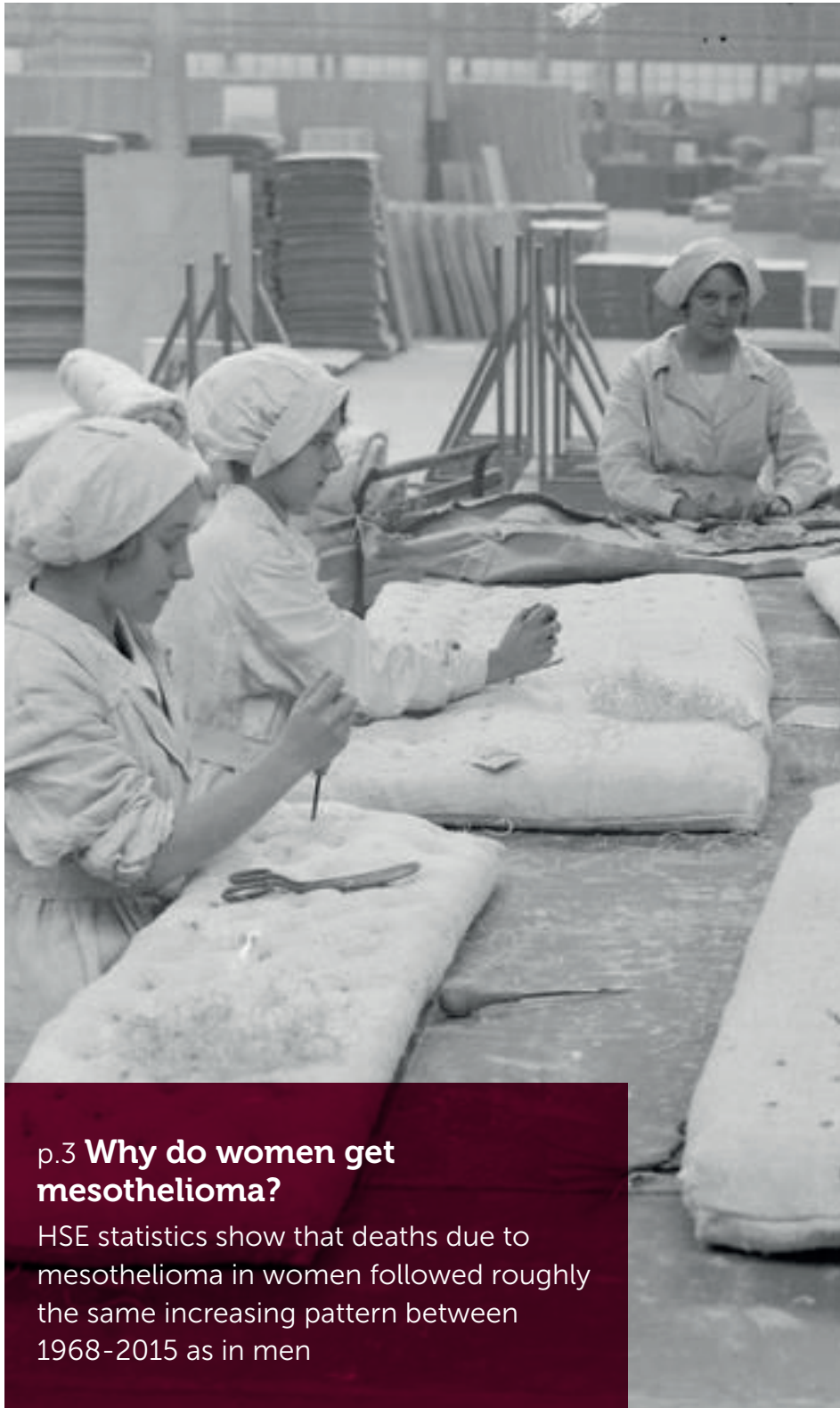


Airborne

Asbestos awareness & advice newsletter



p.5 **Asbestos in Make up**

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

p.3 **Why do women get mesothelioma?**

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 in to 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 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.

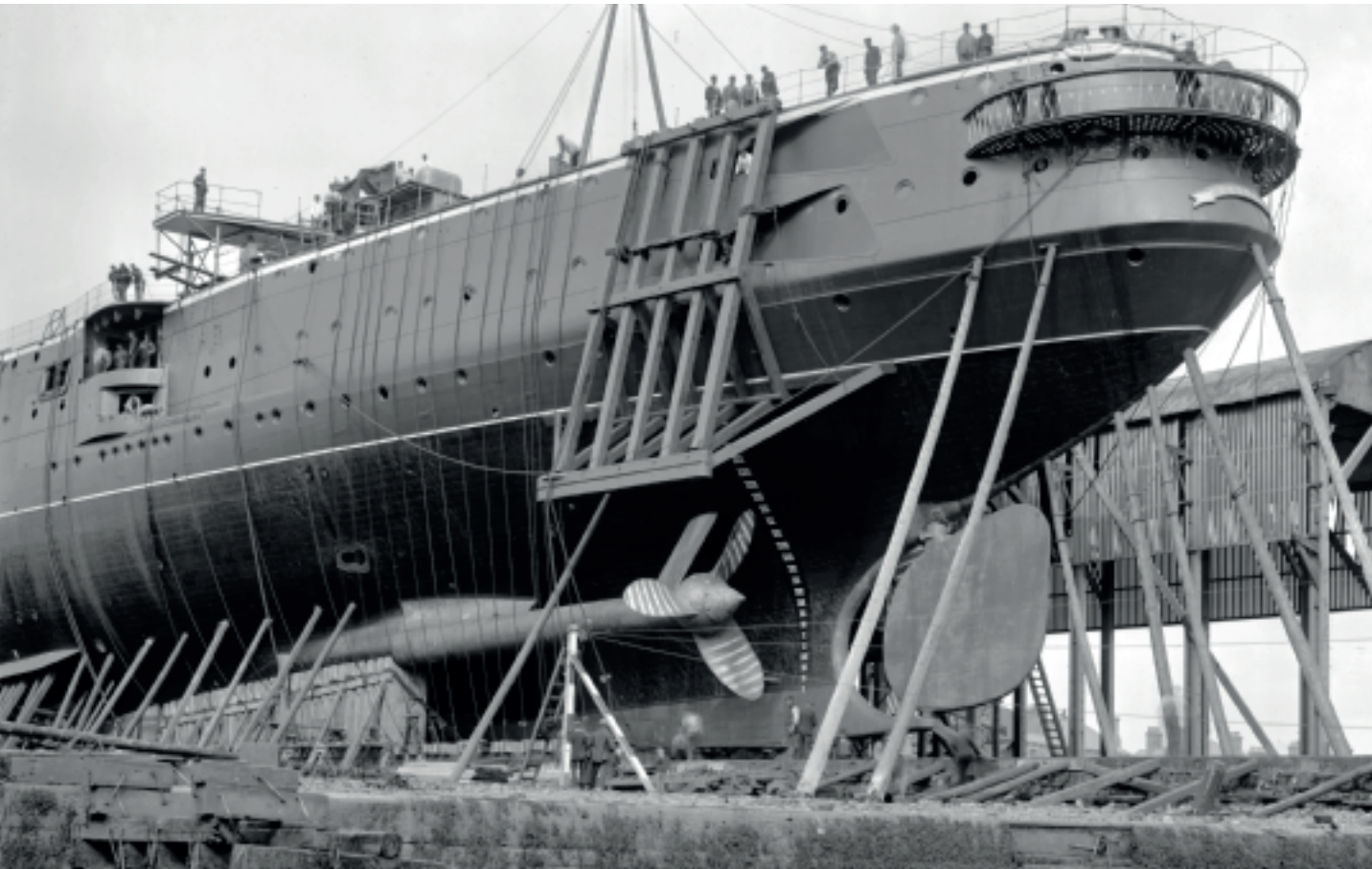
Laurie Kazan-Allen, IBAS Coordinator wrote

"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

Recent settlements



LUNG CANCER CLAIM AGAINST N HOLMAN & SONS LTD. (PENZANCE SHIP REPAIRERS)

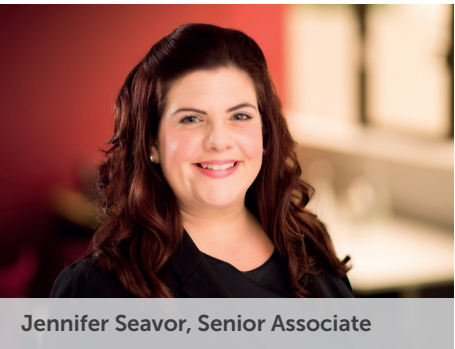
Mr Cooper was employed by N Holman & Sons Ltd between 1983 and 1989 as a fitter/welder working at the company's dry dock in Penzance. He was engaged in carrying out repairs to and gutting ships, including light ships that were then refurbished. His work entailed him spending long periods of time working in the engine rooms removing extensive pipework that was lagged with asbestos.

Mr Cooper was diagnosed with lung cancer and instructed Maggie Powell to pursue a claim against the company. Maggie visited Mr Cooper at his home in Cornwall in July 2017 and prepared a detailed statement on his behalf. Having identified the insurers of the company at the relevant time a claim was pursued. The insurers initially indicated that they would be obtaining engineering evidence dealing with the levels of asbestos exposure before considering liability. Having stated that to be their position Maggie entered into negotiations with the insurers and the claim was settled in March 2017 for £132,000.00.

The main point of dispute related to our client's smoking history with the insurers arguing that there should be a 30% deduction for contributory negligence following the recent Court of Appeal decision in the case of Blackmore. Maggie took the view that our client's smoking history was not comparable to that of Mr Blackmore and argued that the maximum deduction should be 15%. This issue was compromised with a deduction of 17.5%.

Mr Cooper was very pleased with the outcome primarily because of the financial security it would provide for his wife in the longer term and after his demise. He said, "I cannot thank Mrs Powell enough, or the help she has given us. Great solicitors".

Jennifer said "It was awful to hear about the working environment at the Swindon Railway Works from Peter. Whilst I have represented many men over the years that have been exposed to asbestos at the works, it never fails to shock me to hear about the working environment and how so many men were exposed to asbestos and their lives put in danger. Peter told me that he knew many other men who had worked with him and died from asbestos related diseases. He thought he had been one of the lucky ones but was also sadly diagnosed with the disease late in life."



Jennifer Seavor, Senior Associate

THE FAMILY OF FORMER SWINDON RAILWAY WORKS EMPLOYEE RECEIVE SIX FIGURE SUM IN COMPENSATION FOR MESOTHELIOMA

In June 2017, Jennifer Seavor, a Senior Associate in our Industrial Diseases team and specialist mesothelioma and asbestos disease solicitor, was instructed by Peter Heavens.

Sadly, Peter had just been diagnosed with mesothelioma, at the age of 88. Following his diagnosis, his family made enquiries online and found reference to the Swindon and Wiltshire Asbestos Support Group and made contact with us. Jennifer attended Peter at home in the presence of his wife Fiona and daughters, Dawn and Jackie.

Peter was born in Swindon in 1928 and had grown up in the town. At the age of 18 he took his first job as an apprentice fitter and turner with the Great Western Railway at Swindon Carriage Works.

Peter told Jennifer that as asbestos was widely used in the manufacture of railway carriages and various train components he believed he had been exposed to asbestos during that time. He could remember asbestos being mixed into a paste to form lagging and that being applied to pipe work in steam trains. He also remembered that the train carriages were insulated with sprayed asbestos and asbestos sheeting.

Peter also spent a lot of time in the stamping shop. His job involved stripping down hammers and presses and undertaking maintenance and repair work. The presses were steam operated and therefore had associated pipe work which was also lagged with asbestos lagging. Peter regularly had to undertake maintenance work which meant removing lagging from the pipes.

He described to Jennifer what an awfully dusty environment it was. There was no health and safety in those days and breathing protection was not provided. There was no kind of ventilation and therefore Peter and his colleagues inevitably breathed in the deadly asbestos dust.

He completed his apprenticeship in 1949/50 and then undertook National Service. However, he returned to the Swindon Railway Works in 1952 this time at

the Locomotive Works where he continued to be exposed to asbestos due to the fitting, erecting and boiler making going on at the works. At the time the locomotives were still steam driven and again asbestos was used for lagging the pipe work. Peter continued to have to strip down asbestos lagging from locomotives that needed to be repaired.

Jennifer said "It was awful to hear about the working environment at the Swindon Railway Works from Peter. Whilst I have represented many men over the years that have been exposed to asbestos at the works, it never fails to shock me to hear about the working environment and how so many men were exposed to asbestos and their lives put in danger. Peter told me that he knew many other men who had worked with him and died from asbestos related diseases. He thought he had been one of the lucky ones but was also sadly diagnosed with the disease late in life."

Peter left the Railway Works in 1960 and didn't have any further exposure to asbestos in his subsequent working life, much of which was spent with London Transport where he eventually worked with the Quality Assurance department.

Peter and his family were devastated to hear about his diagnosis in May 2017. He began to experience shortness of breath just prior to Christmas 2016. He was referred to the Great Western Hospital for a

chest x-ray and a scan and it was noted that he had developed a pulmonary embolism, a blood clot in his lung as well as pneumonia. It was as a result of these investigations that it was noted that he had also developed mesothelioma.

Unfortunately, no treatment was available to Peter. His condition gradually became worse and sadly he lost his battle in October 2017.

Jennifer said "Peter was a wonderful man. He had spent much of his life in Swindon and worked so very hard. He was dedicated to his wife Fiona and daughters Dawn and Jackie. He also had grandchildren and great grandchildren. He was such an important and treasured member of the local community in Old Town where he lived."

Peter's claim settled following his death in February 2018. Jennifer was however able to obtain an admission of liability from the Department for Transport which now deals with claims against Great Western Railway/British Rail, during Peter's lifetime. He therefore knew that Fiona's security was assured. Importantly, Jennifer was also able to assist Peter with obtaining access to government benefits and an interim payment of compensation during his lifetime to assist him. Peter will be very missed by his family and many friends in Swindon.



COMPENSATION RECOVERED FOR FAMILY OF GLASWEGIAN MAN WHO DIED FROM MESOTHELIOMA

Billy instructed us in October 2016 following his diagnosis of mesothelioma. He developed shortness of breath in the spring of 2016 which did not improve. Billy went to see his GP and was sent for a chest x-ray which showed that he had developed fluid on his lungs. He had the fluid drained off and further tests were done. He was then given the devastating news by his consultant that he had developed mesothelioma, an incurable cancer caused by asbestos exposure.

At the time of his diagnosis, Billy was already residing in a nursing home in Govan in Glasgow due to mild dementia. He never married and had no children of his own. After his diagnosis with mesothelioma he was concerned that he may require more specialist care and as such decided to pursue a claim.

Jennifer attended Billy at his nursing home in Glasgow in the presence of his nephew. Billy told Jennifer that he had worked in a number of ship yards over the years both in England and in Scotland. He had also worked for British Rail in the 1960s and for Darlington Insulation in the late 1970s.

In particular, his work for Vickers Armstrong at their ship yard in Barrow in Furness in Cumbria stuck out in Billy’s mind. He had worked there in the mid 1960s building civilian and war ships as well as submarines for the Royal Navy. As a labourer, his job involved anything and everything. However, he spent a lot of time helping plumbers and ladders. Billy remembered fetching and carrying paper sacks of asbestos back and forth for the ladders to use and being present when they were mixing up asbestos lagging to apply it to pipework.

Billy told Jennifer that it was a very dusty environment. As the asbestos sacks were ripped open and the contents tipped into drums, there was a huge back lash of dust and there would be asbestos clouds in the air. Back in those days, there was little health and safety and he wasn’t given any breathing protection or even warned about the dangers of asbestos exposure. He was also present when ships were being re-fitted and this often involved him assisting the plumbers to strip existing asbestos lagging so that repairs and maintenance could be done to the pipework.

Subsequently, Billy has worked for British Rail again as a labourer. His job involved cleaning up and sweeping asbestos containing materials that had been removed from the locomotives. At Darlington Insulation again, he worked at various premises assisting with the stripping of asbestos lagging from pipes and boilers so repairs could be undertaken.

Billy told Jennifer that so many of his friends and former colleagues had suffered asbestosis and other asbestos related diseases. He said that in Glasgow they called it “the bug” as it had affected so many who had worked in the ship yards and in industry.

Sadly, Billy’s condition quickly deteriorated and although he tried to fight the disease, he sadly passed away on 29 December 2016. Following his death, he had a post mortem examination which confirmed mesothelioma.

Whilst Billy was never married and had no children, his next of kin was his sister Mary who decided to honour Billy’s wishes and continue with the claim. The case settled in early 2018.

Sadly Mr Ferguson died some three months after we were instructed. Having obtained copies of his medical records it became clear that although mesothelioma was suspected during his life there was no definitive diagnosis. A post-mortem was carried out and mesothelioma was confirmed.

We were instructed by Mr Ferguson’s son to continue with the claim for the benefit of his mother, Mr Ferguson’s widow.

As liability was not admitted proceedings were issued against the Secretary of State for Business, Energy and Industrial Strategy, the successors in title to the NCB. Liability was then formally denied on the basis that if the late Mr Ferguson was exposed to asbestos, which was not admitted, any exposure would have been minimal and at the time of his employment would have been considered a “safe” level of exposure.

Engineering experts were instructed by both sides and the case listed for trial at the end of April 2018. The claim settled one week before the trial was due to commence for a sum in excess of £100,000.

It was a battle throughout but we were delighted for the family and that justice had been done for the late Mr Ferguson. When our client told his mother that the claim had settled he said, “She just couldn’t believe what was happening. Can you imagine someone who really hasn’t had anything, even though they worked hard all their lives, to know now that she is secure? She would like to thank you so much for everything you’ve done and I can’t thank you enough for your belief, your professionalism and empathy.”

CLAIM FOR MESOTHELIOMA SUFFERER - A MUM WHO LAUNDERED HER SON'S WORK CLOTHES SETTLED MORE THAN 10 YEARS AFTER THE EXPIRY OF THE LIMITATION PERIOD.

Royds Withy King have recently settled a claim for a mesothelioma sufferer who died in May 2003 aged 75. Mrs M’s son worked as an apprentice for the London Electricity Board. Mrs M used to do her son’s laundry. In 2003 she developed and died from mesothelioma. She and her family were only asked where she had worked with asbestos, they weren’t aware that asbestos can occur as a result of secondary exposure from other family members work clothes. It was only when Mrs M’s other son, Raymond, was diagnosed with mesothelioma in 2015 that it even occurred to them that their mother may have also developed mesothelioma as a result of eldest son’s work.

Raymond’s case proceeded against the London Electricity Board’s successors and they admitted liability for allowing his brother to come home with asbestos on his work clothes.

There is a 3 year time limit from an individual’s diagnosis or date of death to bring a claim for compensation. However this three year time limit can be extended if the court considers it would be equitable to disapply it and this depends on whether the defendants can show any prejudice in investigating the claim later than they would have done if it had been presented to them within the primary limitation period.

Royds Withy King pursued the claim for Mrs M arguing that the defendants were no more prejudiced in investigating her claim than they had been in investigating the claim for her son Raymond which had been bought in time and dealt with on an admission. Indeed the London Electricity Board’s successors admitted that they negligently exposed Mrs M to asbestos through her eldest son’s work clothes as well. However, even though Mrs M’s

exposure to asbestos as the launderer of the work clothes was more intense than her son, Raymond’s exposure to asbestos as a result of simply sharing a bedroom with his brother the defendants disputed that Mrs M’s contact with asbestos on her eldest son’s work clothes caused her to develop mesothelioma.

We were instructed to pursue the claim in the Spring of 2016 following the receipt of an admission in Raymond’s claim. It was met with an outright denial because of the expiry of the limitation period and as soon as Mrs M’s medical notes and records had been received, medical evidence was obtained and court proceedings were commenced. The claim was defended and was listed to go to trial in June 2018. However the claim settled for in excess of £50,000 and about 75% of the realistic full valuation of the claim in January 2018.

Jennifer said “Billy was such a lovely man. It was heart breaking to see how mesothelioma affected him and the impact this had on his family, in particular his sister and his nephew who were devoted to him. Like so many men from Billy’s generation, he worked incredibly hard his entire life only to be diagnosed with such an awful illness during his retirement.”

COLLIERY WORKERS FAMILY RECEIVE SIX FIGURE COMPENSATION FOR MESOTHELIOMA WITHIN A WEEK OF THE TRIAL DATE

Mr Ferguson left school at the age of 14 and went to work at Fishburn Colliery in County Durham. Following nationalisation he undertook an apprenticeship with the National Coal Board (NCB) as a blacksmith and remained working for the NCB at Fishburn Colliery until 1968.

In the early part of 2016 Mr Ferguson began to experience some breathlessness, pain and weight loss. Having undergone various investigations he was advised that he had mesothelioma.

Maggie Powell in our Industrial Diseases team visited Mr Ferguson at his home in March 2016 and prepared a detailed statement on his behalf dealing with his employment history and more particularly how he came into contact with asbestos whilst working at the colliery. Although a blacksmith by trade, Mr Ferguson did spend some time working in the boiler house. One of Mr Ferguson’s jobs was to clean the gaskets on the pipework. The gaskets were referred to as “wheezes”. These gaskets were made from asbestos and Mr Ferguson would clean them using a wire brush, which released asbestos dust into the atmosphere.



Helen Childs of Royds Withy King commented: “Many solicitors will not consider claims where they are being instructed close to the expiry of the three year time limit let alone claims where the three year time limit has already expired. However, the law regarding limitation for court proceedings is complicated, needing specialist legal input and we consider every claim on its merits. As a result we accepted instructions to represent Mrs M’s family in a claim for compensation for mesothelioma where she died more than 13 years previously. We argued we could establish that the defendants weren’t prejudiced in investigating the circumstances of exposure because sadly Mrs M’s son, Raymond had developed mesothelioma himself in 2015 through the same circumstances of exposure. Anyone with a query regarding time limits should seek specialist legal advice.”

Mrs M’s daughter said “I do believe if it had not been for your determination this claim would not have been possible, your hard work in this matter is much appreciated.”

Future events

Swindon & Wiltshire Asbestos Support Group (SWASG)

Meetings are held on the last Friday of every month from 3.00pm – 5.00pm in the Garden Room at Christ Church Community Centre, Cricklade Street, Swindon, SN1 3HB. It is free to attend and anyone affected by asbestos disease including their carers and families are very welcome to attend.

For more information:

Email - support@swasg.com

Telephone - 01793 847 707

Find us on social media:

Facebook - search 'Swindon and Wiltshire Asbestos Support Group'.

Twitter - @SWAsbestos

Asbestos drop in clinics

Free specialist no obligation advice for those diagnosed with an asbestos disease or worried about exposure. We can also assist with applications for government benefits.

Swindon - Every Thursday 9.00am – 5.00pm at our Swindon office – Royds Withy King, 34 Regent Circus, Swindon, SN1 1PY

Oxford - Every Monday 9.00am – 5.00pm at our Oxford office – Royds Withy King, North Bailey House, New Inn Hall Street, Oxford, OX1 2EA

Woodley – 2.00pm – 4.30pm on the first Wednesday of every month – Brunel Room, The Oakwood Centre, Headley Road, Woodley RG5 4JZ

Tilehurst – 3.00pm – 5.00pm on the third Wednesday of every month – Tilehurst Methodist Church, 26 School Road, Reading RG31 5AN

Recent events

BRITISH THORACIC ONCOLOGY GROUP – ANNUAL CONFERENCE JANUARY 2018

In January, Helen, Jennifer and Rachel from our team had the pleasure of attending the annual conference of the British Thoracic Oncology Group in Dublin. The conference, in it's 16th year, brought together professionals throughout the UK and abroad involved in the diagnosis, treatment and care of mesothelioma and lung cancer sufferers as well as those involved in clinical research, specialist solicitors, support group representatives and pharmaceutical companies. This year we were silver sponsors for the conference and also funded several medical professionals to attend through our bursary scheme – The Clifford Lloyd Education Fund.

So why is the conference so valuable to the delegates who attend? A few of the clinicians we sponsored to attend explain...



Simon Bolton, Mesothelioma UK Clinical Nurse Specialist:

"Arriving through the doors of what the locals still call 'The Burlington' early on a cold crisp Wednesday morning in late January is always a highlight of my year. A packed three day programme awaits but that content only scratches the surface of the potential learning that lies ahead. Networking with friends and colleagues at break times and of course in the famous hotel bar, often late at night provides an opportunity to steal ideas for projects or head back to base with ways to change practice by implementing new ideas. The excellent posters enhance this way of learning. Once again, I was proud to exhibit a poster outlining a piece of my own work on the research needs of mesothelioma patients in the region I cover.

After a full Irish breakfast, I headed to a debate on the argument surrounding peer review of ALL radiotherapy cases. This is a serious topic but the informative session was made fun with both presenting clinical oncologists hurling amusing insults at one another to win our vote. Many arriving in Dublin will have done so by air. In doing so, we all put our faith in the pilots flying our plane. We like to think that every aspect of safety has been checked and double checked. Delivering radiotherapy should only be done after an equal level of safety has been carried out. Yet with a shortage of oncologists in the UK and the NHS under greater pressure than ever, finding the time and resources to peer review all radiotherapy cases is a major concern. The

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case for and against was so strong I found it difficult to support one motion against the other as the debate closed.

As a Mesothelioma UK CNS, I was delighted to hear of the ongoing clinical trials in the UK. It's a major challenge keeping up to date and the BTOG Mesothelioma Research update provided a comprehensive review of the recently completed, current and potential future trials aimed at answering vitally important questions to improve the diagnosis, support and treatment of our patients.

I was interested to hear about the follow up of surgically resected lung cancer patients as this is an area I personally feel

has a haphazard approach in the UK with different cancer units performing different surveillance imaging at different intervals. The French study reported in this session will hopefully lead to some replication UK research and eventually provide some much needed guidance on best practice in this session. It's worth remembering that this is a relatively small group of lung cancer patients. They make up 15-20% of the population, yet they are having potentially curative treatment and we really should be doing more to get it right for this group.

Finally, there were a number of interesting sessions on the national optimal lung cancer pathway. This work is important in streamlining what has in many areas become a fairly slick process. There is of course always room for improvement. Once again, the deficient resources in the current NHS acts as a barrier to success. It's certainly not the lack of commitment and the will of the dedicated clinicians in the room.

I'd like to thank the team at Royds Withy King for supporting my attendance at this year's conference through the Clifford Lloyd Education Fund. My head is already filled with ideas of work projects for the next 12 months. I have already cleared a space in my diary during the last week of January 2019 to share the outcomes of this work at next years BTOG conference."



Lorraine Creech, Mesothelioma UK Clinical Nurse Specialist and Team Leader said:

"I was delighted and grateful to receive sponsorship from The Clifford Lloyd Education Fund via Royds Withy King enabling me to attend the BTOG Conference 2018 in Dublin between the 24th and 26th of January.

My name is Lorraine Creech and I am one of two Mesothelioma UK Clinical Nurse Specialist Team Leaders covering the North of England, Wales and Scotland. The BTOG mission is to support and



Mesothelioma and lung cancer education day

Friday 5 October 2018 - 9.00am - 4.30pm

Spotlight on Immunotherapy and non-NHS treatment

This free education day will be of interest to all healthcare professionals involved in the management of patients with mesothelioma and other asbestos-related diseases.

Lunch provided | Networking over drinks and canapés after the talks

Book your free place:

events@roydswithyking.com
01865 268 655

Where:

Royds Withy King, 69 Carter Lane,
London EC4V 5EQ

 **Blackfriars or St Paul's**

Speakers and topics include:

Dr Peter Szlosarek, Consultant in Medical Oncology at St Bartholomew's Hospital and Bart's Cancer Institute Immunotherapy and non-NHS funded treatment: an overview and current trial data

Dr Jeremy Steele, Consultant Medical Oncologist at The London Clinic Immunotherapy: the science

John Paul Swoboda, Barrister at 12 King's Bench Walk Immunotherapy and ethics

Rachel James, Associate at Royds Withy King Asbestos disease law and funding non-NHS treatment: what you need to know

Additional speakers will be discussing diagnosis of mesothelioma and lung cancer and the Coroner's perspective on asbestos disease cases.

Royal College of Nursing and Royal College of Physicians accreditation.

educate health care professionals, creating a professional community to exchange ideas, information and innovation and to foster the development of research. The overall aim is to represent the needs of patients and improve outcomes.

The conference is pivotal to this mission as it brings together over 700 doctors, nurses, allied health care professions and others with a special interest in lung cancer and mesothelioma.

Cutting edge research and the most up to date processes for diagnosis, treatment and care are presented and discussed.

I found the conference to be beneficial. Highlights for me were the translational oncology symposia focusing on comparison diagnostics, new concepts for trial design and precision medicine in mesothelioma. Presentations on the national optimal lung cancer pathway were encouraging and it is reassuring to hear that more teams are making this achievable.

Other highlights for me were the BTOG/ NCRI Mesothelioma Subgroup update, the National Lung Cancer Forum for Nurses session and looking at patient information in the 21st century.

The conference is inclusive and friendly, fostering collaboration and I feel privileged to have been able to attend."

Dr Ganesan Jeyasanger, a Consultant Respiratory Physician in West Yorkshire said:
"Thanks for sponsoring me to attend BTOG through **The Clifford Lloyd Education Fund**. Attending BTOG 2018 has given me an opportunity to update the recent development in the field of thoracic oncology which ultimately will help me to manage my patients. It also gave me an opportunity to network with other health care professionals and we shared our ideas. I have gained immense knowledge and ideas from the conference, which I will be implementing in my hospital for the better care of my patients."

Amanda Dand, Macmillan Lung Cancer Nurse Specialist at the Royal Oldham Hospital said:

"I had a fabulous time at BTOG. I learnt a lot and it was a bonus to meet the Royds Withy King team who made me and my colleagues all feel very welcome and at ease. It was an interesting and thought provoking conference. The topic's which I personally found very interesting and exciting included a session called 'The future of lung cancer surgery: A new reality' which discussed complex keyhole surgery, robotic assisted thoracic surgery and the role of electro magnetics navigational bronchoscopy. The presentations were exciting, interactive and all were presented by enthusiastic speakers who I felt drew the audience in leading to a useful open panel discussion.

I also found a session called 'Pulmonary neuroendocrine tumours' really useful - particularly management and follow up of carcinoid tumours. This led me to look at my own and current practice within our service and I have undertaken discussion with consultants since returning about local follow up.

The Clifford Lloyd Educational Fund operated by Royds Withy King was invaluable in allowing my colleagues and me to access funding to attend the conference. Without this financial assistance we would not have been able to attend what was an excellent conference offering both national and international

updates on evidence based practice and research within lung cancer. It was a forum within which to network and share good practice and ideas."

Marie Eaton, Lung Cancer Clinical Nurse Specialist at The Christie Hospital in Manchester:

"The BTOG conference is well attended by all healthcare professionals who care for patients with all forms of lung cancer. It is a forum where current practice and expertise is celebrated as well as being an excellent springboard for new innovations in patient care.

I found it to be an invaluable experience which allowed me to network with other professionals and colleagues from all over Great Britain, and without the generous funding from Royds Withy King; this would certainly not have been a possibility.

I was given the opportunity to gain knowledge about treatments that are being developed for the future of lung cancer, as well as being able to build upon my existing knowledge which underpins current patient care. I was amazed to see how quickly the future of lung cancer is progressing with increasingly favourable outcomes for our patients - it really is an exciting time to be working in the field of lung cancer. The Early Screening Pilot for high risk patients, developed in Greater Manchester, is definitely a game changer in lung cancer

and it will be interesting to see how this is developed in the NHS.

I was privileged to listen to a presentation from a patient representative, which was extremely influential and humbling. I found listening to her story inspirational and felt that having patient involvement truly made the conference powerful and kept the focus of the event where it should be - upon best patient outcomes. Improving and maintaining the quality of life for both the patient and the families of those affected by lung cancer needs to remain a priority. We need to keep people as well as possible for as long as possible, and this conference has certainly given me the tools and inspiration to do so."



MESOTHELIOMA AND LUNG CANCER
EDUCATION DAY ON 11 MAY 2018

On Friday 11 May, we held our second Mesothelioma, Lung Cancer and Asbestos Education Day at our Bath office. We welcomed 25 delegates including specialist mesothelioma and lung cancer nurses, respiratory physicians, oncologists and radiologists from hospitals including Bristol Royal Infirmary, Royal United Hospital in Bath, Royal Berkshire Hospital in Reading and Queen Alexandra Hospital in Portsmouth as well as several nurses from Prospect Hospice in Swindon.

The event followed Jennifer Seavor's transfer from Oxford to Bath and Swindon in September 2017. Jennifer remains the only APIL accredited asbestos solicitor in Bath and Swindon.

Rachel James, Associate, in our Oxford office chaired the event and Jennifer, Senior Associate, in Bath gave a presentation to the delegates about relevant asbestos disease law and how we advocate for our clients in pursuing legal claims and assisting with other scheme applications and benefits.

All of the speakers were eminent. Dr Vidan Masani, Consultant Respiratory Physician at RUH spoke about diagnosing mesothelioma and lung cancer. Professor Nicholas Maskell, a Consultant Physician at Southmead in Bristol updated the delegates about current clinic trials available for mesothelioma patients and his colleague Dr Anthony Edey, a Consultant Radiologist explained how he diagnoses benign asbestos diseases radiologically.

Dr Jason Lester, a Consultant Oncologist at Velindre Cancer Centre in Wales talked about treatment and in particular the new wave of immunotherapy which is proving to be extremely promising for mesothelioma patients. In recent months we have arranged treatment for several of our clients, recovering the costs through legal claims as the treatment is not available on the NHS for mesothelioma patients.

Indeed, Helen Childs has recently settled a mesothelioma claim for a client who has mesothelioma but remains relatively well. Helen protected his future position by obtaining one of the first court approved periodical payments orders (PPO) requiring the Defendants to pay the associated costs of immunotherapy treatment should her client have the treatment recommended by his oncologist in the future.

In the afternoon, Aliyah Akram, a barrister at 12 King's Bench Walk spoke to the delegates about women and mesothelioma which included a poignant video of a 1982 ITV documentary called 'Alice – a fight for life' which featured Alice Jefferson who sadly died from mesothelioma at the young age of 47 in 1982.

Anne Moylan, a specialise nurse funded by Mesothelioma UK the Hampshire Asbestos and Support Awareness Group (HASAG) spoke to the delegates about her role as a Mesothelioma UK nurse and helping patients with pain control. Simon Devine, Palliative Care Nurse from Dorothy House Hospice in Bath also gave a very touching talk about his role and how he helps patients to come to terms with their terminal illness.

Members of the team also baked muffins which were sold in the afternoon break to support Mesothelioma UK's fundraising imitative 'Muffins for Meso in May'.

Jennifer said "The day was a great success and very well received by the delegates. It was so lovely to meet the specialist doctors and nurses who diagnose, treat and care for many of our clients. They do wonderful work and it was great to bring people together and assist with their learning and development.

- Some of the feedback received from the delegates included:
- 'Legal lecture was excellent, well presented and comprehensive.'
 - 'Excellent all round!'
 - 'Really informative, pitched well and great educational value. Thanks to all speakers.'
 - 'Provided good knowledge, enhancing my confidence to talk more about the disease to patients and their families.'
 - 'Universally excellent standard – thank you.'

Our next Education Day will be at our London office on Carter Lane near St Paul's Cathedral on 5 October 2018 and will focus on immunotherapy treatment. To book a place email events@roydswithyking.com

QUIZ TIME FOR THE PORTSMOUTH LUNG CANCER SUPPORT GROUP

In April 2018, we were invited to host a quiz at the Easter meeting of the Portsmouth Lung Cancer Support Group. Denise Wright and Alena Clemo, lung cancer nurse specialists at the Queen Alexandra Hospital in Portsmouth set up the group a few years ago and it is proving to be an invaluable support for many of their patients.

Members of our team wrote rounds including TV and entertainment, geography, sport, food and drink and a round about the history of Portsmouth! There was also a picture round and snippets of Easter inspired music. Helen Childs and Jennifer Seavor attended the meeting at The Drayton Centre on Havant Road and ran the quiz. Jennifer said “It was a real pleasure to be invited to run the quiz. We felt very welcome and really enjoyed it. We were certainly kept on our toes by the participants who, rightly so, took the quiz very seriously!”

The Conquistadors were victorious and won our £100 John Lewis voucher. The team donated the prize to The Roy Castle Lung Cancer Foundation.

The final results were: Spring Chickens 55, The Winners 60, The Jokers 68, Top Table 68, Conquistadors 77.

The group meets at The Drayton Centre, 238 Havant Road, Portsmouth, PO6 1PA on the first Tuesday of every month between 10am – 11.45am. It is open to all lung cancer patients, their carers and families.

We will be running another quiz for Portsmouth support group in October.

Diffuse Mesothelioma Payment Scheme – fit for purpose?

The Diffuse Mesothelioma Payment Scheme (DMPS) was launched on 6 April 2014, established under the Mesothelioma Act 2014. At the time of introduction, the scheme was welcomed as filled a loophole which had existed for some time which meant that mesothelioma sufferers, who were unable to find the employer responsible for their contact with asbestos dust, or their insurers, could not recover any compensation for their disease.

However, four years on it must now be questioned whether the DMPS is sufficient or whether more can and should be done to ensure that those diagnosed with mesothelioma and other asbestos related diseases who, through no fault of their own, cannot claim the compensation which they undoubtedly deserve.

WHO IS ELIGIBLE FOR A DMPS PAYMENT?

To be eligible a person must have been diagnosed with mesothelioma after 25 July 2012. They must have been exposed to asbestos in the course of their employment in the UK and the disease must have been caused by exposure to asbestos during work. For those who have died from mesothelioma, family members who were financially dependent on the deceased can submit and application to the scheme. To succeed, several pieces of evidence are required including evidence of employment, a witness statement detailing how the person was exposed to asbestos during the course of their work, there must be proof of an unsuccessful attempt to trace a live company and it’s insurers and further, the application must be made within three years of the date of the sufferer’s diagnosis.



The scheme was originally administered by Gallagher Bassett although as of 1 April 2018 the administrators are now TopMark Claims Management Limited. The scheme runs on a tariff system based on the age the mesothelioma sufferer was diagnosed. Two tariff systems now operate. The first relates to sufferers who are diagnosed with mesothelioma from 25 July 2012 to 9 February 2015. The scheme payment will be between £216,896 for a person aged 40 or younger to £69,649 for a person aged 90 or over.

On 10 February 2015 the tariff system changed and those diagnosed with mesothelioma on or after that date will now be eligible for a scheme payment of between £271,124 for those aged 40 and under to £87,061 for those aged 90 and over.

DOES THE DMPS FALL SHORT?

Whilst the introduction of the DMPS has certainly improved the situation for mesothelioma sufferers, my view is that it still falls somewhere short of its potential. There is certainly room for improvement and extensions to the scheme. Whilst such changes would inevitably be more costly, surely the costs could be covered by the insurance industry through an increased levy. I see the following as the main issues with the DMPS in its current form:

- 1. Disease coverage**
The DMPS only covers mesothelioma. This means if other asbestos disease sufferers were to find themselves in the same situation, i.e. that they have been diagnosed with an illness and know the name of the company where they were exposed to asbestos, but that company has ceased trading and it’s insurers cannot be traced, those sufferers cannot claim any compensation. In particular with lung cancer, I think the situation is far from sufficient. Why should a person who has developed asbestos related lung cancer which is terminal, be at more of a disadvantage in terms of the compensation they are eligible for, than someone who has developed mesothelioma?
- 2. Exposure to asbestos not during the course of employment**
I consider that this is one of the main areas where the scheme fails. It will only compensate mesothelioma sufferers who have been exposed to asbestos in the course of employment within the UK. So what then about those who develop mesothelioma due to other sources of exposure? Those who have been exposed on a secondary basis for example wives who

washed their husbands’ work clothes, environmental exposures and those who don’t know where they were exposed to asbestos. Those mesothelioma sufferers are only entitled to a lump sum payment under the Diffuse Mesothelioma Scheme (DMS) 2008 and the awards are significantly less - ranging from payments of £90,097 for those aged 37 and under to £13,998 for those aged 77 and over.

I have recently advised a lady who knew where she was exposed to asbestos. Her father worked for British Uralite - an asbestos manufacturer in Higham in Kent. He came home every day in his dusty work clothes. As a child she remembers greeting him with a hug when he came home from work and sitting on his lap whilst he was still wearing his work clothes. She developed mesothelioma at the age of 68 and was entitled to a payment under the DMS 2008 of £18,675. However the company went out of business in the 1980’s and there are no insurers to pursue a civil claim against. If she had been exposed to asbestos during the course of her own employment instead, she would have been entitled to a payment under the DMPS scheme of £168,048 – a difference of £149,373.

Those who have been diagnosed with asbestos related lung cancer or benign diseases caused by exposure to asbestos which was not through their own work are entitled to even less. They cannot even claim a lump sum payment under the DMS 2008 as the scheme only covers mesothelioma. Therefore, they are left without being able to claim any benefits or compensation what so ever.

- 3. Rates**
Whilst the payments under the DMPS are significant, they do not take into account personal circumstances. This means that there will inevitably be ‘winners and losers’ – those who could have recovered substantially more compensation if their former employers/their insurers had been traced and they had been able to pursue a civil claim and those who would have recovered less if they had been able to make a civil claim. I can see why the scheme operates on this basis. It would be more complex, time consuming and costly to assess each claim on an individual basis. However, it must now be questioned whether advances in medicine and the availability of non NHS treatments means that there is a two tier system.

Immunotherapy and other drugs are showing great promise for those with mesothelioma by extending life expectancy. Many such drugs however are not yet approved by NICE and are not available on the NHS. Those who are able to pursue a civil claim for compensation and resolve liability, can seek the costs associated with such treatments through their claim, from their opponents. An agreement can be put

into place to ensure that if the treatment is ever recommended by the treating clinician, the opponent will pay the costs of the treatment. Each cycle of immunotherapy is very costly – around £8,100. Two years of the treatment costs £280,000.

Those mesothelioma sufferers who are unable to trace their former employers/their insurers, will be unable to undertake such treatment if it is recommended unless they have other financial means of doing so or are eligible for a clinical trial. The payments made under the DMPS are not sufficient to fund such treatment. The result is essentially a two tier system – a significant difference between the potential outcomes for those who can pursue a civil claim and those who cannot.

- 4. Time limits**
The time limit for applying to the DMPS scheme is three years from the date of the diagnosis. This is different to civil law where the time limit is three years from the date of knowledge. Further, in civil claims, if a mesothelioma sufferer were to pass away within the three years from their date of knowledge, their Estate has a further three years from their date of death in which to pursue the claim. Under the DMPS scheme the time limit does not reset. This potentially puts dependents at a disadvantage and it is not clear why.

- 5. Non-dependents**
The DMPS will only make payments to mesothelioma sufferers and those who are financially dependent on them. There is no recourse for the Estate of the person who has died from mesothelioma - children and other family members who are bereaved but who are not financially dependent on the sufferer. They cannot claim a payment under the scheme. This surely can’t be right.

- 6. Legal costs**
The DMPS website suggests that sufferers can apply to the scheme for a payment themselves and that they do not need the assistance of a solicitor. However, if legal advice is obtained, the scheme will pay the sum of £7,000 towards legal costs.

Having dealt with several applications to the DMPS myself, I do wonder if it is realistic to assume sufferers can deal with applications themselves. As well as a lengthy application form, witness evidence and proof that insurers have not been traced must be submitted. Can mesothelioma sufferers who may be extremely poorly, really be expected to deal with this administration and evidence gathering?

Some mesothelioma sufferers may not know the circumstances in which they were exposed to asbestos initially. However, with some investigation, this may become apparent and those sufferers may then be eligible for a DMPS payment if the relevant company has ceased trading and its insurers

can’t be traced. Would a sufferer really be able to undertake these investigations and obtain the evidence needed to secure a payment?

I have recently acted for a gentleman from County Durham who was diagnosed with mesothelioma in his 60’s. He had no idea how he had been exposed to asbestos. It was only through me discussing his employment history in detail and obtaining his HMRC schedule of employment that it became apparent that he had worked as a labourer in a saw mill in the 1960’s. Whilst he had not used any asbestos products, I conducted a witness appeal and obtained evidence from others who had worked in the same building who confirmed that they had made fire doors using asbestos insulation board. My client swept up the dust and was therefore exposed to asbestos. If he had not sought legal advice, it is very unlikely that he would have had sufficient evidence to have made a successful application to the scheme.

My costs in that case exceeded the £7,000 paid by DMPS and I wrote off the excess. Would all firms accept such a case and write off excess costs? Some firms may refuse to act if there is no clear evidence of exposure. In this case, the gentleman received around £170,000 from the scheme. He had no financial dependents so pursuing the application in his lifetime was important. He was a single man and needed support and care during the course of his illness which the payment from the scheme enabled him to fund. The application was therefore very important to him.

Again, I can see why legal costs are limited in an attempt to make things more straightforward however I do wonder whether this causes some unfairness – putting those who cannot trace the company that exposed them or their insurers at a disadvantage.

IS IT TIME FOR CHANGE?

The DMPS is working in its current form and has significantly improved the situation for many mesothelioma sufferers. However, my view is that it is now time to consider extending the scheme to address some of the issues I have highlighted in this piece. Compensating those diagnosed with mesothelioma and other asbestos diseases should be a priority for the insurance industry. They are victims of successive governments’ decisions to allow asbestos to be imported into the UK for so very long, despite the dangers associated with it being known for decades. The insurance industry accepted premiums and can undoubtedly afford to pay more into the scheme to ensure that those diagnosed with these awful, life reducing and debilitating conditions, receive compensation.

Jennifer Seavor, Senior Associate

Your key Industrial Disease Claims contacts



Helen Childs

Partner

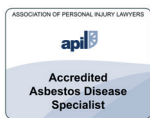
T: 01865 268 359

T: 0207 842 1444

M: 07889 001 649

helen.childs@roydswithyking.com

@HelenChilds_rwk



Jennifer Seavor

Senior Associate

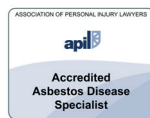
T: 01225 459 991

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



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:

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