

## **West Dunbartonshire Council**

### **Report by the Director of Social Work Services**

**Council: 27 June 2007.**

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**Subject: Council support for patients and families affected by Mesothelioma: the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007**

#### **1. Purpose**

- 1.1** To inform Council of a national campaign supported by Social Work Services in partnership with Clydebank Asbestos Group to change Scottish personal injury legislation in favour of Mesothelioma sufferers and bereaved relatives.

#### **2. Background**

- 2.1** The Bill for the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 was passed by the Parliament on 21st March 2007 and received Royal Assent on 26th April 2007.
- 2.2** This is an Act of the Scottish Parliament to amend the law concerning the right of appropriate family members of a deceased person to claim damages in respect of the death of an appropriate close relative who has died from mesothelioma.
- 2.3** Mesothelioma is a cancer of the mesothelial cells and can develop in the tissues covering the lungs and abdomen. There is no cure for Mesothelioma and once diagnosed, sufferers survive on average some fourteen months. In the great majority of cases, the disease is associated with occupations where there was a greater likelihood of asbestos exposure, such as shipbuilding and construction. There are strong geographical concentrations (or clusters) around shipbuilding areas, railway workshops and asbestos factories. West Dunbartonshire was famous for shipyards and engineering works. In addition to this there was the Turners Asbestos Cement factory which operated from 1938 until 1970 in Clydebank.
- 2.4** Leading epidemiologists forecast that male mesothelioma deaths in Western Europe will increase from 5,000 per year in 1998 to around 9,000 per year by 2018; those most in danger are men born around 1945-50 about one in 150 men born in this period will die from mesothelioma. The risk to men born since 1955 is not yet clear. Plumbers, carpenters, electricians involved in renovation, asbestos removal workers and demolition workers may still be experiencing exposure to asbestos dust. Between 1968 and 2050 there will

be approximately 90,000 deaths from mesothelioma in Great Britain. Sixty-five thousand of which will occur after 2001; for every case of Mesothelioma it is accepted that there is at least one case of asbestos-related lung cancer. In 1989 the Mesothelioma rate for the West of Scotland area was 69 cases per million inhabitants the rate in Clydebank was 596 per million. When this average fell to 61 per million in 1992 Clydebank dropped to 439 per million.

### **3. Main Issues**

- 3.1** Patrimonial damages are awarded for the loss of financial support, while non-patrimonial damages are awarded in respect of;
- Distress because of suffering of injured person before death
  - Grief and sorrow at the death of the injured person; and
  - Loss of deceased person's society and guidance
- 3.2** Under Section 1(2) Damages (Scotland) Act 1976 the immediate family of an injured person is prevented for claiming non-patrimonial damages on the death of that person if the deceased already settled in full a claim prior to death for damages for his or her own loss. This was a great disadvantage to many families who had a relative affected by Mesothelioma
- 3.3** Prior to the Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 Mesothelioma sufferers faced the dilemma of either pursuing their own damages, or not, so that relatives could make claims which total more than the damages award to which the sufferer was entitled.
- 3.4** Under the law as it stood a Mesothelioma sufferer could not benefit in his or her lifetime without ultimately disadvantaging their own family.
- 3.5** The dilemma increased in recent years in part as a consequence of new court procedures implemented on the recommendation of a Court of Session working party led by Lord Coulsfield. This resulted in an accelerated timetable for the settlement of personal injury cases in the Court of Session. In practice this has meant that Mesothelioma cases are being concluded within a shortened period of 12 to 13 months. Another factor is the substantial increase in the amount of damages which are awarded to the immediate family for solatium to compensate for grief, suffering and emotional distress. As a consequence of these two factors most sufferers (around 80%) did not pursue claims in order not to disadvantage their surviving family.
- 3.6** The acceleration of the timetable for personal injury cases in the Court of Session highlighted the particular dilemma faced by mesothelioma sufferers and relatives because many more are now surviving long enough to settle their personal injury claims.
- 3.7** The first legislative attempt to address this dilemma came in the form of a Members' Bill from Des McNulty MSP which was lodged on 16 May 2006 with the policy intention to improve compensation for asbestos victims and

bereaved relatives. On 22 June 2006 the Scottish Executive announced its intention to bring forward legislation on the issue. On this basis Des McNulty withdrew his proposal.

- 3.8** The matter was referred to Justice 1 Committee and a call was made for evidence on the Bill. The consultation process includes a written submission prepared by Social Work Services and submitted on behalf of West Dunbartonshire Council and Clydebank Asbestos Group. Social Work Services were invited to present oral evidence on behalf of West Dunbartonshire Council and Clydebank Asbestos Group to Justice 1 Committee on Wednesday 6 December 2006. The contributions of the Council are fully acknowledged in the Stage 1 Report on the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill.
- 3.9** Family members including widows will now be able to benefit from the substantial increase in the amount of damages under Section 1(4) of the Damages (Scotland) Act 1976.
- 3.10** In 1992, the amounts awarded to a widow ranged from £5,500 to £12,500 and to a child from £600 to £10,500. However, recent awards of Section 1 (4) damages have increased from £20,000 to £28,000 to a widow and £5,000 to £10,000 for an adult child and £3,000 to £10,000 for an elderly parent losing an adult son. Mesothelioma sufferers can now pursue claims in the knowledge that they will not affect the future financial security of their loved ones.
- 3.11** The Rights of Relatives to Damages (Mesothelioma) (Scotland) Act 2007 was the final piece of legislation to be passed prior to the 3<sup>rd</sup> May election and is widely regarded as one of the most significant Acts of the Scottish parliamentary session.

#### **4. Personnel Issues**

- 4.1** There are no personnel issues.

#### **5. Financial Implications**

- 5.1** There are no financial implications

#### **6. Conclusions**

- 6.1** The Asbestos Group provides support and representation to sufferers of Mesothelioma and their families.

## 7. Recommendations

- 7.1 Members are invited to support ongoing partnership with Clydebank Asbestos Group and the outcomes set out within this report.

William W Clark  
Director of Social Work Services  
18 June 2007

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| <b>Wards Affected:</b>    | All   |
| <b>Appendices:</b>        | None  |
| <b>Background Papers:</b> | None  |