

The next step is to check to see if you have the benefit of legal expenses insurance through your household, car or credit card insurance. If you do, we will contact your insurers to ask them to fund the claim. Otherwise, if we consider your case has a good chance of success we will act for you on a no win, no fee basis, which means that we will not charge you if the case is lost. We will also take out an insurance policy to cover the fees from the other side which you would also need to pay if the case was lost.

If the case is successful, we recover all our fees from the losing defendants, on top of your compensation. However, all of the various options on how to fund the claim will be fully explained to you in more detail at our first meeting.

## Step 3 - Agreeing the type of claim to pursue

Unfortunately, exposure to asbestos dust can give rise not only to diseases in the present, but also to the risk of serious asbestos-related diseases in the future. These will be indicated in your medical report if appropriate. You are entitled to compensation both for your current condition and for those future risks and the law gives you a choice about how you claim this.

We will advise you of the options and things to take into consideration, but this is your decision to choose which type of claim you wish to pursue.

### Final damages

If you claim final damages, you will receive compensation both for your current condition (including any loss of earnings and other expenses) and for the future risks. If you are fortunate enough not to develop any other asbestos disease and/or your present condition does not worsen, you will still have received a modest amount for those risks. If you do develop any of the specified conditions, however, you will not be able to claim any further damages. This means that you would ultimately be under-compensated in respect of any such future risks.

### Provisional damages

If you choose this type of claim, you will receive compensation only for your current asbestos disease and you will be entitled to claim further damages in the future if you develop any of the specified future risks. This means that you would receive a smaller amount for the same asbestos disease now than if you were to claim final damages (because you do not receive anything for the future risks). However, if you develop a more serious asbestos disease in the future, you will be able to claim additional damages to compensate you fully in respect of that.

In general, the younger the claimant and the more minor the disease, the more reason there is to claim provisional damages. There are fewer compelling reasons to claim provisional damages for older claimants who are already suffering significantly from the disease.

## Step 4 - Gathering evidence

Once we have established that you have a claim and agreed the approach to payment, we will then concentrate on gathering evidence to prove the essential elements of a claim.

### Duty of care

As with all claims, it is necessary to show that a duty of care was owed to you, the injured person, by the party who exposed you to asbestos.

If you have been exposed to asbestos in the course of your employment, there is usually no difficulty in showing that you were owed a duty of care in those circumstances.

Sometimes there is exposure to members of employees' families, for example as a result of dust carried home on clothing and tools. Or you may have lived near to a factory manufacturing asbestos products. It is sometimes possible to show a duty of care in these circumstances.

### Breach of duty of care

We have to show that there was a breach of duty (negligence) in allowing the exposure to occur and doing little or nothing to prevent this.

Often particular duties will be specified in Acts of Parliament, such as the Factories Act, and failure to comply with these will be breaches of statutory duties.

Everything that you can tell us about the circumstances in which you were exposed to asbestos will help to prove these breaches of duty.

### Damage

This is the physical injury that you have suffered. In order to confirm this we will obtain a medical report for you. You will also be able to claim for other losses and expenses resulting from the asbestos disease such as a loss of earnings. These items can be included as other "heads of damage".

### Causation

You must prove that your asbestos disease has at least probably been caused by the party being sued (the defendant). Issues may arise where there has been significant

exposure to asbestos elsewhere e.g. during employment by another employer who cannot be sued.

If you wish to claim financial loss, you will need to prove that the losses have probably resulted from the asbestos disease. For example, if you are unable to work because of your asbestos disease then you will be able to make a claim for your loss of earnings.

In the case of lung cancer which can be caused by a variety of agents, the most well-known of which is smoking, you need to prove that there has been heavy exposure to asbestos. The link between asbestos inhalation and lung cancer is well reported so if a patient has lung fibrosis and a history of substantial exposure to asbestos dust, this will be readily diagnosed as asbestosis even if they have also been a smoker. The Department for Work and Pensions (DWP) will also award disablement benefit if lung cancer is accompanied by asbestosis.

If a claimant has lung cancer, has been a smoker, and has been exposed to asbestos but does not have asbestosis, some courts have held that this is attributable to exposure to asbestos. We have achieved settlements in lung cancer cases where there is no asbestosis but this is still a difficult legal area.

### Limitation

There is a statutory limitation period of three years within which court action should be commenced. Usually, in asbestos disease cases, the period will run from the date on which you knew you had an asbestos disease. The Court has discretionary power to override this three year limitation period so it is worth discussing a possible claim even if you think you may be outside the period, but any delay can only cause difficulties.

In a fatal case, the three year limit usually starts at the date of death or on the date when the person bringing the claim on behalf of the deceased first knew of the asbestos disease. It is still very important to see a solicitor as soon after the event as possible whilst memories are fresh.

We will give you advice if we think that "limitation" is likely to present a problem, and we will take action, immediately if necessary, to protect your position as far as possible.

At this stage we will meet with you again to obtain a detailed statement. This must include as much as you are able to remember about the circumstances in which you were exposed to asbestos. Often this will mean trying to recall events that happened many years ago. We understand this is difficult but the success of your claim will largely depend on what you can tell us. The statement will also include details of how you found out about your asbestos disease and the effect this has on you.

If you are suing an employer, we will write to the HM Revenue & Customs at this point to obtain proof of your employment history. Any documents that you have to prove this will also help. We will also contact any witnesses and obtain a medical report. If the prospective defendant is a limited company, then unless it is already well known to us, we will carry out a company search at the Companies Registry and/or from our own extensive records.

## Step 5 - Contacting the defendants

Once the facts are gathered and we are happy to proceed with the case, we will then contact the defendant, and inform them that a claim is being made against them. We will send them a letter outlining the reasons for bringing the case, detailing any evidence and the effect that the exposure to asbestos has had on you. The defendants are then legally allowed three months to carry out investigations (sooner in a mesothelioma case).

## Step 6 - Court action

Three months after we have contacted the liable party we are entitled to then issue proceedings to commence court action (sooner in a mesothelioma case). In a simple case, we aim to issue proceedings as soon as possible after the three month period.

At this point we will consider whether the case should be issued in the High Court or in the County Court. Whatever the venue we will, with the help of a barrister and the medical experts, draw up the following documents:

Particulars of Claim - this will set out the facts upon which your claim is based and the allegations of negligence and breaches of statutory duty which we intend to pursue.

Schedule of Damages - this will set out the financial losses which have been incurred to date as a result of the asbestos disease. It will also include a broad outline of any likely future losses.

A Medical Report - this is on your present condition and prognosis and it is usual for both the schedule of damages and the medical report to be updated as your case proceeds towards trial.

## Step 7 - Going to trial

Once proceedings have been served, procedural steps have to be followed in order to progress your case to trial. The court procedural judge sets dates for exchange of witness statements, documents and experts reports and, in many cases, fixes a date for the hearing.

You will probably be invited to attend at least one conference with your barrister and solicitor before the trial in order to discuss various aspects of the case and the best way to proceed.

The case may either settle because the defendants make an acceptable offer of compensation or it may proceed to trial. The trial length varies depending on the complexity of the case. Some cases are split so that one hearing deals with liability and another deals with the amount of damages.

# What we need to do: Legal obligations

## Before court action we must:

- Take a full statement from you
- Collect evidence about any financial losses and/or expenses
- Get a medical report
- Obtain proof of your employment in a claim against employers
- Contact any witnesses
- Notify your claim to the defendant and allow them three months to investigate although this is often less in mesothelioma cases
- Advise you of any offer in settlement
- Prepare the necessary documents to issue court proceedings if no acceptable offer is made

## Before court action you must:

- Sign forms to give access to your medical records
- Attempt to find and retain all receipts, P60s, accounts, etc.
- Sign consents for information about earnings and pensions
- Check the statement carefully and tell us if it is not correct
- Sign the statement of truth if you agree that it is accurate
- Keep any documents proving your employment history
- Sign forms of consent for the HM Revenue & Customs and/or DSS
- Provide names and addresses of any witnesses to us
- Inform us of any changes in your medical condition or financial circumstances which might affect the value of your claim
- Read the Claim Form and Particulars of Claim carefully to check the facts

## During court action we must:

- Advise you on any specific allegations or requests for further information made by the defendant
- Prepare a formal list of all documents in your and our possession relevant to your claim including the documents mentioned above
- Advise you on the contents of any expert's report
- Advise you on any offer to settle or payment into court
- Inform you of the trial date and place

## During court action you must:

- Check the formal list of all documents and sign it, if you are confident that it is true
- Send us all relevant documents which you still have
- Inform us of any change in your medical condition or other matter relevant to the content of the report
- Inform us of any change in your circumstances which might affect the value of your claim (medical or financial)
- Confirm that you will be able to attend the trial

# Your questions answered

## **Q: The company I worked for has been dissolved. Can I still claim?**

A: Because an asbestos disease is usually not apparent until many years after the exposure to asbestos took place, we find that it is often the case that a potential defendant company has been dissolved by then. However, if the relevant insurers of the company can be traced, it is possible to make an application to the Court to restore the company so that it can be sued. We have been successful in doing this on many occasions. Unfortunately, if those insurers cannot be traced, it will not be possible to pursue your claim against that company.

## **Q: My employer has ceased to trade and their insurers cannot be traced. Do I have any other options?**

A: You can still claim compensation if your employer has ceased to trade. The Department for Work and Pensions administers a scheme called the Pneumoconiosis etc. (Workers' Compensation) Act 1979 "PWCA" that pays fixed amounts of compensation in cases where the relevant employer has ceased to trade. It is a requirement that an application for industrial injuries disablement benefit is or has been made before payment can be made under this Act.

Payments are made for diffuse pleural thickening, asbestosis, lung cancer if accompanied by asbestosis or diffuse pleural thickening, and for mesothelioma. The amounts are determined by reference to fixed scales according to your age and level of disability. For further information and a guide to compensation levels please see our Guide to Government Lump Sum Payments.

If you have mesothelioma you might become eligible for a substantial payout from the Employers Liability Bureau (ELIB). We expect ELIB to start making payments in 2014 where the diagnosis was made after July 2012.

## **Q: I was not exposed to asbestos in employment. Can I claim under the PWCA above?**

A: No. But if you have mesothelioma you can claim a lump sum under a similar scheme the "2008 Mesothelioma scheme." Please see our guide to lump sum payments.

## **Q: My disease was caused by exposure to asbestos in military service. Does this affect my claim?**

A: Yes it does. If you have an asbestos disease caused by exposure to asbestos in military service, whether in peace or wartime. You cannot make a compensation claim against the government if the exposure occurred before 1987 because of rules about the armed forces suing the government. You should instead claim a war disablement pension instead of industrial injuries disablement benefit. You can also claim a war pension for an asbestos disease if you were a civilian in HM Armed Forces. We can tell you more about these claims on request.



## **Q: The person affected has now died. Can we still claim ?**

A: It is possible for widows and other dependants of people who have died from asbestos diseases to claim compensation against a defendant through the courts. Certain dependants may make claims under the PWCA.

## **Q: What is Industrial Injuries Disablement Benefit?**

A: Most sufferers with an asbestos-related disability caused by employment (but not self employment) after 4 July 1948 will qualify for this benefit. Application is made through the DWP. A medical examination by their Medical Board may be required, except in the case of mesothelioma where it is no longer necessary. Benefit will not be awarded if the Medical Board assesses the level of disability at less than 14%.

## **Q: If I receive Industrial Injuries Disablement Benefit or 1979 Act compensation does this mean that I cannot pursue a case for compensation?**

A No, but any amounts received may need to be deducted from your subsequent claim and paid back to the DWP.

## **Q: What is the Financial Services Compensation Scheme (FSCS)?**

A: Most successful claims are not paid by the defendants themselves but by their insurers but if the insurance company becomes insolvent, then the defendant will be liable to pay. The FSCS was set up to deal with cases where both the defendant and the insurer have become insolvent and are both unable to meet the claim. In these cases the FSCS will pay:

Where the claim was covered by compulsory insurance (e.g. employers' liability since 1972), the Scheme will pay 100%.

Where the insurance was non-compulsory (e.g. employers' liability before 1972), 90% or sometimes slightly more of the remaining amount will be paid.

Where the relevant period of employment was with a nationalised industry, payment will normally be met by the Government.

## **Q: What is an interim payment?**

A: Once court action has begun, and in rare circumstances before then, it may be possible to apply for an interim payment. This is an early payment of part of the damages that the defendants will be liable to pay. It may be substantial in cases where the final damages are likely to be high. It will only be appropriate in cases which are likely to succeed, so that if there is a proper defence to your claim it will probably not be possible to apply for an interim payment.

# 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 20 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

+44 (0)330 460 6740, bridget.collier@fieldfisher.com



**Bridget heads up our mesothelioma and asbestos claims practice in Manchester.** Bridget has over 20 years’ experience in conducting asbestos, industrial disease and employer liability claims. She sits on the Executive Committee of the Association of Personal Injury Lawyers (APIL) and the Oversight Committee of the Diffuse Mesothelioma Payment Scheme.

## 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

+44 (0)330 460 6744, charlotte.thorpe@fieldfisher.com



**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

+44 (0)330 460 6737, andrew.morgan@fieldfisher.com



**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 specialises in asbestos disease cases, with specific expertise in mesothelioma claims.** He is a partner in the Asbestos Disease team. He has developed a reputation for securing settlements in high profile cases. In legal directories, Dushal is described as:

*“Dushal Mehta is highly experienced in representing claimants suffering from mesothelioma” and “he is a ‘dedicated and incredibly hardworking’ practitioner who knows this area inside out”*

# Freephone 0800 358 3848

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