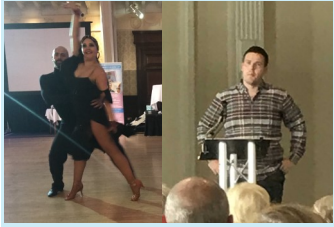


## The Annual Mesothelioma UK Patient & Carer Day 2019



The 4th October was the Annual Mesothelioma UK Patients & Carer Day. This year it was in Blackpool at the Imperial Hotel known for its array of famous guests. The event was incredibly well attended with approximately 180 patients, carers, doctors, nurses and other health professionals there to hear about the latest developments in mesothelioma and to learn first hand things that can help them, their loved ones and patients. There were a whole host of talks given all of which provided new insights for sufferers and their families.

One of the most inspirational talks came from Chris Willis. He is a meso-

thelioma patient diagnosed with peritoneal mesothelioma following a whole host of tests and investigations culminating in exploratory surgery to try and find out what was wrong. He is very young, diagnosed in his early 30's. Prior to his diagnosis he was getting on with his every day life and was a PE Teacher, fairly fit and active. He has had treatment for his mesothelioma and it has come back in different places but despite this it was clear that he intended to live life to the full. He talked of the initial devastating impact of the diagnosis but also what he'd done since including marrying the love of his life Evelyn and raising money for the Charity. His words are definitely ones to live by "In life it's not how long you live but how much of an impact you make in your life"

Dr O'Rourke talked of the use of radiotherapy to treat pain in mesothelioma patients and also told patients it was okay to ask about their

options, to ask about clinical trials and to ask for second opinions.

Professor Dean Fennell gave an update on clinical trials and in particular the record breaking results of a Dutch clinical trial on Gemcitabine.

The night before saw the Annual Awards Dinner for the Charity with the theme of Strictly Meso. There were awards to the charity HASAG and awards to families and individuals who had each raised money for MesoUK in their own way.

There were dance demonstrations from a professional dance couple who also gave a dance lesson to everyone attending the dinner with those participating able to leave knowing how to Cha Cha Cha the night away. A great time was had by all.

Next year the event moves to Southampton.

## 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 50 years experience and all our solicitors specialise in asbestos claims including mesothelioma and have specialist asbestos accreditation from APIL.
- \* We have been involved in most of the important test cases relating to asbestos claims and have constantly fought to promote and preserve the rights of asbestos sufferers.



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# ALP REVIEW

The Asbestos Law Partnership Newsletter

Autumn 2019

## Asbestos Exposure Today and Why it Won't Go Away

### Interview with Greg Byrne from RB Asbestos

#### What does your role day-to-day involve?

We are a company who carry out asbestos surveys principally. This involves surveying buildings and for me the most important part is helping people/organisations to manage the asbestos which has been found on an asbestos survey.

I've been working in this area since 1988.

Years ago you would give people an asbestos survey and they would put it in a drawer and forget about it but it needs to be seen as the key to how you can protect people.

I am also involved in training, consultancy, management and also some mar-

keting for the business.

#### Have you been exposed to asbestos?

Even with my experience I still make mistakes.

As an example, I once went to survey a large church. I asked about a room underneath the bells coming down from the bell tower. I was told that it was a room to help reduce the noise from the bells inside the church itself. I went in to have a look. I walked straight in there without any mask. As I shone my torch down onto the floor of the room, I noticed that it was completely full of asbestos fibres. They were being used to reduce the noise.

A second example is when I

was in Preston last year. It was a building right in the centre. There was a security guard on the front door. He let me in but he didn't come in with

me. I shone the torch in and it looked as if everything had been striped back to the shell. I walked in and as I looked down I realised that there were smashed asbestos boards all over the floor. I came straight back out. I asked the security guard if he knew what was happening in there. He said that he didn't. I had to tell him to not let anybody else in at all and that it was illegal the way the asbestos was being removed.

I went to work in a council building a couple of years ago. I was working in a room where they told me that it was asbestos free. It had been cleared. When I was looking at one of the walls, I could see a big splodge of asbestos on the wall. I went straight back out the area and told them it was full of asbestos. They said it had been removed. I was told I had to speak to the woman from the council who was in charge. She again told me there was no asbestos there. I disagreed and took samples. 29 of the samples came back positive for asbestos.



This is another problem in places where asbestos has supposedly already been removed. From the mid-1980s onwards there was a real boom time to remove asbestos following the ban of asbestos in 1985. Local councils and other big employers such as hospitals and schools spent a lot of money on it. However the techniques for removing it then are different to now meaning that there is still a risk of asbestos, for example underneath new pipe lagging where the residue of the asbestos lagging remains in place.

The very first time I was exposed to asbestos was when I was a teenager. My neighbour gave me £5 to smash up his asbestos garage. I did it. I didn't know any better.

**Are there any examples you can give of asbestos being removed or disturbed not in accordance with the current regulations that you have seen?**

I could give thousands of examples.



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The deliberate removal not in accordance with the regulations in a way is the most annoying but by far the bigger group is the inadvertent group.

As an example, I was working in Manchester last year. I was asked by a company to come and look at a building where removal work was already underway. This was in Central Manchester. It was a large listed building. I was asked to do an asbestos survey after the work had already started. They were ripping the building back to its shell. I agreed to go and have a look. There were seven or eight guys working in the building and I sent them out for 20 minutes or so whilst I had a look round. As I started looking, I noticed there was asbestos everywhere and a skip full of asbestos boards which had been taken out. I had to tell the guys not to go back in. They then asked me whether it was dangerous. I explained to them that it was. They seemed to be unaware of it. There was just a lack of training, knowledge and education. Those guys were then out of that building for months whilst the asbestos was removed properly.

### Who do think is most at risk of being exposed to asbestos?

Still many of the traditional industries such as plumbers, joiners and electricians but there is also in my view a new group who are likely to be at risk which is the communication guys. These are the ones who are installing new communication cables or upgrading existing ones in both commercial and domestic properties. They have a tendency to crash through things. They are disturbing dust and debris and going into places where no one's been for years.

Even in domestic settings there can be issues. Even some of the big boys can get it wrong. For example the ones replacing boilers for free under a Government Scheme were not necessarily carrying out asbestos surveys in properties before doing so. This puts people at risk.

### What do you think is the biggest asbestos risk today in the UK?

Refurbishment work – domestic and commercial because of a lack of knowledge.

### Why do you think people are still being exposed to asbestos today? Do you think the construction/demolition industry fails to take this seriously?

Actually the construction and demolition industry take it seriously and are probably better than others but mistakes still happen and there are still operators that flout the law.

It is probably just not managed well enough because of a lack of education. As an example, I was giving training to high-level apprentices for the electricity board. These are smart kids. I asked them what do you think is likely to kill you when you're working? They said an electrical shock. They thought that was the most likely. I asked them, how about driving to work? Again they thought that that was a possibility. I then asked them about asbestos. They had no idea about it. They had no concept of asbestos at all.

As another example, I went into a college/training centre to carry out an asbestos survey. I went into the areas where the plumbers were training. As I went into the stores, there were 30 to 40 asbestos gaskets ready to be used hung up on the wall.

I went to a local University/College where they did degree courses. About four years ago I was asked if I would speak to the final year students about asbestos. I said I'd be happy to do this for free. I started by asking the lecturers what they taught students. One of the lecturers helpfully found the curriculum. He found within the file mention of asbestos. It said that they had to conform to the 1985 Regulations. They had of course missed about four sets of regulations out. I did the training for free to lecturers and then to the students and said I was happy to come back year after year and do it again for free. I haven't been invited back once.

### What level of training to tradesmen/workers you see have when it comes to asbestos?

Until four years ago the law said that if you are likely to be exposed to asbestos at work you had to have awareness/ training annually. Three years ago this was changed from annually to 'regular'. There was no other type of health and safety training that had to be given annually and for me to relax it by changing it to regular, its dropped of in importance and given it too much scope.

Training can be very mixed. There is face-to-face training and awareness and also online training available. Lots do the online training. In my view it is difficult to bring it to life

with online training. Online training should be used as more of a stopgap. There should be a mix of online and face-to-face training. I certainly think it should be a legal requirement to have face-to-face training the first time.

### Have you given any training to the next generation who might be exposed to asbestos? How receptive are they?

Yes. It depends on the age and direction. If you go in to schools to speak to 14 and 15-year-olds they're very disinterested. For example my 14-year-old daughter wears make-up. She buys Claire's make-up. I told her about the news articles about asbestos in their make up and her response was that she doesn't buy that product.

The older guys over 50 tend to be the most affected. For some of them their instant reaction is well I'm dead. I explain to them that they can still make choices, they can't change the past but they can reduce the risks. They can stop themselves being exposed to asbestos going forward and for example they can stop smoking which is known to dramatically reduce the risk of lung cancer where asbestos may be a factor. The older guys often take a more paternalistic view as well with the younger ones and will discuss it with them.

### What would you like to change in the future?

All the legislation is in place. There's also a police force in place but it's too small and underfunded. The HSE needs support and money. They need a dedicated asbestos team. We need formal education for everybody's working life and everybody involved with asbestos.

We need a register of asbestos in buildings. This needs to start with something like as all asbestos in Government buildings and then move out from there. It's about investment.

### What would be your message to people working in the construction industry today who are at risk of asbestos exposure?

Keep up with your training. Make sure you know how to protect yourself and have the appropriate PPE. Always check the asbestos survey and if there is no survey available don't work there. This is of course for pre-2000 buildings. Remember that you're the only person that will protect you.

## Halifax Joinery Firm Pays Compensation And Immunotherapy Costs To Mesothelioma Sufferer



Fozia Hussain, at our Halifax office acts for Stephen Simpson who was diagnosed with mesothelioma at the age of 59.

His only exposure to asbestos dust was with his first employer after leaving school. He was employed as an apprentice joiner with the then Halifax-based joinery firm A.E.D Pateman & Son. The firm run by Arthur Pateman did private and commercial work.

Mr Simpson was exposed to asbestos when he worked with other joiners on local authority owned nursing and residential homes where the existing doors were refurbished with asbestos boards in order to fireproof them.

Fozia immediately assisted Mr Simpson with applying for State benefits including Industrial Injuries Disablement Benefit and a lump sum payment from the Government. He was awarded the weekly benefit of £179 and also a lump sum of almost £47,000 within two weeks of instructing Fozia.

At the same time Fozia looked at bringing a compensation claim against Mr Pateman's firm which was no longer trading. On carrying out searches, Fozia was unable to trace the employer's liability insurers of the firm so she made an application to the Government's Diffuse Mesothelioma Payment Scheme (DMPS) which awards a tariff payment based on age where a person has a valid claim against an employer that cannot be brought because the employer is no longer trading and the insurers cannot be found. Within 3 ½ months of taking on the case Fozia secured a further payment of £201,000 for Mr Simpson.

After receiving the DMPS payment, Fozia managed to trace the employer's liability insurers of A.E.D Pateman & Son. This was a welcome development because Mr Simpson was entitled to significantly more compensation than he had been awarded through the Government lump sum schemes as he is young and was still working at the time of his diagnosis. He also wanted the chance to have privately funded medical treatment for his mesothelioma such as immunotherapy treatment.

A claim was brought against the insurers of A.E.D Pateman & Son. Both the insurers and Fozia traced a local man who worked for the firm. He denied that the firm handled asbestos. Importantly, he didn't start working for the firm until sometime after Mr Simpson.

With the help of Mr Simpson, Fozia traced two other men who worked for the firm prior to Mr Simpson and even after he left. These men confirmed that the firm did use asbestos products not just for fire doors but also for roofing work. Their evidence supported Mr Simpson's case.

Ironically, the insurer's witness even recalled to Fozia that the firm's premises on Pear Street, Halifax had an asbestos roof which was damaged and replaced in the 1970s.

The insurers fought the case despite the overwhelming witness evidence. Mr Simpson even gave evidence which was videoed.

Eventually, the insurers realised Mr Simpson had a strong case that he would win. Shortly after he gave evidence Mr Simpson's case settled for £423,000. Mr Simpson was awarded compensation not just for having the illness but also for his future loss of earnings.

As well as paying compensation the insurers also agreed to pay for future immunotherapy and other medical treatment that Mr Simpson has for his mesothelioma.

Mr Simpson's case settled in June 2019. By then Mr Simpson had completed a course of chemotherapy treatment and was told that the chemotherapy had shrunk his tumour.

In October 2019 Mr Simpson contacted Fozia again as his tumour had progressed and his oncologist recommended immunotherapy treatment. He started immunotherapy treatment in October. The insurers have paid for three months treatment and will continue to pay for treatment as long as Mr Simpson needs it.

The case demonstrates how important it is that mesothelioma sufferers are seen by specialist asbestos solicitors. Mr Simpson was awarded the Government benefit and the substantial lump sum payment within a few months of instructing Fozia. These payments covered his lost earnings and provided him with some security whilst his claim was on-going.



## Legal Round Up

A small number of interesting and noteworthy cases to report. *Head v Culver Heating* on the face of it seems a very harsh decision where a mesothelioma victim who ran a very successful business was not permitted to claim anything for his loss of earnings and dividends during the years he lost as a result of mesothelioma. The case is probably fact specific but is a salutary warning to claimant's solicitors that careful thought needs to be given as to the best way to argue complicated financial

loss claims and if in doubt consideration must be given to putting forward alternative claims if the primary claim proves to be unsuccessful.

Meanwhile Cape continue to drag their feet as the case of *Graham Dring v Cape* made it to the Supreme Court. The decision of Dame Hale was largely helpful to Claimant's in the fight to obtain critical documents from Cape but we still have to wait for a further hearing to see exactly what documents Cape are going to be compelled to release. This process and judgment has exposed the limited right of access we have to documentation in the UK which is in complete contrast to the US and is a real concern.

