

Asbestos

The re-emergence once again
of a never-ending problem

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5 September 2023

Agenda

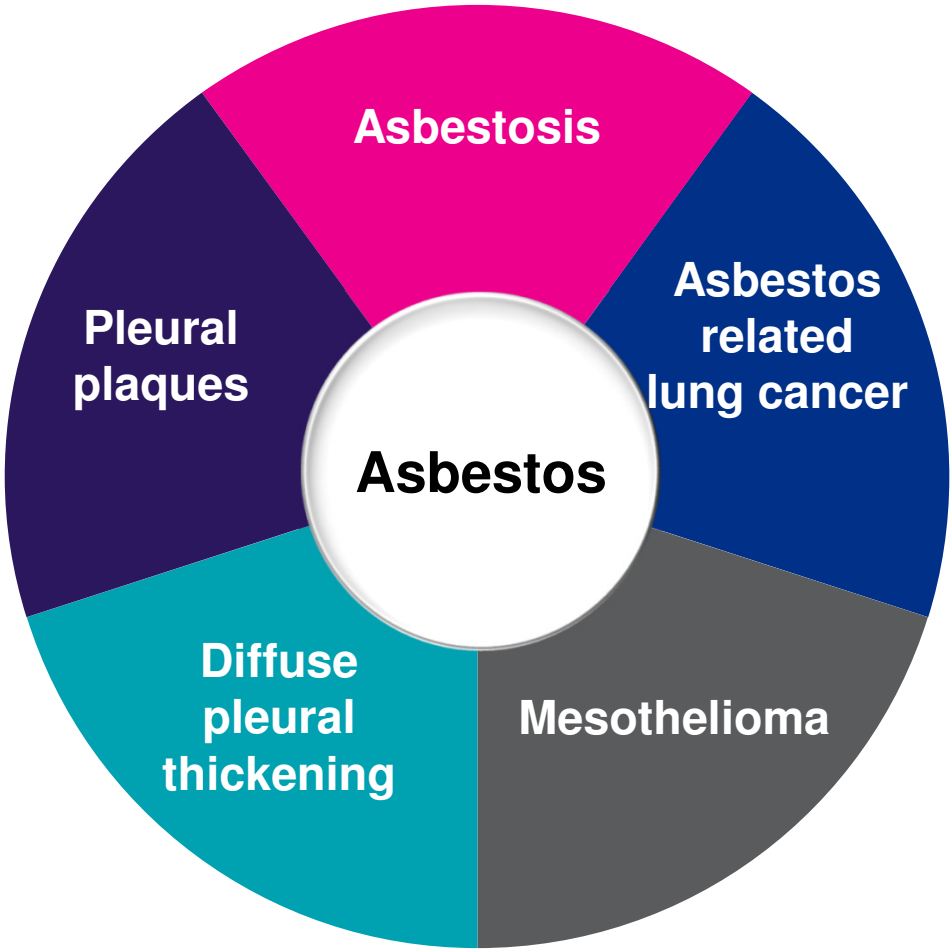
- Introduction
- What is asbestos?
- Asbestos related injuries
- Brief history of medical and industry knowledge of asbestos risks
- Duty of care/Breach of duty
- Causation
- Dealing with asbestos claims
- Asbestos today: The claims of tomorrow

What is asbestos?

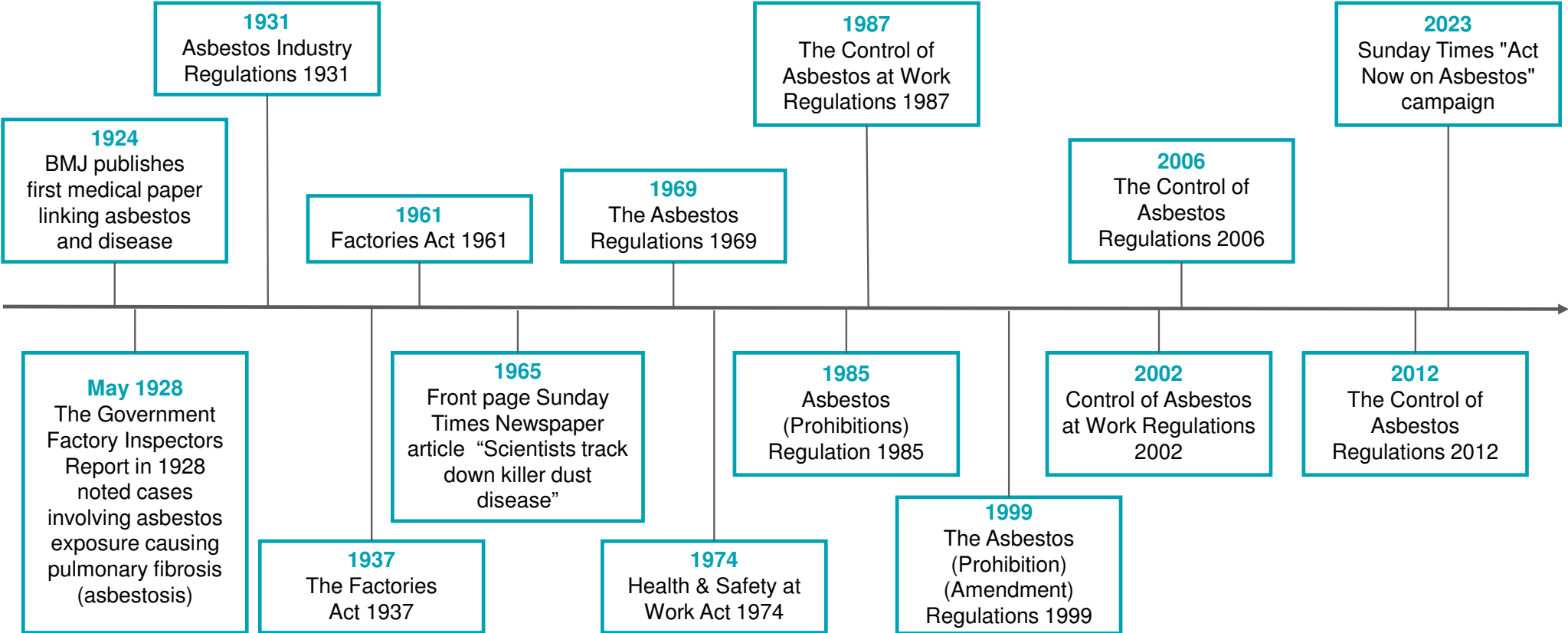
- Naturally occurring fibrous materials that have crystallised to form fibres
- Strong – fire/chemical/degradation resistant
- Used in many products – particularly for buildings/pipes/boilers
- All forms are carcinogenic



Asbestos related injuries

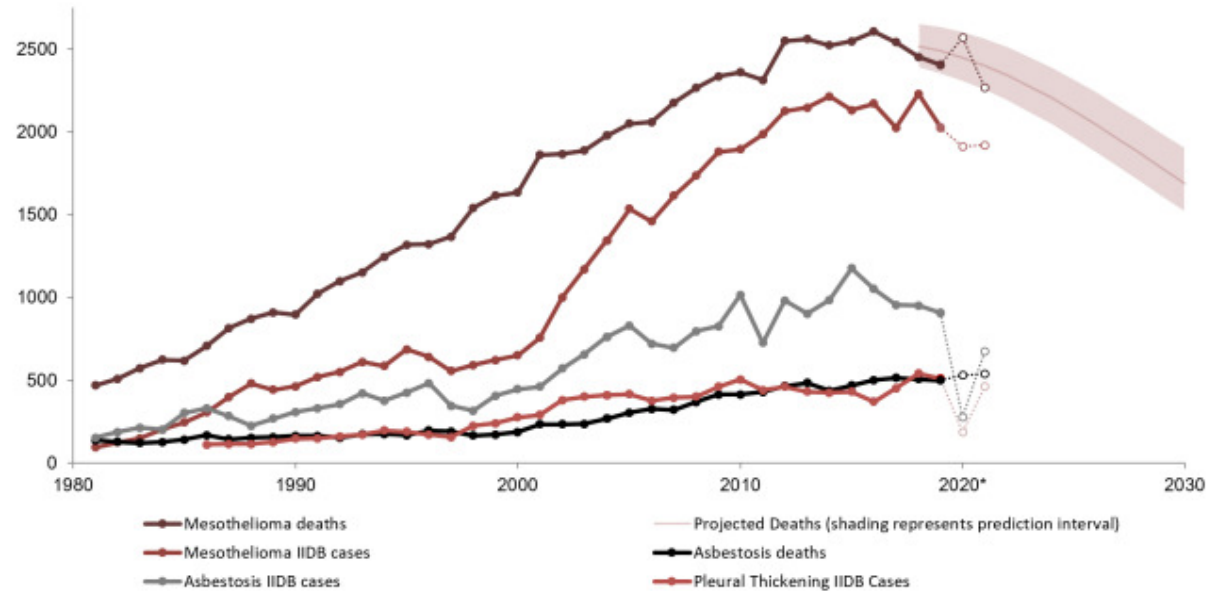


Timeline



Time Trends

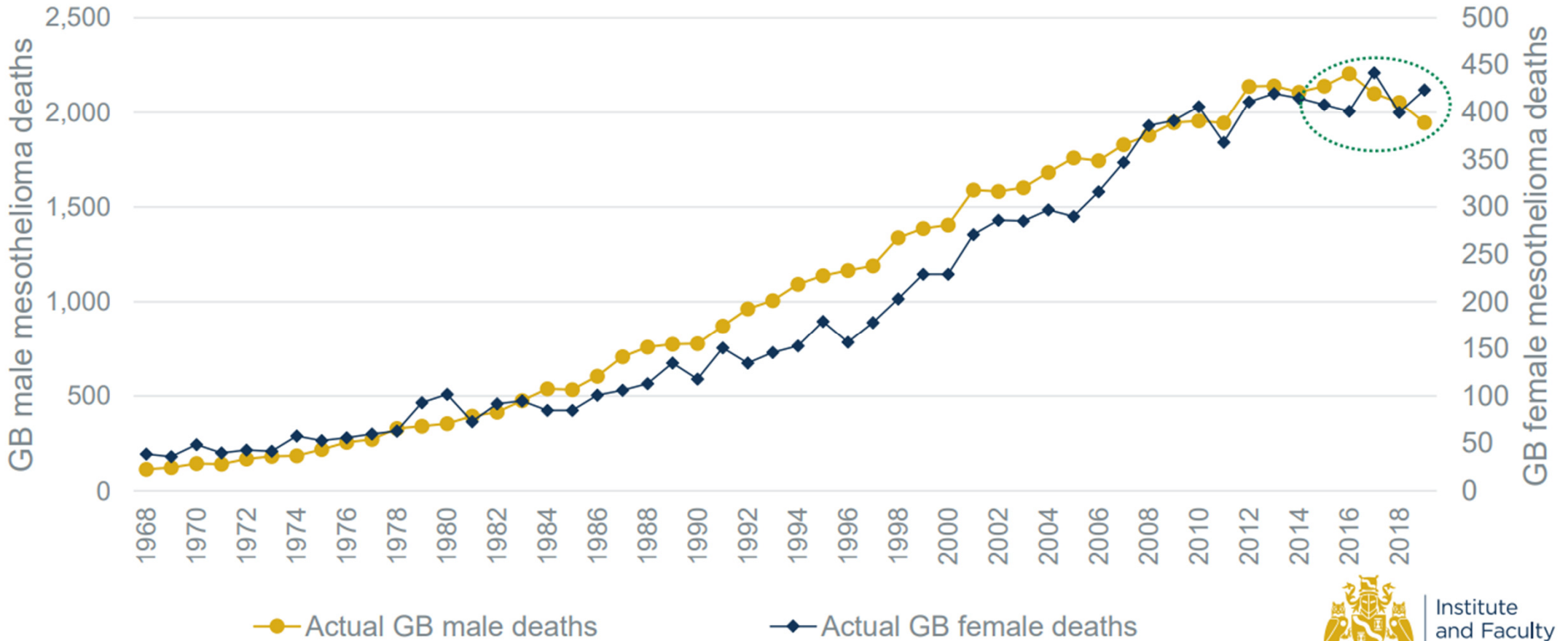
Figure 1: Mesothelioma, asbestosis, and pleural thickening: time trends in annual deaths and Industrial Injuries Benefit Disablement (IIDB) cases



** Note. Figures for deaths occurring in 2020 and 2021 (shown as white circles) may have been affected by the coronavirus pandemic. Assessments of new IIDB cases were substantially reduced in 2020 and may also have been affected during 2021, though this less likely for mesothelioma due to its prioritisation for assessment.*

*Graphics from HSE website

GB male and female mesothelioma deaths



Source: <https://www.hse.gov.uk/statistics/tables/>



11 November 2021

*Graphics from HSE website

Duty of care/breach of duty

- General Duty
 - Reasonable care to protect those affected by an activity against a foreseeable risk of injury
- Low Level Exposure
 - Pre-65 – *Cuthbert v Taylor Woodrow* (appeal pending)
 - Post-65 – *Bussey v Anglia Heating Ltd*



Causation in mesothelioma claims

- ***Fairchild v Glenhaven*** [2002] – The Fairchild Exception
- ***Barker v Corus UK PLC*** [2006]
- S.3 The Compensation Act 2006
- ***Bannister v Freemans*** [2020] – *De Minimis* defence?
- “Test” of materiality: a dose which a medical practitioner who is aware of the medical risks would define as something that the average patient should not worry about (is not material)

How insurers deal with asbestos claims

- EL claims (trigger litigation)
 - *Durham v BAI (Run off Ltd)* [2012]
- PL Claims
 - *Bolton Metropolitan Borough Council v Municipal Mutual Insurance Limited and Commercial Union Assurance Company Limited* [2006]
- IDCWP
- ELTO

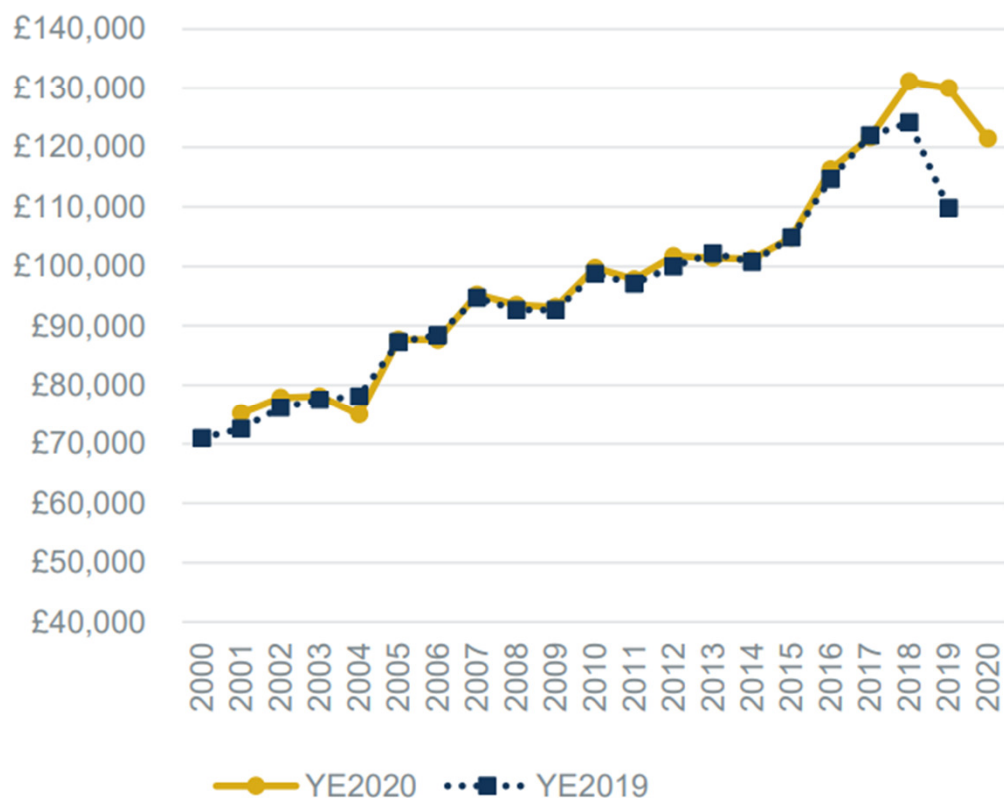


The asbestos list and increasing costs

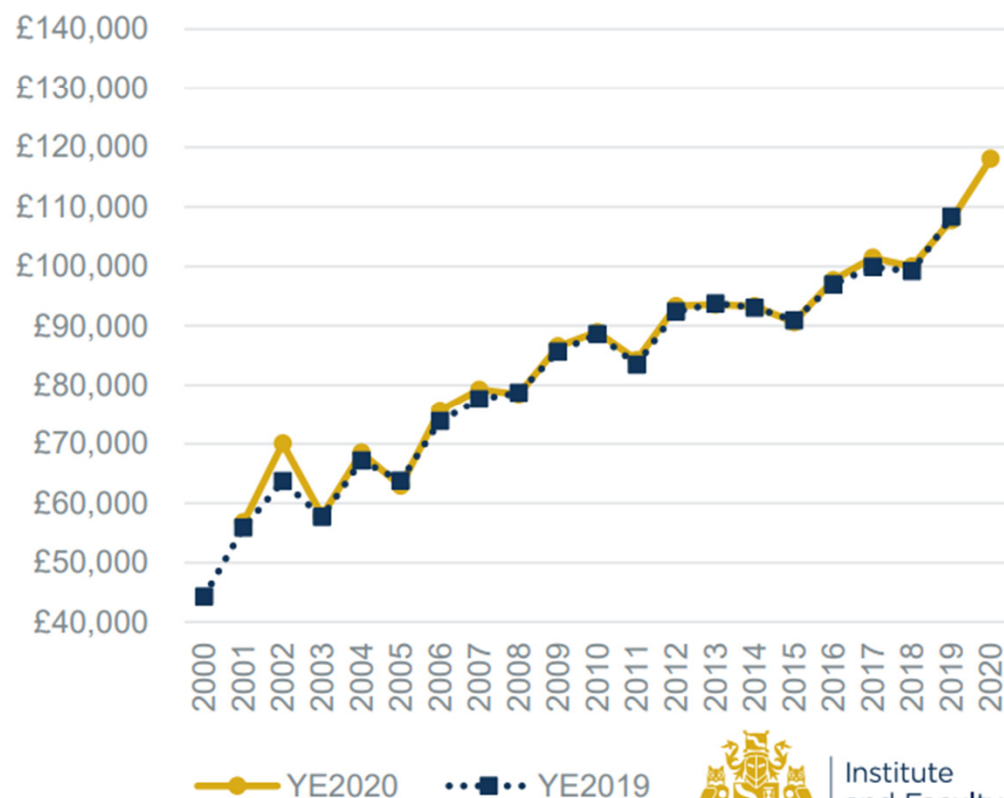
- Asbestos List – Show Cause Procedure
- Cases under £100k exempt from Fixed Recoverable Costs
- QOCS does not apply to Mesothelioma claims
- Private treatment
- Claims Inflation – *Blair v Jaber* [2023]
- “Discount” rate

Mesothelioma average cost per claim (excluding nils)

Incurred average cost by report year



Settled average cost by settlement year



Source: IFoA UK Asbestos Working Party Survey's



Institute and Faculty of Actuaries

Asbestos today

- Continuing poor practice
- Majority of cases still from direct exposure
- Sunday Times “Act Now on Asbestos”



Asbestos today – schools

- Health & Safety Executive – 2022/2023 – Management of asbestos in school buildings
 - Most schools managing asbestos in buildings effectively – 7% need enforcement action
- Common areas are identified in the report
 - Having an up-to-date survey
 - Management plan for monitoring
 - Training for anyone carrying out work likely to disturb asbestos



Asbestos today

- Asbestos Testing and Consultancy (**ATaC**) and the National Organisation of Asbestos Consultants (**NORAC**): The First Annual Data Analysis Report into Asbestos in UK Buildings, November 2022
 - Of the 128,761 buildings inspected, 100,660 (78%) were found to contain asbestos
 - Within those 100,660 buildings, 710,433 items of asbestos were found
 - Out of the 710,433 items of asbestos, 507,612 (71%) were recorded as having some level of damage
 - Of the 507,612 damaged items, 120,629 (24%) would be classed as “licensable” work and require a specialist contractor



The impact on future claims

- Challenge is working out how they were exposed – if no one exposure is identified the claim is currently unlikely to succeed
- Employers and public bodies are likely to be the focus of enquiries as “easiest targets”
- More single exposure cases and/or less potential for recovery from other contributors
- Claims are likely to be more expensive and the cost may not be shared between insurers as it is currently



What could replace asbestos?

- Silicosis?
- Microplastics?
- Glyphosate?
- Pollution?
- Toxic mould?



Q&A

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