

At first blush, Carillion is a company which was only incorporated in 1999 and therefore it would seem unlikely that they would be involved when people develop asbestos related conditions due to exposure decades ago.

However Carillion's history goes back much further. Carillion was formed when Tarmac decided to hive off its "construction and professional services division" in 1999.

Tarmac had in the decades prior to this taken over a number of construction companies including **Mitchell Construction, McLeans and Holland, Hannen and Cubbits**. They had also taken part of the business of **George Wimpey** via an asset swap.

Carillion themselves took over **John Mowlems and Alfred McAlpine**, two

Collapse Affects Asbestos Sufferers ?

historically big construction companies.

Some of the companies whilst part of the Carillion group continue to exist as separate companies others do not.

Many of these companies have been defendants in asbestos claims. Many have been insured for at least part of the time with insurers such as Builders Accident and Chester Street.

Those insurers have gone out of business and so their part of any compensation due comes from the Financial Services Compensation Scheme. Employers Liability insurance wasn't compulsory prior to 1972 so where the asbestos exposure was prior to 1972 the Financial Services Compensation Scheme will only pay 90% of an asbestos sufferer's compensation. If there is a solvent employer (as Carillion was until this year) then they would pay the remaining 10% from their own resources. If the asbestos sufferers employment is in a period

where no insurance can be traced for the employing company which no longer exists then the situation will vary dependent on which condition they have. If they have mesothelioma they should be able to apply to the Diffuse Mesothelioma Payment Scheme. This may though lead to them being significantly undercompensated as the scheme pays out an average compensation sum based on a person's age at diagnosis. If they have any other asbestos related condition including lung cancer they may receive no compensation at all.

There is a risk therefore that those who have historically been employed by companies which have now become subsumed into Carillion may find they miss out on at least 10% of their compensation, if they receive any compensation at all. Only time will tell how many asbestos sufferers are therefore potentially affected by the Carillion collapse.

About Us.....

- * We have built our firm on the ethos that we will act ethically, fairly and in a socially responsible way. As part of this commitment, we donate 10% of our net annual profits to good causes including the John Pickering and Partners Charitable Trust.
- * We are prepared to take the financial risk of pursuing difficult cases that help to preserve and promote the rights of asbestos sufferers.
- * Unlike many other firms, we act exclusively for asbestos sufferers. We do not act for Defendants.
- * We have over 45 years experience and all our solicitors specialise in asbestos claims including mesothelioma and have specialist asbestos accreditation from APIL.



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Do West Midlands Mesothelioma Patients Lose Out?

Interview with Dr Qamar Ghafoor Consultant Clinical Oncologist

The short answer is **No**—Dr Ghafoor explains why.

Why was there a need for a mesothelioma MDT in the West Midlands?

The outcomes for mesothelioma patients were the worst in the West Midlands compared to the rest of the country. For example only 26.8% of patients received chemotherapy but in Greater Manchester it was 55.4%. Patients were being

referred to the specialist MDT at Leicester so we decided we needed to give patients access to medical expertise locally. It took two years of planning to set up the MDT. University Hospital Birmingham Charities agreed to fund the MDT for a 6 month pilot.

How has the MDT benefited mesothelioma patients so far?
Initially, we were seeing 2



to 3 mesothelioma cases but we are now seeing 7-8 mesothelioma cases per MDT. So far, 45-50% of the patients have been referred for clinical trials in Leicester or London. A specialist MDT means we are firmer on diagnosis and treatment options for patients.

What are the ambitions of the MDT?

Our ambition is very simple. We want to ensure mesothelioma patients in the West Midlands have equal, if not better, access to expertise, care and treatment options. We want to

improve outcomes for patients. We also want to develop expertise locally.

What about immunotherapy in mesothelioma cases?

The number of mesothelioma patients who have received immunotherapy treatment at UHB are low. Immunotherapy treatment for mesothelioma isn't available on the NHS. Currently there are trials taking place for immunotherapy. The data from the Keynote-28 trial looking at Pembrolizumab immunotherapy for mesothelioma **Continued on page 3**

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Is the Diffuse Mesothelioma Payments Scheme Working for Mesothelioma Victims?

The scheme is very important for mesothelioma sufferers and operates as a safety net to ensure that compensation is paid when there is no solvent employer and an insurance company has not been traced. Applicants under the scheme not only have to put up with lower sums of compensation but also often arbitrary, non-transparent, decision making.

Under the scheme before a payment is made the claimant has to prove that the exposure to asbestos dust was either negligent or in breach of a statute.

A recent case of ours has highlighted some serious failings in the decision making process and lack of accountability of Gallagher Bassett (GB), the claims management company who run the scheme on behalf of the government and insurance industry.

Our case involved a very clear breach of S.63 of the Factories Act 1961 which should have meant that a payment was made under the scheme.

The Claimant's expert engineer used the words "...there can be little doubt..." and "...on any common sense assessment..." when discussing whether there was a breach of the Factories Act.

However, the application was rejected because GB did not think that the Factories Act applied. Under the scheme there is an opportunity to have a decision reviewed by a different member of the GB team. The Review took place and failed to address the applicability of the Factories Act at all, simply endorsing the previous decision. When this oversight was raised with GB they declined to enter into correspondence and simply suggested a formal appeal. The Claimant

therefore was forced to submit an appeal to a tribunal and finally in GB's response to the appeal it was accepted that the Factories Act did apply but then they bizarrely failed to consider whether there had been a breach. This was raised with GB who failed to engage on the point, simply stating that our comments were noted.

It was only when we requested a copy of the GB complaints policy that we were contacted by GB who shortly before the appeal hearing appeared to accept that there was a breach of the Factories Act and agreed to make a payment.

The claimant suffered financial loss and delayed making a decision about funding immunotherapy as a result of the delay caused by the way this case was dealt with by GB.

We made a formal complaint which was rejected.

We have raised the matter with the chair of the committee that oversees the running of the scheme for the Department of Work and Pensions.

To date we have received no response.

There certainly appears to be very little accountability for the running of this scheme.

Our concern is that claimant's are encouraged to make applications to the scheme without legal representation.

How many of these are turned down because the law has been wrongly applied by GB?

Of the 345 applications received in the 12 months to July 2017 only 200 were successful. Proper scrutiny of the remaining 145 applications is essential. This can only happen if the scheme is run in a transparent and accountable way.

respiratory disease sufferers and their carers.

The John Pickering and Partners Charity continues its efforts to make donations to promote and protect the health of mesothelioma sufferers. Recent donations include: * £1,000 to Kirkwood Hospice to support mesothelioma sufferers and their families.* £1,200 to MESSY

*(Mesothelioma Support Yorkshire) to fund their monthly meetings aimed at mesothelioma sufferers and their carers * £10,000 to Mesothelioma Alliance to fund a project with the aim of improving the outcome for all mesothelioma patients. Dawn McKinley commented "UK Mesothelioma Alliance is grateful to John*

Pickering Trust for providing a grant to help fund a national service specification project - the aim to improve outcomes for UK mesothelioma patients." The charity was set up in 2009 and to date has donated over £175,000 to good causes supporting mesothelioma and other



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Legal Round Up

The Court of Appeal decision in **Bussey v Anglia Heating** has now been handed down. This was a mesothelioma case involving relatively low levels of exposure to asbestos dust. This decision is a victory for common sense and will make pursuing some of these cases where there is exposure to small amounts of asbestos dust in the 1970s much more straightforward. All 3 judges correctly pointed out that the 1970 HSE document TDN 13 that Defendants have been relying upon did not set out a safe level of exposure to asbestos dust and that a more nuanced approach is necessary when considering what action a Defendant should have taken in the 1970s. Those cases where a Defendant does nothing to assess or reduce risk which sadly is all too common should now all be successful. Following the previous Court of Appeal decision in **Williams** in 2011, pursuing these cases had presented a number of difficulties.

In another important decision **Graham Dring v Cape Distribution Ltd and Others [2017] EWHC 3154 (QB)** Master McCloud in the Royal Courts of Justice has ordered that Cape's documents in a recent case being brought by an insurance company against Cape could be made publicly available. Cape Asbestos Company was founded in 1893 to mine asbestos in South Africa. The company imported raw asbestos into the UK and manufactured a number of asbestos products at factories all over the UK including in London and Yorkshire. They were at the forefront of the knowledge of the dangers of asbestos dust for most of the twentieth century. These documents are potentially very important both for cases against Cape and also for cases against other Defendants where the level of exposure and the attendant risk to health is in dispute. Cape are apparently appealing the decision and it is hoped that this is given short shrift. It surely offends a sense of justice to allow Cape to suppress the disclosure of documents to the detriment of asbestos victims.

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is promising in terms of tumour shrinkage and stable disease.

In your view which patients are suitable for immunotherapy treatment?

My personal view is that everyone should have access to immunotherapy treatment with an early assessment of whether or not that person is responding to treatment. However if for example a person is suffering from autoimmune disease or has a poor performance status then they wouldn't be suitable for immunotherapy treatment.

Would you recommend immunotherapy treatment for someone who hasn't had chemotherapy?

No because chemotherapy is the accepted form of treatment in mesothelioma cases. I don't think we should be using immunotherapy treatment as first-line treatment until we have better clinical evidence.

What advice would you give to a mesothelioma patient who wants to find out more about immunotherapy treatment?

I would say speak to your lung cancer nurse specialist, your treating physician or oncologist or liaise with the multidisciplinary team.

What is the main obstacle to having immunotherapy treatment for mesothelioma?

The fact that the clinical data is in its early stages is the main obstacle. We need more clinical data to know if it's the right treatment for mesothelioma.

What is your hope with immunotherapy treatment?

I hope it is suitable treatment for mesothelioma patients and is available to all. It is a terrible illness, often caused by someone's work so the patient should have all available treatment options.

Does having the MDT in Birmingham assist or hinder treatment options?

It will assist because by having the MDT we can make sure that we have unifying treatment across the region as well as access to knowledge and expertise. We accept and recognise that the outcomes in the West Midlands for mesothelioma patients have been poor compared to the rest of the country.

Dr Qamar Ghafoor is a Consultant Clinical Oncologist at University Hospital Birmingham (UHB) and leads the new mesothelioma multidisciplinary team (MDT) set up in October 2017. A longer version of this article is on our website.

