

**IN THE MATTER OF T&N LIMITED (AND THE OTHER SCHEME COMPANIES)
AND IN THE MATTER OF THE COMPANIES ACT 1985**

**As amended by the EL 2007 Amending Deed dated 1 May 2008, the EL 2008 Amending Deed dated 29
May 2009 and the EL 2009 Amending Deed**

**TRUST
DISTRIBUTION PROCEDURES
RELATING TO THE EL SCHEMES**

Contents

1	Introduction	1
1.1	Definitions and Interpretation	1
1.2	Scope of the TDP	1
1.3	Core Objective	1
2	Establishment of EL Claims	1
2.1	Advertising for EL Claims	1
2.2	Time Limits on EL Claims	2
2.3	Proofs of Claim	2
2.4	Election by Claimant for Expedited Review Process or Individual Review Process	3
2.5	Expedited Review Process	3
2.6	Individual Review Process	5
2.7	Claims must be for the most severe Disease Level	7
2.8	Subsequent Claims	7
2.9	Special Provisions applicable to deceased Injured Persons and certain living Injured Persons	7
2.10	Special Provisions applicable where there is joint liability	8
2.11	Proofs of Claim: Trustees' powers and procedures	8
2.12	Expert Determination of Disputes	9
2.13	Trustees' powers of amendment	10
3	Payments to claimants	11
3.1	Computation and Review of the Payment Percentage	11
3.2	Suspension of payments from the Trust Fund	11
3.3	Computation and review of Additional Dividend and Extraordinary Dividend	11
3.4	Payments in respect of Established Claims from the Trust Fund	12
3.5	Payment Mechanics	13
3.6	No Clawback	14
3.7	Deductions from Payments and Repayments	14
4	Revision of Values, Payment Percentages, costs caps and medical costs	14
4.1	Introduction	14
4.2	Special Provisions for Values in Schedule 3	15
	Schedule 1	16
	Schedule 2	17
	Schedule 3	18

SECTION ONE

1 Introduction

1.1 Definitions and Interpretation

1.1.1 In this TDP, unless the context otherwise requires or expressly provides:

- (a) defined terms shall bear the meanings given in the Definitions and Interpretations Schedule;
- (b) the interpretation provisions set out in the Definitions and Interpretation Schedule shall apply to the interpretation of this TDP.

1.1.2 A Non Scheme EL Claimant who is treated as being an EL Claimant pursuant to Clause 14 of the EL Schemes will be treated for all purposes as if he were an EL Claimant and references to EL Claimants in this TDP shall be so construed.

1.2 Scope of the TDP

This TDP sets out the procedures that must be followed by any claimant claiming a payment in respect of an EL Claim from the Trust Fund. It also sets out the procedures the Trustees will follow in determining whether or not they should make a payment out of the Trust Fund and in determining the amount of the payment. No claimant has a right to receive a payment in respect of an EL Claim unless it is made by the Trustees in accordance with the terms of this TDP.

1.3 Core Objective

The Core Objective is twofold:

- (i) to enable EL Claimants with Established Claims to receive a payment (or payments) from the Trust Fund which:
 - (a) reflect the value of the underlying EL Claim assigned to the Trust by the EL Claimant;
 - (b) are fair and proportionate having regard to the interests of other EL Claimants with similar EL Claims;
 - (c) are calculated in an efficient and cost-effective manner following an efficient and cost-effective review of the EL Claim; and
- (ii) to enable the EL Insurers to benefit from the payments, releases and other rights provided to them by the EL Scheme.

SECTION TWO

2 Establishment of EL Claims

2.1 Advertising for EL Claims

The Trustees shall notify and/or advertise for EL Claimants in the following manner:

- 2.1.1 As soon as reasonably practicable after the Effective Date, the Trustees shall write to all EL Claimants of whom they are aware to give them notice of the establishment of the Trust and to invite them to submit a Proof of Claim in accordance with Clause 2.3 of this TDP.
- 2.1.2 The Trustees shall, as soon as reasonably practicable after the Effective Date, place advertisements in the Law Society Gazette, together with two national newspapers of their choice, explaining who can make a claim against the Trust and how to make such a claim. Thereafter, the Trustees shall place advertisements in materially the same terms in the Law Society Gazette every year, and in two national newspapers of their choice on the fifth anniversary of the Effective Date and every 5 years thereafter.
- 2.1.3 The Trustees shall not be obliged further to advertise for, or otherwise invite, the submission of EL Claims.

2.2 Time Limits on EL Claims

- 2.2.1 The Trustees shall not admit as Established Claims claims in respect of EL Claims which would have been statute-barred if made in proceedings commenced against a Scheme Company or Non Scheme Company when the Proof of Claim was lodged, unless
- (a) such proceedings were in fact issued before the expiry of the relevant limitation period for the claim; or
 - (b) there is a standstill agreement in respect of the claim with any of the Scheme Companies or Non Scheme Companies, and the limitation period for the claim had not expired before the standstill agreement was entered into.
- 2.2.2 Notwithstanding the above, the Trustees may in their absolute discretion admit a claim in respect of an EL Claim as an Established Claim if, having regard to the provisions of section 33 of the Limitation Act 1980 or section 19A of the Presumption and Limitation (Scotland) Act 1973 or Article 50 of the Limitation (Northern Ireland) Order 1989, they consider it equitable to do so.
- 2.2.3 Should a claimant disagree with the Trustees' decision under Clause 2.2.2, the claimant shall, within 28 days, give the Trustees written notice that he wishes to refer the matter to the TDP Expert pursuant to Clause 2.12. The TDP Expert's decision shall be final and binding.

2.3 Proofs of Claim

- 2.3.1 A claimant who wishes to make a claim in respect of an EL Claim for a payment out of the Trust Fund must lodge a Proof of Claim with the Trustees.
- 2.3.2 A claimant shall be responsible for the cost of completing and lodging the Proof of Claim and providing such documentary or other evidence as the Trustees may require in accordance with Clause 2.11 below, subject only to the rights of reimbursement of costs provided for in Clauses 3.4.4 and 3.4.5.
- 2.3.3 Claimants are required to provide the information set out in the Proof of Claim.
- 2.3.4 Before admitting a claim as an Established Claim, the Trustees must first be satisfied that the Proof of Claim is in respect of an EL Claim. Claimants may make separate claims based on Asbestos Exposure by more than one Scheme Company. All such claims must be made in one Proof of Claim.
- 2.3.5 Claims in relation to deceased Injured Persons pursuant to the Statutes must be made in one Proof of Claim.
- 2.3.6 To avoid costs being incurred unnecessarily where Proofs of Claim are lodged in relation to deceased Injured Persons:

- (a) where the payment in respect of the EL Claim will not exceed the amount from time to time fixed for the purpose of s.1 of the Administration of Estates (Small Payments) Act 1965 (currently £5000), Clause 12 of the Trust will apply, and the Proof of Claim may be lodged by the Personal Representative of the deceased Injured Person or any person appearing to the Trustees to be entitled to any benefit from the deceased Injured Person's estate;
- (b) where the payment in respect of the EL Claim will exceed the amount from time to time fixed for the purpose of s.1 of the Administration of Estates (Small Payments) Act 1965 (currently £5000), the Proof of Claim must be lodged by a Personal Representative, and where there is no Personal Representative, one must be appointed in order for the claim to be processed by the Trust.

2.3.7 In Disease Level V Cases, Proofs of Claim may be lodged. Payment in respect of these claims will not be made unless there is a change in the law resulting in these claims being compensable. If such a change in the law occurs, the provisions of this TDP will apply.

2.4 Election by Claimant for Expedited Review Process or Individual Review Process

2.4.1 All claims in respect of EL Claims other than Contribution Claims and CRU Claims are eligible for Expedited Review.

2.4.2 A claimant who is eligible for Expedited Review shall elect in his Proof of Claim whether he wishes the Trustees to adopt the Expedited Review Process described in Clause 2.5 or the Individual Review Process described in Clause 2.6 of this TDP. If he fails so to elect, he will be deemed to have elected the Expedited Review Process.

2.4.3 If a claimant chooses to proceed by way of the Individual Review Process, he will not be entitled to recover Actual Legal Costs in accordance with Clause 3.4.4 unless the Trustees or TDP Expert determine that the value of his Established Claim is at least 10% higher than the Expedited Review Value for the relevant Disease Level in the Expedited Review Process.

2.4.4 CRU Claims and Contribution Claims must proceed by way of the Individual Review Process.

2.5 Expedited Review Process

2.5.1 Where the claimant elects to have his claim assessed under the Expedited Review Process, the Trustees shall consider whether the claim meets one or more of the Presumptive Medical and Exposure Criteria applicable to any of the Disease Level(s) set out in Schedule 1. The diagnosis of the medical criteria in Schedule 1 shall be undertaken by a Medical Expert, who must be an accredited respiratory specialist or a retired consultant in respiratory medicine in cases of Disease Levels I to IV and must be a qualified doctor in cases of Disease Level V.

2.5.2 The Trustees shall not be bound to accept the findings of the Medical Expert provided by the claimant and may obtain and rely on such further medical evidence (without limitation) as they think fit, including but not limited to the obtaining of a report from another Medical Expert in the event of uncertainty concerning the Injured Person's condition or where they consider the medical evidence provided to them by the claimant to be unsatisfactory.

2.5.3 The Trustees shall not be bound by the exposure evidence provided by the claimant and may obtain evidence from a consultant engineer or such other evidence (without limitation) as they think fit to assist them in determining the extent and relevance of any Asbestos Exposure alleged by an claimant.

2.5.4 If the Trustees determine that a claim meets all the relevant Presumptive Medical and Exposure Criteria for the relevant Disease Level they shall admit the claim as an Established Claim accordingly.

2.5.5 Where the Trustees determine that a claim should be admitted as an Established Claim under the Expedited Review Process, they shall value the Established Claim as follows:

- (a) in Disease Levels I and II cases, the Trustees shall apply the Expedited Review Value for the relevant Disease Level set out in table 1 of Schedule 3.
- (b) In Disease Level II cases, where the claimant was a smoker the Trustees shall apply a discount of 10% to the Expedited Review Value to reflect contributory negligence.
- (c) in Disease Levels III and IV cases, the Trustees shall first consider the severity of the Asbestos Disease in respect of which the Trust Claim is made by reference to the Disability Rating Scale set out in Schedule 2. They shall calculate the value of the Established Claim by applying the Expedited Review Value for mild, moderate or severe cases of the Asbestos Disease set out in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than a Scheme Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied;
- (d) in Disease Level V cases, the Trustees shall apply the Expedited Review Value for the relevant Disease Level set out in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure by any party other than a Scheme Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied;
- (e) in cases where the Injured Person is deceased, the value of the Established Claim shall be set at the relevant Expedited Review Value for the relevant Disease Level set out in tables 2 and 3 of Schedule 3;
- (f) in all cases, if an EL Claimant has received a payment from or on behalf of any other party in respect of his Asbestos Disease, he must disclose the amount of the payment to the Trustees. The Trustees may take the whole or part of the payment into account when valuing the Established Claim, if they consider it appropriate to do so.

2.5.6 If the Trustees determine that a claim shall be admitted under the Expedited Review Process, they shall send the claimant an Expedited Review Admission Notice setting out in summary form the payment to be made to the claimant, calculated as follows:

- (a) the value of the Established Claim which they have determined under the Expedited Review Process;
- (b) the net sum payable to the claimant after application of the then current Payment Percentage in accordance with Clause 3.4.1; and
- (c) any Costs Payments which the Trustees have determined should be paid pursuant to Clauses 3.4.4 and 3.4.5.

2.5.7 If the Trustees determine that a claim shall be rejected under the Expedited Review Process, they shall send the claimant an Expedited Review Rejection Notice giving detailed reasons for their decision.

2.5.8 Any claimant who is dissatisfied with his Expedited Review Admission Notice or an Expedited Review Rejection Notice may elect to have his claim considered by the TDP Expert pursuant to Clause 2.12 provided that he gives notice in writing to the Trustees of such election in the form set out in the Expedited Review Admission Notice or Expedited Review Rejection Notice (as the case may be) within 28 days of the date of such Expedited Review Admission Notice or Expedited Review Rejection Notice. Upon giving notice of such election the claimant shall lose any right to receive payment from the Trust Fund under the Expedited Review Process until the TDP Expert has made his determination. If a claimant fails to give notice under this

Clause he shall be bound by the determination of his claim by the Trustees under the Expedited Review Process and shall have no further right of appeal or review.

2.6 Individual Review Process

2.6.1 Where a claimant elects to have his claim assessed under the Individual Review Process the Trustees shall determine whether the claim should be admitted as an Established Claim in accordance with this Clause 2.6.

2.6.2 The Trustees shall consider the claim by reference to the relevant United Kingdom common law and statutory provisions and shall have regard to all the information given in the Proof of Claim, and all circumstances which the Trustees (in their absolute discretion) consider relevant, including but not limited to:

- (a) awards or settlement values of similar claims for the same Disease Level against Scheme Companies or other comparable companies;
- (b) the strengths and weaknesses of the available evidence relating to the applicable Disease Level and medical and exposure criteria, including but not limited to the Presumptive Medical and Exposure Criteria set out in the table in Schedule 1 and the Disability Rating Scale set out in Schedule 2;
- (c) the Injured Person's age, symptoms and disability;
- (d) the extent to which the relevant disease is attributable to Asbestos Exposure otherwise than in the course of the Injured Person's work as Employee;
- (e) the extent to which injury, disability and losses are attributable to some comorbid condition unrelated to Asbestos Disease.

2.6.3 The Trustees may obtain and rely on such legal, medical or other advice as they think fit (without limitation) for the purpose of the consideration of claims under Clause 2.6.2.

2.6.4 Where the Trustees determine that a claim should be admitted as an Established Claim under the Individual Review Process, they shall calculate the value of the Established Claim as follows:

- (a) In Disease Levels I and II, the value of the Established Claim shall be set at such amount as the Trustees shall determine but not exceeding the Maximum Value for the relevant Disease Level set out in table 1 of Schedule 3.
- (b) In Disease Level II cases, where the claimant was a smoker the Trustees may, if they consider it appropriate, apply a discount of up to 20% to the value that otherwise would have been fixed for Established Claims, to reflect contributory negligence.
- (c) in Disease Levels III and IV cases, the Trustees shall first consider the severity of the Asbestos Disease in respect of which the Trust Claim is made by reference to the Disability Rating Scale set out in Schedule 2. ~~They shall calculate the value of the Established Claim by applying the Maximum Value for mild, moderate or severe cases of the Asbestos Disease set out in Schedule 3. They shall set the value of the Established Claim at such amount as they shall determine, but not exceeding the Maximum Value for mild, moderate or severe cases of the Asbestos Disease in table 1 of Schedule 3.~~ If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than a Scheme Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied;

- (d) In Disease Level V cases, the value of the Established Claim shall be set at such amount as the Trustees shall determine but not exceeding the Maximum Value for the relevant Disease Level set out in table 1 of Schedule 3. If it appears to the Trustees that the Asbestos Disease is attributable to any material extent to Asbestos Exposure caused by the activities of any party other than a Scheme Company, the Trustees shall apply the Apportionment Formula to the value of the Established Claim. If there is no sufficient evidence of material Asbestos Exposure by any other party, the Apportionment Formula shall not be applied;
- (e) In cases where the Injured Person is deceased, the Trustees shall determine the value of the claim at an amount which shall not exceed the Maximum Value for the relevant Disease Level set out in tables 2 and 3 of Schedule 3;
- (f) in all cases, if an EL Claimant has received a payment from or on behalf of any other party in respect of his Asbestos Disease, he must disclose the amount of the payment to the Trustees. The Trustees may take the whole or part of the payment into account when valuing the Established Claim, if they consider it appropriate to do so.

2.6.4A In determining the value of Established Claims under clause 2.6.4 above, the Trustees shall assume that the Injured Person will not develop any disease or suffer any deterioration in his condition that would entitle the claimant to make a subsequent claim under clause 2.8 below. The Trustees shall only consider any such disease or deterioration if and when they receive a further Proof of Claim pursuant to clause 2.8 below.

2.6.4B The Trustees may, however, take into account evidence of a chance that at some definite or indefinite time in the future the Injured Person will, as a result of the act or omission which gave rise to the claim, develop a disease or suffer a deterioration in his condition that would not entitle the claimant to make a subsequent claim under clause 2.8 below. For example (without limitation) this means that the Trustees may take into account the risk of the Injured Person's percentage disability from Disease Levels III or IV worsening.

- 2.6.5 If the Trustees determine that a claim should be admitted under the Individual Review Process, they shall send the claimant an Individual Review Admission Notice setting out in summary form the payment to be made to the claimant, calculated as follows:
 - (a) the amount of the Established Claim which they have determined under the Individual Review Process broken down by heads of recovery;
 - (b) any amounts due in respect of a CRU Claim which may be lawfully set off against any amount due to the claimant in accordance with Clause 3.7.3;
 - (c) the net sum payable to the claimant after application of the then current Payment Percentage in accordance with Clause 3.4.1; and
 - (d) any Costs Payments which the Trustees have determined should be paid, pursuant to Clauses 3.4.4 and 3.4.5.
- 2.6.6 In the case of Contribution Claims, the Trustees shall value any Established Claim in such amount as they consider appropriate, taking into account relevant facts and matters, but not exceeding the Maximum Value for the relevant Asbestos Disease suffered by the Injured Person.
- 2.6.7 If the Trustees determine that a claim shall be rejected under the Individual Review Process, they shall send the claimant an Individual Review Rejection Notice giving detailed reasons for their decision.
- 2.6.8 Any claimant who is dissatisfied with an Individual Review Admission Notice or an Individual Review Rejection Notice may elect to have his claim determined by the TDP Expert pursuant to Clause 2.12 provided that he gives notice in writing to the Trustees of such election in the form set out in the Individual Review Admission Notice or Individual Review Rejection Notice

(as the case may be) within 28 days of the date of such Individual Review Admission Notice or Individual Review Rejection Notice. Upon giving notice of such election the claimant shall lose any right to receive payment from the Trust Fund in accordance with the Individual Review Process until the TDP Expert has made his determination. If the claimant fails to give notice under this Clause he shall be bound by the determination of his claim by the Trustees under the Individual Review Process and shall have no further right of appeal or review.

2.7 Claims must be for the most severe Disease Level

A claimant must claim for the most severe Disease Level for which he considers he qualifies at the time of lodging his Proof of Claim with the Trustees, and for this purpose Disease Level I shall be the most severe and Disease Level V shall be the least severe. Irrespective of the Disease Level alleged on the Proof of Claim, each claim shall be treated as if it were a claim in respect of an EL Claim for the most severe Disease Level for which the claimant is determined by the Trustees to qualify at the time of lodging the Proof of Claim with the Trustees.

2.8 Subsequent Claims

- 2.8.1 A claimant who lodges a Proof of Claim in respect of claim involving a non-malignant Asbestos Disease (Disease Levels III to V inclusive) may subsequently lodge a further Proof of Claim in respect of an EL Claim involving a malignant Asbestos Disease (Disease Level I or II) provided the claimant did not know the diagnosis of the malignant Asbestos Disease until after the Proof of Claim in respect of the non-malignant Asbestos Disease was lodged.
- 2.8.2 A claimant who lodges a Proof of Claim in respect of an EL Claim involving Disease Level IV or V may subsequently lodge a further Proof of Claim in respect of an EL Claim involving asbestosis (Disease Level III) provided the claimant did not know the diagnosis of asbestosis until after the Proof of Claim in respect of Disease Level IV or V was lodged.
- 2.8.3 Any subsequent claims made under this Clause must proceed by the Individual Review Process.

2.9 Special Provisions applicable to deceased Injured Persons and certain living Injured Persons

- 2.9.1 Subject to Clause 2.9.3 below, where a claim is lodged in respect of a living Injured Person, the first table at Schedule 3 to this TDP shall apply in determining the value of the Established Claim.
- 2.9.2 Where a claim is lodged in relation to a deceased Injured Person, the second and third tables at Schedule 3 to the TDP shall apply in determining the value of the Established Claim.
- 2.9.3 Where a claim is lodged by a living Injured Person in respect of Disease Levels I and II, who confirms in writing that he has no Dependants or Relatives or any person who is akin to a Dependant or Relative under equivalent legislation, or his Dependants or Relatives or any such persons confirm in writing by deed that they will not bring any claims pursuant to the Statutes on the death of the Injured Person, the first table at Schedule 3 to this TDP shall apply in determining the value of the Established Claim. Where there is no such confirmation, the amount of the pain and suffering element of the claim will be valued (subject to a maximum of £70,000 in Disease Level I cases, and a maximum of £60,000 in Disease Level II cases), and the remainder of the claim (the value of which will be determined in accordance with the second and third tables at Schedule 3 to the TDP) may be claimed by the individual who, on the death of the Injured Person, lodges a claim pursuant to Clause 2.3.6.
- 2.9.4 The aggregate of the values attributed to the Established Claim in respect of the Asbestos Disease of any one Injured Person will not exceed:
- (a) the relevant Expedited Review Value set out in Schedule 3 to this TDP where the claims proceed by the Expedited Review Process; or

- (b) the relevant Maximum Value set out in Schedule 3 to this TDP where the claims proceed by the Individual Review Process

so that where the living Injured Person or his Dependants or Relatives or persons akin to his Dependants or Relatives under any equivalent legislation provide the confirmation in 2.9.3, his claim is admitted by the Trustees and his Established Claim is valued according to the second or third table of Schedule 3 to the TDP, no additional claims will be accepted in respect of that Injured Person's Asbestos Disease.

2.10 Special Provisions applicable where there is joint liability

- 2.10.1 If a claimant brings a claim, and, prior to the claim being determined by the Trustees, a claimant has received a payment from or on behalf of any other party in respect an Asbestos Disease caused by the same Asbestos Exposure, he must disclose the amount of the payment received to the Trustees, and the Established Claim shall be reduced by the amount of the payment.
- 2.10.2 If a claimant who has received payment from the EL Scheme subsequently receives payment from or on behalf of another party, he must disclose the amount of the payment received. The Trustees may, in their absolute discretion, pursue the claimant in order to clawback any overpayment by the EL Scheme.

2.11 Proofs of Claim: Trustees' powers and procedures

- 2.11.1 The claimants shall co-operate with the Trustees in their consideration of claims. In particular, the claimant shall provide the Trustees with details of any matter required to be specified in the Proof of Claim, including further medical evidence or exposure evidence if the Trustees request it.
- 2.11.2 Pursuant to Clause 16 of the EL Schemes, the Scheme Companies shall co-operate with the Trustees in the Trustees' consideration of claims on the following terms:
 - (a) the Scheme Companies shall promptly provide the Trustees with such information and documents within their custody, possession or control as the Trustees may reasonably request. For the avoidance of doubt, the Scheme Companies shall not in any circumstances provide or be required to provide any legally privileged information or documents to the Trustees, or take any step which constitutes or gives rise to a breach of the Hercules Policy. The Trustees will return and refrain from using or relying upon any legally privileged document which they are informed post-disclosure was disclosed by mistake;
 - (b) the Scheme Companies shall meet any costs, fees and expenses incurred by the Scheme Companies in providing information or documents pursuant to a request made under Clause 16.1.1 of the EL Schemes;
 - (c) if the Scheme Companies do not meet the costs, fees and expenses referred to in Clause 16.1.2 of the EL Schemes, the Trustees shall pay these costs, fees and expenses, and the Trustees shall seek to recover from the Scheme Companies the amount of any such payment.
- 2.11.3 If a claimant or any legal adviser appointed by him fails to comply with a reasonable request for information by the Trustees under Clause 2.11.1, the Trustees shall be entitled to serve a notice giving the claimant or his legal advisers a further period of 28 days to respond, failing which the claim will be rejected.
- 2.11.4 A claim may be admitted by the Trustees either for the whole amount claimed by the claimant or for part of that amount, subject to the Expedited Review Values and Maximum Values provided by the tables in Schedule 3.

- 2.11.5 The Trustees may revise any determination of a claim they previously made (including the value of an Established Claim):
- (a) if they are satisfied that any fraud (including fraudulent misrepresentation or non-disclosure) was committed by or on behalf of the claimant in respect of the claim; or
 - (b) when deciding the amount of any Additional Dividend to be paid to EL Claimants with an Established Claims under Clauses 3.3 and 3.4, to take account of developments in the law or medical science in respect of the EL Claim.
- 2.11.6 A Proof of Claim may at any time, by agreement between a claimant and the Trustees, be withdrawn or varied.
- 2.11.7 The Trustees may, in their absolute discretion, enter into any compromise or arrangement with any claimant or any person claiming to have a claim in respect of an EL Claim.
- 2.11.8 Acceptance of an EL Claim for the purposes of voting at the Court Meeting shall not bind the Trustees to accept either the existence or the amount of the EL Claim.
- 2.11.9 The Trustees shall keep all documentation submitted to them by EL Claimants until at least 6 years after the termination of the Trust, although they may if they so decide keep it in electronic form only. The Trustees shall keep copies of all documentation submitted to them by the Scheme Companies for at least 6 years.

2.12 Expert Determination of Disputes

- 2.12.1 Where a claimant elects to have his claim referred to the TDP Expert under Clause 2.2.3, 2.5.8 or 2.6.8, this Clause shall apply.
- 2.12.2 The TDP Expert shall act as an expert and not as an arbitrator. The first TDP Expert shall be Ben Hytner of Byrom Street Chambers, 12 Byrom Street, Manchester M3 4PP. Subsequent TDP Experts shall be appointed by a resolution of the Trust Committee.
- 2.12.3 The TDP Expert shall assess the claim referred to him afresh, and shall not limit himself to a review of the Trustee's determination.
- 2.12.4 Each party to the dispute shall, within 28 days of notification by the claimant to the Trustees of his wish to refer the matter to the TDP Expert, provide the TDP Expert with his written representations and any evidence on which he wishes to rely regarding the matter. The TDP Expert shall have the power to extend the period in which such representations can be made.
- 2.12.5 Where the Trustees assessed the claim by way of the Expedited Review Process, the TDP Expert shall consider in particular whether the claimant satisfied the Presumptive Medical and Exposure Criteria set out in Schedule 1 on the basis of the information submitted by him to the Trustees, and any written representations provided to the TDP Expert under Clause 2.12.4. Where the Trustees assessed the claim by way of the Individual Review Process, the TDP Expert shall consider, in particular, whether the claimant established his claim on the basis of information submitted by him to the Trustees, and any written representations provided to the TDP Expert under Clause 2.12.4. In both cases, the TDP Expert may rely on evidence supplied by one party in the absence of evidence to the contrary from any other party, provided always that such matters or evidence are relevant to the criteria or factors, as appropriate, which are laid down in Schedule 1 (where the claimant elected for the Expedited Review Process) and in Clause 2.6.2 (where the claimant elected for the Individual Review Process).
- 2.12.6 Each party to the dispute shall comply promptly (and at his own expense) with all reasonable requests for information and other assistance that the TDP Expert makes in connection with his determination.

- 2.12.7 If an EL Claimant or any legal advisers identified by him in the Proof of Claim do not comply with a reasonable request for information by the TDP Expert under Clause 2.12.6, the Trustees shall be entitled to serve a notice giving the EL Claimant a further period to comply in default of which the TDP Expert shall be entitled to draw such adverse inferences as he considers appropriate or to reject the EL Claim.
- 2.12.8 The decision of the TDP Expert shall be final and binding on the parties and there shall be no right of review or appeal.
- 2.12.9 Where the Trustees assessed the claim by way of the Expedited Review Process, the TDP Expert shall not be entitled to make a determination of a claim in respect of an EL Claim in excess of the Expedited Review Value for the relevant Disease Level. Where the Trustees assessed the claim by way of the Individual Review Process, the TDP Expert shall not be entitled to make a determination of a claim in respect of an EL Claim in excess of the Maximum Value for the relevant Disease Level.
- 2.12.10 So far as the law permits, no claimant shall be entitled to challenge the validity of any act done or omitted to be done in good faith by the TDP Expert in pursuance of his functions or duties nor the exercise by the TDP Expert in good faith of any power or discretion conferred upon him, and the TDP Expert shall not be liable for any loss whatsoever and howsoever arising unless such loss is attributable to his own negligence, fraud or dishonesty.
- 2.12.11 The costs of the TDP Expert shall be borne:
- (a) where the Trustees have rejected a claim and the TDP Expert determines that the claim shall be admitted as an Established Claim, by the Trustees as an expense of the Trust;
 - (b) where the Trustees have admitted a claim and the TDP Expert determines that the claim shall be admitted as an Established Claim in an amount at least 20% higher than the amount determined by the Trustees, by the Trustees as an expense of the Trust;
 - (c) where the Trustees have rejected a claim and the TDP Expert determines that the claim shall be rejected, by the Trustees as an expense of the Trust, who shall be entitled to recover the amount of those costs from the claimant;
 - (d) where the Trustees have admitted a claim as an Established Claim and the TDP Expert determines that the claim shall be admitted but not for an amount at least 20% higher than the amount determined by the Trustees, by the Trustees, who shall be entitled to deduct the costs from the amount due to the claimant up to the amount determined by the TDP Expert, and any balance shall be payable as an expense of the Trust.
- 2.12.12 The Trustees and the claimant shall each bear their own costs and disbursements of the referral of the matter to the TDP Expert. In the case of the Trustees such costs and disbursements shall be expenses of the Trust.

2.13 Trustees' powers of amendment

- 2.13.1 Subject to ensuring that the Core Objective referred to in Clause 1.2 is maintained, the Trustees may, following consultation with the Trust Committee, by deed or written resolution amend Clauses 2.5, 2.6, 3.4.4 and 3.4.5 of the TDP and the Schedules to the TDP (including the Values therein, and the Payment Percentage) in order to:
- (a) take account of advances in scientific or medical knowledge or the law insofar as such advances or changes affect how EL Claims are dealt with under the TDP; or

- (b) make such amendments as may from time to time appear to be in the best interests of the beneficiaries of the Trust including but not restricted to any amendments or other arrangements necessary to obtain charitable status for all or part of the Trust.

2.13.2 Any such amendments must be in accordance with the Core Objective and in accordance with the Trustees' obligations as fiduciaries.

SECTION THREE

3 Payments to claimants

The Trustees shall make payments to claimants in accordance with this Section 3. For the avoidance of doubt, when making a payment in respect of a claim which gives rise to a liability to the CRU, the Trustees shall meet the liability to the CRU in accordance with this TDP, in particular Clauses 2.4.4 and 3.7.3.

3.1 Computation and Review of the Payment Percentage

- 3.1.1 The Trustees shall set the Payment Percentage at such rate as they consider appropriate to enable them to comply with the provisions of this TDP in accordance with the Core Objective, on the basis of the information and advice referred to in Clause 3.1.2, and after creating such reserves as they consider to be prudent in their absolute discretion relying on actuarial projections based on a prudent estimate.
- 3.1.2 In determining the rate at which the Payment Percentage is set, the Trustees shall consider and rely upon such legal, medical, fiscal, actuarial or (without limitation) other information and/or advice as they consider appropriate.
- 3.1.3 On the fifth anniversary of the Effective Date and every five years thereafter, the Trustees shall review and if appropriate revise the Payment Percentage as provided by Clause 4.1.1.

3.2 Suspension of payments from the Trust Fund

The Trustees shall suspend payments from the Trust Fund for such period (not exceeding 3 months) as they consider appropriate if information becomes available to them at any time as a result of which they determine that they should consider whether or not to set a revised Payment Percentage outside the 5-year cycle provided by Clause 4. As soon as practicable during and in any event at the end of the suspension period, the Trustees shall review the Payment Percentage and either set a revised Payment Percentage or conclude that the Payment Percentage need not be revised, and thereupon the suspension of payments shall be lifted. A Payment Percentage set in accordance with this Clause shall be reviewed every 5 years on each fifth anniversary of the Effective Date as provided by Clause 4.

3.3 Computation and review of Additional Dividend and Extraordinary Dividend

- 3.3.1 Within 12 months of the fifth anniversary of the Effective Date and every five years thereafter, and at such other time as they consider necessary, the Trustees shall consider whether to set an Additional Dividend Percentage at such rate as they consider appropriate to enable them to pay an Additional Dividend in respect of each Established Claim and may do so in their absolute discretion subject to Clause 3.3.2.
- 3.3.2 The Trustees shall not pay any Additional Dividend unless they consider, on the basis of the information and advice referred to in Clause 3.3.5, and by reference to the Additional Dividend, that after:
 - (a) they have otherwise complied with the provisions of Clause 3.4 in relation to all Established Claims as at the date on which they consider the matter; and

- (b) such reserves have been created by them as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on a prudent best estimate)

the Trust Fund will be sufficient to enable them to comply with the provisions of this TDP in accordance with the Core Objective.

3.3.3 At any time the Trustees may in their absolute discretion subject to Clause 3.3.4 set an Extraordinary Dividend Percentage at such rate as they consider appropriate to enable them to pay the balance of all Established Claims in full by way of an Extraordinary Dividend in respect of all Established Claims at that time.

3.3.4 The Trustees shall not pay an Extraordinary Dividend unless they consider, on the basis of the information referred to in Clause 3.3.5, and by reference to the Extraordinary Dividend, that after:

- (a) they have otherwise complied with the provisions of Clause 3.4 in relation to all Established Claims at the Review Date concerned; and
- (b) such reserves have been created by them as they consider to be prudent (for which purpose the Trustees shall be entitled in their absolute discretion to rely on actuarial projections based on an extremely prudent estimate)

the Trust Fund will be sufficient to enable them to comply with the provisions of this TDP in accordance with the Core Objective.

3.3.5 In considering whether to pay an Additional Dividend or an Extraordinary Dividend, the Trustees shall consider and rely upon such legal, medical, fiscal or actuarial or (without limitation) other information and/or advice as they consider appropriate.

3.3.6 Where the Trustees pay an Additional Dividend, every 5 years from the fifth anniversary of the Effective Date they shall review and if appropriate revise the level of Additional Dividend, as provided by Clause 4 below.

3.3.7 Where a claimant has received a dividend under the UK Asbestos Trust in relation to his residual claim, the Trustees may, when paying an Additional Dividend or Extraordinary Dividend, make all or part of the payment to the UK Asbestos Trustees if payment of all or part of the Additional Dividend or Extraordinary Dividend to the claimant on top of the dividend from the UK Asbestos Trust would result in the claimant recovering more than 100% on his Established Claim.

3.4 Payments in respect of Established Claims from the Trust Fund

3.4.1 The Payment Percentage current at the date of payment shall be applied to the value of the Established Claim as determined by the Trustees.

3.4.2 Where applicable, in accordance with Clause 3.3, the Additional Dividend or the Extraordinary Dividend shall be applied to the value of the Established Claim as determined by the Trustees. When considering the amount to be paid as an Additional Dividend, the Trustees may revise the value of an Established Claim they previously determined, in order to take account of developments in the law and medical science in respect of the EL Claim. The Trustees shall have absolute discretion to revise the value of an Established Claim on these grounds.

3.4.3 In addition to payments in respect of Established Claims the Trustees shall pay Costs Payments in respect of medical and legal costs in accordance with Clauses 3.4.4 and 3.4.5. Costs Payments shall be paid in full without application of any Payment Percentage, but subject to Clause 2 of the Trust and Clause 2.4.3 of this TDP.

3.4.4 Subject to Clause 3.4.3, the Trustees shall pay to a claimant with an Established Claim as a Costs Payment such amount as the Trustees see fit to cover the provision of medical evidence up to a maximum of:

- (a) £600 ~~300~~ in cases of Disease Levels I and II;
- (b) £800 ~~400~~ in cases of Disease Levels III and IV;
- (c) £50 in cases of Disease Level V.

3.4.5 Subject to Clause 3.4.3, the Trustees shall pay to a claimant with an Established Claim as a Costs Payment such amount as the Trustees see fit to cover the claimant's Actual Legal Costs but shall not pay more than:

- (a) £500 in relation to the first £5,000 of the Established Claim; plus
- (b) 5% of the amount by which the Established Claim exceeds £5,000 but does not exceed £20,000; plus
- (c) 2.5% of the amount by which the Established Claim exceeds £20,000; plus
- (d) where the claimant has reasonably (in the view of the Trustees in their absolute discretion) issued proceedings in respect of the EL Claim, the issue fee paid by the claimant in such proceedings,

and the aggregate of sums payable under (a) – (d) above shall not be more than £5,000.

3.4.6 In order to determine the Actual Legal Costs the Trustees shall be entitled to require the claimant to provide a certificate signed by a partner or principal in the firm or firms of solicitors instructed by him setting out the costs and disbursements actually incurred on his behalf.

3.4.7 Claimants shall not be entitled to any payments from the Trust other than those provided for by this TDP.

3.5 Payment Mechanics

3.5.1 All sums payable in respect of a claim:

- (a) may be paid by cheque in the name of the claimant, or as he may direct in writing, and sent by post to the claimant's last known address or such other address as is notified in writing by the claimant to the Trustees; or
- (b) may be paid by telegraphic transfer to such bank account as the claimant may from time to time notify in writing to the Trustees; or
- (c) where a Proof of Claim has been lodged in relation to a deceased Injured Person in accordance with Clause 2.3.6, may be paid by cheque in the name of the individual lodging the Proof of Claim, or as he may direct in writing, and sent by post to his last known address or such other address as is notified in writing by him to the Trustees,

except any payment which is to be made in respect of Actual Legal Costs under Clause 3.4.4 above shall be paid by separate cheque in favour of and sent to the addresses of the claimant's solicitors nominated in the Proof of Claim.

3.5.2 The sending of a cheque by the Trustees in accordance with Clause 3.5.1 shall be a good discharge of the Trustees and the Trustees shall not be liable to the claimant for any loss in transmission of a cheque drawn and sent in accordance with Clause 3.5.1. Receipt of the amount of a telegraphic transfer into the claimant's bank account notified to the Trustees in accordance with Clause 3.5.1 shall be a good discharge of the Trustees.

3.5.3 Where a telegraphic payment or an unbanked cheque is returned to the Trustees unclaimed, or a cheque is unbanked for six months after its date, the Trustees shall transfer the amount of the unclaimed payment to a separate interest bearing account for unclaimed payments until 14 days before the date when the Trustees propose to terminate the Trust or one year after the payment was sent, whichever is the sooner at which time, if the payment is still unclaimed, the Trustees shall transfer the unclaimed payment together with any interest earned to the Trust Fund and the monies so transferred shall form part of the Trust Fund and the claimant payee shall have no remaining right to any payment out of the Trust Fund.

3.6 No Clawback

A claimant shall not be required to repay any sum received by him in respect of an Established Claim (including any Additional Dividend or Extraordinary Dividend) by virtue only of any reduction of the Payment Percentage.

3.7 Deductions from Payments and Repayments

3.7.1 Subject to the provisions of this Clause 3.7, and Clauses 2.5.5(d) and 2.6.4(d), all payments to claimants shall be made in full without any deduction, set-off, lien or withholding whatsoever.

3.7.2 The Trustees may deduct any costs incurred by the Expert from payments to claimants, as provided in Clause 2.12.11.

3.7.3 In the case of Established Claims assessed by the Individual Review Process, the Trustees may set off any amounts due in respect of a CRU Claim which may lawfully be set off against any amount due to the claimant. There shall be no such set-off in the case of Established Claims assessed by the Expedited Review Process.

3.7.4 The Trustees may deduct such amounts on account of withholding or other tax as they consider to be required by law.

3.7.5 Without prejudice to any of their other rights to recover any overpayment the Trustees shall be entitled to deduct any overpayment made to a claimant from any further sum or sums due from time to time to such claimant out of the Trust Fund if:

- (a) after a claim has been admitted and paid as an Established Claim, the Proof of Claim is withdrawn or varied as provided for in Clause 2.11.6; or
- (b) after a claim has been admitted and paid as an Established Claim, it is shown to the satisfaction of the Trustees that an overpayment was made in respect of the EL Claim by reason of any material misrepresentation or non disclosure by or on behalf of the claimant.

SECTION FOUR

4 Revision of Values, Payment Percentages, costs caps and medical costs

4.1 Introduction

4.1.1 In addition to and without derogation from their power of amendment in Clause 17 of the Trust Deed, in order to comply with the requirements of the TDP and with the Core Objective, on the fifth anniversary of the Effective Date and every 5 years thereafter, and at such other time as they consider necessary, the Trustees shall review and if appropriate revise either upwards or downwards or keep at the same level:

- (a) the Expedited Review Values and the Maximum Values set out in Schedule 3;

- (b) the Payment Percentage in Clause 3.1, together with the level of any Additional Dividend;
- (c) the payments for medical costs in Clause 3.4.4;
- (d) the caps of £500 and £5,000 imposed on certain Actual Legal Costs in Clause 3.4.5;
- (e) the figures representing the pain and suffering element of a claim payable in accordance with Clause 2.9.3.

4.1.2 In conducting their review, the Trustees shall in their absolute discretion consider all such matters as appear to them to be relevant to their review, and may rely on such legal, medical, fiscal, actuarial or (without limitation) other information and/or advice as they consider appropriate.

4.1.3 The Trustees may in their absolute discretion postpone their 5-yearly review for no longer than 12 months.

4.1.4 If the Trustees postpone a review, the Expedited Review Values, Maximum Values, Payment Percentage, medical costs and caps on Actual Legal Costs from the previous 5-year period will continue to apply until the review takes place. Any increase resulting from the review can be backdated for claims submitted during the period that the review was postponed, but decreases shall not be relied upon to clawback any sum already paid to a claimant.

4.2 Special Provisions for Values in Schedule 3

4.2.1 Where a claim in respect of an EL Claim is submitted to the Trust and admitted by the Trustees as an Established Claim either (i) before the first five-yearly revision of the Expedited Review Values and Maximum Values, or (ii) after a revision has taken place, but before the next revision is carried out, Established Claims shall be valued as follows:

- (a) where the Established Claim is assessed by the Expedited Review Process, the Trustees shall value it by the application of the Expedited Review Values for that 5-year period, subject to any discounts made pursuant to Clause 2.5.5;
- (b) where the Established Claim is assessed by the Individual Review Process:
 - (i) as to any recovery for pain and suffering: the Trustees shall calculate the value of such claim by reference to the amount that could have been recovered as at the Effective Date or the most recent Review Date, as the case may be;
 - (ii) as to any recovery for other heads of loss: the Trustees may discount any such claim by an amount for inflation calculated by reference to the cumulative rates contained in the Retail Price Index from the date on which the Maximum Values were last set to the date on which the claim was submitted to the Trust.

Schedule 1

Disease Level	<u>Presumptive Medical and Exposure Criteria</u>
I Mesothelioma	<p>(1) <u>Diagnosis by an accredited respiratory specialist¹ or for Trust Claims in respect of deceased Injured Persons assessed by Expedited Review, a medical certificate issued by the appropriate authority for the relevant jurisdiction certifying the cause of death as mesothelioma.</u></p> <p>(2) Credible evidence of material Asbestos Exposure in the course of employment by one or more Scheme Companies and such Asbestos Exposure commencing at least 10 years before first diagnosis.</p>
II Lung Cancer	<p>(1) Diagnosis by an accredited respiratory specialist of (a) a primary lung cancer and (b) asbestosis or credible evidence of exposure to asbestos sufficient to have caused asbestosis according to the Helsinki Criteria.</p> <p>(2) Credible evidence of Asbestos Exposure in the course of employment by one or more Scheme Companies for a minimum period of 6 months and such Asbestos Exposure commencing at least 10 years before first diagnosis.</p>
III Asbestosis	<p>(1) Diagnosis by an accredited respiratory specialist and assessment of disability as mild, moderate or severe according to the Scale in Schedule 2.</p> <p>(2) Credible evidence of Asbestos Exposure in the course of employment by one or more Scheme Companies for a minimum period of 6 months and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p>
IV Diffuse Pleural Thickening	<p>(1) Diagnosis by an accredited respiratory specialist and assessment of disability as mild, moderate or severe according to the Scale in Schedule 2.</p> <p>(2) Credible evidence of Asbestos Exposure in the course of employment by one or more Scheme Companies and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p>
V Pleural Disease Not Causing Disability	<p>(1) Diagnosis by a qualified doctor based on radiological evidence.</p> <p>(2) Credible evidence of material Asbestos Exposure in the course of employment by one or more Scheme Companies and such Asbestos Exposure commencing at least 15 years before first diagnosis.</p>

¹ All references to an accredited respiratory specialist include a retired Consultant in respiratory medicine.

Schedule 2

The Disability Rating Scale For Disease Levels III and IV

Disability Percentage	Symptoms	Lung Function Impairment
0%	Not breathless on exercise	None
10%	Breathless on prolonged or heavy exertion	Mild
20%	Breathless on walking uphill or climbing stairs or on hurrying on level ground	Mild
30%	Breathless at normal pace for age walking on level ground	Moderate
40%	Breathless on walking 100 yards or climbing one flight of stairs at a normal pace	Moderate
50%	Breathless on walking 100 yards at a slow pace or climbing one flight of stairs at a slow pace	Moderate
60%	Breathlessness prevents walking 100 yards at a slow pace without stopping or climbing one flight of stairs without stopping	Severe
70%	Breathlessness prevents activity outside the home without assistance or supervision	Severe
80%	Breathlessness limits activities to within the home	Severe
90%	Able to walk only a few steps because of breathlessness	Severe
100%	Bed and chair bound, totally dependent on carers because of breathlessness	Severe

All assessments must be based upon comparison with a healthy person of the same sex and of a similar age.

Schedule 3

1 EL Claims made under the laws of England, Wales, Scotland and Northern Ireland (Save For Deceased Cases of Levels I, II and III Where the Disease was Causative of Death)

<u>Disease Level</u>	<u>Expedited Review Value</u>	<u>Maximum Value</u>
I Mesothelioma	£100,000	£250,000
II Lung Cancer	£80,000	£200,000
III Asbestosis		
Mild	£25,000	£50,000
Moderate	£50,000	£100,000
Severe	£80,000	£200,000
IV Diffuse Pleural Thickening		
Mild	£17,500	£40,000
Moderate	£35,000	£80,000
Severe	£60,000	£150,000
V Pleural Disease Not Causing Disability	£3,000	£40,000

2 Deceased EL Claims made under the laws of England, Wales and Northern Ireland Where Asbestos Disease is Causative of Death

<u>Disease Level</u>	<u>Expedited Review Value</u>	<u>Maximum Value</u>
I Mesothelioma	£110,000	£275,000
II Lung Cancer	£90,000	£225,000
III Severe Asbestosis	£90,000	£225,000

3 Deceased EL Claims made under the laws of Scotland Where Asbestos Disease is Causative of Death

<u>Disease Level</u>	<u>Expedited Review Value</u>	<u>Maximum Value</u>
I Mesothelioma	£150,000 £140,000	£335,000 £325,000
II Lung Cancer	£120,000 £110,000	£285,000 £275,000
III Severe Asbestosis	£120,000 £110,000	£285,000 £275,000

For the avoidance of doubt, " EL Claims made under the laws of England, Wales, Scotland and Northern Ireland" means EL Claims where the Asbestos Exposure to the Injured Person occurred, respectively, in England, Wales, Scotland and Northern Ireland.

**IN THE MATTER OF T&N LIMITED (AND THE OTHER
SCHEME COMPANIES)**

**AND IN THE MATTER OF THE COMPANIES
ACT 1985**

**TRUST
DISTRIBUTION PROCEDURES
RELATING TO THE EL SCHEMES**
