

Damages (Asbestos-related Conditions) Bill [HL]

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Committee

11.41 am

Clause 1 : Pleural plaques

Amendment 1

Moved by Lord Henley

1: Clause 1, page 1, line 3, at end insert "only where the person first discovered the presence of the pleural plaques before 17th October 2007"

Lord Henley: My Lords, in moving Amendment 1, I wish to speak also to Amendments 2, 3 and 4, and to Clause 1 stand part.

Before I address the amendments, I wish to say a word or two about why I have put down a relatively large number of amendments to this relatively brief Private Member's Bill. I asked five very specific questions at Second Reading, to which I had hoped to receive answers. The noble Lord, Lord Tunnicliffe, who responded on that occasion, said:

"The noble Lord, Lord Henley, asked five questions, to which I do not have answers, other than that the Scottish judgment is, as he said, currently being appealed and it would be inappropriate for me to comment on it. The essential point about the speed at which the asbestos-related claims I have alluded to are considered, and his other questions, will be answered when we complete the process of consultation and publish the results. We hope that will happen shortly".-[*Official Report*, 5/02/10; col. 461.]

I have not yet received a letter from the noble Lord answering my questions. It is now something of the order of a month since Second Reading. However, we have since had a partial response from the Government in the form of the announcement made by the Secretary of State and Lord Chancellor a week ago about their response to the Bill and to the consultation. However, that seems to me only a partial response. I imagine that we will get a fuller response in due course. We might get some of that response this afternoon because one of the reasons I have tabled these amendments is to find out exactly what the Government's intentions are. I would still appreciate a letter responding to my five questions, but no doubt the noble Lord, Lord Tunnicliffe, is working on that as we speak.

Amendment 1 states,

"only where the person first discovered the presence of the pleural plaques before 17th October 2007".

I believe that that was the date of the House of Lords judgment that this Bill has inspired. The amendment is simply intended to raise queries about which cases should be in scope for either a scheme or for legislation of the sort that is before us.

Amendment 2 would insert,

"only where the presence of the pleural plaques was discovered in an examination by a registered medical practitioner".

It is intended to highlight the problem that most people find out they have plaques only via claims farmers scouring the traditional heavy industry areas and/or advertising to push people to have X-rays, or, more often, CT scans, to detect the plaques.

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The Minister will remember-at least, I hope he does-that in December 2007 the twelfth report of the Committee on Medical Aspects of Radiation in the Environment was issued. That report was designed to look at the impact of personally initiated, X-ray computed tomography scanning for the health assessment of asymptomatic individuals. It made clear that CT scans for non-therapeutic reasons are not advisable. The report stated, at paragraph 1.10:

"The level of radiation received by the individual is an additional concern, particularly with whole body CT scanning. For an asymptomatic individual the potential risk may outweigh the benefits. The dose received by an individual can vary substantially depending on the type of scan employed and the machine and protocol used".

Claims should be permitted only if they have come through medical referral rather than through marketing by lawyers or intermediaries.

Amendment 3 is a probing amendment. It states,

"only where the person suffers physical symptoms directly attributable to the presence of the pleural plaques".

This probing amendment is targeted at the medical reasons why the Government are still saying that some people with no symptoms should get compensation. As we have noted, the instance of pleural plaque cases with symptoms is very low, and such cases will still be entitled to compensation.

Amendment 4 would insert,

"only where the person has sustained a recognised psychiatric condition directly attributable to the discovery of the presence of pleural plaques".

The noble Lord will remember that the Grieves case was also dismissed by the Lords as part of the test cases. In this case there was genuine psychiatric illness, whereas most of those with pleural plaques are simply anxious about having any recognised medical condition. Should this be the basis for compensation?

Those are the specific issues which the Minister may wish to address in the general debate that I am also proposing on Clause 1 stand part. Taking out this clause would remove from the Bill the provision which would overturn the judgment of the House of Lords in those test cases in October 2007. The Government announced very quickly after that decision—as early as 31 October 2007—that they did not consider that the judgment should be overturned. However, that was a long time ago on any view, and well before the run-up to a general election.

The Government's long-awaited announcement last week that they still see no basis for overturning the judgment is welcome. The Secretary of State's Written Statement helpfully summarised the position on the medical evidence, which is the key to understanding the House of Lords judgment and why it should not be overturned. Although the presence of pleural plaques is an indicator that a person has been exposed to asbestos, most people who were exposed more than minimally are well aware of that exposure anyway. More importantly, the Government confirmed that,

"in the great majority of cases pleural plaques do not in themselves produce any significant physiological change or loss of lung function, and only very rarely give rise to physical symptoms. In such rare cases it is still possible for individuals to bring a civil claim for damages".

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The Government also confirmed that there was,

"no available medical evidence to show that pleural plaques become malignant or lead to mesothelioma or other asbestos-related diseases. Current evidence indicates that it is a person's exposure to asbestos that produces any increased risk of developing a serious asbestos-related disease rather than the pleural plaques themselves".

That must come as a great relief to many people.

Thus far, I agree with the Government's position. However, the proposal that there should be an extra-statutory scheme to compensate those individuals,

"who had already begun, but not resolved, a legal claim for compensation for pleural plaques at the time of the Law Lords' ruling in October 2007",

is more difficult to understand. I confess to having reservations about this. The Written Statement attempts to justify this move on the basis that:

"Such people would have had an understandable expectation that their claim would result in compensation and many had made plans accordingly" .-[*Official Report*, 25/2/10; col. WS 141-44.]

Is the Minister saying that these people must have already, as it were, spent their compensation and in some way were out of pocket?

This whole "understandable expectation" line smacks of a compensation culture and threatens to set a curious and potentially dangerous precedent. The Court of Appeal and the House of Lords were rightly concerned about the wider effects on society of permitting claims for a condition that results in no symptoms and no risk of future illness. I should be interested to hear from the Minister how he believes the Government's latest stance on pleural plaques will not in some way open the floodgates for them to compensate for other conditions that are symptomless. If the medical evidence supports the House of Lords decision on the law, why are the Government so keen for payments to be made?

The proposal for a limited no-fault compensation scheme is not entirely new. This was outlined in the Government's consultation paper in July 2008. As there has never been a properly published government response, other than the Statement of last week, we do not know exactly what the anticipated impact of this proposal would be. Again, I would welcome the Minister's comments on various specific points made in the consultation paper.

At paragraph 45 of the consultation paper, the Ministry said:

"There is no definitive information on either the total number of people with confirmed diagnoses of pleural plaques. ... Estimates regarding the potential numbers of people who would be eligible for financial support are therefore highly uncertain, as they depend on a number of assumptions that cannot be verified ... This uncertainty ... translates into a wide range for the potential costs of each of the options of financial support set out in the accompanying Initial Impact Assessment, as on the basis of current information it is not possible to provide narrower ranges".

I very much hope the Minister will reassure the Committee that much better information is now available as to the potential impact.

At paragraph 54 of the consultation paper, the department summarised the potential cost of the limited scheme option as between £52 million and £196 million, excluding set-up costs. The paper states:

"Estimates of the number of people who have been diagnosed with pleural plaques before the House of Lords decision are subject to a high degree of uncertainty".

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The range is obviously very wide, and the Ministry of Justice actually committed to do better. Paragraph 54 also states:

"During the course of this consultation the Government will undertake further analysis in relation to the number of people diagnosed before the Law Lords' decision, better to inform the evidence base".

I hope that the Minister can enlighten us on how far they got.

I also repeat the question that I asked at Second Reading about the range of costs, not just to the Government but to the entire industry, estimates of which are between £4 billion and £28 billion. I think that those figures came from the consultation paper. Can the Government confirm that? What are their estimates now compared with the previous wide range of estimates?

At paragraph 48 of the initial impact assessment, the Ministry gave some indication of the number of claims that formed the basis of the estimate of between £52 million and £196 million. It stated that there would be between 11,000 and 41,200 potential applicants under a limited scheme. Neither of those figures seems to be particularly scientific; again, the range is very wide and it is obvious from the impact assessment that a number of assumptions were made which could be significantly out. Can the Minister update us on the estimated claim numbers?

A range of between £52 million and £196 million represents quite a lot of taxpayers' money for the Government to commit themselves to, even on those limited assumptions. The Minister has a duty to inform the House about which department's budget will be used to meet both the direct costs of the scheme and the set-up and administration costs. If the money is to come from his department, which front-line services will have to be cut in order to make ends meet?

This would not be the first time that this Government have committed themselves to an extra-statutory scheme for compensating people who are not necessarily suffering. In 1999, the then Department of Trade and Industry put together what are collectively known as the coal health compensation schemes. There has been much talk in this House and another place about the fallout from those schemes, both in terms of the massive underestimating of the potential claim numbers and overall costs, and the massive amounts of money received by certain claimant lawyers under the scheme. The Minister may remember that.

Because of the fallout from those schemes, the National Audit Office published a report in July 2007 into the workings of the schemes, and it made a number of observations on lessons for the future. It highlighted a long list of issues to be taken into account whenever a department was asked to take forward a similar compensation scheme in the future. Having regard to that list, will the Minister outline what action his department has taken on those eight key points? They were: first, to monitor and manage the risks; secondly, to establish a project board; thirdly, to conduct a full options appraisal; fourthly, to put resources in place sufficiently early; fifthly, to put a strategy in place for managing the expectations of claimants and stakeholders; sixthly, to obtain actuarial

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advice; seventhly, to review the quality of evidence likely to be available to support individual claims; and, eighthly, to create an implementation strategy. Those are just some of the recommendations.

We all remember how badly burnt the Department of Trade and Industry was on the coal schemes. The Ministry of Justice must make sure that it, or whichever department has to pay for this scheme, is not burnt too.

That is a reasonable number of questions to put to the Minister on this first clause. I hope that he will in due course address them and shed some light on the Government's announcement last week. I beg to move.

12 noon

Baroness Quin: My Lords, I very much welcome the fact that we are dealing with this Bill in Committee today. I also welcome the spirit in which the noble Lord, Lord Henley, has put forward his amendments, which he has told us are probing amendments. In his remarks, he asked the Government a number of valid questions, to which I hope responses will be made. Some of the noble Lord's questions related to the Written Ministerial Statement on this matter that the Government issued on 25 February.

I say from the outset that I welcome the announcement that the Government made last week about helping those people who had made claims but whose claims were then stopped because of the Law Lords' judgment in 2007. The level of payments that the Government outlined in that Statement are reasonable; they are in the middle of the range previously awarded under the old scheme, before the Law Lords overturned it in 2007. Secondly, I very much welcome the fact that in the Government's Statement there are measures to speed up the payment of compensation claims for mesothelioma and other serious asbestos-related diseases. That is obviously very important. Thirdly, I very much welcome the fact that part of the Government's Statement refers to expanding the research into asbestos-related diseases and asbestos cancers. Therefore, much is to be welcomed in the Statement.

We last debated this Bill on 5 February, when we had the Second Reading. On that day, an identical Bill, presented by Mr Andrew Dismore, succeeded in passing through the other place in all its stages. It might seem slightly odd that somehow we are not considering that Bill at the same time as my Bill, since they are identical. I am not a procedural expert and do not fully understand the reasons for that, but I hope that the fact that the Bill has reached us from the other place in the form that it has, which is identical to my Bill, will strengthen the case for my Bill today. I hope that the Government will give time for the further consideration of the two Bills.

The amendments proposed by the noble Lord, Lord Henley, go to the heart of the Bill. For that reason, I was not surprised at his comments on Clause 1 as a whole, as it is really the major part of the Bill. When I first saw his amendments, I was somewhat

alarmed because, on the face of it, they looked as if they might contain a rather different policy line from that pursued by the noble Lord's colleagues in the other place-I am thinking in particular of the strong support given

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to the Bill by Mr Henry Bellingham, who spoke for the opposition Front Bench. His speech in the other place on 16 October last year was very powerful. He said:

"We should not forget that we are talking about victims ... Imagine waking up every day knowing that you have a physical condition that could lead to an evil and wicked illness that is invariably fatal ... That is why we need to show compassion to those who are suffering and never forget that they are the only people who really matter in this debate".-[*Official Report*, 16/10/09; col. 572.]

In the same speech, he referred to some of the concerns that the noble Lord has expressed about the possible costs in this case. However, compensation has largely been of a fairly modest nature-not a life-changing sum but varying between £4,000 and £7,000 for each victim. Those points are important to take into account.

The noble Lord's amendments raise a number of detailed issues. Some of the issues relating to costs and the diagnosis and assessment of pleural plaques can be dealt with through provisions already in force. Certainly, the Civil Procedure Rule Committee and the Jackson review are looking at issues of cost, which are best taken care of in that context rather than through amendments to this Bill. As the person sponsoring the Bill in this House, knowing that it has proceeded twice through the other place in unamended form-because, as the opposition spokesperson in the other place recognised, it was tightly worded and had been carefully checked out beforehand-I hope that, although the amendments raise many useful points, the Bill and Clause 1 can remain in their current form.

Lord Addington: My Lords, the argument here reminds me very much of the discussion that we had at Second Reading. Indeed, the tone is the same. The condition affects someone who has clearly been placed at risk, but there is a degree of worry. Have they escaped and dodged the bullet, with a reminder left within their bodies, disguised? How much damage will this cause to their mental health? Future research may prove that it is a precursor to a more damaging condition.

We can dance around this for ever and a day, but that is where we will be left. As the noble Lord, Lord Henley, pointed out, other schemes have been ambushed by ambulance chasing. We are entitled to have some reassurance from the Government, if this is brought in, that it will be a skilled medical practitioner who identifies the problem. If that occurs, some of my concerns disappear. I hope that the proposal in Amendment 2 will be taken into account for any form of compensation.

Amendment 3 means that the provision would apply,

"only where the person suffers physical symptoms directly attributable to the presence of the pleural plaques".

We come back to the problem. Let us say that you have the condition and have scarring-and what adult does not have a few scars on their knees, acquired in childhood? It is scar tissue; it does not really affect you very much, especially if you cannot see it and it is not disfiguring. What does this do? It is a problem only if it leads or can be attributed to some other condition, but we do not know whether it will.

If the Government are prepared to give us some guidance on who they will allow in and how they will define the condition, I am less worried. That way you

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will get rid of the bad practice that has marred other schemes. Of all the amendments that have been tabled, the one that would lead to an assurance that that is covered or accepted deals with many of my problems. There is a problem with the idea that you can get compensation for being nearly in that situation or having been placed at risk. That is something that still rattles around with me, although others may disagree. I will probably not have to intervene again if I get a good indication of what will happen and what the case is with the medical practice. I hope that we can get a good answer, because this is where the problem lies. A good answer will help to speed up the procedure.

I should add that, in the previous bit of business, my noble friend made a mistake about what would happen if there was a vote. I have to admit that that was me whispering in her ear. Anyone reading *Hansard* who finds that the noble Baroness, Lady Hamwee, got something wrong should know that it was the fault of the noble Lord, Lord Addington.

The Parliamentary Under-Secretary of State, Ministry of Justice (Lord Bach):

My Lords, it is always a huge pleasure to listen to the noble Lord, Lord Henley, but I had to remind myself that this is a Private Member's Bill brought to this House by my noble friend Lady Quin. It is not a government Bill. In fact, I should not be the one who replies to these amendments. That is not my role. I am here to comment on the Government's position with regard to these amendments, which I will do shortly. On the first group of amendments, I will say something about what has happened since Second Reading and today, as the noble Lord, Lord Addington, asked me to do. But this is not a government Bill and I want to make that absolutely clear from the start.

Amendments to Clause 1 of my noble friend's Bill would all limit the circumstances in which pleural plaques could be held to constitute actionable damage. The main focus of Clause 1 and the Bill as a whole is the subject of pleural plaques. As noble Lords will be aware, the Government have announced their decision on whether the House of Lords 2007 judgment on pleural plaques should be overturned so that the condition becomes compensatable again under the civil law of tort. That was done by way of a Written Ministerial Statement on 25 February.

The announcement indicated that, on the basis of the medical evidence received, the Government are unable to conclude that the House of Lords decision on pleural plaques should be overturned at this time or that an open-ended, no-fault compensation scheme should be set up. While the current medical evidence is clear

that pleural plaques are a marker of exposure to asbestos and that exposure to asbestos significantly increases the risk of asbestos-related disease, any increased risk of a person with pleural plaques developing an asbestos-related disease arises because of that person's exposure to asbestos rather than because of the plaques themselves.

What I will say next is of great importance. If new medical or other significant evidence were to emerge, the Government would obviously reassess the situation. We recognise the importance of supporting people suffering from asbestos-related diseases and have

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announced a range of initiatives. One of those is the setting up of an extra-statutory scheme of fixed payments of £5,000 for individuals who had begun but not resolved a legal claim for compensation for pleural plaques at the time of the House of Lords ruling in October 2007. In our view, such people would have had an understandable expectation that their claim would result in compensation; indeed, many had made plans accordingly.

The Government regard this as a unique situation and as not setting any precedent for any other circumstances where litigants may be disappointed. The scheme will apply to England and Wales and detailed arrangements relating to the operation of the scheme will be announced shortly. I was disappointed to hear that the Official Opposition do not support the scheme. That is only one measure in the range. Other initiatives are being taken forward by the Government to provide help and support to people suffering from asbestos-related diseases.

A significant consequence of the House of Lords decision has been that people diagnosed with plaques can no longer bring proceedings to establish liability for negligent exposure to asbestos, which was useful for some individuals later diagnosed with mesothelioma, as prior establishment of liability expedited their new compensation claim. That is of particular importance with conditions such as mesothelioma, as patients frequently die very soon after diagnosis, leaving very little time to trace records and obtain compensation. It is imperative that steps are taken to improve the speed of payment for compensation claims for mesothelioma and other serious asbestos-related diseases. Therefore, we are establishing a working group composed of claimants' solicitors, trade unions, insurers, the judiciary and civil servants to examine litigation practices and procedures for compensation claims relating to mesothelioma and to identify options for streamlining them in order to reduce the time taken to conclude cases. We will also be considering the need for changes to the substantive law.

12.15 pm

Further to those initiatives, we are taking action to deal with the problem of people who develop serious asbestos-related disease but are unable to obtain full compensation because they cannot trace the employer's insurer. That problem has been recognised for some time and, since 1999, the Association of British Insurers and the Lloyd's Market Association have committed to a voluntary code of practice

for tracing EL insurance policies. However, while the tracing service has led to some improvements, many individuals were still left without help-3,210 in 2008. The situation is not satisfactory and the Government are therefore consulting on two proposals to improve matters.

The essential first step is the creation of a UK-wide employers' liability tracing office, or ELTO, to manage an electronic database of EL policies and to operate the existing tracing services. We are grateful that the Association of British Insurers has agreed to drive forward that work to help claimants and their representatives, informed by the outcome of the consultation. The new office will initially be launched on a voluntary basis but we would ultimately like it to

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be a requirement on all insurers to publish relevant policy details with the ELTO. We have every expectation that that will deliver significant results, creating a database of records that will help many thousands of people to trace policies and receive compensation in the future.

However, even with an ELTO, there will be some people, especially those who suffer from long-tail diseases such as mesothelioma, who are unable to trace their insurance records and thus will be denied full compensation. That brings me to our second decision. We therefore propose to establish an employers' liability insurers bureau, or ELIB, providing a compensation fund of last resort for individuals throughout the UK who are unable to trace EL insurance records.

The consultation published on 10 February examines whether the employers' liability insurance bureau should cover the impact of an ELIB on insurers and employers, how much should be paid by way of compensation, limitations on claiming from the ELIB and what more can be done to ensure that employers who are legally obliged to obtain ELCI do so. The Government will consider fully the responses to the consultation before determining the next steps towards the introduction of an employers' liability insurance bureau.

A mandatory ELTO and ELIB should, in time, provide a comprehensive framework for supporting people who develop serious asbestos-related disease. However, in recognition of the need for action now, the Government are taking a series of steps to increase the upfront payments currently made to mesothelioma sufferers and their dependants. The Government will increase payments made under the Pneumoconiosis etc. (Workers' Compensation) Act 1979 by 1.5 per cent even though, as the Committee knows, the retail prices index showed negative growth. In addition, we will increase payments due to mesothelioma under the Child Maintenance and Other Payments Act 2008 so that they equal payments made under the Pneumoconiosis etc. (Workers' Compensation) Act 1979. Further, the Secretary of State for Works and Pensions is amending regulations to increase payments to all dependants under the 1979 Act and the 2008 Act by up to £5,000 so that their awards are closer to those paid to sufferers. All those increases will come into effect on 1 April 2010.

The fact that the UK has one of the highest rates of death from mesothelioma in the world is a legacy of our industrial past and the part that asbestos played in it. Just as we were a global leader in the asbestos industry, so we must now become a global leader in research into asbestos-related disease. We have received strong representations from clinicians and others for the creation of a national centre for asbestos-related disease—a collaborative network of funded researchers whose core purpose would be to advance medical research into the prevention, cure and alleviation of asbestos-related disease, primarily mesothelioma. There is now widespread recognition, including within the medical research community, that, while there has been considerable investment in cancer research generally, not enough has been focused on the study of cancers of the lung, including mesothelioma, yet mesothelioma is now the 12th most common cancer killer in men and

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the cancer of most rapidly increasing incidence in women. We are determined to expand research in this area.

My right honourable friend the Secretary of State for Health has therefore asked his officials in the Department of Health to consider and advise on how best to create a world-leading network of medical research practitioners for asbestos-related disease. Based on their recommendations, and on advice from the National Cancer Research Institute about research priorities, we will set out how the Government will support an increase in research investment in this area. In addition, the insurance industry will contribute £3 million towards research into asbestos-related disease. We believe that these measures will provide real and significant benefits for people suffering from mesothelioma and other asbestos-related disease.

I have taken some time to describe the Government's position. I will not take nearly as much time in responding on behalf of the Government on other groups of amendments. The noble Lord, Lord Henley, asked a number of significant questions, including some relating to Second Reading. I shall deal with some of them quickly and I will look at *Hansard* carefully and respond to him in writing on the others.

At Second Reading, his first question was:

"Will the noble Lord confirm that those are the figures provided by the department? Does it still stick with them".—[*Official Report*, 5/2/10; col. 459.]

Today he asked whether there is an update on the cost estimates of pleural plaques. Further work has been undertaken on the cost estimates in the consultation paper and I will write to him with more detail. I want to make it absolutely clear that the Government's decision, which I have effectively repeated today, was taken on the basis of the medical evidence on pleural plaques and not on the costs involved, although they clearly had to be taken into consideration.

The noble Lord's second question was about how the retrospective nature of the Bill affects the estimates of what the costs might be. The costs in the impact assessment included the retrospective costs. His next question, which he said might be more for

my noble friend Lady Quin, was about giving the Committee an idea of how quantum would have to be decided in each case if the Bill were to be passed. It is clearly a question for my noble friend. His fourth question was about the position in Scotland. A decision of the High Court has been appealed in Scotland and is to be considered in due course. His fifth question was whether we have any intention of, or suggestions to make about, speeding up the process. I hope that I answered that in outlining what the Written Ministerial Statement said last week.

The noble Lord's other questions included whether the extra-statutory scheme will open the floodgates for other symptomless conditions. It will not, because there are no other symptomless conditions that have in law been regarded as compensatable damage for a long and settled period. There is no analogy with the symptomless condition for which compensation has never been recoverable in law.

The Government's position on the noble Lord's amendments is that, because of the decision that we have made, we cannot support the Bill or any amendments

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that are made to it. However, we do not oppose the Bill, either. We remain neutral, which is the normal position of the Government when Private Members' Bills are brought to this Chamber. However, I have to say that the Government have huge affection and respect for my noble friend in her work on this matter.

Lord Henley: My Lords, I am interested in the Minister's response that the Government in this House remain neutral about the Bill. The Minister somewhat ticked me off for treating the Bill as if it were a government Bill—that was the implication—when it is a Private Member's Bill. I fully accept that it is a Private Member's Bill, but the Government have a major interest, as they will be paying out considerable sums of money. They also have an interest because they have the resources to answer a lot of the questions that we need to ask about the Bill, many of which have not yet been answered.

I am grateful that the noble Baroness was not for too long worried about the intention behind my amendments. They went down when we saw the Government's response. The response inspired them, which is why I put them down and why we will be coming to other amendments on which it behoves the Government to provide an answer. They have an interest as an employer, as the ones who are handing out this money, as they have announced, and as they have the resources to be able to do something.

I shall ask one or two questions about what is going on. The Government have had considerable time to examine this. The original House of Lords decision was made in October 2007. For once, the Government acted very quickly and within about a week, they said that they did not think that decision should be overturned. They announced consultation, which started, as I remember it, in the summer of 2008. In that consultation document, they quoted figures showing an extraordinary range in the total cost to Government, the insurance industry and employers as whole of between £4 billion and £28 billion. For the third time of asking, will the Government confirm

that that was the figure they quoted on that occasion? Will they, in due course, confirm that they still accept that as the sort of figure that could land on employers, the insurance industry and government should a Bill such as this get on to the statute book? That is the third time of asking; I asked at Second Reading and in introducing this amendment and now I ask it again. I will, no doubt, ask it again later on in the course of these amendments. The Minister might then confirm that those figures were correct.

Lord Bach: In order that the noble Lord will not have to ask the question again, I say that he is right: those were the figures that we used. I think he probably knew the answer to that question. That was in the consultation document. The response to the consultation document will be coming out soon, so the noble Lord will have to be a bit patient.

Lord Henley: I never quite know what is the response to the consultation document. We have the Government's announcement of two weeks ago, which we are told is the response to the consultation. It starts with the

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Secretary of State for Justice and Lord Chancellor, one Jack Straw, saying that his Ministerial Statement sets out the Government's decision on the question of compensation for pleural plaques, following their consultation on the issue. That is not the proper response to the consultation, and another document will come out "soon", "shortly" or "in due course".

12.30 pm

Lord Bach: Perhaps the noble Lord would read on. My right honourable friend then said that a full summary of the submissions we received during the consultation will be published shortly. So we can expect another publication: that is what my right honourable friend said.

Lord Henley: So the second part of the response will be just a full summary of the submissions received during the consultation, and it will be published shortly. It will not deal with the large array of questions that I put to the noble Lord about how the Government got their figure of between £50 million and £200 million, and how they estimated the number of those who would be affected. Who were the people who had already put in their claims, and how was that defined? Did they, by that stage, have to have issued a writ, or just have got as far as a solicitor or claims farmer or whoever? All those questions must be answered.

When she talked about the wording of the Bill, the noble Baroness said it was identical to the number two Bill. I would be grateful for confirmation that it is absolutely identical, or that one or two words have been changed. She claimed that the Bill was tightly worded. It is very important to accept that it is not quite as tightly worded as it might be, because there is still considerable doubt, certainly on the part of the Government, about how many people will be affected. There is also doubt on

the part of the Government about how many people will be affected by their own announcement.

The noble Lord announced that it was the policy of the Official Opposition to object to the payments. I did not say that. I am questioning them, questioning why it is necessary to offer payments to people who are suffering something that is asymptomatic, and also asking-again, this something that the noble Lord did not answer, and to which I will perhaps have to come back on Report or later-where in his department the money is coming from. I presume that it is coming from his departmental budget.

A number of other issues were raised by the noble Baroness, Lady Quin, that I will want to come on to when we debate later amendments. The question of costs and the review of civil litigation by Lord Justice Jackson are matters that we need to address, and I will do that. I will also, when we debate Clause 4 stand part, ask the noble Lord to expand on the speeding up of the handling of mesothelioma claims. That is a crucial question. The disease can move very quickly, and claims must be dealt with quickly.

I welcome what the Minister said about the proposed employers' liability tracing office, and about consultations starting with the industry on an employers' liability insurance bureau. However, he must accept that the way in which that operates must be very different from

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that of the Motor Insurers' Bureau, which has been in existence since the late 1940s or early 1950s, because we are dealing not with a car crash, but something that may have happened a long time ago, and over an extended period. I note what he said about consultations on that starting with the industry in February 2010. I hope that, given the timescale of their other consultations and their glib use of the words "soon" and "shortly"-I never understand what they mean-the Government will make sure that the consultation goes at a reasonable pace, so that they can come forward with conclusions in due course.

I suspect that I will get no further responses at this stage to questions on amendments in this group. I will come back to a number of them on Report, and to other points that need to be made when we debate later amendments. I beg leave to withdraw the amendment.

Amendment 1 withdrawn.

Amendments 2 to 4 not moved.

Amendment 5

Moved by Lord Henley

5: Clause 1, page 1, line 5, at end insert "but may not recover legal costs"

Lord Henley: My Lords, Amendment 5, which inserts the words,

"but may not recover legal costs",

provides that in any claim under the Act, no legal costs should be recovered. I was interested to see that the Government have already adopted this position with the limited extra-statutory scheme-or at least I think that they have. Perhaps that reflects the fact that they have learnt at least one of the lessons that I alluded to earlier from the coal- miners' schemes.

How much of the money that the Minister plans to make available to individual claimants will end up in the hands of lawyers? I hope that there will be no direct payment to lawyers by the scheme administrators: that would replicate the embarrassment of the earlier compensation scheme. However, I have no doubt that those who have presented claims did so with the benefit of lawyers, and that those lawyers will have run up costs under "no win no fee" agreements. Have the Government considered what will happen if money is paid to claimants under the scheme? Will that trigger a win so far as the lawyers are concerned? If so, will most of the money end up in their pockets rather than those of the claimants?

I am sure that Ministers have thought through this before making the announcement, although we hear that they will make further announcements in due course. I am sure that they do not want to line the pockets of lawyers at the expense of the people suffering from pleural plaques. However, there is nothing about this in the Ministerial Statement, and I would welcome assurances from the Minister that the point has been carefully considered. Has he sought and obtained assurances from those representing claimants that the money will be retained by the claimants?

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I am afraid that Amendment 8, which is in the same group as Amendment 5, has a drafting error. The word in proposed subsection (1) of the new clause should be "costs" rather than "damages". It provides for the Secretary of State to fix the amount of legal costs paid, and for such regulations to ensure that the legal costs paid do not exceed a reasonable proportion of the compensation. As with the proposal to fix by regulation the amount of damages, I wish to see the affirmative resolution procedure applied. As with many other low-value personal injury claims, claims for pleural plaques have historically generated significant legal costs. Noble Lords will be aware of Lord Justice Jackson's recent report on civil litigation costs, which was referred to by the noble Baroness, Lady Quin, in which he concluded that costs were out of all proportion to damages and that the main culprit was the so-called "no win no fee" regime, which is now commonplace in personal injury and disease claims.

Unless the Minister can assure us that there will be a positive prohibition on any payment under the scheme by claimants' lawyers, I want to press him about ensuring

that only a limited proportion of any scheme payment can end up in the hands of lawyers. I believe that the same principle should apply equally to claims farmers. I am assuming that it will be relatively easy for a claimant under the scheme to present a claim and that they will not need advice to do so, but that will not stop aggressive marketing in the media and the internet by claims farmers offering to process such claims for a proportion of the compensation. How will the Government act to plug that gap and ensure that the £5,000, or the vast bulk of it, ends up with individual claimants and not with the lawyers of claims farmers? I beg to move.

Lord Bach: I repeat what I said earlier. We are debating amendments to my noble friend's Bill in Committee. We are not debating the scheme that the Government set out in the Ministerial Statement of 25 February. There are various other ways in which the noble Lord can find out more about it, and use the procedures of the House to ask Oral Questions, Written Questions or initiate debates. I do not know whether I am right procedurally but my view is that this is not a suitable vehicle to ask questions on matters that do not appear anywhere in the Bill.

Lord Henley: Of course they are relevant. I am using the procedures of the House to ensure that the Government explain their scheme. They made the announcement as a direct result of the Bill introduced by the noble Baroness, and the Bill in another place. If the noble Lord says that that is not the case, I have doubts. Noble Lords are giving their view on the Bill—that they do not think it is necessary. It is now passing through this House. It is perfectly legitimate and I shall continue to ask those questions. I am asking the Government about the Statement that was made two or three weeks after the Second Reading of this Bill and one week before its Committee stage. I did not table any amendments until that statement, so it is relevant today.

Lord Addington: I thank the noble Baroness, Lady Quin, for introducing the Bill for the simple reason that it has made the Government's position much

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clearer, and their approach generally seems to be correct. But it is the process of Private Member's Bills often to clarify, so it has fulfilled its function if we have a slightly better understanding of the issues. The noble Lord, Lord Henley, has a point about the background detail but it may be that it is for the Bill's proposer to answer that question, which may be a bit much without the Civil Service behind her. A balance needs to be struck, but the Bill has achieved clarification even if it is not the right vehicle for that issue. We need to take a step back.

Lord Bach: My Lords, I shall carry on with my reply to the noble Lord, Lord Henley, on payments under the extra-statutory scheme being made to lawyers. Further information relating to the scheme will be published in due course when it is fully established and ready for operation. I shall expand on what is being done to speed up the mesothelioma claims process. As I said in my response to the last group of amendments, we are setting up a working group and hope to be able to say more about it shortly.

The amendments relate to my noble friend's Bill and refer to the amount of damages that would be achievable if her Bill became law. We are concerned to ensure that legal costs are properly controlled in civil proceedings generally and we are considering the very important recommendations made by Sir Rupert Jackson in his comprehensive review of litigation costs. The amendments raise interesting issues. They may well turn out to be probing, but I do not know yet. If not, we might consider their phrasing to be rather draconian.

Baroness Quin: My Lords, I take the opportunity to respond to some of the points made in the amendments and some of the subsequent points made by noble Lords in the debate. I am grateful to the noble Lord, Lord Addington, for his understanding that piloting a Private Member's Bill is a challenge. Having been a Minister, I remember the bank of comforting advice that I could resort to. It is certainly very different when you are trying to pilot a Bill of this kind, although I must say that I am grateful to my colleagues in another place, who have raised these issues on many previous occasions, and whose arguments have been extremely useful in dealing with the Bill.

The noble Lord, Lord Henley, is quite right to raise the issue of costs. It goes back to what he said earlier when he expressed some alarm at floodgates being opened as a result of such legislation. The Bill returns the situation to what it was prior to 2007. Although there was certainly a number of claims—we have heard about the number of claims in the pipeline—I do not think that they amounted to a flood. However, I agree with what both the noble Lord and my noble friend said about being vigilant that lawyers do not simply use this to tout for business and try artificially to inflate the number of cases. In this instance, my noble friend is quite right: the findings of the Jackson review and the work of the Civil Procedure Rule Committee will be very important in that respect. I say to the noble Lord, Lord Henley, that those issues go much wider than the Bill. They relate to a whole range of compensatable industrial injuries and need to be

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dealt with on that wider basis, which is why I hope that there will be a positive outcome to the Jackson review process.

I should also stress, and the Government have recognised, that previous awards have been fairly modest. That is quite right, given that—this point has been made—you may have been exposed to asbestos, but you may not necessarily develop a more serious disease. I take issue with the reference of the noble Lord, Lord Addington, to the fact that we all have scarring on knees, elbows and so on. It is a very real worry if you have been exposed to such a highly dangerous substance as asbestos. Many colleagues in the other House who represent constituencies where people are affected have graphically described the worry and, in some cases, trauma, that people go through worrying whether they will develop a very serious asbestos-related disease in consequence. I certainly would not want to underestimate that in any sense, although it seems to me that the level of awards that have been given in the past recognises the situation: they are not comparable to the awards given when more serious illnesses or conditions have developed.

I gave an estimate-I freely confessed that it was a guesstimate, given the amount of information available to me-of the number affected, but it is interesting that it was rather similar to the Government's estimate in their statement on pleural plaques just a week ago.

Finally, the Minister invited me earlier to refer to the situation in Scotland. Obviously, I accept the point that further appeals are taking place. None the less, I continue to have huge concern, which relates to the fact that I live in a border region of the United Kingdom where workers may have worked in both English and Scottish shipyards and may be resident in England but have been exposed to asbestos in their time working in a Scottish shipyard, or vice versa. It worries me that, although I normally support different policies being pursued by devolved Administrations, on this issue we could be leading towards an unfair and discriminatory situation, which would badly affect a lot of working people in my part of the country. I am sure that your Lordships will understand my human concern for people who might find themselves in that situation.

Lord Henley: My Lords, like the noble Baroness, Lady Quin, I come from the Borders and so fully understand her point about the Tyneside and Clydeside connection. Like her, I think that it is unfortunate that Scotland has gone ahead with legislation-admittedly, being challenged in the courts at the moment-for separate provisions which would have a dramatic effect on England and on the Government here, particularly for the Government as an employer. The Government obviously have an interest in the Bill, and no doubt the Minister will be able to assure us that his colleagues have had discussions with their colleagues in the Scottish Executive on these matters over the years since that House of Lords judgment.

The Minister said that further information on the working of the scheme will be set before us in due course. Again, this leads me to further confusion about their announcement last week saying:

"This Ministerial Statement sets out the Government's decision on the question of compensation",

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and so on. All it says later on is:

"A full summary of the submissions we received during that consultation will be published shortly".-[*Official Report, Commons, 25/2/10; col. 79WS.*]

However, we are now told that we will get further statements on how this works, on how the Government will identify the individual people, and on what safeguards there will be. We really need those statements now, while we discuss the Bill, so that we know what to make of it. That is one reason why it is right and proper to continue to put amendments to the House which I expect the Minister to answer.

I assure the noble Lord, Lord Bach, that not all my amendments this afternoon will be directed at him; I hope the noble Baroness will answer some of them. I am sure that, with her great ministerial experience, she will be more than up to it, even on her own. Many of us know from the past that the noble Lord has a panoply of advisers behind him who will assist him and the House by providing us with the answers that we need so that we can discuss these amendments. I beg leave to withdraw the amendment.

Amendment 5 withdrawn.

Amendment 6

Moved by Lord Henley

6: Clause 1, page 1, line 8, at end insert "save that damages in respect of pleural plaques can only be assessed by the court having regard to the actual physical and mental pain and suffering caused to the claimant"

Lord Henley: My Lords, I shall also speak to Amendment 7. Amendment 6 builds on an earlier point and highlights the anomaly that the Bill seeks to reinstate liability without considering the effect on the quantum of claims. How are the courts to approach the valuation of a claim when there are no symptoms? The Court of Appeal suggested a bracket of £4,000 to £6,000 if the law was not overturned, but those figures seem high, given subsequent developments, and the courts would have to consider the matters afresh.

Amendment 7 follows on from that and seeks to amend the Bill to provide that a tariff for damages can be set by regulations and that the tariff would be applied via the affirmative procedure. To my mind, any setting of the level of damages, and therefore of the control of the costs to the public purse, should be subject to careful and ongoing scrutiny by Parliament.

As we have heard, the Secretary of State has already indicated that, in his extra-statutory scheme, the compensation would be £5,000. Again, this is a question for the noble Lord, Lord Bach, although the other matters might be for the noble Baroness. I am curious to know how the Government arrived at that figure. Paragraph 58 of the consultation paper notes that a fixed payment of £5,000 was used for the financial impact assessment, but goes on to say:

"However, as pleural plaques have been held not to be actionable damage, and in view of the minimisation of legal costs, a lower figure may be more appropriate".

There is a telling rider to that paragraph at the end:

"This is likely to be necessary to make a no fault scheme affordable, were it to be introduced".

What has changed since July 2008 to make £5,000 more affordable now?

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I have more questions about the workings of the scheme. Again, I hope the noble Lord will not mind responding to them. The Statement, as I think I made clear earlier, is silent on what is meant by,

"those individuals who had already begun",-*[Official Report, Commons, 25/2/10; col. 80WS.]*

a claim for compensation. How far back in time does that go? Presumably even if these people had an "understandable expectation" before 2007, they have rather got over that expectation in the past two and a half years. Again, what proof will the scheme require of the previous presentation of that claim?

I hope the noble Lord will address those points and that the noble Baroness will think a little about the amendments and what figure the courts should come to should the Bill go ahead. I beg to move.

Lord Bach: My Lords, as the Written Ministerial Statement states, we,

"decided to make payments of £5,000 to individuals in this limited category under an extra-statutory scheme. The payment broadly reflects the level of compensation likely to have been received if pleural plaques had continued to be compensatable".

So it is based on awards which would typically have been made at the time that the people covered by their scheme commenced their legal claim.

As to the noble Lord's second question, paragraph 10 of the Statement states:

"Detailed arrangements relating to the operation of this extra-statutory scheme will be announced shortly".-*[Official Report, Commons, 25/2/10; col. 80WS.]*

Obviously those detailed arrangements will assist the noble Lord in his questions being answered.

The detailed qualifying criteria and the requirements for proof that an applicant meets those criteria will be published in due course when the scheme is fully established and ready for operation. There is not much more that I can say about the scheme than that.

Baroness Quin: My Lords, perhaps I, too, may respond to one or two of the points that have been made. I feel less warm about this group of amendments than some of the previous amendments in the name of the noble Lord, Lord Henley, because these issues are taken care of elsewhere in the legal system. He said that the proposed level of awards is rather high. I have already said that I feel that it is about right, because of

the response I gave earlier to the noble Lord, Lord Addington. I am reinforced in this by the fact that the noble Lord's Front-Bench colleague in another place very much took the same line; namely, that the level of awards was modest. It would not be a life-changing sum of money but, as he said, for people who are probably out of work or perhaps from families with no prospect of getting work, it could bring some relief and happiness when the individual would be suffering great anxiety.

I know that many people who received awards under the old scheme were workers who had lost jobs because of the closure of shipyards. In many cases, they were in their 50s with virtually no prospect of working again. While the award was in relation to the diagnosis and the presence of pleural plaques, and the worries therefore about further asbestos-related diseases as a result, none the less the level of awards was such

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as to give some very valued and welcome compensation for exposure to a dangerous disease at what was frequently a difficult point in that person's life and career, as the noble Lord's colleague said in the other place.

The noble Lord talked about allowing a tariff of damages to be established in one of his amendments, and allowing the Secretary of State to fix by regulation the amount of damages to be paid. But my understanding is that common law sets the damages and tariffs. It might be an unfortunate precedent for that approach to be changed on the basis of this single, fairly tightly drawn piece of legislation.

The noble Lord talked about regulations being laid before Parliament. I am not sure that there would be regulations if the Bill was passed in the form in which it appears before us. Incidentally, at an earlier stage he asked me if the wording in my Bill was identical to the Bill that had come from the other place. It is my understanding that it is identical. But, in any case, the other Bill has also been sent to your Lordships' House for consideration.

The noble Lord's desire to see regulations laid before Parliament also links into a later amendment concerned with the Government reporting back to Parliament with an impact assessment on this issue. While I understand why he wishes to do that, it is important to point out that parliamentarians have many ways in which we can raise issues about the operation of particular Acts. We can do so through Parliamentary Questions, debates and so on. Certainly the issues around pleural plaques have been debated not only on the Floor of the other place, but in Westminster Hall. Further, the matter has been raised repeatedly with Ministers at Question Time. There are a number of ways already open to us in which Parliament can closely monitor legislation.

Having said that, these and the rest of the amendments tabled by the noble Lord raise issues that it is completely proper to discuss at this stage of our proceedings. From that point of view, I welcome them.

1 pm

Lord Carswell: My Lords, I have spent a great deal of the past 50 years trying to obtain damages for plaintiffs, prevent plaintiffs from obtaining damages, awarding or refusing to award damages to plaintiffs, and sitting on appeals on the amount of damages awarded. A significant part of that work has been concerned with diseases of the chest related to asbestos. I do not for a moment claim the depth of knowledge of the noble Baroness, Lady Quin-I have a mere acquaintance with it-but I can recollect vividly coming across those who had real fears and worries. Every time people who had worked in the Belfast shipyard and places like it developed a cough, they were afraid that it might be the harbinger of something much worse.

I admit to a few reservations about the principle of awarding damages for something that is not in fact a matter that should be a cause for concern; that is, the physical manifestation of a serious disease of the chest. It is a difficult principle. I was not a member of the House of Lords Appellate Committee which decided the case to which reference has been made, and I have

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not ever formed a standpoint either in litigation or otherwise on the matter, but I want to put in a word to say that awarding damages for a worry that should be resolved-one that people should be able to dispel to a large extent by reassurance-is a difficult principle. But if the Committee considers that this Bill should go through and that damages should be awarded, so be it.

I say only this in relation to the amendment about the tariff proposed by the noble Lord, Lord Henley. One thing which has shone through clearly in all my experience of dealing with damages is that no two cases are the same, and tariffs lead almost inevitably to anomalies and injustices. Their advantages are speed, certainty and the costs are kept down. If the Bill remains as drafted, I am concerned that an awful lot of small claims will be exploited by those persons whose business it is to gather in claims on behalf of claimants and plaintiffs in order to obtain disproportionate amounts. If it is better that the tariff should be designed in such a way as to avoid that, it may be of benefit. So, on balance, I will support the noble Lord's amendment. However, it will need to be carefully drafted so that questions such as age and the type of concern are ironed out. You cannot legislate for everything but, if the Government take this further, I hope that they will think carefully about the way in which the tariff is prepared.

The question the Minister referred to about successive employers is real and difficult. I had many occasions of great concern where a claimant had been exposed to asbestos as, say, a pipe coverer with a whole collection of companies, most of them very well known. However, a lot of them had gone out of business and some of their insurers had either transformed themselves into other groups or even, occasionally, gone out of business. The question was how the claimant, if he had a proper case, was going to enforce his claim. Did he land one unfortunate company or insurer with everything or were they able to come to agreement? On the whole, insurers were able to come to agreements because they could see the concerns raised and the difficulties that would ensue if they did not do so. However, if the Government are considering a way round this difficulty, I would commend it.

Lord Henley: My Lords, I am grateful for the support of the noble and learned Lord, Lord Carswell. Amendments 6 and 7 are, to some extent, alternatives. They are tabled to highlight the problem of how we assess the damages that should be paid out for something that is asymptomatic. That is the point I was seeking to address and I am grateful for the debate on it.

I shall want to come back to this on Report because there are real concerns involved. I note what the noble and learned Lord, the Minister and the noble Baroness have said. I shall seek to bring the amendments or something similar back later. In the mean time, I beg leave to withdraw Amendment 6.

Amendment 6 withdrawn.

Amendment 7 not moved.

Clause 1 agreed

Amendment 8 not moved.

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Amendment 9

Moved by Lord Henley

9: After Clause 1, insert the following new Clause-

"Costs Orders

(1) The Courts and Legal Services Act 1990 is amended as follows.

(2) In section 58A, after subsection (6) insert-

"(6A) Subsection (6) shall not apply to a claim of any type which is permitted by section 1 of the Damages (Asbestos-related Conditions) Act 2010."

(3) This section shall be treated for all purposes as always having had effect."

Lord Henley: My Lords, I shall speak also to Amendments 10 and 11. The amendments are intended to abolish the recovery of success fees paid to solicitors, after-the-event insurance premiums and "membership organisation" fees paid to unions in pleural plaque claims. Amendment 11 is designed to ban the use of referral fees paid to claims farmers and other intermediaries.

In his final report, to which we have referred, Lord Justice Jackson recommended in chapter 10 that the recovery of success fees in certain types of claim be abolished. In chapter 9, he makes a similar recommendation in regard to recovery-after-the-event insurance premiums. I see this as a way of getting rid of disproportionate costs, and I would welcome the Government's opinion on whether this might not be a suitable suggestion for how to do so.

Amendment 11 is intended to permit the Secretary of State to prevent the payment of any referral fee by a solicitor acting on behalf of a claimant to the claims farmer or trade union which introduced that claim to the solicitor. I have already made reference to the miners' compensation scheme. One of the biggest scandals related to that scheme resulted in the solicitors in question being struck off. There was an unlawful deduction from compensation made by the solicitors, who then paid over some of the sums deducted to a claims-farming company. We must ensure that any scheme promoted by the Ministry of Justice does not fall into the same trap.

It is no surprise that, in chapter 20 of his final report, Lord Justice Jackson came out strongly against the use of referral fees in personal injury claims. Paragraph 3.7 on page 199 states:

"Trade unions refer the personal injury claims of their members to solicitors on union panels. Trade unions may charge referral fees, albeit at a lower level than BTE insurers or claims management companies. For example, one union informs me that it receives a referral fee of £200 for every case which proves to be 'worthy of investigation'".

Paragraph 4.9, on page 204, states:

"I do not accept that referral fees are necessary for access to justice. Claimants with personal injury claims would be well aware of their right to claim damages, even if claims management companies did not exist".

Paragraph 4.11, on page 205, states:

"There is also a wider point. In my view, it is offensive and wrong in principle for personal injury claimants to be treated as a commodity".

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That must be the case even where the referral fee is paid out of the claimant's legal costs. In the scheme proposed by the department, there is presumably no right to recover legal costs and any referral arrangement would have to be financed out of the claimant's damages. As Lord Justice Jackson rightly concludes:

"The only winners are the recipients of referral fees".

This scheme is being offered by the Government for the benefit of individual claimants and not of lawyers or trade unions. Will the Minister assure the Committee that none of the money to be paid to the claimants under this extra-statutory scheme is likely to find its way into the hands of either the lawyers or the trade unions? I beg to move.

Lord Bach: My Lords, the detailed arrangements relating to the operation of the extra-statutory scheme will be announced shortly, so I am not in a position to answer directly the noble Lord's perfectly valid question. These amendments have a clear theme of seeking to avoid profiteering from pleural plaques. The questions whether there were abuses in the past, what might be done to avoid them in the future if pleural plaques were to become compensatable damage, and whether those approaches are viable are all very interesting issues. The noble Lord showed expert knowledge of the recent report on costs from Lord Justice Jackson. That report raises many interesting questions around this theme which would be relevant in this context. As I think he and the Committee know, the Government are considering the Jackson report as we speak. That is really all I need to say at this stage in the context of the Bill.

Baroness Quin: The noble Lord, Lord Henley, is rightly concerned about disproportionate costs. Part of what he said related back to one of his earlier amendments, where he sought to ensure that legal costs did not exceed a reasonable proportion of the damages to be paid. I sympathise with that, although it is my understanding that that is in law anyway—perhaps my noble friend can confirm that—and that the principle would apply to legislation such as this.

The noble Lord raised referral fees, and my noble friend referred to the outcome of the Jackson review. I hope the review will be able to deal with issues such as these, but I reiterate my earlier point that these issues go wider than the Bill and would need to relate to a number of other pieces of legislation and other instances where claims can be made. For that reason, they are better dealt with in that wider context than in a specific amendment to the Bill.

I welcome the presence in the Chamber of the noble and learned Lord, Lord Carswell, who reminded us of the interest of Northern Ireland in these issues, which I know well myself. I have at least some knowledge of Harland and Wolff and the industries in the Belfast area. However, on costs and tariffs, it is again better to look at the civil procedure committee work rather than seek to be too prescriptive in the Bill, which is narrowly drawn around one particular issue.

1.15 pm

Lord Henley: My Lords, again the Minister tells us that detailed arrangements will be published shortly. I hope that before we are finished with this he will be

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able to give us a better idea of what "shortly" means. He will know that I have some experience of using similar words. I remember that once we made an announcement

that we would publish something "later in the spring", and I confess that we stretched things a bit by considering July to be the spring. Governments have a way of saying that they will "publish shortly".

We have taken a long time over this. We have had the Statement, which looked as though it was a full and final statement, other than that the responses to the consultation would be added, but obviously it is not. Until we get that final statement, it is difficult to know what to do with a Bill of this sort.

I also notice that the Minister said that the Government at this moment are actively considering Lord Justice Jackson's report. That is right and proper because the report has only recently come out, but at some point we will all need to consider it and debate it in this House. Whether that will be this side of a general election or the other is another matter. I suspect that the cost of the consideration needed for that report means that we will have to come to that after the election.

For the moment I will withdraw the amendment. I might want to consider coming back to this group on Report, but at this stage it is probably best if I beg leave to withdraw the amendment.

Amendment 9 withdrawn.

Amendment 10 not moved.

Clause 2 agreed.

Amendments 11 and 12 not moved.

Amendment 13

Moved by Lord Henley

13: After Clause 2, insert the following new Clause-

"Contribution to medical research through damages

Where in any action permitted by this Act there is a payment of damages due to the claimant, an amount equal to 50 per cent of those damages shall be deducted for the purposes of research into asbestos-related cancer and paid to such body as the Secretary of State may by regulations appoint."

Lord Henley: My Lords, I am anxious that we make some progress. I appreciate that all the amendments have been in my name, but I assure the Committee that I am not trying to waste the time of the Committee; I am just trying to get answers from the Government, as is right and proper.

Amendments 13 and 14, which are alternatives, are a putative suggestion that claimants who are worried about the risk of future disease ought perhaps to be contributing to the cost of the research that we know is going to be mounted. Noble

Lords might prefer the second suggestion, Amendment 14, which would take the contribution from the legal fees. As I have outlined, there is concern in some quarters. Lawyers are pushing for pleural plaque claims to be reinstated because they are used to generate significant costs, usually well in

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excess of the damages awarded. The costs would include an uplift of an additional percentage for winning cases under no-win, no-fee cases. The lawyers should be encouraged to put a percentage of their revenue from such cases into research for the benefit of their clients-part of their corporate social responsibility, if you like. I raise this purely in a spirit of helpfulness, not in a spirit of knocking lawyers. Noble Lords might like to consider the proposal or possibly suggest some alternative. It might also offer the Minister a chance to say a little more about the research that the Government want to commission in this area. I beg to move.

Baroness Quin: My Lords, one of the amendments seems to say that some amount for medical research would be deducted from the damages awarded. If this involves taking money away from the claimant, I would be strongly opposed to it. I am not sure that it would comply with human rights legislation. Perhaps the Minister could comment on that. Certainly, it would be a worrying development if that were to be the case.

However, I share a concern that the noble Lord has expressed on several occasions. I sympathise with his concern that lawyers should not profit excessively from these arrangements. His amendment seeks to tease out from the Government how they feel arrangements should be made to prevent lawyers making excessive profits. I would be very reluctant to see anything that seemed to deduct damages from the claimant or victim as a result of the noble Lord's amendments.

Lord Addington: My Lords, would it not be more to the point if we took some of the fees from the lawyers and put them into research?

Lord Henley: I am obviously not getting a response from the Government. I accept the point made by the noble Baroness, Lady Quin, about Amendment 13. Amendment 14 might contain a better idea, but I do not think it has much support. I will consider the matter again, and whether I wish to address it on Report. In the mean time, I beg leave to withdraw the amendment.

Amendment 13 withdrawn.

Amendment 14 not moved.

Clause 3 : Limitation of Actions

Amendment 15

Moved by Lord Henley

15: Clause 3, page 2, line 14, after "determined" insert ", discontinued or withdrawn"

Lord Henley: My Lords, Amendment 15 is purely a probing amendment to understand the scope of the proposed scheme. It is now nearly two and a half years since the judgment. Many claims that were live at that time have since been withdrawn or discontinued by the claimant or lawyers on their behalf. Claims that were

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live at the time of the judgment may now be long gone. I wanted to be clear as to whether such claims are within or outside the scope of the scheme. I can possibly predict the Minister's answer that the Government will announce this shortly when they announce the further details of the scheme. However, it might be that the Minister can provide some assistance on the question of individuals who have begun but not yet resolved a claim. This point is not entirely clear to me. It would be very useful if the noble Lord could assist the Committee at this stage. I beg to move.

Lord Bach: I am sorry to keep repeating myself but I am afraid the noble Lord will have to wait until the details of the scheme are announced. In terms of the Bill, the amendment appears to clear matters up quite well. It is a reasonable amendment.

Baroness Quin: My Lords, I took it from the noble Lord, Lord Henley, that his amendment was a probing amendment to get some response from the Minister. In that sense it is welcome, although I do not feel that it is necessary as a substantive addition to the Bill.

Lord Henley: I did not intend to press it. As I said, it was just a probing amendment. I understand that the noble Lord welcomes the chance to make things clearer and will do so in due course. Is that correct?

Lord Bach: My Lords, we consider this to be an amendment to a Private Member's Bill. We looked at the amendment in the context of the Bill and thought that it provided reasonable clarification. That is all. We are neutral about the amendment, as we are—and as I think I have made clear—about all the noble Lord's amendments.

Lord Henley: If the Government are perfectly happy, as—

Baroness Quin: I certainly do not wish to oppose the amendment if there is general agreement on it. I make that point to the noble Lord.

Lord Henley: In that case, it seems to me best to provide that clarification by agreeing to the amendment.

Lord Bach: I am sorry to interrupt the noble Lord because I know that he is about to take an action, but we are not going to support this amendment. I pointed out that we think that it is a reasonable clarification to the Bill, but we certainly have no intention of supporting it or opposing it.

Lord Henley: My Lords, as it is felt to be a reasonable clarification, I will formally move the amendment.

Amendment 15 agreed.

Clause 3, as amended, agreed.

Amendment 16 not moved.

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Clause 4 : Commencement and retrospective effect

Amendments 17 and 18 not moved.

Debate on whether Clause 4 should stand part of the Bill.

Lord Henley: My Lords, I wish to say a word or two on this because I seek further clarification on what the Government are doing to speed up claims in relation to mesothelioma. We all know that it is a horrific disease. It is wholly right that the legal system should give priority to very early determination of compensation claims so that sufferers can obtain proper compensation during their lifetime. We support and applaud the Government's contribution and commitment to improve the speed of payment of compensation claims. However, it may take a little more than the creation of a working party, as I recall a similar commitment by the Department for Work and Pensions in 2007 that has not yet borne much fruit.

In response to the Government's Statement, the Association of British Insurers commented:

"It is unacceptable that it takes up to two years for these claims to work through the compensation system".

I was minded to put down an amendment on this to encourage the Secretary of State to do something. It is important that any handling scheme should place obligations on those acting for claimants as well as on those acting for defendants. I raise this again in this clause stand part debate before we finally conclude the Committee Stage in order to hear from the Government again on this. I am sure that they will be grateful to take this opportunity to say what they feel they can do to speed up the claims, such as fixing legal costs for the various stages of the claims at fair levels so that solicitors are properly rewarded for the work that they do in sometimes difficult circumstances. That might drive early settlement. I would be grateful if the noble Lord could set out what the Government are doing to streamline the handling of claims and what progress they think they can make in this area given the lack of progress over the past three years.

Lord Bach: My Lords, I am grateful to the noble Lord for what he has said about the Government's efforts in this field. I am afraid that I cannot add much to what the Written Ministerial Statement says about this and what I said in my response to Amendment 1. As the noble Lord rightly sets out, there is a real problem. Steps need to be taken to improve the speed of payment of compensation claims for mesothelioma and other serious asbestos-related diseases. The Government think that it is imperative that steps are taken to this effect.

As I said earlier, we are therefore establishing a working group composed of experts in this field, including claimants' solicitors, trade unions-which have much experience representing their members-the insurance industry, the judiciary and civil servants, to examine litigation practices and procedures for compensation claims relating to mesothelioma and to identify options for streamlining them in order to reduce the time taken to conclude cases. The working group will also consider the need for changes to the

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substantive law. It is good to know that we will have the support of the noble Lord and his party in measures that are taken to hurry this along. As he rightly says, this is a serious matter on which action is needed.

Clause 4 agreed.

Clause 5 agreed.

House resumed.

Bill reported with amendments.