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Press ReleaseNo Embargo

High Court Halts Government Plans to Increase Asbestos Victims' Legal Costs

A Judicial Review Judgement handed down today in the Royal Courts of Justice has halted Government plans to increase legal costs for the victims of the asbestos related cancer mesothelioma. This is an extremely aggressive disease usually affecting the pleura around the lungs, life expectancy after diagnosis is approximately nine months and the only known cause in this country is exposure to asbestos.

In his judgement the Honourable Mr Justice William Davis ruled that according to the Government's own Legal Aid Sentencing and Punishment of Offenders Act of 2012 (LASPO) a review had to be carried out into the likely consequences of such plans before they could be implemented. Commenting on the 'review' the Government did undertake he concluded that "no reasonable Lord Chancellor, faced with the duty imposed on him by Section 48 of the Act, would have considered that the exercise in fact fulfilled that duty". He has called on the Lord Chancellor to carry out a proper review.

Until this review is concluded the Government cannot implement the changes.

Asbestos Victims Support Groups have welcomed this judgement. Tony Whitston, Chair of the UK wide Forum of Asbestos Support Groups, called on the Government to "see this judgement as an opportunity to take a new approach based on justice for victims of big financial institutions. The old plans were rooted in a culture of secret deals with insurers and flawed consultations which excluded the victims of asbestos. Now is the time for a change".

"We need a new approach based on prioritising policies that help victims and their families. A proper review is needed, one based upon evidence of the likely consequences of making these changes. We need to understand that it will take three to five years for that evidence to

emerge. This matter must go back before Parliament. It is time we had an open and transparent debate about an agenda for justice not another shabby deal done in the dark.”

This judgement is only the latest in a series of developments which have undermined the Government’s case.

During the process of taking the Judicial Review the Asbestos Support Groups discovered that the Government had signed a secret Heads of Agreement with the Association of British Insurers concerning the reform of mesothelioma claims in July 2012. The secret agreement contained all of the measures the Government would include in a 2013 consultation paper on reforming mesothelioma claims, including the commitment to increase the legal costs for sufferers in mesothelioma cases.

Shortly after this revelation the Government’s plans came under further attack when the Parliamentary Justice Select Committee published a damning report into the conduct of the review required before the changes could be brought in. They concluded that the review was “maladroit and “unsatisfactory” and called on the Government to start again.

The origins of the Government’s situation lie in the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO). Sections 44 and 46 of this Act impose legal costs on people taking personal injury cases. 'During the passage of the Act, the Lords, in an act of humanity, insisted that dying mesothelioma sufferers be exempt from legal costs. The Government grudgingly allowed a temporary exemption pending a review of the likely effects of legal costs on mesothelioma claims.

The Government carried out this review in 2013, largely as part of a consultation into a wider raft of measures aimed at reforming the mesothelioma claims process.

Asbestos Support Groups have always maintained that the review was deeply flawed. In light of the Justice Select Committee report and today’s ruling that case appears unanswerable.

END

Notes for Editors

For Further information contact Doug Jewell at the Asbestos Victims Support Groups Forum on 0791 943 0059

The Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO) came into effect on 1 April 2013.

On the House of Lords insistence the Government introduced S48 LASPO which prevents LASPO section 44 (payment of success fees) and section 46 (after the event insurance) from

coming into effect for mesothelioma claims until a review has been conducted into the likely effects of s 44 and 46 on mesothelioma claims and a report of that review is published.

The review was incorporated into a consultation on reforms to mesothelioma claims 25 July 2013 ending October 2013. The reforms, including a mesothelioma pre-action protocol, formed part of a secret agreement with the Government.

The secret agreement can be found on the Forum's website:

http://www.asbestosforum.org.uk/Letter_from_James_Dalton_abi_mesothelioma%20claims%20process.pdf

On the 4 December 2013 the Justice Minister Shailesh Vara confirmed that the Government had decided to end the mesothelioma exemption.

The Justice Committee Report can be found at:

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmjust/308/30802.htm>