

STATES OF JERSEY



COMPENSATION FOR MESOTHELIOMA SUFFERERS

Lodged au Greffe on 23rd October 2018
by Deputy C.S. Alves of St. Helier

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

- (a) to provide compensation to every victim of Mesothelioma who was infected following exposure to asbestos in Jersey;
- (b) to request the Minister for Social Security to bring forward proposals for the implementation and administration of an appropriate compensation scheme as described in paragraph (a) to be implemented by 1st April 2019; and
- (c) to request the Minister for Treasury and Resources to identify the necessary funding source to provide compensation for victims either from central contingencies or, if insufficient funds are available, to request the Council of Ministers to make provision in the draft Government Plan 2020–2023 for this payment to be funded.

DEPUTY C.S. ALVES OF ST. HELIER

REPORT

Mesothelioma is a rare, aggressive form of cancer that develops in the lining of the lungs, abdomen, or heart. Caused by asbestos, mesothelioma currently has no known cure. Due to the long latency period of the disease, most patients are diagnosed at a late stage, leaving them with an aggressive malignancy and few treatment options. Therefore, life expectancy for mesothelioma patients is generally short.

It has come to my attention that protection in this area for this particular industrial disease is absent in Jersey. At the moment, Jersey does not maintain a central disease register, but according to a recent question I asked, the Health and Social Services Department (WQ.143/2018) stated there were a total of 32 unique patients with a diagnosis of mesothelioma who had an in-patient episode over the period of 7 years. This would suggest that on average, less than 5 people per year are diagnosed in Jersey.

Brian Coutanche, a former carpenter and States housing maintenance officer, lost his battle with mesothelioma earlier this year and made a plea for the States to put in place a compensation scheme.

In 2012, Keith Shaw, a local teacher at St. Helier Boys' School and lecturer at Highlands College, died a mere 16 days after his diagnosis of mesothelioma. His wife, June Summers-Shaw, has since been campaigning for Jersey to have a similar compensation scheme to that which is currently set up in the U.K. A U.K. scheme has been in place for a decade, since 2008, in order to support those affected and their families. Mrs. Summers-Shaw has also recently set up an e-petition calling for compensation for asbestos victims, which has reached over 1,000 signatures (see attached **Appendix** for the Minister's response).

Both Brian Coutanche and Keith Shaw paid into the Social Security Scheme all their working lives, and had the expectation of many years ahead of them in retirement with the benefit of a pension payment that they would have earned. That was denied to them. They contributed, not just in a financial sense, but also in voluntary work in the Island. Keith Shaw, for instance, was a Retained Fireman for 18 years, a foster-parent for 20 years, sat on the St. Helier Roads Committee and was a Roads Inspector and Inspector of Children's Homes. Brian Coutanche also volunteered for the Samaritans for many years.

During the times that both Brian Coutanche and Keith Shaw were exposed to asbestos, the States knew of the risks involved, but did little to alert the Public to it or ban the substance. Had they taken action, exposure may not have taken place.

This has also been a matter of concern to States Members in the past; for example, former Deputy J.A. Hilton of St. Helier raised 2 questions on this matter in 2017 (1240/5/1(177) and 1240/5/1(178)).

Although the [Employers' Liability \(Compulsory Insurance\) \(Jersey\) Law 1973](#) does allow sufferers to gain compensation by pursuing a case against employers, this is a lengthy process, as has been evidenced by Mrs. Summers-Shaw's case. It took a 5 year long and expensive court battle for Mrs. Summers-Shaw to gain compensation from the States Employment Board. For example, one report, which was needed as evidence to support the case, cost over £12,000 to source.

Her particular case highlights why it is so important to get easily accessible funds for mesothelioma sufferers, as the victims are often short-lived following diagnosis.

Currently, sufferers can apply for Long-Term Incapacity Allowance (“LTIA”), which is a monthly payment and therefore does not fully meet the immediate need of sufferers and their families.

There is no denying that asbestos kills and that no amount of money will ever bring back a life; however, by providing compensation to these victims, they are able to access better levels of care, cover the additional costs of their illness, and provide access to support which would have ordinarily been beyond their means.

The U.K. Government currently has 2 schemes in place: the Diffuse Mesothelioma Payments (the “2008 Scheme”), and the Diffuse Mesothelioma Payment Scheme (“DMPS”). The 2008 Scheme is designed to give sufferers an immediate lump sum on diagnosis, provided that they satisfy a set of criteria including that the origin of exposure was in the U.K. The amount provided depends on the age of the sufferer when diagnosed. For example, a 60 year-old would get a payment of £42,339. Further details of both schemes are available via this link: www.gov.uk/diffuse-mesothelioma-payment/what-youll-get.

The U.K. have had a scheme in place for 10 years, France has a similar scheme, and Guernsey has recently stated that they intend to adopt a scheme. Therefore, it is fair and just that the States of Jersey Government adopts this basic compensation measure which exists in most civilised states.

Financial and manpower implications

According to the Minister for Social Security’s answer to question WQ.166/2018, the annual ongoing costs could be in the region of £150,000 – £200,000 per annum.

The average number of people affected is not more than 5 people per year, therefore the manpower demand can be met from within current staffing.

Petition

Provide compensation for Asbestos victims



Ministers responded

This response was given on 7 September 2018

Employers must hold liability insurance. Sufferers of diffuse mesothelioma may be able to claim, dependent on individual circumstances. The Social Security review will consider the need for a scheme.

Ministers acknowledge the devastating effect that diffuse mesothelioma has on sufferers and their families and the potential need for a compensation scheme in Jersey, which supports those with asbestos-related illnesses to get redress if their employer no longer exists.

Prior to the creation of this petition, at the Council of Ministers meeting in July 2018, the Social Security Minister confirmed her existing commitment to including a review of the options for potential redress schemes for asbestos-related diseases within the larger social security review that is taking place. This issue was considered at the Council of Ministers meeting on 5 September 2018.

Jersey employment legislation does contain considerable protection for local employees, including the Employers' Liability (Compulsory Insurance) (Jersey) Law 1973 which requires all employers to take out and maintain employers' liability insurance, against liability for bodily injury or disease sustained by their employees during the course of their employment. The Health and Safety at Work (Jersey) Law 1989 is the overarching principal law that provides for securing the health, safety and welfare of persons at work (including controlling the risks of asbestos exposures).

The regulation and enforcement of all working activities which (may) carry risk of exposure to asbestos has developed greatly over the years, with the prevention of exposure to such risks being the highest priority for the Health and Safety Inspectorate.

There are three schemes in the UK offering compensation to those with asbestos-related illnesses.

Details of the UK schemes can be found here:

- Pneumoconiosis Etc. (Workers' Compensation) Act 1979 – The 'Workers' Compensation (1979) scheme:' <https://www.gov.uk/industrial-injuries-disablement-benefit/how-to-claim>
- Diffuse mesothelioma payment – the '2008 scheme:' <https://www.gov.uk/diffuse-mesothelioma-payment>
- Diffuse Mesothelioma Payment Scheme (DMPS) – The '2014 DMPS scheme:' <https://www.gov.uk/diffuse-mesothelioma-payment>

Whilst currently no similar schemes exist in Jersey, sufferers of diffuse mesothelioma (or their relatives) who contracted the disease as a result of exposure to asbestos at work may be able to claim against their employer, dependent on the individual circumstances of each case. If any individual, or a member of their family, has an asbestos-related illness they should seek independent legal advice or, alternatively, advice can be sought from Citizens Advice. Citizens Advice Jersey offer free and impartial information and advice on personal injury, and this includes general advice on claims relating to asbestos.

Separately, the Social Security Department provides a range of benefits to support people with mesothelioma arising from asbestos fibre inhalation. Please see www.gov.je/benefits for more information.

Minister for Social Security