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DEBRIEF: A Kings Chambers Podcast Factsheet

EPISODE 7 – Mesothelioma and Immunotherapy

Nigel Poole QC, Michael Rawlinson QC and Jeremy Roussak discuss the various mechanisms by which defendants (and their insurers) can be induced and, if necessary, forced to fund treatment for mesothelioma.

"Mesothelioma is a hideous disease that is inevitably fatal." Lord Phillip's opening words in Sienkiewicz v Greif (UK) Ltd [1] remain sadly true, yet there is some cause for cautious optimism that new drugs are capable of significantly extending life expectancy while maintaining a high quality of life.

Malignant mesothelioma is a cancer of the lining of the chest (usually) or abdomen. It is caused by exposure to asbestos; apart from some rare cases in which it can arise after radiotherapy for breast cancer, under the irradiated area, probably only by exposure to asbestos.

Surgery has not been shown to be of much value. Chemotherapy, which can be highly unpleasant and poorly tolerated, shrinks the tumour in many cases and a second course can be given when the disease advances after the first. But life expectancy remains less than a year from diagnosis. Desperation has led some to subject themselves to therapies which can be of no obvious benefit [2].

Immunotherapy works by activating the immune system, the body's own defence mechanism, against the cancer. Its side-effects tend to be milder than those of chemotherapy. Early studies were encouraging. In one, conducted on patients whose tumours were advancing after chemotherapy, 25% showed tumour regression and a further 50% slowing of tumour growth. However, immunotherapy for mesothelioma is a very expensive (potentially upwards of £100,000 per year) and is not available on the NHS.

The huge uncertainties about the cost of immunotherapy, when it might start (if it has not started during the litigation), for how long it might be required, whether it might stop and re-start, whether the drug regime might be changed, potentially to new drugs not yet available, present difficulties which the law is poorly equipped to address.

Kings Chambers, working with solicitors particularly at Irwin Mitchell, have developed several mechanisms by which defendants (or almost invariably their insurers) can be induced and, if necessary, forced to fund the treatment. We discuss those mechanisms in this podcast.

Cases referenced in the Podcast

[1] Sienkiewicz v Greif (UK) Ltd [2011] UKSC 10

[2] Najib v John Laing plc [2011] EWHC 1016 (QB)

Speaker Profiles

Nigel Poole QC

Nigel is ranked as a leading QC by Chambers UK and the Legal 500. He is Head of Kings Chambers and sits as a Deputy High Court Judge and a chair of the Bar Tribunal and Adjudication Service. He has appeared in the Supreme Court and Court of Appeal. He has given many lectures and seminars around the country on subjects including human rights, loss of earning capacity and proving reduction in life expectancy.

Michael Rawlinson QC

Michael's main area of practice arises from claims where historic exposure to any bodily insult is argued to have led to late onset sequelae. Michael is regularly instructed in litigation aimed at resolving 'generic' issues, the value of which stretches across very large numbers of cases with combined values exceeding beyond £100 million. Michael has been instructed in litigation which requires him to work with counterparts throughout the Commonwealth and the US.

Jeremy Roussak

Jeremy practises almost exclusively in the fields of personal injury and clinical negligence. He qualified as a doctor in 1983 and worked in hospital medicine for more than ten years before being called to the Bar. Jeremy is instructed on cases of all values, including very high value claims involving catastrophic injury at birth or in road traffic accidents. He has appeared on behalf of government departments, including the Ministry of Defence and the Ministry of Justice, in personal injury and clinical negligence cases and at inquests.

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