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# Pleural Plaques

EEF response to consultation paper from  
the Ministry of Justice

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# Contents

<b>About EEF</b>	<b>3</b>
<b>Executive Summary</b>	<b>3</b>
<b>Detailed Response</b>	<b>4</b>
<b>Conclusion</b>	<b>6</b>

## About EEF

EEF is the representative voice of manufacturing, engineering and technology-based businesses with a membership of 6,000 companies employing nearly 1 million people. EEF is one of the leading providers of business services in employment relations and employment law, health, safety and environment, manufacturing performance, education, training and skills.

## Executive Summary

- EEF is keen to see the compensation system reformed so that good claims are settled more quickly and with a greater proportion of resources going to the person who has suffered harm. People who contract serious disease as a result of negligent asbestos exposure deserve a faster and more efficient system.
- However EEF does not believe that the main proposals in this paper advance the position in any way. Rather they risk distracting attention and resources away from both proper compensation for those harmed and action to prevent future exposures.
- Both overturning the House of Lords' decision and the establishment of a no-fault payment scheme for pleural plaques would run counter to important principles of civil law. Redress is justified only where harm has been suffered. Asymptomatic pleural plaques do not represent harm and neither does concern about possibly developing disease in the future.
- EEF does support well-targeted action to improve understanding of pleural plaques. It is important that those directly or indirectly affected receive clear, accurate and consistent advice and information.

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## Detailed Response

### **Question 1: Do you think that the proposals to raise awareness of the nature of pleural plaques will help allay concerns?**

1. There is a need for action to ensure that those diagnosed with pleural plaques receive clear, accurate and consistent explanation and advice, particularly from medical practitioners. However the associated objective (paragraph 24) of improving understanding of pleural plaques amongst the wider public is laudable but unrealistic. In reality the condition will be of interest only to those who are directly affected and their close family and friends. Others will simply ignore any communications.
2. EEF therefore supports a well-targetted campaign to provide clear, accurate and consistent advice and information to those directly or indirectly affected by pleural plaques.

### **Question 2: What are your views on whether it would or would not be appropriate to overturn the House of Lords decision on pleural plaques?**

3. EEF strongly supports the right of redress of people who have suffered harm due to the negligence of a person who owed them a duty of care. Indeed, EEF has consistently pressed for reform of the redress system to speed up such claims. However, in the case of pleural plaques, EEF agrees with the Law Lords: pleural plaques are asymptomatic and therefore there is no harm to redress.
4. EEF is opposed to any attempt to overturn the House of Lords decision; to do so would distort the basic principles of existing civil law and would set a political precedent that could have far wider effects than are considered in the consultation paper at paragraph 39.
5. Were the House of Lords' decision to be overturned, it would raise a logical expectation of compensation for exposure to other agents known to cause long-term effects. As the consultation paper identifies, that expectation would certainly exist where an asymptomatic condition acts as a marker for exposure, e.g. a sun tan evidences exposure to ultraviolet light. However it would also set a political and public precedent for those concerned about exposure to any substance with potential long-term effects to claim compensation, regardless of any asymptomatic changes.
6. There are many agents that have in the recent past, been widely used at work that are now classified as having potential long-term carcinogenic or mutagenic effects. If it were established that concern about exposure were compensatable, the estimates currently identified in the impact assessment would be very greatly exceeded.
7. EEF urges that the government maintains the important principle of civil law that redress can be owed only where harm has occurred. In law concern, whether or not accompanied by asymptomatic conditions, does not amount to harm.

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**Question 3: Do you consider that no fault financial support for pleural plaques would be appropriate? If so, what would be the rationale for this? If not, please give your reasons.**

8. EEF does not believe that it would be appropriate to establish a no fault financial support for pleural plaques.
9. In the case of asymptomatic pleural plaques there is no harm to redress. The fact that for 20 years some have received compensation, due to what the Law Lords unanimously determined was an incorrect legal interpretation, does not justify a support scheme. Two wrongs do not make a right.
10. Either scheme for no-fault support would cost money. Whether it came from taxpayers, insurers or businesses, that money that could instead be used to support the many people who each year suffer the very real harm and suffering of mesothelioma and asbestos-related lung cancer. It could also be used to prevent future asbestos exposures. A scheme for pleural plaques risks diverting both attention and money from these pressing needs.

**Question 4: If a no fault payment system were to be introduced:**

- a) Which of the above two schemes should be introduced, and why?
  - b) What level of payment would be appropriate?
  - c) How should the scheme be funded?
  - d) What limitation period should apply for each option?
11. Not applicable

**Question 5: Do you have any estimates regarding:**

- a) The number of people currently diagnosed with pleural plaques?
  - b) The future number of people who will develop pleural plaques?
12. EEF does not have any data or research on numbers of people diagnosed with pleural plaques now or in the future. It has not identified relevant research beyond the published studies of which MoJ are aware. It is clear that there is very considerable uncertainty in this area.

**Question 6: Do you have any estimates of the distribution of future pleural plaques cases, including the period of time over which people will develop pleural plaques?**

13. EEF does not have any estimates as to the distribution of future cases of pleural plaques beyond that contained in the published literature.

**Question 7: Do you have any estimates regarding the number of people diagnosed with pleural plaques prior to the House of Lords decision and who have not received compensation?**

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14. As identified in responses to questions 5 there is very considerable uncertainty about the prevalence of pleural plaques; it is therefore not possible to estimate with any confidence the numbers who had pleural plaques at the time of the House of Lords decision, but had not received compensation.

## Conclusion

EEF wants to see major improvements to the compensation system, resulting in good claims being settled more quickly and efficiently. However, overturning the House of Lords decision or establishing a no-fault payment scheme for pleural plaques do not advance the position in any way. They also run counter to important principles of civil law and would be likely to lead to very large impacts.

EEF therefore urges that action be limited to a well-targeted campaign to ensure that those directly or indirectly affected by pleural plaques receive clear, accurate and consistent information and advice.

## Contact

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