

<b>Title:</b> Mesothelioma Payment Scheme and Mandatory Membership of Employer Liability Tracing Office (ELTO) <b>IA No:</b> DWP0032  <b>Lead department or agency:</b> DWP  <b>Other departments or agencies:</b> MoJ	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 14/08/2012		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Primary legislation		
<b>Contact for enquiries:</b> Alex Dawe			

<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> AMBER
--	---------------------------

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£-79.6m	£-310m	£38.3m	Yes   IN

**What is the problem under consideration? Why is government intervention necessary?**  
Mesothelioma is a long tail disease, resulting from exposure to asbestos, with symptoms developing 30 - 40 years after exposure. Due to this time lag many people with mesothelioma are unable to trace a liable employer or Employers' Liability (EL) insurer to claim against. Government intervention is required to compel all EL insurers to contribute to a levy to finance a compensation fund and also improve tracing to reduce the pool of untraced cases and the time from diagnosis to compensation. The problem is caused by exposure to asbestos at work, which the courts have determined is the fault of employers, so the costs should be met from that sector (via the insurance to cover such risks) rather than from the general taxpayer.

**What are the policy objectives and the intended effects?**  
To establish a fund that will provide compensation to those people with mesothelioma whose exposure to asbestos arose through the workplace and improve tracing to allow claims to be resolved more quickly. Compensation to be set at a level that balances disincentivising those with mesothelioma from suing a liable party if they can be identified against providing a level of compensation commensurate with the degree of suffering and loss the victims experience. In addition improvements to the tracing of liable parties will be improved through strengthening of the Employers' Liability Tracing Office (ELTO)

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**  
A) The ABI delivering the fund with no input from Govt. - this would not work due to the risk of insurers not complying and thereby gaining a market advantage. B) Changing FSA rules to give the FSA powers to allow the ABI to compel membership - this could lead to sub delegation of legislative powers and would be unlawful. These two options have not been pursued and are therefore not addressed in this IA. The preferred option is option 2 - for Government to introduce legislation to compel EL insurers to contribute to a levy to fund the compensation scheme and deliver improved tracing. This option has been developed with the insurance industry, is relatively quick to implement, and the costs are widely spread so there is no disproportionate impact on any one party. DWP are also working with MoJ on non legislative changes that could be introduced to support the improved tracing and reduce legal costs to the victims.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** Month/2019

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b>		<b>Non-traded:</b>

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

Signed by the responsible Minister: \_\_\_\_\_ Date: \_\_\_\_\_

# Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

### Description and scale of key monetised costs by 'main affected groups'

None

### Other key non-monetised costs by 'main affected groups'

We estimate that over the 10 year period of the IA 3000 individuals who have contracted mesothelioma while employed and in the workplace and who cannot trace their employer or insurance policy, and who would be eligible to apply for the scheme, will not receive compensation (beyond that provided by the government)

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	0	0

### Description and scale of key monetised benefits by 'main affected groups'

None

### Other key non-monetised benefits by 'main affected groups'

None

### Key assumptions/sensitivities/risks

Discount rate (%)

All estimates of case numbers are based upon forecasts of deaths from mesothelioma. It is assumed that due to a legal case lowering the burden of evidence, 5% of males and 10% of females whose cases are currently classed as 'environmental' will make a claim and be unable to trace an employer or insurance policy. It is assumed a 10% improvement in tracing due to ELTO.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 0	Net: 0	No	Zero net cost

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** The Proposed Payment Scheme and Mandatory ELTO Membership

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	<b>Net Benefit (Present Value (PV)) (£m)</b>		
			Low: Optional	High: Optional	Best Estimate: -£79.6m

<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Cost (Present Value)</b>
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£1.4m	£41m	£388m

### Description and scale of key monetised costs by 'main affected groups'

Over the appraisal period, insurance industry costs are scheme payments (£325m), legal costs (£22m), set up (£1.4m) and running of the scheme (4.7m) and improved tracing of policies will cost £20m in compensation and £3.5m in legal fees. The admin cost of recovering government benefits on scheme and additional cases is £2m in total. Individuals pay legal fees of £2m on scheme cases (net). Costs also include the resource cost to the economy of additional court activity (£28m, including set-up).

### Other key non-monetised costs by 'main affected groups'

It is possible that insurers will pass the cost of the scheme onto customers via increased premiums. This is unlikely but if it did happen the impact on customers would be relatively low, estimated at 2.16% on EL insurance premiums or 0.07% on General Insurance.

<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>	<b>Average Annual (excl. Transition) (Constant Price)</b>	<b>Total Benefit (Present Value)</b>
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0	£33m	£308m

### Description and scale of key monetised benefits by 'main affected groups'

Over 10 years, individuals receive £275m in scheme payments and £18m from additionally traced cases, plus net legal savings of £1m on additionally traced cases (they don't have to pay for unsuccessful tracing). Government recovers £49m and £2m in compensation. Solicitors benefit from new legal fees of £28m (£26m from insurers/ individuals on scheme/ additionally traced cases and £1m to advise on the scheme - these are not included in EANCB figures to ensure full reflection of regulatory costs).

### Other key non-monetised benefits by 'main affected groups'

The insurance industry will receive positive benefits to its reputation by setting up and paying for the scheme and avoids the negative affect on its reputation of individuals who contract mesothelioma in the workplace not receiving compensation from insurers.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5

All estimates of case numbers are based upon forecasts of deaths from mesothelioma. It is assumed that 50% of people who currently do not try to trace an employer/ insurance policy will become eligible for the scheme, and that tracing of insurance policies will improve by a further 5%. A 76% success rate for both scheme and additionally traced cases is assumed. Average civil compensation and average recoveries of government benefits are used for financial calculations.

## BUSINESS ASSESSMENT (Option 2)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>In scope of OIOO?</b>	<b>Measure qualifies as</b>
Costs: £38.3m	Benefits: £0	Net: £38.3m	Yes	IN

## Evidence Base (for summary sheets)

### References

- 2010 Consultation 'Accessing Compensation – Supporting people who need to trace Employers' Liability Insurance'.  
<http://www.dwp.gov.uk/docs/elci-compensation-consultation.pdf>
- B12: UK Asbestos Working Party update 2009, Brian Gravelsons et al, October 2009  
[www.actuaries.org.uk/sites/all/files/documents/pdf/b12asbestoswp.pdf](http://www.actuaries.org.uk/sites/all/files/documents/pdf/b12asbestoswp.pdf)
- Tan and Warren 2009 - Tan E, Warren N, Darnton AJ, Hodgson JT. Projection of mesothelioma mortality in Britain using Bayesian methods. Br J Cancer. 2010 Jul 27;103(3):430-6.
- Mesothelioma mortality in Great Britain: The revised risk and two-stage clonal expansion models - Prepared by the Health and Safety Laboratory for the Health and Safety Executive 2011, Emma Tan & Nick Warren, Harpur Hill - [www.hse.gov.uk/research/rrpdf/rr876.pdf](http://www.hse.gov.uk/research/rrpdf/rr876.pdf)
- Towers Watson 2011 – ABI commissioned (unpublished)
- 'UK Employers' Liability Insurance 2011' (Data Monitor, Dec 2011)

## **Policy context**

1. In 2010 the previous administration published the public consultation 'Accessing Compensation – Supporting people who need to trace Employers' Liability Insurance'. This proposed both improved tracing of EL insurance policies and, among other things, a non-government compensation fund of last resort for people who have contracted mesothelioma who were unable to trace a liable insurer or employer. Following analysis of the consultation responses, the Coalition Government decided to discuss the issue in detail with stakeholders before reaching a conclusion on the best way forward.
2. DWP has been working with a range of stakeholders to identify the best means of addressing the issue. In conjunction with the Association of British Insurers (ABI) and others, DWP has developed a plan for a non-government compensation scheme to make payments to untraced mesothelioma cases. The ABI supports the principle of making payments to people who have untraced mesothelioma cases.
3. The problem is caused by exposure to asbestos at work, which the courts have determined is the fault of employers, so the costs should be met from that sector (via the insurance they took out to cover such risks) rather than from the general taxpayer. This approach maintains consistency between the treatment of compensation from the civil courts and from the new scheme.
4. DWP has worked with the Ministry of Justice (MoJ) and stakeholders on a streamlined mesothelioma claims process which will realise savings in terms of both legal costs and time for sufferers to receive compensation. This includes a pre-action protocol and electronic portal for all occupational mesothelioma claims. These measures will be supported by improved tracing through the Employers' Liability Tracing Office (ELTO) and a Technical Committee resulting in more people being able to identify a liable insurer.
5. For those people with mesothelioma still unable to trace a liable insurer or employer, whose asbestos exposure arose through their employer's negligence, it is proposed a new compensation scheme is introduced. This will be funded by a levy on current EL insurers and will pay a level of civil compensation ranged between that offered by state lump sum awards and average payouts from civil action. For the purposes of this impact assessment (IA) it is assumed that this will be 75% of average civil compensation, though ranges of 70% and 80% are also included.
6. Throughout the course of developing this impact assessment the DWP has discussed the analysis approach and sources of data in detail with the ABI, and sought its opinion and advice on all assumptions.
7. The Regulatory Policy Committee opinion on this impact assessment is attached in annex E and amendments made in line with its recommendations.

## **Scope of analysis**

### **• Mesothelioma compensation initiatives**

8. The proposal is closely linked to a number of other initiatives to reform mesothelioma compensation procedures. MoJ is proposing to introduce a single electronic portal governed by a Mesothelioma 'Pre-action Protocol' (PAP) which will speed up the claims process. The impacts directly associated with

introduction of the mesothelioma PAP are not within the scope of this IA and are not formally included in this assessment. However, as the policy forms part of wider improvements to the mesothelioma compensation system, estimates of the relevant costs and benefits are outlined in Annex B for information.

9. For the purposes of this IA it is also assumed that the streamlined legal processes under the mesothelioma PAP will be implemented regardless of whether the scheme is set up, and will be in place by the time the scheme is implemented. Therefore, the Mesothelioma PAP should be seen as part of the 'do nothing' baseline. As a result, all legal and admin costs are based on this streamlined process, which explains why the legal costs set out in this IA are considerably lower than those estimated in the 2010 consultation.
10. MoJ is also reforming the 'no win no fee' system for personal injury cases. Mesothelioma cases are currently exempt from the reforms to 'no win no fee' funding rules until a report on the impact of the reforms on mesothelioma cases is published. For the purposes of this IA it has been assumed that the current 'no win no fee' system remains in place for mesothelioma cases.

- **Consultation IA (2010)**

11. The consultation impact assessment considered the establishment of a non-government compensation scheme for people with mesothelioma funded by a levy on current EL insurers. This among other measures, was covered in the 2010 consultation.

- **Government compensation**

12. People diagnosed with mesothelioma may be entitled to Industrial Injuries Disablement Benefit (IIDB) and other social security benefits depending on their particular circumstances. Those entitled to IIDB are also entitled to a lump sum award under the Pneumoconiosis etc (Workers' Compensation) Act 1979. On a normal civil case where an individual receives civil compensation from an employer or insurer, government would recover the social security benefits and lump sum awards it has paid.

### **Preferred option**

13. The preferred option is Option 2 which outlines the scheme with recovery by government of these social security benefits and lump sum awards in line with standard practice when an individual receives civil compensation.

### **Analysis notes**

14. The analysis below is based on Great Britain, and so doesn't include Northern Ireland.
15. The time period for this IA is 2014 to 2023. This is because 2014 is the anticipated start date of the scheme and a 10 year period covers the period when deaths from mesothelioma are predicted to peak.
16. It has been proposed that eligibility for the scheme would include those who receive a diagnosis from July 2012, although the start date of the scheme is assumed to be 1<sup>st</sup> Jan 2014 (the legal implications of this are being explored). This means that although the period of the IA is 2014 to 2023 estimates are also included of those whose case falls into the preceding 18 months because any payments would fall in the 2014 to 2023 period. It is assumed this will be in the early part of the IA period.

17. Cases from the period Jul 2012 to end 2013 which would fall into the *additionally traced* category (see below) and so be able to make a claim for civil compensation against an insurer due to the proposed measures are not included.
18. All analysis is based on calendar years.
19. For financial calculations, unless otherwise stated inflation factors are applied to bring the figures to 2012 values. Where inflation is applied to reach the 2012 values it uses the Treasury GDP deflators from 28th Mar 2012 using figures for the calendar year. [http://www.hm-treasury.gov.uk/data\\_gdp\\_fig.htm](http://www.hm-treasury.gov.uk/data_gdp_fig.htm). Discounting has been applied to figures in the summary pages above in line with guidance but not to the figures in the evidence base.
20. The analysis design below was produced through detailed discussion with experts from the Health and Safety Executive (HSE), Asbestos Working Party and the ABI. Assumptions and data from the Towers Watson report, which was commissioned by the ABI (unpublished) are also used. The IA has been written in line with government guidance.
21. Annex A contains a list of forecasts of key figures.

### **Summary of the analysis**

22. The analysis below firstly looks at the option of doing nothing (option 1). This is to provide a clear picture against which the rest of the analysis can be compared. This focuses on the uncertain picture of forecasts of mesothelioma deaths and then attempts to predict the volumes of mesothelioma cases going forward, given the changing context between 2014 and 2023.
23. Option 2 is the preferred option and examines the costs and benefits of the new scheme and supporting legislation which aims to improve tracing (via enhanced ELTO). This option assumes recovery of the social security benefits and lump sum awards paid by the government to all people who contract mesothelioma, which is the norm when a civil compensation payment is made.
24. Throughout the analysis two categories of cases are referred to which are of particular relevance to the costs and benefits in this IA. Firstly 'occupational and untraced' who represent those who would be eligible for a payment from the scheme. Secondly 'additionally traced' are cases that have been traced because of the assumptions made in the option under consideration, that wouldn't have been otherwise.

## Option 1 – Do nothing

### **Key points**

- Doing nothing – It is estimated that c.3,000 people who had contracted mesothelioma after being exposed to asbestos at work, who would be eligible to apply for payment from the scheme outlined in option 2, would not be able to apply to receive civil compensation because they could not trace their employer or employer's insurance policy during the 10 year period of the IA.

### **The system**

25. In this option it is assumed that the current system would remain. This means that those who cannot trace an employer or EL insurance policy would not receive civil compensation, but would retain social security benefits and lump sum awards from the government (referred to as 'occupational and untraced' cases).
26. Civil compensation is on average £160k (in 2012 terms) across the IA period (based on AWP survey 2008<sup>1</sup>). The best estimate of recovered government social security benefits and lump sum awards in respect of mesothelioma in successful civil cases is £18k (based on Compensation Recovery Unit (CRU) data).
27. Even doing nothing there are contextual factors that will impact on the system:
- **Lower legal burden of evidence (Sienkiewicz 2011)** – This means that some cases that are currently assumed to be 'environmental' because in the past they couldn't provide strong enough evidence of a link to an employer, may now be able to do so meaning they become classified as 'occupational' and can attempt to trace an employer (see figure 1). This tracing attempt may or may not be successful. However overall this is likely to mean that some cases that are currently classified here as 'environmental' may become 'occupational and untraced'.
  - **The creation of the ELTO in 2011** - This aims to improve the success rate of tracing in occupational cases by centralising electronic information on insurance policies that might not otherwise be traceable under the current system. This means cases that are currently classified as 'occupational and untraced', may be able to find an insurer to make a civil case against.

### **Summary**

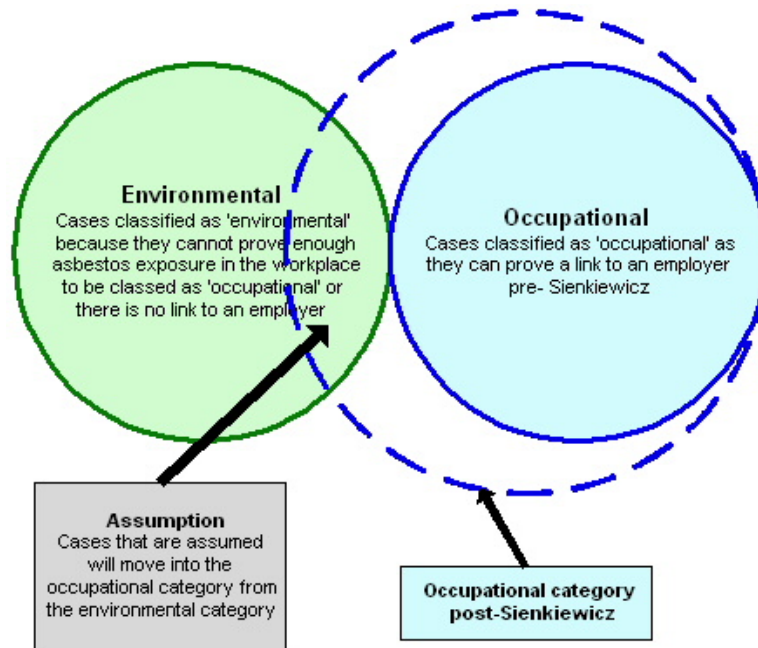
28. Taking these changes into account it is estimated that c3,000 people who would potentially be eligible for the scheme would not have the opportunity to try and get non-government compensation because they cannot trace an EL insurance policy.
29. To provide a baseline for option 2, it is also estimated that 28 additional people per year (285 people in total between 2014 and 2023) will be able to trace an insurance policy due to improved tracing.

---

<sup>1</sup> UK Asbestos Working Party Update 2009, <http://www.actuaries.org.uk/research-and-resources/documents/b12-uk-asbestos-working-party-update-2009-5mb>



**Figure 1 – Movement of cases**

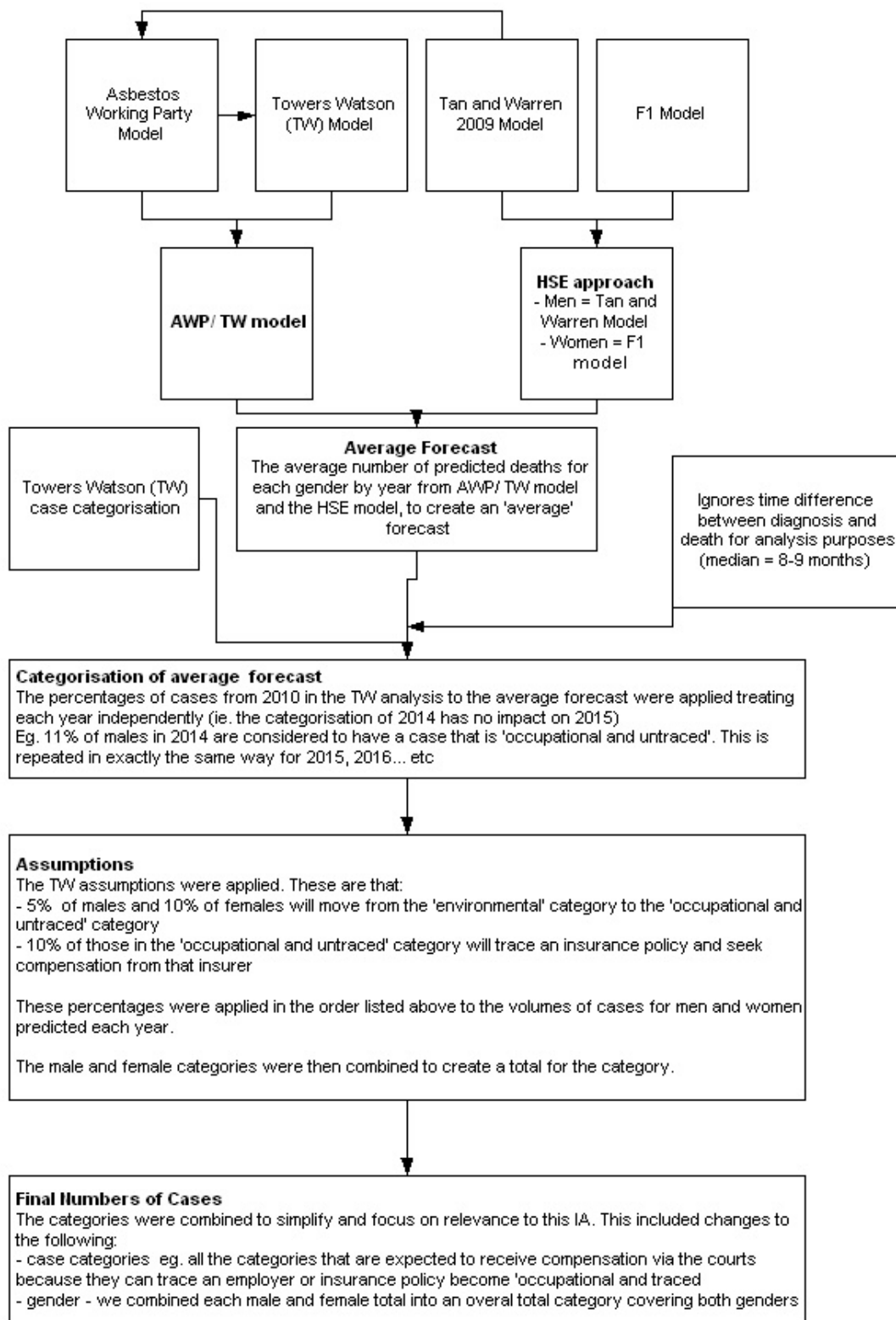


## **Option 1 - Methods**

- **Predicting volumes of cases**

30. First to understand the baseline for analysis (option 1) it is necessary to be able to predict the number of 'occupational and untraced' cases who would not receive civil compensation if government does nothing. This is the same group who would be eligible for payments under the proposed scheme (option 2).
31. Secondly it is also necessary to produce a clear picture of the estimated number of cases in the 'occupational and compensated' category, which includes anyone who would receive civil compensation. This will enable clear identification of cases that are traced because of the scheme in option 2 (so it is the baseline for the 'additionally traced' case category referred to later).
32. There is no central database or survey that tracks people after they have been diagnosed with mesothelioma or follows their attempts to obtain non-government compensation. Therefore the approach taken is to estimate the volumes of cases involved firstly looking at forecasts of deaths from mesothelioma. Next a categorisation of cases from 2010 was applied to establish the numbers who take particular routes through the non-government compensation system. Then clear assumptions were made about the impact of contextual factors on the case paths people are likely to take and the impact on the volumes of cases in each. More detail on each step in this method is outlined below.

**Figure 2 – Calculating the number of cases that would be eligible for the Scheme (see below - for more explanation)**



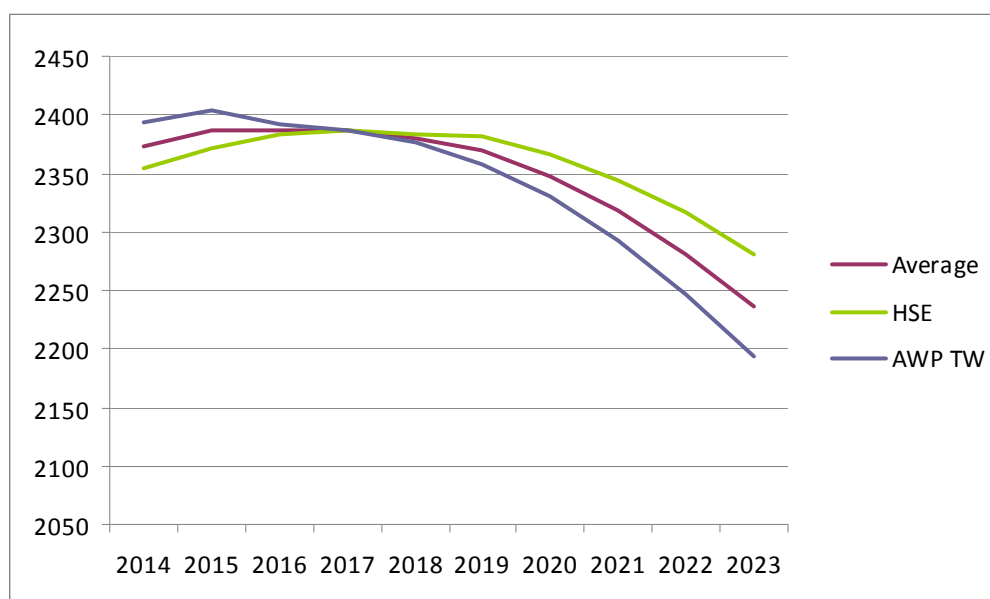
● **Forecasts of deaths from mesothelioma**

33. To begin with forecasts of mesothelioma deaths. There are various models that forecast mesothelioma deaths each giving different predictions, and all of which become increasingly uncertain going forward in time. A key aspect of this

uncertainty is the dependence in the models on assumptions about the extent of asbestos exposures within the last 30 years. Exposures are known to have been substantially lower in this period than previously, but the range of possibilities still has a large impact on future predictions.

34. According to the HSE, of the available models for males, the predictions of the Tan and Warren 2009 model are likely to be most plausible in the short term (the next few years) given the extent of the agreement between the projections and observed annual numbers in the last 3 years. These have been combined with separate predictions for females using a similar model (model F1). Both models cover ages 20-89 and cover cases with any mention of mesothelioma on the death certificate (rather than necessarily the official cause of death). Both exclude people aged 90 years and older. The HSE estimate that this may constitute a further 30-40 deaths per year for men and around 10 for women.
35. The Asbestos Working Party (AWP) built on the Tan and Warren 2009 model and introduced additional assumptions. The AWP did not project female deaths. The AWP used the Tan and Warren 2009 model with a number of alternative assumptions. This led the AWP to project a lower number of future population male deaths than the HSE approach. In terms of trends, the key difference between the two approaches is that the AWP model assumes that there was a steeper decline in exposure to asbestos during the 1980s. Towers Watson (TW) built on the AWP projections and incorporated projections for population female deaths (see figure 2).
36. References for these models are:
  - The Tan and Warren 2009 - Tan E, Warren N, Darnton AJ, Hodgson JT. Projection of mesothelioma mortality in Britain using Bayesian methods. Br J Cancer. 2010 Jul 27;103(3):430-6.
  - F1 - [www.hse.gov.uk/research/rrpdf/rr876.pdf](http://www.hse.gov.uk/research/rrpdf/rr876.pdf)
  - AWP - [www.actuaries.org.uk/sites/all/files/documents/pdf/b12asbestoswp.pdf](http://www.actuaries.org.uk/sites/all/files/documents/pdf/b12asbestoswp.pdf)
  - Towers Watson 2011 – ABI commissioned (unpublished).
37. Until the pattern of deaths due to exposure during the 1980s becomes apparent (2010-2020 and beyond), it is uncertain which forecast is more accurate. Therefore in this IA the average of the two has been used – referred to as the ‘Average Forecast’. This means averaging the two models by year and gender (eg. the ‘average forecast’ of the total number of deaths in 2014, is the mean of HSE and AWP forecasts of male deaths in 2014 and it is then added to the mean of the HSE and Towers Watson forecasts of female deaths). Over the 2014 to 2023 period the percentage difference between the ‘average forecast’ and either the HSE or AWP/TW approach ranges between +2.0% and -1.9%. Figure 3 shows the differences between the forecasts.
38. The ‘average forecast’ predicts 23.5k deaths from mesothelioma between 2014 and 2023 and is considered the ‘best estimate’ and used to underpin all analysis in this IA. The HSE approach results in c100 more deaths than this and the AWP/TW model, c100 less.

**Figure 3 – Forecasts of deaths from mesothelioma**



- **Categorisation – case paths**

39. The next stage was to apply the Towers Watson civil case categories (see annex C for how these were derived) to the forecasts of deaths. Please note this section focuses on non-government compensation, while the impact of the scheme on government social security benefits and lump sum awards is covered later in the IA.
40. For analysis purposes the times between making a claim and receiving a payment/ civil compensation have not been taken into account. According to the Dept of Health Mesothelioma Framework (Feb 2007), median survival time from diagnosis (the earliest point a claim could be made) to death varies from study to study but is usually within the range of 8 to 9 months. Under the current system the best estimate of the length of a civil case is the time between registration and settlement with the Compensation Recovery Unit (CRU). Currently the CRU report that this is 16.6 months (no further detail available) and new streamlined processes should further reduce this but it is unclear by how much. Therefore we have used the year of death as a base for case volume estimates.
41. The Towers Watson case categorisation combines civil claim outcomes, employment status and source of exposure to identify different claim paths. In 2010, just under three quarters of people with mesothelioma were considered under occupational case paths. This means that they were employed and exposed to asbestos due to employer negligence. They are sub-divided into those who were:
  - *Occupational, traced and successful (62%)* - compensated by insurers or private sector employers (56%), the Ministry Of Defence (1%) and the rest of government (5%).
  - *Occupational and untraced (11%)* - not able to find a solvent employer or insurer to make a civil claim for compensation against.

42. Not everyone who contracts mesothelioma was exposed while employed and at work. Around a quarter fall into the following categories:
- *Self-employed (2%)* - exposed to asbestos in the workplace but have always been self-employed and therefore will not have been covered by an EL insurance policy.
  - *Environmental (19%)* - did not contract mesothelioma due to exposure to asbestos in the workplace, or are unable to prove a link to an employer (it is assumed here that any 'traced and unsuccessful' cases would also be counted here)
  - *Unclaimed (6%)* - assumed to have never brought forward a civil claim. This category is estimated from the mesothelioma deaths that are unaccounted for.
43. In this IA, the 'occupational and untraced' category is equivalent to those who would be eligible for a scheme payment proposed in option 2 and so changes to this category is the focus of the remaining sections.
44. The 2010 proportions were applied as fixed percentages independently to each year to the 'average forecast' of deaths from mesothelioma. At this stage of the analysis it essentially assumes that the 2010 picture in terms of proportions that fall into each case category won't change.
- **Impact of contextual changes**
45. However as noted above it is unknown whether there are contextual factors that will impact on the number of 'untraced' cases, namely the Sienkiewicz case and the creation of ELTO.
46. The Sienkiewicz 2011 case lowers the burden of evidence in civil cases. This is likely to encourage additional people to make claims for civil compensation as the likelihood of success is perceived to be greater and more attempts will be made to trace employers/ insurance policies. Therefore some cases that would have fallen into the 'environmental' category because they couldn't prove an occupational link previously, will now be able to prove this and will be classed as 'occupational, traced and successful' or 'occupational and untraced'.
47. There is no precedent to accurately predict the impact of this, but on advice from industry experts, including the ABI<sup>2</sup>, it is assumed that 5% of males and 10% of females who would have fallen into the 'environmental' category will now be classed as 'occupational and untraced'. This percentage change has been applied as a fixed percentage to the forecasts of volumes of cases in the 'average forecast' for each year.
48. The creation of ELTO is designed to improve the likelihood that an insurance policy will be traced. This means that some cases in the 'occupational and untraced' category will become 'occupational, traced and successful' (or it is assumed that if the case is unsuccessful as no employment link is proven, it will be considered 'environmental').
49. According to the ELTO report on its first 6 months of operation, it dealt with 15k enquiries about employers' liability on a range of diseases, of which 10k

---

<sup>2</sup> This assumption was used in the ABI commissioned Towers Watson 2011 report

successfully traced an insurer. Compared to the previous Employers' Liability Code Of Practice (ELCOP) system during the same 6 month period the year before this increased volumes of enquiries by 60% and the tracing success rate by 20% (to 64%).

50. A break down for mesothelioma cases shows that success rates are slightly lower. It was 56% in the May to Dec 2011 period. In the voluntary ELCOP for tracing EL policies in place prior to the introduction of the ELTO, the final year's figures (for 2010) showed that 34% of mesothelioma traces were successful.
51. The AWP/ Towers Watson forecast includes an assumption of increased tracing already. Therefore in the assumptions on tracing below 20% is used as the highest estimate for sensitivity testing with 10% and 5% as the best and lowest estimates. Considering the likely effect across the 10 year period, on advice from the ABI, it is estimated that 10% of 'occupational and untraced' mesothelioma cases will be traced. The assumption is applied as a fixed percentage to each year independently and after applying the assumptions listed previously.
52. Using these assumptions, 3,000 people who would be eligible to apply for the scheme, would not have the opportunity to receive non-government compensation because they could not trace their employer or employer's insurance policy. This figure covers scheme cases between Jul 2012 and end 2023, which would be eligible for compensation in the IA period (2014 to 2023).
53. Table 1 uses sensitivity testing to look at different scenarios of movement from the environmental category and ELTO improvement. This shows that the lowest estimate of cases in the 'occupational and untraced' category is 2496 and the highest is 3396.

**Table 1 – Sensitivity testing the number of cases in the 'occupational and untraced' category once different assumptions have been applied (cases Jul 2012 to end 2023)**

% Increase in traces	% moving from environmental category		
	2.5% male & 5% female	5% male & 10% female	10% male & 20% female
+5%	2964	2108	<b>3396</b>
+10%	2808	<b>2944</b>	3217
+20%	<b>2496</b>	2617	2859

### Summary

54. This method produces a best estimate of the number of people who contract mesothelioma due to exposure while at work and employed, but who do not receive civil compensation due to not being able to trace their employer or insurance policy. It takes into account trends in mesothelioma deaths, the different case paths people with mesothelioma take and the contextual factors which will influence claim behaviour and improvements in tracing.
55. It also provides a picture to compare option 2 of implementing the proposed scheme against.

## Option 2 – The Proposed Payment Scheme and Mandatory ELTO Membership

**Key points** – Over the 10 year period of the IA and compared to option 1:

### ***The Scheme***

- An estimated 2700 people who contracted mesothelioma due to negligent exposure while employed and at work but cannot trace an employer or insurance policy against which to make a claim, will receive scheme payments of an estimated £120k (assumes tariff is 75% of civil compensation) from the insurance industry.

- The fund required for this would total £325 million.

- Government could recover £49 million in social security benefits and lump sum awards, from scheme payments at a cost of £1.4 million in administration.

- The legal costs faced by either side would total £1.91 million for claimants (including savings from unnecessary failed tracing attempts under option 1) and £21.57 million for defendants. The costs of legal advice provide a financial benefit overall to personal injury solicitors.

### ***Additionally Traced Cases***

- A further 124 people would trace an employer or insurance policy and successfully receive full civil compensation totalling £19.8 million.

- Due to improved tracing government would also recover £2.26 million from additional cases and this would cost £0.06 million.

- Legal costs on additional cases would be £3.5 million for the defendant and due to savings on unsuccessful tracing there is a benefit for individuals of legal costs of £0.82 million.

### **The proposed scheme**

56. Setting up the proposed scheme will essentially transfer money in the form of scheme payments from current EL insurers to individuals who were negligently exposed to asbestos in the workplace while employed but who cannot trace an employer or insurance policy against which to make a civil claim. The scheme does not cover anyone exposed to asbestos while not employed. The scheme will be funded by a levy on the insurance industry based on market share in the previous year.

57. The proposed legislation would also make it compulsory for all EL insurers to join the ELTO. By enhancing ELTO this should lead to more cases being traced back to the insurance policy in place at the time of exposure.

58. Annex D illustrates and summarises the money transfers involved.

### **Costs and benefits to the main affected groups**

59. The main groups affected by this scheme are individuals (with mesothelioma who cannot trace an employer/ insurance policy against which to make a claim, plus possibly individual insurance customers), business (the insurance industry, specific insurers, personal injury solicitors, and possibly employers as customers of the insurance industry), government and the economy.

- **Individuals**

***Scheme cases***

60. People who have contracted mesothelioma due to workplace exposure while employed who cannot trace an employer or insurance policy, will receive scheme payments from current EL insurers via a central fund. Civil compensation is far higher than government social security benefits and lump sum awards. Civil compensation is on average £160k (adjusted to 2012 prices) compared to £18k in government benefits and lump sum awards. It is estimated that government social security benefits and lump sum awards are just 15% of the average civil compensation pay out (based on data from the CRU on recoveries of government social security benefits and lump sum awards).
61. Two factors will impact on the numbers of people eligible for the scheme. First the existence of the scheme will encourage some people who might not otherwise attempt to make a civil claim to apply to the scheme. Second an enhanced service for mesothelioma claimants provided by ELTO and a Technical Committee. ELTO will investigate cover on behalf of the claimant and, where evidence of cover is found but liability disputed, the Technical Committee will establish whether the evidence is sufficient to make a binding ruling against the insurer concerned to pay the claim. The assumption in the Towers Watson report is that this combined proposal would move 5-10% of cases from untraced to traced.
62. Taking these factors into account it is estimated that 3600 people will be eligible for a scheme payment, and can apply to receive compensation (though not all will).
63. The level of scheme payments they will receive from the fund (the 'tariff') has not yet been decided. However it is expected to be a proportion of average civil compensation. The proportion will aim to be high enough to compensate individuals while not providing a disincentive to trace the relevant insurance policy in place at the time of the asbestos exposure. In reality it is likely to be linked to the age of the person making a claim, as this is the case in civil compensation, but for the purposes of this analysis an average across age groups has been used. The 'best estimate' of the tariff used here is 75%, which gives an individual an average of £120k.
64. As the scheme is new there is no way of knowing how many cases will be successful in their application to receive scheme payments. If this were to mirror the case success rate in the civil system it is estimated that 76% would be successful (this is the success rate for civil cases in the 2010 consultation). This would mean that 2700 people will receive payments from the scheme.
65. Taken together the best estimate of the total compensation individuals would receive is £325 million. If the tariff was set at an 80% level it would be £346 million and at a 70% level £303 million. As under this option the government would recover all social security benefits and lump sum awards it has paid, the full cost of this tariff would fall on the insurance industry. This means that the payments of £325m to individuals would be made up of a scheme payment of £275m on top of government benefits and lump sums of £49.3m that they have already received.

***Additionally traced cases***



66. Applying this success rate again to additionally traced cases this results in 124 cases between 2014 and 2023. The cost to insurers of paying average civil compensation to them is £19.8 million (2012 value). Individuals receive £17.6 million of this, under this option as they have already received some in the form of government benefits and lump sum compensation (see below).
67. Improved tracing also means that some people with *additionally traced* cases will receive full civil compensation. This is estimated at 163 people over the 10 year period of the IA. Again applying the 76% success rate, it is estimated that 124 people will receive full civil compensation over the period.

### **Legal costs**

68. Both scheme cases and additionally traced cases will incur legal costs. The legal costs of making a claim for *scheme* payments are based on the new streamlined processes. The quote covers the full process of a successful and unsuccessful application for compensation under the scheme. The costs of these cases are split between the individual and the scheme/ insurer and so the quote explicitly states who would actually bear the cost. For individuals this is £7000 if they received payment from the scheme and £9000 if they are unsuccessful. This was applied to the volume of successful and unsuccessful cases.
69. This is actually cheaper for many individuals than the cost of making an unsuccessful attempt at tracing an insurance policy if the scheme did not exist (option 1).
70. This means that for scheme cases, there is actually a benefit for individuals in legal fees compared to option 1 of £1.02m. However when the unsuccessful cases are taken into account there is a cost to individuals in terms of legal fees of going through the scheme of £2.06m. Overall this means a net cost to individuals of legal fees of £1.04m.
71. However in addition to this, there are people who would receive scheme payments but who would not have attempted to trace an employer or insurer under option 1. These are people who would have been classed as 'unclaimed' under option 1 (see para 60) but in this analysis it is assumed that they would attempt to make a claim to the scheme (under option 2). For these people the whole legal cost would be new and there would be no savings on option 1 as they would have paid nothing. When this is taken into account this results in a net cost to individuals on scheme cases of £1.91million.
72. This saving in legal costs also applies to additionally traced cases. Again applying the legal costs of a successful and unsuccessful case, and taking away the savings of the unnecessary failed trace attempt (option 1), there is a net benefit in legal costs to these individuals of £0.82 million.

**Table 2 Costs and benefits to individuals (m)**

(000,000s)	Who	What	Costs	Benefits	Net
Individuals	scheme	compensation	£ -	£ 275.49	£ 291.97
		legal costs	£ 1.91	£ -	
	additional cases	compensation	£ -	£ 17.57	
		legal costs	£ -	£ 0.82	

- **Government**

73. As already noted, people diagnosed with mesothelioma may be entitled to IIDB and other social security benefits depending on their particular circumstances. On

a normal civil case where an individual receives civil compensation from an employer or insurer government would recover the social security benefits and lump sum awards it has already paid.

**Scheme cases**

74. Under this option government would recover all social security benefits and lump sum awards from the 2700 successful scheme cases as well. This would not impact on the amount of scheme payments an individual would receive, but it would mean overall the scheme payment fund would be entirely funded by the insurance industry and that the Exchequer would receive additional money from the creation of the scheme in recoveries totalling £49.3 million (Jul 2012 to 2023).

**Additionally traced cases**

75. There would also be recoveries on the estimated 124 additionally traced, successful civil cases in option 2. This would give the Exchequer additional recoveries of £2.26 million.

**Costs of recovery**

76. There are costs to government of recovering this money. The CRU report that the costs of recovery are 2.78% of the total amount recovered. Applying this to the levels that could be recovered here, this puts the costs for mesothelioma cases at c£500 per case. This means that it would cost £63k under option 2 for recoveries in the additionally traced cases. For scheme cases under this option it would cost £1.37 million to recover it.

**Other government benefits**

77. The impact on means-tested benefits of the scheme and additionally traced cases has also been considered. Under current Employment Support Allowance (ESA) and Pension Credit (PC), and under the Universal Credit (UC) rules being developed, if a person suffering from mesothelioma received civil compensation or a payment from the scheme it would not affect their means-tested benefits for at least a year (and would be ignored indefinitely for Pension Credit). If they put the compensation or scheme payment into trust within that year, the value of the trust and any income from it would continue to be ignored. Given the short time period between diagnosis (the earliest point a claim could be made) and death, it is unlikely that this would be an issue for many individuals. However, any compensation or scheme payment paid to a bereaved relative or inherited on the death of the sufferer could affect that relative’s benefits. Government does not have data on the family circumstances of people with mesothelioma so is not possible to predict the level of this impact.

78. Therefore the main benefit to the Exchequer is the recovered social security benefits and lump sum awards and the main costs are recovery costs.

**Table 3 Costs and benefits to government/ the Exchequer**

(Millions)	Who	What	Costs	Benefits	Net
Government	Scheme	Recovered compensation	£ -	£ 49.33	£ 50.16
		Costs of recovery	£ 1.37	£ -	
	Additional cases	Recovered compensation	£ -	£ 2.26	
		Costs of recovery	£ 0.06	£ -	

• **Business Scheme cases**

79. As noted above in the section on individuals, under this option the total cost of payments from the scheme will fall on the insurance industry. It is estimated that this will be £325 million on cases between Jul 2012 and end 2023. Though if the tariff paid to individuals was 80% of average civil compensation the fund would need to be £346 million and if it was 70% it would be £303 million.
80. The payment scheme will be funded **by current insurers** who will have to pay the levy to support it. It is assumed here that the total cost of the levy will equal the total cost of the scheme payment fund.
81. This **levy** is likely to be based upon market share of the current EL insurance market based on Gross Written Premium (GWP). This means that the costs of paying people who have occupational mesothelioma and who can't trace an employer/ insurance policy would be met by the current insurance industry, rather than by the insurers or employers who held the EL insurance policy at the time of negligent exposure. DWP commissioned work to investigate the feasibility of allocating the levy based on historic market share but this showed that there was likely to be insufficient data to be able to do this in the short term without significant risk of legal challenge. Looking at each year across the IA period, at a 75% tariff rate, the fund would be on average 2.16% of EL GWP.
82. There is a possibility that linking the levy to GWP could drive changes in market behaviour. For example if it was linked to EL insurance GWP then this might encourage insurers to stop offering this insurance to avoid paying the levy. However as EL insurance is a legal requirement for employers, it is assumed this is unlikely.
83. Insurers might pass the costs of the levy onto their **EL customers** via increased premiums. However the insurance market is competitive and so it would be unlikely for any one insurer to move from their default pricing structure to put up prices. A recent Data Monitor report investigating 'UK Employers' Liability Insurance 2011' (Dec 2011) noted that strong competition was suppressing premium growth though 'profitability' was increasing. However the alternative is for insurers to absorb the costs of the scheme themselves and from a purely financial perspective they may be unwilling/ unable to increase their costs and potentially reduce their profit margins to pay the levy.
84. Even if insurers did pass the costs onto employers the actual impact on employer customers is likely to be relatively low. Again it is assumed here that the cost of the increase in premiums would be equal to the cost of the levy and the cost of the scheme payment fund. For example if it is assumed for the purposes of analysis that insurers would only pass on the costs of the fund to customers this would increase EL insurance premiums by on average 2.16% (as EL GWP is the total of premiums paid on EL insurance).
85. Under this scenario, as EL insurance costs tend to be linked to payroll this means larger businesses with more staff would pay a higher proportion of the costs of the scheme. If this were to happen it would also fall onto current employers across industries meaning that employers in industries with no link to asbestos or who weren't in existence at the time of exposure would also be paying the levy to compensate people they did not expose to asbestos.
86. It has been assumed so far that insurers would pass the levy directly onto EL customers but it is possible that they would pass it onto **non-EL customers**, including individuals. If the costs of the levy came from general insurance, this

would mean a maximum of 0.07% on general insurance premiums (using the assumptions above).

#### **Additionally traced cases**

87. **Some EL insurance companies** will have to pay full civil compensation and legal fees on **additional cases** due to improvements in tracing. For all 124 successful cases this compensation would total £19.8 million. It is possible that insurance companies would pass these costs onto customers via increased prices, staff due to reductions in pay or benefits or even lead to redundancies (though industry experts consider this very unlikely). However there is no way to estimate the likelihood or extent or costs of these indirect possibilities and so these have not been included in the analysis.

#### **Legal costs**

88. The **legal** costs to insurers of the scheme are estimated at £21.57 million, and of additional cases £3.54 million, including both successful and unsuccessful cases.

89. As outlined above there would be legal costs to insurers (defendants) as well as to individuals. Unlike the analysis for individuals listed above, insurers do not pay for unsuccessful trace attempts under option 1 and so there are no savings to offset the additional legal costs of the scheme and of additional cases.

90. However the costs to one section of the business community (insurers) and to individuals do actually benefit another section of the business community. **Personal injury solicitors** will benefit by receiving legal fees on cases that receive scheme payments, additionally traced cases and legal support to the administration of the scheme. This is estimated to total £27.6 million over the IA period. In addition to these costs, there is a cost to the economy of additional court activity, which is included in paragraph 96 and Table 5 below.

91. It is worth noting though that as part of the wider bundle of mesothelioma measures that the DWP and MoJ are finalising, the overall costs of a legal case is likely to reduce and so this would be offset to some extent (see Annex B).

#### **Admin costs**

92. **Insurers** will also bear the **administration** costs of the scheme. These are estimated at £1.4 million to set up the scheme and £472k per year to administer the scheme. This assumes that the scheme is administered by the insurance industry. Given the size of the scheme it is possible that some of the administrative costs could be offset by management of the timings of payments to maximise bank interest. These admin costs also include some legal fees totalling £1.5million. In addition to these costs, there is a cost to the economy of additional court activity, which is included in paragraph 96 and Table 5 below.

93. There would also be some costs to insurers associated with membership of ELTO as this would become compulsory under the proposed legislation. In the first 6 months of ELTO's existence, 142 insurers joined ELTO and so this would not cost them or any newer members anything. ELTO report that members make up 98% of the current EL market based upon EL GWP, but it is unclear how many insurance companies are not members. Government does not have information on how much membership costs and some of the administrative processes involved could fall under the scope of MoJ legislation on streamlined processes. Therefore no attempt has been made to cost this and it is assumed that it would be small enough to be considered insignificant in the overall figures.

94. There are also likely to be some costs associated with **appeals** against decisions made by the scheme. However these are mitigated by the creation of a Technical Committee which will review decisions. The details of this committee and any appeal system against their decisions are not yet known and there is no information on the number of cases that might reach appeal. Therefore the cost of this possibility has not been assessed in the IA.

#### **Non-monetary benefits**

95. These above explicit financial costs to the insurance industry are offset to some extent by the non-monetised benefit in terms of reputation. There are positive **reputational benefits** of proposing, setting up and administering this scheme. Plus the avoidance of the negative effect on the whole industry of any insurers who avoid paying out on policies to people with mesothelioma.

**Table 4 Costs and benefits to business (m)**

(m)	Who	What	Costs	Benefits	Net
Business	Insurers – scheme	Costs of scheme	£ 324.83	£ -	-£ 348
		Legal costs	£ 21.57	£ -	
		Admin (set up)	£ 1.44	£ -	
		Admin (running)	£ 4.72	£ -	
	Insurers - additional cases	Recovered compensation	£ 19.83	£ -	
		Costs of recovery	£ 3.54	£ -	
	Lawyers	Set up of scheme	£ -	£ 0.85	
		Ongoing advice to Technical Committee	£ -	£ 0.58	
		Case costs - scheme and additional	£ -	£ 26.19	

- **Economy**

96. The costs to the economy combine the administration and legal costs outlined above, including the costs of recovery of mesothelioma related government benefits. Due to the streamlined legal process they are lower than the estimates in the 2010 IA.

**Table 5 - Costs and benefits to the economy**

(m)	Who	What	Costs	Benefits	Net
Economy	Scheme	Legal costs (net)	£ 23.47	£ -	-£ 33.78
		Admin (set up)	£ 1.44	£ -	
		Admin (running)	£ 4.72	£ -	
		Recovery of compensation	£ 1.37	£ -	
	additional cases	Recovery of compensation	£ 0.06	£ -	
		Legal costs	£ 3.54	£ 0.82 (net)	

#### **Summary**

97. The key beneficiaries of the scheme are individuals who have been diagnosed with mesothelioma and who will receive compensation or a scheme payment. The legal costs for individuals are low because some fees are paid to the other side and they also make savings as they don't have to bear the costs of an unsuccessful trace attempt.

98. The Exchequer also benefits under this option compared to option 1, as if more people are compensated under civil compensation and the proposed scheme, it increases the amount of benefit government can recover. This is offset slightly by the costs of recovery.

99. The main costs of the scheme fall on the insurance industry. They pay the full scheme payment fund under this option and admin and legal costs. Some insurers would also have additional cases to pay against insurance policies they held at the time of the individuals' exposure to asbestos.

100. There are some benefits to the business community however in the form of additional legal fees that personal injury solicitors receive (though in the wider picture these would be offset to some extent by overall savings in the costs of a mesothelioma legal case).

101. Finally the costs to the economy are made up of administration of the scheme, legal costs and the cost of recovering government social security benefits and lump sum awards.

102. Table 6 summaries the costs and benefits of this option.

**Table 6: Costs and Benefits of Option 2**

(m)	Who	What	Costs	Benefits	Net
Individuals	Scheme	Compensation		£275.49	£291.97
		Legal costs (net)	£1.91		
	Additional cases	Compensation		£17.57	
		Legal costs (net)		£0.82	
Government	Scheme	Recovered compensation		£49.33	£50.16
		Costs of recovery	£1.37		
	Additional cases	Recovered compensation		£2.26	
		Costs of recovery	£0.06		
Economy	Scheme	Legal costs (net)	£23.47		£-33.8
		Admin (set up)	£1.44		
		Admin (running)	£4.72		
		Recovery of compensation	£1.37		
	Additional cases	Recovery of compensation	£0.06		
		Legal costs	£3.54	£0.82 (net)	
Business	Insurers – scheme	Costs of scheme	£324.83		£-348.3
		Legal costs	£21.57		
		Admin (set up)	£1.44		
		Admin (running)	£4.72		
	Insurers - additional cases	Compensation	£19.83		
		Legal costs	£3.54		
	Lawyers	Set up of scheme		£0.85	
		Ongoing advice to Technical Committee		£0.58	
		Case costs - scheme and additional		£26.19	

Note – a minus sign shows a net cost

### Option 2 - Methodology

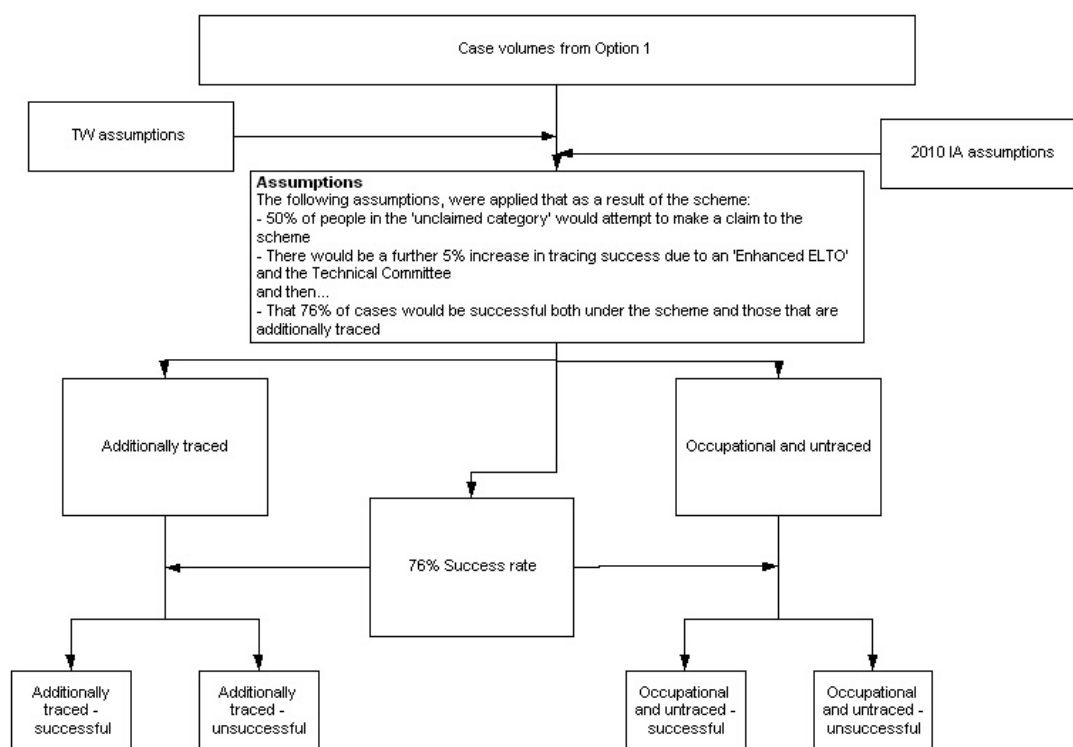
- **Volumes of cases in the 'occupational and untraced' category**

103. As noted in option 1, the 'occupational and untraced' category of claims is equivalent to the people who are eligible for the scheme. However it would be inaccurate to simply take the category from option 1, as implementing the

scheme will in itself create changes. After detailed discussion with experts from the insurance industry, including the ABI, it is assumed that:

- 50% of people who currently don't make a claim will be motivated by the creation of the scheme to make an attempt to trace an insurance policy but be unable to do so, putting them into the 'occupational and untraced' category<sup>3</sup>.
- An enhanced ELTO and the Technical Committee will lead to additional improvements in success levels on tracing, leading to an additional increase of 5% in tracing success. This reduces the size of the 'occupational and untraced' category slightly.

**Figure 4 – calculating numbers of cases in the successful 'occupational and untraced' and 'additionally traced' categories**



104. These changes were applied as fixed percentages, treating each year independently, to the volumes already predicted in option 1, in the order given above.

105. This results in a best estimate of 3600 people being eligible for the scheme. This is made up of 3100 from 2014 to 2023, plus 460 would be eligible from the July 2012 to end of 2013 period.

106. To ensure a clear understanding of the implications of making these assumptions sensitivity testing was conducted. Table 7 shows sensitivity testing on the total number of people who would be eligible.

<sup>3</sup> This assumption was used in the ABI commissioned Towers Watson 2011 report

**Table 7 – Sensitivity testing of the assumptions of people who would be eligible for the scheme taking into account changes in claim behaviour caused by the scheme and further improvements in tracing**

New cases previously unclaimed	Improvements in tracing		
	+2.5%	+5%	+10%
40%	3502	3412	3233
50%	3660	<b>3566</b>	3378
60%	3818	3720	3524

107. This also impacts on the number of civil cases that can be brought directly against the insurer who held the policy at the time the person was exposed to asbestos. It is also estimated that a further 163 cases would be additionally traced over the period 2014 to 2023 (in addition to those traced under option 1) and could attempt to make a claim for civil compensation (which may or may not be successful – see below). This group is referred to as ‘additionally traced’ cases in the methods below.

**Table 8 – Sensitivity testing of the assumptions of additionally traced cases taking into account changes in claim behaviour caused by the scheme and further improvements in tracing**

New cases previously unclaimed	Improvements in tracing		
	+2.5%	+5%	+10%
40%	85	156	312
50%	82	<b>163</b>	327
60%	78	170	341

- **Case success**

108. Compensation is only awarded in successful cases, therefore success rates will have a big impact on the estimates of the costs and benefits of the scheme and of the additionally traced cases.

109. It is not possible to know what the success rate will be either for cases under the scheme or for additionally traced cases. This is because:

- the scheme is entirely new and there is no precedent to compare against.
- it is also likely that the existence of the scheme will in itself change people’s behaviour and the patterns of claims will change. For example some people are likely to make claims to the Scheme who wouldn’t make a civil claim under the current system.
- the scheme also contains a Technical Committee which will make decisions about whether compensation should be awarded. As this has not been created there is no way to predict how they will interpret cases and make awards.
- the Sienkiewicz case is likely to increase the likelihood of success on the kind of cases that currently go through the system as it lowers the burden of



evidence. However this is also likely to encourage people to apply for scheme payments who previously thought their case was too weak to be successful.

110. This means that there are arguments that the success rate could go up, but also that it could go down. Therefore after detailed discussion with industry experts it is assumed that the 76% success rate used in the 2010 consultation IA (based on civil case success rates), is a reasonable assumption of success rates both for scheme and additionally traced cases.

111. This percentage was applied to the volumes of cases already predicted as eligible for the scheme (the ‘occupational and untraced’ category) and to ‘additionally traced’ cases, each year across the period. This resulted in:

- A total of 2710 successful scheme cases – 2357 successful cases during the 2014 to 2023 period, plus 353 from Jul 2012 to end of 2013.
- 124 successful additionally traced cases between 2014 and 2023.

112. As this success rate is uncertain, sensitivity testing was also conducted on the success rates of 66% and 86% and the results are shown in table 9.

**Table 9: Sensitivity testing on success rates for scheme and additionally traced cases**

Rate	Scheme cases 2014 to 2023		Scheme cases Jul 2012 to end 2023		Additional traced cases	
	Successful	Unsuccessful	Successful	Unsuccessful	Successful	Unsuccessful
66%	2047	1055	2354	1212	108	56
76%	<b>2357</b>	<b>744</b>	<b>2709</b>	<b>855</b>	<b>124</b>	<b>39</b>
86%	2668	434	3067	499	140	23

• **Compensation – scheme cases**

113. As noted earlier, the level of the tariff that individuals who are successful in an application for payment from the scheme will receive has not yet been decided. The policy aims to set a level of tariff that is a proportion of the average civil compensation they would receive if they could trace an insurer/ employer. It has been agreed that this will not be 100% of average civil compensation as there needs to be an incentive for individuals to co-operate with attempts to trace an employer/ insurance policy to make a civil case against. Therefore this IA will look at a range of proportions of average civil compensation but use 75% as a ‘best estimate’. This is an analytical assumption and not an indication of the direction policy will ultimately take. Table 10 shows the scheme payments an individual would receive and the total scheme payment costs for eligible cases (Jul 2012 to end 2023). 100% of scheme payments are included only to provide context.

114. These tariff proportions were applied to the levels of average civil compensation per year. This was then multiplied by the number of successful cases predicted under the scheme for each year. This produced the total cost of payments under the scheme. Again figures have been brought to 2012 value.

**Table 10 – Scheme payment options and total fund over the IA period**

% of average scheme compensation	Average Scheme payments per individual	Total Scheme payments for successful scheme cases
100%	£160k	N/A
80%	£128k	£346k

<b>75%</b>	<b>£120k</b>	£325k
70%	£112k	<b>£303k</b>

115. Next sensitivity testing was conducted to ensure a clear understanding of the implications of an unpredictable success rate and of the policy decision on the tariff rate. If the tariff was 80% and there were an 86% chance of success then the fund would be £392 million. If it was 70% and the success rate was 66% then it would be £263 million.

**Table 11 – Sensitivity testing of the success rates and tariff levels**

Tariff	Success rate		
	66%	76%	86%
80%	£301m	£346m	£392m
75%	£282m	£325m	£368m
70%	£263m	£303m	£343m

116. When the government benefits individuals have already received is taken into account they receive £275.49 million.

- **Compensation – additionally traced cases**

117. It is assumed that additionally traced cases will receive the average civil compensation for successful cases in 2008 as reported by the Asbestos Working Party 2009 report based on a survey of cases. This was £146k. Applying inflation this puts the average compensation in 2012 as £160k.

118. Next the average civil compensation for each year (2012 value) was multiplied by the forecasts of the number of successful additionally traced cases. This produced an overall cost of civil compensation for additionally traced, successful cases of £19.8 million. When government benefits and lump sum payments are taken from this, individuals get £17.57 from this scheme.

- **Legal fees**

119. All legal fees are based on an estimate of the legal costs of the new streamlined legal system provided by ABI solicitors. Depending on the outcome of the case, proportions of the costs could be borne by the other side. To help us to clearly understand the costs to either side the quote shows both where the work was done and who actually would pay the bill. However for all further analysis on legal costs the figures used are those of who actually pays the bill.

120. Table 12 outlines the estimated costs of an average case to the individuals with mesothelioma and the defendant (here counted as either the scheme or the additionally traced employer or insurance company).

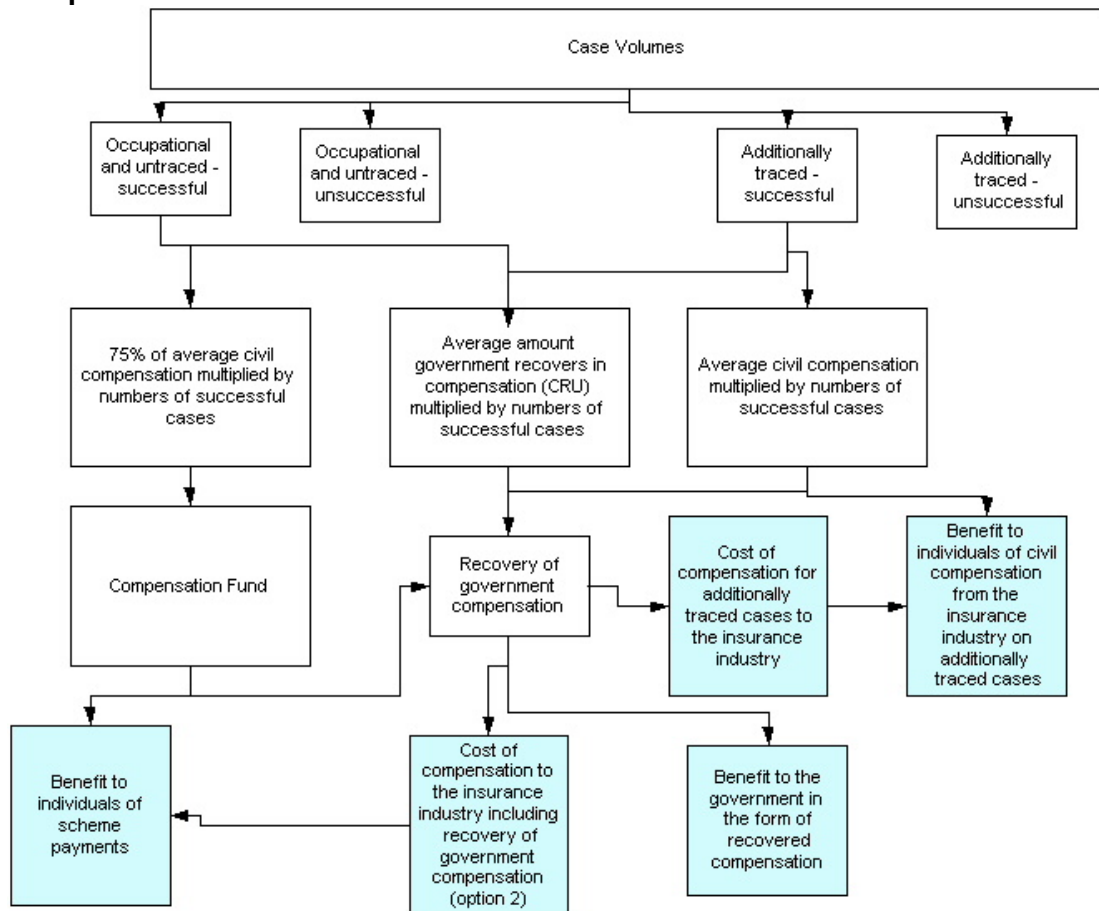
121. These proportions were applied to the number of successful and unsuccessful cases in each of the categories by year, keeping the split between defendant and claimant.

122. For defendant costs this was simply a matter of multiplying the number of successful and unsuccessful cases each year for scheme and additional cases by the relevant costs.

123. For individuals the same process for the costs was followed. However for individuals there was also a saving compared to the situation outlined in option 1. This is because they no longer have to bear the full costs of an unsuccessful

trace attempt. Instead although they go through the trace attempt, the other side pays part of their costs. For some types of cases this means that paying the legal costs under option 2 is cheaper for an individual than the costs of tracing would be. For example according to the quote if a person is successful in making a claim for payment under the scheme they pay £7000 in legal fees, and the defendant (the scheme) pays £6400, making the total cost in legal fees of paying the legal fees of a successful claim to the scheme an estimate £13,400. However if the scheme had not been set up the individual would have had to pay £9,000 for an unsuccessful tracing attempt. Therefore the existence of the scheme actually saves them £2,000 in legal fees because part of the costs of a successful case is paid by the other side.

**Figure 5 – Calculating the costs of payments under the Scheme and civil compensation for additional cases**

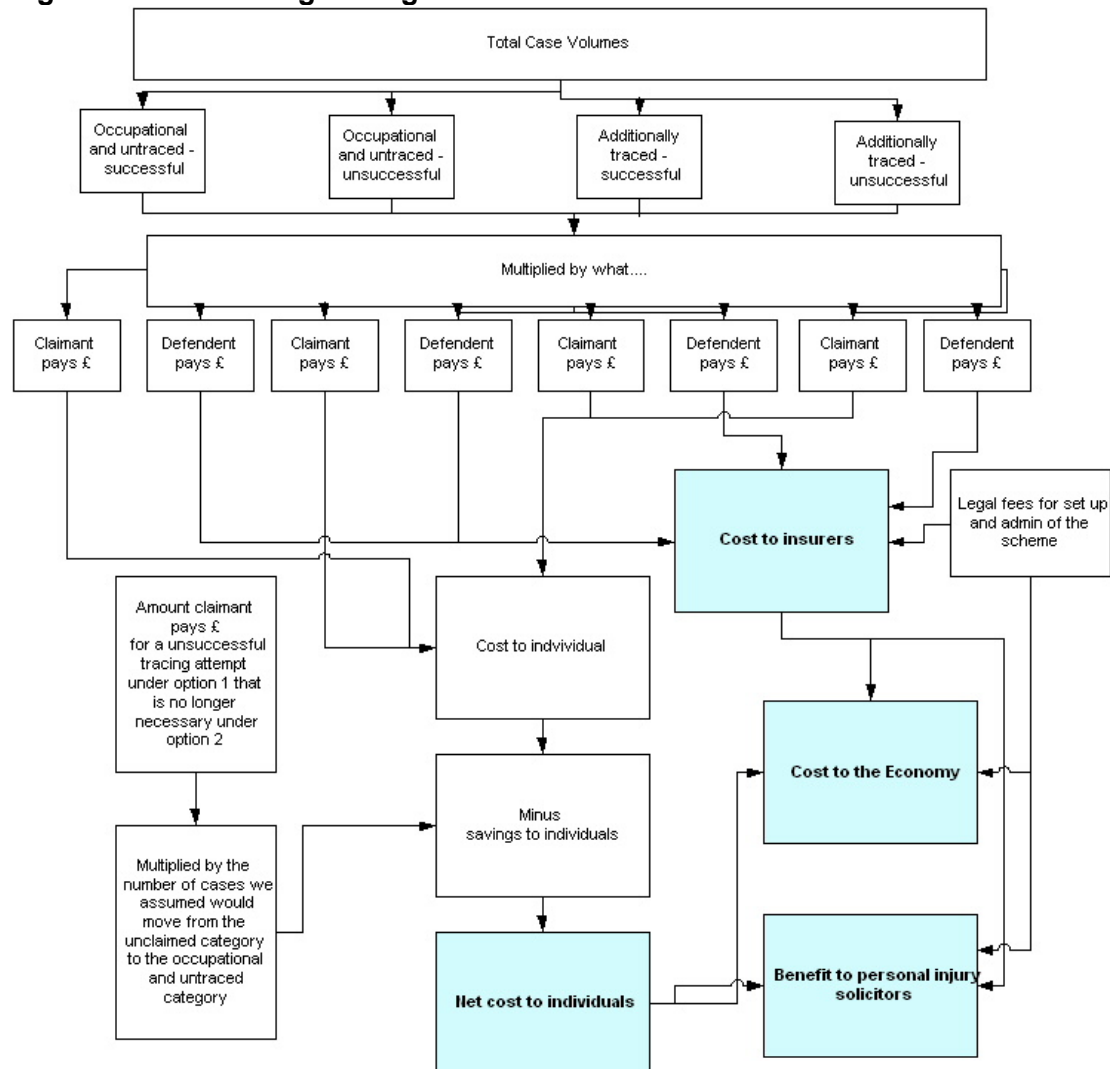


124. However this assumes that all the people who make an application to the scheme or additionally trace an employer, would have made an attempt at tracing under option 1. For most this is the case as they are the 'occupational and untraced' category in option 1. However in option 2, it is also assumed that the implementation of the scheme would encourage 50% of those who wouldn't make a claim attempt under option 1, to apply under the scheme. Therefore the numbers in this category were multiplied by the cost of an unsuccessful trace and took this away from the total savings on unsuccessful traces already outlined above.

**Table 12 - Cost of a legal case for scheme compensation in occupational mesothelioma cases under the new streamlined system**

LEGAL COSTS IN 2014	Total Costs	Claimant (individual)	Defendant (insurer)
<b>Option 1</b>			
Unsuccessful trace attempt	£ 9,000	£ 9,000	
<b>Option 2</b>			
<b>Successful</b>			
Untraced and so compensated by scheme	£ 13,400	£ 7,000	£ 6,400
Traced insurance policy and received civil compensation	£ 25,500	£ -	£ 25,500
<b>Unsuccessful</b>			
Untraced but also unsuccessful in applying to the scheme	£ 13,400	£ 9,000	£ 4,400
Traced insurance policy but does not receive civil compensation	£ 24,500	£ 17,000	£ 7,500

**Figure 6 – Calculating the legal costs**



- **Recovery of government mesothelioma related benefits and compensation**

125. As already noted, government pays a range of social security benefits and lump sum awards to people who contract mesothelioma. If they receive compensation from a civil case then the costs of these social security benefits and lump sum awards are recovered. For details please see <http://www.dwp.gov.uk/publications/specialist-guides/technical-guidance/z1-recovery-of-benefits-and/1.-the-law/>

126. The CRU is responsible for the recovery of benefits. Analysis was conducted on data on recoveries from claims by people with mesothelioma between 1<sup>st</sup> Jan 2007 and 29<sup>th</sup> Feb 2012 (CRU). This showed every claim individually and so the anonymous individual reference number was used to total the amounts recovered from each individual before conducting any analysis. The cases were filtered to look at the amounts recovered by year from settled, occupational cases only, to calculate the average recovered compensation levels each year.

127. This showed that the average government compensation levels recovered from settled cases only has varied each year and there is no obvious trend. Therefore the 2011 figure of £17,697 is assumed to be the best estimate. For sensitivity testing the 2010 average of £19,000 was used as the highest estimate and the 2012 average (only based on 10 cases) of £12,606 as the lowest estimate. Inflation was applied to each to bring them to 2012 levels.

128. Likewise for scheme cases the average government compensation recovered was multiplied by the number of successful payments estimated from the scheme. The total of these figures is £49.3 million.

**Table 13 – Total amounts of recoverable benefits and lump sums**

m	Additionally traced cases	Payments from scheme (2014 to 2023)	Total payments from scheme (July 2012 to end 2023)
High estimate	£2.47	£46.84	£53.8
<b>Best estimate</b>	<b>£2.26</b>	<b>£42.91</b>	<b>£49.33</b>
Low estimate	£1.56	£29.72	£43.16

129. For additionally traced cases the recovery of government social security benefits and lump sum awards is calculated by multiplying the average recovered compensation for each year by the number of additionally traced cases under option 2 (excluding cases in option 1) for that year. This gives the total amount of government recoveries for each year. The total of these from 2014 to 2023 is £2.26 million.

130. Recoveries provide a benefit to the Exchequer in the amounts that are recovered. However there is also a cost of achieving this recovery which is a cost to the government and to the economy.

131. Estimating this requires the cost per case of recoveries. The CRU has a target of 3% of amounts recovered and CRU report reaching 2.78%.

132. There are 124 additionally traced cases between 2014 to 2023, which would cost £64k. If the 2,710 cases which would successfully receive scheme payments were included this would add £1.37 million.

133. If government recovers social security benefits and lump sum awards, this would mean the full costs of the fund would be borne by the insurance industry.

- **Levy**

134. Gross written premium for EL insurance for 2014 is £1,309 million. This is the total amount received in premiums on EL insurance. It is assumed here that the total levy paid by insurers will equal the payment fund.

135. To estimate how much the costs of the scheme levy with a 75% tariff would add to GWP and so to premiums if the costs were passed on, the increase in the levy has been estimated as a percentage of current GWP.

136. This was repeated firstly for an 80% and 70% tariff and then the same method was applied to the GWP for General Insurance.

**Table 14 – impact on premiums of different tariff levels**

Tariff level	EL insurance		General insurance	
	Average	Max	Average	Max
80%	2.30%	2.34%	0.07%	0.07%
75%	2.16%	2.30%	0.07%	0.07%
70%	2.01%	2.05%	0.06%	0.07%

- **Administration costs**

137. Administration costs for the scheme are based on a quote from the ABI, which is based upon experience of the Motor Insurance Bureau. This assumes that the scheme would be run by the industry. If this didn't happen the costs could increase. It is assumed that the costs will remain stable over the IA period and that case volumes won't impact on them.

138. Given the size of the fund, it is likely that management of payments from the scheme could result in interest being generated which could offset the administrative costs of the scheme. However as little is known about the timing of payments or receipt of the levy no attempt has been made to calculate this.

- **Presentation of Costs**

139. In the previous tables the costs and benefits have been listed by main affected group – business, individuals and government. To calculate the overall costs to the main affected groups, all the costs were added up by year. An average was then taken of the annual costs per year covering the 10 year period of the IA (2014 to 2023). The period July 2012 to end 2013 was not included in this average to allow the average to demonstrate the normal running of the scheme and impacts of the legislation.

140. Discounting of 3.5% was then applied to each year.

141. This was repeated for the benefits, resulting in a list of costs and benefits for each year. The costs were taken from the benefits to produce a net discounted value per year.

142. The Total Net Present Value figures include all costs and so cover the discounted costs per year over the 10 year IA period, including the set up and costs of the scheme cases in Jul 2012 to end 2013.

143. This was then repeated only including costs and benefits to business to produce the Business Net Present Value.
144. The above NPV process was repeated to calculate the NPV for business. The benefits to personal injury solicitors were taken out to ensure the regulatory costs to business, which fall on the insurance industry, are not underestimated.
145. The total of the discounted net costs for insurers (which includes the costs of the period Jul 2012 to end 2013) and the set up costs was then put into the format of the equivalent annual net cost to business (EANCB).

## Annex A – Summary table of forecasts

Notes - all prices are 2012 values and not discounted. The Jul 2012 to end 2013 period is only for scheme cases and covers legacy cases that may be eligible for the scheme. 2014 is the date the scheme is expected to start.

Deaths from mesothelioma	Jul 12-2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Average 2014-2023	Total 2014-2023	Total Jul 12- 2023
<b>HSE forecast</b>														
- men	2,938	1,979	1,988	1,990	1,988	1,978	1,966	1,945	1,916	1,881	1,841	1,947	19,472	22,410
- women	545	375	383	393	399	406	415	421	428	435	440	410	4,095	4,640
all	3,482	2,354	2,371	2,383	2,387	2,384	2,381	2,366	2,344	2,316	2,281	2,357	23,567	27,049
<b>ABI forecast</b>														
- men	2,906	1,948	1,950	1,946	1,936	1,921	1,898	1,868	1,829	1,783	1,731	1,881	18,810	21,716
- women	642	445	454	446	451	456	459	462	463	463	462	456	4,561	5,203
all	3,547	2,393	2,404	2,392	2,387	2,377	2,357	2,330	2,292	2,246	2,193	2,337	23,371	26,918
<b>Average forecast</b>														
- men	2,922	1,964	1,969	1,968	1,962	1,950	1,932	1,907	1,873	1,832	1,786	1,914	19,141	22,063
- women	593	410	419	420	425	431	437	442	446	449	451	433	4,328	4,921
all	3,515	2,374	2,388	2,388	2,387	2,381	2,369	2,348	2,318	2,281	2,237	2,347	23,469	26,984
<b>% Difference</b>														
- % difference HSE Forecast from Average Forecast	0.93%	0.83%	0.70%	0.19%	0.00%	-0.15%	-0.50%	-0.76%	-1.11%	-1.51%	-1.93%	-0.42%	-0.42%	-0.24%
- % difference ABI model from Average Forecast	-0.92%	-0.81%	-0.69%	-0.19%	0.00%	0.15%	0.51%	0.77%	1.13%	1.56%	2.01%	0.42%	0.42%	0.24%

Mesothelioma - volumes of claims for non-government compensation	Jul 12-2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Average 2014-2023	Total 2014-2023	Total Jul 12- 2023
<b>Occupational and untraced</b>														
Option 1	383	259	260	260	260	260	259	256	253	249	244	256	2561	2944
Option 2 (option 1 + Scheme and Legislation)	464	313	315	315	315	315	313	310	307	302	296	310	3102	3566
Option 2 - successful cases	353	238	240	240	240	239	238	236	233	229	225	236	2357	2710



<b>Additionally traced</b>														
Option 1 (including impact of Sienkiewicz and ELTO)	-	29	29	29	29	29	29	28	28	28	27	28	285	-
Option 2 (Scheme and Legislation, minus option 1)	-	16	17	17	17	17	16	16	16	16	16	16	163	-
Option 2 - successful cases	-	13	13	13	13	13	13	12	12	12	12	12	124	-

<b>Compensation - individual receives (000s)</b>	<b>Jul 12-2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Average 2014-2023</b>
Average individual civil compensation	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160	£ 160
<b>Tariff options - % of average civil compensation</b>												
80%	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128	£ 128
<b>75%</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>	<b>£ 120</b>
70%	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112	£ 112

\*assumes estates cases are paid at a rate equivalent to the average compensation 2014 to 2016

<b>Compensation - total cost of fund (successful cases only) (000,000s)</b>	<b>Jul 12-2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Average 2014-2023</b>	<b>Total 2014-2023</b>	<b>Total Jul 12- 2023</b>
<b>Tariff options - % of average civil compensation</b>														
80%	£ 45.09	£ 30.46	£ 30.64	£ 30.64	£ 30.64	£ 30.56	£ 30.42	£ 30.16	£ 29.78	£ 29.32	£ 28.76	£ 30.14	£ 301.39	£ 346.48
<b>75%</b>	<b>£ 42.27</b>	<b>£ 28.56</b>	<b>£ 28.73</b>	<b>£ 28.73</b>	<b>£ 28.73</b>	<b>£ 28.65</b>	<b>£ 28.52</b>	<b>£ 28.27</b>	<b>£ 27.92</b>	<b>£ 27.48</b>	<b>£ 26.96</b>	<b>£ 28.26</b>	<b>£ 282.55</b>	<b>£ 324.83</b>
70%	£ 39.45	£ 26.65	£ 26.81	£ 26.81	£ 26.81	£ 26.74	£ 26.62	£ 26.39	£ 26.06	£ 25.65	£ 25.16	£ 26.37	£ 263.72	£ 303.17

<b>Recovered government benefits (successful cases only) (000,000s)</b>	<b>Jul 12-2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Average 2014-2023</b>	<b>Total 2014-2023</b>	<b>Total Jul 12- 2023</b>
Additionally traced cases	£ -	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.2	£ 0.23	£ 2.26	£ 2.26
Scheme cases	£ 6.4	£ 4.3	£ 4.4	£ 4.4	£ 4.4	£ 4.4	£ 4.3	£ 4.3	£ 4.2	£ 4.2	£ 4.1	£ 4.29	£ 42.91	£ 49.33

<b>Cost of recovery of government benefits</b>	<b>Jul 12-2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Average 2014-2023</b>	<b>Total 2014-2023</b>	<b>Total Jul 12- 2023</b>
Additionally traced cases	£ -	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.01	£ 0.06	£ 0.06

Scheme cases	£ 0.18	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.11	£ 0.12	£ 1.19	£ 1.37
--------------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------	--------

Compensation - Cost of fund if no recovery of government benefits (successful cases only) (000,000s)	Jul 12-2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Average 2014-2023	Total 2014-2023	Total Jul 12- 2023
<b>Tariff options - % of average civil compensation</b>														
80%	£ 38.7	£ 26.1	£ 26.3	£ 26.3	£ 26.3	£ 26.2	£ 26.1	£ 25.9	£ 25.5	£ 25.1	£ 24.7	£ 26	£ 258	£ 297
<b>75%</b>	£ 35.9	£ 24.2	£ 24.4	£ 24.4	£ 24.4	£ 24.3	£ 24.2	£ 24.0	£ 23.7	£ 23.3	£ 22.9	<b>£ 24</b>	<b>£ 240</b>	<b>£ 275</b>
70%	£ 33.0	£ 22.3	£ 22.4	£ 22.5	£ 22.4	£ 22.4	£ 22.3	£ 22.1	£ 21.8	£ 21.5	£ 21.1	£ 22	£ 221	£ 254

Legal fees - Total Scheme Costs (000,000s)	Jul 12-2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Average 2014-2023	Total 2014-2023	Total Jul 12- 2023
<b>a. Successful</b>														
- claimant	£ 2.51	£ 1.67	£ 1.72	£ 1.72	£ 1.72	£ 1.72	£ 1.71	£ 1.69	£ 1.67	£ 1.65	£ 1.61	£ 1.69	£ 16.87	£ 19.38
- defendant	£ 2.29	£ 1.52	£ 1.57	£ 1.57	£ 1.57	£ 1.57	£ 1.56	£ 1.55	£ 1.53	£ 1.50	£ 1.48	£ 1.54	£ 15.43	£ 17.72
<b>- Savings (of an unsuccessful trace attempt)</b>														
- Claimant - cost of unsuccessful tracing attempt (saving)	£ 2.26	£ 1.50	£ 1.55	£ 1.55	£ 1.55	£ 1.55	£ 1.54	£ 1.53	£ 1.51	£ 1.48	£ 1.46	£ 1.52	£ 15.21	£ 17.48
- Defendant - cost of unsuccessful tracing attempt (saving)	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
<b>- Net Cost</b>														
Claimant	£ 0.25	£ 0.16	£ 0.17	£ 0.17	£ 0.17	£ 0.17	£ 0.17	£ 0.17	£ 0.16	£ 0.16	£ 0.16	£ 0.17	£ 1.66	£ 1.91
Defendant	£ 2.29	£ 1.52	£ 1.57	£ 1.57	£ 1.57	£ 1.57	£ 1.56	£ 1.55	£ 1.53	£ 1.50	£ 1.48	£ 1.54	£ 15.43	£ 17.72
<b>b. Unsuccessful</b>														
- claimant	£ 1.02	£ 0.68	£ 0.70	£ 0.70	£ 0.70	£ 0.70	£ 0.69	£ 0.69	£ 0.68	£ 0.67	£ 0.66	£ 0.69	£ 6.85	£ 7.87
- defendant	£ 0.50	£ 0.33	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.33	£ 0.33	£ 0.32	£ 0.33	£ 3.35	£ 3.85
<b>- Savings (of an unsuccessful trace attempt)</b>														
- Claimant - cost of unsuccessful tracing attempt (saving)	£ 1.02	£ 0.68	£ 0.70	£ 0.70	£ 0.70	£ 0.70	£ 0.69	£ 0.69	£ 0.68	£ 0.67	£ 0.66	£ 0.69	£ 6.85	£ 7.87
- Defendant - cost of unsuccessful tracing attempt (saving)	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
<b>- Net Cost</b>														

Claimant	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
Defendant	£ 0.50	£ 0.33	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.34	£ 0.33	£ 0.33	£ 0.32	£ 0.33	£ 3.35

<b>c. Net total</b>														
Claimant	£ 0.25	£ 0.16	£ 0.17	£ 0.17	£ 0.17	£ 0.17	£ 0.17	£ 0.17	£ 0.16	£ 0.16	£ 0.16	£ 0.17	£ 1.66	£ 1.91
Defendant	£ 2.79	£ 1.86	£ 1.91	£ 1.91	£ 1.91	£ 1.91	£ 1.90	£ 1.88	£ 1.86	£ 1.83	£ 1.80	£ 1.88	£ 18.78	£ 21.57

Legal fees - Total Additional Case Costs (000,000s)	Jul 12-2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Average 2014-2023	Total 2014-2023	Total Jul 12- 2023
<b>a. Successful</b>														
- claimant	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
- defendant	£ -	£ 0.32	£ 0.33	£ 0.33	£ 0.33	£ 0.33	£ 0.33	£ 0.32	£ 0.32	£ 0.32	£ 0.31	£ 0.32	£ 3.24	£ 3.24
<b>- Savings (of an unsuccessful trace attempt)</b>														
- Claimant - cost of unsuccessful tracing attempt (saving)	£ -	£ 0.11	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.12	£ 0.11	£ 0.11	£ 0.11	£ 0.11	£ 0.11	£ 1.14	£ 1.14
- Defendant - cost of unsuccessful tracing attempt (saving)	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	-£ 0.11	-£ 1.14	-£ 1.14
<b>- Net Cost</b>														
Claimant	£ -	-£ 0.11	-£ 0.12	-£ 0.12	-£ 0.12	-£ 0.12	-£ 0.12	-£ 0.11	-£ 0.11	-£ 0.11	-£ 0.11	-£ 0.11	-£ 1.14	-£ 1.14
Defendant	£ -	£ 0.32	£ 0.33	£ 0.33	£ 0.33	£ 0.33	£ 0.33	£ 0.32	£ 0.32	£ 0.32	£ 0.31	£ 0.44	£ 4.38	£ 3.24
<b>b. Unsuccessful</b>														
- claimant	£ -	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.07	£ 0.68	£ 0.68
- defendant	£ -	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.30	£ 0.30
<b>- Savings (of an unsuccessful trace attempt)</b>														
- Claimant - cost of unsuccessful tracing attempt (saving)	£ -	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.03	£ 0.04	£ 0.36	£ 0.36
- Defendant - cost of unsuccessful tracing attempt (saving)	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -	£ -
<b>- Net Cost</b>														
Claimant	£ -	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.32	£ 0.32
Defendant	£ -	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.30	£ 0.30

<b>c. Net total</b>														
Claimant	£ -	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.08	-£ 0.82	-£ 0.82
Defendant	£ -	£ 0.35	£ 0.36	£ 0.36	£ 0.36	£ 0.36	£ 0.36	£ 0.35	£ 0.35	£ 0.34	£ 0.34	£ 0.47	£ 4.68	£ 3.54

Admin of scheme (000,000s)	Set up	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Average 2014-2023	Total 2014-2023	Total (incl set up)
Scheme	£ 1.38	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 0.44	£ 4.41	£ 5.79
Technical Committee	£ 0.06	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.03	£ 0.31	£ 0.37
- Of which are legal fees....	£ 0.85	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.06	£ 0.58	£ 1.43

## Annex B – Legal savings of streamlined legal processes

To illustrate the kind of costs of the wider package of mesothelioma measures here is a very broad estimate of the savings on civil cases of the new streamlined legal processes.

Using the methodology already outlined above to get the volumes of mesothelioma cases overall and assuming that:

- The proportion of cases that successfully find an employer/ insurer and receive civil compensation remains at 62% during the period
- The cost of a civil case without the streamlined legal processes is £32k, compared to £25.5k with streamlining and the defendant pays this (based on a quote from ABI solicitors).

It is estimated the saving on one successful and one unsuccessful case with and without the streamlined legal processes. This produced a saving to the defendant of £6500 per case on a successful case (individual received civil compensation) and £5000 per case on unsuccessful cases (individual doesn't get civil compensation). Across the c15k successful civil cases during the period this results in a saving to the defendant of £95 million. Here the defendant would be the insurance industry and employers (including government where it is an employer).

**Table 15 – Broad estimates of the legal savings of new streamlined legal processes**

		Total		Defendant		Claimant	
		Compensated	Uncompensated	Compensated	Uncompensated	Compensated	Uncompensated
Stream-lined legal process	One case	£ 25,500	£ 25,500	£ 25,500	£ 7,500	£ -	£ 17,000
	Compensated cases	£281,998,380	£ 89,052,120	£281,998,380	£26,191,800	£ -	£ 59,368,080
Current system	One case	£ 32,000	£ 32,000	£ 32,000	£ -	£ -	£ 32,000
	Compensated cases	£353,880,320	£111,751,680	£353,880,320	£ -	£ -	£111,751,680
<b>Savings</b>		<b>£ 71,881,940</b>	<b>£ 22,699,560</b>	<b>£ 71,881,940</b>	<b>-£26,191,800</b>	<b>£ -</b>	<b>£ 52,383,600</b>
<b>Net</b>		<b>£ 94,581,500</b>		<b>£ 45,690,140</b>		<b>£52,383,600</b>	

## Annex C – Methods to produce case categories

### **Categories of claimants**

Claimants are categorised using the Towers Watson 2011 method.

Sources for estimated methods of categorisation: Compensation Recovery Unit (data for 2007-2010), ABI Tracing Service (data for 2007-2010), ONS and the AWP 2009 Report.

#### Occupational Compensated - Insurers and Government

- This category includes those claimants who had occupational exposure and receive compensation either directly from employers' liability insurance or directly from government.
- Estimates are based on the analysis of CRU data for the period 2007-2010.
- The number of male Occupational Compensated cases is estimated by applying the *percentage claims to death ratio* from the AWP 2009 Report to total number of projected deaths.
- The number of female Occupational Compensated cases is estimated assuming a starting proportion for 2011 of 23% of total female deaths. This percentage is based on analysis of CRU data.
- Occupational compensated claimants are split between insurers and government. The split between compensation from insurers and compensation from government is based on analysis of 2007-2010 CRU data. It is assumed that all claims classed as 'local authority' are compensated by insurers. Averages of the 2007-2010 government portions (10.5% for males and 11.5% for females) were used for 2011 to 2050 and applied to the government portion of Occupational Compensation.

#### Occupational untraced

- This category includes all cases where the claimant is looking for compensation but an insurance policy cannot be found (and may not exist). Claimants who are not able to find an insurer through the ABI's tracing services or through other means are considered to be 'Occupational Untraced'.
- Estimates are based on 2007-2010 data from the ABI.
- The number of male Occupational Untraced Cases is based on a proportion of 14% of male deaths for 2011. It is assumed the proportion of untraced cases is likely to decrease over time, to 8% in 2050.
- The number of female Occupational Untraced Cases is based on a proportion of 6% of female deaths for 2011. It is assumed the proportion of untraced cases is likely to decrease over time.

#### Ministry of Defence (MoD)

- This category includes cases where the claimant worked for the MoD for their whole life and is therefore unable to claim compensation because of crown immunity.
- The number of male Occupational MoD cases is estimated as a fixed proportion of 1%, based on AWP 2009 Report. It is assumed that there are no female Occupational MoD cases.

#### Self employed

- This category includes cases where the claimant was self-employed for their whole life, and so would have no employer (or employer's insurer) to claim against.
- A fixed proportion of 2% is assumed to estimate the number of male cases, based on ONS data. It is assumed there are no female cases.

#### Compensated and Uncompensated Environmental

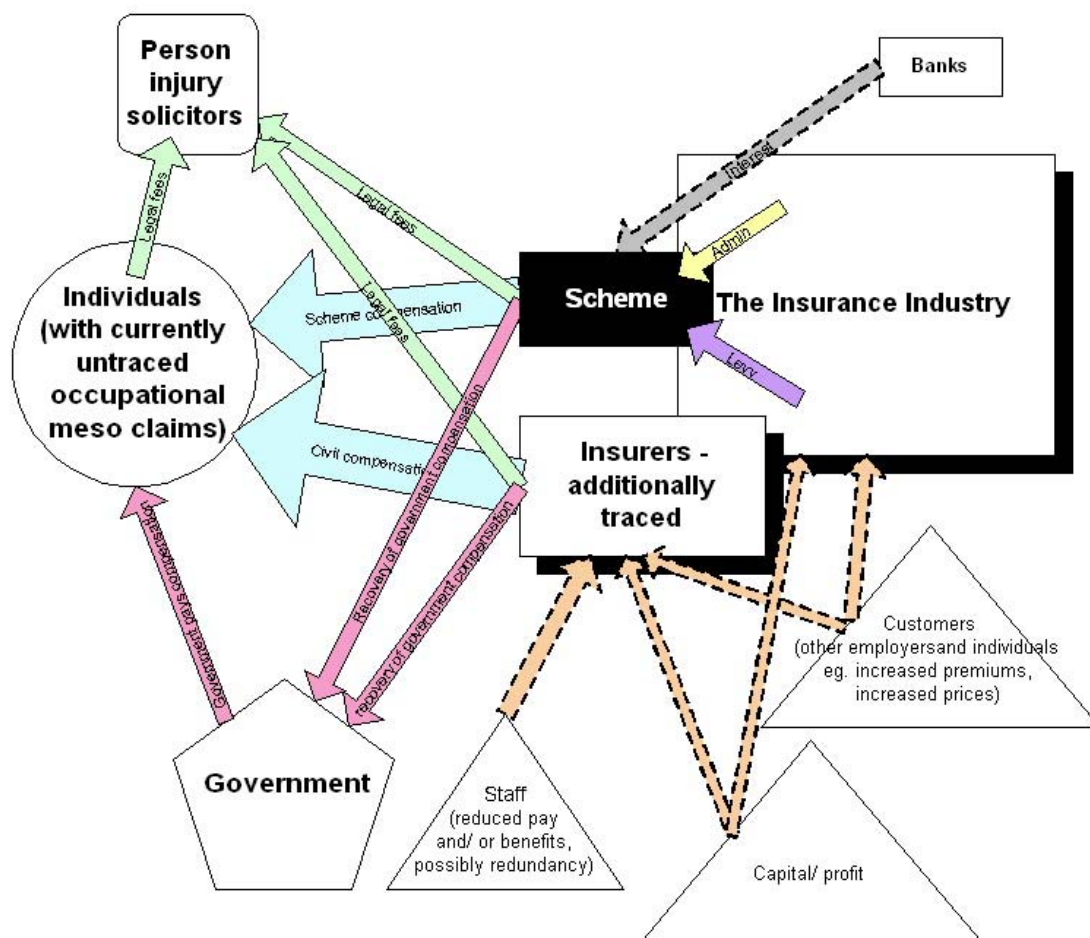
- This category includes public liability claims, domestic exposure claims and environmental claims with no known cause.
- To estimate the number of male Environmental cases, a fixed proportion of 10% for all years has been assumed, as per the assumption in the AWP 2009 Report.
- The number of female cases is estimated as the number of female cases not allocated to other categories (i.e. a balancing item). In 2011, the proportion was 66% and this proportion is used for all years.

#### Occupational Unclaimed

- This category includes those who have occupational exposure and who do not bring a claim against either the insurance industry or government and who are not attempting to find someone to bring a claim against using the tracing service.
- The number of male Occupational Unclaimed cases is the number of male cases not allocated to other categories (balancing item) and is approximately 3% for 2011.
- The number of female Occupational Unclaimed is estimated as 150% of the male proportion and is approximately 4.7% for 2011.

## Annex D – Diagram of money transfers

### Mesothelioma Compensation Scheme - Transfers of money


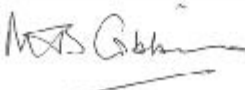


#### Key

- Blue = Compensation to individuals
  - Green = Legal fees
  - Pink = Government lump sum and benefits payments (including recovery)
  - Purple = Levy
  - Orange = Potential ways to pass on costs
  - Yellow = Admin costs
  - Grey = Interest on fund
- Dotted outline on arrow = potential money transfer  
Complete outline on arrow = known money transfer



**Annex E – Opinion from the RPC**

 <b>Regulatory Policy Committee</b>	<b>OPINION</b>	
Impact Assessment (IA)	Mesothelioma Payment Scheme and Mandatory Membership of Employer Liability Tracing Office (ELTO)	
Lead Department/Agency	Department for Works and Pensions	
Stage	Final	
Origin	Domestic	
Date submitted to RPC	20/07/2012	
RPC Opinion date and reference	24/07/2012	RPC12-DWP-1420
Overall Assessment	<b>AMBER</b>	
<p>The IA is fit for purpose. The IA would benefit from using the consultation responses to show the distributional impacts of the proposal as well as any ensuing implications.</p>		
<p><b>Identification of costs and benefits, and the impacts on small firms, public and third sector organisations, individuals and community groups and reflection of these in the choice of options</b></p> <p><i>Distributional impacts.</i> The IA would be improved from better demonstrating the extent to which the consultation has been used to inform the impacts presented. For example, the IA says that the payment scheme will be funded by insurers, but that it is unlikely that they will pass the costs of the levy onto their customers through increased premiums (paragraph 82). However the IA then says, “employers in industries with no link to asbestos or who weren’t in existence at the time of exposure would also be paying the levy to compensate people they did not expose to asbestos” (paragraph 84). The IA would therefore benefit from using the consultation responses to show the distributional impacts of the proposal as well as any ensuing implications.</p> <p>The IA also states that 50% of people who currently don’t make a claim will be motivated by the creation of the scheme to make an attempt to trace an insurance policy. The IA could have included a discussion here as to the basis of that assumption, for example, making greater use of consultation responses from the insurance industry.</p>		
<p><b>Have the necessary burden reductions required by One-in, One-out been identified and are they robust?</b></p> <p>The IA says that the proposal is a regulatory measure that will impose a net cost to business (an ‘IN’) with an Equivalent Annual Net Cost to Business (EANCB) of £38.3m. Based on the evidence provided in the IA, this appears consistent with the current One-in, One-out Methodology (paragraph 17) at this stage and provides a reasonable assessment of the likely impacts.</p>		
Signed		Michael Gibbons, Chairman