



Press Notice Issued 29th September 2014

Judgement due on the Judicial Review of Government Plans to Increase Legal Costs for Victims of Asbestos Related Cancer

Judgement to be handed down Thursday 2nd October in the Royal Courts of Justice in the case of Tony Whitston, Asbestos Victims Support Groups Forum UK, and Secretary of State for Justice and Association of British Insurers.

Judgement is to be made by the Honourable Mr Justice William Davis.

Issues of interest in this case:

- **Access to justice for terminally ill cancer patients**
- **Government conduct of reviews required by Parliament**

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The Case:

The case concerns current Government plans to reform mesothelioma legal claims. Mesothelioma is a particularly aggressive cancer that usually develops in the pleura surrounding the lungs. It's only known cause in this country is exposure to asbestos. There is no cure and average life expectancy from diagnosis is nine months.

Most mesotheliomas are caused by negligent exposure to asbestos at work and civil claims for compensation can be taken against negligent employers or their insurers. For this reason the British insurance industry also has a huge financial stake in the outcome of mesothelioma cases and intervened into the Judicial Review in support of the Government.

Many sufferers take legal action to ensure that their families will be provided for after they die. The proposed measures would impose legal costs on mesothelioma sufferers seeking such justice through the courts which are currently paid by the liable employer or insurer. Many believe the proposed measures, and fear of legal bills, would deter many sufferers from taking claims.

The measures were originally part of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (LASPO). Sections 44 and 46 of the Act impose legal costs on people taking personal injury cases. During the passage of the Act Parliament was concerned about the adverse effects this could have on mesothelioma sufferers making claims, particularly given the short life expectancy of many patients. Therefore mesothelioma claims were exempted from these provisions until a review had taken place into their likely consequences for mesothelioma sufferers.

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. They launched a Judicial Review of the Government's actions and this was heard on the 29th- 30th July 2014.

During the process of taking the Judicial Review it was revealed 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 included in the 2013 consultation, including the commitment to end the separate treatment of mesothelioma cases.

The Government's plans came under further attack on the 1st August 2014 when the Parliamentary Justice Select Committee published a damning report into the review. They concluded that the review was "maladroit and "unsatisfactory" and called on the Government to start again.

Tony Whitston, Chair of the Asbestos Victims Support Groups Forum said:

"The Government's plans to impose legal costs on Mesothelioma sufferers and their families, although not welcome, would have been accepted had they been based on a fair and credible review. Instead the actual review was hurried and flawed. If it is allowed to stand, and the planned changes are introduced, sufferers and their families will be left with an enduring sense of grievance for years to come."

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Notes for Editors

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

The Forum was represented in the Judicial Review by Leigh Day Solicitors

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 2014 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>