

Airborne

Asbestos awareness & advice newsletter

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**£400,000
compensation
recovered for Army
serviceman for
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**Asbestos and old
buildings –
are we at risk?**

Asbestos was widely used throughout the UK in the 20th Century with many industrial, commercial and residential buildings still containing asbestos materials. It was commonly used in the manufacture of construction materials, such as fireproof boarding, pipe lagging, drain pipes, artexing, floor tiles and ceiling tiles, to name a few.

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Bereavement and compensation payments: Rachel James comments on the recent decision of Smith v Lancashire Teaching Hospitals NHS Trust

The law relating to compensation payments following the death of a loved one has many inconsistencies – but one of the injustices may at long last be coming to an end following a recent court decision. This relates to the compensation payable to cohabiting couples, who would receive nothing to recognise their bereavement following the loss of often life long partners. However the case of Smith v Lancashire Teaching Hospitals NHS Trust might bring this area of the law one step closer to the 21st century.

Increasingly couples are cohabiting rather than tying the knot – and after all 42% of marriages currently end in divorce. Since the enactment of the Fatal Accidents Act 1976 couples who were financially dependent on each other, and who had been cohabiting as “husband and wife” for at least two years could pursue a

middle of a divorce at the time! This went against the recommendations of the Law Commission back in 1999, who in their paper called “Claims for Wrongful Death”, recommended that cohabiting couples should receive bereavement damages in these circumstances.

Jacqueline Smith, who had lived with her partner John Bulloch for more than 10 years when he died as a result of clinical negligence, made a claim for compensation but was unable to recover the statutory bereavement damages that she would have been entitled to if they had been married. As part of a stable couple, who had been together for more than a decade, she felt this to be unfair, and appealed the decision of the High Court dismissing this element of her claim. She argued before the Court of Appeal that this refusal to pay her bereavement damages was incompatible

would have received if they had been half of a married rather than a cohabiting couple. We were however recently able to persuade the insurers for Sindalls construction, who exposed our client Mr L to asbestos when they built the Lister and other hospitals in the 1960’s, that they should compensate his partner of more than 30 years not only for her dependency upon him but also for her bereavement. However the partner for more than 25 years of Raymond S - a Wiltshire man who developed mesothelioma in 2014 after he worked for the Co-Op sadly received nothing for bereavement. She felt the law was treating her life long relationship with her partner as second best. Her tribute to him at our Action Mesothelioma Day event last year said *“Remembering you with all my love Ray. Miss you so much xxx”*

I welcome this declaration and would urge the UK government to move swiftly to amend the Fatal Accidents Act to reflect the Court of Appeal’s ruling. However, it should also heed the recommendations of the Ministry of Justice in 2009 to widen the class of beneficiaries to include parents who lose children aged over 18 and children who lose parents – and also other family members like siblings. In Scotland, for example, the class of beneficiaries who are able to recover bereavement damages is much wider and the awards payable much higher. It is an area of the law that is ripe for reform, and I do hope that the government acts swiftly to end the anomalies that currently result in real unfairness. I also hope that the government will consider retaining the European Convention on Human Rights post Brexit.

Rachel James, Associate



claim for the loss of their dependency if their partner died as a result of negligence. However, only spouses would receive statutory bereavement damages, which currently stand at £12,980. This led to real unfairness, with couples who had cohabited for decades feeling that the law did not recognise the bereavement that they had suffered, whereas married couples could claim a payment – even if they were in the

with the European Convention on Human Rights. The Court of Appeal agreed, and made a “Declaration of Incompatibility” – which the UK government should resolve by amending the existing legislation. Unfortunately Ms Smith will not benefit from this decision as the change in the law will not be retrospective. It will also come too late to benefit many of our clients over the years, who have recovered less compensation than they



£400,000 compensation recovered for Army serviceman for mesothelioma

In July 2016, our specialist asbestos disease solicitor, Jennifer Seavor, was instructed by Mr T who had been diagnosed with sarcomatoid mesothelioma in May 2016.

Jennifer attended Mr T at his home in Warwick and spoke to him in detail about his working life. She found out that he had served in the British Army between 1963 and 2002 and that his work had involved engineering, construction and building operations. Mr T could recall several times during his career when he was exposed to dust from asbestos containing materials.

Unfortunately, due to the provisions of the Crown Immunity Act 1947, no claim for damages can be brought by servicemen injured in the course of duty prior to 15 May 1987. On that date the Crown Proceedings (Armed Forces) Act 1987 modified the effect of the 1947 Act and from then onwards, has allowed such claims where a person was injured or developed a condition as a result of negligence or breach of statutory duty. Jennifer advised Mr T of the provisions and took a detailed statement of evidence from him. He was able to recall some instances when he was exposed to asbestos post May 1987.

Jennifer advised Mr T that he may qualify for a lump sum payment under the relatively new War Pension Scheme which was introduced in 2016. Under the scheme, if a veteran diagnosed with mesothelioma was exposed to asbestos in the course of his/her work prior to May 1987, a one off lump sum payment of £140,000 can be claimed. However, Jennifer also advised Mr T that if the claim could be proved relating to his post 1987 asbestos exposure then his legal claim through the civil court system was likely to be considerably more valuable. Mr T instructed Jennifer to attempt to pursue the legal claim in the first instance.

Between 1986 and 1989 Mr T was posted to Chilwell in Nottinghamshire but spent regular periods of time in Germany in connection with the development of emergency war plans. In Germany he spent prolonged periods of time of up to 16 hours per day for 14 days at a time working in basement cellars of old barrack blocks. The services for the buildings ran through the cellars, suspended from the ceilings. The pipework was lagged with asbestos. Mr T informed Jennifer that the lagging was in poor condition; deteriorating and emanating asbestos dust. He could remember the cellars being very dusty environments and that movement through them caused the dust to rise.

Jennifer was able to trace five witnesses who had worked with Mr T during that time who were able to provide statements to corroborate his version of events and in particular the condition in the cellars and state of the asbestos lagging.

Unfortunately, the Ministry of Defence did not respond in a timely fashion to Mr T's claim. They said that they were investigating the claim but did not provide any substantive response in respect of liability. To move matters forward Jennifer advised Mr T that it would be necessary to commence court proceedings by issuing a claim form in the specialist asbestos division in the High Court. Jennifer instructed a specialist barrister to consider the evidence. The barrister felt that the claim was very difficult and was unwilling to act. Jennifer sought a second opinion and

was able to find another barrister who backed the claim meaning that court proceedings could be commenced.

Sadly, Mr T's condition deteriorated and as such Jennifer advised him that he should also claim the £140,000 payment under the War Pension Scheme as the payment is only available during a person's lifetime. Jennifer assisted him with the application and was able to consider the scheme guidelines in detail to ensure that payment under the scheme would not prejudice Mr T's legal claim for compensation for his post 1987 exposure.

The legal claim continued and Jennifer requested an urgent hearing before one of the specialist asbestos Masters in the High Court who reviewed all of the evidence. He gave the Ministry of Defence a further 14 days to file a defence and provide some evidence that would convince him that they had a realistic prospect of defending the claim. The Ministry of Defence were unable to provide any such evidence and instead made Mr T an offer of settlement.

In the end his legal claim settled for just short of £400,000. Importantly, the claim was resolved during Mr T's lifetime. Whilst Jennifer had advised him that his legal claim for compensation was in fact more valuable if settled on dependency basis in his wife's name, after his lifetime, Mr T was adamant that he wanted certainty and resolution of the claim during his lifetime. Jennifer was able to achieve this for him. Mr T sadly passed away a few months later however his widow said to Jennifer: *"It was a complicated and difficult claim, which you dealt with extremely competently, for which I am extremely grateful."*

Jennifer said *"This case shows the importance of exploring with former servicemen, whether or not they have in fact had any exposure to asbestos after May 1987 when Crown immunity was lifted. In Mr T's case, his legal claim was considerably more valuable than the £140,000 lump sum payment under the War Pension Scheme for pre 1987 exposure. I think this claim may be one of the first where a veteran has had both pre and post 1987 asbestos exposure."*



Claims for the cost of immunotherapy for mesothelioma sufferers

Immunotherapy is a very promising treatment for mesothelioma. Mavis Nye, a very well known and much loved mesothelioma warrior, had immunotherapy in 2009 as part of a clinical trial. Before she had the immunotherapy her life expectancy had been measured in months. However, she has been told she is now mesothelioma free.

Immunotherapy is only available privately, and almost always only as a second line treatment (ie after chemotherapy has been undertaken). As a result people are always at least 6 months and often a good year post diagnosis before they are suitable candidates for immunotherapy.

Immunotherapy is expensive, with two years of immunotherapy often costing £280,000 plus. It's rarely covered by private healthcare providers.

The efficacy of immunotherapy is still being assessed, but current evidence suggests that there's about an 80% response rate with 20% having disease shrinkage, and 60% disease stability. Some people's response to immunotherapy is so good that it can extend their lifespans considerably.

In mesothelioma and other life limiting conditions we always advise our clients on the merits of settling their claim in their lifetime or their estate settling it after their death. Usually a fatal settlement is more valuable, but sometimes it isn't, which means those claims have to be especially fast tracked. Immunotherapy adds another complication to this. Historically an individual will have the first cycle of immunotherapy (cost c.£35,000) and decide whether to proceed with the treatment dependent on the results of CT scans, and how well they tolerate the immunotherapy.

The efficacy of immunotherapy is still being assessed, but current evidence suggests that there's about an **80% response rate** with **20% having disease shrinkage**, and **60% disease stability**.

This means that in a case where it's imperative to settle in lifetime – because the living claim is more valuable – we were previously able to claim the full cost of the first cycle of immunotherapy plus a percentage of the balance, because usually the immunotherapy treatment will not have taken place yet. Obviously if the individual only undergoes the first cycle, or if they deteriorate before they are even able to undergo the first cycle, the settlement would be more than the actual cost incurred.



Until recently, we would have to advise our clients that early settlement including the cost of part of the immunotherapy is always a gamble, because if they responded well to the immunotherapy there will have been a potential shortfall of up to £190K, which they would have to fund from the balance of their claim or savings.

However a claim has recently been settled for an individual personally on the basis that if immunotherapy is recommended by their treating physicians the defendants will fund it. This is known as a "periodical payments" agreement. We hope periodical payments for immunotherapy will develop so it is often ordered by the court, even if the defendants and their insurers are not willing to consent to it. This will remove one of the many uncertainties that claimants and their families currently have to face and ensure that claimants were not running the risk of being under compensated, and defendant Insurers don't pay out for treatment the client may not actually receive.

We have a claim listed for an assessment of damages hearing in mid-April, and another in July, and anticipate that these could well become two of the first formal periodical payments orders for mesothelioma.

The purpose of compensation is to ensure that the claimant is in the same financial position they would have been in if the illness had not developed. Periodical payments orders represent a real opportunity for claimants and defendant insurance companies to achieve this aim, rather than for either of them to risk being considerably out of pocket in relation to the costly – but potentially hugely beneficial – ground breaking treatment.

Helen Childs, Partner



Witness evidence key in settling hospital maintenance manager's mesothelioma claim

Rachel James, a specialist asbestos disease solicitor in our Industrial diseases team, has recently concluded a case for the family of Michael Thornton, who sadly passed away from peritoneal mesothelioma in March 2017. Michael instructed Royds Withy King in late January 2017, immediately after his diagnosis. He had been suffering symptoms of weakness and fatigue for over a year, and for 4 months leading up to his diagnosis, his condition had been rapidly deteriorating. Prior to his diagnosis, Michael had undergone all kinds of tests, but doctors could not find the source of his illness. By the time he was diagnosed, Michael was extremely poorly.

Between 1969 –1978, Michael was the maintenance manager at three hospitals, Southmoor Hospital, Burntwood Hospital and Wardee Aldam Hospital, where he was responsible for the maintenance team working in the hospitals and for the supervision of electricians, plumbers, joiners and painters. Over time, the number of hospitals Michael was responsible for increased to seven. He supervised all of the work being undertaken across the sites and was called in to fix urgent problems and supervise maintenance work.

All of the hospitals had coal powered boilers within boiler houses. Southmoor Hospital also had a steam laundry with heavily lagged pipes and fittings. In the early 1970's, Michael supervised the complete re-plumbing of the boilers, one of which had sprung a leak. To access the boiler, the lagging had to be stripped off the boilers by hand, exposing Michael to vast amounts of asbestos dust and fibres.

Initially, the Department of Health, who was responsible for the hospitals, did not admit liability despite the overwhelming evidence provided by Michael and his family. Michael was still in contact with several of his team, who came forward and provided witness statements which corroborated Michael's evidence. One of the witnesses was also able to provide details of a previous case that had been brought by a colleague of Michael's against Southmoor hospital, following her diagnosis of mesothelioma.

Despite all of the additional evidence showing that Michael had been negligently exposed to vast amounts of asbestos dust and fibres, the Secretary of State for Health still refused to make an admission of liability and an interim payment in Michael's case. By then, Michael had become extremely unwell and had been admitted to a hospice.

Rachel issued court proceedings in the asbestos division in the High Court within one and a half months of being instructed however, sadly Michael died shortly after. Following an inquest into Michael's death, an admission of liability was made by the Secretary of State for Health and an interim payment of £50,000 was made to his estate.

Michael had provided a great deal of services to his wife and family. He was a very talented and skilled man, who built his own home and serviced his own car and caravan. He could turn his hand to any job. Rachel wanted to ensure that this loss was compensated. In addition, Michael had received a great deal of care from his children and granddaughter who lived in Edinburgh, Norwich and Cheshire, so detailed statements to show the very complicated care and services claim was prepared. Terms of settlement were agreed on behalf of Michael's family in early December 2017 for them to receive further compensation.

Rachel said *"I am very happy to have helped Michael's family obtain justice. He and his colleagues could have easily been protected from the dangers of asbestos, by an employer who should have had more knowledge of the link between asbestos exposure and illness than most other employers."*

National Lung Cancer Forum for Nurses Conference – Gateshead – 10-11 November 2017



In November 2017, Helen Childs, Jennifer Seavor and Rachel James attended the National Lung Cancer Forum for Nurses annual conference in Gateshead, bringing together specialist lung cancer and mesothelioma nurses from around the UK.

Delegates heard talks on future pathway for lung cancer, the complexity of diagnosing mesothelioma and decision making in the management of pleural effusions, the importance of the mesothelioma multidisciplinary team meetings, developing

competencies and frameworks, a model of proactive best supportive care for patients with lung cancer – the Fife Experience, whether proactive care management by clinical nurse specialists improves outcomes for patients with lung cancer, tobacco addiction and the role of the LCNS in supporting smoking cessation and how to lead in challenging times.

Jennifer Seavor our associate solicitor who has recently been accredited as an Occupational and Asbestos Disease Specialist by the Association

of Personal Injury Lawyers (APIL) said *"It was so lovely to catch up with all the wonderful nurses we know who treat and provide so much care and support to our clients. It is always such a pleasure and honour to sponsor the conference and see how it makes a real difference to the nurses who attend."*

We sponsored three nurses to attend through our bursary scheme, The Clifford Lloyd Education Fund, offered in memory of our late client Clifford Lloyd.

The winners of our John Lewis vouchers were: Yvonne Miah, Deborah Denman, Simon Bolton, Marie Eaton and Martin Peters.



The importance of support groups for asbestos disease sufferers

Having acted for asbestos disease sufferers and their families for a decade I have witnessed how devastating it can be for my clients to be told that they have an incurable condition which will shorten their life expectancy or cause them difficulty breathing for the rest of their lives.

I have heard my clients say time after time, how difficult they find it to live in the knowledge that they have mesothelioma knowing their days are numbered. Those with benign diseases such as pleural plaques, diffuse pleural thickening and asbestosis have told me that they feel almost lucky that they have 'got away lightly' not having being diagnosed with cancer, despite often suffering debilitating respiratory symptoms. They also live with the psychological impact of their disease caused by asbestos exposure. They worry that they too one day, could be diagnosed with a malignant condition such as mesothelioma or lung cancer. With every cough and chest infection they develop, they worry that it may be the first sign of something more serious.

Asbestos disease sufferers have often seen their former workmates and friends succumb to asbestos diseases over the years. When I ask my clients if they are still in touch with people they worked with who could act as witnesses in their claim, all too often I hear *"They have all died from lung cancer and asbestosis."*

It is no easier for the families of those with asbestos diseases. Spouses, partners, children and grandchildren who watch their loved ones suffer as their conditions deteriorate. Accompanying them to every hospital appointment; worrying that things have gotten worse.

For these reasons, I realised early in my career how important it could be for my clients to talk to people who were going through or have been through the same as them. Only they can truly understand. It is here where support groups shine though as beacons of hope, understanding, support and friendship for those with asbestos diseases.

Over the years I have been honoured to have been involved with some fantastic groups; organisations set up by specialist



nurses and doctors, solicitors committed to helping their clients and by communities affected by the legacy of asbestos exposure.

My colleagues and I see it is a fundamental part of our roles as specialist asbestos solicitors to give something back and help. Last year we set up the Swindon and Wiltshire Asbestos Support Group (SWASG) and run monthly meetings in the Garden Room at Christ Church Community Centre, Cricklade Street, Swindon, SN1 3HB on the last Friday or every month between 3-5pm. We also help other support groups where we can and provide sponsorship, as funding is so often an issue in their success. In December we donated to both the Oxford Asbestos Support Group and Portsmouth Lung Cancer Support Group to assist with the costs of a Christmas lunch and get together for their members.

Denise Wright and Alena Clemo, Lung Cancer Nurse Specialists at Queen Alexandra Hospital in Portsmouth set up the support group in March 2016 to help their patients. Their Christmas party in December 2017 was really well attended. Denise said: *"The patients had a great time and many commented what a lovely way it was to end the year."* One patient told Denise: *"This group is a life line for us"* and another said *"It's great to be able to laugh and forget about the cancer."*

I would encourage all sufferers to attend a local group if they can. There are so many around the country and the details can be found on the Mesothelioma UK website.

Jennifer Seavor, Associate





■ Upcoming events

Mesothelioma, lung cancer and asbestos disease education day

Following on from our education day in London on 6 October 2017, we are now holding a similar event in our Bath office on 11 May 2018.

Confirmed speakers include:

- Dr Vidan Masani, Consultant Respiratory Physician – Diagnosing mesothelioma, lung cancer and asbestos disease.
- Professor Nicholas Maskell, Consultant Physician – Current update on clinical trials for mesothelioma
- Dr Anthony Edey, Consultant Radiologist – The role of the radiologist in diagnosing mesothelioma and asbestos diseases
- Dr Jason Lester, Consultant Clinical Oncologist – Treatment options of mesothelioma and lung cancer patients including immunotherapy
- Anne Moylan, Mesothelioma Clinical Nurse Specialist – The role of a

Mesothelioma UK nurse and pain control for patients

- Jennifer Seavor, Associate, Royds Withy King – Asbestos disease and the law: What you need to know

Accredited by the Royal College of Physicians and Royal College of Nurses, the day is free for all delegates and will include lunch followed by networking drinks and canapés at the end of the day.

To book a place or register your interest please email events@roydswithyking.com or phone 01225 459 991

Action Mesothelioma Day 2018

For the third consecutive year, we will be holding a service at the Mesothelioma Memorial Garden in Queens Park in Swindon on Action Mesothelioma Day on Friday 6 July 2018. There will be speakers and a dove release, followed by refreshments. All are welcome.

For more information please contact Jennifer Seavor on jennifer.seavor@roydswithyking.com or 01793 847707.

Swindon & Wiltshire Asbestos Support Group (SWASG)

Meetings are held on the last Friday of every month from 3pm-5pm in the Garden Room at Christ Church Community Centre, Cricklade Street, Swindon, SN1 3HB.

Asbestos drop in clinics

Free specialist, without obligation advice for those diagnosed with an asbestos disease or worried about exposure. We can also assist with applications for government benefits.

Every Thursday 9am – 5pm at our Swindon office – Royds Withy King, 34 Regent Circus, Swindon, SN1 1PY.



Asbestos and old buildings – are we at risk?

Asbestos was widely used throughout the UK in the 20th Century with many industrial, commercial and residential buildings still containing asbestos materials. It was commonly used in the manufacture of construction materials, such as fireproof boarding, pipe lagging, drain pipes, artexing, floor tiles and ceiling tiles, to name a few. The manufacture of industrial asbestos products dates back as far as the 1850s, with the first UK asbestos manufacturing company, the Patent Asbestos Manufacturing Company being established in Glasgow in 1871. Asbestos had many desirable attributes which made it such a widely used material. It could strengthen cement without adding weight to the mix, its insulation qualities made it an ideal material for pipe lagging, and asbestos was added to artex to add texture to the paste.

The use of asbestos in the UK continued until the Asbestos (Prohibitions) (Amendment) Regulations 1999 came into force on 24 November 1999. These regulations banned the use of all asbestos materials. Despite the regulations coming into force in 1999, it allowed the use of materials already purchased for building work which meant that it was not until 2000 that the use of all asbestos materials ceased.

It is estimated that there are approximately 500,000 industrial buildings still contain asbestos materials. This figure does not include residential properties. Whilst some buildings were built prior to the use of asbestos in building materials, many have had them added during renovation works and in particular the installation or upgrade of heating systems. Therefore, as asbestos is still present in many old and historic buildings, are we at risk by visiting them and working in them?

Where can asbestos be found in buildings?

The Health and Safety Executive (HSE) have advised that asbestos can potentially be found in the following places in industrial and commercial buildings:

- Sprayed coatings
- Cement water tanks, roofs, panels and gutters
- Loose filling insulation
- Lagging on pipes and boilers
- Textured decorative coatings i.e. artex
- Textiles such as fire blankets
- Floor, ceiling and roof tiles

Within residential properties asbestos can potentially be found in the same places as in industrial buildings along with the following places:

- Asbestos insulating boards in bath panels, behind fuse boxes and cookers, partition walls, interior and exterior window panels and behind fires
- Vinyl floor tiles
- Roofing felt
- Ironing board mats

Whilst some of the above will be visible, many of the materials containing asbestos are hidden.

What buildings have been found to have asbestos in?

75% schools and the majority of older hospitals are reported to have asbestos in them. There are also numerous other public and historic buildings in which asbestos has been found. In March 2017, asbestos was found in the ventilation system in the House of Commons. In 2015, it was estimated that it would cost £150 million to remove asbestos from Buckingham Palace and wide scale asbestos removal from Kensington Palace has already been widely reported. Asbestos has been found in many 1960's and 1970's built public buildings such as leisure centres, swimming pools and council buildings. Many shops including long established department stores have asbestos materials in them. In 2011 Marks & Spencer were fined £1 million for exposing staff and customers to asbestos dust during renovations in their Reading and Bournemouth stores a few years earlier. In January 2018, the former BHS department store in Hull had hoarding placed around its exterior when it was realised that some cladding had come away exposing asbestos insulation.

Libraries and museums are also buildings in which asbestos can be found, not only in the buildings themselves, but also in some of the exhibits. In Oxford, the Bodleian Library underwent major refurbishment work in the early 1970's, during which it is thought that asbestos products were used in the heating systems. In August 2017 the Museum of Royal Worcester, a porcelain museum, was found to have asbestos in its ceiling. As a result the museum closed to allow for the safe removal of the asbestos materials. These are only a few examples.

Are we at risk?

Asbestos materials when undamaged present little danger. The risk occurs when the asbestos containing materials are disturbed, releasing asbestos fibres into the air. It is these fibres which when inhaled or ingested, are harmful to us.

To ensure that these fibres are not released into the atmosphere when asbestos is removed from buildings, it must be removed by specialist contractors, wearing full protective suits and respirators, with the area tented off so that asbestos dust and fibres cannot escape into the atmosphere.

The Control of Asbestos Regulations 2012 placed a duty upon those in control of non-domestic premises to manage the risk of asbestos by ensuring suitable and sufficient risk assessments are carried out to identify whether asbestos is likely to be present in the premises. The condition of the asbestos present in the premises must also be monitored and inspections undertaken of those parts of the premises that are reasonably accessible. The risk that the asbestos poses must be considered; and a written plan kept, which identifies the parts of the premises concerned. The plan must include adequate measures for monitoring the condition of the asbestos, ensuring that it is properly maintained, or if necessary, removed. Information on the location and condition of any likely asbestos must be provided to anyone liable to disturb it and to the emergency services. The plan must be reviewed at regular intervals and revised without delay, if it is thought to have become outdated.

But are these measures sufficient? Do reviews of asbestos plans at regular intervals provide sufficient protection? What is the definition of regular intervals? Does review of asbestos materials pick up day to day wear and tear?

Having pursued cases for claimants where asbestos exposure occurred due to the operations of daily life, such as accidental and inadvertent damage to pipework lagging for example during the moving of goods on a forklift truck in the basement of a department store, the knocking of an asbestos roof whilst removing goods from high level shelving, replacement of decorative panels behind which asbestos had been sprayed in a shopping centre, or the falling in of a water damaged artex ceiling containing asbestos; we know only too well that such incidences cannot be prevented by surveys of these materials in situ.

So what is the answer?

There is a growing campaign to remove asbestos from all schools and workplaces, a move which is supported by the TUC. Asbestos is the biggest cause of workplace deaths, but the issue raises questions far wider than the work place. Asbestos containing materials can be found in half a million non-domestic premises and probably around 1 million domestic ones. Any act that causes the asbestos materials to be disturbed can cause asbestos fibres to be released in to the air. While planned maintenance, building work and demolition can be risk assessed and controlled, what about unforeseen damage that can't be controlled?

Everyday damage to the structures of a building caused by the passage of goods vehicles and people can be foreseen, as can water damage, accidental damage and fire. All of these would cause the release of asbestos fibres from asbestos containing materials into the atmosphere in an uncontrolled and dangerous way.

Surely, the only fail safe solution to the danger of asbestos in public buildings and buildings visited by the public can be its complete removal. However, this raises many questions in itself. Who should fund asbestos removal? Where asbestos should be removed from first?

- schools?
- social housing?
- public buildings?

Should private individuals be obliged to remove asbestos from their own homes and premises? Would such legislation even be enforceable?

Is it therefore safe to continue to visit public and historic buildings even if they contain asbestos? For those of us who visit, work in and enjoy these buildings, the risk of inhaling asbestos dust is low. However, for those who may be accidentally damaging or disturbing asbestos containing materials unknowingly, through their day to day activities, the risk could be far higher.

Jessica Tuffrey, Paralegal



Recent compensation claim successes...

Claim for mesothelioma for a 77 year old builder of agricultural buildings settles for £200,000 within 9 months of instruction

Mr J was born in 1939 and diagnosed with mesothelioma in January of 2017 when he was aged 77. He instructed us with regards to a potential claim in March 2017. We immediately identified the insurers for his previous employers and sent details of the claim to them, as well as making applications for benefits and a lump sum from the government. Sadly, his condition progressed rapidly and he died in late April 2017.

Mr J had for many years worked erecting agricultural buildings for a firm in Buckinghamshire. Many of the agricultural buildings were concrete frame structures with asbestos roofs and walls. It was Mr J's job to help manoeuvre, cut and fix the asbestos panels into place and to remove any unused or broken panels. He and his work mates would travel all over the country and would be away for weeks at a time, all

that judgment should be entered on the issue of liability. The Court fixed an assessment of damages hearing for April 2018.

Over the summer of 2017 Mrs J had a fall and fractured one of the vertebrae in her spine. She needed considerable care and assistance as a result. This was assistance that Mr J would have provided but for his mesothelioma, and the voluntary care and assistance provided by other family members formed part of Mrs J's claim. The claim settled just before Christmas 2017 for £200,000.

Mr J had been a hard working man throughout his whole life and had wanted nothing more following his diagnosis than to make sure that his wife was going to be financially provided for. After the settlement his daughter wrote to Helen Childs who handled the case and said: *"Thank you really doesn't seem enough. Dad would have been blown away with all of this and I know if he could, he too would be sending many hugs to you and your team."*

Judgment at 'show cause' hearing for former trainee metallurgist with mesothelioma

We have recently secured judgment for Mr H following a complex and difficult "show cause" hearing in the High Court. Mr H was employed by Babcock and Wilcox and Babcock Power Limited between 1980 and 1984, working as a trainee metallurgist in their Renfrew Research Plant. Mr H was exposed to asbestos by using asbestos blankets in the course of treatment testing on metal components, to test their reaction to extreme heat. He applied asbestos blanket over parts that were to be cooled slowly or kept cool during the heating process. The application of these blankets caused them to emanate dust and fibres. Overtime with repeated use, they became very tattered and frayed.

Mr H began to experience symptoms of mesothelioma in July 2016, being diagnosed in September 2016 when he was 53 years old. After leaving Babcock and Wilcox, he immigrated to Australia and set up a business in Perth delivering skips. Shortly prior to his diagnosis with malignant mesothelioma he was diagnosed with Korsakoff's syndrome, which caused him to have significant problems with his short term memory. However, despite this he had a very good recollection of his employment at Babcock and Wilcox and was able to give a detailed witness statement. Despite initially agreeing to deal with Mr H's claim, the defendants withdrew their admission after noting that Mr H had Korsakoff's syndrome.

"Thank you really doesn't seem enough. Dad would have been blown away with all of this and I know if he could, he too would be sending many hugs to you and your team".

sharing a small caravan with limited washing facilities. As a result they were all exposed to considerable levels of asbestos dust both as a result of their own work, but also from the overalls of their work mates. The building company was no longer trading, but it was possible to trace their insurers. Court proceedings were commenced in July of 2017. At the date of the Court's first review hearing in November the defendant insurers finally admitted responsibility for Mr J's mesothelioma and agreed an interim payment of £50,000 and

Rachel James, who handled the claim, commenced proceedings in the specialist asbestos division in the High Court to try and obtain judgment on liability. Shortly after service, the defendants raised questions alleging that Mr H would have come into contact with asbestos through his skip hire company, something that was noted in his medical records, and this would have been the cause of his mesothelioma. They also alleged that Mr

"I am very happy to be able to have secured judgment in Mr H's case. The interim payment will allow him to put in place a care plan whilst his case is concluded".

H's Korsakoff's syndrome could cause him to confabulate i.e. create a version of events to fill in blanks in his memory. Mr H's ex wife, who was a partner with him in the skip hire business, confirmed that while asbestos waste was collected, it was never removed from site. When it was collected, it was always double wrapped and sealed in plastic so that no dust or fibres could escape. The skip operator had no physical contact with the contents of the skip, other than to attach chains to the skip for it to be lifted onto a flat bed truck. Evidence was also taken from Mr H's family to confirm that whilst Mr H did have gaps in his short term memory, there were no gaps in his long term memory. The witness evidence confirmed that Mr H did not confabulate; he would always admit if he did not remember something.

A witness appeal was carried out for witnesses who could provide evidence about asbestos exposure at the Babcock and Wilcox Renfrew Plant. Several witnesses came forward, including a fellow trainee metallurgist who worked alongside Mr H in the plant. The witness evidence obtained proved that Mr H's description of the use of asbestos blankets was true and correct and that asbestos blanket material was in use as late as 1986. An engineering expert also provided

a short report which confirmed that the description of the blanket material was consistent with asbestos and that the use of asbestos blankets in the way described by Mr H would have given off asbestos dust and fibres in excess of the levels that would have been deemed non negligent given the knowledge at the time.

At the hearing the Master found in Mr H's favour and entered summary judgment on the basis that the defendant could not prove it had prospects of defending the claim. An interim payment of £50,000 was ordered in Mr H's favour.

Rachel James said *"I am very happy to be able to have secured judgment in Mr H's case. The interim payment will allow him to put in place a care plan whilst his case is concluded."*

Posthumous settlement for the family of Geoff who died from mesothelioma

In May 2017, Rachel James an Associate in our specialist Industrial Diseases Team in Oxford was instructed by Geoff, an 83 year old gentleman from Cambridge, who had recently been diagnosed with mesothelioma. Geoff lived with his partner, Barbara. While Geoff and Barbara were not married, they had lived together as man and wife for 22 years. In August 2016, Geoff began to suffer with shortness of breath and pains in his chest and abdomen. He was diagnosed with mesothelioma in April 2017. Geoff worked for the William Sindall Group for most of his adult life. As a young man, he trained with Sindall's as a bricklayer, but after National Service, re-joined the Sindall Group as a trainee foreman, working his way up to a contracts manager. In 1967, Geoff worked on the construction of the Lister Hospital. He supervised the work, often working in close proximity to carpenters cutting up asbestos insulation board with handsaws and bench saws and working in close proximity to ladders mixing and applying lagging.

Despite Geoff providing very detailed evidence about the work he carried out for the William Sindall Group, which later became Morgan Sindall Group Plc and Sindall Limited, the solicitors acting for them did not make an admission of

liability in Geoff's case, stating that his evidence was "vastly overstated." Geoff was becoming increasingly unwell and whilst we were able to obtain substantial benefits payments for Geoff, it was not sufficient to give him the mental security of knowing that Barbara was provided for after he passed away. He especially wanted to buy a brand new car for Barbara before he passed away, to ensure that she would not have to manage vehicle maintenance and could get about without him. Geoff was also worried that Barbara would not manage financially, because she had always been reliant on his higher pension income.

Rachel researched whether there were any of the original building plans concerning the Lister hospital in the local Hertfordshire archives. She found a vast amount of documents concerning the building of the hospital, especially the building site manager's journals which detailed all of the work that went on during the building of the hospital. These proved that asbestos was used throughout the construction of the hospital, that wet asbestos paste lagging was applied by Kitsons Insulation and that Geoff definitely worked on the site, because he was named in the journals.

Court proceedings were issued within two months of instruction as Geoff deteriorated very rapidly over a matter of days and passed away shortly after the issue of court proceedings. We were able to help Barbara to obtain a grant of probate to deal with Geoff's affairs. Following an inquest and disclosure of the site manager's journals for the construction of the Lister Hospital, the Sindall Group finally agreed settlement terms at the end of December 2017, within seven months of instruction.

Rachel James said *"I was very happy to be able to pursue the claim successfully for Barbara and to obtain justice for Geoff posthumously. Geoff continued to work for the Sindall Group until 1992 when he was retired. He was exposed to asbestos for much of his working life, and it was only in the last 10 years of his employment that his employers took any precautions to minimise the dangers of asbestos. These dangers were well known during the time that Geoff worked on the construction of the Lister Hospital; however he was always led to believe that it was safe by his superiors. Tragically, Geoff passed away before his claim could be settled, however he knew Barbara would be afforded financial security."*

Your key Industrial Disease Claims contacts



Helen Childs

Partner

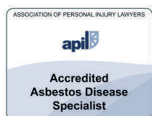
T: 01865 268 359

T: 0207 842 1444

M: 07889 001 649

helen.childs@roydswithyking.com

🐦 @HelenChilds_rwk



Jennifer Seavor

Associate

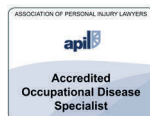
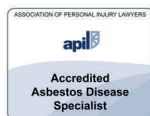
T: 01225 459 991

T: 01793 847 707

M: 07469 859 315

jennifer.seavor@roydswithyking.com

🐦 @jennifer_seavor



Rachel James

Associate

T: 01865 268 655

M: 07931 100 059

rachel.james@roydswithyking.com



Maggie Powell

Associate

T: 01225 730 219

M: 07900 180 589

maggie.powell@roydswithyking.com



Gurminder Sidhu

Solicitor

T: 01865 268 391

gurminder.sidhu@roydswithyking.com



Jessica Tuffrey

Paralegal

T: 01865 268 374

jessica.tuffrey@roydswithyking.com



Laura Coppack

Legal Assistant

T: 01225 730 219

laura.coppack@roydswithyking.com



Abbie Porter

Legal Assistant

T: 01225 730 223

abbie.porter@roydswithyking.com

You can contact our team for free

T: 0800 051 8056

pi.enquiries@roydswithyking.com

Connect on social media:

🐦 **@RWKIDTeam**

facebook.com/RWKIDTeam



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