

Asbestos claims – assessing the risk

Employers dealing with claims for asbestos related injuries will be aware that cases usually involve secondary exposure; in other words where an individual has not worked directly with asbestos, but close to where asbestos has been disturbed. Disputes often arise as to whether the exposure was sufficient to have caused the claimant's medical condition.

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In *Bannister v Freeman* a claim was brought on behalf of Mr Bannisters estate after he had died of mesothelioma. Mr Bannister had worked as an account's manager in a large 4 storey Victorian building. The exposure to asbestos dust was alleged to have occurred over the course of a week after partitions allegedly containing asbestos were replaced over a week-end in around 1983/4.

Following the case of *Fairchild v Glenhaven Funeral Services Ltd* (2002) it would only be necessary to prove that any negligent exposure brought about a 'material increase in risk' of the claimant developing mesothelioma for the deceased to succeed in proving a causative link to find in favour of the claimant.

In *Bannister* the judge did not accept the claimant had been exposed to asbestos and reached the conclusion that, had the boards contained asbestos, a specialist firm would have been called in to carry out their removal. However, the judge also considered what the exposure would have been had partition boards contained asbestos and exposure taken place.

The judge took the mid-point between the party's respective engineering experts and determined that the exposure dose of asbestos was no more than 0.0004 fibre/ml years, which was also quantified as a 1 in 50 million increase in risk.

Both medical experts agreed that on seeing a patient with this level of exposure they would tell the patient not to worry about an increase in risk. The judge added that the deceased's expert was straining logic to regard this figure of 1 in 50 million as a 'material increase in risk'.

The judge dismissed the claim, taking the view that the test of whether exposure was 'material' would be such that 'a medical practitioner who is aware of the medical risks would define it as something that the average patient should not worry about.'

This may be viewed as helpful guidance as to what is meant by a 'material increase in risk' and may lead to more low-level asbestos cases being defended by employers.

This article was first published by *Western Morning News* and [Business Live](#).

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