



Mesothelioma Bill [HL]: House of Commons stages

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The *Mesothelioma Bill [HL]* provides the legislative framework for a new Diffuse Mesothelioma Payment Scheme to make payments to people with diffuse mesothelioma who were exposed to asbestos either negligently or in breach of statutory duty by an employer, and who are unable to bring a claim for damages against the employer or an Employers' Liability (EL) insurer. The scheme is to be funded by a levy on insurance companies and, under current plans, would make payments to people first diagnosed on or after 25 July 2012. It is hoped to make the first payments by summer 2014.

The Bill was introduced in the Lords on 9 May 2013 and the Lords Third Reading was on 22 July. The Commons Second Reading debate was on 2 December, and the Bill was considered by a Public Bill Committee over four sittings (on 10 and 12 December). The Commons Report Stage and Third Reading are scheduled for 7 January 2014.

This note summarises developments since the Bill was introduced in the House of Commons. It complements – and should be read alongside – [Library Research Paper 13/66](#), which gives detailed background to the Bill and an account of the proceedings in the Lords.

No amendments (other than a technical Government amendment) were agreed in the Public Bill Committee. Throughout the Commons proceedings, Ministers have emphasised the desirability of avoiding amendments, on the grounds that a period of “ping-pong” with the Lords could delay the introduction of the scheme. There were however Ministerial undertakings to reflect further on certain issues raised by Members in Committee, before Report Stage. The Opposition has said that, if amendments are made at Report Stage, it would seek to ensure that any delay due to ping-pong would be no more than 24 hours, for the Bill received Royal Assent as quickly as possible.

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2 Summary

Mesothelioma is a form of cancer caused almost exclusively by exposure to asbestos. It is a “long-tail” disease – symptoms may not appear until decades after exposure – but when they do appear, it is often rapidly terminal. Measures limiting exposure to asbestos in the workplace have been in place for many years, but the number of deaths caused by past exposure is expected to peak over the next few years. Around 23,000 deaths from mesothelioma are predicted to occur between 2014 and 2024.

The *Mesothelioma Bill [HL]* provides the legislative framework for a new Diffuse Mesothelioma Payment Scheme to make payments to people with the disease who were exposed to asbestos either negligently or in breach of statutory duty by their employer, and who are unable to bring a claim for damages against the employer or that employer’s Employers’ Liability (EL) insurer. It is intended to address the problem where, by the time an individual has been diagnosed, the employer is no longer in business and it is not possible to trace the employer’s EL insurer because the relevant records have been lost or destroyed. The scheme is to be funded by a levy on insurance companies and, under current plans, would make payments to people first diagnosed on or after 25 July 2012. The Government hopes to make the first payments by summer 2014. The scheme will be UK-wide.

Proposals for a scheme were set out in a consultation paper published by the Labour Government in February 2010. The incoming Government conducted detailed negotiations with the insurance industry before publishing its response on 25 July 2012. Further discussions took place with the insurance industry and other interested parties before the Bill was introduced in the House of Lords on 9 May 2013.

While the announcement of a new scheme was welcomed by organisations representing people suffering from asbestos-related diseases and their families, there are criticisms that the scheme is more limited in scope than many were led to expect, from the proposals floated in the original consultation paper. Criticisms include the fact that the scheme is to be limited to those suffering from mesothelioma, the cut-off date of 25 July 2012 is seen as arbitrary and unfair, the proposal to set payment rates at below average civil damages, and potential conflicts of interest if the insurance industry administers the scheme.

During the Lords Stages, the Minister for Welfare Reform, Lord Freud, admitted that the final proposals were a compromise, but said that attempting to extract further money and concessions from the insurance industry could lead to legal challenges that risked delaying payments to mesothelioma sufferers. No Opposition or backbench amendments were agreed in the Lords, but the Government announced a number of changes including:

- An increase in the compensation rate from 70% to 75% of civil compensation levels, following further negotiations with the insurance industry
- Agreement that details of the scheme would be brought in by regulations
- An undertaking that the scheme administrator would be selected through an open tender
- A pledge to set up an oversight committee to ensure the scheme would operate in an efficient and just way

- The announcement of a joint strategy with the Department of Health to encourage proposals for high quality research into mesothelioma

The Lords Third Reading was on 22 July 2013, and the Commons Second Reading was on 2 December. The Bill was considered by a Public Bill Committee at four sittings, over two days (10 and 12 December respectively). The remaining Commons Stages are scheduled for 7 January 2014.

No amendments (other than a technical Government amendment) were agreed in the Public Bill Committee. Throughout the Commons proceedings, Ministers have emphasised the desirability of avoiding amendments, on the grounds that a period of “ping-pong” with the Lords could delay the introduction of the scheme. There were however Ministerial undertakings to reflect further on certain issues raised by Members in Committee, before Report Stage. The Opposition has said that, if amendments are made at Report Stage, it would seek to ensure that any delay due to ping-pong would be no more than 24 hours, for the Bill received Royal Assent as quickly as possible.

A key development since the introduction of the Bill in the Commons has been the publication of an updated Impact Assessment for the scheme. Backbench Members and the Opposition have pressed the Government for improvements to the scheme for mesothelioma sufferers, in particular to the level of payments. Revised estimates of legal costs mean however that, within the funding limits agreed with the insurance industry, there may be less scope to improve scheme payments or coverage than previous analyses suggested. The Government has said that it intends to review all elements of the scheme – including the rate of payment and the rate of the levy on insurers – after an initial four year period, and that at this point there may be scope to increase payments or improve the scheme in other ways.

3 Commons Stages

Following the completion of its Lords stages on 22 July, the *Mesothelioma Bill [HL]* had its [Second Reading](#) in the House of Commons on 2 December 2013.¹

The Bill was considered in Committee at four sittings, over two days:

First sitting: [PBC Deb 10 December 2013 cc1-40](#)

Second sitting: [PBC Deb 10 December 2013 cc41-78](#)

Third sitting: [PBC Deb 12 December 2013 cc79-106](#)

Fourth sitting: [PBC Deb 12 December 2013 cc107-138](#)

The Bill itself – Bill 100 of Session 2013-14 – is available at the Parliamentary website, along with links to other relevant documents including Explanatory Notes and Impact Assessments, and links to all previous stages.

Detailed background to the Bill and an account of the proceedings in the Lords is given in [Library Research Paper 13/66](#) prepared for the Bill’s Second Reading in the Commons.

¹ [HC Deb 2 December 2013 cc659-729](#)

4 Updated Impact Assessment

On 29 November the Department for Work and Pensions published an [updated Impact Assessment](#) for the Bill. The main change since the previous set of cost estimates for the scheme – published by the Department in an [ad hoc statistical analysis in July 2013](#) – relates to amounts to cover applicants' legal fees.

The levy on insurers is to include an amount to cover the legal fees of successful applicants. The previous version of the [Impact Assessment published in May 2013](#) assumed a contribution of £7,000 per applicant. However, during the Lords stages of the Bill this was revised downwards to £2,000 per applicant. This figure underpinned the updated estimates of the cost of the scheme to the insurance industry in the DWP's ad hoc statistical analysis to support the passage of the Mesothelioma Bill published on 4 July.² The headline figures from this analysis are given in the table on p24 of [Library Research Paper 13/66](#) prepared for the Commons Second Reading debate.

In the analysis published on 4 July it was estimated that, assuming scheme payments at 75% of average civil compensation and a contribution of £2,000 towards applicant legal fees, the levy on insurers over the first four years of the scheme would be £169 million, or 2.79% of gross written premiums for employers' liability insurance. Over the first ten years of the scheme, the levy was estimated at £343 million, or 2.27% of gross written premiums. The analysis also suggested that the payment rate could be increased to 80% of average civil compensation without the levy breaching the limit of 3% of gross written premiums at any point. The insurance industry maintains that were the levy to exceed 3%, it would have to pass on the costs to businesses.³

In the [latest Impact Assessment](#), the assumed contribution to cover applicant legal fees has been increased again to £7,000, "following consultation with APIL [the Association of Personal Injury Lawyers] and FOIL [the Forum of Insurance Lawyers]."⁴ The effect is to increase estimates of the total levy payable by insurers to fund payments at a given percentage of civil compensation. The revised figures are given in the table below (NB this supersedes the table on p24 of [Library Research Paper 13/66](#)).

² DWP, [Analysis to support the passage of the Mesothelioma Bill: Estimated costs of the proposed Diffuse Mesothelioma Payment Scheme](#), 4 July 2013, Table 3

³ See p21 of [Library Research Paper 13/66](#)

⁴ Annex C, p54

Levy to be paid by insurers if scheme payments set at various percentages of average civil compensation

Scheme payments as a percentage of average civil compensation	Over the first four years of the scheme:		Over the first ten years of the scheme:	
	Levy	% of GWP for employer liability insurance	Levy	% of GWP for employer liability insurance
	£ million	%	£ million	%
70%	170	2.81%	349	2.31%
75%	181	2.99%	371	2.46%
80%	192	3.18%	393	2.61%
85%	204	3.37%	416	2.75%
90%	215	3.56%	438	2.90%
95%	226	3.75%	460	3.05%
100%	238	3.94%	482	3.19%

Notes

Figures assume a contribution of £7,000 towards applicant legal fees, and take into account a Government contribution of £17 million towards initial costs of the scheme

Source: DWP, [Mesothelioma Payment Scheme Revised Impact Assessment](#), 29 November 2013, p52

The change to the assumption about legal fees means that 75% of civil compensation is the maximum that can now be paid without breaching the limit of 3% of gross written premiums at any point. Payments at this level would require a levy at 2.99% of gross written premiums over the first four years of the scheme (although over ten years the figure would be 2.46%). The levy required to fund payments set at around 90% of civil compensation would not breach the 3% limit over the ten year period as a whole, but payments at that level would require a levy of 3.56% over the first four years.

5 New DWP ad hoc statistical analysis

A new DWP ad hoc statistical analysis, [Estimates of the effect of extending the scope of the mesothelioma payment scheme](#), was published on 6 December.

The document gives estimates the impact of expanding the scope of the mesothelioma payment scheme to include:

- mesothelioma sufferers diagnosed before July 2012;
- non-occupational mesothelioma sufferers (including cases of “para-occupational” exposure, for example, family members exposed to asbestos fibres on an employee’s clothes); and

- other asbestos-related diseases and other non-asbestos work related diseases

6 Commons Second Reading debate

The Commons Second Reading debate was on 2 December 2013.⁵

Opening for the Government, the Minister for Disabled People, Mike Penning, said:

I hope that the House will see the urgent need to push this Bill through and get it through its Committee and Report stages so that it goes on to the statute book and I am able to move the regulations that are under consultation as soon as possible. It can then provide compensation for our constituents who have been suffering from this terrible disease or, if they have died, for their dependants who need assistance from the scheme.⁶

For the Opposition, Kate Green said:

We will support the Bill on Second Reading, but it does not go quite as far as necessary in bringing justice for victims. We will therefore seek further improvements as the Bill continues its parliamentary passage. I want to make it very clear that we are not doing so to score political points or to delay the Bill unnecessarily. Everyone understands the importance of establishing a scheme and getting payments flowing as quickly as possible.⁷

Issues raised by the Opposition and Members of other parties in the debate included:

- The proposed 75% compensation rate and whether there was scope for payment rates to be increased within the funding limit agreed with the insurance industry.
- The case for an earlier cut-off date than 25 July 2012.
- The position of the self-employed and others who fell outside the scheme, including those who contracted mesothelioma when washing their partner's clothes.
- The reasons for the increase in estimated legal fees from £2,000 per case back to £7,000.
- The role of the insurance industry in administering the scheme and in relation to the Technical Committee
- Whether it was appropriate to claw back 100% of recoverable social security benefits from scheme awards, given the proposal to pay compensation at less than 100% of civil awards.
- The timetable for the Bill, and in particular the time available for consideration on Report and third Reading.⁸

Winding up for the Opposition, Chris Bryant said:

⁵ [HC Deb 2 December 2013 cc659-729](#)

⁶ [HC Deb 2 December 2013 c664](#)

⁷ [HC Deb 2 December 2013 cc665-6](#)

⁸ [HC Deb 2 December 2013 cc720-1](#)

I assure the Minister that we will do everything in our power to help him get the Bill through, but at the moment it has only three stars and by the end we want it to have five. That will require amendments and his co-operation.⁹

The Minister, Mike Penning, again reiterated the need to get the Bill on to the statute book as soon as possible – to enable the necessary regulations to be laid and to get compensation to victims of mesothelioma quickly – and that amendments would mean a period of “ping-pong” with the House of Lords that would delay this.¹⁰ He added:

We have been in deep negotiations—there is no argument about that; it will all come out—but the insurance companies did not just stroll up to Lord Freud’s office and say, “By the way, can we do a deal?” They were dragged there, otherwise that would have been done under the previous Administration. The Bill is not perfect and it probably can be amended, but it must not be delayed.¹¹

Pressed by Chris Bryant on whether he was saying that he would not countenance any amendment to the Bill because of the possibility of delay, even given the contributions to the debate from those calling for amendments, the Minister replied:

At the end of the day, however, some parts of the Bill can be amended without it going back to the Lords. Some parts, particularly on the percentage—*[Interruption.]* It is for regulations. It is not actually part of the Bill. If the hon. Gentleman reads the Bill, he will understand what is going on. He is trying to score party political points on a really serious issue, and he is wrong. We need to ensure that what can be amended, is amended, but I will not have the Bill, and therefore the compensation, delayed.¹²

The Bill received a Second Reading without a vote. The programme motion was put to the vote. The Opposition voted against the programme motion, but it was agreed by 267 votes to 202.¹³

7 Committee Stage

The Bill was not amended in the Public Bill Committee (other than the standard technical amendment to remove the Lords privilege amendment to clause 21 that was inserted when the Bill moved from the Lords to the Commons. A privilege amendment is made to Bills starting in the Lords since the House of Lords cannot consider matters of money and charges on public funds).

At the end of the Committee’s proceedings, the Opposition Work and Pensions Spokesman Chris Bryant, said:

As my hon. Friend the Member for Stretford and Urmston [Kate Green] said, we are all enormously grateful for the way in which the Minister [Mike Penning] has conducted the business, and for regularly saying that he will, on Report, come back to several of the issues raised, not least by some of his hon. and learned Friends.

The Minister has said countless times that he does not want ping-pong. I think I am right in saying that there has been a Government amendment, but it is only a technical

⁹ [HC Deb 2 December 2013 c722](#)

¹⁰ [HC Deb 2 December 2013 c722](#)

¹¹ [HC Deb 2 December 2013 c724](#)

¹² [HC Deb 2 December 2013 c724](#)

¹³ [HC Deb 2 December 2013 c725](#)

one; the subsection that has been removed from the Bill is the one that is always in a Lords Bill that might incur some kind of charge. I suggest to the Minister, through the Chair, that were he to come forward with an amendment on Report—there are many issues on which it would ease the mind of the whole Committee if amendments were brought forward, on a cross-party basis—we Opposition Members would want to make sure that there was no delay in ping-pong of more than 24 hours, to make sure that the Bill was brought to completion.¹⁴

Various issues raised in Committee are outlined below. The Members of the Public Committee are listed in an appendix to this note.

7.1 Research on mesothelioma

In the Lords, Lord Alton of Liverpool moved an amendment (also in the name of Lord Walton of Detchant, Baroness Butler-Sloss and Lord Wigley) to include an amount in the levy on insurers to provide funding for research to find new treatments for mesothelioma. The amendment was defeated by 199 votes to 192.¹⁵ The issue was also raised by Lord Alton at Lords Starred Questions on 5 December.¹⁶

In a letter dated 6 December to Members who spoke in the Commons Second Reading debate, the Minister for Disabled People Mike Penning said:

The issue of funding medical research into this terrible disease is one that I know many members feel very strongly about. There was extensive debate in the Lords about Lord Alton's proposal to include an element in the levy to fund medical research into Mesothelioma. Those who have followed the Bills progress to date will be aware that the Department of Health has recently overhauled its research approval processes to ensure that funding is focused on good quality research. These processes would have been undermined by the Lord Alton's amendment so we were unable to accept it.

However, to ensure that there is sufficient, long term, quality research into Mesothelioma the Department of Health is currently working with the National Institute for Health Research. This work is expected to bring forward suitable bids in due course but it is not possible to say at this time exactly when this will be.¹⁷

At the first sitting of the Commons Public Bill Committee on 10 December, the Labour Member Paul Goggins spoke to an amendment to clause 1 of the Bill to impose an additional levy on insurers not exceeding 1% of the main levy to fund research into the causes and treatment of mesothelioma. The amendment was supported by the Opposition front bench.

Mr Goggins said that he found the arguments put forward by the Government against a levy to fund research that such a levy would effectively be a "hypothecated tax" and there was a lack of precedent for such a charge to be "deeply unimpressive and very weak."¹⁸ He continued:

Ministers have also argued—this argument is shot through with holes—that there is no lack of funding for research into mesothelioma; instead, there is a lack of high-quality applications. Earl Howe made that point during the brief exchanges last Thursday in the other place, which set off a fierce reaction from members of the medical research community who work on the matter day and night using the modest resources at their

¹⁴ [PBC Deb 12 December 2013 cc137-8](#)

¹⁵ See section 3.5 of [Library Research Paper 13/66](#)

¹⁶ [HL Deb 5 December 2013 cc343-5](#)

¹⁷ [DEP2013-1959](#)

¹⁸ [PBC Deb 10 December 2013 c13](#)

disposal. They believe that they have high-quality research, but that there is a lack of money.

The problem is the lack of certainty about money. The current temporary three-year funding is, as we have heard, producing some good research outcomes. If there is uncertainty, how can high-quality researchers be expected to put at risk their own time and resources to gain an end product that simply is not there? They need certainty. I am clear that, if the funding were there at a reasonable level and were sustainable and accessible, the high-quality bids would come.

[...]

There is no doubt that the quality of research project is there. If the funding were more certain and plentiful, there would be the high-quality applications that we would all want to see.

If the Minister were to say today that he was interested in the levy that I am proposing and was prepared to consider it as a reserve power in order to focus the minds of the industry to ensure that it came up with a voluntary scheme that did the business, and that everybody contributed to what would be a permanent scheme—in other words, to hold back the powers that we would pass in the legislation as a reserve—I would consider that.¹⁹

Mr Goggins concluded that “a small additional levy shared proportionately between all insurers involved in the scheme would be viable, legal, fair and effective.”²⁰

The Minister for Disabled People, Mike Penning, updated the Committee on developments since the Lords Stages relating to research:

I will touch on the detailed discussions that took place in the other House, in particular the amendment tabled by Lord Walton, which ended in a close Division. One reason why the Government carried the vote in the other place was the fantastic speech by Earl Howe, who is as well-respected there as he is here, during which he committed to increasing capabilities around research. I am not one of those who have been critical of the quality of the research, but there has been some duplication and there is some scepticism about research in this area, which may be based on the financial situation or, as the right hon. Member for Wythenshawe and Sale East mentioned, the high-profile nature of other cancers.

Since Earl Howe made his comments, a meeting was jointly chaired by Lord Freud and Earl Howe, and the highlighted notice, which needed to go out to researchers, has gone out. Researchers have been invited to a seminar in early 2014, so that bids can be co-ordinated.²¹

The Minister went on to say that while an additional 1% levy would breach the funding agreement reached with insurers, the Government would continue to meet with insurers to seek an undertaking from them for additional funding for research. He explained:

I will make a negative and a positive point. To do the 1% will bust the deal, so we will move to 4%. I did not do the deal, but I respect the deal and it is in place with the insurers, so we have the 3% levy. I also want to put on record that, while I will not put a

¹⁹ PBC Deb 10 December 2013 c15

²⁰ PBC Deb 10 December 2013 c16

²¹ PBC Deb 10 December 2013 c20

backstop position in the Bill, if the voluntary approach proposed by Lord Howe does not work, we will revisit this and bring legislation forward should we need to do so.²²

Mr Goggins replied:

...there is time between now and Report for further thought to be given to this. There is time for the insurance companies to sit down with Ministers and actually say, "Yes, we mean it; we really can make a voluntary approach work. We can structure this, guarantee payments and we can come up with an amount of money." If the Minister was able to report that back to us on Report, we would be heartened by that.

Mike Penning: I can assure the hon. Gentleman that Lord Freud and I will be having meetings with the insurance companies and I will raise this particular issue. If we can come to a consensus that does not break the 3% threshold then I would be more than happy to bring that back on Report.

Paul Goggins: That is a very important commitment and I thank the Minister for making that intervention. We now have an approach to this that I think could work. He and his ministerial colleagues will sit down with the insurance companies between now and Report really to thrash out what a properly funded voluntary scheme might look like; one that would deliver the kind of investment in research that experts know is needed, and that we in our hearts know is needed. If the Minister is prepared to do that before Report, and if he is able to give us a positive response on Report, we will all feel that the arguments made in this place and the other place will have been effective.

Mike Penning: If we can come to an agreement—that is important. I will have the discussions and I will do my level best, but I cannot make promises that are out of my hands. It will be the insurance companies that will have to decide.²³

The amendment was withdrawn.

7.2 Cut-off date

The Government proposes that only those mesothelioma sufferers who were diagnosed on or after 25 July 2012 will be eligible for a payment under the scheme. The cut-off date was debated extensively in the Lords (see section 3.3 of [Library Research Paper 13/66](#)). The Opposition argued that the cut-off date should be 10 February 2010 – the date of publication of the Labour Government's original consultation paper.

The cut-off date was also raised in the Commons Second Reading debate. In a letter of 6 December to Members who participated in the debate, the Minister, Mike Penning, said:

Several colleagues proposed alternative start dates for scheme eligibility. The fundamental issues here are around legal expectations and affordability. The expectation for eligibility was deliberately set as early as we could arrange it, once the scheme had been agreed. Whilst I understand the desire to include as many people as possible, February 2010 is not a legitimate date to use as the consultation did not indicate the intention to create a scheme and indeed one of the options proposed was 'do nothing'. At that point in time, there was no certainty what, if any, scheme would be pursued by government. Only from 25th July 2012, could people have an expectation that they would receive a payment.

Similarly, moving the date to 1965 [the date of publication of an influential article on mesothelioma in the *British Journal of Industrial Medicine*] is not possible. Moving the

²² PBC Deb 10 December 2013 c20

²³ PBC Deb 10 December 2013 c22

start date back this far would have a very similar effect to having no start date. The number of historical cases that would become eligible with a 1965 start date would mean that the costs would be prohibitive, and a scheme would simply not be possible. The DWP published an ad hoc statistical report on the 6th December which provided figures for the estimated cost of extending the scheme in this way.²⁴

A number of amendments were tabled in Committee to provide for an earlier scheme cut-off date. The Opposition Work and Pensions Spokesperson Kate Green said:

...we have selected the date of 10 February 2010 in our amendments, and this is a moderate suggestion to an industry that has been collecting premiums in respect of this industrial illness over many years. That is the date at which, under the noble Lord McKenzie, the then Labour Government launched a consultation, at which point it is arguable that the insurance industry was crystal clear about the intentions of the Government and what would follow.²⁵

Kate Green said that the additional funding required for a cut-off date of 10 February would not push the levy in insurers above 3% over the initial ten-year period for the scheme.

The Minister, Mike Penning, quoted the Department's recent ad hoc analysis (see part 5 above) which estimates that extending the scheme to cover those diagnosed from February 2010 would result in an additional 700 successful applicants and cost £80 million. He said that this additional amount would push the levy on insurers above the 3% threshold of gross written premiums agreed with the insurance industry, breaking the agreement. He was not therefore willing to accept that the Government should do what was proposed.²⁶

The Conservative Member Stephen Phillips asked for clarification on whether the earlier start date was or was not affordable within the 3% threshold:

Stephen Phillips: I am a little confused, as I am sure many members of the Committee are, about the numbers. It would be helpful—if not today, then before the Bill is reported back to the House—if the Minister undertook to write to the Committee, setting out why the figures given by the hon. Member for Stretford and Urmston would push the costs over the 3% of gross written premium, so that we can all be satisfied, at least for the purposes of Report, that that is the case. I know the Minister very well and know him to be a deeply honourable and straightforward person. I take the Minister at his word, because I am sure that if it were under 3%, he would be accepting the amendment.

Mike Penning: Once we have seen the hon. Lady's calculations, I will be more than happy to do that, so that the whole House will have an opportunity to look at this when we come to Report. What I am saying is that I am not willing to accept the amendment. I will write to the Committee, but I will also ensure that the document is available to the whole House by placing it in the Library, which I think is what the hon. Member for Rhondda is indicating from a sedentary position that he wants. I will do that.²⁷

The amendments were withdrawn.

²⁴ [DEP2013-1959](#)

²⁵ PBC Deb 10 December 2013 c30

²⁶ PBC Deb 10 December 2013 c34

²⁷ PBC Deb 10 December 2013 c35

7.3 Turner and Newall

Under the Bill, mesothelioma sufferers who have received, or are eligible for, a “specified payment” from certain other sources cannot receive a payment from the scheme. For the Opposition, Kate Green moved amendment to clause 2 to provide that a person who would be eligible for a specified payment, but who had not received one, would be eligible for a scheme payment. Speaking to the amendment, Ms Green explained that the Opposition had particular concerns about people who might be eligible for a payment from the Turner and Newall Trusts:

Our concerns are that the product liability insurance offered by the Turner and Newall trust for compensation at a much lower rate than offered through this scheme will mean that former employees of Turner and Newall will have to be at least eligible to access the product liability cover that would have been on offer and the funds that are available to meet those claims. That would mean that, as currently worded, they would be precluded by this section from applying to the diffuse mesothelioma payment scheme, even if they made no claim and received no payment from any of the Turner and Newall schemes. The purpose of the amendment is to remove what could be a very useful loophole to the insurance industry.²⁸

For the Government, Mike Penning said:

I fully understand where the Opposition amendments are coming from and I will try to address each issue as we go through. Let me first address Turner and Newall, as it is commonly known. This is supposed to be a fund of last resort when dependants who have suffered from this disease cannot get the financial help that they deserve from other sources. If they have received money from the Turner and Newall scheme, they would be excluded from this scheme, although, on the face of it, some of them may get less than they would do from this scheme. However, because of exemptions in the legislation that created the Turner and Newall scheme, there will be no clawback of benefits or anything else, which, in most cases, would have taken them over the limit.

Kate Green: Will the Minister comment on two points? First, I accept what he said about there being no clawback of benefits, but the level of compensation that people receive under the Turner and Newall scheme is typically substantially less than the amount that they will receive under this scheme. Secondly, people could be prevented from claiming not because they have made a claim or received money from the Turner and Newall scheme, but because they can potentially make a claim, not in relation to employers’ liability, but to product liability. Is it the Government’s intention that people should use the scheme when they have no access to redress under other employers’ liability insurance, or when they have no access under any insurance policy at all?

Mike Penning: As I understand it, it is under any insurance policy at all. If I am wrong about that, I will write to the hon. Lady. As I said, the Turner and Newall compensation will allow for benefits and other lump sums to be held; they will not be clawed back. Under the scheme of last resort, the benefits that claimants have received will be clawed back. I will deal with that later in the debate. There are a range of payments, and people should try to receive moneys from whatever sources they can, for the simple reason that this is a fund of last resort.²⁹

²⁸ PBC Deb 10 December 2013 c36

²⁹ PBC Deb 10 December 2013 c38

Kate Green said that she was “disappointed” with the Minister’s response. The Opposition pushed the amendment to the vote. The amendment was defeated by 7 votes to 6.³⁰

Further information regarding Turner and Newall payments was given in a “Dear Colleague” letter dated 16 December from the Minister to Members of the Committee. The letter said:

In respect of T&N employees who were negligently exposed to asbestos in the course of their employment, we cannot extend eligibility to sufferers where they have received, or are eligible to receive, a payment from T&N. This Scheme [ie the one provided for in the Bill] is to correct a market failure where a relevant employer or insurer cannot be traced. Where a potential applicant is eligible to receive a T&N payment, a liable party has been identified and it is therefore not appropriate to defer to this Scheme, which is a scheme of last resort.

As [Kate Green] pointed out, payments made by the T&N Trust funds are exempt from benefit recovery. Due to this extra incentive for applicants to claim other government payments, the value of such payments is likely to exceed the average of £20,000 benefit recovery figure. The effect is that any gap between the value of a Scheme payments and a T&N payment will be significantly reduced.

In some instances, the net value of the T&N payment will be greater than the Scheme payment due to benefit recovery. Based in figures provided by T&N, there will be some instances where the net value of the T&N payment may exceed the average civil damages figure.

In respect of Scheme applicants who were not employees of T&N but who may have been exposed to asbestos as a result of using a T&N product, the issue does not need to be addressed in this Bill. Rather, the contractual arrangements made between DWP and the scheme administrator will specify that investigations to identifying a liable party will relate to employment history and not any potential Product Liability claim for the purpose of excluding applicants. As I have indicated before, the way the scheme administrator operates will be stringently controlled by the requirements laid in regulations and the contractual arrangements put in place.

7.4 Level of payments

The Government proposes that payments under the scheme will be set at 75% of average civil compensation awards (see section 3.2 of [Library Research Paper 13/66](#)). At the Committee’s second sitting a number of amendments were discussed setting payments at higher percentages of civil compensation. For the Opposition, Kate Green said:

These amendments go to the heart of the Bill and the generosity of the scheme for sufferers of mesothelioma and their families. Amendment 7 in my name and that of my hon. Friend the Member for Rhondda [Chris Bryant] seeks to increase the rate of payment from the currently proposed 75% of average civil compensation to 90%. My hon. Friend the Member for Wansbeck [Ian Lavery] has proposed a rate of 100%; my right hon. Friend the Member for Newcastle upon Tyne East [Nicholas Brown] has suggested 110% and the hon. and learned Member for Sleaford and North Hykeham [Stephen Phillips] has suggested 80%. It is clear that every amendment tabled about the rate indicates the unacceptability to the Committee of the current proposal.³¹

³⁰ PBC Deb 10 December 2013 c43

³¹ PBC Deb 10 December 2013 c49

Ms Green said that in considering affordability it was important to look at different time scales. While the Government had focused on the initial four-year “smoothing period” for the scheme, over the full ten-year period the picture was somewhat different. Ms Green said:

Interestingly, and perhaps not surprisingly, over a four-year period 75% payouts are the level at which the levy is just within 3% of gross written premium—it is 2.99% at that level. That falls very significantly if we look over the 10-year period for which the Minister has kindly supplied information: a levy at 2.46% of gross written premium would be needed to meet 75% payouts. For payouts at 80%, we tip over the 3% of gross written premium over a four-year period, but over a 10-year period the levy is 2.61%. For payouts at 90%—the subject of amendment 7—we are at 3.56% over the four-year time frame, but even at 90% over 10 years we are still within the 3% of gross written premium, at 2.9%. It is only when the payout is at 95% that even over a 10-year period the percentage of gross written premium tips over the 3% mark to 3.05%.

The impact assessment issued by the Government in November varies from the one available earlier this year. In July, for payouts at 80% over a four-year period the levy was predicted to be within the 3% of gross written premium, at 2.98%. Indeed, over a 10-year period it did not exceed 3% of gross written premium even when compensation payments were set at 100% of average civil damages. So what has changed, and, more pertinently, why—what is the justification for that shift in the impact assessment?

The November 2013 impact assessment explains that the increase in costs is a result of increased estimates for the legal fees that scheme applicants will face. [from £2,000 to £7,000]³²

Ms Green said that if the 3% limit was all that was affordable, even by the Government’s calculations over the longer time-frame higher payments were readily affordable. She said:

We strongly advocate the moral case for the most generous scheme possible. There is a moral case without question that victims who are forced to rely on the scheme because, through no fault of their own, they are unable to trace an employer’s insurer should not be discriminated against, compared with other victims. In our view, there is a strong case for the affordability of a more generous system of payout, certainly at 80% and 90% if we look over a longer time frame. I know other right hon. and hon. Members also want to make the case for more generous compensation. The Opposition will strongly support their arguments.³³

The Minister said that the figure of £7,000 for legal fees was “in the upper echelons of the figures that were given to us on advice.” He also confirmed that it would be a set payment and that individuals would be able to keep the difference between the £7,000 and actual legal fees (if lower).³⁴

Mr Penning again mentioned the agreement on the 3% levy limit, and the need to avoid passing on costs to businesses. He fully understood the strength of feeling, and admitted that the settlement was not perfect, but said it was “is the best deal on the table for people who have absolutely no compensation whatever and no other recourse to get money for their family and loved ones.” The Government would oppose amendments to raise scheme payments from 75% of civil compensation. The Minister did however indicate that the

³² PBC Deb 10 December 2013 cc53-54

³³ PBC Deb 10 December 2013 cc56-57

³⁴ PBC Deb 10 December 2013 cc70-72

Government would monitor closely the scheme's finances as it was implemented (see the section on the levy below).³⁵

For the Opposition, Kate Green took issue with those who warned of the dire consequences of breaching the 3% limit, pointing to a statement in the Impact Assessment that the impact on employers of insurers passing on costs was likely to be low. She added:

...there seems to be scope at least to consider that, although 3% might be a convenient figure for the industry, it is not an absolutely set-in-stone indication of the point at which a scheme would become unaffordable, either directly for the insurance industry or indirectly through employers' liability premiums.³⁶

Ms Green was "not persuaded" that there was no room for manoeuvre on payment rates and pressed the Opposition amendment to increase the payment rate to 90% to the vote. The amendment was defeated by 9 votes to 6.³⁷

7.5 The levy

For the Opposition, Kate Green moved an amendment to require the levy in insurers to be not less than 3% of gross written premiums in any period. A further amendment by the Conservative Member Stephen Phillips to require an annual report to Parliament on the scheme, which would include an assessment of the impact of the levy on insurance, was also tabled.³⁸

Speaking to the Opposition amendment, Kate Green noted that, according to the Impact Assessment, the cost of the scheme was expected to fall after the first four years. She added:

The amendment stipulates that, although the cost of fulfilling claims will fall and may continue to fall for many years, the levy would remain at 3% regardless of the claim bill, and that any surplus money could be invested in research, scheme extension or greater pay-outs. That would prevent victims from being short-changed when insurers could pay more within their own terms of what is affordable, and would meet the concern that, if average civil compensation claim amounts fall in future, the industry's obligations and payments to sufferers under the scheme would be protected. Such an approach could be more generous than a guaranteed payment of, for example, 80% but offers less certainty as it would depend on how much of the levy is used to meet payments under the scheme.³⁹

Ms Green said that a briefing produced by the Association of British Insurers (ABI) implied that the industry expected to make a total contribution to the scheme of between £1.2 to £1.4 billion over a 40 year period, adding:

In our view, that is likely to be enough to provide payments equivalent to 100% of average civil compensation claims and to open the scheme to all mesothelioma sufferers going back to 1968, which it has been estimated would cost £1.1 billion. Any additional money left in the consolidated fund would then be available to pay for future expansion of the scheme. It could be used for research, as we discussed this morning, and of course, as a matter of priority, to increase payments up to at least 100% or

³⁵ PBC Deb 10 December 2013 cc71-72

³⁶ PBC Deb 10 December 2013 cc72-73

³⁷ PBC Deb 10 December 2013 c74

³⁸ PBC Deb 10 December 2013 cc74-78

³⁹ PBC Deb 10 December 2013 cc74-75

perhaps more if we felt that that would impose a useful discipline on the insurance industry.⁴⁰

The Minister replied:

It is very important that the insurance companies know that the 3% is there. In Committee in the other place, Lord Freud committed to a review at the end of the smoothing period, after four years, to see exactly how things were going. There was certainly not a commitment to interfere. I will place that fact in regulations so that the Committee has confidence that a review will take place after the four-year smoothing period. At that point, we will have a much better idea of how much the levy collector is collecting. We may be able to spend that by increasing the percentage, or we may be able to do other things with it.

In the meantime, it is important to know that the charge will not be passed on to new British businesses, because it has nothing to do with new businesses that take out compulsory insurance. We are working with Her Majesty's Treasury, the Financial Conduct Authority and the levy collector. My view is that the levy collector should be able to produce a report, because they will fully understand the business and how it is moving. There is more work to be done, with BIS in particular, but I think that the levy collector will be placed to report on a regular basis, at least annually.⁴¹

The amendments were withdrawn, but in the later debate on whether clause 13 should stand part of the Bill, Kate Green pressed the Minister further on his commitment to review the scheme's funding and the difference between estimated total levy over the first ten years and the amount that could be paid out if the levy were held at 3% throughout.⁴²

The Minister replied "Three per cent. is 3% and we have no intention of moving away from it", and said that he would write to Ms Green with more details.⁴³

In a "Dear Colleague" letter dated 16 December to Members of the Committee, the Minister stated:

Rate of the Levy in Future

Finally, I would like to conclude by re-iterating my commitment to look to ensure that after the initial four year period, a review will take place to assess all elements of the scheme, including the rate of payment and the rate of the levy. To add to what I said in committee, we will look to ensure that the rate of the levy continues to be 3% of gross written premium, or equivalent to 100% of average civil damages.

7.6 Administration of the scheme

In the debate on whether clause 7 ("Scheme administration") should stand of the Bill, Kate Green raised concerns about possible conflicts of interest were the insurance industry to run the scheme. She added:

It is reassuring to know that there will be an open and competitive tendering process. Will the Minister tell us a little more about how he expects it to operate to ensure the appointment of the best possible administrator to run the scheme? What assurances can he give us that the administration of the scheme will be fully independent if, in the

⁴⁰ PBC Deb 10 December 2013 c75

⁴¹ PBC Deb 10 December 2013 cc77-78

⁴² PBC Deb 12 December 2013 cc115-116

⁴³ PBC Deb 12 December 2013 c117

end, the contract is awarded to an insurance industry body? I look forward to hearing his response to my concerns.⁴⁴

The Minister replied:

In answer to the initial concerns about ensuring that the Bill says that the tendering process will be as open as possible: it will be. As the noble Lord Freud indicated in the other House, the tender competition will be completely open—exactly the same as any other tender process. We will ensure that we have as much expertise on that committee as possible. The commercial staff in the Department for Work and Pensions will be responsible for the tender, as they are for our other tender processes—exactly as happened when the right hon. Member for Newcastle upon Tyne East was a Minister in the Department.

The contract will obviously be chosen on the usual criteria of value for money—commercial criteria. If there is a conflict of interest, that will be exposed at that stage, as will a bidder's ability to operate the scheme. The shadow Minister was concerned about what would happen if—a big “if”—there was a conflict of interest that allowed the insurance companies to limit or pick and choose, but the criteria are set and the administrator has no say as to who gets money from the fund other than on the basis of the specific criteria agreed by this Committee. The administrator has to abide by the regulations to follow.⁴⁵

The Minister gave further information in the “Dear Colleague” letter to Members on 16 December:

The Open Tender Process

[Kate Green] also asked for a little more detail relating to the open tender process, in particular how the bids will be evaluated and by whom. I can reassure her that the department's standard commercial process was followed throughout. A Prior Information Notice (PIN) was published in the Official Journal of the European Union (OJEU) on the 22nd August. All suppliers who expressed an interest were then issued an Invitation to Tender (ItT) on 15 October alongside issue of a Contract Notice on OJEU, and publication of the Invitation to Tender through Contracts Finder. The ItT period closed on 11 November. The evaluation of bids is being led by DWP Commercial Directorate in line with the evaluation criteria published as part of the ItT. Once the bids have been fully assessed against qualitative and financial criteria, a recommended option will be presented to me by officials.

The letter also stated:

Scheme Operation and Reporting

The Scheme Administrator will make independent decisions based upon the Scheme rules provided by the DWP and the application of such rules will be assessed by the Oversight Committee. Regarding reporting on the scheme Administrator's performance, the Scheme Administrator will be contractually obliged to produce an annual report, which can be laid in the Parliamentary Library.

⁴⁴ PBC Deb 12 December 2013 cc88

⁴⁵ PBC Deb 12 December 2013 cc89

7.7 Recovery of benefits from scheme payments

The Bill provides for the recovery of amounts paid to individuals by way of social security benefits and other lump sum payments from payments under the scheme (see section 2.3 of [Library Research Paper 13/66](#)).

The Conservative Member Stephen Phillips moved an amendment to clause 11 to ensure that there would be no recovery of benefits unless the individual received an amount at least equal to 100% of civil compensation. The amendment would also prevent recovery reducing the amount received to less than 100%.

Speaking to the amendment, Mr Phillips said:

Even though they will get 75% of the damages, 100% of the relevant benefits will disappear. I cannot be the only one to perceive an injustice in that situation, although I think that I am the only one to have moved any amendment before this Committee in relation to it.

[...]

It is wholly unfair and wholly wrong that anyone in those circumstances should lose 100% of their benefits or other payments to which they are entitled when they are not being fully compensated for a disease that will kill them and which they have contracted purely because—I said this when I opened the debate on the first amendment to the Bill—they have gone out to work and sought to do that which we all seek to do every day.⁴⁶

For the Opposition, Kate Green hoped that the Minister would reflect on the “strong views expressed” by Mr Phillips on the “moral argument for aligning the recovery of benefits with the proportion of civil compensation that claimants receive.”⁴⁷

The Minister replied that “one cannot cherry-pick back and forth and make a special scheme on benefit recovery for any individual scheme.” To have more lenient rules on compensation recovery for those receiving scheme payments would be unfair since some people making a civil claim will have settled for less than they would have been able to get had they been eligible for a scheme payment:

...there are people in the civil courts who get less than they would get in the scheme and there is 100% recovery of the benefits for them.

... there will be people who get financially less than they would from this fund—that is if they came to the fund. They cannot come to the fund, because it has been settled in court because they found their insurer and their employer. These people will get 100% recovery of the benefits they claim. So there would be a two-tier system. That is why it would not be acceptable.⁴⁸

Pressed by Stephen Phillips on whether he would reflect further in the matter between then and Report, the Minister replied that he would not:

⁴⁶ PBC Deb 12 December 2013 cc101-102

⁴⁷ PBC Deb 12 December 2013 c103

⁴⁸ PBC Deb 12 December 2013 c103. See also the Minister's letter to Members dated 6 December ([DEP2013-1959](#))

Mike Penning: With regret, I have already reflected quite extensively on this. I am afraid that I cannot reflect any more. If my hon. and learned Friend wishes to push it to a vote I fully respect that position.

Stephen Phillips: I am grateful. I do not want to cause the Minister difficulties but I am afraid I have not heard anything to persuade me to ask leave to withdraw the amendment. In those circumstances, I am minded to test the will of the Committee.⁴⁹

The amendment was defeated 7 votes to 6. Mr Phillips abstained.

7.8 Reinsurance

The Bill provides for a levy to be imposed on companies currently active in the Employers' Liability (EL) insurance market. The Conservative Member Stephen Phillips tabled an amendment to extend the levy to include reinsurers, in order to expand the fund to enable full payments to be made, fund research, extend the scope of the scheme to include those contracting mesothelioma via environmental exposure, and other improvements. Mr Phillips explained:

...reinsurers operating today have received significant amounts, perhaps as much as 20%—perhaps even more—of the premiums paid to direct insurers by employers to effect compulsory insurance. They are being asked to contribute precisely nothing to this or any other scheme of last resort to make whole those who suffer from mesothelioma, who have no other route of recourse. They therefore afford, as the previous Government should have appreciated and as perhaps this Government should also have appreciated, a pocket of money that is not being tapped up, but which could be used to ensure full compensation to those who have to seek recourse from the scheme; that could be used to ensure proper research into treatments and cures for mesothelioma, as urged upon the Committee by the right hon. Member for Wythenshawe and Sale East; that could be used to extend the scope of the scheme, so that it covered those who have no other route of recourse and, for example, did nothing more than wash their husband's overalls covered with asbestos fibres; and that could be used to ensure that children, who will in middle age and later life sustain diagnoses of mesothelioma, are properly compensated in circumstances in which they have no other recourse because they were not employed by anyone.

[...]

...the position that I am urging on him [the Minister] is that, even if at this stage the Government cannot accept the amendments because there has been no write-round or negotiation with the reinsurance industry, this is something that his Department needs to look at.⁵⁰

The Minister replied that this was something the Government would look at, but that in the meantime the priority was for the Bill to receive Royal Assent:

I will move on to a more positive tone by saying that I would like to look at the proposal in more depth.

[...]

The principle of reinsuring based on moving the risk down the line would need to be debated and looked at more extensively. I am happy to progress discussions with reinsurers. It may perhaps seem sometimes that they are not being represented by the

⁴⁹ PBC Deb 12 December 2013 c105

⁵⁰ PBC Deb 12 December 2013 cc111-112

ABI. Many will be the same companies that we are talking about. Because of that and the complexity it would bring, my hon. and learned Friend is right that at this stage of the Bill, being so close to getting the legislation on the statute book—

[...]

I understand that the complexity of tracing reinsure and run off is part of the issue—most hon. Members will realise that it is the biggest issue. I give a commitment that we will continue to pursue the matter and see whether we can bring more organisations to the party, but at the same time, as my hon. and learned Friend touched on his comments, I cannot at this stage of the Bill accept the amendments, simply because they would create a difficult situation.⁵¹

The amendment was withdrawn.

In the subsequent debate on whether clause 13 should stand part of the Bill, responding to questions on why reinsurers had been left out of the Bill Mr Penning said:

Yes, of course I will write to members of the Committee, but the information will be available in the Library to all Members who want to take part in the debate on Report and Third Reading. I have no inner knowledge, but I suspect that the reinsurers are going to be almost exactly the same people who were insuring in the first place. There is not an infinite amount of companies out there insuring, but we will write to them.⁵²

7.9 Additional schemes for people with other conditions

For the Opposition, Kate Green tabled a New Clause requiring the Secretary of State to report to Parliament within a year setting out the Government's proposals with regard to the establishment of additional schemes for asbestos-related industrial diseases, where there are unresolved insurance disputes. A similar New Clause was tabled by Nicholas Brown.

Ms Green explained:

New clause 1 asks not that an extension to other asbestos-related diseases be encompassed into the scheme provided for in the Bill, but that the Minister lays a report before Parliament within 12 months, explaining exactly what the Government intend to do and will be able to do about extending a payments scheme to a wider range of asbestos-related diseases. We recognise that the long and short titles of the Bill would exclude the possibility of doing that in this Bill, but we are also aware that there have been encouraging indications from Lord Freud and others that the Government have not ruled out the possibility of extending some other form of payments system to other asbestos-related diseases.⁵³

Ms Green said that Asbestos Victims Support Groups UK disputed figures in the Govt's ad hoc statistical publication (see section 5 above) on the costs of extending the scheme to cover other conditions.

The Minister replied:

As the shadow Minister said, the long title and short title of the Bill are quite defined. It is important that that is understood. However, Lord Freud made understandable commitments in the other place to work with other Departments, researchers and groups to develop better information and analysis, so that other groups could be as

⁵¹ PBC Deb 12 December 2013 cc113-114

⁵² PBC Deb 12 December 2013 c117

⁵³ PBC Deb 12 December 2013 c128

defined as the groups in the Bill, and also get compensation from a fund of last resort if has to happen, although we all hope that would not be the case. I reiterate that here today.

Lord Freud, Lord Howe, who spoke movingly in Committee in the other place, and I work closely together. Although the right hon. Member for Wythenshawe and Sale East has left for understandable reasons, this is where the research becomes so important. The reason why the Bill has got so close to getting the money to those who desperately need it is that the research and analysis were definitive.

I pay tribute to the Asbestos and Mesothelioma Support Group. We do not always agree on the figures, but we all agree on one thing. We need to get help in this case. We will work together. That is the commitment that the shadow Minister wanted. We will try to get our figures as close to theirs as possible. I am willing to work with anybody who can come forward and show us a way to get help to people who are not getting it from any other source.⁵⁴

Kate Green pressed the Minister further on how Parliament would be kept informed of progress:

Kate Green: I am grateful for much of what the Minister has said about the new clause. Could he share how he intends to keep the House informed of the progress of the work? My new clause proposes a report within one year to Parliament, but I am open to other suggestions from the Minister.

Mike Penning: I hope I have already indicated to the Committee and made a commitment that the way the fund is working will be reported to Parliament each year. I do not want it to be complicated or to be full of gobbledegook. It has got to be nice and simple. We will take a similar path with the report.

[...].

Kate Green: I welcome a great deal of what the Minister said. He acknowledged that we already have his commitment to an annual report to Parliament in relation to the diffuse mesothelioma payment scheme. I think I heard him say that there would be a similar commitment to progress on identifying the possibility of extending schemes to other asbestos-related diseases, though I do understand the issues that he raised.⁵⁵

The amendment was withdrawn.

7.10 Oversight Committee

For the Opposition, Kate Green tabled a New Clause to establish by regulations an Oversight Committee, to include representatives of asbestos victims support groups, trade unions and active insurers; and to be chaired by an independent person. Further background on the issue of oversight is given in section 3.4 of [Library Research Paper 13/66](#).

Kate Green explained:

Lord Freud was very positive about the idea of an oversight committee and expressed his agreement with the idea behind the amendments to that effect that were tabled by Lord McKenzie when the Bill was on Report in the House of Lords. He said:

⁵⁴ PBC Deb 12 December 2013 c132

⁵⁵ PBC Deb 12 December 2013 c132

“The suggestion was made in Committee, and since then we have been exploring available options for some form of oversight. I spent some time looking for an existing mechanism or body already within the auspices of the DWP that I could utilise, but I have not been able to find a suitable vehicle. We are therefore continuing to explore all the options.”—[Official Report, House of Lords, 17 July 2013; Vol. 747, c. 843.]

Will the Minister tell us what progress has been made since that statement in the House of Lords? Obviously, if an existing body can be utilised that would undoubtedly speed up the matter, which would be very welcome. If not, we would like to hear what progress has been made in establishing a new body.

I know that the Minister is reluctant to see measures added to the Bill, but it is important that people have an absolute assurance that there will be an independent oversight committee for the scheme. The best possible way to give them that assurance would be to include reference to such a body in the Bill.⁵⁶

The Minister replied:

I am going to have to say that I do not see the requirement for new clause 3. The main reason is that we have sought extensive opinions from stakeholders on the proposed oversight body and the representation on that body. We think that representation should be as open and expansive as possible. As a trade unionist, I personally feel that unions should be represented on the body—I am not necessarily saying that all unions should be represented, but some trade union representation is important.

We have done some work on this matter. The proposed body will monitor the performance of the scheme. It will conduct blind case checks—it is very important that there are checks on how things are being done—and will produce reports for the DWP, either for me as the Minister responsible or for Lord Freud if the responsibility goes back to him.⁵⁷

Mr Penning said that the contract for the scheme administrator would include a clause requiring the administrator to supply information to the oversight committee.

Kate Green replied:

I am reassured by that. That is much better news. I hope that this will be supported by an obligation on those who hold such information to provide it to the oversight committee. I am pleased by the strength of the support that both this Minister and the Minister in the House of Lords have given to the notion of an independent oversight body. That will have been noted on the record, and by those who are paying close attention to this debate. I still cannot see any difficulty in including that in the Bill. I know that the Minister is concerned about ping-pong, but I cannot imagine any objections from the other place to such a clause being included in the Bill. However, the assurances are certainly very strong, and have been repeated by Ministers in both Houses.⁵⁸

The New Clause was withdrawn.

⁵⁶ PBC Deb 12 December 2013 c135

⁵⁷ PBC Deb 12 December 2013 c136

⁵⁸ PBC Deb 12 December 2013 cc136-137

Appendix - Members of the Public Bill Committee

Chairs

Mr Philip Davies and Mr George Howarth

Members

Adams, Nigel (*Selby and Ainsty*) (Con)

Blenkinsop, Tom (*Middlesbrough South and East Cleveland*) (Lab)

Brine, Steve (*Winchester*) (Con)

Brown, Mr Nicholas (*Newcastle upon Tyne East*) (Lab)

Bruce, Fiona (*Congleton*) (Con)

Bryant, Chris (*Rhondda*) (Lab)

de Bois, Nicholas (*Enfield North*) (Con)

Goggins, Paul (*Wythenshawe and Sale East*) (Lab)

Green, Kate (*Stretford and Urmston*) (Lab)

Heaton-Harris, Chris (*Daventry*) (Con)

Kwarteng, Kwasi (*Spelthorne*) (Con)

Lavery, Ian (*Wansbeck*) (Lab)

Lloyd, Stephen (*Eastbourne*) (LD)

McCann, Mr Michael (*East Kilbride, Strathaven and Lesmahagow*) (Lab)

Paisley, Ian (*North Antrim*) (DUP)

Penning, Mike (*Minister of State, Department for Work and Pensions*)

Perry, Claire (*Devizes*) (Con)

Phillips, Stephen (*Sleaford and North Hykeham*) (Con)

Thornton, Mike (*Eastleigh*) (LD)

Committee Clerk

Fergus Reid