



Recovery of social security benefits from compensation awards

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Social Policy section

When a person is awarded compensation as a result of an accident, injury or disease, the amount of compensation they receive may be reduced to take account of social security benefits already paid to them. The current rules on 'compensation recovery' were introduced in 1997, but such provisions are a longstanding feature of the social security system.

This note looks briefly at the background to the current rules, and outlines how the present scheme works.

It also gives details of changes which came into effect on 12 March 2007 to exempt those receiving compensation for asbestos-related diseases under the schemes set up for former employees of Turner and Newall (and other associated companies of the US parent company Federal Mogul) from the usual rules on compensation recovery.

Contents

A.	Introduction	3
B.	Background to the current system	3
1.	The situation before 1990	3
2.	The 1990 scheme	3
3.	Social Security Committee inquiry	4
4.	Government response	5
C.	The 1997 changes	5
1.	Background	5
2.	Overview of the 1997 changes	6
3.	The rules in detail	7
a.	Heads of compensation and associated benefits	8
b.	Exempt payments	9
c.	Worked example	10
D.	Reform proposals	11
E.	Exemption for former Turner and Newall employees	14
F.	Further information	17
	Appendix: Compensation Recovery Unit statistics	18

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A. Introduction

A person who has been affected by an accident, disease or injury may be entitled to social security benefits. If that accident, injury or disease was caused by negligence of a third party they may also be entitled to compensation from that third party. In practice this compensation is usually paid by insurance companies after a settlement between the parties or enforced through the courts. It is a long established principle that the benefits which are paid to the 'victim' do not serve as double compensation for the same loss but should simply meet their needs while a settlement is being reached.¹ The second principle underpinning the current system of 'compensation recovery' is that 'taxpayers should not subsidise a liable third party in their obligation to fully compensate a person for their injury or disease they have contracted'.²

The system has changed a number of times, with the most important changes taking place in 1990, under provisions contained in the *Social Security Act 1989*, and in 1997, as a result of the *Social Security (Recovery of Benefits) Act 1997*.

B. Background to the current system

1. The situation before 1990

From 1948 to 1990, courts were instructed to take into account the value of benefits received, and the amount of future benefits, through a reduction in damages awarded.³ A number of changes to the system were made during this period in terms of the benefits to be taken into account and the proportion of benefits to be recovered. The amount deducted varied according to the benefit concerned. Also, courts deducted amounts from compensation payments but these did not have to be paid to the benefit authorities by compensators. In effect therefore, the negligent party (or his insurer) could be argued to have been receiving a subsidy at the expense of the taxpayer who was meeting the cost of the benefits paid.

2. The 1990 scheme

The Conservative Government introduced a recovery scheme in the *Social Security Act 1989* with effect from 3 September 1990 in an attempt to deal with the inconsistencies in the treatment of different benefits. This followed a consultation exercise and recommendations by the Public Accounts Committee.⁴ This scheme was incorporated in Part IV of the *Social Security Administration Act 1992*.

Under the scheme, an amount equal to 100 per cent of relevant social security benefits could be deducted from compensation awards before they were paid to claimants. The benefits which were recoverable were:

¹ Paragraph 260 of the Beveridge Report, *Social Insurance and Allied Services*, Cmnd 6404 November 1942, stated that 'An injured person should not have the same need met twice over'.

² Department for Work and Pensions website, *The Compensation Recovery Scheme*, downloaded April 2004: http://www.dwp.gov.uk/advisers/compensation_recovery.asp#aims

³ *Law Reform (Personal Injuries) Act 1948*

⁴ *Recovery of social security benefits when damages in tort are awarded*, HC 120 1987/88

- Attendance Allowance
- Constant Attendance Allowance
- Industrial Injuries Disablement Benefit
- Family Credit
- Income Support
- Incapacity Benefit (previously Invalidity and Sickness Benefits)
- Mobility Allowance (up to April 1992)
- Old Cases Act benefits
- Reduced Earnings Allowance
- Retirement Allowance
- Severe Disablement Allowance
- Statutory Sick Pay (up to April 1994)
- Unemployment Benefit
- Disability Living Allowance (from April 1992)
- Disability Working Allowance (from April 1992)
- Dependency increases paid with any of the above.

The Department for Social Security's Compensation Recovery Unit (CRU) collected the deductions from the compensator. Unlike under earlier system, where only damages awarded for loss of earnings were affected, under the 1989 Act recovery was made from total damages. This included awards for pain and suffering in addition to loss of earnings. Small payments of compensation, defined as £2,500 or less, were exempted. Certain other payments were also exempted. Benefits could be recovered for the period up to the date compensation was paid, subject to a five year limit.

3. Social Security Committee inquiry

In July 1995, the former Social Security Select Committee published a critical report on the work of the CRU.⁵ The report made a number of criticisms of the existing system.⁶ It argued that a number of cases the Committee had encountered were 'revolting to the ordinary man's sense of justice' and that the system of compensation recovery as it then stood appeared to be 'having at least some deterrent effect on the pursuit of claims'. In particular, the recovery from damages other than from those for loss of earnings was highlighted as being 'central to the unfairness identified with the present scheme.' The Committee's central proposal was as follows:

76. To ensure that there is no double compensation, the amount included for benefit recovery should be distinguished from the amount within the settlement for special damages for loss of earnings in excess of the level received by the claimant in the form of DSS benefits. If the amount of compensation for loss of earnings is lower than the amount paid in benefits, the amount equivalent to total amount of benefit received should nevertheless be included in the claim. Most importantly, the amounts in the settlement for pain, suffering, future earnings and any other element other than compensation for loss of earnings should not be subject to any clawback. In this way,

⁵ Social Security Committee, *Compensation Recovery*, HC 196 1995-95, 21 June 1995

⁶ *ibid.* paras 65-79

the taxpayer would be fully protected, receiving back through recovery all the money paid out in benefits. The individual would receive the full compensation settlement apart from damages paid for loss of earnings up to the amount he had already received in the form of benefit. This method of recovery and reimbursement would answer the varied complaints made about the present scheme: the distortions of the small payments limit would be eliminated and any disincentives to pursue claims because of fear of loss of settlements through recovery would be removed.

77. If the taxpayer is protected and the individual gains, then the money in this financial equation must come from somewhere. **We believe that it is right that the compensator and insurer bear the cost reimbursing the taxpayer for benefits paid to claimants as the result of accidents or injury or disease.**⁷

The report sent on to acknowledge that this would result in increased insurance premiums, but argued that spreading the cost in this way would be better than burdening individuals who have had accidents or diseases caused by others. It might also be an incentive to settle claims more quickly.

4. Government response

The Conservative Government's response to the Select Committee report was published on 2 October 1995.⁸ The Government welcomed the recognition by the Select Committee of the necessity for some form of compensation recovery to exist to avoid 'double' compensation. It also believed the Committee's recommendations that compensation should only be recovered from that part of the award made for loss of earnings were important, but it was unable to decide whether the Compensation Recovery scheme should be amended to this end. It therefore launched a consultation exercise to determine the wider implications of the reforms suggested by the Select Committee.⁹

Library Research Paper 97/13 gives further background on the consultation exercise.¹⁰

C. The 1997 changes

1. Background

Following the consultation exercise, the previous Government introduced legislation in the form of the *Social Security (Recovery of Benefits) Bill [H.L.] 1996/97*, which had its Second Reading in the House of Lords on 19 November 1996.¹¹ The Bill received broad support from the opposition parties, and it received Royal Assent on 19 March 1997.¹²

⁷ original emphasis

⁸ *Reply by the Government to the Fourth Report of the Select Committee on Compensation Recovery*, Cm 2997

⁹ The consultation document was included with the Government response.

¹⁰ *Social Security (Recovery of Benefits) Bill*, 30 January 1997:
<http://hcl1.hclibrary.parliament.uk/rp97/rp97-013.pdf>

¹¹ HL Deb 19 November 1996 cc 1200-1211; 1215-1222

¹² CAP 27 1997

The Act did not come into force immediately, however. The decision to bring the provisions of the Act into force was in fact made by the incoming Labour Government.¹³ The TUC had been pressing for the Act to be brought into force as quickly as possible, as the following extract from its August 1997 *General Council Report* indicates:

Clawback from damages

One of the major achievements of the TUC's legal services work in this Congress year was the decision by the Government to reform the system of compensation recovery which clawed back injury victims' benefits from the damages awarded to them by the courts. By 1996, this was costing trade union members millions of pounds a year, and the TUC had been working with sufferers' groups and legal organisations to change the system.

After a long consultation exercise, the Government finally published a Bill in October which would shift much of the burden of benefit recovery onto insurers, and therefore encourage quicker settlements at higher levels. The Government also proposed that the £2,500 minimum damages award for benefit recovery should be abolished, and the TUC accepted this part of the Government's proposal, so that members were no longer encouraged to settle cases too low to avoid recovery. The TUC welcomed the Bill and assisted the government in progressing the measure through Parliament. In January, with the General Election imminent, the TUC published *No Excuse for Delay* by Julia Gallagher, which drew on examples of benefit recovery cases to press MPs to speed the Bill into law before the Election intervened, and in March the Bill became an Act.

Since the election, the TUC has concentrated on pressing for the Act to come into force as early as possible. A number of comments were submitted on the Department of Social Security's consultation exercise on the form of Regulations designed to implement the Act. Overall, the new system is likely to benefit union members by at least £50 million a year, as well as shifting the balance between unions and insurers in the courts.¹⁴

2. Overview of the 1997 changes

The 1997 Act reformed the Compensation Recovery Scheme and implemented many of the recommendations of the Social Security Select Committee, ensuring that compensation in respect of pain and suffering cannot be reduced on account of recovery of social security benefits.

The current rules on recovery of social security benefits from compensation awards are now contained in the 1997 Act and *Social Security (Recovery of Benefits) Regulations 1997*.¹⁵ Details are provided in DWP leaflet Z1.¹⁶ The scheme applies where recoverable benefits have been paid or are likely to be paid to an injured person in respect of an accident, injury or disease, and the compensator makes a payment which was agreed on or after 6 October 1997.

¹³ HC Deb 29 July 1997 c 425w

¹⁴ <http://www.tuc.org.uk/congress/tuc-2026-f0.cfm> (downloaded June 2004)

¹⁵ SI 1997/2205

¹⁶ *Recovery of Benefits and NHS Charges: Procedures for liaison with the Compensation Recovery Unit*, August 2005: <http://www.dwp.gov.uk/advisers/z1/>

Deductions are paid direct to the DWP Compensation Recovery Unit by whoever pays the compensation (usually an insurance company). As with the 1990 scheme, benefits can be recovered for the period up to the date compensation was paid, subject to a five year limit.

The 1997 scheme differs from the 1990 one in three main respects:

- Benefits can now be recovered according to different heads of compensation: loss of earnings, cost of care, and loss of mobility.
- Compensators are now liable to repay the full amount of benefits which have been paid as a result of an accident, injury or disease. They are allowed to reduce compensation payments to take account of benefit recovery, but only where the benefits and compensation meet the same need. So compensators bear the extra cost of benefits paid where the compensation payment cannot be reduced.
- There is no longer a small claims limit of £2,500. The benefits must be repaid no matter how low the award.

3. The rules in detail

DWP leaflet Z1 gives the following description of the procedures which are followed under the Compensation Recovery rules:

The main provisions of the CRU scheme are that:

- a person should not be compensated twice over in respect of the same accident, injury or disease;
- a compensator who is, or is alleged to be, liable to any extent for the accident, injury or disease makes a compensation payment, agreed on or after 6 October 1997 and recoverable benefits have been paid (or are likely to be paid); to, or for, the injured person in respect of an accident, injury or disease;
- the scheme applies in the UK or elsewhere, regardless of where the compensator is based, or where the accident occurred.

However where a payment was made on or after 6 October 1997 in accordance with a Court Order or agreement made before that date, the provisions of the Social Security Administration Act 1992 and the Social Security (Recoupment) Regulations will continue to apply.

- No person shall make a compensation payment (other than an exempt payment) without first applying to CRU for a Certificate of Recoverable Benefits. The compensator will be liable to pay the DWP an amount equal to the total amount of the recoverable benefits on the Certificate.
- CRU must issue the Certificate within 28 days from the date of receipt of a request which contains all the information on which one may be issued.
- Under the provisions of the Social Security (Recovery of Benefits) Act 1997, the compensator – the person who caused the injury or, more commonly, his

insurer – is liable both to pay damages to the injured person and to repay benefits to the Secretary of State for Work and Pensions. (Strictly speaking it is not the actual benefits which are recovered, but “an amount equivalent to” the total benefit payment). In certain circumstances it will be possible for the compensator to deduct some or all of the amount he has had to repay to the Secretary of State from the gross compensation award, a practice known as “offsetting” (see page 13 for explanation).

- Where the amount of compensation relating to a particular head of compensation is less than the amount of the corresponding benefit, the compensator is still liable to repay the full amount shown on the Certificate of recoverable benefits.
- When making a deduction the compensator must inform the injured person.
- The compensator, the injured person or his representative may ask at any time for the Certificate of Recoverable Benefits to be reviewed. It may only be changed if:
 - a mistake occurred in the preparation of the Certificate
 - the amount of recoverable benefit on the Certificate is more than the amount due to the Secretary of State for Work and Pensions
 - incorrect or insufficient information was provided by the person who applied for the Certificate and as a consequence the amount on the Certificate is less than the amount due to the Secretary of State

If after we have looked at the Certificate again we find that there is no recoverable benefit due to the Secretary of State then the Certificate may be revoked.

- A compensator has the right of appeal against the Certificate of Recoverable Benefits only when he has repaid the total amount of recoverable benefits shown on the Certificate to DWP. An injured person has a similar right, but only where his compensation payment has been reduced to take account of benefit recovery under section 8 of the Act.
- An appeal may be made on the grounds that:
 - any amount, rate or period specified in the Certificate is incorrect; or
 - benefits listed in the Certificate have been paid other than because of the accident, injury or disease in question, and should not have been included; or
 - benefits listed which have not, and are not likely to be, paid to the injured person have been brought into account; or
 - the compensation payment was not made as a consequence of the accident, injury or disease.¹⁷

a. Heads of compensation and associated benefits

Schedule 2 of the *Social Security (Recovery of Benefits) Act 1997* sets out the benefits which may be recovered according to the different ‘heads of compensation’.

¹⁷ <http://www.dwp.gov.uk/advisers/z1/part1/thelaw.asp>

Compensation in respect of **loss of earnings** during the relevant period may be reduced where the following benefits have been paid to meet the same need:

- Disability Working Allowance
- Industrial Injuries Disablement Benefit
- Incapacity Benefit
- Income Support
- Invalidity Pension
- Invalidity Allowance
- Jobseeker's Allowance
- Reduced Earnings Allowance
- Severe Disablement Allowance
- Sickness Benefit
- Statutory Sick Pay paid before 6 April 1994
- Unemployability Supplement
- Unemployment Benefit

Compensation in respect of **cost of care** may be recovered if any of the following benefits have been paid:

- Attendance Allowance
- Care Component of Disability Living Allowance (DLA Care)
- Disablement Pension increase for Constant Attendance Allowance/
- Exceptionally Severe Disablement Allowance

Compensation in respect of **loss of mobility** may be reduced where any of the following have been paid:

- Mobility Allowance
- Mobility Component of Disability Living Allowance (DLA Mobility)

The rules mean that someone who, for example, has been in receipt of Incapacity Benefit is subsequently awarded compensation for loss of earnings, the compensation award is reduced to take account of the benefit already paid.

DWP booklet Z1 lists various reasons for paying compensation which do not fall within one of the three heads specified above and which cannot therefore be offset against any benefit paid. The list includes damages for pain and suffering, loss of leisure, loss of marriage prospects, and loss of pension rights.¹⁸ The booklet emphasizes however that the list is not definitive and does not purport to be an interpretation of the law.

b. Exempt payments

The following compensation payments are exempt from recovery:¹⁹

¹⁸ <http://www.dwp.gov.uk/advisers/z1/part1/thelaw2.asp>

¹⁹ Schedule 1 *Social Security (Recovery of Benefits) Act 1997*; regulation 2 *The Social Security (Recovery of Benefits) Regulations SI 1997/2205*

- Compensation to an injured person ordered by a criminal court against a convicted person
- Payments made out of certain trusts
- Payments from insurance companies either before the accident or injury, or before the claim for the relevant benefit
- Redundancy payments taken into account in assessing damages
- Payments for legal costs
- Payments from the Macfarlane Trusts (to certain people suffering from haemophilia), the Eileen Trust (to certain people who are HIV positive), and trusts established out of Government funds for people suffering from variant Creutzfeldt-Jakob disease
- Payments made under the *Fatal Accidents Act 1976*
- Payments made under section 1 of the *Damages (Scotland) Act 1976*
- Payments made under the *Vaccine Damage Payments Act 1979*
- Payments made under the Criminal Injuries Compensation Scheme
- Compensation paid by British Coal under the NCB Pneumoconiosis Compensation Scheme set up following the agreement of 13 September 1974
- Compensation for sensorineural hearing loss of less than 50dB in one or both ears
- Contractual sick pay
- Payments to National Health Service employees under the NHS Injury Benefits Scheme

Payments made under the *Pneumoconiosis etc (Workers' Compensation) Act 1979* are also exempt from recovery. This is because payments made under the 1979 Act are made by the Department for Work and Pensions to people who cannot make a claim against the employers who caused the disease, because they have ceased trading. The payments are not made on behalf of a person who is, or is alleged to be, liable for having caused the disease, and do not therefore come within the scope of the Compensation Recovery Scheme as set out in section 1 of the *Social Security (Recovery of Benefits) Act 1997*.²⁰

The rationale for exempting certain types of payment from the Compensation Recovery Scheme is discussed further in section D below.

As noted in section B.2, under the 1990 Compensation Recovery Scheme, payments of under £2,500 were exempt. No such figure has been set under the 1997 Act (although there is provision to set such a figure in the legislation²¹), and so the recovery rules now apply to all eligible compensation payments, no matter how small.

c. Worked example

The following hypothetical example may help to illustrate how the Compensation Recovery Scheme operates:²²

²⁰ DWP booklet Z1, *op cit.* <http://www.dwp.gov.uk/advisers/z1/part1/thelaw3.asp>

²¹ Schedule 1, paragraphs 1 and 9 *Social Security (Recovery of Benefits) Act 1997*

²² This is adapted from an example given in DWP booklet Z1:
<http://www.dwp.gov.uk/advisers/z1/part1/thelaw2.asp>

- An award of compensation totaling £100,000 is agreed and broken down as follows: £40,000 for pain and suffering, £30,000 for loss of earnings and £30,000 in respect of loss of mobility.
- The Compensation Recovery Unit lists Incapacity Benefit totaling £5,000, Income Support totaling £10,000 and Disability Living Allowance (mobility component) totaling £10,000.
- The compensator may not under any circumstances offset against the pain and suffering element of the award. He may however offset the Incapacity Benefit and Income Support against the loss of earnings head. He therefore deducts a total of £15,000 from the loss of earnings head, leaving £15,000 to be paid to the injured person.
- Similarly, the compensator may offset the £10,000 DLA (mobility) against the mobility head of damage, leaving £20,000 to be paid to the injured person.
- The injured person has settled his claim for a total of £100,000. Following offsetting, he receives £75,000 from the compensator in addition to the £25,000 he has already received from the state benefits system. 'Double compensation' is thereby avoided.

D. Reform proposals

From time to time it is suggested that payments made under certain special schemes should be exempt from the Compensation Recovery Scheme. The issue arises most frequently in relation to the Department for Trade and Industry scheme for coal miners affected by respiratory diseases²³ The Government's position with regard to the coal industry scheme was set out in a written answer in February 2000 from the then Social Security Minister, Hugh Bayley:

The provisions of the Social Security Recovery of Benefits Act 1997 will apply to miners in the same way as they do for other victims of accident, injury or disease. The compensation recovery scheme is intended to ensure that people do not receive double compensation for the same need. Compensation paid in respect of loss of past earnings, cost of past care or loss of past mobility is therefore reduced to take account of all benefits paid for the same purpose, but only for a maximum period of five years from the date of claim to benefit in respect of the disease. Whether miners see a reduction in the amount of compensation they actually receive, therefore, will depend on the make-up of their compensation payment. However, compensation awarded to miners in respect of pain and suffering will be paid at the full amount awarded under the terms of the handling agreement.²⁴

As section C3b indicates however, certain forms of compensation are exempt from the Compensation Recovery Scheme. The exempt categories are virtually unchanged from the 1990 scheme. A memorandum submitted by the former Department for Social Security to

²³ For further details see Library Standard Note SN/SC/1256, *Miners' compensation – lung diseases*, 17 January 2007:

²⁴ HC Deb 29 February 2000 c 234w

the Social Security Committee's 1994-95 inquiry explained the rationale behind the exemptions as follows:

EXEMPT PAYMENTS

46. The Government considers it reasonable to exempt payments made under a limited number of specific schemes from the recoupment provisions. These exemptions are made for three main reasons. Firstly, the payment is made from a source or for a purpose which would make recoupment illogical or unreasonable; secondly, the payment is designed to supplement benefits rather than replace them; lastly, it is expedient for operational reasons not to have regard to a particular form of compensation.

47. The following payments fall into the first category:

(i) *Payments made under an insurance policy taken out before injury, or before benefit was first claimed naming the disease for which compensation is being claimed.* Such payments are the result of voluntary payment of a premium and have never been regarded as available for offset or recoupment - see paragraphs 3 and 4.

(ii) *Discretionary payments from charities and disaster funds (where more than half the fund is made up of donations from the public).* The Government believe that recoupment from monies given freely and for humanitarian reasons would be inappropriate. Lord Reid's observations in the case of *Parry v Cleaver* (1970) are relevant in this context - see paragraph 3.

(iii) *Payments from the Macfarlane Trust set up to help the families of haemophiliacs who were unable to obtain insurance cover owing to the possible infection of factor 8 by HIV.* Because of the part-funding of this scheme by the Government, it would be illogical if payments from it were made subject to recoupment.

(iv) *Payments made under the Vaccine Damage Payments Act 1979.* This scheme is fully funded by the Government and recoupment would not therefore be appropriate.

(v) *Structured settlements.* Payments made subsequent to the settlement date are not available for recoupment because they are designed to help meet future care needs.

(vi) *Payments made under Section 4 of the Fatal Accidents Act 1976 (later consolidated in Section 3(1) of the Administration of Justice Act 1982).* Payments made in respect of the deceased are subject to recoupment, but those made to surviving dependants to compensate for their own losses (such as the payment of funeral expenses) are not.

(vii) *Redundancy payments and contractual amounts paid to an employee by an employer in respect of a day of incapacity for work.* These payments are not designed to compensate an ex-employee for the effects of an accident, injury or disease and as such do not fall within the ambit of the scheme.

48. The second category covers:

(i) *Awards made in respect of personal injury sustained as a result of a criminal act.* These are subject to a separate offsetting arrangement operated by the Criminal Injuries Compensation Board. This scheme, introduced in 1964 and amended in

1983, requires compensation to be reduced by the full value of any present or future entitlement to social security benefits, compensation from other schemes and payments under insurance arrangements not paid for by the victim. An interdepartmental working party conducted a detailed examination of the scheme in 1986 concluded that the provisions were based on the sound principle that there should be no duplication of payments from public funds.

(ii) *Payments under the British Coal Pneumoconiosis Scheme*. These payments are exempt from the recoupment because the scheme is partly subsidised by Government funds and is structured to supplement benefits and not replace them. Double compensation is thus avoided.

49. The third category of exempt payments comprises:

(i) *Payments for noise-induced hearing loss, where loss of hearing is less than 50 decibels*. In such cases, it is very rare for benefit to be paid as a direct consequence of the deafness. The exemption therefore avoids the nugatory work that would result if compensators were required to notify the Department that a claim had been lodged and then apply for a certificate.

(ii) *Payments made under Section 35 of the Powers of Criminal Courts Act 1973 or Section 58 of the Criminal Justice (Scotland) Act 1980*. These are payments ordered by a Court payable to the victim by a person convicted of a criminal offence that gave rise to the injury. It is considered impracticable to attempt recovery in these circumstances.²⁵

The Committee noted the reasons given by the Government for exempting only certain kinds of payment, but said that it had been urged to consider whether other types of settlement or particular groups should also be exempt. It felt that there were special reasons for making compensation payments for people suffering from asbestos-related conditions exempt from recovery:

The Committee understands the particular and special case of people with asbestos related conditions. We believe that the special circumstances of asbestos sufferers should be recognized. Because of the unique difficulties in pursuing claims and because of the high mortality rate of asbestos related sufferers, we believe that *all* recovery in these cases should cease at the earliest possible opportunity.²⁶

The Government responded:

The government acknowledges the difficulties that surround claims for compensation made by those exposed to asbestos, which are, unavoidably, usually made some years after exposure takes place. Formidable evidential problems can exist, both in terms of the nature of the exposure, and its particular effects on the health of individuals. It can prove equally difficult to prove negligence at a distance of many years or decades.

However, a key difficulty would attach to an exemption for sufferers of asbestos-related disease. There are a range of occupational diseases where the individual can

²⁵ HC 196 1994-95, Ev 8-9

²⁶ HC 196 1994-95, para 54

remain healthy for a considerable period after exposure has taken place. For example, workers in the dye industry can contract carcinoma of the bladder many years after exposure takes place. Against this background, an exemption for those exposed to asbestos might be seen as inequitable.²⁷

The Government also added that the proposal to identify separate heads of compensation would resolve the issue of erosion of damages for pain and suffering.²⁸ As noted above, under the Compensation Recovery Scheme in place since 1997 compensation paid for pain and suffering is not offset against any benefit received previously.

E. Exemption for former Turner and Newall employees

On 26 October 2006 the Secretary of State for Work and Pensions, John Hutton, announced that the Government would bring forward amendments to the legislation to exempt those receiving compensation for asbestos-related diseases under the schemes set up for former employees of Turner and Newall (and other associated companies of the US parent company Federal Mogul) from the usual compensation recovery rules.

Federal Mogul, a US company, bought the UK car parts manufacturer Turner and Newall (T&N) in 1998. In 2001, it filed for Chapter 11 bankruptcy, largely because of a vast increase in asbestos claims. This forced T&N into administration in the UK in the same year. A DWP memorandum explains the background and the impact on former workers as follows:

7.2.7. The terms of US administration allow the company to continue trading but to freeze and clear their outstanding liabilities. As a result the asbestos liabilities arising from Turner & Newall and other UK subsidiaries will not be met in full.

7.2.8. Two Trust Funds [The UK Asbestos Trust and The EL Scheme Trust] have been set up to meet the asbestos claims of former employees and any compensation recovery costs.

7.2.9. The two schemes are very similar and meet similar needs; the difference is in the funding stream for the Trusts. The EL Scheme Trust is funded from the proceeds of insurance cover, however this only covered part of the period and therefore there are still insufficient funds to meet claims in full.

7.2.10. It is envisaged that injured parties will receive substantially less than their full compensation, the settlement probably only being in the region of 20p in the £.²⁹

Further information on the trusts is available at the Federal Mogul UK claims website.³⁰

The announcement of 26 October 2006 was made in a Written Ministerial Statement:

The Secretary of State for Work and Pensions (Mr. John Hutton): I am pleased to be able to inform the House that we have decided to exempt payments made in

²⁷ Cm 2997, October 1995, paras 18-19

²⁸ *ibid.* para 20

²⁹ http://www.opsi.gov.uk/si/em2007/uksiem_20070357_en.pdf

³⁰ <http://www.fmukclaims.co.uk/>

respect of asbestos related diseases by subsidiaries of Federal Mogul from the Department's Compensation Recovery Scheme.

The Compensation Recovery Scheme is aimed at ensuring that injured parties are not compensated twice—once through the compensation payment they receive from the employer or insurer and again through the benefits system. The scheme also helps ensure that compensators fulfil their own obligations and are not subsidised by the taxpayer. Benefit paid out for the same accident, injury or disease for which the compensation is being made is normally recovered from the compensator by the Department for Work and Pensions.

Federal Mogul has become insolvent under the United States of America's insolvency legislation. As a result of this it is not in a position to meet, in full, its liabilities to its employees arising from asbestos related diseases. A trust fund has been set up to meet part of these liabilities. However, employees are only likely to receive around twenty pence of every one pound they are due. The unprecedented step to exempt this particular trust recognises the unique position in which former employees of Federal Mogul's UK subsidiaries (Turner & Newall and associated companies) have found themselves.

Exempting the trust from the normal compensation recovery rules means that more money will be available to meet the needs of the victims and their families who have been affected by these diseases. All the funds in the trust will be available for compensation payments on top of benefits paid—we feel it is important to ensure that their already reduced compensation payments are not reduced further. The cost to the Government is estimated to be £10 million over the next three years.

These are unique circumstances which do not undermine the general principles of the Compensation Recovery Scheme.

We will bring forward the necessary regulations shortly.³¹

The announcement was widely welcomed. The trade union Amicus, for example, issued the following press release on 26 October 2006:

Amicus welcomes government decision on Turner & Newell asbestos victims

Amicus, the UK's largest private sector union, has welcomed the government's announcement that it will not be reclaiming money paid in compensation to UK asbestos victims.

The decision follows a concerted campaign by Amicus on behalf of its members following the Turner and Newell (T&N) administration process. Because of this money was withheld due to negotiations with T&N's owners Federal Mogul and Kroll the administrators. The deal struck will pay a dividend in compensation to UK asbestos victims from US owner Federal Mogul, which will come from the approximately £101 million that this deal will yield.

Under UK law the Government has the right to reclaim part of a victim's compensation paid out through suffering from asbestos related disease and could

³¹ HC Deb 26 October 2006 c98WS

claim back the first five years of any state benefit a victim has claimed. However the UK government has decided not to refer the Turner and Newell pay outs to the Compensation Reclaim Unit.

Amicus' General Secretary, Derek Simpson, said": We are delighted with this outcome which Amicus has worked hard to achieve.

"It is a victory for common sense. People who are suffering and the families of people who have died from this awful disease deserve to have peace of mind that they will not lose a huge amount of their compensation payments to the Government."

This is excellent news for hundreds of immediate sufferers of asbestos who will see the effects of this announcement straight away. Also long term the benefit of this will cover thousands of people who have or will suffer from asbestos related illness.

Amicus have campaigned hard with Terry Rooney MP to bring about this issue.

Contacts Brian Gallagher on 0207 420 8900 or 07957 995 947. Catherine Bithell on 0207 420 8909.

- Ends -

Note to editors -

1) T&N went in to administration 3 years ago when Federal Mogul acquired the company. US lawyers filed law suits on behalf of asbestos victims in the US totalling \$11billion, a figure proved to be outrageously high by the UK administrators. This event saw the US arm flee to chapter 11 and the UK assets go in to administration in order to protect the assets from creditors.

2) A culmination of three years work by Amicus has seen the T&N pension fund safe guarded by the pension protection fund. The deal now, also gets money to our members and other UK victims of asbestos related diseases. Without this work we would have faced a quite different situation, with both the pension fund getting little or nothing from the deal and the UK asbestos victims receiving very little or nothing from the deal.³²

The exemptions were given effect by the *Social Security (Recovery of Benefits) (Amendment) Regulations 2007*, which were laid before Parliament on 15 February and which came into force on 12 March 2007.

The Government estimates that there are currently 800 cases which are likely to benefit from the decision, but that the figure is likely to rise over the next 50 years. It estimates that the cost will be around £10 million over the next three years, but it expects this will rise to £40 million in line with the expected increase in cases.³³

³² <http://www.amicustheunion.org/default.aspx?page=4772>

³³ DWP press notice, 'More money for asbestos sufferers – John Hutton', 26 October 2006:
<http://www.dwp.gov.uk/mediacentre/pressreleases/2006/oct/hsc44-261006.asp>

The Government argues that the exemption does not undermine the key principles underpinning the compensation recovery scheme. The *Explanatory Notes* accompanying the amending regulations give two reasons for this:

The amount being paid out by the compensator (namely Federal Mogul) is predefined by the amount in the Trust Funds. Therefore exemption will not result in subsidy of the compensator.

Injured persons will not receive double compensation as due to the low value of the dividend they will receive significantly less than the full amount of their compensation.³⁴

F. Further information

The Department for Work and Pensions produces the following guides to the Compensation Recovery Scheme:

- DWP booklet Z1, *Recovery of Benefits and NHS Charges: Procedures for liaison with the Compensation Recovery Unit*, August 2005: <http://www.dwp.gov.uk/advisers/z1/>
- DWP booklet Z2, *Recovery of benefits Appeal Guide: What to do if you think a Compensation Recovery Scheme Certificate is wrong*, August 2005: <http://www.dwp.gov.uk/advisers/z2/>
- DWP leaflet GL27, *Compensation and social security benefits*, August 2005: <http://www.dwp.gov.uk/advisers/gl27/>

Child Poverty Action Group, *Welfare benefits and tax credits handbook 2007/2008*, pp 1005-1013

Disability Alliance, *Disability Rights Handbook*, 2006-07 edition, pp 223-224

³⁴ *ibid.* para 7.2.13

Appendix: Compensation Recovery Unit statistics

A written answer on 27 May 2004 gave statistics on the number of claims registered with the Compensation Recovery Unit, the number of benefit recovery cases, and the total amount of benefit recovered, in the previous three years:

Mr. Dismore: To ask the Secretary of State for Work and Pensions how many cases (a) were registered with the Compensation Recovery Unit and (b) resulted in repayment of benefits to the CRU in each of the last 10 years; what the total repaid to the CRU was; and if he will make a statement.[R] [173563]

Mr. Pond [*holding answer 17May 2004*]: The available information is in the table.

	2001–02	2002–03	2003–04
Total number of claims registered	688,315	706,715	770,243
Total number of benefit recovery cases	35,907	40,258	39,995
Total benefit recovered (£)	139,130,000	166,590,000	171,110,000

Note:

It is not possible to provide the requested information prior to the year 2001–02 as records are only kept for the most recent three years.³⁵

³⁵ HC Deb 27 May 2004 cc 1797-1798w