



## City Research Online

### City, University of London Institutional Repository

---

**Citation:** Forth, J. ORCID: 0000-0001-7963-2817, Metcalf, H., Coleman, N., Meadows, P., King, M. and Tufekci, L. (2014). Study into Average Civil Compensation in Mesothelioma Cases. London, UK: Department for Work and Pensions.

This is the published version of the paper.

This version of the publication may differ from the final published version.

---

**Permanent repository link:** <https://openaccess.city.ac.uk/id/eprint/20758/>

**Link to published version:**

**Copyright:** City Research Online aims to make research outputs of City, University of London available to a wider audience. Copyright and Moral Rights remain with the author(s) and/or copyright holders. URLs from City Research Online may be freely distributed and linked to.

**Reuse:** Copies of full items can be used for personal research or study, educational, or not-for-profit purposes without prior permission or charge. Provided that the authors, title and full bibliographic details are credited, a hyperlink and/or URL is given for the original metadata page and the content is not changed in any way.



Department  
for Work &  
Pensions



# Study into average civil compensation in mesothelioma cases

---

January 2014

Research Report No 858

A report of research carried out by the National Institute of Economic Research on behalf of the Department for Work and Pensions

© Crown copyright 2014.

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence.

To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This document/publication is also available on our website at:

<https://www.gov.uk/government/organisations/department-for-work-pensions/about/research#research-publications>

If you would like to know more about DWP research, please email:  
[Socialresearch@dwp.gsi.gov.uk](mailto:Socialresearch@dwp.gsi.gov.uk)

First published 2014.

ISBN 978 1 909532 94 6

Views expressed in this report are not necessarily those of the Department for Work and Pensions or any other Government Department.

# Summary

The research provides estimates of average civil compensation and legal costs for occupational mesothelioma cases. It was designed to inform the development of proposals by both the Department for Work and Pensions and the Ministry of Justice in relation to helping mesothelioma victims who cannot trace a liable employer to access compensation and to speed up the settlement process for all victims.

Using a variety of measures, average compensation awarded ranged from £137,000 to £153,531 and average legal costs ranged from £22,000 to £28,407. The estimates were based on a survey of 2,334 mesothelioma claims settled between 2007 and 2012.

Regression analysis was used to investigate how civil compensation awarded and legal costs varied with the characteristics of the claimant and features of the claim. It was found that civil compensation decreased with the claimant's age (by around £3,500 per year) and grew over time between 2007 and 2012. Average civil compensation was higher in Scotland than in England and Wales, and also higher where court proceedings were issued and where the claimant was alive at settlement. The length of the case was not associated with the size of civil compensation.

The regression analysis found that legal costs increased by £4, on average, for every additional £100 of compensation. Legal costs were higher if the claimant was younger, the claim was made in England and Wales rather than Scotland, the claim was made after 2008, court proceedings were issued, the duration of the case was longer and the claimant was deceased on award.

# Contents

|   |    |
|---|----|
| Acknowledgements .....                                      | 9  |
| The Authors .....   | 10 |
| List of abbreviations and glossary of terms .....           | 11 |
| Executive summary .....                                     | 13 |
| 1 Introduction.....   | 15 |
| 1.1 Background .....  | 15 |
| 1.2 Aims .....  | 15 |
| 1.3 Report layout.....                                      | 16 |
| 2 Method.....   | 17 |
| 2.1 Survey design.....                                      | 17 |
| 2.2 Response .....  | 17 |
| 2.3 ‘Weighting’ .....                                       | 18 |
| 2.4 The profile of the returned sample .....                | 18 |
| 3 Findings .....  | 22 |
| 3.1 Introduction.....                                       | 22 |
| 3.2 Uprating monetary values to account for inflation ..... | 22 |
| 3.3 Summary statistics for total compensation.....          | 22 |
| 3.4 Summary statistics for legal costs .....                | 25 |
| 3.5 The characteristics of the claim or claimant .....      | 26 |
| 3.5.1 The age of the claimant .....                         | 27 |
| 3.5.2 The year of the award .....                           | 27 |
| 3.5.3 Jurisdiction .....                                    | 28 |
| 3.5.4 Whether court proceedings were issued.....            | 28 |
| 3.5.5 Whether the claimant was alive or deceased .....      | 29 |
| 3.5.6 The length of the case .....                          | 29 |

## Study into average civil compensation in mesothelioma cases

|            |   |    |
|------------|---|----|
| 3.6        | The relationship between total compensation and characteristics of the claim or claimant .....    | 30 |
| 3.6.1      | The age of the claimant .....   | 30 |
| 3.6.2      | Other characteristics: descriptive analysis .....   | 33 |
| 3.6.3      | Regression analysis of the associations between claim characteristics and total compensation..... | 35 |
| 3.7        | The relationship between total legal costs and characteristics of the claim or claimant .....     | 37 |
| 3.7.1      | Descriptive analysis .....  | 37 |
| 3.7.2      | Regression analysis.....  | 39 |
| 3.8        | Components of legal costs .....   | 42 |
| 3.8.1      | Success fees.....   | 42 |
| 3.8.2      | Disbursements .....   | 43 |
| 3.8.3      | ATE insurance costs .....   | 44 |
| 3.8.4      | 'Base' legal costs .....  | 45 |
| Appendix A | Method .....  | 46 |
| Appendix B | England and Wales, descriptive findings.....  | 51 |

## List of tables

|           |   |    |
|-----------|---|----|
| Table 2.1 | Response by organisation.....   | 18 |
| Table 2.2 | Response by individual case.....  | 18 |
| Table 2.3 | Comparison of eligible population (based on the CRU register) with the sample of returned cases ..... | 19 |
| Table 2.4 | Comparison of returned and non-returned cases, from organisations who returned some cases only .....  | 20 |
| Table 3.1 | Measures of average compensation (2012 prices) .....  | 23 |
| Table 3.2 | Percentiles of the distribution of compensation values (2012 prices) .....                            | 24 |
| Table 3.3 | Measures of average legal costs including VAT (2012 prices).....                                      | 25 |
| Table 3.4 | Percentiles of the distribution of legal costs (2012 prices) .....                                    | 26 |
| Table 3.5 | Age of claimant (when the claim was registered).....  | 27 |
| Table 3.6 | Year of award .....   | 28 |
| Table 3.7 | Jurisdiction .....  | 28 |
| Table 3.8 | Whether court proceedings were issued.....  | 28 |
| Table 3.9 | Whether claimant was alive or deceased at the time of the award .....                                 | 29 |

## Study into average civil compensation in mesothelioma cases

|            |   |    |
|------------|---|----|
| Table 3.10 | Length of case.....   | 29 |
| Table 3.11 | Average compensation (2012 prices), by age of claimant<br>(when the claim was registered) .....                                       | 30 |
| Table 3.12 | Regression-based estimates of the relationship between<br>compensation and age of claimant .....                                      | 31 |
| Table 3.13 | Average compensation (2012 prices), by age of claimant<br>(at time of claim registration), estimated via regression.....              | 32 |
| Table 3.14 | Average compensation (2012 prices), by year of award.....   | 34 |
| Table 3.15 | Average compensation (2012 prices), by jurisdiction.....  | 34 |
| Table 3.16 | Average compensation (2012 prices), by whether court<br>proceedings were issued .....   | 34 |
| Table 3.17 | Average compensation (2012 prices), by whether claimant was alive or<br>deceased at the time of the award .....                       | 35 |
| Table 3.18 | Average compensation (2012 prices), by length of case .....   | 35 |
| Table 3.19 | Regression-based estimates of the relationship between<br>compensation and various characteristics of the claim or claimant .....     | 36 |
| Table 3.20 | Average legal costs (2012 prices), by total value of compensation .....   | 38 |
| Table 3.21 | Average legal costs (2012 prices), by age of claimant<br>(at time of claim registration).....   | 38 |
| Table 3.22 | Average legal costs (2012 prices), by year of award .....   | 38 |
| Table 3.23 | Average legal costs (2012 prices), by jurisdiction .....  | 38 |
| Table 3.24 | Average legal costs (2012 prices), by whether court proceedings<br>were issued .....  | 39 |
| Table 3.25 | Average legal costs (2012 prices), by whether claimant was<br>alive or deceased at the time of the award .....                        | 39 |
| Table 3.26 | Average legal costs (2012 prices), by length of case.....   | 39 |
| Table 3.27 | Regression-based estimates of the relationship between total<br>legal costs and various characteristics of the claim or claimant..... | 41 |
| Table 3.28 | Whether legal costs included a success fee .....  | 42 |
| Table 3.29 | Average success fees (2012 prices) .....  | 43 |
| Table 3.30 | Whether legal costs included disbursements.....   | 43 |
| Table 3.31 | Average disbursements (2012 prices).....  | 44 |
| Table 3.32 | Whether legal costs included ATE insurance costs.....   | 44 |
| Table 3.33 | Average ATE insurance costs (2012 prices) .....   | 44 |
| Table 3.34 | Average base legal costs (2012 prices) .....  | 45 |
| Table B.1  | Measures of average compensation (2012 prices), England and Wales .....   | 51 |
| Table B.2  | Percentiles of the distribution of compensation values (2012 prices),<br>England and Wales .....                                      | 51 |

## Study into average civil compensation in mesothelioma cases

|            |   |    |
|------------|---|----|
| Table B.3  | Measures of average legal costs including VAT (2012 prices),<br>England and Wales .....                         | 52 |
| Table B.4  | Percentiles of the distribution of legal costs (2012 prices),<br>England and Wales .....                        | 52 |
| Table B.5  | Age of claimant at the time of the claim, England and Wales .....   | 52 |
| Table B.6  | Year of award, England and Wales .....  | 53 |
| Table B.7  | Whether court proceedings were issued, England and Wales.....   | 53 |
| Table B.8  | Whether claimant was alive or deceased at the time of the award,<br>England and Wales .....                     | 53 |
| Table B.9  | Length of case, England and Wales.....  | 54 |
| Table B.10 | Average compensation (2012 prices), by age of claimant<br>(when the claim was registered) .....                 | 54 |
| Table B.11 | Average compensation (2012 prices), by year of award .....  | 54 |
| Table B.12 | Average compensation (2012 prices), by jurisdiction.....  | 55 |
| Table B.13 | Average compensation (2012 prices), by whether court<br>proceedings were issued .....                           | 55 |
| Table B.14 | Average compensation (2012 prices), by whether claimant was<br>alive or deceased at the time of the award ..... | 55 |
| Table B.15 | Average compensation (2012 prices), by length of case .....   | 56 |
| Table B.16 | Average legal costs (2012 prices), by total value of compensation .....   | 56 |
| Table B.17 | Average legal costs (2012 prices), by age of claimant<br>(at time of claim registration).....                   | 56 |
| Table B.18 | Average legal costs (2012 prices), by year of award .....   | 57 |
| Table B.19 | Average legal costs (2012 prices), by jurisdiction .....  | 57 |
| Table B.20 | Average legal costs (2012 prices), by whether court<br>proceedings were issued .....                            | 57 |
| Table B.21 | Average legal costs (2012 prices), by whether claimant was<br>alive or deceased at the time of the award .....  | 58 |
| Table B.22 | Average legal costs (2012 prices), by length of case.....   | 58 |
| Table B.23 | Whether legal costs included a success fee .....  | 58 |
| Table B.24 | Average success fees (2012 prices) .....  | 58 |
| Table B.25 | Whether legal costs included disbursements.....   | 59 |
| Table B.26 | Average disbursements (2012 prices).....  | 59 |
| Table B.27 | Whether legal costs included after-the-event (ATE) insurance costs.....   | 59 |
| Table B.28 | Average ATE insurance costs (2012 prices) .....   | 59 |
| Table B.29 | Average base legal costs (2012 prices) .....  | 60 |

## **List of figures**

|            |  |    |
|------------|--|----|
| Figure 3.1 | Distribution of compensation values between 1st and 99th percentiles (2012 prices) ..... | 24 |
| Figure 3.2 | Distribution of legal costs between 1st and 99th percentiles (2012 prices) .....         | 26 |

# Acknowledgements

We would like to thank all those who assisted in this study, both in the main stage and in the initial scoping study. In particular, we would like to thank the survey respondents, the insurers and solicitors, who gave their time to provide information on up to 300 mesothelioma claims each. We would also like to thank those who helped us at the design stage, discussing the claims and recording processes and the factors affecting claims: claimant and defendant solicitors, insurers, trades unions and charities. A special thanks to the Association of British Insurers, which facilitated access to their members and provided a forum for testing our ideas. We would like to thank the Department of Work and Pensions (DWP) and the Ministry of Justice (MoJ), which funded the study, and their project teams which provided valuable support, with special thanks to Alex Dawe, DWP, and to Catherine Piper, MoJ. Finally, we would like to thank the DWP's Compensation Recovery Unit (CRU) for providing the survey sampling frame.

# The Authors

The research was conducted by a team of researchers at the National Institute of Economic Research (NIESR), together with an independent consultant.

**John Forth** is a Principal Research Fellow at NIESR.

**Hilary Metcalf** is a Director of Employment and Social Policy Research at NIESR.

**Nick Coleman** is an independent consultant.

**Pamela Meadows** is a Visiting Research Fellow at NIESR.

**Max King** is a Research Assistant at NIESR.

**Leila Tufekci** is a Research Assistant at NIESR.

# List of abbreviations and glossary of terms

|  |   |
|--|---|
| <b>ABI</b>                               | Association of British Insurers   |
| <b>ATE</b>                               | After the event insurance. This is insurance taken out by a party to a claim (usually the claimant), to cover their legal costs if they do not win their case.  |
| <b>Claimant</b>                          | The person seeking compensation for mesothelioma. This will be the victim, whilst they are alive.   |
| <b>Confidence interval</b>               | The range either side of the sample mean within which the true population mean is likely to lie.  |
| <b>CRU</b>                               | Compensation Recovery Unit. The CRU is part of the DWP. It recovers, from the defendant, social security benefits and lump sum payments made to the victim pending settlement of the claim.   |
| <b>Defendant</b>                         | An organisation against which the mesothelioma victim makes a claim for damages. This will be a former employer or, if the employer no longer exists, the former employer's insurance company.  |
| <b>DWP</b>                               | Department for Work and Pensions  |
| <b>Mean</b>                              | A measure of 'average', computed by summing all values in a series and then dividing by the total number of values.   |
| <b>Median</b>                            | A measure of 'average': the value which falls in the centre of the distribution when all values are arranged in ascending order of magnitude.   |
| <b>Mesothelioma</b>                      | A cancer of the thin membrane that lines the chest and abdomen.   |
| <b>MoJ</b>                               | Ministry of Justice   |
| <b>Normal distribution</b>               | A bell-shaped distribution that is symmetric about the mean.  |
| <b>Ordinary least squares regression</b> | An approach to estimating the general relationship between a dependent variable and one or more explanatory variables. The method of ordinary least squares identifies the solution which minimises the sum of the squared differences between the observed responses in the dataset and the fitted values provided by the model. |

## **Study into average civil compensation in mesothelioma cases**

|                            |   |
|----------------------------|---|
| <b>Percentile</b>          | The value in a series below which a certain percentage of cases fall.   |
| <b>Skewed distribution</b> | A distribution that departs from the bell-shape of the normal distribution by being asymmetric about the mean. In other words, one tail of the distribution is longer than the other.   |
| <b>Standard error</b>      | An estimate of the degree to which a survey estimate is likely to vary under repeated sampling. Provides an indication of the uncertainty that is inherent to the survey estimate because some members of the population were not sampled.  |
| <b>Trimean</b>             | A measure of 'average', computed as the average of: (a) the 25th percentile; (b) the 75th percentile; and (c) twice the value of the median.  |
| <b>Weighting</b>           | In a weighted dataset, each individual is assigned a weighting factor so that, after weighting, the profile of the achieved sample closely matches that of the population at large (i.e. it is representative of the population). Groups that are under-represented in the sample vis-a-vis the population are given larger weighting factors than groups which are over-represented. |

# Executive summary

## Background and introduction

Mesothelioma is a cancer of the thin membrane that lines the chest and abdomen. Symptoms often do not develop for 30 to 40 years after exposure to asbestos, but once diagnosed the disease is rapidly terminal. Both the DWP and the MoJ are developing proposals in relation to mesothelioma to help victims who cannot trace a liable employer to access compensation and to speed up the settlement process for all victims.

To inform the development of these proposals, the DWP and the MoJ commissioned NIESR to provide estimates of average civil compensation and legal costs for occupational mesothelioma cases.

## Approach

Estimates of average compensation and average legal costs were based on a survey of 2,334 mesothelioma claims settled between 2007 and 2012. The cases were analysed for Britain (for the DWP scheme) and for England and Wales (for the MoJ).

## Main findings for Britain<sup>1</sup>

A number of measures of 'average' were calculated. Using these measures:

- average compensation awarded ranged from £137,000 to £153,531;
- average legal costs ranged from £22,000 to £28,407.

Compensation awarded and legal costs varied with personal and case characteristics. Using regression analysis to take a number of characteristics into account simultaneously, the size of the award:

- decreased with age (on average by £3,500 per year);
- grew between 2007 and 2012 (on average by £17,900);
- was higher in Scotland than in England and Wales (on average by £53,500);
- was higher if court proceedings had been issued (on average by £8,300);
- was higher for those who were alive at settlement (on average by £10,900).

The size of award and the length of the case did not appear to be related.

For legal costs, regression analysis found that legal costs:

- increased by £4, on average, for each additional £100 of compensation;
- were lower for older claimants (on average by £111 per year);

---

<sup>1</sup> Results were adjusted to take into account inflation and are in 2012 prices.

## **Study into average civil compensation in mesothelioma cases**

- were higher for claims made after 2008 (on average, between £2,400 to £3,100 higher, depending on the year);
- were lower in Scotland (on average by £18,400);
- were higher if court proceedings were issued (on average by £9,400);
- rose with the length of the case, rising steeply after six months and after two years;
- were higher if the claimant was deceased on award (on average by £2,000).

# 1 Introduction

## 1.1 Background

Mesothelioma is a cancer of the thin membrane that lines the chest and abdomen. Symptoms often do not develop for 30 to 40 years after exposure to asbestos, but once diagnosed the disease is rapidly terminal. Both the DWP and the MoJ are developing proposals in relation to mesothelioma.

The DWP is establishing a payment scheme for occupational mesothelioma victims who develop mesothelioma after their employer has negligently, or through breach of statutory duty, exposed them to asbestos, but who are unable to trace an employer or employers' liability insurance policy against which to make a claim.

The MoJ is developing proposals to increase the pace and improve the efficiency of the claims process for all occupational mesothelioma victims where there is a traced employer or insurer, to ensure that early payment of compensation is made.

To inform the development of the DWP payment scheme and the MoJ proposal, both departments commissioned the NIESR to conduct a survey to establish estimates of average civil compensation and legal costs for work-related mesothelioma cases.

There is no comprehensive dataset which is known to provide sufficiently representative data on mesothelioma compensation levels or legal costs. In 2008, the Association of British Insurers (ABI) conducted a survey of 363 claims handled by the five insurers with the greatest number of mesothelioma claims (Alliance, Aviva, Axa, RSA and Zurich) which the ABI estimate jointly cover around half of all claims. Following a feasibility study, the DWP and the MoJ jointly commissioned NIESR to conduct a new study to provide more recent, robust, independent estimates of mesothelioma compensation levels and legal costs.

## 1.2 Aims

The aim of this research was to provide representative data on occupational mesothelioma claims, to allow analysis of:

- average compensation levels by age;
- average claimant legal costs;
- average compensation and legal costs by:
  - year (2007–12);
  - legal jurisdiction (England and Wales, Scotland);
  - whether litigation was involved;
  - whether the victim was alive at the date of award.

## **1.3 Report layout**

The next chapter describes the study method: the survey design, response rates, weighting and the profile of the returned sample. Chapter 3 presents the findings, describing average compensation and legal costs (using various measures of average), the characteristics of claims and of claimants, how average compensation and legal costs varied with claim and claimant characteristics and the components of legal costs. The chapter provides findings for Britain. For those interested in England and Wales only, tables of descriptive findings are given in Appendix B<sup>2</sup>.

---

<sup>2</sup> Response rates for England and Wales only are not described, as jurisdiction could not be identified for cases for which there was no response.

## 2 Method

### 2.1 Survey design

The study covered:

- settled employer liability claims in the private sector (i.e. excluding government, local authority, NHS and unknown cases);
- claims recorded as having been settled between 1 January 2007 and 31 December 2012<sup>3</sup>.

'Special' cases covered by other compensation schemes were excluded. In total 4,216 claims met these three criteria (i.e. private sector liability, settlement date and were not special cases).

A sample of 3,477 cases were selected from the CRU<sup>4</sup> register of claims for inclusion in the survey. Further details on the sampling are included in Appendix A.

The organisations which had registered these claims with CRU ('registrants') were asked to provide details of the selected claims, resulting in 43 organisations (mainly insurance companies and defendants' solicitors) being contacted.

The survey was in the field from 22 January 2013 to 8 March 2013.

### 2.2 Response

In total, 2,334 cases which included either an amount for total compensation paid and/or an amount for total legal costs (67 per cent of the total sample) were returned. Twenty-five of the 43 sampled organisations participated. Tables 2.1 and 2.2 show the response by type of organisation.

---

<sup>3</sup> The questionnaire also asked for date of settlement. For three cases, the survey respondents gave the settlement year as 2005/06. These cases were retained in the sample.

<sup>4</sup> CRU is part of the DWP. It recovers, from the defendant, social security benefits and lump sum payments made to the victim pending settlement of the claim. All mesothelioma claims must be registered with CRU. They are registered by the defendant (normally the insurance company or the employer) or their representative (normally a law firm). However, CRU does not hold data on the amount of compensation.

## Study into average civil compensation in mesothelioma cases

**Table 2.1 Response by organisation**

| Type of organisation | Organisations which returned: |            |           | Total     |
|----------------------|-------------------------------|------------|-----------|-----------|
|                      | all cases                     | some cases | no cases  |           |
| Insurers             | 0                             | 9          | 0         | 9         |
| Defendant solicitors | 3                             | 12         | 15        | 30        |
| Employers            | 0                             | 0          | 1         | 1         |
| Loss adjusters       | 0                             | 0          | 2         | 2         |
| Not known            | 0                             | 1          | 0         | 1         |
| <b>Total</b>         | <b>3</b>                      | <b>22</b>  | <b>18</b> | <b>43</b> |

'Type of organisation' as recorded in the CRU database; in some cases, the questionnaires were passed on to a different organisation for completion.

**Table 2.2 Response by individual case**

| Type of organisation | Number sampled | Number returned | Percentage returned |
|----------------------|----------------|-----------------|---------------------|
| Insurers             | 1,239          | 1,015           | 82                  |
| Defendant solicitors | 1,971          | 1,156           | 59                  |
| Employers            | 24             | 0               | 0                   |
| Loss adjusters       | 65             | 0               | 0                   |
| Not known            | 178            | 163             | 92                  |
| <b>Total</b>         | <b>3,477</b>   | <b>2,334</b>    | <b>67</b>           |

Prior to analysis, cases with Northern Ireland jurisdiction (as recorded in the questionnaire) were removed from this sample (as they were outside the remit of the DWP and MoJ schemes); this reduced the total sample by two, to 2,332<sup>5</sup>. In addition, two organisations (accounting for 256 returned cases) did not give permission for their responses to be linked to CRU data (one solicitor and one in the 'not known' category). As a result, these responses were excluded from analysis requiring linking of survey and CRU data. Therefore, the useable sample for linked analysis was 2,076.

## 2.3 'Weighting'

In order to make the survey findings more representative of all claims, the data were adjusted ('weighted') to take into account the way in which the sample had been drawn and the response. See Appendix A for details.

## 2.4 The profile of the returned sample

Table 2.3 compares the profile of the 4,216 CRU claims eligible for the survey (see Section 2.1) with the 2,076 surveyed cases returned where both the total compensation paid was reported and permission for data to be linked to CRU data was given (this is the

<sup>5</sup> Organisations were asked whether the data they provided could be linked to the data held on the CRU database for that case. Two organisations did not give permission for linking. As a result, these cases were excluded from analyses requiring data from both the CRU database and the survey.

## Study into average civil compensation in mesothelioma cases

sample used for the majority of the analysis). This analysis shows that the profile of the returned sample was very similar to the eligible sample. The returned sample can therefore be considered representative (as far as can be assessed from the information available from the CRU database) of all occupational mesothelioma claims.

Table 2.4 compares the profile of the returned and non-returned sample, for organisations which returned some cases only. The profile suggests a lack of bias in the returned sample. The main exception is in the type of respondent: a larger percentage of non-returned cases were cases registered with the CRU by law firms. It is unknown whether this may be a source of bias. However, this difference is unsurprising, as insurers have been more highly involved in the issue.

**Table 2.3 Comparison of eligible population (based on the CRU register) with the sample of returned cases**

|  | Total eligible population | Returned cases (total) <sup>1</sup> |
|--|---------------------------|-------------------------------------|
|  | %                         | %                                   |
| <b>Gender</b>                            |                           |                                     |
| Male                                     | 94.7                      | 94.7                                |
| Female                                   | 5.3                       | 5.3                                 |
| <b>Age at time of claim registration</b> |                           |                                     |
| Under 65                                 | 22.7                      | 22.9                                |
| 65-69                                    | 18.8                      | 18.7                                |
| 70-74                                    | 20.6                      | 20.9                                |
| 75-79                                    | 19.0                      | 18.9                                |
| 80-84                                    | 12.2                      | 12.0                                |
| 85+                                      | 6.8                       | 6.6                                 |
| <b>Settlement year</b>                   |                           |                                     |
| 2007                                     | 5.8                       | 3.9                                 |
| 2008                                     | 18.3                      | 17.7                                |
| 2009                                     | 19.6                      | 22.4                                |
| 2010                                     | 19.1                      | 19.4                                |
| 2011                                     | 19.4                      | 19.5                                |
| 2012                                     | 17.7                      | 17.1                                |
| <b>Total CRU recovery banded</b>         |                           |                                     |
| Zero                                     | 13.0                      | 12.7                                |
| Under 5k                                 | 16.9                      | 16.7                                |
| 5k up to 10k                             | 11.1                      | 11.1                                |
| 10k up to 15k                            | 11.7                      | 10.7                                |
| 15k up to 20k                            | 14.8                      | 14.5                                |
| 20k up to 25k                            | 10.5                      | 10.8                                |
| 25k up to 30k                            | 6.4                       | 7.0                                 |
| 30k up to 50k                            | 10.9                      | 11.5                                |
| 50k +                                    | 4.6                       | 5.1                                 |

Continued

## Study into average civil compensation in mesothelioma cases

**Table 2.3 Continued**

|  | Total eligible population<br>% | Returned cases (total) <sup>1</sup><br>% |
|--|--------------------------------|--|
| <b>Type of organisation</b>            |                                |  |
| Insurer                                | 34.8                           | 46.5                                     |
| Law firm                               | 58.1                           | 53.5                                     |
| Other/not known                        | 7.1                            | 0  |
| <b>Claimant's country of residence</b> |                                |  |
| England                                | 85.6                           | 85.4                                     |
| Wales                                  | 3.9                            | 3.4                                      |
| Scotland                               | 7.1                            | 7.3                                      |
| Other/not known                        | 3.5                            | 3.9                                      |
| Total                                  | 100                            | 100                                      |
| <i>Number of cases</i>                 | <i>4,216</i>                   | <i>2,076</i>                             |

<sup>1</sup> Weighted by probability of selection weight.

**Table 2.4 Comparison of returned and non-returned cases, from organisations who returned some cases only**

|  | Returned cases<br>% | Non-returned cases<br>% |
|--|---------------------|-------------------------|
| <b>Gender</b>                            |                     |                         |
| Male                                     | 95.1                | 95.5                    |
| Female                                   | 4.9                 | 4.5                     |
| <b>Age at time of claim registration</b> |                     |                         |
| Under 65                                 | 27.0                | 27.8                    |
| 65-69                                    | 17.1                | 19.3                    |
| 70-74                                    | 19.2                | 18.3                    |
| 75-79                                    | 17.9                | 17.0                    |
| 80-84                                    | 12.1                | 11.6                    |
| 85+                                      | 6.8                 | 6.0                     |
| <b>Settlement year</b>                   |                     |                         |
| 2007                                     | 4.7                 | 5.7                     |
| 2008                                     | 16.7                | 19.9                    |
| 2009                                     | 21.1                | 16.2                    |
| 2010                                     | 20.3                | 15.8                    |
| 2011                                     | 20.5                | 18.7                    |
| 2012                                     | 16.8                | 23.7                    |

Continued

## Study into average civil compensation in mesothelioma cases

**Table 2.4 Continued**

|  | Returned cases<br>% | Non-returned cases<br>% |
|--|---------------------|-------------------------|
| <b>Total CRU recovery banded</b>       |                     |                         |
| Zero                                   | 11.8                | 12.7                    |
| Under 5k                               | 16.5                | 16.0                    |
| 5k up to 10k                           | 10.5                | 12.7                    |
| 10k up to 15k                          | 10.9                | 11.4                    |
| 15k up to 20k                          | 15.0                | 12.7                    |
| 20k up to 25k                          | 10.4                | 10.0                    |
| 25k up to 30k                          | 6.8                 | 6.7                     |
| 30k up to 50k                          | 12.2                | 13.2                    |
| 50k+                                   | 5.8                 | 4.5                     |
| <b>Type of organisation</b>            |                     |                         |
| Insurer                                | 44.2                | 30.6                    |
| Law firm                               | 48.7                | 67.4                    |
| Other/not known                        | 7.1                 | 2.0                     |
| <b>Claimant's country of residence</b> |                     |                         |
| England                                | 84.6                | 86.9                    |
| Wales                                  | 3.9                 | 4.9                     |
| Scotland                               | 8.0                 | 4.8                     |
| Other/not known                        | 3.4                 | 3.3                     |
| Total                                  | 100                 | 100                     |
| <i>Number of cases</i>                 | 2,293               | 748                     |

## 3 Findings

### 3.1 Introduction

The analysis presented here focuses on two principal issues:

- **the total value of compensation awarded to the claimant**, i.e. the actual amount of damages paid to the claimant, plus any amount repaid to CRU in respect of benefit recovery; and
- **the total amount of claimant legal costs**, i.e. the total of all sums paid by the compensator(s) to the claimant's legal representatives in respect of legal costs, any success fee, court fees, and all other disbursements (inclusive of VAT).

Summary statistics are presented to indicate the average amounts of compensation and legal costs. The relationships between compensation or legal costs and the characteristics of the claim or claimant are also explored.

All findings have been weighted to make them more representative of all claims (see Section 2.3 and Appendix A).

Findings in this chapter are for Britain. Appendix B replicates the descriptive tables for England and Wales.

### 3.2 Uprating monetary values to account for inflation

The survey collected information on cases with award dates ranging from 2005–12, although all but three cases awards were made in the period 2007–12. In order to account for inflation over this period, monetary amounts were converted to current (2012) values using the annual All-items Consumer Price Index (CPI).<sup>6</sup> The CPI provides an indicator of changes in the cost of living and so, after uprating, £1 of compensation awarded in 2007 has the same value to the claimant as £1 of compensation awarded in 2012. One case was lost from the overall sample at this point because of the inability to determine the date of award, leaving a total of 2,323 cases with a non-zero value for compensation and 2,187 cases with a value for legal costs.

### 3.3 Summary statistics for total compensation

There are a number of ways in which an 'average' value may be estimated from a set of survey responses on compensation claims.

The most familiar calculation is perhaps the arithmetic mean. Among the 2,323 cases with a non-zero value for total compensation, the mean award is estimated at £153,531 (in 2012 prices), as shown in Table 3.1. The arithmetic mean has the advantage of drawing upon all of the values in the distribution. It is a useful way of indicating the 'typical' value in a series when all values cluster closely and symmetrically around the central value. However, the

---

<sup>6</sup> Office for National Statistics Time-Series Identifier: D7BT.

## Study into average civil compensation in mesothelioma cases

distribution of compensation values has a long and sparsely populated upper tail. This tail begins at around the 99th percentile in the distribution (around £420,000) and extends well beyond £1m. The mean will be pulled upwards by these large, atypical values.

The median is an alternative measure of the 'average' award, which takes no account of the overall shape of the distribution. In calculating the median, the distribution of values is simply divided into two evenly-sized groups. In other words, half of all claimants will have received amounts below the median and half will have received amounts above it. The median award for mesothelioma claimants is estimated from the survey to be £137,000.<sup>7</sup>

Trimmed means make use of large parts of the distribution after excluding values which lie beyond specified thresholds. If one expects that awards beyond these thresholds are likely to be extremely rare, then the trimmed mean will better represent the vast majority of claims that are likely to be awarded in the future. A range of trimmed means are presented in Table 3.1, alongside the mean and median. As the long upper tail in the distribution of compensation awards begins around the 99th percentile, the 1% trimmed mean is arguably the most informative measure of the 'average claim' alongside the arithmetic mean.

**Table 3.1 Measures of average compensation (2012 prices)**

| Measure            | Value    |
|--------------------|----------|
| Arithmetic mean    | £153,531 |
| Median             | £137,000 |
| 1% trimmed mean    | £146,923 |
| 5% trimmed mean    | £143,734 |
| Interquartile mean | £137,630 |
| Trimean            | £138,257 |

Source: NIESR survey.

The interquartile mean is the mean of all values from the 25th to 75th percentiles inclusive.

The trimean is the average of: the 25th percentile, the 75th percentile and twice the median.

Average compensation varied by £16,531 among the six measures presented in Table 3.1.

In order to identify the cut-off points for the various trimmed means, and also to give a general sense of the shape of the distribution of compensation claims, Table 3.2 shows a selection of percentiles from the full distribution of values. As with the median claim in Table 3.1, the figures are rounded to the nearest £1,000 so as not to identify individual claim values. The shape of the distribution of claims between the 1st and 99th percentiles is shown in Figure 3.1.

<sup>7</sup> The figure has been rounded to the nearest £1,000 so as not to identify the amount of compensation given to any individual claimant.

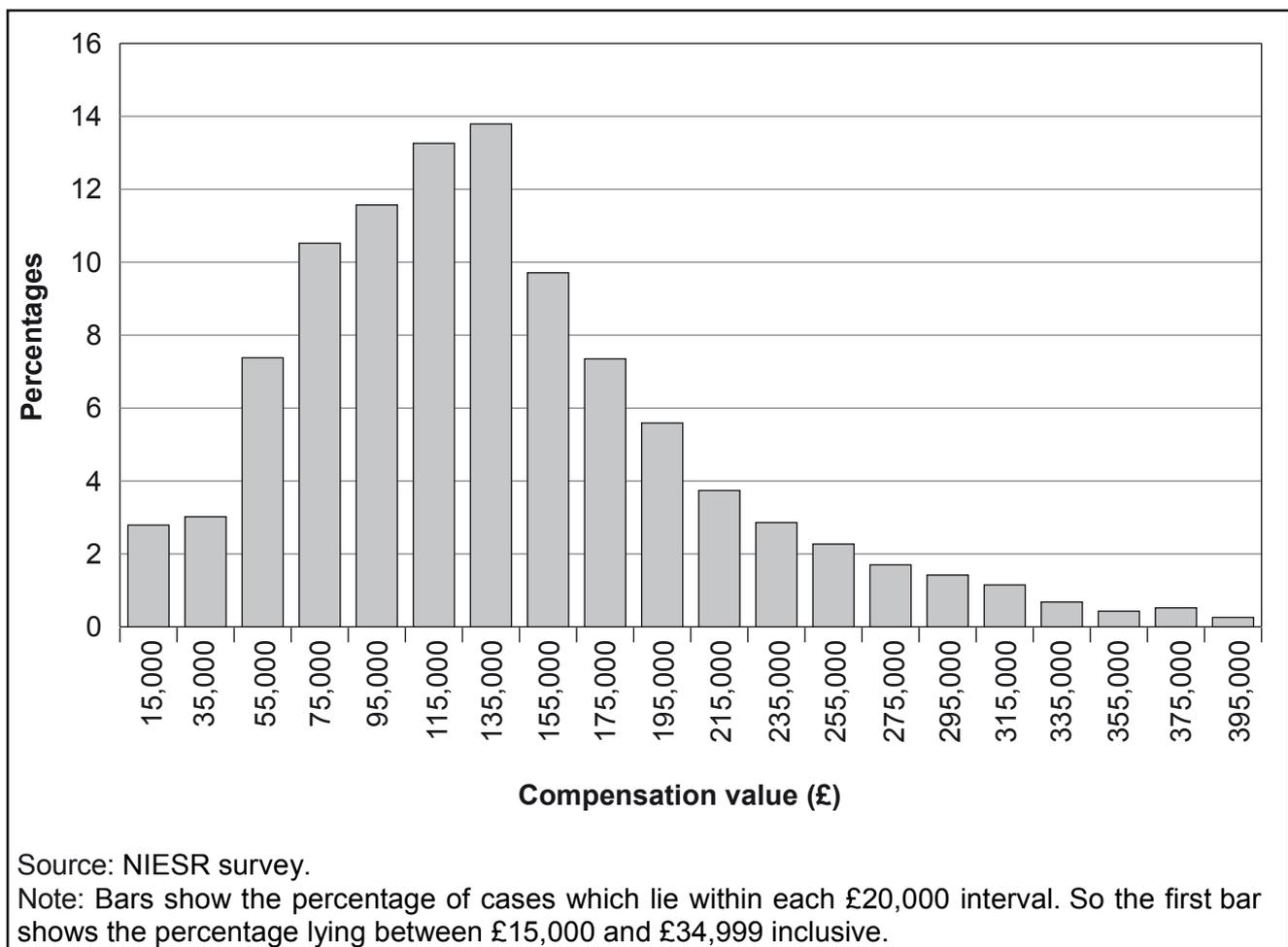
## Study into average civil compensation in mesothelioma cases

**Table 3.2 Percentiles of the distribution of compensation values (2012 prices)**

| Percentile | Value (rounded to nearest £1,000) |
|------------|-----------------------------------|
| 1st        | £15,000                           |
| 5th        | £43,000                           |
| 25th       | £97,000                           |
| 75th       | £183,000                          |
| 95th       | £300,000                          |
| 99th       | £421,000                          |

Source: NIESR survey.

**Figure 3.1 Distribution of compensation values between 1st and 99th percentiles (2012 prices)**



While the preceding discussion serves to provide an indication of the average value of compensation in the population, the figures in Table 3.1 are derived from a sample of all cases, rather than a census. As such, they are only estimates of the true values that pertain

in the full population of settled claims. We can obtain an indication of how an estimate would vary across repeated surveys by computing its standard error. The mean value of £153,531 has a standard error of £2,810. This implies that we can be 95% confident that the true mean value for all mesothelioma cases lies between £148,023 and £159,039.<sup>8</sup>

### 3.4 Summary statistics for legal costs

Among the sample of 2,187 cases with data on total legal costs (including eight cases in which the costs are stated to be zero), the mean value of these costs is estimated at £28,407 (including VAT) in 2012 prices. This mean value has a standard error of £617. This implies that we can be 95 per cent confident that the true mean value for legal costs in mesothelioma cases lies between £27,198 and £29,616.<sup>9</sup>

There was again a long upper tail in the distribution of legal costs, which extended well beyond £150,000. Accordingly, Table 3.3 shows a variety of measures of average legal costs. Table 3.4 shows selected percentiles from the overall distribution and Figure 3.2 shows the shape of the distribution between the 1st and 99th percentiles. The upper tail of the distribution of legal costs is longer than that for compensation values (see Figure 3.1), beginning around the 95th percentile, and so it could be argued that the 5% trimmed mean is the measure most complementary to the overall mean in this distribution.

**Table 3.3 Measures of average legal costs including VAT (2012 prices)**

| Measure            | Value   |
|--------------------|---------|
| Arithmetic mean    | £28,407 |
| Median             | £22,000 |
| 1% trimmed mean    | £26,601 |
| 5% trimmed mean    | £24,729 |
| Interquartile mean | £22,477 |
| Trimean            | £22,651 |

Source: NIESR survey.

The interquartile mean is the mean of all values from the 25th to 75th percentiles inclusive.

The trimean is the average of: the 25th percentile, the 75th percentile and twice the median.

<sup>8</sup> The 95 per cent confidence interval extends to 1.96 standard errors either side of the mean in a normally-distributed (bell-shaped) series. The confidence interval cited in the text is necessarily an approximation since, as stated earlier, the full series of compensation claims is not normally distributed but has a long upper tail.

<sup>9</sup> Again, this confidence interval cited in the text is necessarily an approximation since the full series of legal cost values is not normally distributed but has a long upper tail, as shown later.

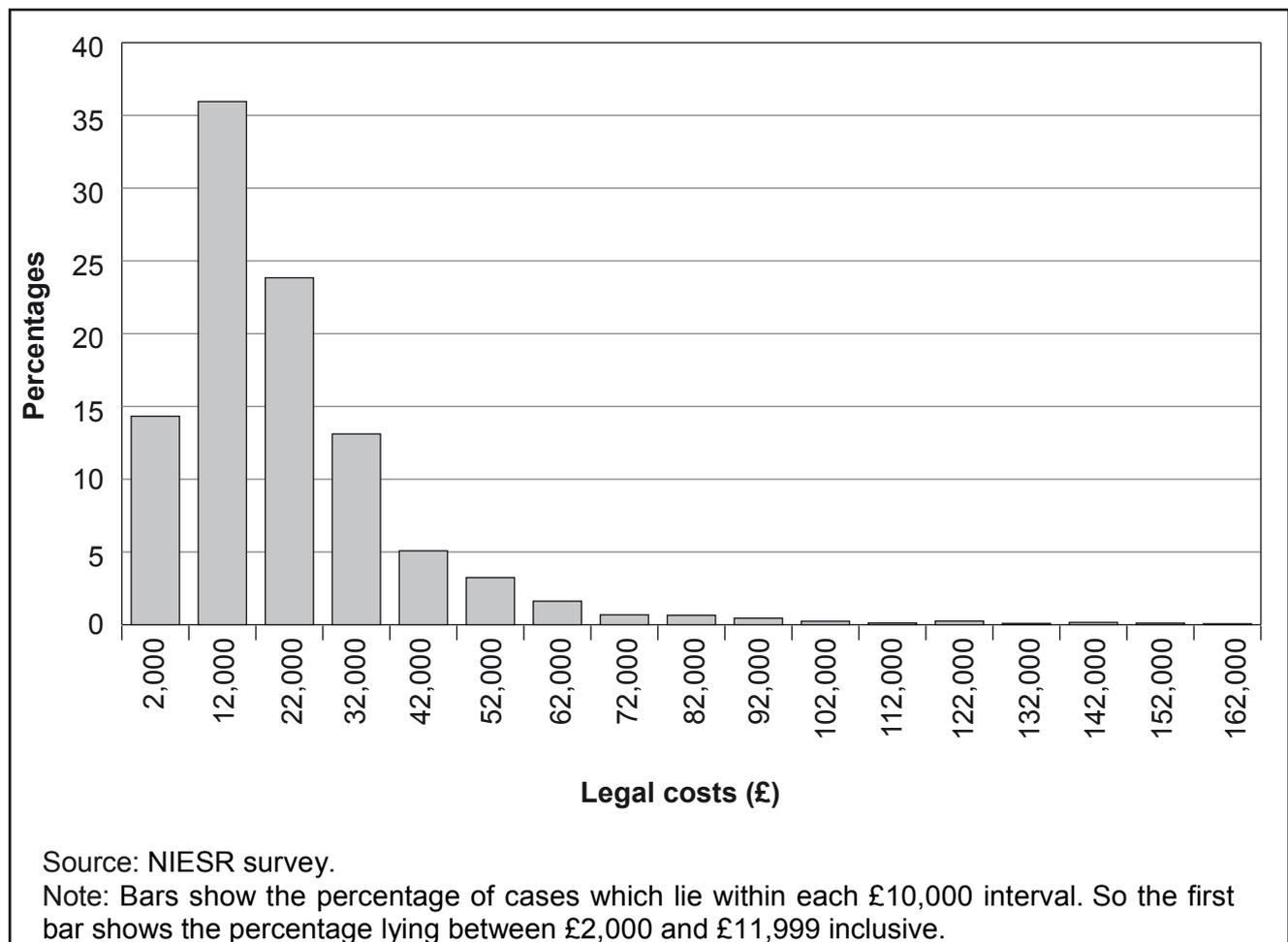
## Study into average civil compensation in mesothelioma cases

**Table 3.4 Percentiles of the distribution of legal costs (2012 prices)**

| Percentile | Value (rounded to nearest £1,000) |
|------------|-----------------------------------|
| 1st        | £2,000                            |
| 5th        | £8,000                            |
| 25th       | £15,000                           |
| 75th       | £33,000                           |
| 95th       | £64,000                           |
| 99th       | £167,000                          |

Source: NIESR survey.

**Figure 3.2 Distribution of legal costs between 1st and 99th percentiles (2012 prices)**



## 3.5 The characteristics of the claim or claimant

The survey allows a number of characteristics of the claim or claimant to be examined. These are:

- the claimant's age (when the claim was registered);
- the year of the award;

## Study into average civil compensation in mesothelioma cases

- the jurisdiction;
- whether court proceedings were issued;
- whether the claimant was alive at the time of the award; and
- the overall length of the case.

The claimant's age (when the claim was registered) was identified in the CRU database. All other attributes were identified in the survey; however missing values for the year of the award and the length of the case were imputed from the CRU database where possible. The distribution of claims across each characteristic is shown in Tables 3.5 to 3.10. The tables are based on those 2,076 cases which provided a non-zero value for total compensation and which provided the consent to link to the CRU database.<sup>10</sup> In some cases, the percentages cited in the table may not sum to 100 because of rounding.

### 3.5.1 The age of the claimant

The average (mean) age of the claimant at the time of registering the claim was 71 years, although the age range of respondents extended to around 30 years either side of this average. Just under one-quarter of claimants were aged under 65 at the time of their claim, whilst 19 per cent were aged 80 or over.

**Table 3.5 Age of claimant (when the claim was registered)**

| Age band    | Percentage of cases |
|-------------|---------------------|
| Under 65    | 23                  |
| 65-69       | 19                  |
| 70-74       | 21                  |
| 75-79       | 19                  |
| 80-84       | 12                  |
| 85 and over | 7                   |

Source: NIESR survey.

### 3.5.2 The year of the award

The claims covered in the survey were primarily from the period 2008–12, with a small proportion coming from 2005–07.

<sup>10</sup> Some 247 of the 2,323 cases that provided a value for total compensation did not give consent to link to the CRU database, and so the age of the claimant could not be determined for these cases. We exclude these cases from all of the tables in this section, for consistency with the later section that presents regression analysis of the relationship between all of the various factors and total compensation.

## Study into average civil compensation in mesothelioma cases

**Table 3.6** Year of award

| Year    | Percentage of cases |
|---------|---------------------|
| 2005/06 | <1                  |
| 2007    | 6                   |
| 2008    | 18                  |
| 2009    | 20                  |
| 2010    | 19                  |
| 2011    | 20                  |
| 2012    | 16                  |

Source: NIESR survey.

As noted earlier, all monetary amounts cited in this chapter were converted to current (2012) values prior to analysis, in order to account for the effects of inflation.

### 3.5.3 Jurisdiction

Some eight per cent of the cases covered in the survey fell under Scottish jurisdiction; in other words, the claim against the main defendant was brought to a Scottish court or, in cases that did not go to court, it was perceived that the case would have been heard by a Scottish court.

**Table 3.7** Jurisdiction

| Jurisdiction      | Percentage of cases |
|-------------------|---------------------|
| England and Wales | 92                  |
| Scotland          | 8                   |
| Not known         | <1                  |

Source: NIESR survey.

### 3.5.4 Whether court proceedings were issued

Court proceedings were issued in 56 per cent of the cases. The percentage was much higher (91 per cent) among cases falling under Scottish jurisdiction than it was for cases falling under English or Welsh jurisdiction (53 per cent). This serves to indicate the inter-related nature of many of the characteristics covered in this section.

**Table 3.8** Whether court proceedings were issued

| Any court proceedings               | Percentage of cases |
|-------------------------------------|---------------------|
| No court proceedings                | 41                  |
| Formal service of court proceedings | 56                  |
| Not known                           | 2                   |

Source: NIESR survey.

### 3.5.5 Whether the claimant was alive or deceased

Around three-fifths (59 per cent) of claimants were known to be deceased at the time of the award. However, in a further 11 per cent of cases, the status of the claimant at the time of the award was not known by the survey respondent.

**Table 3.9 Whether claimant was alive or deceased at the time of the award**

| Alive or deceased at time of award | Percentage of cases |
|------------------------------------|---------------------|
| Alive                              | 31                  |
| Deceased                           | 59                  |
| Not known                          | 11                  |

Source: NIESR survey.

### 3.5.6 The length of the case

In order to indicate the length of the case, we rely primarily on the dates given by survey respondents for: (a) the month and year in which the claimant first lodged a claim for damages; and (b) the month and year in which compensation was awarded<sup>11</sup>. The length of the case was computed simply as the difference between the two. However, at least one of these dates was missing in around one-fifth of cases; in most of these instances, the relevant dates were imputed from the CRU database, using date claim recorded (instead of the survey date the claim was lodged) and date of settlement (instead of the survey date of award)<sup>12</sup>.

Cases varied considerably in length, with some taking only one or two months to reach a conclusion and others taking at least three or four years. The mean duration was 14.5 months (median: 12 months). The distribution is shown in six-monthly bands in Table 3.10. The 'not known' category includes the small set of cases for which dates were missing both in the survey and on the CRU database, plus a small number where the date of lodging the claim was recorded as being later than the date of receiving compensation.

**Table 3.10 Length of case**

| Length of case | Percentage of cases |
|----------------|---------------------|
| 0-6 months     | 26                  |
| 7-12 months    | 27                  |
| 13-18 months   | 17                  |
| 19-24 months   | 11                  |
| 25+ months     | 17                  |
| Not known      | 1                   |

Source: NIESR survey.

<sup>11</sup> Date of award was the date reported in the survey in response to Question 8 (see Appendix A).

<sup>12</sup> 'Date of settlement', as taken from the CRU database, is the date the claimant received the compensation awarded. The date of settlement (CRU database) was similar to the survey reported date of award. The date the claim was recorded (CRU database) tended to be later than the survey reported the date the claim was first lodged.

## 3.6 The relationship between total compensation and characteristics of the claim or claimant

This section explores the relationship between total compensation and those characteristics of the claim or claimant discussed in Section 3.5.

First we present summary statistics showing how average compensation varies with each of these characteristics (using the arithmetic mean as our measure of average compensation). Second we use ordinary least squares regression to indicate the general relationships in a more formal way.

The initial sample size for this analysis was reduced from the 2,323 cases utilised in Section 3.3, to a total of 2,076 cases because, as noted in the previous section, some cases did not give consent to link to the CRU database, and so the age of the claimant could not be determined for these cases. However, the analysis excludes cases below the 1st percentile of the distribution of compensation values and those above the 99th percentile, so as to limit the influence of extreme values (see Section 3.3). As shown in Figure 3.1, this truncated distribution (based on 2,030 cases) is approximately normally distributed.

### 3.6.1 The age of the claimant

Table 3.11 shows that compensation awards generally fall with age. The highest awards are typically for those claimants aged under 65, while the lowest awards are typically for those claimants aged 85 and over. The table also shows the percent of claimants within each age band who were awarded more than the mean. This is as low as 40 per cent of claimants for those aged 85 and over and only rises above half for those aged 75 to 79.

**Table 3.11 Average compensation (2012 prices), by age of claimant (when the claim was registered)**

| Age band    | Mean award | Percentage of claimants in age band awarded more than the mean |
|-------------|------------|--|
| Under 65    | £194,466   | 48   |
| 65-69       | £160,859   | 47   |
| 70-74       | £135,143   | 48   |
| 75-79       | £129,223   | 53   |
| 80-84       | £110,099   | 43   |
| 85 and over | £95,188    | 40   |

Source: NIESR survey.

Note: Excludes compensation values below the 1st percentile of the distribution of compensation values and those above the 99th percentile.

This relationship can be examined more formally using regression, a statistical method for modelling the relationship between variables. A number of regression models were estimated, using the method of ordinary least squares, in order to show the relationship between total compensation and victims' age (see Table 3.12). The first model (Model 1) used all available cases, but the presence of large, outlying values in the upper tail of the distribution of compensation claims limits the value of the regression method here.<sup>13</sup> Model 2 removes a large

<sup>13</sup> The method of ordinary least squares regression assumes that the dependent variable is normally distributed.

## Study into average civil compensation in mesothelioma cases

part of the upper tail by excluding the top and bottom one per cent of all cases. Model 3 goes further by excluding the top and bottom five per cent of all cases. The distribution of compensation claims moves closer to normality as these exclusions are made, but larger parts of the sample are inevitably omitted from the estimation. Among these three, Model 2 achieves the best fit; in this model, age explains 20 per cent of the variance in total compensation. The elasticity of compensation with respect to age was estimated in Model 2 at -£3,681 per year. In other words, compensation declines by £3,681 for each additional year of age, on average.

**Table 3.12 Regression-based estimates of the relationship between compensation and age of claimant**

|  | Coefficient <sup>b</sup> | T-statistic |
|--|--------------------------|-------------|
| <b>Model 1</b>   |                          |             |
| <b>Dependent variable: Total compensation</b>                      |                          |             |
| <b>Sample: all cases</b>   |                          |             |
| Age of claimant <sup>a</sup>                                       | -4,657.14                | -9.50       |
| Constant   | 486,465.13               | 13.11       |
| <i>Observations</i>  | 2,076                    |             |
| <i>R-squared</i>   | 0.074                    |             |
| <b>Model 2</b>   |                          |             |
| <b>Dependent variable: Total compensation</b>                      |                          |             |
| <b>Sample: all cases from 1st to 99th percentile</b>               |                          |             |
| Age of claimant <sup>a</sup>                                       | -3,681.17                | -21.65      |
| Constant   | 409,617.41               | 32.15       |
| <i>Observations</i>  | 2,030                    |             |
| <i>R-squared</i>   | 0.202                    |             |
| <b>Model 3</b>   |                          |             |
| <b>Dependent variable: Total compensation</b>                      |                          |             |
| <b>Sample: all cases from 5th to 95th percentile</b>               |                          |             |
| Age of claimant <sup>a</sup>                                       | -2,835.24                | -20.00      |
| Constant   | 346,937.82               |             |
| <i>Observations</i>  | 1,856                    |             |
| <i>R-squared</i>   | 0.179                    |             |
| <b>Model 4</b>   |                          |             |
| <b>Dependent variable: Natural logarithm of total compensation</b> |                          |             |
| <b>Sample: all cases</b>   |                          |             |
| Age of claimant <sup>a</sup>                                       | -0.028                   | -18.09      |
| Constant   | 13.743                   | 125.53      |
| <i>Observations</i>  | 2,076                    |             |
| <i>R-squared</i>   | 0.143                    |             |

<sup>a</sup> Age at the time of claim registration.

<sup>b</sup> The value of the coefficient indicates the size of change in the dependent variable (total compensation or the natural logarithm of total compensation, depending on the model) for a one year change in age.

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

As noted earlier, very large and very small compensation awards are excluded from Model 2 so as to limit the influence of outliers and to improve the overall fit of the regression model. However an alternative means of estimating the relationship with age in a skewed sample is to transform the dependent variable. Taking the natural logarithm of compensation gives a distribution that is approximately normally distributed without the need to exclude any outliers; all 2,076 cases can then be entered into the regression. The coefficients are shown in Model 4 of Table 3.12. This model has the benefit of including all available cases but explains 14 per cent of the variance in the dependent variable. Models 2 and 4, therefore, represent a trade-off between a better overall fit (Model 2) and a more inclusive approach to outlying values (Model 4).

The relationship estimated in Model 4 is non-linear, such that the elasticity of compensation with respect to age is higher among younger claimants than among older claimants. This is illustrated in Table 3.13, which shows the compensation value predicted by Models 2 and 4 for each value of age between 40 and 95 years (Models 2 and 4 being those with the highest R-squared values in Table 3.12). At the average claimant age of 71, the estimated elasticities from the two models are very similar (-£3,681 in Model 2 and -£3,644 in Model 2).

**Table 3.13 Average compensation (2012 prices), by age of claimant (at time of claim registration), estimated via regression**

| Age | Model 2       |                     | Model 4       |                     |
|-----|---------------|---------------------|---------------|---------------------|
|     | Average award | One-year elasticity | Average award | One-year elasticity |
| 40  | £262,370      |                     | £305,991      |                     |
| 41  | £258,689      | -£3,681             | £297,600      | -£8,391             |
| 42  | £255,008      | -£3,681             | £289,440      | -£8,161             |
| 43  | £251,327      | -£3,681             | £281,503      | -£7,937             |
| 44  | £247,646      | -£3,681             | £273,784      | -£7,719             |
| 45  | £243,965      | -£3,681             | £266,276      | -£7,507             |
| 46  | £240,283      | -£3,681             | £258,975      | -£7,302             |
| 47  | £236,602      | -£3,681             | £251,873      | -£7,101             |
| 48  | £232,921      | -£3,681             | £244,967      | -£6,907             |
| 49  | £229,240      | -£3,681             | £238,250      | -£6,717             |
| 50  | £225,559      | -£3,681             | £231,717      | -£6,533             |
| 51  | £221,878      | -£3,681             | £225,363      | -£6,354             |
| 52  | £218,196      | -£3,681             | £219,183      | -£6,180             |
| 53  | £214,515      | -£3,681             | £213,173      | -£6,010             |
| 54  | £210,834      | -£3,681             | £207,327      | -£5,845             |
| 55  | £207,153      | -£3,681             | £201,642      | -£5,685             |
| 56  | £203,472      | -£3,681             | £196,113      | -£5,529             |
| 57  | £199,790      | -£3,681             | £190,735      | -£5,378             |
| 58  | £196,109      | -£3,681             | £185,505      | -£5,230             |
| 59  | £192,428      | -£3,681             | £180,418      | -£5,087             |
| 60  | £188,747      | -£3,681             | £175,471      | -£4,947             |
| 61  | £185,066      | -£3,681             | £170,660      | -£4,812             |
| 62  | £181,385      | -£3,681             | £165,980      | -£4,680             |

Continued

## Study into average civil compensation in mesothelioma cases

**Table 3.13 Continued**

| Age               | Model 2        |                     | Model 4                                      |                     |
|-------------------|----------------|---------------------|--|---------------------|
|                   | Average award  | One-year elasticity | Average award                                | One-year elasticity |
| 63                | £177,703       | -£3,681             | £161,429                                     | -£4,551             |
| 64                | £174,022       | -£3,681             | £157,002                                     | -£4,427             |
| 65                | £170,341       | -£3,681             | £152,697                                     | -£4,305             |
| 66                | £166,660       | -£3,681             | £148,510                                     | -£4,187             |
| 67                | £162,979       | -£3,681             | £144,437                                     | -£4,072             |
| 68                | £159,298       | -£3,681             | £140,477                                     | -£3,961             |
| 69                | £155,616       | -£3,681             | £136,625                                     | -£3,852             |
| 70                | £151,935       | -£3,681             | £132,878                                     | -£3,746             |
| 71                | £148,254       | -£3,681             | £129,235                                     | -£3,644             |
| 72                | £144,573       | -£3,681             | £125,691                                     | -£3,544             |
| 73                | £140,892       | -£3,681             | £122,244                                     | -£3,447             |
| 74                | £137,211       | -£3,681             | £118,892                                     | -£3,352             |
| 75                | £133,529       | -£3,681             | £115,632                                     | -£3,260             |
| 76                | £129,848       | -£3,681             | £112,461                                     | -£3,171             |
| 77                | £126,167       | -£3,681             | £109,378                                     | -£3,084             |
| 78                | £122,486       | -£3,681             | £106,378                                     | -£2,999             |
| 79                | £118,805       | -£3,681             | £103,461                                     | -£2,917             |
| 80                | £115,123       | -£3,681             | £100,624                                     | -£2,837             |
| 81                | £111,442       | -£3,681             | £97,865                                      | -£2,759             |
| 82                | £107,761       | -£3,681             | £95,182                                      | -£2,684             |
| 83                | £104,080       | -£3,681             | £92,572                                      | -£2,610             |
| 84                | £100,399       | -£3,681             | £90,033                                      | -£2,538             |
| 85                | £96,718        | -£3,681             | £87,564                                      | -£2,469             |
| 86                | £93,036        | -£3,681             | £85,163                                      | -£2,401             |
| 87                | £89,355        | -£3,681             | £82,828                                      | -£2,335             |
| 88                | £85,674        | -£3,681             | £80,557                                      | -£2,271             |
| 89                | £81,993        | -£3,681             | £78,348                                      | -£2,209             |
| 90                | £78,312        | -£3,681             | £76,199                                      | -£2,148             |
| 91                | £74,631        | -£3,681             | £74,110                                      | -£2,089             |
| 92                | £70,949        | -£3,681             | £72,078                                      | -£2,032             |
| 93                | £67,268        | -£3,681             | £70,101                                      | -£1,976             |
| 94                | £63,587        | -£3,681             | £68,179                                      | -£1,922             |
| 95                | £59,906        | -£3,681             | £66,310                                      | -£1,870             |
| <b>Elasticity</b> | <b>-£3,681</b> |                     | <b>-£3,644 between the ages of 70 and 71</b> |                     |

### 3.6.2 Other characteristics: descriptive analysis

The bivariate (or descriptive) relationships between compensation and other characteristics of the claim or claimant are shown in Tables 3.14 to 3.18. If we examine those values between the 1st percentile and 99th percentiles (this being the sample for Model 2 in Table 3.13 and for the further regression analysis which follows), we find that awards were:

## Study into average civil compensation in mesothelioma cases

- around £10,000 higher, on average, after 2008;
- almost £60,000 higher, on average, in Scotland;
- around £20,000 higher, on average, if there had been a formal service of court proceedings;
- around £14,000 higher, on average, if the claimant was still alive at the time of the settlement.

There was no clear relationship with the length of the case, however.

**Table 3.14 Average compensation (2012 prices), by year of award**

| Year | Mean award:<br>all cases | Mean award:<br>1st-99th percentiles | Median award:<br>all cases |
|------|--------------------------|-------------------------------------|----------------------------|
| 2007 | £140,555                 | £139,473                            | £133,926                   |
| 2008 | £148,511                 | £138,267                            | £130,369                   |
| 2009 | £159,257                 | £147,198                            | £136,593                   |
| 2010 | £155,657                 | £150,210                            | £139,651                   |
| 2011 | £152,410                 | £150,177                            | £138,838                   |
| 2012 | £158,969                 | £149,875                            | £135,000                   |

Source: NIESR survey.

Note: Excludes three cases where the award was made in 2005/06.

**Table 3.15 Average compensation (2012 prices), by jurisdiction**

| Jurisdiction      | Mean award | Mean award:<br>1st-99th percentiles | Median award:<br>all cases |
|-------------------|------------|-------------------------------------|----------------------------|
| England and Wales | £149,787   | £142,132                            | £133,926                   |
| Scotland          | £202,320   | £198,646                            | £200,275                   |

Source: NIESR survey.

Note: Excludes 11 cases where the jurisdiction was unknown.

**Table 3.16 Average compensation (2012 prices), by whether court proceedings were issued**

| Any court proceedings               | Mean award | Mean award:<br>1st-99th percentiles | Median award:<br>all cases |
|-------------------------------------|------------|-------------------------------------|----------------------------|
| No court proceedings                | £134,970   | £134,907                            | £130,000                   |
| Formal service of court proceedings | £167,170   | £155,278                            | £144,311                   |

Source: NIESR survey.

Note: Excludes 42 cases where it was not known whether court proceedings were issued.

**Table 3.17 Average compensation (2012 prices), by whether claimant was alive or deceased at the time of the award**

| Alive or deceased at time of award | Mean award | Mean award: 1st-99th percentiles | Median award: all cases |
|------------------------------------|------------|----------------------------------|-------------------------|
| Alive                              | £160,359   | £158,969                         | £146,492                |
| Deceased                           | £154,864   | £144,456                         | £133,696                |

Source: NIESR survey.

Note: Excludes 197 cases where it was not known whether the claimant was alive at award.

**Table 3.18 Average compensation (2012 prices), by length of case**

| Length of case | Mean award | Mean award: 1st-99th percentiles | Median award: all cases |
|----------------|------------|----------------------------------|-------------------------|
| 0-6 months     | £138,311   | £140,093                         | £133,588                |
| 7-12 months    | £156,718   | £149,130                         | £138,158                |
| 13-18 months   | £166,378   | £140,423                         | £126,890                |
| 19-24 months   | £158,798   | £151,175                         | £145,871                |
| 25+ months     | £157,512   | £154,892                         | £142,668                |

Source: NIESR survey.

Note: Excludes 27 cases where the length of the case could not be determined.

### 3.6.3 Regression analysis of the associations between claim characteristics and total compensation

As noted earlier, these various characteristics are somewhat inter-related. The independent associations with the amount of compensation were, therefore, identified by adding each of the characteristics mentioned above to Model 2 from Table 3.12. The results are shown in Table 3.19. The broad relationships described previously were maintained, although the magnitude of those relationships altered somewhat. For instance, the £20,000 premium in favour of claims which had involved court proceedings was reduced to around £8,000 after controlling for other characteristics of the case. There remained no clear relationship between the size of the award and the length of the case.

## Study into average civil compensation in mesothelioma cases

**Table 3.19 Regression-based estimates of the relationship between compensation and various characteristics of the claim or claimant**

|  | <b>Coefficient</b> | <b>T-statistic</b> |
|--|--------------------|--------------------|
| <b>Age of claimant (at time of claim registration)</b>     | -3,532.25          | -20.81             |
| <b>Year of award</b>                                       |                    |                    |
| 2007   | Ref.               |                    |
| 2008   | 919.10             | 0.15               |
| 2009   | 10,111.33          | 1.69               |
| 2010   | 11,712.88          | 1.89               |
| 2011   | 13,685.74          | 2.28               |
| 2012   | 17,919.98          | 2.70               |
| <b>Jurisdiction</b>  |                    |                    |
| England or Wales   | Ref.               |                    |
| Scotland   | 53,516.04          | 7.54               |
| Not known  | 29,773.18          | 1.14               |
| <b>Whether court proceedings</b>                           |                    |                    |
| No   | Ref.               |                    |
| Yes  | 8,340.55           | 2.81               |
| Not known  | 16,592.12          | 1.48               |
| <b>Whether claimant alive or deceased at time of award</b> |                    |                    |
| Alive  |                    |                    |
| Deceased   | -10,893.08         | -2.83              |
| Not known  | -26,993.81         | -4.69              |
| <b>Length of case</b>                                      |                    |                    |
| 0-6 months   | Ref.               |                    |
| 7-12 months  | 590.48             | 0.16               |
| 13-18 months   | -1,004.78          | -0.22              |
| 19-24 months   | 2,033.50           | 0.35               |
| 25+ months   | -812.36            | -0.14              |
| Not known  | 17,373.43          | 1.33               |
| Constant   | 388,523.54         | 28.88              |
| <i>Observations</i>  | 2,027              |                    |
| <i>R-squared</i>   | 0.268              |                    |

Source: NIESR survey.

Note: Model excludes compensation values below the 1st percentile of the distribution of compensation values and those above the 99th percentile. Excludes three cases where the award was made in 2005/06.

## 3.7 The relationship between total legal costs and characteristics of the claim or claimant

This section explores the relationship between total legal costs and those characteristics of the claim or claimant discussed in Section 3.5.

As in the preceding analysis of total compensation, we first present summary statistics showing how average legal costs vary between claimants of different types (using the arithmetic mean as our measure of average costs). We then use ordinary least squares regression to indicate the general relationships in a more formal way.

The initial sample size for this analysis was reduced from the 2,187 cases utilised in Section 3.4, to a total of 1,948 cases after dropping those which did not give consent to link to the CRU database. However, the analysis also excluded cases below the 5th percentile of the distribution of cost values and those above the 95th percentile, so as to limit the influence of extreme values (see Section 3.4). Figure 3.2 shows that this truncated distribution (based on 1,750 cases) is approximately normally distributed.

### 3.7.1 Descriptive analysis

The simple bivariate (or descriptive) relationships between legal costs and other characteristics of the claim or claimant are shown in Tables 3.20 to 3.26. If we examine those values between the 5th and 95th percentiles (this being the sample for Figure 3.2 and for the further regression analysis which follows)<sup>14</sup>, we find that legal costs were:

- negatively associated with the age of claimant (at time of claim registration);
- around £3,000 higher, on average, after 2007;
- almost £10,000 lower, on average, in Scotland;
- around £9,000 higher, on average, if there had been a formal service of court proceedings;
- around £3,000 lower, on average, if the claimant was still alive at the time of the settlement;
- positively associated with the length of the case.

Some of these associations – such as the negative association with the age of the claimant – can be at least partially explained by the positive association between legal costs and the total value of compensation awarded (see Table 3.20). The correlation coefficient for these two series was 0.24.<sup>15</sup>

Some associations are, however, contrary to this general pattern, such as the lower average value of legal costs in Scotland (average compensation values were higher in Scotland than in England and Wales – see Table 3.15).

---

<sup>14</sup> Descriptive tables also provide the mean and median for all cases.

<sup>15</sup> The correlation coefficient is a measure of the strength and direction of the association between two variables. It can vary between -1 (perfect negative association) and +1 (perfect positive association). The bivariate association shown between legal costs and compensation is not unduly affected by outliers in the compensation series. The correlation coefficient of 0.24 is based on the full series for both variables. If the sample of cost values omits those below the 5th percentile and those above the 95th percentile, and the sample of compensation values omits those below the 1st percentile and those above the 99th percentile, the correlation coefficient is 0.23.

## Study into average civil compensation in mesothelioma cases

**Table 3.20 Average legal costs (2012 prices), by total value of compensation**

| Compensation      | Mean legal costs:<br>all cases | Mean costs:<br>5th-95th percentiles | Median costs:<br>all cases |
|-------------------|--------------------------------|-------------------------------------|----------------------------|
| Under £100,000    | £19,258                        | £20,558                             | £16,114                    |
| £100,000-£149,999 | £26,926                        | £24,233                             | £21,854                    |
| £150,000-£199,999 | £30,847                        | £26,618                             | £25,223                    |
| £200,000 and over | £42,384                        | £29,170                             | £29,310                    |

Source: NIESR survey.

**Table 3.21 Average legal costs (2012 prices), by age of claimant (at time of claim registration)**

| Age band    | Mean legal costs:<br>all cases | Mean costs:<br>5th-95th percentiles | Median costs:<br>all cases |
|-------------|--------------------------------|-------------------------------------|----------------------------|
| Under 65    | £39,245                        | £29,063                             | £29,159                    |
| 65-69       | £29,866                        | £25,058                             | £22,813                    |
| 70-74       | £27,318                        | £24,924                             | £21,012                    |
| 75-79       | £24,653                        | £22,577                             | £20,569                    |
| 80-84       | £20,222                        | £21,739                             | £17,207                    |
| 85 and over | £20,174                        | £20,922                             | £17,571                    |

Source: NIESR survey.

**Table 3.22 Average legal costs (2012 prices), by year of award**

| Year | Mean legal costs:<br>all cases | Mean costs:<br>5th-95th percentiles | Median costs:<br>all cases |
|------|--------------------------------|-------------------------------------|----------------------------|
| 2007 | £23,985                        | £21,404                             | £17,915                    |
| 2008 | £25,655                        | £24,479                             | £21,256                    |
| 2009 | £28,047                        | £24,941                             | £22,202                    |
| 2010 | £33,383                        | £26,312                             | £24,707                    |
| 2011 | £29,579                        | £24,810                             | £21,597                    |
| 2012 | £28,160                        | £24,311                             | £21,000                    |

Source: NIESR survey.

Note: Excludes cases where the award was made in 2005/06.

**Table 3.23 Average legal costs (2012 prices), by jurisdiction**

| Jurisdiction      | Mean legal costs:<br>all cases | Mean costs:<br>5th-95th percentiles | Median costs:<br>all cases |
|-------------------|--------------------------------|-------------------------------------|----------------------------|
| England and Wales | £29,643                        | £25,455                             | £22,673                    |
| Scotland          | £16,105                        | £15,750                             | £13,069                    |

Source: NIESR survey.

Note: Excludes cases where the jurisdiction was unknown.

**Table 3.24 Average legal costs (2012 prices), by whether court proceedings were issued**

| <b>Any court proceedings</b>        | <b>Mean legal costs:<br/>all cases</b> | <b>Mean costs:<br/>5th-95th percentiles</b> | <b>Median costs:<br/>all cases</b> |
|-------------------------------------|--|---|------------------------------------|
| No court proceedings                | £20,534                                | £19,800                                     | £16,712                            |
| Formal service of court proceedings | £34,805                                | £28,578                                     | £27,207                            |

Source: NIESR survey.

Note: Excludes cases where it was not known whether court proceedings were issued.

**Table 3.25 Average legal costs (2012 prices), by whether claimant was alive or deceased at the time of the award**

| <b>Alive or deceased at<br/>time of award</b> | <b>Mean legal costs:<br/>all cases</b> | <b>Mean costs:<br/>5th-95th percentiles</b> | <b>Median costs:<br/>all cases</b> |
|---|--|---|------------------------------------|
| Alive   | £29,077                                | £23,074                                     | £20,410                            |
| Deceased                                      | £30,022                                | £26,131                                     | £24,170                            |

Source: NIESR survey.

Note: Excludes cases where it was not known whether the claimant was alive at award.

**Table 3.26 Average legal costs (2012 prices), by length of case**

| <b>Length of case</b> | <b>Mean legal costs:<br/>all cases</b> | <b>Mean costs:<br/>5th-95th percentiles</b> | <b>Median costs:<br/>all cases</b> |
|-----------------------|--|---|------------------------------------|
| 0-6 months            | £22,990                                | £20,634                                     | £17,990                            |
| 7-12 months           | £28,450                                | £24,637                                     | £21,539                            |
| 13-18 months          | £28,080                                | £24,841                                     | £23,734                            |
| 19-24 months          | £31,209                                | £24,712                                     | £23,354                            |
| 25+ months            | £36,012                                | £30,275                                     | £29,541                            |

Source: NIESR survey.

Note: Excludes cases where the length of the case could not be determined.

### 3.7.2 Regression analysis

As noted earlier, these various characteristics are somewhat interrelated. The independent associations with total legal costs were, therefore, identified by adding each of the characteristics into a regression analysis. The dependent variable is total legal costs (with values below the 5th percentile and those above the 95th percentile omitted). The regressors are identical to those used in the earlier regression analysis of total compensation, although here, total compensation forms one of the regressors in the model. Compensation values below the 1st percentile and above the 99th percentile are omitted as they are found to have a strong influence on the size of the coefficient estimated from the model.

The results of the regression analysis are shown in Table 3.27. The regression analysis found that legal costs increase by £4, on average, for each additional £100 of compensation. They are lower for older claimants, higher for claims made after 2008, lower in Scotland, higher if the claim involved court proceedings and higher if the claimant was deceased at the

## Study into average civil compensation in mesothelioma cases

time of the award. It is perhaps worth noting that the characteristics listed in Table 3.27 are better able to explain the variance in legal costs than in the case of total compensation (i.e. the model shown in Table 3.27 has a better fit – a higher R-squared – than the model shown in Table 3.19).

Legal costs remain positively associated with the length of the case after controlling for other factors, as one might expect. The model shown in Table 3.27 uses a categorical indicator for case length; however, if this categorical indicator is replaced with a continuous variable indicating the length of the case in months, we obtain a coefficient of 206.27 (t-statistic: 6.06). In other words, total legal costs rise by around £200, on average, for each additional month, after controlling for other factors. Nevertheless, it should be noted that this is the simple linear elasticity estimated from the model: the coefficients shown in Table 3.27 suggest that the association is not linear, however, and that it rises more steeply in the early phases of a case (perhaps reflecting fixed and marginal costs). Compared to cases with 0-6 months duration, there is an increase of around £3,000 for cases that last 7-12 months and around £4,000 for cases that last 13-18 months.

The coefficients on the other variables shown in Table 3.27 were substantively unaltered when the categorical indicator for case length was replaced with the continuous indicator.

## Study into average civil compensation in mesothelioma cases

**Table 3.27 Regression-based estimates of the relationship between total legal costs and various characteristics of the claim or claimant**

|  | Coefficient | T-statistic |
|--|-------------|-------------|
| <b>Total compensation (£)</b>                              | 0.043       | 9.44        |
| <b>Age of claimant (at time of claim registration)</b>     | -111.22     | -3.50       |
| <b>Year of award</b>                                       |             |             |
| 2007   | Ref.        |             |
| 2008   | 1,323.05    | 1.11        |
| 2009   | 2,391.40    | 2.22        |
| 2010   | 2,664.61    | 2.44        |
| 2011   | 3,093.37    | 2.90        |
| 2012   | 2,676.94    | 2.22        |
| <b>Jurisdiction</b>  |             |             |
| England or Wales   | Ref.        |             |
| Scotland   | -18,431.95  | -22.26      |
| Not known  | 4,765.69    | 1.67        |
| <b>Whether court proceedings</b>                           |             |             |
| No   | Ref.        |             |
| Yes  | 9,447.68    | 16.16       |
| Not known  | 4,599.19    | 2.76        |
| <b>Whether claimant alive or deceased at time of award</b> |             |             |
| Alive  |             |             |
| Deceased   | 1,982.34    | 2.94        |
| Not known  | 374.53      | 0.32        |
| <b>Length of case</b>                                      |             |             |
| 0-6 months   | Ref.        |             |
| 7-12 months  | 2,995.35    | 3.96        |
| 13-18 months   | 3,907.88    | 4.59        |
| 19-24 months   | 3,458.82    | 3.73        |
| 25+ months   | 6,996.10    | 6.41        |
| Not known  | 12,061.87   | 3.36        |
| Constant   | 15,811.06   | 5.60        |
| <i>Observations</i>  | 1.725       |             |
| <i>R-squared</i>   | 0.373       |             |

Source: NIESR survey.

Note: Excludes cost values below the 5th percentile and those above the 95th percentile, and compensation values below the 1st percentile and above the 99th percentile. Excludes three cases where the award was made in 2005/06.

## 3.8 Components of legal costs

The survey asked whether the total legal costs included each of the following components:

- a success fee<sup>16</sup>;
- disbursements<sup>17</sup>;
- after-the-event (ATE) insurance costs<sup>18</sup>.

In cases where these elements were included in the total legal costs, the respondent was asked to specify the value of that component.

In practice, many respondents did not know whether a specific component was included in the legal costs. In cases where they did know that it was included, they were often unable to specify the value of that component. Some caution should, therefore, be attached to the findings of the survey on this particular issue.

The analysis presented in this section returns to the overall sample of 2,187 cases utilised in Section 3.4.

### 3.8.1 Success fees

A success fee was known to be included in the legal costs in 67 per cent of cases. It was known not to be included in seven per cent, while in the remaining 26 per cent of respondents did not know whether it was included or not.

A small number of respondents said that a success fee was included, but then gave a figure of zero for the value of that success fee. These cases were treated as if there was no success fee. A small number gave a success fee that was larger than the total value of legal costs and these are treated as if the value of the success fee was not known.

**Table 3.28 Whether legal costs included a success fee**

|                        | Percentage of cases |
|------------------------|---------------------|
| Yes – amount known     | 37                  |
| Yes – amount not known | 30                  |
| No                     | 7                   |
| Do not know            | 26                  |

Source: NIESR survey.

<sup>16</sup> Most claimants' cases are taken on by solicitors on a 'no win, no fee' basis. If the claimant wins, the claimant's solicitor charges their actual costs plus an additional charge (the success fee). The success fee is to compensate for the risk the solicitor faced (because they might lose). In the scoping study for the survey, this was reported by solicitors to vary little.

<sup>17</sup> Disbursements are non-legal costs such as payment for medical reports and travel.

<sup>18</sup> After the event insurance is insurance taken out by the claimant to cover their legal costs if they do not win their case.

## Study into average civil compensation in mesothelioma cases

The average success fee among the 37 per cent of cases where the amount was known was £4,797 (in 2012 prices) (Table 3.29). Mean legal costs for these cases amounted to £33,860, and so the success fee accounted for 14 per cent of total legal costs, on average, in these cases.

**Table 3.29 Average success fees (2012 prices)**

|                 | Value  |
|-----------------|--------|
| Mean            | £4,797 |
| Median          | £3,788 |
| 1% trimmed mean | £4,526 |
| 5% trimmed mean | £4,237 |

Source: NIESR survey.

If we combine the 37 per cent of cases where the amount was known with those seven per cent where there was no success fee (giving those cases a value of zero), the average (mean) across all cases where complete information was given was £4,029. Mean legal costs for these cases amounted to £31,513. Consequently, our best estimate is that success fees account for 13 per cent of total legal costs on average across all cases. However, as noted earlier, the large proportion of cases with incomplete information means that some caution must necessarily be attached to this estimate, as these cases may not be fully representative.<sup>19</sup>

### 3.8.2 Disbursements

Disbursements were known to be included in the legal costs in 74 per cent of cases. They were known not to be included in only one per cent, while in the remaining 25 per cent the respondent did not know whether they were included or not. Inconsistencies were treated in the manner described in the previous section.

**Table 3.30 Whether legal costs included disbursements**

|                        | Percentage of cases |
|------------------------|---------------------|
| Yes – amount known     | 53                  |
| Yes – amount not known | 21                  |
| No                     | 1                   |
| Do not know            | 25                  |

Source: NIESR survey.

The average value of disbursements among the 53 per cent of cases where the amount was known was £5,138 (in 2012 prices) (Table 3.31). Mean legal costs for these cases amounted to £28,731, and so disbursements accounted for 18 per cent of total legal costs on average in these cases.

<sup>19</sup> One can note that average legal costs are slightly higher than is the case for all cases, for example.

## Study into average civil compensation in mesothelioma cases

**Table 3.31 Average disbursements (2012 prices)**

|                 | <b>Value</b> |
|-----------------|--------------|
| Mean            | £5,138       |
| Median          | £3,865       |
| 1% trimmed mean | £4,812       |
| 5% trimmed mean | £4,453       |

Source: NIESR survey.

If we combine the 53 per cent of cases where the amount was known with those one per cent where there were no disbursements (giving those cases a value of zero), the average across all cases where complete information was given was £5,042. Average legal costs for these cases amounted to £28,556. Consequently, our best estimate is that disbursements account for 18 per cent of total legal costs, on average, across all cases.

### 3.8.3 ATE insurance costs

ATE costs were known to be included in the legal costs in 52 per cent of cases. They were known not to be included in 16 per cent, while in the remaining 33 per cent the respondent did not know whether they were included or not. Again, inconsistencies were treated in the manner described for success fees.

**Table 3.32 Whether legal costs included ATE insurance costs**

|                        | <b>Percentage of cases</b> |
|------------------------|----------------------------|
| Yes – amount known     | 40                         |
| Yes – amount not known | 12                         |
| No                     | 16                         |
| Do not know            | 33                         |

Source: NIESR survey.

The average value of ATE costs among the 40 per cent of cases where the amount was known was £2,468 (in 2012 prices) (Table 3.33). Mean legal costs for these cases amounted to £33,698, and so ATE costs accounted for seven per cent of total legal costs, on average, in these cases.

**Table 3.33 Average ATE insurance costs (2012 prices)**

|                 | <b>Value</b> |
|-----------------|--------------|
| Mean            | £2,468       |
| Median          | £1,904       |
| 1% trimmed mean | £2,431       |
| 5% trimmed mean | £2,285       |

Source: NIESR survey.

If we combine the 40 per cent of cases where the amount was known with those 12 per cent where there were no ATE costs (giving those cases a value of zero), the average across all cases where complete information was given was £1,769. Average legal costs for these cases amounted to £30,501. Consequently, our best estimate is that ATE costs account for 6 per cent of total legal costs on average across all cases.

### 3.8.4 'Base' legal costs

The preceding sections have noted that success fees typically accounted for 13 per cent of total legal costs in those cases where the value of the success fee was known and after including cases in which there was no success fee. Disbursements typically accounted for 18 per cent and ATE costs for six per cent. The overall average value of total legal costs (computed on all available cases) was £28,407 (see Table 3.3). We can, therefore, estimate that base legal costs averaged £17,896 before any success fee, disbursements or ATE costs were included (this figure being 63 per cent of total legal costs) (see Table 3.34). This estimate should be treated with caution however, as it is clear from the preceding sections that many respondents could not provide information on the value of any success fee, disbursements or ATE costs and so the percentages noted above may not be fully representative of the average case.

An alternative means of arriving at an estimate for base legal costs is to sum the individual cost elements for those cases which provided a valid figure for all three cost elements. This alternative approach arrives at an estimate of £19,325 (see Table 3.34); however, it is computed from only 37 per cent of those cases with a value for total legal costs and is, therefore, subject to even more caution than the figure cited in the previous paragraph. Nevertheless, it is possible under this approach to also compute a median and trimmed means and these are shown in Table 3.34.

**Table 3.34 Average base legal costs (2012 prices)**

|  | Value   |
|--|---------|
| <b>Deduced from all available cases</b>  |         |
| Mean   | £17,896 |
| <b>Computed from all cases with valid information on all three cost elements</b> |         |
| Mean   | £19,325 |
| Median   | £14,364 |
| 1% trimmed mean  | £17,504 |
| 5% trimmed mean  | £15,990 |

Source: NIESR survey.

Note: these figures should be treated with caution for the reasons stated in the text.

# Appendix A

## Method

### A.1 Survey design

The scoping study identified the CRU database as the only comprehensive sampling frame for mesothelioma settlements. The structure and content of the CRU database affected the survey design and this is described in this section.

Claims are registered with the CRU by the defendant (normally the insurance company or the employer) or their representative (normally a law firm) and it is the contact details of this registrant that the database holds. Therefore the survey, whilst of a sample of claims, was conducted through registrants, with registrants providing details of the claim.

The number of claims registered by each registrant varied from one to several hundred, with the distribution highly skewed to a small number of organisations.

- To minimise the burden on each registrant, the number of claims requested per registrant was capped at 300.
- To increase the cost-effectiveness of the survey, the survey was limited to registrants registering at least five claims. This resulted in the exclusion of 3.2 per cent of registered claims. There is the possibility that registrants handling few cases handle different claims than other registrants<sup>20</sup>. However, because these registrants account for so few cases in total, their exclusion would have a negligible effect on the estimates of compensation levels.

Structuring of the sample was considered necessary for two reasons: Firstly, the CRU database had relatively few cases where the victim was aged under 65. Secondly, the number of cases falling under Scottish jurisdiction was expected to be low (because of the size of the population). Cases are not identified by country of jurisdiction in the CRU database, but we assumed that claimants residing in Scotland and registrants which were law firms with a Scottish address were likely to fall under Scottish jurisdiction and there were relatively few of these cases. Therefore, both under-65s and those estimated to fall under Scottish jurisdiction were oversampled through structuring the sample in organisations with more than 300. Details are given in the next section.

The questionnaire was designed as an Excel spreadsheet. For each registrant, the questionnaire listed their cases in the sample, using the defendant case reference number and giving no other details of the case.

---

<sup>20</sup> Some stakeholders in the scoping study suggested that registrants with few cases were more likely to have white-collar victims and so receive higher compensation. However, at three per cent of the sample (and fewer still of the achieved sample, if our expectations about response rates being lower amongst the organisations dealing with fewer mesothelioma cases), their impact on estimates of average compensation would be negligible.

## A.2 Sampling

Based on the CRU data, the following cases were included in the sample population:

- settled employer liability claims in the private sector (i.e. excluding government, local authority, NHS and unknown);
- claims settled between 2007 and 2012<sup>21</sup>.

'Special' cases (i.e. 'Turner and Newell' cases and those falling under the Financial Services Compensation Scheme) were excluded.

This gave a total of 4,216 eligible cases.

Eligible claims were grouped according to the CRU claim registrant (i.e. defendants and their representatives).

As described already, organisations registering fewer than five claims were excluded from the sample. This meant that 97 organisations were excluded, accounting for 142 claims (3.2 per cent of the total). The sample was drawn from the remaining 43 organisations.

Where organisations were the registrant for no more than 300 cases, all cases were selected in the sample. For the three organisations which had registered more than 300 claims, their sample was capped at 300 (see Section A.1). For each of these three organisations, a sample of 300 cases was drawn, as follows:

- all cases in Scotland were selected (cases were allocated to Scotland if, according to CRU data, either the claimant was resident in Scotland or the registrant was located in Scotland);
- all cases where the claimant was under 65 at the time of the claim were selected;
- a random sample of remaining cases was selected, to take the total up to 300 per organisation.

This selection was taken into account in the weighting.

In total, 3,477 cases were selected.

## A.3 Fieldwork process

Contact was made with the organisations sampled to explain the survey and to make arrangements for receipt of the questionnaire. The Association of British Insurers provided extensive assistance, with their members contacting their representatives to encourage them to assist in the survey and through identifying appropriate contacts in their representative organisations.

Owing to confidentiality concerns, in each organisation, a person was identified to receive the questionnaire. The questionnaire was then emailed, with phone contact maintained until confirmation of receipt. Respondents were instructed to remove their own case reference number prior to returning the completed questionnaire (but retain the NIESR case identifier).

---

<sup>21</sup> The questionnaire also asked for date of settlement. For three cases, the survey respondents gave the settlement year as 2005/06. These cases were retained in the sample.

## **Study into average civil compensation in mesothelioma cases**

The survey was in the field from 22 January 2013 to 8 March 2013. A helpline was maintained to assist respondents. Respondents initially received two reminders at approximately two-week intervals. In addition, respondents received further reminders until they had returned the questionnaire or declined to participate.

### **A.4 Weighting**

The weighting comprised:

- a probability of selection weight, to reflect the cap on the three largest organisations and the over-sampling of Scotland and of claimants aged over 65;
- a non-response weight: cases were weighted by year of settlement. Separate weights were applied for analysis of total compensation paid and for total legal costs (because the total number of cases differed); and
- separate weights were constructed to take into account the organisations that had not given permission to link their responses with CRU data: a weight for analysing overall figures only (covering all cases) and a weight for analysing sub-groups derived from the CRU data (excluding those who had not given permission).

All findings have been weighted with the appropriate weight.

## A.5 Questionnaire

|  |  |   |
|--|--|---|
| Your case reference<br>PLEASE DELETE THIS ROW BEFORE RETURNING TO NIESR  |  | a |
| CRU reference number<br>PLEASE DELETE THIS ROW BEFORE RETURNING TO NIESR   |  | a |
| NIESR survey case ID (DO NOT DELETE)   |  | a |
| Please complete the spreadsheet only for cases where total compensation has been agreed. <b>If total compensation has not been agreed</b> , please indicate 'not agreed' on this line and leave the rest of the column blank.  | not agreed                                   |   |
| <b>1. What was the total compensation paid?</b><br>i.e. the actual amount of damages paid to the claimant, plus any amount repaid to CRU in respect of benefit recovery  | amount in £s                                 |   |
| <b>2. What were the total claimant legal costs paid?</b><br>i.e. the total of all sums paid by the compensator(s) to the claimant's legal representatives in respect of legal costs, success fee, Court fees, and all other disbursements:<br><br>a) including VAT<br>b) excluding VAT                                     | amount in £s<br>amount in £s                 |   |
| <b>3a. Did the agreed total claimant legal costs include:</b><br>a) a success fee?<br>b) disbursements?<br>c) after-the-event insurance costs?   | yes<br>no<br>don't know                      |   |
| <b>3b. If known, what was the cost (excluding VAT) of:</b><br>a) a success fee?<br>b) disbursements?<br>c) after-the-event insurance costs?  | amount in £s<br>amount in £s<br>amount in £s |   |
| <b>4. Which jurisdiction did the claim (against the main defendant) fall under?</b><br>i.e. which was the jurisdiction in which litigation was brought or the perceived jurisdiction that would have been utilised had litigation ensued<br>a) England and Wales<br>b) Scotland<br>c) Northern Ireland<br>d) other/unknown | E&W<br>S<br>NI<br>don't know                 |   |
| <b>5. Was there a formal service of court proceedings in the case?</b>   | yes<br>no<br>don't know                      |   |
| <b>6. When did the claimant first lodge a claim for damages?</b>   | dd/mm/yyyy<br>don't know                     |   |
| <b>7. Date of victim's diagnosis of mesothelioma<sup>b</sup></b>   | mm/yyyy<br>don't know                        |   |

## Study into average civil compensation in mesothelioma cases

|   |                                 |  |
|---|---------------------------------|--|
| <b>8. Date of award of compensation</b><br>i.e. the specific date of the:<br>– formal Court Order<br>– signed Consent Order<br>– formal acceptance of a settlement offer by the Claimant or Defendant (if pre-litigation) | dd/mm/yyyy<br><b>don't know</b> |  |
| <b>9. Had the victim died prior to settlement?</b>  | yes<br>no<br><b>don't know</b>  |  |
| <b>10. If the victim had died prior to settlement, date of death</b>  | dd/mm/yyyy<br><b>don't know</b> |  |

- a A column was allocated to each case sampled for the respondent. Each case was identified by the respondent's case reference and the CRU reference number and given a NIESR survey case ID.
- b This data was not used in the analysis, due to concerns over variability in definition and estimation of the date amongst respondents.

# Appendix B

## England and Wales, descriptive findings

This appendix replicates the tables in Chapter 3 for cases decided in England and Wales only. The table number in brackets indicate the corresponding table in Chapter 3. Descriptive tables only are included. Data has been weighted to make the survey findings more representative of all claims in England and Wales. See Appendix A for details.

**Table B.1 Measures of average compensation (2012 prices), England and Wales**  
(Table 3.1)

| Measure            | Value    | <i>n</i> |
|--------------------|----------|----------|
| Arithmetic mean    | £149,704 | 2,123    |
| Median             | £134,903 | 2,123    |
| 1% trimmed mean    | £142,844 | 2,080    |
| 5% trimmed mean    | £139,466 | 1,902    |
| Interquartile mean | £134,849 | 1,036    |
| Trimean            | £135,777 | 2,123    |

Note: Mean values do not match those shown in Table 3.15 (and Table B.15) since the analyses presented in Section 3.6 are conducted only on the subset of cases that could be linked to the CRU database, which provided data on the age of the claimant (a key part of the regression analysis conducted towards the end of that section).

Source: NIESR survey.

**Table B.2 Percentiles of the distribution of compensation values (2012 prices), England and Wales** (Table 3.2)

| Percentile | Value (rounded to nearest £1,000) |
|------------|-----------------------------------|
| 1st        | £15,000                           |
| 5th        | £43,000                           |
| 25th       | £95,000                           |
| 75th       | £178,000                          |
| 95th       | £287,000                          |
| 99th       | £421,000                          |
| <i>n</i>   | 2,123                             |

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

**Table B.3 Measures of average legal costs including VAT (2012 prices), England and Wales (Table 3.3)**

| Measure            | Value   | <i>n</i> |
|--------------------|---------|----------|
| Arithmetic mean    | £29,266 | 1,995    |
| Median             | £22,673 | 1,995    |
| 1% trimmed mean    | £27,387 | 1,954    |
| 5% trimmed mean    | £25,465 | 1,794    |
| Interquartile mean | £23,320 | 1,006    |
| Trimean            | £23,578 | 1,995    |

Note: Mean values do not match those shown in Table 3.23 (and Table B.23) since the analyses presented in Section 3.7 are conducted only on the subset of cases that could be linked to the CRU database, which provided data on the age of the claimant (a key part of the regression analysis conducted towards the end of that section).

Source: NIESR survey.

**Table B.4 Percentiles of the distribution of legal costs (2012 prices), England and Wales (Table 3.4)**

| Percentile | Value (rounded to nearest £1,000) |
|------------|-----------------------------------|
| 1st        | £2,500                            |
| 5th        | £8,000                            |
| 25th       | £15,000                           |
| 75th       | £33,000                           |
| 95th       | £64,000                           |
| 99th       | £165,000                          |
| <i>n</i>   | 1,995                             |

Source: NIESR survey.

**Table B.5 Age of claimant at the time of the claim, England and Wales (Table 3.5)**

| Age band    | Percentage of cases |
|-------------|---------------------|
| Under 65    | 23                  |
| 65-69       | 18                  |
| 70-74       | 22                  |
| 75-79       | 19                  |
| 80-84       | 12                  |
| 85 and over | 7                   |
| <i>n</i>    | 1,876               |

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

**Table B.6** Year of award, England and Wales (Table 3.6)

| Year     | Percentage of cases |
|----------|---------------------|
| 2005/06  | <1                  |
| 2007     | 7                   |
| 2008     | 19                  |
| 2009     | 20                  |
| 2010     | 19                  |
| 2011     | 20                  |
| 2012     | 17                  |
| <i>n</i> | 1,876               |

Source: NIESR survey.

**Table B.7** Whether court proceedings were issued, England and Wales (Table 3.8)

| Any court proceedings               | Percentage of cases |
|-------------------------------------|---------------------|
| No court proceedings                | 44                  |
| Formal service of court proceedings | 53                  |
| Not known                           | 2                   |
| <i>n</i>                            | 1,876               |

Source: NIESR survey.

**Table B.8** Whether claimant was alive or deceased at the time of the award, England and Wales (Table 3.9)

| Alive or deceased at time of award | Percentage of cases |
|------------------------------------|---------------------|
| Alive                              | 32                  |
| Deceased                           | 57                  |
| Not known                          | 11                  |
| <i>n</i>                           | 1,876               |

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

**Table B.9 Length of case, England and Wales (Table 3.10)**

| Length of case | Percentage of cases |
|----------------|---------------------|
| 0-6 months     | 28                  |
| 7-12 months    | 27                  |
| 13-18 months   | 17                  |
| 19-24 months   | 10                  |
| 25+ months     | 16                  |
| Not known      | 2                   |
| <i>n</i>       | 1,876               |

Source: NIESR survey.

**Table B.10 Average compensation (2012 prices), by age of claimant (when the claim was registered) (Table 3.11)**

| Age band    | Mean award | <i>n</i> |
|-------------|------------|----------|
| Under 65    | £189,718   | 509      |
| 65-69       | £154,682   | 303      |
| 70-74       | £132,548   | 370      |
| 75-79       | £125,278   | 330      |
| 80-84       | £105,916   | 204      |
| 85 and over | £91,726    | 118      |

Source: NIESR survey.

**Table B.11 Average compensation (2012 prices), by year of award (Table 3.14)**

| Year | Mean award:<br>all cases | Mean award:<br>1st-99th<br>percentiles | Median award:<br>all cases | <i>n</i><br>all cases | <i>n</i><br>1st-99th<br>percentiles |
|------|--------------------------|--|----------------------------|-----------------------|-------------------------------------|
| 2007 | £139,954                 | £138,759                               | £129,226                   | 92                    | 88                                  |
| 2008 | £146,794                 | £135,865                               | £129,999                   | 311                   | 303                                 |
| 2009 | £155,165                 | £141,874                               | £133,213                   | 408                   | 402                                 |
| 2010 | £149,423                 | £145,665                               | £139,586                   | 365                   | 356                                 |
| 2011 | £147,105                 | £144,559                               | £137,144                   | 387                   | 381                                 |
| 2012 | £154,248                 | £143,984                               | £132,500                   | 310                   | 301                                 |

Source: NIESR survey.

Note: Excludes three cases from the full dataset where the award was made in 2005/06.

## Study into average civil compensation in mesothelioma cases

**Table B.12 Average compensation (2012 prices), by jurisdiction (Table 3.15)**

| <b>Jurisdiction</b>  | <b>Mean award</b> | <b>Mean award:<br/>1st-99th<br/>percentiles</b> | <b>Median award:<br/>all cases</b> | <b><i>n</i><br/>all cases</b> | <b><i>n</i><br/>1st-99th<br/>percentiles</b> |
|----------------------|-------------------|---|------------------------------------|-------------------------------|--|
| England and<br>Wales | £149,787          | £142,132  | £133,926                           | 1,876                         | 1,834  |

Source: NIESR survey.

Note: Excludes 11 cases from the full dataset where the jurisdiction was unknown.

**Table B.13 Average compensation (2012 prices), by whether court proceedings were issued (Table 3.16)**

| <b>Any court<br/>proceedings</b>       | <b>Mean award</b> | <b>Mean award:<br/>1st-99th<br/>percentiles</b> | <b>Median award:<br/>all cases</b> | <b><i>n</i><br/>all cases</b> | <b><i>n</i><br/>1st-99th<br/>percentiles</b> |
|--|-------------------|---|------------------------------------|-------------------------------|--|
| No court<br>proceedings                | £134,493          | £134,423  | £130,000                           | 848                           | 839  |
| Formal service of<br>court proceedings | £161,300          | £148,175  | £138,845                           | 987                           | 956  |

Source: NIESR survey.

Note: Excludes 42 cases from the full dataset where it was not known whether court proceedings were issued.

**Table B.14 Average compensation (2012 prices), by whether claimant was alive or deceased at the time of the award (Table 3.17)**

| <b>Alive or<br/>deceased at<br/>time of award</b> | <b>Mean award</b> | <b>Mean award:<br/>1st-99th<br/>percentiles</b> | <b>Median award:<br/>all cases</b> | <b><i>n</i><br/>all cases</b> | <b><i>n</i><br/>1st-99th<br/>percentiles</b> |
|---|-------------------|---|------------------------------------|-------------------------------|--|
| Alive   | £157,774          | £156,773  | £144,146                           | 618                           | 608  |
| Deceased  | £149,557          | £137,629  | £129,999                           | 1,073                         | 1,047  |

Source: NIESR survey.

Note: Excludes 197 cases from the full dataset where it was not known whether the claimant was alive at award.

## Study into average civil compensation in mesothelioma cases

**Table B.15 Average compensation (2012 prices), by length of case** (Table 3.18)

| Length of case | Mean award | Mean award:             | Median award: | <i>n</i><br>all cases | <i>n</i><br>1st-99th<br>percentiles |
|----------------|------------|-------------------------|---------------|-----------------------|-------------------------------------|
|                |            | 1st-99th<br>percentiles | all cases     |                       |                                     |
| 0-6 months     | £137,416   | £139,231                | £132,840      | 513                   | 507                                 |
| 7-12 months    | £153,894   | £145,532                | £136,543      | 504                   | 493                                 |
| 13-18 months   | £161,000   | £134,936                | £123,973      | 331                   | 318                                 |
| 19-24 months   | £150,062   | £141,201                | £139,651      | 207                   | 205                                 |
| 25+ months     | £151,861   | £148,317                | £139,586      | 295                   | 286                                 |

Source: NIESR survey.

Note: Excludes 27 cases from the full dataset where the length of the case could not be determined.

**Table B.16 Average legal costs (2012 prices), by total value of compensation** (Table 3.20)

| Compensation      | Mean legal          | Mean costs:             | Median costs: | <i>n</i><br>all cases | <i>n</i><br>5th-95th<br>percentiles |
|-------------------|---------------------|-------------------------|---------------|-----------------------|-------------------------------------|
|                   | costs:<br>all cases | 5th-95th<br>percentiles | all cases     |                       |                                     |
| Under £100,000    | £19,768             | £20,949                 | £16,515       | 444                   | 376                                 |
| £100,000-£149,999 | £27,432             | £24,605                 | £22,321       | 567                   | 542                                 |
| £150,000-£199,999 | £31,955             | £27,498                 | £26,000       | 391                   | 365                                 |
| £200,000 and over | £47,594             | £32,633                 | £34,685       | 347                   | 294                                 |

Source: NIESR survey.

**Table B.17 Average legal costs (2012 prices), by age of claimant  
(at time of claim registration)** (Table 3.21)

| Age band    | Mean legal          | Mean costs:             | Median costs: | <i>n</i><br>all cases | <i>n</i><br>5th-95th<br>percentiles |
|-------------|---------------------|-------------------------|---------------|-----------------------|-------------------------------------|
|             | costs:<br>all cases | 5th-95th<br>percentiles | all cases     |                       |                                     |
| Under 65    | £40,425             | £30,172                 | £30,079       | 502                   | 439                                 |
| 65-69       | £31,508             | £25,880                 | £24,168       | 286                   | 255                                 |
| 70-74       | £27,780             | £25,247                 | £22,202       | 347                   | 319                                 |
| 75-79       | £25,654             | £23,393                 | £21,539       | 313                   | 286                                 |
| 80-84       | £21,149             | £22,849                 | £18,000       | 193                   | 174                                 |
| 85 and over | £20,941             | £21,829                 | £18,872       | 115                   | 107                                 |

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

**Table B.18 Average legal costs (2012 prices), by year of award (Table 3.22)**

| <b>Year</b> | <b>Mean legal costs: all cases</b> | <b>Mean costs: 5th-95th percentiles</b> | <b>Median costs: all cases</b> | <b><i>n</i> all cases</b> | <b><i>n</i> 5th-95th percentiles</b> |
|-------------|------------------------------------|---|--------------------------------|---------------------------|--------------------------------------|
| 2007        | £24,566                            | £21,848                                 | £17,915                        | 88                        | 75                                   |
| 2008        | £26,373                            | £25,187                                 | £22,106                        | 304                       | 278                                  |
| 2009        | £29,337                            | £25,843                                 | £24,112                        | 400                       | 363                                  |
| 2010        | £35,030                            | £27,016                                 | £25,245                        | 359                       | 316                                  |
| 2011        | £30,743                            | £26,155                                 | £22,625                        | 369                       | 332                                  |
| 2012        | £28,468                            | £24,822                                 | £22,000                        | 233                       | 213                                  |

Source: NIESR survey.

Note: Excludes cases from the full dataset where the award was made in 2005/06.

**Table B.19 Average legal costs (2012 prices), by jurisdiction (Table 3.23)**

| <b>Jurisdiction</b> | <b>Mean legal costs: all cases</b> | <b>Mean costs: 5th-95th percentiles</b> | <b>Median costs: all cases</b> | <b><i>n</i> all cases</b> | <b><i>n</i> 5th-95th percentiles</b> |
|---------------------|------------------------------------|---|--------------------------------|---------------------------|--------------------------------------|
| England and Wales   | £29,643                            | £25,455                                 | £22,673                        | 1,756                     | 1,580                                |

Source: NIESR survey.

Note: Excludes cases where the jurisdiction was unknown.

**Table B.20 Average legal costs (2012 prices), by whether court proceedings were issued (Table 3.24)**

| <b>Any court proceedings</b>        | <b>Mean legal costs: all cases</b> | <b>Mean costs: 5th-95th percentiles</b> | <b>Median costs: all cases</b> | <b><i>n</i> all cases</b> | <b><i>n</i> 5th-95th percentiles</b> |
|-------------------------------------|------------------------------------|---|--------------------------------|---------------------------|--------------------------------------|
| No court proceedings                | £20,540                            | £19,984                                 | £16,969                        | 796                       | 739                                  |
| Formal service of court proceedings | £37,421                            | £30,464                                 | £29,541                        | 927                       | 808                                  |

Source: NIESR survey.

Note: Excludes cases from the full dataset where it was not known whether court proceedings were issued.

## Study into average civil compensation in mesothelioma cases

**Table B.21 Average legal costs (2012 prices), by whether claimant was alive or deceased at the time of the award (Table 3.25)**

| Alive or deceased at time of award | Mean legal costs: all cases | Mean costs: 5th-95th percentiles | Median costs: all cases | <i>n</i> all cases | <i>n</i> 5th-95th percentiles |
|------------------------------------|-----------------------------|----------------------------------|-------------------------|--------------------|-------------------------------|
| Alive                              | £29,372                     | £23,481                          | £20,559                 | 578                | 525                           |
| Deceased                           | £31,521                     | £27,389                          | £25,507                 | 996                | 899                           |

Source: NIESR survey.

Note: Excludes cases from the full dataset where it was not known whether the claimant was alive at award.

**Table B.22 Average legal costs (2012 prices), by length of case (Table 3.26)**

| Length of case | Mean legal costs: all cases | Mean costs: 5th-95th percentiles | Median costs: all cases | <i>n</i> all cases | <i>n</i> 5th-95th percentiles |
|----------------|-----------------------------|----------------------------------|-------------------------|--------------------|-------------------------------|
| 0-6 months     | £23,209                     | £20,634                          | £18,043                 | 485                | 445                           |
| 7-12 months    | £29,236                     | £24,637                          | £22,202                 | 473                | 424                           |
| 13-18 months   | £29,415                     | £24,841                          | £25,000                 | 303                | 275                           |
| 19-24 months   | £33,591                     | £24,712                          | £25,000                 | 195                | 178                           |
| 25+ months     | £38,398                     | £30,275                          | £30,853                 | 276                | 237                           |

Source: NIESR survey.

Note: Excludes cases from the full dataset where the length of the case could not be determined.

**Table B.23 Whether legal costs included a success fee (Table 3.28)**

|                        | Percentage of cases |
|------------------------|---------------------|
| Yes – amount known     | 40                  |
| Yes – amount not known | 32                  |
| No                     | 2                   |
| Do not know            | 26                  |
| <i>n</i>               | 1,995               |

Source: NIESR survey.

**Table B.24 Average success fees (2012 prices) (Table 3.29)**

|                 | Value  | <i>n</i> |
|-----------------|--------|----------|
| Mean            | £4,763 | 781      |
| Median          | £3,788 | 781      |
| 1% trimmed mean | £4,510 | 764      |
| 5% trimmed mean | £4,229 | 702      |

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

**Table B.25 Whether legal costs included disbursements (Table 3.30)**

|                        | Percentage of cases |
|------------------------|---------------------|
| Yes – amount known     | 53                  |
| Yes – amount not known | 21                  |
| No                     | 1                   |
| Do not know            | 25                  |
| <i>n</i>               | 1,995               |

Source: NIESR survey.

**Table B.26 Average disbursements (2012 prices) (Table 3.31)**

|                 | Value  | <i>n</i> |
|-----------------|--------|----------|
| Mean            | £4,951 | 1,091    |
| Median          | £3,687 | 1,091    |
| 1% trimmed mean | £4,681 | 1,071    |
| 5% trimmed mean | £4,338 | 980      |

Source: NIESR survey.

**Table B.27 Whether legal costs included after-the-event (ATE) insurance costs (Table 3.32)**

|                        | Percentage of cases |
|------------------------|---------------------|
| Yes – amount known     | 43                  |
| Yes – amount not known | 12                  |
| No                     | 11                  |
| Do not know            | 33                  |
| <i>n</i>               | 1,995               |

Source: NIESR survey.

**Table B.28 Average ATE insurance costs (2012 prices) (Table 3.33)**

|                 | Value  | <i>n</i> |
|-----------------|--------|----------|
| Mean            | £2,470 | 865      |
| Median          | £1,905 | 865      |
| 1% trimmed mean | £2,433 | 856      |
| 5% trimmed mean | £2,287 | 796      |

Source: NIESR survey.

## Study into average civil compensation in mesothelioma cases

**Table B.29 Average base legal costs (2012 prices) (Table 3.34)**

|  | <b>Value</b> | <b><i>n</i></b> |
|--|--------------|-----------------|
| <b>Deduced from all available cases</b>  |              |                 |
| Mean   | £18,610      | <i>n/a</i>      |
| <b>Computed from all cases with valid information on all three cost elements</b> |              |                 |
| Mean   | £20,218      | 678             |
| Median   | £15,274      | 678             |
| 1% trimmed mean  | £15,274      | 662             |
| 5% trimmed mean  | £15,370      | 610             |

Source: NIESR survey.

Note: these figures should be treated with caution for the reasons stated in the text.