



Health & Safety

MATTERS

Health & Safety Information for GMB Safety Reps

Pleural Plaques Compensation - The Fight For Justice Goes On

Introduction

The decision last year to refuse victims of pleural plaques compensation has generated a large political fallout. The lobby organised by GMB in January went some way towards ensuring the government issued a consultation document in the summer over a way forward, on what many saw as a perverse decision. It would appear that the size of the response took them by surprise, as there were over 7,000 from a wide variety of individuals and organisations. GMB recently followed their response to the consultation with another lobby of parliament, which was as successful as the first.

What exactly are pleural plaques?

Pleural Plaques are pathological changes in the membrane which surrounds the lung, with the laying down of fibrous scar tissue, caused by the inhalation of *asbestos fibres*. The plaques are detected by undergoing a chest x-ray or CT scan. The plaques themselves may not cause physical symptoms, though where they do there can be pain, discomfort and breathlessness. Workers with pleural plaques have obviously been exposed to asbestos and so have an added risk of developing mesothelioma. This has been estimated at 10% (one thousand times more than the general population) though some GMB branches have members with over a 30% fatality rate from mesothelioma after developing pleural plaques.

So why was the decision taken to stop compensating victims of pleural plaques?

The insurance industry claim that they are prepared to pay out in cases of "genuine" suffering. What did surprise many was that this new approach took nearly 25 years to develop, during which time workers exposed to asbestos received small amounts of compensation. Trade union lawyers suspect that this is part of an overall strategy to push back the areas that insurers have to pay out on. History shows that there has been a fight through the legal system over many different aspects of compensation payouts, many of these driven by the insurance industry to save money. To reinforce this, it appears that if this decision continues to be upheld the insurance industry has over £1.4 billion held in reserve which can be used at its discretion to pay out in dividends. It is important to note that this money was allocated, and collected to cover eventualities such as pleural plaques and is now deemed to be a windfall for the industry!

GMB SAFETY REPS

Making Your Workplace Safer

Regional Health, Safety & Welfare Officer: Tristan Chard

Regional Secretary: Tim Roache

GMB - Grove Hall

WAKEFIELD

WF1 3RN

Telephone: 01924 882255

What is GMB's position?

It will come as no surprise that GMB do not agree that this situation can go unchallenged. From our perspective we feel that there are a number of flaws in the legal decision, namely;

- There has been a clear invasion of the body by asbestos fibres.
- This is an obvious breach of an employers' *duty of care*.
- Scarring of the lung is an obvious injury.
- Internal scarring of the body should be no less compensatory than external body scarring.
- The mental anguish after diagnosis of waiting for mesothelioma to potentially develop.

In the case of the last area there is no compensation payable for anxiety, even though this may not just affect the sufferer but also their family, who in close knit communities will have experience of colleagues and workmates dying after firstly developing pleural plaques, followed by the incurable disease, mesothelioma.

So what happens next?

The Justice Minister, Jack Straw, has to consider the consultation responses. Reports from his department suggest that there should be a response from him by the end of November. However this timescale may slip if the original delays in the consultation exercise and the number of responses are considered. Without definitely knowing, we suspect that the vast majority want the government to do something to address what is seen as an injustice. They claim that practically, it is difficult to overturn the House of Lords decision, but currently in Scotland that is exactly what the Scottish parliament intend to do. It might be more a question of being difficult but not impossible. GMB in common with the other major trade unions involved in this campaign (Unite & UCATT) are of the view that the best way forward is to overturn the decision with some new legislation. The consultation did offer up some other alternative proposals, the best of which would be the establishment of a fund of last resort, which could mirror the motoring insurance scheme, particularly where a company insurer could not be traced. This fund could use the £1.4 billion already in the insurance industry coffers, and so not be a burden on the taxpayer or the government!

However, there could be complications in a scheme such as this and the first and best option should be the overturning of the House of Lords bizarre decision. For further information contact tristan.chard@gmb.org.uk or go to www.gmb.org.uk/health&safety to see our response to the consultation document.

General Secretary
Paul Kenny
GMB
22-24 Worple Road
London SW19 4DD