

# ADVISER

## MESOTHELIOMA UPDATE: FSCS CHANGE MAY BRING POLICYHOLDERS SUBSTANTIAL REIMBURSEMENTS

The Financial Services Compensation Scheme (FSCS) has revised its stance with regard to the funding of mesothelioma claims that fall within insolvent insurer periods, where exposure straddles 01 January 1972 — the date when employers' liability insurance became compulsory in the UK. The change could result in reimbursements to some policyholders.

### FSCS REVISED RULES

Under the revised rules, a mesothelioma claim can be considered as qualifying for 100% protection where a proportion of the exposure is from 1972 onwards and where other sources of negligent exposure to asbestos can be identified — regardless of whether those sources were named as a defendant in any action. The FSCS will apply its revised stance retrospectively, and will reimburse policyholders for any claim that meets the criteria where the policyholder has funded pre-1972 exposure since 20 May 2015.

This only relates to mesothelioma claims; it is not applicable to other asbestos-related disease claims or other occupational disease claims.

### THE EFFECTS OF THE REVISED STANCE

The revised stance is positive for companies that have both exposure to insolvent insurers and mesothelioma claims. Some companies will be due substantial reimbursements.

The most prominent insolvent insurer with disease liabilities is Chester Street Insurance Holdings (formerly Iron Trades Insurance Holdings). However, there are other insolvent insurers with historic disease claims where exposure periods straddle 1 January 1972, such as Builders Accident Insurance.

### WHAT NEXT FOR CONCERNED COMPANIES?

If a company had a mesothelioma claim where part of the exposure period was prior to 1972, they will have funded damages and third-party costs for the pre-1972 period on a pro-rata basis. The average value of a mesothelioma claim is approximately £185,000, with many exceeding £250,000 and, on occasion, exceeding £1 million. A company only needs to have funded payments for one such claim since 20 May 2015 to potentially be eligible for a substantial reimbursement.

Companies should assess whether they have both exposure to insolvent insurers and mesothelioma claims, and determine whether they are due reimbursements. Such an exercise should include:

- Establishing whether any claims meet the revised criteria.
- Identifying which of those claims have been open since May 2015.
- Quantifying the maximum recovery.
- Ensuring that the recovery amount is paid to policyholders as swiftly as possible.

For more information on disease liabilities solutions, please contact our UK Claims Practice, or:

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