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Press ReleaseEmbargoed 23 September 2013

Charities furious at one-sided MoJ Mesothelioma reform consultation

Charities meeting the Justice Minister, Helen Grant on the 23 September, will express their anger and frustration concerning the consultation Reforming Mesothelioma Claims.

The consultation constitutes the Review of the exemption for mesothelioma sufferers from legal costs under the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASSPO), and recommends lifting of the exemption.

The options for reform were drafted by the Association of British Insurers (ABI) and incorporated wholesale in the consultation paper. Charities' request to include one claimant option for reform was refused by the Minister.

Charities' concerns about inadequate and possibly misleading data used in the consultation impact assessment were dismissed, and requests for data to allow expert analysis by statisticians have been refused.

Charities believe that the ABI options will slow down claims and limit access to justice and cannot be construed as reforms justifying the imposition of legal costs.

On behalf of the Asbestos Victims Support Groups Forum; the June Hancock & Mick Knighton Mesothelioma Research Funds; Macmillan; Mesothelioma UK, Tony Whitston said: **“We are furious that the ABI agenda for reform has been adopted wholesale in the Ministry of Justice consultation and is being construed as the basis for imposing legal costs on dying mesothelioma sufferers. We are calling on the Minister to abandon this partisan consultation which disadvantages mesothelioma sufferers, and instead, to arrange an opportunity for the defendant and claimant community to develop a positive agenda for reform.”**

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END

NOTES FOR EDITORS

Mesothelioma is a fatal cancer caused by exposure to asbestos. Life expectancy on diagnosis is 7-9 months.

Section 44 and 46 of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO Act)

As a result of a campaign, championed by Lord Alton and other Peers, sections 44 and 46 of the LASPO Act were not brought into force pending a review of their effects. Section 44 means that success fees are no longer recoverable from a defendant and section 46 means that after the event insurance (ATE) is no longer recoverable. Claimants are responsible for both costs.

The LASPO Act reforms provides for a 10% uplift in general damages (pain and suffering) to compensate claimants for paying solicitors' success fees and through 'cost shifting' removes the need for claimants to take out after the event insurance.

However, as success fees may be set at up to 25% of general damages, and costly disbursements are not included in cost shifting, Peers did not accept that the LASPO Act reforms would compensate mesothelioma sufferers.

Government argued that mesothelioma sufferers would have an interest in solicitors' charges. But, Peers were appalled at the suggestion that dying mesothelioma sufferers should have to 'shop around' for the best deal.

The Review of sections 44 and 46 LASPO

The review is being conducted within the MoJ consultation Reforming Mesothelioma Claims, 25 July 2013 – 2 October 2013.

The consultation contains ABI proposals for a Mesothelioma pre-action protocol; fixed costs regime for work undertaken pre-action and an ABI controlled electronic data collection 'Gateway'.

The MoJ say that the three ABI proposals, plus the 10% uplift in general damages to offset legal costs (LASPO Act), and the introduction of the Mesothelioma Bill justifies lifting the exemption.

Claimants say that: the ABI reforms will slow down claims and limit access to justice; the 10% uplift does not compensate for the effect of legal costs; the Mesothelioma Bill concerns claimants who are unable to trace an insurer and has nothing to do with the issue in question.

The most contentious issue for the charities concerned is the failure to consult with them prior to the consultation as they allege they have done.