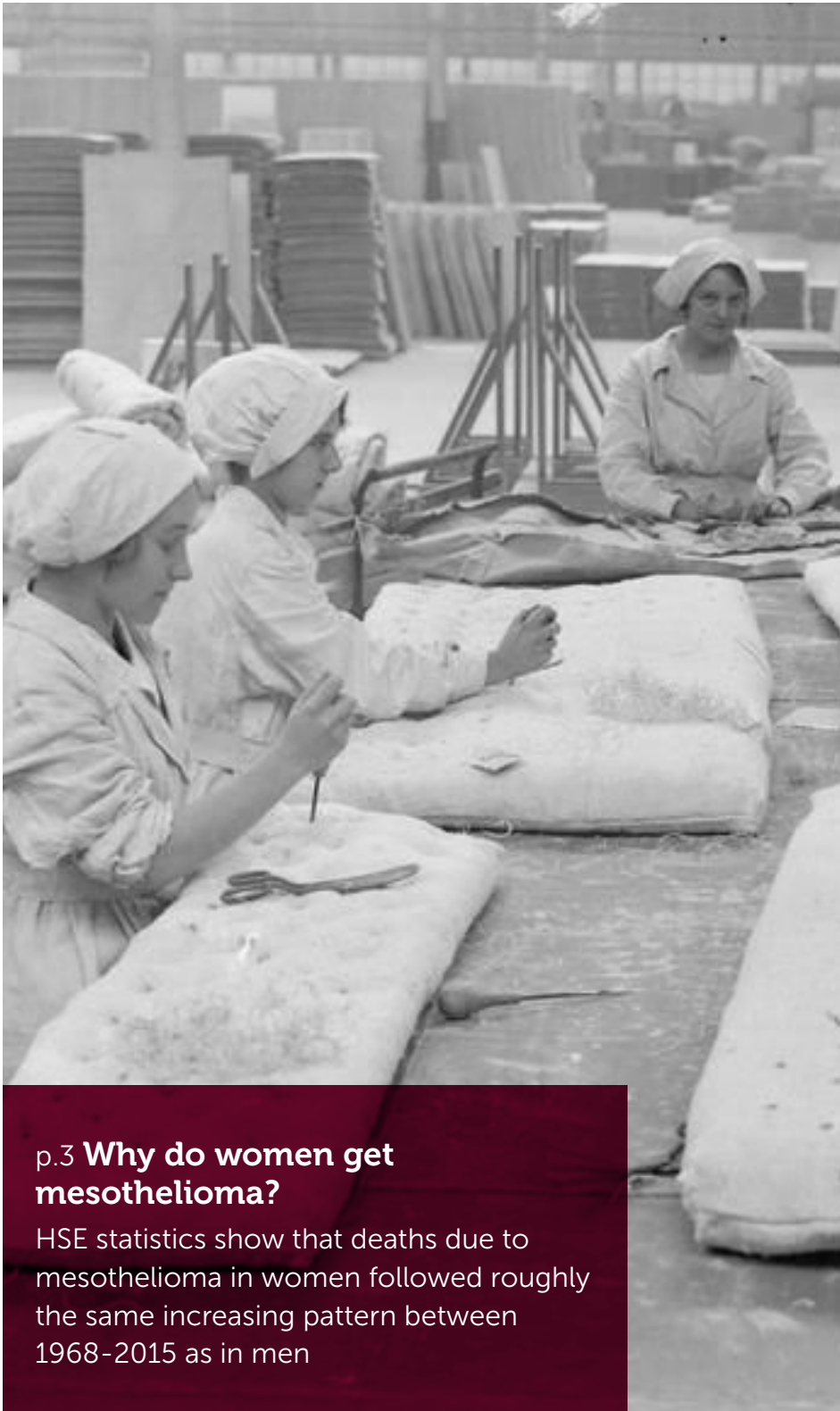


Airborne

Asbestos awareness & advice newsletter



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Reports in the media stating that asbestos had been found in make up products sold by Claire's, formerly trading under the name Claire's Accessories.



p.2 **Immunotherapy and PPO success**

In clinical trials, immunotherapy gave very positive results with many individuals experiencing a greatly increased life expectancy

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HSE statistics show that deaths due to mesothelioma in women followed roughly the same increasing pattern between 1968-2015 as in men



Royds Withy King agree periodical payments order for immunotherapy treatment in a mesothelioma claim

In recent years there have been real advances in the treatment of mesothelioma – especially immunotherapy. In clinical trials, immunotherapy gave very positive results with many individuals experiencing a greatly increased life expectancy with their quality of life being maintained.

At the moment immunotherapy is not licensed for use by the NHS, although it has been licensed for use in the US and private healthcare companies are beginning to recognise the benefits to their mesothelioma clients.

Often individuals who are diagnosed with mesothelioma may not realise that immunotherapy treatment is a possibility. Knowledge of its availability and efficacy is still developing in many hospitals.

Those making a claim for compensation for mesothelioma can claim the cost of private immunotherapy treatment. However, until this year they had to make a decision about the timing of the settlement vis-a-vis their immunotherapy which could mean that they could be undercompensated – potentially leaving them high and dry and wishing to undergo further immunotherapy treatment which they would have had to fund themselves.

However, specialist mesothelioma solicitors like Royds Withy King are now successfully arguing that future immunotherapy treatment should be funded under a "Periodical Payments Order" which means that the defendants are liable for whatever immunotherapy treatment is recommended as necessary without the claimant running the risk of being under compensated, or the defendants running the risk of over compensating them.

In April 2018, Helen Childs of Royds Withy King agreed settlement in relation to a mesothelioma claim for Mr S, a man who developed mesothelioma years after he was exposed to asbestos during the course of his service with the Royal Fleet Auxiliary. The Royal Fleet Auxiliary (RFA) is a civilian-manned fleet owned by the United Kingdom's Ministry of Defence, whose purpose is to deliver worldwide logistical

and operational support for the wide range of tasks the Royal Navy undertakes including warfighting, counter-piracy, humanitarian and disaster relief, and counter-narcotics operations. It's primary role is to supply the Royal Navy with fuel, ammunition and supplies, normally by replenishment at sea (RAS).

Mr S had joined the Royal Fleet Auxiliary as a cadet in the 1970s and had worked with them for many years until he retired some 40 years later. He had seen active service and had even served on the RFA Sir Galahad when it was sunk during the Falklands War. By the time he retired Mr S had been widowed - and until he became unwell with mesothelioma he was enjoying an active retirement working as a volunteer and enjoying going for long walks with his dog.

He began to experience slight breathlessness and was then diagnosed with mesothelioma in 2016. Fortunately, he remained well for an extended period of time and is still relatively fit and active. However, his future is uncertain.

As a widower, Mr S needed to settle his claim personally or he would have lost any compensation for his loss of income during the period by which his life is likely to be shortened by the mesothelioma. However, he also wished to undergo immunotherapy treatment when the time came.

At the time when he commenced his claim he had to make the very difficult decision whether to press ahead with his claim for compensation and settle it personally, including a proportion of the likely cost of immunotherapy treatment, or wait and see how the immunotherapy treatment went so that a better assessment of the likely overall cost of immunotherapy could be reached, but then risk being unable to conclude the rest of his claim personally.

However, Helen Childs of Royds Withy King Solicitors and barrister Patrick Kerr of 12 Kings Bench Walk applied for a Periodical Payments Order in relation to immunotherapy treatment. The rest of his claim was settled amicably in February 2018 for in excess of £500,000.00, but in April 2018, just before trial, it was agreed by the defendants that as and when immunotherapy treatment is appropriate, they will fund the cost of it and they will continue to fund it for as long as Mr S's treating physician recommends it. This removes the lottery that the claimant and defendants previously faced when settling claims for immunotherapy treatment because until periodical payments were used to settle these claims, it was inevitable that the claimant would either be under compensated or the defendants would have over compensated them.

We are hosting a study day in our London office on 5 October which will explore the huge advances being made in immunotherapy and other treatments for mesothelioma and lung cancer. It's a free event, and all are welcome to attend. **We have a great line up of speakers planned and anyone wishing to attend just needs to email events@roydswithyking.com. The information for this event can be found on page 14.**



Helen Childs, Partner

Why do women get mesothelioma?



Mesothelioma is thought by many to be a disease suffered by elderly men who worked in industry and trades but that isn't the case.

In 2015, there were 2697 recorded cases of mesothelioma with 450 of those people being women. HSE statistics show that deaths due to mesothelioma in women followed roughly the same increasing pattern between 1968-2015 as in men.

It is rarer for women to have worked with asbestos containing materials so why then are almost a fifth of the diagnoses in women? Indeed, are all mesotheliomas in women linked to asbestos or could there be another cause?

HOW ARE WOMEN EXPOSED TO ASBESTOS?

Whilst most women may not have undertaken jobs typically involving exposure to asbestos (shipbuilders, boiler workers and power plant workers) they may still have been exposed to asbestos at some point during their life either occupationally or by other means.

OCCUPATIONAL EXPOSURE

Exposure to asbestos at work started for women in at least the early 20th Century. With the outbreak of war, men were enlisted for national service and women filled the roles that men were previously performing in large factories. Their jobs began to involve the manufacture and production of ammunitions for the war and asbestos was used.

In peacetime, whereas women did not work in heavy industry they were employed in other industries where asbestos was used such as in textiles and cosmetics. Asbestos was often used in the production of clothes and garments due to its resistance to heat and corrosive elements. Most commonly it was used in fire blankets, suits for firemen and woven to make materials such as cloth, rope and string. Asbestos was used for stuffing mattresses. Building materials started to be produced by large asbestos manufacturers such as Cape and Turner and Newall and women were employed in those factories.

Indeed the first ever recorded death of a worker due to asbestos exposure was a woman – Nellie Kershaw. She was born in 1891 and died at a young age in 1924 from asbestosis. She worked for Turner & Newall in Rochdale making asbestos products.

Women frequently describe asbestos exposure in other workplaces including:

- **Laundries** – asbestos was often present in large commercial dryers found in launderettes. Any damaged insulation in these dryers and associated pipework could have put workers at risk. Commonly these workers would be women.
- **Bakeries** – similarly to launderettes, bakeries commonly employed women. Asbestos was used in large commercial ovens.
- **Shop workers** – asbestos materials such as sheeting for partition walls and ceiling tiles were used in shops and could become damaged or disturbed by workmen doing repairs. Marks & Spencer is a well known example as there has been litigation by shopworkers who have developed mesothelioma due to exposure from ceiling tiles.
- **Schools** – women employed as teachers, cleaners and dinner ladies in schools, or even who simply attended school, may have been exposed to asbestos that was used in the construction of many schools. Any disturbance of that asbestos could release fibres that could be breathed in.
- **Cleaners** – cleaning workplaces where asbestos has been used including offices where repair and maintenance work has disturbed asbestos containing materials.

SECONDARY EXPOSURE

Probably the most common way in which women are exposed to asbestos is on a secondary basis. Secondary exposure occurs when someone is exposed to asbestos from another, usually by a family member or friend bringing asbestos fibres into the home from an external environment. This is often on work clothes.

Commonly, men went to work and were heavily exposed to asbestos. They would not shower or change their clothes before returning home as facilities weren't provided so would routinely return home covered in asbestos dust and fibres. Typically, it was the wife's job to launder these clothes. Especially in the days before proper washing machines, women would often shake off the dust from clothes to make them easier to wash. This simple task however, unknowingly to women, would release thousands of asbestos fibres into the air which were then inhaled.

Cleaning and sweeping the house would then inevitably lead to further exposure from asbestos fibres and dust which had fallen from loved ones work clothes or settled on soft furnishings.

ENVIRONMENTAL

Like men, women were at risk of exposure to asbestos from the environment by living near to, going to school by or working

next to industrial premises or sites where asbestos was used and the dust and fibres emitted. There are many areas in the country which have a very high incidence of mesothelioma thought to be due to this form of exposure, most notably Barking and Dagenham due to Cape Asbestos, Highham in Kent due to British Uralite and Armley in Leeds due to Turner and Newall. Areas around historic dockyards including Barrow in Furness, Tyneside, Portsmouth and Plymouth are similarly affected.

PRODUCTS

Asbestos was used in cosmetic manufacturing in make ups and powders. In recent months it has come to light that asbestos has been found in children's make up products being sold now by Claire's Accessories.

Heat insulating mats for ironing boards, for cooking and Bunsen burner mats in schools contained asbestos. Such products will have been used by women at home or in schools and may have led to exposure as they gradually wore down or if they were in disrepair.

Talcum powder was contaminated with asbestos. Women often used talc as part of their hygiene routine and historically undertook most of the childcare, using talc on their children. As long ago as 1976, Rohl and Lager tested 20 consumer talc products and found half of them to be contaminated with asbestos.

Even certain brands of cigarettes had asbestos containing filters.

ARE ALL MESOTHELIOMAS IN WOMEN CAUSED BY ASBESTOS?

Medical experts and academics have suggested that mesothelioma in women is not always asbestos related.

In a 2009 study, Peto et al concluded that a third of mesotheliomas in women were due to occupational exposure including secondary exposure, a third were due to ambient environmental exposure including from construction work and release of dust and fibres from asbestos products in buildings and a third were spontaneous.

Theorists have suggested several alternative causes including the SV40 virus which was found to have contaminated some polio vaccinations between 1955 and 1963. Research has shown that contact with the SV40 virus, in addition to exposure to asbestos, can increase the risk of developing mesothelioma. Hence, SV40 is thought to be a possible co-factor in the development of mesothelioma.

Additionally, exposure to radiation from Thorotrast (thorium dioxide), which was used in some x-ray tests until the 1950's, was found to be responsible for the development of some mesothelioma. Furthermore, a mineral found in Turkey called erionite has been shown to be causative.

LITIGATION AND WOMEN

Women who have been negligently exposed to asbestos and develop mesothelioma or another asbestos disease are entitled to claim compensation.

Most women were exposed to asbestos as a result of secondary exposure or environmental exposure. At first many have no idea as to the circumstances when they may have been exposed. Women frequently report to their doctors that they have 'no known asbestos exposure'. Understandably, women may decide not to take legal advice. Whilst identifying the source of exposure and proving non occupational exposure can be more difficult, we are expert at dealing with such cases and recommend that women who are diagnosed with mesothelioma seek advice even if they don't know how they came in to contact with asbestos.

Having assisted our team in pursuing claims for women, I know how obscure asbestos exposure can be. It is absolutely understandable why women in particular often do not know how they have been exposed. However, we can help unpick memories and investigate the potential cause.

My personal opinion is that most if not all mesotheliomas are caused by asbestos rather than something else. It is just that often, women do not know how they were exposed. Women should not be at a disadvantage when it comes to litigation. Compensation can make such a difference by easing financial worry and ensuring access to specialist care and new treatments such as immunotherapy. I would urge all women diagnosed with mesothelioma or another asbestos disease to seek legal advice from a specialist solicitor.



Abbie Porter, Legal Apprentice



■ Asbestos in makeup – more questions than answers

People who are aware of the risks associated with asbestos exposure, and those who have direct experience of the devastating diseases it can cause, will have been alarmed about reports in the media stating that asbestos had been found in make up products sold by Claire's, formerly trading under the name Claire's Accessories.

Having read the media reports, press releases and information posted on Claire's own website, I have more questions than answers.

If what is reported in the press is correct, the issue arose in December 2017 when a mother in the US was concerned about the lack of information on a make up kit given to her daughter. The kit said made in China but did not list ingredients. She sent it to a lab for testing. It was reported that the results confirmed the make up kit contained asbestos. A public interest group in the US (PIRG) had a number of Claire's make up products tested by STAT Analysis Corporation and some were found to contain asbestos. Some products were recalled.

I went into a branch of Claire's to see what information was provided. All the make up items I looked at confirmed the product was made in China. Ingredients were listed and many products contained talc.

There is no suggestion that asbestos has been deliberately used in the manufacturing process. The asbestos fibre reported to have been found in these products is Tremolite. Both Talc and Tremolite are created by the same geologic processes and Talc deposits are frequently found near sources of Tremolite, giving rise to the risk of contamination.

How did Claire's respond to STAT's findings? In a post dated 12 March 2018, the company disputed the results of the tests stating that the methods used by STAT are obsolete and unreliable. The last post on Claire's website is dated 28 March 2018 and states that the products had already been tested for asbestos levels, both in the EU and the US, at independent accredited laboratories, and were found to be compliant with all relevant regulations.

In April 2018, the Asbestos Victims Support Groups Forum UK working with the International Ban Asbestos Secretariat (IBAS) arranged for further testing of Claire's make up products by US analyst, Scientific Analytical Institute. The products were purchased at Claire's store in Edgware and were reported as containing asbestos.

I have not seen any response from Claire's to this latest report. Perhaps the company's impending bankruptcy means we are unlikely to do so albeit UK shops are said not to be impacted.

Laurie Kazan-Allen, IBAS Coordinator wrote

"There is no doubt in my mind that the use of these products could pose a serious health risk. I believe that the authorities must act immediately on the potential threat to the intended users of these products: children and young teenagers. I would like to see product recalls, public health warnings and investigations of the composition of the talc-based products sold by Claire's not only in the UK but in other countries."

As consumers, what should we do now to safeguard ourselves and others. Claire's cannot be the only producers of make up products that contain talc. As a consumer I would like to know if products sold by other companies have been tested. If I purchase a product containing talc, or talcum powder itself, how do I know if it is safe and if the manufacturer has proper processes in place to eliminate any asbestos contamination? The situation is very worrying.

Maggie Powell – Associate