

## Damages (Asbestos-Related Conditions) Bill

### *Second Reading*

1.32 pm

**Mr. Andrew Dismore (Hendon) (Lab):** I beg to move, That the Bill be now read a Second time.

Most people in the House know that for 20 years before I entered Parliament, I was a personal injury lawyer; I suppose that I still am—once a lawyer always a lawyer. I still have my practice certificate and remain a consultant with my firm, although I do not take on any cases. It would be impossible to do that job as well as this one, but I have maintained a keen interest in the development of this area of law. During the course of my practice, I have represented many sufferers of various asbestos-related illnesses and diseases, but the Bill is narrowly drawn, as it is designed to deal with pleural plaques.

Pleural plaques are a thickening of the lining of the lung, which is usually visible on an X-ray or a CT scan, and they are caused by exposure to asbestos. They represent an increased risk—between 5 and 10 per cent.—of more serious asbestos-related diseases, and, because of that, pleural plaques cause real anxiety and stress for those who have them. It is hard to imagine someone's fear if they are at risk of developing an evil, disabling illness such as mesothelioma, which is painful and always fatal. During the course of my practice and, indeed, my time in the House, I have met many pleural plaques sufferers who have expressed to me their strong feelings about the issue and the problems that have recently arisen because of a decision in the courts.

Until recently, pleural plaques were compensated at common law. Since 1984, there have been three cases against the Ministry of Defence, the leading one being *Church v. Ministry of Defence*. With a diagnosis of asbestos-related pleural plaques, or asymptomatic fibrosis on the pleural lining of the lungs as it is described in the cases, it was decided in *Church v. Ministry of Defence* that the condition constituted an injury, enabling damages to be claimed. The amount of compensation has varied over the years, but on a provisional basis the rate until recently was probably about £4,000, although at times it has been as high as £7,000.

In the 2006 case of *Rothwell v. Chemical and Insulating Company Ltd*, the Court of Appeal found that pleural plaques are not compensatable, mainly on public policy grounds. The Court refused to aggregate the condition of pleural plaques with the anxiety and distress that they cause, deciding that each individual condition is not compensatable and that courts cannot look at the aggregate of both pleural plaques and the psychological conditions that they cause. In autumn 2007, that decision was upheld by the House of Lords in a case called *Johnston v. NEI International Combustion Ltd*; in fact, it was the same as the *Rothwell* case, because a number of cases had been consolidated and the appeals were linked. The House of Lords upheld the Court of Appeal decision that pleural plaques are not compensatable, which has been a cause of concern in the wider community and the House ever since. There have

been numerous parliamentary questions, early-day motions, amendments to Government Bills and pieces of private Members' legislation, and I do not know how many Adjournment debates the issue has been raised in.

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At Prime Minister's questions on 12 March last year, the Prime Minister announced that there would be a consultation on how to resolve the issue. That was followed on 9 July by a written statement with the consultation, which ended on 1 October 2008. We are still awaiting the outcome of the consultation, which included three different options: a no-fault payments scheme, presumably funded by the taxpayer, only for historic cases prior to the House of Lords ruling; a general no-fault scheme, which would relate both to the historic cases and to the future; and a return to the common law scheme. So far, the Government have made no announcements about their position.

There is no perfect option for dealing with this issue, but pleural plaques are a serious condition that affects many people, and doing nothing is simply not an option.

**Mr. Michael Clapham (Barnsley, West and Penistone) (Lab):** My hon. Friend will be aware that the medical evidence shows that pleural plaques occur only when there has been exposure to asbestos. After about 20 years, they can start to calcify, forming a hard part on the pleura. Furthermore, they are irreversible. Given what his Bill says in respect of impairment, does he agree that because the medical evidence is that the plaques are irreversible and there is a great deal of evidence that they lead to breathlessness, the condition should be compensatable, as the Bill says?

**Mr. Dismore:** I am grateful to my hon. Friend for his intervention, and I very much agree with what he has said. He has been a redoubtable campaigner on this issue for many years, ever since the court cases. I am pleased to see him and hope that he will support my Bill.

My Bill tries to build on what has happened in Scotland, where people are ahead of the game. The Scottish Parliament has passed its own legislation to restore the position in law to where it was before the cases in the Court of Appeal and House of Lords. That Bill is simply awaiting Royal Assent and has completed all the other stages.

My Bill is modest. All it seeks to do is turn back the law to what we all thought it was prior to the decisions in the courts. Any scheme case would, of course, cost the taxpayer. However, turning the law back to where it was would mean that the insurers, which were on risk at the time, would meet the liability rather than getting the windfall of having collected the premiums without having to pay out on the risk.

The Bill is tightly drawn—it is not the thin end of the wedge, and it will not open the floodgates to any form of parallel litigation for other illnesses or injuries; it relates purely and simply to pleural plaques. It maintains the basic principles of negligence or breach of statutory duty as the test for liability. The burden of proof that the claim exists and should be upheld is still on the claimant. The Bill provides for a suspension

of the limitation period from the date of the House of Lords decision until the coming into force of the Bill. That is only fair, but it would not affect any cases that were already settled or decided in the courts. The Bill also leaves out Scotland, where, as I have said, a decision to legislate has already been made.

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**Mrs. Eleanor Laing (Epping Forest) (Con):** Will the hon. Gentleman clarify that point? It is not clear whether his Bill would be generally retrospective. I appreciate that he has tackled that point, but I want it to be clarified.

**Mr. Dismore:** My Bill, under clause 4(2), would not affect any claims that have already been decided through a settlement or by the courts. It would allow people who had pleural plaques and whose cases had not been disposed of to reactivate them, as it were, to claim compensation. It would not try to undo anything that has already been decided, but, in cases that were in abeyance because of the decision of the House of Lords, had not been decided or had been dismissed, the people involved could still be compensated. That is basically the nub of the issue. The aim is simply to turn the law back to where we thought it was.

In conclusion, I thank those who helped me to draft the Bill—the Association of Personal Injury Lawyers, Thompsons, the GMB union, my own law firm, Russell Jones and Walker, and all the others who have been involved in the campaign.

**Linda Gilroy (Plymouth, Sutton) (Lab/Co-op):** I join my hon. Friend in thanking the trade unions. Will the Bill fully restore the security that people who developed pleural plaques once had, whereby if they went on to develop the whole disease, they had the basic plank from which to make a further compensation claim without the hassle otherwise involved? Plymouth has been a hot spot for that.

**Mr. Dismore:** My hon. Friend has made an important point. If the decision on liability were to be made at an early stage on the basis of a pleural plaques case, with a provisional damages award, someone who developed, further down the track, mesothelioma, asbestosis or lung cancer as a result of asbestos exposure would not have to go all the way through establishing liability again. That would be of benefit not only to the claimant but to insurers, because it could avoid difficult and costly litigation many years later when the evidence would be harder to establish.

This is not only about compassion for people who are suffering from pleural plaques and the psychological consequences that are caused, which are equally bad. We are simply asking for justice for people who have, through no fault of their own, been exposed to asbestos during the course of their employment, who should be enabled to recover the compensation to which they are justly entitled.

1.42 pm

**Mrs. Eleanor Laing (Epping Forest) (Con):** I welcome the fact that the hon. Member for Hendon (Mr. Dismore) has introduced this Bill, because it concerns an important matter that deserves discussion in this House. Conservative Members

certainly have the compassion to which he referred. We have great sympathy for people who have unwittingly had to work with asbestos for much of their working lives; and, indeed, for those who have not directly worked with asbestos but have come into contact with it because members of their family and others have worked with it. There is no doubt—we acknowledge it, of course, because it is a clear fact—that many thousands of people undertook, sometimes for a lifetime, work that they had no idea was dangerous.

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Some time ago, when, like the hon. Gentleman, I practised the law instead of just talking about it, I dealt with a case that had gone on for years and years, involving the insurance aspects of asbestos injuries and affecting hundreds of thousands of people. I well remember the evidence that I dealt with, and I am well aware of how horrible the effects of asbestos and asbestosis can be, and are, for very many people. Of course, we accept the principle, as is normal in personal injury law generally, that where someone has suffered, and is suffering, because of the work that they did, they should be entitled to compensation.

However, there are various areas in which I believe the hon. Gentleman's Bill varies from the principle I have just stated. First, we must make a distinction between pleural plaques as a benign condition, pleural plaques where there is a physical impairment and other asbestos-related diseases. I hope he accepts that and I think he probably does, because his Bill is specifically about pleural plaques. If we do not make that distinction between those three different types of asbestos-related disease, we are in danger of widening the effects of the law enormously. It is the duty of Parliament to balance the needs and rights of the individual with the amount spent from the public purse on the taxpayer's behalf.

**Mr. Dismore:** The hon. Lady identified three types of injury. She called the first benign, although I prefer to call it asymptomatic, because I do not think it is benign. The remaining two are already actionable in law. The only one that remains is asymptomatic pleural plaques, which is what my Bill is intended to address. The other two are already actionable, so the issue does not arise.

**Mrs. Laing:** I thank the hon. Gentleman for making that point, which I fully appreciate. That is why I am making the distinction quite clear. Of course the other two are actionable—I understand that that is exactly why the hon. Gentleman has brought the matter before the House today. However, I have been considering the medical evidence, which I suggest it is important that we do that when considering new legislation such as this. Sometimes it is right that general principles of personal injury law should be upheld rather than specific instances isolated, as they would be by the Bill.

In saying all this, I am exploring the possibilities in the Bill rather than speaking vehemently against it. As I said, when we consider this issue we do so with great compassion for and sympathy with people who have worked with asbestos and who suffer from asbestos-related diseases.

**Mr. Clapham:** As the hon. Lady knows, there is a great disparity in some of the evidence. There are two chaps who come regularly to my surgery, both of whom have difficulty in breathing and have been exposed to asbestos for the bigger part of their working lives. Both have pleural plaques, and both take the view that pleural plaques are causing their breathlessness. Yet I know of another case, of a younger man who was diagnosed with pleural plaques. When the doctor made the diagnosis, that man could tell him precisely where the pleural plaques were, because when he walked vigorously he could feel the spot. When he pointed to the spot, the doctor agreed. There is a real need for us to see much more medical evidence in future, because the decision that the Law Lords made on 17 October 2007 belittled people to some degree.

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**Mrs. Laing:** I entirely see the hon. Gentleman's point, including about the particular people to whom he refers. It seems to me that as a matter of the general principle of personal injury law, if there is an identifiable and provable link between suffering or injury in such cases and action taken by, or negligence on the part of, an employer—a legally provable causal link with the injury that someone is now suffering—the normal law of this country, without any amendment such as in the Bill, would give those people a locus for action. I am sure that the hon. Gentleman will have advised his constituents to take both medical and legal advice on the matter. Indeed, if he were to come forward with the medical and legal advice that showed that causal link, there would surely be a case to answer without the need for today's Bill.

**Mr. Dismore:** The real problem is the general view that the House of Lords got it wrong. Part of the problem was its refusal to aggregate the psychological and the asymptomatic impact—that is, the physical changes—of pleural plaques. However, if pleural plaques were on the outside of the body rather than on the inside, there would be no argument about their being compensatable, yet because we cannot see them, they do not count. I was grateful for what the hon. Lady said earlier, but I am not sure whether she is opposing my Bill or not. If she is concerned about the detail of the wording, let me assure her that I am not wedded to it. Should the Bill proceed to Committee, I should be more than happy to discuss any suggestions for amendments that she may wish to make to improve it.

**Mrs. Laing:** I thank the hon. Gentleman for that. It might benefit the House in considering the matter to take into account the published medical opinion on it. For example, the president of the British Lung Foundation, Dr. John Moore-Gillon, has said:

“Pleural plaques do not themselves ‘turn malignant’ and become a malignant mesothelioma. They do not in themselves cause asbestosis to develop, nor do pleural plaques increase the risk of lung cancer, and they are a different condition from diffuse pleural thickening.”

**Linda Gilroy:** I would press the hon. Lady to clarify whether she intends to allow the Bill to receive its Second Reading and say whether she has picked up on the point made by the presenter of the Bill, my hon. Friend the Member for Hendon (Mr.

Dismore), that we need to consider the psychological aspects. When somebody has a pleural plaque, they live in fear of it. Does she know that there are thousands of people who served in the Royal Navy who were required to pull flash hoods with asbestos in them over their faces—many are in their late 70s and 80s today—who live with that fear?

**Mrs. Laing:** Yes, I appreciate that. I think that I said quite clearly, although I will repeat for the sake of clarity, that we on the Conservative Benches certainly acknowledge that there are hundreds of thousands of people—not just in Britain, but throughout the world—who were forced to work with asbestos when the awful effects it can have were not known. I have previously seen evidence of the dreadful effects of asbestosis. I also accept what the hon. Lady says about the employer in question sometimes being Her Majesty’s Government, which means that the person legally responsible for compensation for the injuries suffered is the British taxpayer. I entirely agree that that is an incontrovertible fact.

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The hon. Lady asks whether I intend to oppose the Bill today. We are dealing with something that is in the balance—something that is not clear. It is not a matter for party political argument, nor of political principle. It is not a question of our thinking and saying one thing, and the Government thinking and saying another. Far from it: we recognise that people are suffering and have suffered. I believe that the matter ought to be more carefully explored. As a matter of principle, I would always encourage us to allow such a Bill to go to Committee, so that it can be properly considered.

The hon. Member for Hendon said that he would welcome amendments to the Bill in Committee. As a mark of respect to our legislative process, I would not oppose a Bill such as this at this stage in the proceedings. I am not yet certain whether I will support it, but I will not seek to prevent it from having a Second Reading. It is right that all these matters should be explored.

I should like to continue with my exploration of the published medical opinion. I have already quoted Dr. John Moore-Gillon, and I should like to quote a leading consultant, Dr. Robin Rudd, who has said:

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“Pleural plaques are not thought to lead directly to any of the other benign varieties of asbestosis-induced pleural disease”.

Dr. John Moore-Gillon has also said:

“Pleural plaques do not themselves ‘turn malignant’ and become a malignant mesothelioma”.

The issue is whether the development of pleural plaques amounts to an actionable injury. I would argue that, if there is a causal link between the suffering and the employment that caused the suffering, there is clearly a case in law. If there is no such causal link or no quantifiable suffering, there is no case in law.

**Michael Fabricant (Lichfield) (Con):** Is not the extent of the pleural plaques a key point? In themselves, they can be asymptomatic—that is, they present no symptoms. Contrary to the example given earlier, if people are not suffering from a particular dysfunction, it could be argued that there is no cause for compensation to be paid. Unless there is an X-ray or some other form of diagnosis, there is no way of telling whether someone has pleural plaques.

**Mrs. Laing:** My hon. Friend, as ever, makes a very good point, which helps the debate.

I take the point made by the hon. Member for Plymouth, Sutton (Linda Gilroy), which I think is the crux of the matter. She said that the hon. Member for Hendon was trying to widen the law so that not only the disease, injury and suffering but the fear of the consequences—and therefore the psychological effect of having developed pleural plaques—would be taken into consideration. I see the hon. Gentleman nodding; I am glad I have identified the crux of the matter correctly.

This is rightly a narrow Bill about a specific issue. The principle behind the way in which personal injury law has developed in this country would be changed considerably by it—

**Mr. Dismore** *indicated dissent.*

**Mrs. Laing:** The hon. Gentleman says no. I shall certainly give way to him so he can explain that.

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**Mr. Dismore:** The problem is that psychological injury in these circumstances can be looked at by the courts only if there is also a physical injury that they consider compensatable. My Bill simply tries to establish that pleural plaques are compensatable, so that a link could therefore be made to the psychological injury. There is no new principle involved.

**Mrs. Laing:** I thank the hon. Gentleman for his perfectly logical and reasonable explanation.

**Mr. Andrew Robathan (Blaby) (Con):** Unlike the hon. Member for Hendon (Mr. Dismore), I am not a personal injury lawyer, or indeed a lawyer of any shape or form, but it seems to me that he wishes to overturn a ruling of the House of Lords. For all I know, he may be right to want to do so, but does it not seem strange that overturning such a ruling should be reliant on him? I would rather have expected the Government, if they felt that the ruling was unsound, to have come forward with their own proposals to improve the law. I have to say that we are going through a fairly strange

constitutional procedure when a Back Bencher is determining, on a Friday when the Chamber is very empty, how to overturn a ruling of this country's highest court.

**Mrs. Laing:** My hon. Friend makes an extremely good point. Clearly, there would have been no need for the hon. Gentleman to introduce his Bill had it not been for the House of Lords' decision, which was quite clear on this matter. Indeed, it has been discussed in many different ways in this Chamber over the last several years since the case was first brought—quite rightly, long before it ever came to the House of Lords. I well understand why the hon. Gentleman has brought his Bill forward in an attempt to overturn the ruling, but we need to reflect that before the House of Lords finally made that ruling, the matter had been considered in great detail—year after year and on the basis of all the necessary evidence put before the various courts that had considered it. If he wishes to challenge the House of Lords, there is no way for him to do so other than by trying to change the law himself.

I agree, of course, with my hon. Friend the Member for Blaby (Mr. Robathan) that if the law is to be changed in this way, it should be for the Government to decide how best to do it, so I shall conclude shortly to allow the Minister to give us the Government's opinion.

**Michael Fabricant:** We can all tell from my hon. Friend's accent that she is Scottish and she will be aware that the Scottish Parliament passed similar legislation. Is she aware of whether any additional costs were created for Scottish businesses and whether the legislation was applied to people who had not suffered from specific symptoms? Let me make it clear that hon. Members on both sides of the House will feel that people who have symptoms of any kind deserve compensation.

**Mrs. Laing:** On that last point, I agree, of course, with my hon. Friend, who is absolutely right to mention the position in Scotland. I was just coming to that because the Scottish equivalent of the hon. Gentleman's Bill was passed by the Scottish Parliament on 11 March this year. My colleagues there agreed with its general principles and, as I have said, I agree that it was right to bring forward this Bill today and I understand the hon.

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Gentleman's motives. Nevertheless, our colleagues in the Scottish Parliament rightly asked for the costs of implementing that Bill to be routinely monitored.

As I said a little while ago, it is our duty as a Parliament to balance the rights of the individual against the rights of the taxpayer and the public purse. I say that with compassion and sympathy for all those suffering from pleural plaques—asbestosis has terrible consequences, which we all understand—and it is on the basis of that sympathy and compassion that I conclude in order to hear what the Minister has to say.

**2.4 pm**

**Michael Fabricant (Lichfield) (Con):** I want to say a few words, because I, too, have had constituents with asbestosis coming to my surgery—although not, I think, as many as some other Members. Interestingly, I have been made aware of an example involving of someone who was in the Royal Navy. The circumstances related not to

putting on an asbestos mask, but to working with pipes that were clad with asbestos. That has also been a major cause of this particular dysfunction.

Where people are clearly suffering from a symptom, or have a condition that will clearly lead to a further condition that will have a symptom, there is an acceptance by every right-thinking person—and, indeed, an acceptance in the law—that compensation should be asked for and given. The problem with the Bill, however, is one of degree. A single pleural plaque, if restricted in size and in a certain part of the pleura, might not give a symptom to the person who has it. Neither is there any clear indication that a pleural plaque or group of pleural plaques will lead to asbestosis or any other lung condition; as my hon. Friend the Member for Epping Forest (Mrs. Laing) has said, several specialists have confirmed that.

The hon. Member for Plymouth, Sutton (Linda Gilroy) pointed out that some people might have concerns that this might develop into a condition, and I understand that, but there comes a point at which one has to say that an unreasonable fear cannot be compensated for—and, indeed, at which it would be unreasonable to ask for compensation. [*Interruption.*] I invite the hon. Lady to intervene, if she wishes to do so.

**Mr. Dismore** *rose*—

**Michael Fabricant:** I am happy to give way to the hon. Gentleman.

**Mr. Dismore:** The research done by Dr. Rudd, who is probably the pre-eminent doctor in this area, of 150 dockyard workers re-examined 10 years after the detection of asymptomatic pleural changes, shows that 10.3 per cent. had radiographic changes suggestive of asbestosis, and 4.5 per cent. had clinical and radiological signs of asbestosis. Therefore, although there may not be a causative link, there is certainly a statistical link, which is what creates the distress, fear and worry that the individuals concerned suffer from. That distress, fear and worry can be compensated if there is a physical injury to link it to—if there is a physical change, asymptomatic though it may be. The problem is how to compensate if there also has to be treatment.

**Michael Fabricant:** I thank the hon. Gentleman for his comments, which were very helpful, because I now understand why people may well be concerned if they

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are demonstrating this condition. Pleural plaques also appear for other reasons, of course, and people can have other concerns.

**Mr. Robathan:** I do not want the hon. Member for Hendon (Mr. Dismore) to misunderstand me, so let me first of all say that this is a very well-intentioned Bill. However, it seems to me that he was arguing that people should be compensated for stress, and—

**Mr. Dismore** *indicated dissent.*

**Mr. Robathan:** Well that is what the hon. Gentleman said, I think, and that seems to me to be a fairly strange route to go down, in what is a very serious matter to do with the development of diseases from which people die.

**Michael Fabricant:** I hear what my hon. Friend says, but I am not sure that I wholly agree with him. If someone has been working in circumstances where they have been in contact with asbestos—through no fault of the employer at the time, as they would not necessarily have known that asbestos was a clear cause of pleura and other types of lung dysfunction—then I understand why they might be concerned. The hon. Member for Hendon made a good point, therefore, and I can now understand the irritation, anger and disbelief of the hon. Member for Plymouth, Sutton about what I was saying earlier. This is a good example of why this sort of debate is useful, because in true and full debate information can sometimes be made available that might not otherwise become available.

Nevertheless, even if we accept, as I am now slightly inclined to do, the argument that there can be fear, concern and stress—to adopt the word used by my hon. Friend the Member for Blaby (Mr. Robathan) and the hon. Member for Hendon—if pleural plaques are in existence, the question remains: is there a damage done and is there a tort done when the pleural plaques are asymptomatic? I am talking about situations where they are so small and sparse that they are not showing any symptoms.

**Jeremy Wright (Rugby and Kenilworth) (Con):** Will my hon. Friend give way?

**Michael Fabricant:** I am very happy to give way, particularly to my hon. Friend, who is a practising lawyer.

**Jeremy Wright:** I should make it clear that I am not a practising lawyer, and I certainly did not practise in the field of personal injury. What I ask my hon. Friend to consider in the context of his remarks is clause 2(3), which, as I have no doubt that the hon. Member for Hendon has spelt out very clearly, clearly states the following:

“It is not necessary for a person seeking damages in respect of asbestos-related pleural thickening or asbestosis to prove that it has caused, is causing or is likely to cause impairment of that person’s physical condition.”

Does my hon. Friend agree that that is an extraordinarily sweeping statement and that it would be more helpful, in the context of this debate, if it could be a little more closely defined, so that if the hon. Gentleman’s argument is, as I suspect it may be, that these things are in

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themselves pernicious, it can be explained why they are pernicious in the context of the recognisable law in this country in respect of establishing who is liable for damages?

**Michael Fabricant:** I thank my hon. Friend for that helpful remark and explanation of that part of the Bill, and I invite the hon. Member for Hendon to accept that particular argument. Surely the hon. Gentleman is not arguing—or is he?—that someone who is not suffering a symptom, and is not likely to suffer a symptom or any form of damage, should be able to seek compensation. Can he clarify whether he would be prepared to alter the wording of that particular provision if the Bill reaches Committee, in order to make it more acceptable?

**Mr. Dismore:** Of course I am prepared to consider the wording. The point is that this involves a physical change in the anatomy, and that is what I am arguing should be compensated, whether or not it causes symptoms, because that is the trigger for bringing the psychological claim. All wording is subject to discussion in more detail and amendment in Committee. I am happy to discuss things, and if someone has a better formulation, I am happy to consider it.

**Michael Fabricant:** I am grateful to the hon. Gentleman for explaining that. However, I feel very uneasy when he talks about any change in the body that may give cause for concern, although there may not be justifiable cause for concern. I can think of many other types of dysfunction, although many doctors would not classify them as such, that involve a change in the nature of the body that does not actually lead to anything that could be called an injury. I accept the earlier arguments that both he and my hon. Friend the Member for Plymouth, Sutton made that there is a fear that perhaps these conditions can lead to greater things, but what he has just said is far more worrying. If this principle were accepted, so many other types of changes that are asymptomatic and not in any way damaging could be open to claims for damages, based on the particular wording that he has just mentioned.

**Jeremy Wright:** I do not wish to add to my hon. Friend's unease, but I suspect that I might be about to do so. Does he agree that what we should really be dealing with in this Bill is any impairment of the person's mental or psychiatric condition and that that is really what the hon. Member for Hendon is describing? Is he not focusing his Bill on the wrong target? We should not be talking about a physical condition that may or may not have any further effects; we should be focusing on the effects. If the person has a recognisable mental impairment or a psychiatric effect caused by the worry that the hon. Gentleman has described—I am perfectly prepared to accept that that may be a worthwhile cause of action—it is that which is the cause of action, not a physical condition that may or may not lead to that harm.

**Michael Fabricant:** I hear what my hon. Friend says, but earlier the hon. Member for Hendon did raise that point by saying that it is a question of cause and effect, and without recognition that pleural plaques are a cause for concern, there would be no basis for any legal

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action. I wonder whether that is the case. I would have thought that the link could be established anyway— [ *Interruption.* ] I see that the hon. Gentleman shakes his head. He argues that no such link can be established.

I am uncomfortable about the Bill for several reasons. We all recognise that compensation must be paid to those suffering from conditions that cause distress and impairment, and I well remember arguments in this House about vibration white finger. For a long time, that too was ignored by Governments, but now compensation is paid. But if there are no symptoms at all, it is a different matter.

**Mr. Robathan:** That is the point that I wished to raise. Vibration white finger is measurable. It can be seen, and I have constituents who have it. Whatever the rights and wrongs of the issue, they are compensated, rightly. But the Bill specifically states that

“a condition...which...is not causing or is not likely to cause impairment of a person’s physical condition is a personal injury”.

How can that be the case?

**Michael Fabricant:** The point is that it can be the case only if it is written in the law. It needs to be written in the law because the common law says that where there is no injury, there is no basis for a claim. If the Bill were passed, we would therefore be in a worrying position.

I personally do not wish to oppose the Second Reading of the Bill. Nor would it be right to talk out the Bill, and that is not my aim. However, it involves some major issues of principle that not only affect this condition, but could affect a gamut of conditions. That is why it is so important to say that while we all recognise the real problems that have been encountered by workers in the asbestos industry and by those who have come into contact with asbestos as they served their country—particularly in the Royal Navy, but also in other branches of the military—we must recognise that this Bill, unamended, would make a major change in the law. That change would not be just, because it would allow claims to be made for damage when no damage had been incurred.

**2.18 pm**

**The Minister of State, Ministry of Justice (Mr. David Hanson):** I am pleased to speak at the end of this useful debate, which has probed some of the issues that we will undoubtedly wish to probe further should the Bill be given a Second Reading today.

I congratulate my hon. Friend the Member for Hendon (Mr. Dismore) on his efforts in introducing this Bill. He reflects the strong feeling on both sides of the House that this issue needs to be addressed. Indeed, it has recently been addressed by the Prime Minister, the Secretary of State for Justice and the Under-Secretary of State for Justice, the hon. Member for Lewisham, East (Bridget Prentice).

I am also grateful for the comments of the hon. Members for Epping Forest (Mrs. Laing) and for Lichfield (Michael Fabricant), who raised issues that we will wish to explore in any debate in Committee. I am also pleased to see my hon. Friends the Members for Barnsley, West and Penistone (Mr. Clapham), for Plymouth, Sutton (Linda Gilroy) and for Ealing, North (Stephen Pound), as well as my hon. Friend the Member for Paisley and Renfrewshire, North (Jim Sheridan), who raised this issue in an Adjournment debate on 11 February this year.

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All those hon. Members have a strong and honourable tradition of raising in this House the issue of asbestos-related conditions. They reflected widespread concern about the issue outside the House, too. For example, let me look at the submissions from the trade union movement to the Government as part of our recent consultation.

I can see strong elements of support for action in relation to this Bill from Unite the Union, which has indicated that many of its members have suffered and died as a result of asbestos-related illnesses. The Union of Construction, Allied Trades and Technicians has said that the House of Lords decision in Johnston, to which my hon. Friend the Member for Hendon referred, was a huge blow to sufferers of pleural plaques. Unison has said that it believes that those who, through no fault of their own, have been exposed negligibly to asbestos should be rightfully entitled to compensation.

**Michael Fabricant:** The Minister mentioned Unite. He will be aware that Unite is asking for £5 million to £10 million to fund an asbestos-related disease centre rather like the one in Australia. The Australian Government provided 6.2 million Australian dollars. Are the Government minded to provide such funding?

**Mr. Hanson:** The hon. Gentleman will expect us to consider those issues seriously, but no decisions have been taken. We need to look, as we are, at a range of matters relating to the issue.

As my hon. Friend the Member for Hendon said, there has been considerable legal discussion. As he will know, there have been interpretations through the High Court following the challenge by the insurance industry, *Rothwell v. Chemical and Insulating Co. Ltd* and conjoined cases. My hon. Friend has outlined—I do not need to repeat this point—the continued discussions in the legal system, which ended with the House of Lords judgment on 17 October 2007, when the Law Lords upheld the Court of Appeal decision that the existence of pleural plaques does not constitute actionable or compensable damage. In this instance, the House of Lords based its decision on two further principles underpinning the law of negligence. These are the matters that relate to today, and my hon. Friend’s Bill is trying to examine that issue and to make a change on that basis.

In the light of concerns raised by hon. Members after constituents were diagnosed with pleural plaques, the Government published a consultation paper on 9 July 2008 to gather views on the most appropriate means of responding to the House of Lords decision. Indeed, my hon. Friend referred to the fact that my right hon. Friend the Prime Minister responded to that decision in Prime Minister’s questions, whereas my right hon. Friend the Secretary of State for Justice brought forward the consultation paper, which considered several issues.

The consultation paper considered the law and medical evidence underpinning the House of Lords decision and sought views on a range of possible options. It proposed that action should be taken to improve understanding of pleural plaques and in particular to provide support and reassurance to those diagnosed with pleural plaques to help allay their concerns. In the light of representations that have been received from those who are strongly of the view that pleural plaques should be compensable, the paper considered the issues that arise in relation to changing the law of negligence and invited views on whether that would be appropriate.

The consultation also invited views on the merits of establishing a no-fault payment scheme for individuals who have been diagnosed with pleural plaques and considered two possible approaches. One would be to establish a no-fault payment scheme limited to those with work-related exposure to asbestos, and the other would be to establish a no-fault payment scheme for those similarly exposed and diagnosed now or in the future. The paper discussed whether any payments should be made and, if so, crucially, by whom, what amount the payment should be and the risks, benefits and costs of both schemes.

The paper also explained that it was important to ensure that any decisions on pleural plaques were reached on the basis of the best available current medical evidence, an issue that was alluded to by the hon. Members for Epping Forest and for Lichfield. For that reason, the paper indicated that independent reviews of the medical evidence have been commissioned from the Industrial Injuries Advisory Council and the chief medical officer.

The consultation closed at the beginning of October last year. Let me be honest: I fully understand the concerns about the time that we are taking to consider the consultation issues. In some way, that answers the questions asked by the hon. Member for Blaby (Mr. Robathan) about why my hon. Friend the Member for Hendon introduced the Bill today, and whether the matter is not one for the Government. I say to the hon. Member for Blaby that we are looking into the issue extremely seriously. We have had the consultation, and it has been considered. Responses have been received; there were over 224 in total, including 125 from people who have been diagnosed with pleural plaques, or whose relatives have been diagnosed with the condition—so the Government do take the issue seriously.

My hon. Friend the Member for Hendon has rightly taken the opportunity offered by the Bill to raise the issue and to seek legislative redress. We are considering the matter. There is confluence of the Government's consideration of the consultation and my hon. Friend's Bill, but that, I hope, does not reflect on either party.

**Mr. Robathan:** In all seriousness, the issue is not, as far as I am concerned, in any way a party political matter. It is a serious subject, and concerned constituents have written to me about pleural plaques. Has the Minister received responses to the consultation? I know that the process takes a long time, and although I do not doubt the Government's good intent—well, I sometimes do, but not in this case—the House needs to know the Government's view, following the consultation. When will we get the response? With all due respect to the hon. Member for Hendon (Mr. Dismore), the Bill may raise the issue and perhaps goad the Government a little bit, but I think it has been introduced at the wrong time.

**Mr. Hanson:** The hon. Gentleman will understand that we have to produce the response to that consultation, and we will do so. It will be provided to the House, and it will be part of the ongoing discussions. I very much hope that it will be part of the considerations when we reflect on the points that my hon. Friend the Member for Hendon has discussed.

**Mr. Dismore:** Nothing would please me more than if the Government introduced their own proposals. I simply say that my Bill is designed to push them along a little

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bit and help them to make their mind up. Of course, I am more than happy to consider any Government amendments to my Bill, should it reach Committee.

**Mr. Hanson:** My hon. Friend brings me to a point that is worth putting on record. There are concerns, some of which were recognised by the hon. Members for Epping Forest and for Lichfield. The Government have concerns about some aspects of the Bill, and those concerns will have to be explored if it proceeds to Committee. For example, the Bill does not interact with law on Northern Ireland. There are different limitations and different legislation available in Northern Ireland, and clause 3 does not reflect that. Clause 2 extends the Bill to asbestosis and asbestos-related pleural thickening; those conditions were not included in the consultation, and we need to consider carefully whether they should be included in any legislation.

Having said all that, although we have reservations that need to be explored, I am happy to allow the Bill to be read a Second time today, if the House so wishes. I am happy for those issues, and the issues raised by the hon. Member for Epping Forest, to be explored in Committee. Undoubtedly, as my hon. Friend the Member for Hendon will be aware, there will come a time when we respond to our consultation. Hopefully, that will be within relatively short order. We will look at the consultation response in light of the progress in Committee. I cannot say today whether ultimately we will support all the details of my hon. Friend's Bill, but if the House wishes the Bill to proceed, we certainly will not today force a situation in which it cannot do so.

I thank hon. Members for their contributions, and thank my hon. Friend the Member for Hendon for introducing the Bill. It deals with a serious issue that affects people who have had injuries and illnesses that have damaged their lives in considerable ways. It is up to the House to reflect that in a proper and effective way. If the House wishes the Bill to proceed to Committee, I know that full consideration will be given to all the issues raised, not just by me as the Minister speaking on behalf of my colleagues, but by all Members of the House. I thank my hon. Friend for the opportunity to discuss the issues today.

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2.29 pm

**Mr. Andrew Robathan (Blaby) (Con):** I am keen not to talk the Bill out, but I have to say to the Government that I do not think that they have given an adequate response. We are talking about a very serious issue that affects my constituents and others. It is not an adequate response to say, "We'll push the matter into Committee and discuss it through a private Member's Bill." The Government have had time to consider the issue, and they must determine whether they wish to change the law or not.

*Question put and agreed to.*

Bill accordingly read a Second time and committed to a Public Bill Committee.