

The T&N UK Asbestos
Trust and
The T&N EL Trust
Trustee's Annual Report 2013

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1 Introduction

1.1 Executive summary

The purpose of this report is to provide an update to the key stakeholders of the T&N UK Asbestos Trust and T&N EL Trust (the Trusts). The T&N UK Asbestos Trust consists of a number of funds. The primary funds are the T&N Fund and the Chester Street Fund. Under the terms of the Trust Deed, these Funds must remain separate and cannot be co-mingled.

This report is the seventh annual report issued by the Trustee (see 1.2). This report contains terms which are defined in the Trust Distribution Procedures (TDP).

This report includes detail in relation to the operational, financial and legal matters, which have been of relevance to the Trusts throughout the period. This report should be read in conjunction with the Trustee's previous reports.

The highlights of the report are as follows:

- i During the year the number of Trust Claims received and paid by the Trusts can be summarised as follows:

	Received	Paid/Settled
T&N excluding Cape Trust Claims	172	184
T&N - Cape Trust Claims	117	101
Chester Street	30	37
Total	319	322

Note: Excludes second dividend payments

The level and value of Trust Claims received during the year is significantly in excess of last year. In addition, the previous two years had shown no appreciable reduction in Trust Claim levels. This is at variance with the actuarial models that indicated that there should be a declining level of Trust Claims over the past three years. This is particularly evident for employee mesothelioma claims where the amount paid out has increased substantially, although the model anticipated large reductions over the last three years. For certain other types of Trust Claims the trend is less pronounced but is still evident, with again a significant variance in the last year. This trend has caused the Trustee to have serious reconsideration of the actuarial model. The Trustee consulted with the actuarial adviser (Towers Watson) and they indicated that the Trusts recent claims history is not untypical; many insurance companies are having a similar experience. In view of this the Trustee has recently concluded that it is appropriate to bring forward the date of the next full actuarial review. The Trustee anticipates that Towers Watson will have completed their review by the end of summer 2014.

The Trustee has already determined that it is obliged to reduce the dividend paid out in respect of the TBA Fund and this is discussed further in section 3 of this report.

Payments to Trust Claimants can be summarised as follows:

£ million	
T&N - first dividend	3.56
T&N - second dividend	2.08
T&N - Cape Trust Claims	0.46
Chester Street - first dividend	0.34
Chester Street - second dividend	0.38
T&N EL Trust - first dividend	2.93
T&N EL Trust - second dividend	1.36
	11.11

- ii The second dividends paid during this year related to Trust Claims agreed during the second year of operations of the Trusts. In total £3.82 million was paid as second dividends (£2.08 million from the T&N Fund, £1.36 million from the T&N EL Fund and £0.38 million from the T&N Chester Street Fund) and is the main reason for the significant increase in dividend payments. This is a reflection of the fact that more Trust Claims were received in the second year of operations than the first. The Trustee would expect the amount of second payments to fall significantly next year.
- iii The investment return during the past year was 5.5% representing an improvement over previous years but still slightly below the target return of 6%. The average rate of return over the past three years was 3.2%, which is below the target return and driven by a loss on investments in 2011 when there was significant turmoil in the markets. In conjunction with the full actuarial review discussed above the Trustee will also be consulting with Towers Watson and the investment adviser (Buck Consultants) over the appropriate rate of investment return to use in the liability modelling. The Trustee will continue to keep the investment return and the performance of investments under review. This is discussed in further detail in section 5.1.
- iv During this year the Government formalised its intention to introduce a compensation scheme for mesothelioma sufferers by publishing the Mesothelioma Bill (the **Bill**). The Bill has recently been passed by Parliament and became the Mesothelioma Act 2014 (the **Act**) which established The Diffuse Mesothelioma Payment Scheme (**DMPS**). From the perspective of mesothelioma sufferers, the Act and establishment of the DMPS is to be welcomed.

However there are some particularly adverse consequences for T&N ex-employee Trust Claimants. In practical terms they are excluded from the Act, irrespective of the amount of compensation they receive or are eligible to receive from the Trusts. In many cases a claimant will be worse off if they have the ability to claim against T&N than if they have no claim at all.

The Trustee strenuously opposed the Government's stance in respect of T&N Claimants and, amongst other actions, worked closely with Kate Green MP, the Shadow Minister with responsibility for asbestos matters. However these actions were in vain and it was concluded that legal action through a Judicial Review was not appropriate. The only concession the Trustee was able to obtain from the Department of Work and Pensions (**DWP**) was an agreement that eligibility to make a product liability claim (**PL claim**) against T&N would not disqualify a T&N Claimant from making a claim against the DMPS, although if a T&N Claimant receives a payment in respect of a PL claim this will disqualify them. The effect of the introduction of the Act is discussed in more detail in section 7 of this report.

1.2 The Trustee

The Trustee is 'The T&N Asbestos Trustee Company Limited' a limited company, number 05548874, registered in England and Wales.

The directors of the Trustee are James Gleave, Anne O'Keefe and Christopher Melton QC. James Gleave and Anne O'Keefe are Chartered Accountants at Zolfo Cooper LLP. Christopher Melton QC is a barrister at Byrom Street Chambers.

1.3 Core objective

The Core Objective of the Trusts is broadly to allow Trust Claimants to receive a payment (or payments) from the appropriate Fund or funds which:

- reflects the value of their underlying claim;
- is fair and proportionate, having regard to the interests of other Trust Claimants with similar Trust Claims claiming out of the same Fund or Funds; and
- is calculated and paid in an efficient and cost-effective manner, following an efficient and cost-effective assessment of the Trust Claim.

2 T&N Fund/T&N EL Trust Claims

This section relates to claims against the above two Funds and excludes Chester Street Claims, which are shown in section 4 of this report.

2.1 Trust Claims analysis

The Trust Claims submitted in the first seven years of operation are summarised below:

Status	As at 11 October 2012	As at 11 October 2013
Paid	1,496	1,763
Awaiting further information from Trust Claimants	39	68
Pending issue of Admission Notice	5	2
Subject to Expert review process	1	-
Withdrawn	68	72
Rejected	172	187
Total	1,781	2,092

During the year the Trust received 117 Cape Trust Claims (see 2.6), 101 of which have been paid or are awaiting payment.

2.2 Payments to Trust Claimants

During the year a total of £11.65 million was paid out in respect of claims against the Trusts. The total paid out during the first seven years is £51.87 million and can be summarised as follows:

£ million	As at 11 October 2012	Paid during year	As at 11 October 2013	% of total
Payments to Trust claimants	37.02	11.11	48.13	92.8
Trust claimants' legal fees	2.69	0.38	3.07	5.9
Trust claimants' medical costs	0.48	0.16	0.64	1.2
Other	0.03	-	0.03	0.1
Total	40.22	11.65	51.87	100.00

Significantly greater sums were paid during this year in comparison with previous years primarily because of the second dividend.

2.3 Disease analysis

The Trust Claims during the first seven years of operations are analysed between diseases as follows:

Disease	Total claims %
Mesothelioma	35
Lung cancer	9
Asbestosis	44
Pleural thickening	10
Pleural plaques	2
Total	100

During the past four years the proportion of Trust Claims attributable to asbestosis has increased substantially. This is due to the vast majority of Cape Trust Claims being for asbestosis.

2.4 Trust Claims subject to Expert review process

In the last year, no Trust Claims were referred to the Expert.

In total, during the first seven years of the Trusts, 21 Trust Claims were referred to the Expert.

2.5 Rejected claims

During the year 13 Trust Claims were rejected, making a total of 185 rejected Trust Claims over the first seven years of operation. This represents less than 10% of the total number of Trust Claims received. All rejected Trust Claims are reviewed and discussed in detail at a meeting of the Trustee. A detailed explanation of the reason for rejection is provided to the Trust Claimant at the time of rejection.

The reasons for rejection are shown below:

Reason for rejection	As at 11 October 2012	Activity	As at 11 October 2013
Failure to satisfy medical criteria	49	-	49
No response to requests for further information	31	2	33
Failure to satisfy exposure criteria	39	8	47
Trust claimant had already been compensated in full	19	-	19
Exposure to asbestos prior to 1965 and did not fall within the Margereson/Hancock judgment	15	2	17
Limitation grounds	12	1	13
Lung cancer not meeting Helsinki criteria	5	-	5
Other	2	-	2
Total	172	13	185

2.6 Cape Trust Claims

Cape Trust Claims are defined within the TDP and are essentially those overseas claims originating from Swaziland, Zimbabwe, Botswana, South Africa and India.

The T&N Fund continues to receive a steady stream of Cape Trust Claims from India, all relating to the operation of Hindustan Ferodo, a brake pad manufacturer and Asbestos Cement Limited, an asbestos cement manufacturing company. Both these companies were at one time subsidiaries of T&N Limited. All of these Cape Trust Claimants have opted for an Expedited Review and in accordance with legal advice received by the Trustee, have been subject to a discount of 50% to reflect the significant litigation risks associated with claims of this nature.

During the year a further 117 Cape Trust Claims have been received. Payments to these Cape Trust Claimants total £457,296 and associated medical and legal fees were £111,300. Since the inception of the Trusts a total of 471 Cape Trust Claims originating from India have been received. Payments to these Cape Trust Claimants totalled £2,195,105. Medical and legal fees totalled £688,045.

Whilst the number of Cape Trust Claims being received is significant, they are generally for mild to moderate asbestosis. Accordingly the average dividend payment is far less than for other types of Trust Claim. The overall amount paid out in respect of Cape Trust Claims remains within the parameters of the Trustee's last actuarial review.

2.7 Product liability claims

The number of PL claims paid during the past seven years is summarised as follows:

Financial year	Number of claims
2007	3
2008	15
2009	10
2010	14
2011	21
2012	10
2013	8
Total	81

Over the past three years the number of PL claims appears to have stabilised. However this is too short a period for the Trustee to be confident this represents a long term trend. The incidence of PL claims remains of concern to the Trustee. Based on current information the Trustee believes the Trusts are the only major asbestos defendant paying these types of claims. The Trustee understands that few, if any, other defendants are pursued because of the significant litigation risk and, therefore, cost risk associated with these types of claims. The Trustee will also need to consider what impact the establishment of the DMPS will have on the incidence of mesothelioma PL claims.

All PL claims are subject to detailed individual scrutiny by the Trustee and whether progressing by Expedited or Individual Review are subject to a discount of 50%.

The T&N Trust paid out £261,017 in respect of PL claims in the year to 11 October 2013, making a total of £1.5 million since the inception of the Trust.

3 Dividend policy

The table below shows the dividend levels currently being paid to Trust Claimants.

Fund	Dividends p/£		Total
	Initial	Second	
T&N EL Trust	100	-	100
T&N Fund	27	5	32
Chester Street Fund	30	5	35
TBA Industrial Products	10	-	10
Federal-Mogul Friction Products	100	-	100

The level of dividends has remained unchanged during the year except in respect of the TBA Fund. During this year it became evident that the TBA Fund was experiencing a much higher average level of Trust Claim than anticipated in the actuarial model. The TBA Fund is a small fund and was forecast to receive an average of 17 Trust Claims per annum, with an average settlement below £20,000. Due to the size of the TBA Fund, the slight increase in the average number of Trust Claims received and settlement awards averaging nearer £40,000, there was a significant effect on the balance of remaining funds. The Trustee now believes that the trend for an increasing number of Trust Claims at higher settlement values is likely to continue in the future and as a consequence considered it appropriate to reduce the level of dividend to 10 pence in the pound.

For the remaining Funds the next review of dividend levels is not scheduled until 2016. However, during this year the Trustee became concerned about the level and value of Trust Claims being received, particularly in respect of mesothelioma claims brought against the T&N EL Trust. The overall value of this category of claim now appears to be increasing which is contrary to the actuarial model which indicated substantial reduction over the past three years. The Trustee is also concerned about the overall level and amount being paid in respect of other categories of claim which, with the exception of PL claims, are not demonstrating the reduction forecast in the actuarial model. In view of these concerns the Trustee has consulted with Towers Watson and they indicated that the Trusts' experience is not uncommon and in fact a number of insurance companies are experiencing similar trends. The general industry consensus is that the incidence of asbestos claims is remaining static or even increasing contrary to the expectation contained in most actuarial models of recent years. In view of the Trusts' experience and that of the industry in general, the Trustee decided to bring forward the actuarial review scheduled for 2016 and Towers Watson have commenced work on this assignment.

The Trustee anticipate the review will be completed by the end of summer 2014, following which the Trustee will consult with the Trust Advisory Committee to finalise any amendments to the dividend policy that may be determined once the review is complete.

4 Chester Street Fund

The Chester Street Fund is part of the T&N UK Asbestos Trust but must be kept separate from the other Funds. The purpose of this fund is to provide compensation to Chester Street, an insolvent insurer, and related parties. This fund provides a contribution towards Trust Claims made against T&N and Federal-Mogul companies, as joint tortfeasors, by Chester Street.

There has been a significant reduction in the number of claims being submitted during the past year. The Trust Claims submitted to the Chester Street Fund during the seven years of the Trusts' operation can be summarised as follows:

Investment	As at 11 October 2012	As at 11 October 2013
Paid/established	326	357
British Shipbuilders' settlement	2,219	2,219
Awaiting further information	6	1
Rejected	115	118
Total	2,666	2,695

During the year a total of £0.34 million has been paid out in respect of compensation payments.

During the year, three Trust Claims were rejected.

5 Trusts' investments

5.1 Investment strategy

The Trustee remains of the view that it should adopt a prudent investment policy whilst remaining conscious of the long-term nature of the Trusts. In practical terms, this equates to the Trustee adopting an investment approach similar to pension scheme trustees.

Almost all the investments of the Trusts are held in the BlackRock Dynamic Diversified Growth Fund (formerly the BlackRock Cautious Portfolio Fund). This fund does not have a targeted rate of return but rather concentrates on an investment profile with moderate levels of risk.

It is evident that the investment world has significantly changed since the inception of the Trusts and the Trustee does have some concerns surrounding the long-term rate of return currently earned on Trust Funds. Following consultation with Buck Consultants, the Trustee concluded that it was appropriate to broaden the Trusts range of investments. However the view remains that the Trustee must continue to adopt a conservative approach and accordingly sought advice to identify appropriate investments with a modest increase in risk but with higher possible level of return. The advice concluded that the Trustee's criteria could best be met by investing in a specialist property/property loan fund. The Trustee received presentations from a number of property debt fund managers and concluded that M&G best met the criteria. M&G are the current market leader and clearly adopt a conservative and principled approach to their investment strategy. The Trustee agreed to commit a proportion of funds to the M&G Real Estate Debt Fund. However since reaching agreement on the terms of the investment, M&G has struggled to identify property investment opportunities that met their investment strategy. Accordingly at the year-end there has been no significant investment in the M&G Real Estate Debt Fund.

5.2 Funds held at year end

At the year end the Trusts held investments and cash shown below:

Investment	Amount (£ million)	% of total
BlackRock Dynamic Diversified Growth Fund	80.61	96.7
M&G Real Estate Debt Fund	0.40	0.5
Cash	2.37	2.8
Total	83.38	100.0

5.3 Investment performance

The performance of the Trusts' investments in the BlackRock Dynamic Diversified Growth Fund can be summarised as follows:

£ million	Valuation 11 October 2012	Withdrawals	Investment returns	Valuation 11 October 2013
T&N Fund	46.53	(6.75)	2.42	42.20
Chester Street Fund	20.99	(0.85)	1.14	21.28
T&N EL Trust	19.02	(4.65)	0.95	15.32
T&N Remuneration Fund	1.94	(0.25)	0.11	1.80
Total	88.48	(12.50)	4.62	80.60

The T&N Fund includes amounts relating to Federal-Mogul Friction Products (£2.4 million) and TBA Industrial Products (£0.4 million).

During this year the return on the Trusts' investments with BlackRock was a gain of 5.5%. The annualised return over the last four years invested in the BlackRock Dynamic Diversified Growth Fund is 5.1%.

6 Hercules

The T&N Asbestos Trust is entitled to 11.9% of any recovery under the Hercules Reinsurance Policy (the **Policy**), with the US Asbestos Trust being entitled to the remainder. The Policy has a face value of £500 million. Under the terms of the Trust Deed, the US Asbestos Trust has the primary responsibility for pursuing recoveries under the Policy.

During this year the Trustee maintained close contact with the US Asbestos Trust and its UK legal advisors. Having consulted with the Trustee they issued legal proceedings which were strenuously defended. These issues have now proceeded to trial which commenced in late March 2014. As yet, no decision has been reached. The Trustee will report further on the trial in its next annual report. The costs of these proceedings are being borne entirely by the US Asbestos Trust although it is entitled to recover its costs from any recoveries received.

7 Mesothelioma Act 2014 (the Act)

In 2012 the Government announced its intention to establish a fund to compensate mesothelioma sufferers who were exposed to asbestos during the course of their employment but have been unable to obtain any compensation from their employer or their employer's insurers. The funding for this scheme is, primarily, to be provided by the insurance industry and as a consequence it was heavily involved in the formulation of the legislation. The Trustee liaised closely with the DWP over the formulation of the legislation and met with the senior civil servants responsible for developing the legislation. It quickly became apparent that one of the guiding principles was that the compensation fund was only intended as a 'last resort'. In light of this principle, Trust Claimants were likely to be excluded on the basis that they were entitled to compensation from the T&N Asbestos Trusts. The compensation levels from the DMPS are likely to average between £90,000 and £100,000. This is substantially in excess of the amount many Trust Claimants will receive.

The Trustee worked closely with the Greater Manchester Asbestos Victims Support Group and also sought assistance from the late Paul Goggins MP and Kate Green MP, the Shadow Minister responsible for asbestos affairs. Both were extremely supportive and Kate Green MP agreed to propose an amendment to the draft legislation protecting ex-employees of T&N. Regrettably this amendment did not garner sufficient support from Parliament and therefore was not passed.

The Trustee sought advice from David Allan QC as to the appropriateness of applying for a Judicial Review of the legislation. Mr Allan explained that the Courts apply a high threshold for Judicial Reviews. It is not sufficient to demonstrate unfairness; the Trustee would have to show that it was so manifestly unfair as to be unconscionable. The DWP would undoubtedly use the counter-argument that the funding for the DMPS was the result of negotiation with the insurance industry and that, whilst not ideal, was the best result that could have reasonably been achieved. This would be a difficult argument to counter. In addition the Trustee was concerned that any application for a Judicial Review would, invariably, delay the implementation of the Act. The DWP had previously indicated that parliamentary time before the next election is limited and any delay may well result in the Act not coming into force until after the next election.

After some deliberation, the Trustee concluded that it could not be responsible for delaying the passage of the Act when it only had limited prospects for a successful Judicial Review.

The specific clause naming the T&N Asbestos Trusts is contained in the Diffuse Mesothelioma Payment Scheme Regulations 2014, Regulation 6, Schedule 2. A copy of the relevant schedule is attached at Appendix A.

During the course of discussions with the DWP, the Trustee identified further serious concerns in connection with PL claims. The legislation enables the DMPS administrators to disqualify a claimant if they have received a payment from the T&N Asbestos Trusts or would be eligible to make a claim against the T&N Asbestos Trusts. Due to T&N's dominance of the asbestos market in the UK, many asbestos disease sufferers in the UK have the possibility of being able to lodge a PL claim against the T&N Asbestos Trusts. Thus they were potentially at risk of having a claim against the DMPS disallowed even though they had no intention of actually making a PL claim. Eventually the Trustee was able to secure a concession in respect of PL claims and copies of the relevant confirmatory letters from the DWP are enclosed at Appendix A. However it is important to note that this concession only extends to eligibility. If a Trust Claimant has received any type of payment from the T&N Asbestos Trusts, including a payment relating to a PL claim, they will no longer be eligible to receive a payment from the DMPS.

The Act and the accompanying regulations have recently received full Parliamentary approval and are therefore now in force. As a result any claimant who is an ex-employee of T&N will not be eligible to receive a payment from the DMPS.

The DWP has also recently appointed administrators for the DMPS.

8 Professional costs

During the year the legal and other professional fees paid by the Trusts are detailed as follows:

£000	T&N	Chester St	T&N EL
Legal fees	19	11	24
Audit fees	4	3	7
Total	23	14	31

Claims management and Trustee fees incurred in the year to 11 October 2013 are as follows:

£000	
Chester Street Fund	143
T&N EL Trust	342
T&N Remuneration Fund	343

All these fees are paid to Zolfo Cooper LLP.

Claims management and Trustee fees in respect of the Chester Street Fund and T&N EL Trust are drawn from the relevant Fund and approval is required from the appropriate Trust Advisory Committee.

9 Trusts accounts

Attached at Appendices B and C are copies of the Trust accounts for the period 12 October 2012 to 11 October 2013.

10 Contact details

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Should you wish to discuss any aspect of this report or obtain further copies, please do not hesitate to contact us.

Mesothelioma Act 2014 correspondence and extracts

Appendix A

This Appendix contains copies of the following documents:

- Letter from James Gleave to Lord Freud, dated 31 December 2013
- Letter from Mike Penning MP to James Gleave, dated 13 January 2014
- The Diffuse Mesothelioma Payment Scheme Regulations 2014, Regulation 6, Schedule 2

**The T&N UK Asbestos Trust Accounts for the period
from 12 October 2012 to 11 October 2013**

Appendix B

**The T&N EL Trust Accounts for the period from
12 October 2012 to 11 October 2013**

Appendix C

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