



Northern Ireland  
Assembly

Committee for Social Development

# OFFICIAL REPORT (Hansard)

Mesothelioma Bill

13 June 2013

# NORTHERN IRELAND ASSEMBLY

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### Mesothelioma Bill

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**Members present for all or part of the proceedings:**

Mr Alex Maskey (Chairperson)  
Mr Mickey Brady (Deputy Chairperson)  
Ms Paula Bradley  
Mr Gregory Campbell  
Mr Michael Copeland

**Witnesses:**

Ms Jane Corderoy	Department for Social Development
Ms Anne McCleary	Department for Social Development

**The Chairperson:** We will now receive a briefing about the proposed legislative consent memorandum for the Mesothelioma Bill. That was agreed by the Executive on 6 June. I think there was one query from the Committee to the Department. Members have a letter from the Association of British Insurers detailing the benefits of the Bill. There is also a letter from the Department seeking to answer the Committee's queries as to how the mesothelioma lump sum payment would affect those already in receipt of benefits. The letter is designed to clarify that they will not suffer any significant detriment.

Jane Corderoy and Anne McCleary are here from the Department, which is helpful. I spoke to Mickey earlier; I think he was one of the people who raised the query. If you do not mind, Anne and Jane, there may be just a bit more clarification required on that. Mickey, do you want to say something?

**Mr Brady:** The Bill itself is beneficial to people who are, unfortunately, diagnosed with mesothelioma. I know that the benefit is recoverable and all that, but the point that I was trying to get to was to ask whether it is recoverable from the person's compensation. Going back a number of years, when people suffered an injury and then received compensation, it was initially recovered from the compensation and there was a £2,500 lower limit. Anything above that was recoverable. Some people I dealt with over the years who, unfortunately, suffered serious injury, ended up with £2,500. One of them has since lost a leg as a result of that accident. We are talking about serious injury, and they were penalised. It was a double whammy, if you like, because they suffered the injury and then were penalised.

That changed, and now the compensation is recovered from the insurance company. It seems that people with mesothelioma are going to be treated differently, in that it is going to be recovered from their compensation, not from the insurers. That is really what I was trying to find out about. It may affect only a very small number of people — I think eight was the figure mentioned — but the point is that those are eight people with relatives. It is a distressing illness. When you are diagnosed, I think

the outer limit is probably about two years, so there may not be that much to be recovered, but it is the principle, because it does not apply to other people. Why does it apply to people with mesothelioma?

**Ms Anne McCleary (Department for Social Development):** I think the point you are making is that, where someone has a claim against their employer, or is in a road traffic accident, or whatever, the figure for the benefit that the Department has the right to recover, usually referred by the Compensation Recovery Unit (CRU), is usually added to the claim. So, the Department then gets its money back, but the person who has suffered injury does not lose out. They will have received their benefit, but the compensation awarded for any suffering is not affected by it. That, as I understand it, is how that fits.

In this situation, benefit would be recovered from the compensation award, but it is limited in that it is only the benefit that has been received after the diagnosis of diffuse mesothelioma, and it is only benefits that are directly linked to the diffuse mesothelioma.

**Mr Brady:** I understand that. One of the points that you made in your letter was that, if someone had, for instance, a respiratory problem, was 80% disabled and was receiving industrial injuries disablement benefit, and then they were diagnosed with mesothelioma, which put them up to 100%, it would only be that 20%. However, it is a point of principle for that person, because someone with mesothelioma is being singled out as different from someone for whom the compensation is not increased —

**Ms McCleary:** I take your point, but what we have to remember is that these are all employers' liability cases. They are cases where the employer either cannot be traced or the insurance cannot be traced. This is a sort of safety-net scheme. One reason why the award has been set at 70% of the average is to encourage people not just to go to the last-resort option, but to do their best to try to find the employer who, in fact, is responsible for that, so that, where possible, that person, firm or organisation will pay the compensation. The same principle applies.

**Mr Brady:** I absolutely agree with that. The reason it is probably different around tracing employers is that asbestos has not been used, for instance, in the construction industry since the 1980s or 1990s, so most of those companies are not around any more.

I am not saying that the Bill is not beneficial. What I am saying is that it is grossly unfair that those people who, through no fault of their own, suffer from an industrial disease, are then penalised, or their relatives are penalised, because their benefits are recovered directly from their compensation rather than from the insurers. The insurers are talking about paying something like £3 billion over a particular period. It seems to me that, when you are talking about those sums, it is unfair — it is even more unfair, in a sense — to penalise the individual. That is really the point that I wanted to make.

**Ms McCleary:** I understand the point that you are making, but it comes back to what I was saying about it being a safety net.

**Mr Brady:** I think that it needs to be recorded, because it is unfair and it should not happen. That is really what I am saying.

**Mr Copeland:** This may seem a bit strange. What, for the purposes of this, constitutes an employer? I know from personal experience in the construction industry, in particular, that most tradesmen are either self-employed or subcontractors. In some cases, they may not even have paid the appropriate amount of national insurance because of the way the "grip", for want of a better word, was set up. So, what constitutes an employer?

**Ms McCleary:** I think Jane has the answer.

**Mr Copeland:** Does the lack of an employer affect in any way the likelihood or the speed at which the matter could be concluded, given the 24 months?

**Ms McCleary:** I know that there is an appeal mechanism in which there is an issue around employment and whether the employer was insured at the time. I am not sure whether they go into who is an employer and who is not. In a general way, there is legislation that designates who an employer is. That is why subcontractors are caught in that.

**Mr Copeland:** Subcontracting is different.

**Ms McCleary:** Yes. You would also have general employment law or the law of negligence itself with regard to the person who is injured as a subcontractor.

**Mr Copeland:** I am really driving at the differentiation between subcontractors and self-employed people. There is a difference.

**Ms McCleary:** I am hoping that Jane has the answer.

**Ms Jane Corderoy (Department for Social Development):** The scheme is concerned with employees of businesses that had to take out compulsory employer liability insurance under UK legislation, or would have had to do so if that legislation had been in force previously. I do not think that self-employed people are caught by this, which is, possibly, what you are talking about.

**Mr Copeland:** A substantial number of those who would have worked with asbestos in the construction industry, for house building, were generally joiners. Most of them are self-employed.

**Ms McCleary:** That is probably less of an issue now because that kind of thing really only started in the past 10 or 15 years. It was because of tax or something. I do not know the exact details.

**Mr Copeland:** The "grip" as it was called.

**Ms McCleary:** An awful lot of that happened around 15 years ago. As Mr Brady said, the bulk of those cases go back way beyond that.

**Mr Copeland:** It was much longer than that, Anne. The self-employed stuff finished about 15 years ago.

**Ms Corderoy:** The legislation for having employer liability insurance should have been in place. This is really for historical cases in which the employer or the insurance company does not exist any more. It is a very small number of cases. I think that that catches those people who would have had nowhere else to go apart from the government-funded scheme. Under this scheme, they will get substantially more compensation.

**Mr Brady:** Reduced by benefits.

**The Chairperson:** If members are content that they have explored the queries and received responses, it leaves me to thank Anne and Jane.

I am getting a sense that members will support the legislative consent motion, but that they want to record concern about the idea that benefits may be unfairly affected or that it is unfair that it is different for other claimants. Do members want to record the fact that we are concerned? We can express in the Chamber that the Committee will support the legislative consent motion but we are concerned about that aspect of the recovery of compensation. Are members content?

*Members indicated assent.*

**The Chairperson:** Given that that is the case, I will read the motion into the record:

*"That the Committee for Social Development has considered the draft legislative consent motion on the Mesothelioma Bill and recommends that it is endorsed by the Assembly."*

Do members agree?

*Members indicated assent.*

**The Chairperson:** I advise members that there will be a briefing on the Bill by the Association of British Insurers in the Senate on Monday 24 June at 10.30 am. Members are invited to attend.