

## Asbestos Victims Support Groups Forum – UK

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### Press Release no embargo

#### **New Scheme for Untraced Insurance but 50% Asbestos Victims Excluded**

Today, Lord Freud, Minister DWP, announces a tariff scheme to pay compensation in cases where employers' liability insurance cannot be traced. The scheme is limited to claimants suffering from the asbestos cancer, Mesothelioma. Claimants suffering from Asbestosis, Pleural Thickening and Asbestos-related Lung Cancer, which constitute 50% of all asbestos diseases, are excluded from the scheme.

The scheme takes effect for any mesothelioma sufferer diagnosed from today – excluding all those diagnosed prior to today - but no payments will be made for approximately two years because primary legislation is required.

Lord Freud is responding to a Labour Government consultation which closed in May 2010 which gave options to resolve the long-standing problem of tracing employers' liability insurance in personal injury claims where negligent employers are no longer trading. The FSA have described the long-standing problem as: '..... **a situation where insurers/other policyholders are inappropriately subsidised by claimants that are unable to trace the relevant insurance company and/or are not aware of the existence of a potential coverage.**'<sup>1</sup>

The main option in the consultation which attracted comments from all sides was for an insurance fund of last resort, an Employer Insurance Bureau (ELIB), similar to the Motor Insurers Bureau (MIB), which would fully satisfy any successful claim for compensation where the EL insurer could not be traced by paying full compensation.

Not one respondent to the consultation supported the other options for a tariff scheme of fixed payments and for limiting payment to mesothelioma claimants: all of the responses were either for an ELIB (claimants) or against an ELIB (insurers). An impact assessment was provided for an ELIB but not for a tariff scheme.

Asbestos victims groups are bitterly disappointed at the exclusion of 50% of asbestos victims from the scheme. Tony Whitston, Forum Chair says:

***“We must welcome this first movement on untraced insurance which provides compensation for mesothelioma sufferers, but we are disappointed at the reduced amounts***

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<sup>1</sup> FSA Consultation Paper 10/13 June 2010.

*payable, and we are bitterly disappointed at the exclusion of so many people who suffer from diseases such as asbestosis or lung cancer caused by exposure to asbestos.*

*Asbestosis is a chronic, progressive lung condition, in many cases causing severe breathlessness and fatigue on the least exertion, limiting a sufferers' opportunity to live an active life and which shortens life-expectancy. Asbestos-related lung cancer is not unlike mesothelioma and invariably leads to an early death. There is no justification for excluding such people from the scheme. The MIB scheme for injured motor accident victims doesn't discriminate according to the type of injury, paying only those who are fatally injured. Nor does the MIB limit payments according to a tariff. Why should asbestos victims receive less protection than motor accident victims. We have waited two years for this response and it is not good enough."*

The cost of including all asbestos victims would only amount to about 18% of the total cost. This is because non-mesothelioma claimants must trace the insurers of all negligent employers, and some manage to find some insurers to pay a part of their compensation, and also because compensation is much lower for non-mesothelioma claims such as asbestosis.

Tony Whitston goes on to say:

*"The cost of including all asbestos victims is not prohibitively expensive: it would cost less than 20% more to provide cover for all asbestos victims. There is no financial justification for excluding so many people and there is certainly no fairness and justice in doing so. Had the scheme applied to all asbestos victim we would have welcomed it as a significant move forward, despite reduced compensation, which is a huge advantage to insurers. As things stand, claimants continue to subsidise rich and powerful insurers who have ready access to ministers to ensure that their liabilities are limited and they get the best outcome possible. Insurers must be forced to face their liabilities: the bargain they have driven has been too hard: too many people lose out. We are urging Lord Freud to make the scheme available to all asbestos victims."*

Frank Hill who suffers from asbestosis says:

*"I worked all my life as a heating engineer constantly exposed to asbestos and I now suffer from asbestosis which has seriously affected my breathing. I could only trace the insurers for part of my employment so I have only received part of the compensation due to me. There are many like me with scarred lungs, some with worse conditions and some better. I cannot understand why some should receive a payment and some not, we all suffer because we worked with asbestos, we should all be treated the same."*

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Notes for Editors

Asbestos diseases can, on average, take up to 30 to 40 years to develop after first exposure to asbestos, consequently, many employers are no longer trading when a claim for compensation is made and a claimant must rely on tracing the employers' insurance.

**Insurers not only failed to keep records of EL insurance, but routinely destroyed records after a period of years so that in some 10% of cases insurance cannot be traced.**

The Employers Liability (Compulsory Insurance) Act 1969 (effective 1972) made holding EL insurance compulsory. HSE research showed that 99% of employers complied with the law. Prior to that date, most employers held EL insurance. But, without a central system for recording insurance, virtually 100% compliance was of no use to many claimants. **Despite continued difficulties tracing insurance, insurers refused to support the setting up of a central database of EL insurance.**

In 1999 the voluntary Employers Liability Code of Practice for Insurance (ELCOP) was introduced by the ABI and overseen by the DWP to improve tracing of employers' liability insurance. **By 2010, the tracing scheme had failed to improve the success rate beyond 46% and the ABI conceded that the tracing scheme had "plateaued".**

In 2010, the Labour Government introduced a consultation paper giving options for an insurance fund of last resort to pay compensation where insurance could not be traced. An **Employers Liability Insurance Bureau (ELIB), similar to the Motor Insurers Bureau (MIB) was the only option which was costed in an Impact Assessment and attracted comments.**

The consultation also asked for comments on setting up a central data base for EL insurance. Ahead of the Government's response to the consultation the Minister allowed the ABI to set up an Employers Liability Tracing Office (ELTO) which included a central data base for EL insurance. Insurers now support a central data base arguing that there is no need for an ELIB as the ELTO would resolve tracing problems. **But a central database will only be effective going forward and will not resolve the problem of historic traces. The FSA is now responsible for the ELTO.**

Lord Freud took responsibility for the consultation and has taken over two years to respond to it. **A tariff scheme will pay less compensation than would be paid under an ELIB which would pay out according to civil law rules and practice.**

Insurers have not only avoided liability for untraced insurance for decades, they also received a huge windfall during the time Governments failed to recover state lump sum payments paid in lieu of civil compensation. These unrecovered payments were credited to insurers so that claimants would not be over-compensated: tax payers effectively subsidised civil compensation to the tune of £ millions. In 2008, the Government started to recover lump sum payments and recovered £18 million pounds for the single year 2011: this is the amount of money insurers would have saved but for recovery. **Insurers received a windfall of well over £100 million in tax payers' money over a 10-year period as well as the year-on-year windfall of escaping liability for untraced insurance.**