

Title: Mesothelioma Pre-Action Protocol and Fixed Cost Regime IA No: MoJ 200 Lead department or agency: Ministry of Justice Other departments or agencies:	Impact Assessment (IA)				
	Date: 23 May 2013				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: Alpa Parmer 0203 334 2987					
Summary: Intervention and Options					RPC Opinion: AMBER

Cost of Preferred (or more likely) Option					
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?		
£m	£m	£m	Yes	Zero net cost	

What is the problem under consideration? Why is government intervention necessary?

Concerns have been raised about the time taken for mesothelioma claims to settle, especially where liability has been admitted. Claims for compensation can take over one year to resolve, which exceeds the life expectancy of many sufferers. Concerns have also been raised about the resources required and processes involved in settling claims, especially for more straightforward cases. Court rule changes and other government involvement would be necessary to introduce pre-litigation reforms which affect the processes for handling claims and the legal costs which may be recovered.

What are the policy objectives and the intended effects?

The primary policy objective is to secure quicker settlement of mesothelioma claims. Improved pre-litigation processes are being considered in order to achieve this. Two further objectives relate to these processes, notably to reduce legal costs incurred in the process and to support more cases being resolved at pre-litigation stage.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0: Do Nothing (base case).

Option 1: Pursue a package of two linked reforms:

- (i) Introduce a new dedicated mesothelioma Pre-Action Protocol (PAP). This would affect the process for settling claims pre-litigation, in cases where defendants have admitted liability.
- (ii) Introduce a new Fixed Recoverable Costs (FRC) regime for mesothelioma claims that settle under the PAP, relating to legal costs which successful claimants may recover from defendants.

Option 1 is favoured at this stage as it would meet the policy objectives and deliver the intended effects.

In addition in parallel industry bodies may establish a new Information Gateway to support the PAP by providing an electronic platform for exchanging information. Government intervention is not required to establish this hence this is not being treated as an Option in this Impact Assessment.

Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce pre-action protocol PAP and fixed recoverable costs regime FRC.

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

Other key non-monetised costs by 'main affected groups'

- Cash flow costs to defendants (insurers) from quicker settlements
- Reduced income for claimant lawyers from mesothelioma cases as less work on average is required per case

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

Other key non-monetised benefits by 'main affected groups'

- Cash flow benefits to claimants from quicker settlements
- Savings to defendants (insurers) mirroring the reduced income for claimant lawyers from mesothelioma cases
- Savings to defendants (insurers) from reduced own costs of defending claims
- Resource savings to claimant lawyers from mesothelioma cases as less work on average is required per case

Key assumptions/sensitivities/risks

Discount rate (%)

- Overall case volumes remain the same
- Case outcomes and settlement levels remain the same
- Some cases will use the new PAP in future, and less resource is required to settle claims under the new PAP compared to the alternative routes

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes	Zero net cost

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?					
Which organisation(s) will enforce the policy?		Judiciary/HMCTS			
What is the annual change in enforcement cost (£m)?		N/A			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

References

No.	Legislation or publication
1	
2	
3	
4	

Evidence Base (for summary sheets)

1. Introduction

- 1.1 This Impact Assessment relates to the Ministry of Justice's proposals as set out in the consultation paper 'Reforming Mesothelioma Claims'. Mesothelioma is an aggressive and terminal asbestos-related disease, specifically a cancer of the lining of the chest and abdomen, which can lay dormant for many years. Once mesothelioma has been diagnosed life expectancy is less than one year in many cases, but claims often take longer than this to settle. Mesothelioma is in most cases an occupational disease hence employers are liable to cover damages relating to it. The Employer's Liability Tracing Office (ELTO) exists to help claimants and their lawyers trace past employers and their insurers in order to pursue claims for damages.
- 1.2 Mesothelioma claims for damages may be resolved by three routes:
- (i) Settlement for damages can be agreed without the need to issue court proceedings. Currently a disease and illness Pre Action Protocol (PAP) may be used to guide pre-litigation settlement. This route involves claimants identifying a past employer and insurer in order to pursue a settlement from them. Whilst it is not clear how often it is used, as this is not monitored or recorded, feedback from stakeholders suggests that it is under-used for mesothelioma cases.
 - (ii) Settlement for damages can be agreed after court proceedings have been issued. This usually takes place if pre-court settlement is not forthcoming or in cases of severely short life expectancy, and does not necessarily mean that a final court hearing will be required. A Royal Courts of Justice (RCJ) specialised mesothelioma procedure (Practice Direction 3D) currently aims to expedite cases once court proceedings have been issued, but is not used in every single case. As above, this route involves claimants identifying a past employer and insurer in order to pursue a settlement from them.
 - (iii) Where claimants cannot identify a past employer and insurer against who to pursue a settlement, in future for claims from 25 July 2012 claimants will be able to apply for a payment from the forthcoming Diffuse Mesothelioma Payment Scheme (where claimants are eligible for this scheme). In effect this is a compensation fund which is financed by insurers and which specifically aims to cover claimants who cannot trace their past employer and insurer.
- 1.3 Mesothelioma claimants almost universally instruct lawyers to pursue their claims and often do so under Conditional Fee Arrangements (CFAs), or 'no win no fee' arrangements. Currently this exposes claimants to no legal costs and they retain all of their damages if they are successful. Under these arrangements the CFA lawyer charges a success fee if they win the case, and both this success fee and their underlying legal costs are then paid by the defendant (insurer). In addition the claimant may take out 'After The Event' (ATE) insurance to cover their exposure to meeting the defendant's costs if the claimant happens to lose the case. If the claimant wins the case then the defendant (insurer) also pays this ATE insurance premium.
- 1.4 The defendants in mesothelioma cases are businesses, in particular insurers; mesothelioma is in most cases an occupational disease and employers invariably take out Employer Liability insurance cover.

Proposed reforms

- 1.5 The key problem at stake is the time taken to resolve mesothelioma claims, especially given the shortness of life expectancy post-diagnosis, and the primary policy objective is to secure quicker settlement. Surveys by Chapman A et al (2008) and by Muers MF et al (2008) found that median life expectancy post diagnosis ranges from around 7 to 9 months¹. Annex B provides further

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1) <http://thorax.bmj.com/content/63/5/435.full.pdf+html>

2) <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2431123/>

information on case durations, secondary analysis on an interim dataset supplied by the National Institute of Economic and Social Research (NIESR) found that between 2005-2012 around 50% of cases took over 12 months to settle. Improved pre-litigation processes are being considered in order to reduce settlement times. Two further objectives relate to these pre-litigation processes, notably to reduce the legal costs incurred in the process and to support more cases being resolved at pre-litigation stage, which would enable courts to focus more on more complex mesothelioma cases and on other cases.

- 1.6 The proposed reforms relate directly to route (i) above, i.e. to cases settled before court proceedings are issued where liability has been admitted. Government intervention is required for two proposals, which are linked:
 - (i) A new Pre-Action Protocol (PAP) specifically for mesothelioma claims would improve the process of resolving claims pre-litigation, by clarifying which actions should be undertaken by which parties in which way and by which milestones. It would be better tailored to the specific features and requirements of mesothelioma cases than the existing disease and illness PAP. Rules of court would be needed in order to give effect to the new PAP.
 - (ii) A new Fixed Recoverable Costs (FRCs) scheme for claims settled under the new mesothelioma PAP reflects the lower underlying costs incurred. This would apply to claimant lawyer costs only as defendant costs are not recoverable for claims which settle under the PAP. Rules of court would be needed in order to introduce the new FRC scheme. The FRCs should ensure there is little incentive to undertake additional work beyond that envisaged by the PAP. FRCs may also support quicker settlement by reducing the time required to agree legal costs.
- 1.7 While a new mesothelioma PAP will not be compulsory, and it may not always be possible to follow it in all cases, the court may take into account the circumstances of non-compliance by any party and may ultimately impose cost sanctions on a party if they have acted unreasonably in not complying with the PAP.
- 1.8 By establishing a more efficient and quicker pre-litigation PAP process backed by FRCs the overall time and legal costs of resolving claims should be lower. It is also possible that more claims might settle pre-litigation without the need to issue court proceedings.
- 1.9 In addition to these two reforms it is possible that a secure electronic Information Gateway might be set up, funded by defendants (insurers) but for use by all parties, in order to support the more efficient exchange of information by all parties, and in order to help all parties monitor case progression. Government intervention is not needed to establish and operate this platform, which could help support the resolution of all mesothelioma claims including those settled via the new PAP.

2. Costs and benefits

- 2.1 The Impact Assessment identifies impacts on individuals, groups and business in the UK. Costs and benefits of each option are compared to the base case do nothing option. In this instance there are two possible variants of the do nothing option. In particular, the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 reforms to the 'no win no fee' market do not currently apply to mesothelioma claims but they might do in future following the review envisaged in section 48 of the LASPO Act which will form part of the mesothelioma claims consultation – and if so these reforms to the 'no win no fee' market might apply at the same time as the reforms proposed in this Impact Assessment. Because the outcome of this section 48 review is unknown the proposals in this Impact Assessment are assessed against the base case of the current position. Annex A explains how the expected impacts might differ if the proposed reforms are compared against a base case where the 'no win no fee' reforms apply.

2.2 Data and evidence have been collected from various sources to understand the baseline position, including;

- Independent research commissioned from the National Institute of Economic and Social Research (NIESR) covering mesothelioma cases, including legal costs, settlement amounts, case durations and information relating to claimants. This is due to be published later in 2013. The Annex also includes secondary analysis on an interim dataset supplied by NIESR.
- Analysis by the Department for Work and Pensions (DWP) in relation to the Impact Assessment for the Diffuse Mesothelioma Payment Scheme (DMPS) published on the 7th May 2013².
- Pre-consultation views expressed by key stakeholders including claimant groups, claimant representatives and the Association of British Insurers (ABI).

2.3 The following key data and information would be required in order to monetise the main expected aggregate impacts of the proposed reforms. Because the new FRCs should reflect the underlying costs of settling a case under the new PAP there should be no additional monetised impact from the FRC reform beyond that of the PAP reform unless there are further behavioural effects:

- Estimates of the likely total volume of mesothelioma claims, split according to the three resolution routes (without issuing court proceedings; with issuing court proceedings; Diffuse Mesothelioma Payment Scheme). Past volume figures have been provided by the NIESR research and future volume figures have been provided by DWP forecasts. Future figures reflect the impact of the forthcoming Diffuse Mesothelioma Payment Scheme for claims with untraced defendants.
- Estimates of the volume of claims which might use the new mesothelioma PAP in future. Data is not currently held on the volume of claims which use the existing disease and illness PAP. As explained above, the NIESR research provides volumes of cases which currently settle without issuing court proceedings, but does not provide a further disaggregated breakdown within this category.
- Estimates of how many claims which use the new mesothelioma PAP would previously have been resolved. How many would have used the disease and illness PAP, how many would otherwise have settled without court proceedings being issued, how many would have settled after court proceedings were issued.
- Estimates of the change in costs and case durations between using the new mesothelioma PAP and using the alternative routes which otherwise would have been used. This change in costs would include defendants' own costs from defending a claim, plus claimants' own costs from dealing with their lawyer, plus claimants' legal costs which are subsequently passed to defendants when claimants succeed. The NIESR research provides a baseline of legal costs for cases settled without the need for litigation and for cases settled after court proceedings have been issued. It does not provide a further disaggregated breakdown.

2.4 The consultation exercise should hopefully provide the information needed to enable aggregate impacts to be monetised, subject to risks and assumptions. Under the existing evidence base it has not been possible at this stage to make sufficiently reasonable indicative estimations.

Option 0: Base case (do nothing)

2.5 Under the 'do nothing' base case, the current system would continue to apply. The 'do nothing' option is compared against itself and therefore its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198388/mesothelioma-payment-scheme-impact-assessment.pdf

2.6 Annex B provides more information on the current baseline position. In summary, data from the Compensation Recovery Unit indicates that between 2007-2012 around 1,400 individuals per year made mesothelioma claims in England and Wales. Data from the NIESR research shows that between 2005-2012 average (mean) damages were around £155,000, average (mean) legal costs were around £30,000, and around 50% of cases took more than one year to settle.

Option 1: Introduce a new mesothelioma Pre-Action Protocol (PAP) plus an associated Fixed Recoverable Costs (FRC) regime

2.7 The main elements of this Option are outlined in the 'Proposed Reforms' section above.

Assumptions

2.8 The following key assumptions apply to the assessment of expected costs and benefits of Option 1:

- Claimant willingness to bring a claim remains unchanged as does claimant ability to identify and engage a lawyer.
- In aggregate, claimant lawyers' willingness to take on all types of mesothelioma claim remains unchanged. Related to this, if some claimant lawyers were to exit the market others would enter or existing providers would expand to meet demand.
- There is no change in overall case volumes relative to the base case³. This stems from the above assumptions about claimants and claimant lawyers being as willing in future to pursue cases.
- Claimant settlements remain unchanged as does the quality of service provided by claimant lawyers.

Benefits

2.9 In some cases the following benefits would stem from cases being settled pre-litigation in future when previously court proceedings would have been issued. In other cases these benefits would relate to pre-litigation processes being more efficient and quicker in future than now.

Benefits to claimants

2.10 Claimants would benefit from quicker case resolution and would value earlier certainty that defendants have admitted liability. Claimants' own costs of engaging with their lawyers might be lower under the mesothelioma PAP compared to other settlement processes.

2.11 Claimants may benefit from earlier interim payments as well as from earlier final payments. Claimants could benefit from greater transparency, better knowledge of the stages of the claims procedure and more assurance that their claim is being handled effectively.

Benefits to claimant representatives (e.g. lawyers)

2.12 No particular benefits have been identified for claimant lawyers. In aggregate claimant lawyers would devote less resource to settling mesothelioma claims, i.e. would undertake less mesothelioma business. This would free up claimant lawyer resource to be devoted to other profitable activities.

Benefits to defendants (insurers)

2.13 Defendants meet claimants' costs in cases which are settled in favour of the claimant. Defendants would therefore gain from the reduction in claimant solicitor costs.

2.14 In addition defendants would gain directly from the new PAP and FRCs if their own costs of defending claims were lower.

³ In practice, the base case relates to the situation after of the ELTO's Untraced Scheme but prior to the Jackson proposals.

Benefits to HMCTS

2.15 Fewer mesothelioma cases might involve court action in future. This reduced volume of court business would provide HMCTS with aggregate resource savings, all else being equal. The court resources freed up by this would be devoted to other court cases. This would reduce court waiting times and/or court case durations. These other cases may be other mesothelioma cases which still require court action, or other types of court case. In effect this would increase the flow of cases through the court, supporting quicker case resolution. This would not be associated with any efficiency gains for HMCTS, but with the same total HMCTS resource being allocated in a different way and to a different overall set of cases.

Wider economic benefits

2.16 Overall the package should be associated with improved economic efficiency. In particular, fewer resources would be used to achieve equivalent outcomes, freeing up these resources for alternative uses which may generate social and economic benefits.

Costs

Costs to claimants

2.17 No direct costs to claimants are anticipated.

Costs to claimant representatives (e.g. lawyers)

2.18 In aggregate claimant lawyers would undertake less mesothelioma business, hence aggregate income from mesothelioma cases would be lower. This would mirror the benefit to defendants from reduced claimant solicitor costs.

2.19 This reduction in mesothelioma business would free up claimant lawyer resource to be devoted to other profitable activities. As a result adjustment costs may be incurred. Initial familiarisation costs might also arise.

Costs to defendants (insurers)

2.20 Earlier payment of claims and new interim payments would generate cash flow costs for defendants (insurers) and other costs associated with reduced financial holdings.

2.21 As for claimant lawyers, defendants (insurers) might incur initial familiarisation costs.

Costs to HMCTS

2.22 As explained in the benefits section no aggregate net impacts would apply to HMCTS. Instead HMCTS would devote the same total amount of resource to a different overall set of cases, with positive implications for case durations and waiting times.

Risks

2.23 The following key risks apply to the assessment of expected costs and benefits of Option 1:

- Claimant settlements might be lower if claimant lawyers undertake much less work in future. This risk is not expected to materialise as the PAP and FRCs should reflect the amount of work required to settle claims quickly, efficiently and fairly. The PAP applies to all parties including defendants.
- Claimant settlement times might rise for claims which initially use the PAP and then find it is necessary to issue court proceedings, when beforehand they would have issued court proceedings from the outset. This risk is not expected to materialise as there is no particular reason why the reforms should change claimant lawyers' ability to select the right resolution route. Furthermore court cases involve initial case management activities, which would also be

undertaken as part of using the PAP and might not need to be duplicated. As such the PAP might support litigation activity where this is required, without necessarily increasing total settlement times.

One In Two Out Assessment

- 2.24 Defendants (insurers) would gain from paying reduced claimant lawyer charges and from a reduction in their own costs of defending claims. These ongoing annual savings would be offset by initial one-off familiarisation costs, which are likely to be relatively minor. Defendants (insurers) would also lose from making quicker payments to claimants (individuals). These business costs would not be economic costs as insurance compensation payments are a form of transfer payment. If a stream of future compensation payments was all paid sooner, these business costs would take the form of a financial cost which accrues in the first year only, i.e. a one-off cost, to the extent that businesses value holding money more today than they value holding money tomorrow.
- 2.25 Over the duration of the reforms, the ongoing annual savings to defendants (insurers) from lower legal costs and lower own costs of defending claims are anticipated to outweigh the initial one-off costs associated with making earlier payments and the one-off familiarisation costs.
- 2.26 Claimant lawyers would experience a reduction in aggregate income. This would not constitute a direct economic cost of the reforms, but instead would reflect their increased economic efficiency. Fewer resources would be required to achieve the same outcomes, and the resources freed up as a result may be devoted to other productive profit-making activities, with positive implications for economic growth. Claimant lawyers would also incur initial familiarisation costs, which are likely to be relatively minor.
- 2.27 In conclusion the proposed reforms in this Impact Assessment constitute regulation and are likely to generate net resource savings for business. As such they have been assessed as ZERO NET COST.

Small and Micro Business Assessment

- 2.28 The costs and benefits of these reforms on providers have been outlined above. It is unclear to what extent small (up to 49 employees) and micro businesses (up to 10 employees) might be affected and how the impacts might be mitigated. Several questions have been included in the consultation document, and we welcome further views on this.
- 2.29 Small and micro businesses may be more likely than larger businesses to value the increased business certainty in terms of the amount of work required and the associated income. These portfolio management benefits might lead to an increase in the number of small and micro businesses in this field.
- 2.30 The mesothelioma PAP is designed to create efficiencies in the process and might allow existing legal service providers to undertake less work than now, with an associated reduction in income from such cases. Resources may be diverted to other cases, possibly in different areas of the business. It is unclear to what extent business adjustment costs might disproportionately affect small and micro businesses, and further views are welcome on this.
- 2.31 The impact of the reforms may be mitigated because legal service providers are able to choose which cases to take on. These reforms apply to a subset of non-litigated cases which are subject to the mesothelioma PAP. In addition, some cases might be subject to the initial stages of the mesothelioma PAP, but not the final stages. This affects the extent to which the proposals affect small and micro legal service providers.
- 2.32 Guidance and information may be produced to help mitigate any disproportionate impacts on small and micro legal service providers. Further views are also being sought on this and on other mitigating options.

3. Enforcement and Implementation

- 3.1 We intend to publish our consultation response by winter 2013/2014 Any reforms which may take place would be implemented by July 2014, to coincide with the roll-out of the DWP untraced claims scheme and before mesothelioma claims peak in 2015.

Annex A: Impact on costs and benefits of applying LASPO ‘no win no fee’ reforms to the base case

A.1 Key elements of the LASPO reforms to the ‘no win no fee’ market are:

- In cases that they win, claimants are responsible for paying the success fees charged by their ‘no win no fee’ lawyer. Currently these success fees can be recovered from the defendant in cases where the claimant succeeds. Related to this, tighter limits apply to the success fee levels that can be charged.
- Claimant damages are 10% higher, in part to offset the fact that claimants will be liable for their success fees in future.
- Defendants are unable to recover their legal costs from claimants, even where defendants are successful. This is known as Qualified One Way Cost Shifting (QOCS). (Some minor exemptions apply to this, for example if defendants make an initial offer which is not subsequently beaten by the claimant, then defendants may recover the costs they incur after they made that initial offer).
- Claimants are responsible for paying their insurance premiums relating to After The Event (ATE) insurance cover. This covers claimants against their exposure to meeting defendants’ costs in cases which defendants’ win. Currently these ATE premiums can be recovered from the defendant in cases where the claimant succeeds. The impact of QOCS, however, is to limit claimants’ exposure to defendants’ costs. As a result there may be a limited scope and demand for ATE insurance.
- Impact Assessments relating to the Jackson CFA reforms and the referral fee ban may be found at <http://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/Royal-Assent-IAs-and-EIAs.zip>

Impact on expected benefits – additional to the benefits of Option 1 under the current base case

Benefits to claimants

- A.2 Because damages would be higher due to the 10% increase in damages, the gains to claimants from receiving quicker payments would also be higher.
- A.3 Because success fees are a proportion of underlying claimant lawyer costs, the reduction in claimant costs associated with the mesothelioma PAP might imply lower success fees. This would reduce costs for claimants as they would be responsible for meeting success fees.

Benefits to claimant lawyers

- A.4 Benefits to claimant lawyers are not expected to differ materially from those in Option 1 under the current base case.

Benefits for defendants (insurers)

- A.5 Because success fees are met by claimants rather than by defendants (insurers) the benefits of reduced success fees would accrue to claimants and not to defendants (insurers). The same benefits would arise, they would simply be allocated to a different party.

Benefits for HMCTS

- A.6 Benefits to HMCTS are not expected to differ materially from those in Option 1 under the current base case.

Impact on expected costs – additional to the costs of Option 1 under the current base case

Costs to claimants

A.7 Costs to claimants are not expected to differ materially from those in Option 1 under the current base case.

Costs to claimant lawyers

A.8 Costs to claimant lawyers are not expected to differ materially from those in Option 1 under the current base case.

Costs for defendants (insurers)

A.9 Because damages would be higher due to the 10% increase in damages, the costs to defendants (insurers) from making quicker payments would also be higher.

Benefits for HMCTS

A.10 Costs to HMCTS are not expected to differ materially from those in Option 1 under the current base case.

Other possible impacts of the change in base case

A.11 Under the LASPO reforms to the 'no win no fee' market claimants are expected to take a greater interest in the costs generated by their lawyers. As a result it is possible that more cases might use the mesothelioma PAP in future, as more claimants may express more of a preference to do so.

Annex B: Summary data on the current baseline position

The following data uses secondary analysis from the interim NIESR dataset and should be regarded as indicative data that may be subject to future revision. The dataset covers a survey of settled employer liability claims in the private sector settled between 2007 and 2012. All figures are unweighted and cover England and Wales only.

Past volume of mesothelioma cases

The volumes of individuals with mesothelioma cases registered with the Compensation Recovery Unit (CRU) from 2007-2012 (calendar years) are illustrated in Table 1. These relate to England and Wales and to cases where defendants have been traced. ⁴

Table 1: Mesothelioma individuals registered with the Compensation Recovery Unit, 2007-2012

CRU registration	2007	2008	2009	2010	2011	2012
Total volume (approx)	1,360	1,400	1,330	1,340	1,390	1,380

Compensation levels

Descriptive statistics on the settlement levels from secondary analysis on the interim NIESR dataset are illustrated in Table 2. The inter-quartile range covers the range applying to the middle 50% of cases if the cases are ordered, i.e. the range once the upper and lower 25% of cases have been removed.

Table 2: Settlement levels of claims settled between 2007 and 2012 from the interim NIESR dataset

Compensation Levels	All Cases	Non-litigated	Litigated	Unknown
Mean	£156,600	£138,900	£171,200	£180,000
Median	£138,900	£132,000	£147,100	£154,000
Range	£1,300 - £5,573,700	£1,300 - £298,200	£3,300 - £5,573,700	£40,100 - £799,900
Inter-quartile Range	£98,800 - £185,200	£92,900 - £169,900	£105,100 - £199,200	£102,700 - £208,400
Volume of claims	2,122	975	1,104	43

⁴ DWP (June 2013): Individuals with diffuse mesothelioma living in England and Wales with Employers' Liability cases registered with the Compensation Recovery Unit. <https://www.gov.uk/government/publications/individuals-with-diffuse-mesothelioma-living-in-england-and-wales-with-employers-liability-cases-registered-with-the-compensation-recovery-unit>

Case durations

Secondary analysis on the interim NIESR dataset provides an indication of case duration from when the claimant first lodges a claim with a defendant (insurer) to the date of the settlement. Table 3 illustrates that 48% of non-litigated claims and 51% of litigated claims take over one year to settle. A study by Muers MF et al (2008) found that 25% of mesothelioma victims have a life expectancy of more than 12 months.

Table 3: Case duration from the interim NIESR dataset

Length of case	0-6 months	6-12 months	13-18 months	19-24 months	Greater than 24 Months
Non-litigated Claims	21%	31%	20%	14%	14%
Litigated Claims	19%	30%	18%	12%	21%

Total legal costs

The following legal costs derive from secondary analysis on the interim NIESR dataset covering all mesothelioma cases. These figures relate to all cases, including those where separate data was not recorded for each of the key cost components (base costs, ATE premiums, success fees, disbursements). The figures include VAT.

Table 4: Descriptive statistics on total legal costs from the interim NIESR dataset

Total Legal Cost	All Cases	Non-litigated	Litigated	Unknown
Mean	£30,300	£20,700	£39,000	£26,900
Median	£22,800	£17,000	£30,100	£20,600
Range	£500 - £409,500	£500- £291,200	£1,100- £409,500	£8,200- £90,100
Inter-quartile Range	£15,800 - £34,000	£12,900 - £24,000	£21,300 - £42,500	£17,500 - £31,100
Frequency	1,989	922	1032	35

Base legal costs

The following table from secondary analysis on the NIESR dataset provides information on legal base costs and relates solely to cases where data is recorded for all key cost elements (total costs, ATE premium, success fees and disbursements). This is a subset of all cases. The figures exclude VAT.

Table 5: Descriptive statistics on Base Costs from the interim NIESR dataset

	All Cases	Non-litigated	Litigated	Unknown
Mean	£15,100	£10,700	£18,200	£16,300
Median	£10,700	£8,300	£12,900	£15,400
Range	£200 - £251,300	£200 - £146,300	£1,200 - £251,300	£6,600 - £30,500
Inter-quartile Range	£7,200 - £15,800	£6,100 - £11,300	£9,000- £18,600	£10,800 - £19,500
Frequency	649	271	367	11

Success fees

The following table from secondary analysis on the interim NIESR dataset provides information on success fees and relates to all cases where success fees were recorded. The figures exclude VAT.

Table 6: Descriptive statistics on Success Fees from the interim NIESR dataset

Success Fee	All Cases	Non-litigated	Litigated	Unknown
Mean	£4,700	£3,400	£5,600	£6,400
Median	£3,600	£2,800	£4,400	£4,000
Range	£0-£62,700	£0-£15,600	£0-£62,700	£0-£29,500
Inter-quartile Range	£2,400 - £5,700	£2,100 - £4,200	£2,900 - £6,400	£2,100 - £6,500
Volume of claims	808	335	462	11

ATE Premiums

The following table from secondary analysis on the interim NIESR dataset provides information on ATE premiums and relates to all cases where ATE premiums were recorded. The figures exclude VAT.

Table 7: Descriptive statistics on ATE Premiums from the interim NIESR dataset

ATE Premiums	All Cases	Non-litigated	Litigated	Unknown
Mean	£2,200	£1,600	£2,700	£2,100
Median	£1,700	£1,400	£2,200	£2,200
Range	£0 - £15,400	£0 - £15,400	£0 - £14,000	£0 - £6,000
Inter-quartile Range	£1,000 - £2,800	£900 - £2,100	£1,400 - £3,600	£1,100 - £2,800
Frequency	974	432	529	13

Disbursements

The following table from secondary analysis on the interim NIESR dataset provides information on disbursements and relates to all cases where disbursements were recorded. The figures exclude VAT.

Table 8: Descriptive statistics on Disbursements from the interim NIESR dataset

Disbursements	All Cases	Non-litigated	Litigated	Unknown
Mean	£5,000	£2,700	£7,300	£6,700
Median	£3,600	£2,200	£5,600	£3,000
Range	£0 - £151,300	£0 - £14,200	£0 - £151,300	£1,300 - £26,000
Inter-quartile Range	£1,900 - £6,000	£1,300 - £3,600	£3,600 - £8,400	£2,100 - £7,800
Frequency	1,119	554	553	12