

Tuesday 9 December at 2.30pm

†*[Lord Alton of Liverpool](#) to ask Her Majesty's Government, following the decision of the High Court that the consultation on mesothelioma legal fees was unlawful, and the lack of new funding for mesothelioma research, what is their policy with regard to combatting mesothelioma and supporting victims.

Mesothelioma

Question

2.58 pm

Asked by Lord Alton of Liverpool

To ask Her Majesty's Government, following the decision of the High Court that the consultation on mesothelioma legal fees was unlawful, and the lack of new funding for mesothelioma research, what is their policy with regard to combating mesothelioma and supporting victims.

The Minister of State, Ministry of Justice (Lord Faulks) (Con): The Government take the plight of mesothelioma sufferers seriously and are determined to improve their position. We have introduced significant changes through the diffuse mesothelioma payment scheme, established under the 2014 Act. By October 2014 the scheme had made 131 payments, resulting in £16.5 million being paid to sufferers or their families. The Government fully recognise the need to stimulate an increase in the level of research activity and continue actively to pursue measures to achieve this.

Lord Alton of Liverpool: My Lords, I thank the Minister for that reply. Does he recall that, during the passage of the Mesothelioma Act 2014, Ministers said that the levy on the insurance industry would be set at 3%? They said:

"Three percent. is 3% and we have no intention of moving away from it".—[Official Report, Commons, Mesothelioma Bill [Lords] Committee, 12/12/13; col. 117.]

Why then has it now been set at 2.2%, representing a shortfall of more than £11 million? That money could have been generated and used to undertake sustainable research into a killer disease which will take the lives of another 60,000 British people. This is according to figures which the Government themselves have issued.

Lord Faulks: As the noble Lord will know, the Government responded to the amendment which he tabled during passage of the Act by saying that they were committed as a priority to helping to encourage research by the National Institute for Health Research. We set up a partnership of patients and carers to identify a top 10 list of questions for researchers to answer. The results were published yesterday, as he may know. We now feel that we have identified the questions and funding will be available if there are appropriate applicants. The problem with research is no longer—indeed, it never was—funding, but finding really conceivably successful applications.

Lord German (LD): My Lords, both the House of Commons Justice Committee and the judgment of the High Court concerning the issue of legal fees in mesothelioma cases are critical of the way that the government review was carried out. It was found to be premature and did not follow the rules of the LASPO Act. We know that the incidence of this disease will peak and then fall away over the years, as the 30 year-old Acts concerning asbestos are put into place and have an effect. Given that there will be a withering on the

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vine of the numbers suffering this fatal disease, is it not now the time for this legal fees issue to be left alone and kept as it is, rather than coming back to it again and putting people through increased risk and increased delay?

Lord Faulks: My noble friend is right. We expect the peak to start declining and perhaps come more or less to an end in 2024. There is to be a review. There is no immediate timing for it but my noble friend is right in that the status quo is acceptable to the claimants. They are to receive damages. Research will continue, as I indicated, and the pre-LASPO regime for legal support will continue. This will ensure that lawyers are paid adequately, and we are told that they will not take cases unless they are paid adequately. The review will go on.

Lord Giddens (Lab): My Lords, I watched a member of my family die of this dreadful disease. There are massive advances in medical technology which make it possible, in principle, to find a cure. As the noble Lord, Lord Alton, has indicated, that could mean saving the lives of some 50,000 people. To do this we are going to need an integrated research strategy, with the Government in the lead, co-ordinating with industries and with universities. Where is this strategy? The Government's approach seems far too piecemeal and far too limited to do the job that is needed.

Lord Faulks: As I indicated, the strategy is to ensure that the right questions are posed so as to elicit appropriate applications. The funding is very much there, but there is no point in having it unless it is directed towards research which can feasibly produce the result which, I am sure, everybody in this House wants to achieve.

Lord Wigley (PC): My Lords, will the Minister go further on that? There needs to be a certainty that the money is there but the top-level researchers also need to be aware of it so that the money and the level of the research capability are brought together. Is the Minister confident that that certainty now exists? What can be done to make sure that the best researchers in the land are aware of it and can get engaged with this problem?

Lord Faulks: I can do no better than quote what Professor Dame Sally Davies, the Chief Medical Officer and chief scientific adviser, said yesterday. She thanked all those who provided information and said:

“With their help I believe we have built a genuine consensus—and a real impetus. I hope the research community will now respond by generating new research proposals that will provide robust evidence to help people with mesothelioma”.

The Lord Bishop of Chester: My Lords, I encourage the Minister to answer the first part of the Question asked by the noble Lord, Lord Alton, about why the percentage of the precept was reduced from the promised 3% to 2.2%.

Lord Faulks: The position with insurers is that they have provided money. I will have to write to both noble Lords and the right reverend Prelate about what has happened to that particular sum. The question of

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the use of research funds is difficult. We think that research funds should be spent in the most effective way, and we think that publicly funding research is much more appropriate than hypothecating against insurers' particular sums.

Lord McKenzie of Luton (Lab): My Lords, would the Minister accept that throughout our deliberations on the Mesothelioma Bill the focus was on a 3% levy? It was 3% because the insurance industry insisted that beyond that it would have to be passed to consumers. By implication, if the levy is now 2.2%, presumably that falls into the pocket of the insurance companies at a time when compensation is not being paid at a 100% level, and, as has been asserted, there is insufficient funding for research.

Lord Faulks: It is absolutely not the case that there is insufficient funding for research. As I have said more than once, the case is that, at the moment, there is not a suitable number of applications for research. The funding is very much there. As to any question of insurers making some profit out of this, I will look into that. It is contrary to what the Government wish to achieve.

Lord Howarth of Newport (Lab): My Lords, when the noble Lord, Lord Freud, brought in the mesothelioma legislation he did so undoubtedly in good faith. Yet, sufferers from this terrible industrial disease have now been failed not only by employers and insurers but by the Government themselves. Has the Lord Chancellor authorised the noble Lord to apologise on behalf of the Government for his decision to take up to 25% of compensation awards for costs—conduct which has been ruled by judicial review in the High Court to be unlawful? The noble Lord still has not explained to the House why the Government have failed to honour their commitment, given in terms by the Minister, Mike Penning, to set the levy on employer's liability insurance at 3% of gross written premiums, which would have enabled better compensation and more funding for sustained research.

Lord Faulks: Compensation is full at the moment, as the noble Lord knows. I reject the allegation that the Government have done nothing. Not only are they promoting research; they have also, with their Big Tent meeting in June, encouraged much greater co-operation between lawyers acting for claimants to ensure that medical employment records are swiftly obtained. What is most important is that these claimants obtain compensation quickly and at as high a level as they can