Welcome

Welcome to this week’s edition of BC Disease News.

In the last week, the High Court has found that a claimant who only beat his part 36 offer at trial because of the interest on the damages awarded through to judgment, is not entitled to enhanced costs.

This week we present the first in a two part feature in which we explore occupational exposure to UV radiation. In part one of this feature we will explore what UV radiation is, what are its effects and who is at risk from UV radiation? In part two we will look at the law in the UK, what employers’ responsibilities are in terms of protecting workers against exposure to the sun and what any potential future claims may look like.

We would also like to remind readers that our Summer Drinks Party is being held on Monday 11th July 2016 at our new EC3 Office and Client Knowledge Hub. It is not too late to confirm your attendance and we hope to see you there.

Any comments or feedback can be sent to Boris Cetnik or Charlotte Owen.

As always, warmest regards to all.

SUBJECTS

Possible Extension of QOCS

In a report published last week by the Civil Justice Council (CJC) working group, a case had been set out to extend qualified one-way costs shifting (QOCS) to actions against the police and ‘follow-on’ professional negligence cases over failed or under-settled personal injury claims.1

The working group was initially set up to explore early effects of the 2013 costs and procedural reforms following on from a conference the CJC held in March 2014. However, given the breadth of these terms of reference, the decision was taken to prioritise the areas of activity that focused on QOCS.

In relation to actions against the police, Lord Justice Jackson’s Final Report identified these types of claims as a type in which parties are in an asymmetric relationship. Such claims are not within the ambit of the current QOCS scheme unless they include damages for personal injuries. The Police Actions Lawyers’ Group (PALG), presented a strongly-argued submission in support of including these cases in an extended QOCS regime as they felt the loss of the recovery of ATE insurance in these cases had created ‘an insurmountable barrier to access to justice’ for claimants who did not qualify for legal aid.

Although they could not obtain an opposing view to balance the arguments from the Association of Police Lawyers (APL), the Working Group was broadly supportive of the proposal and recognised the strong case made on the point of principle. They did however not that there would have to be a consultation brought forward by Government before an extension of QOCS into this area could be made.

The arguments for extension of QOCS into the field of claims arising from negligently-handled injury cases were not put forward by an organised group in the same way the PALG had done with police claims. However, the arguments of principle were set out concisely by Professor Peysner in his research paper on the issue.

‘… if a lawyer is pursuing a personal injury case and through negligence loses the cases or under-settles QOCS does not cover any resulting professional negligence case. The claimant is potentially injured three times: one in the accident; twice in losing compensation and thrice in being deprived of an effective remedy against incompetence. This situation is completely illogical and needs to be addressed. Such an extension would not open the floodgates as damages are often low in such cases. As such they may well be unattractive to lawyers acting on risk based arrangements’.

However, insurers active in the specialist market for solicitors’ professional indemnity insurance (PII) were consulted by the Working Group. The proposal to extend QOCS to these claims, even if restricted to matters arising from personal injury claims, raised concerns. The view was expressed that the present (ie post LASPO) arrangements do not, it appears, impact adversely on access to justice. PII insurers reported that professional negligence claims are simply not defended ‘for the sake of it’, given the expense that would be involved in doing so. It was also stated that where the underlying matter triggering the PII claim involves personal injury, the question of liability will very often be clear given that the most common error in this field is a failure to issue proceedings before the expiry of limitation.

The Working Group concluded that there was a ‘fair’ argument of principle that would support the extension of QOCS in follow-on claims. But they did point out that:

‘The practical points raised against doing so, and in particular the risk of a secondary market in these claims, may be thought to carry some weight in the present environment. The decision whether to take matters forward is a matter for government. If it were minded to do so, specific proposals and an impact assessment should be prepared. Should matters progress…the availability of other routes for either funding these claims (such as BTE insurance) or for resolving them (such as schemes operated by lawyer associations) should be investigated’.

The Working Group said the CJC would be prepared to assist in whatever way might be thought appropriate were the government to press ahead with either of these recommendations. The full report can be found here.

Claimant Beats a Part 36 Offer Due To Interest: Enhanced Costs?

The High Court, ruling in the case of Purrunsing v A’Court & Co (a firm) & Anor [2016] EWHC 1528 (Ch), found that a claimant who only beat his part 36 offer at trial because of the interest on the damages awarded though to judgment is not entitled to enhanced costs.

The substantive ruling was in relation to property fraud in which the conveyancers on both sides were found jointly liable for the £470,000 loss suffered by the buyer. By a letter dated 20 May 2015, the claimant made a part 36 offer by which he offered to settle the claim at £516,000 inclusive of interest. The claimant valued his claim at that stage at £573,698.15 inclusive of interest. The discount was therefore £57,698.15. Following the trial, the claimant recovered £470,000 together with interest at the rate of 2.5% above base rate, which down to the date of the order (14 April 2016) was £48,983.01. This totalled £518,983.01. It was submitted on behalf of the claimant that since he had recovered a sum in excess of what had been offered, he was entitled to recover an enhanced costs order for the period from the date 21 days after the Part 36 offer was made – 10 June 2015.
Part 36 Offer Made
(20 May 2015)

Relevant period for acceptance expires
(10 June 2015)

Judgment
(14 April 2016)

HHJ Pelling, rejected this argument and deemed it to be mistaken. His reasons were that CPR r.36.5(4) makes it clear that a part 36 offer to pay money is deemed to include all interest down to the date when the relevant period for acceptance of the offer expires.

He went on to say that:

‘In order to work out whether a judgment is more advantageous than such an offer it is necessary to ensure that the offer or the judgment sum is adjusted by eliminating from the comparison the effect of interest that accrues after the date when the relevant offer could have been accepted. In my judgment this is the effect of the words “… better in money terms …” in CPR r. 36.17(2). If that is not done then comparing the offer with the judgment is not comparing like with like and thus it is not possible to assess whether the judgment is “… more advantageous …” in money terms than the offer. Interest compensates for the loss of use of money over a given period. In theory at least interest that accrues due for the period between the last date when the offer could have been accepted and the date of judgment is neutral and so immaterial in deciding the question whether a subsequent judgment is “… more advantageous …” than a previous offer. The only interest that is material is that included or deemed included within the offer’.

It is clear that if this were not the case then whether an offer from a claiming party should be accepted by a defending party would depend not on an analysis of liability in respect of the claim but the unpredictability of when a trial takes place and when a judgment will be handed down.

HHJ Pelling therefore concluded that the claimant was not entitled to recover enhanced costs. The full judgment can be found here.

Rulings On Switching to CFAs Overturned

Sitting in the High Court with Senior Costs Judge, Master Gordon-Saker as assessor, Mr Justice Foskett overturned three high-profile costs rulings in which a firm of claimant solicitors lost the right to recover success fees and insurance premiums from defendants after failing to advise on the 10% uplift in general damages before switching clients from legal aid to CFAs.\(^2\)

The three cases, Kai Surrey, AH and Yesil were all medical negligence claims which were switched from legal aid to CFAs, having been ongoing already for several years, shortly before 1 April 2013 when the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) restricted the right to recover success fees and ATE insurance premiums.

It was found in these cases that the claimant solicitors had failed to provide sufficient advice to the litigation friends of the claimants regarding the Simmons v Castle uplift in damages and so they were ‘not in a position to make an informed choice about the change of funding from LSC [legal aid] to CFA/ATE’.

However, Foskett J has now ruled that whilst the 10% issue should have been mentioned to the claimants, ‘the failure to do so should, save in very exceptional cases, be a matter for discussion and consideration between the claimant and/or his litigation friend and the solicitors: it is not a matter that should be of concern to the paying party’.

Interestingly, he suggested that had Parliament wanted to prevent solicitors from switching from legal aid to CFAs once litigation had started then it could have included such a provision in LASPO. However, they did not and as such Foskett J ruled that the 10% must be considered in relative, rather than absolute, terms.

He stated specifically that: ‘A costs judge is perfectly entitled, possibly using his or her experience of other cases or their experience from days in practice, to ask and, in most cases, answer the question of whether the omission to refer to the 10% uplift would have made any difference to a reasonable claimant or his litigation friend in the circumstances prevailing in that case without receiving evidence on the issue. However, this question should be seen from the perspective of asking whether a reasonable claimant or reasonable litigation friend, in the circumstances prevailing in the case, would see the possibility of obtaining \(X +10\%\) of \(X\) rather than \(X\) in the context of the overall global settlement as a matter that would prevent the change to a CFA’.

Helpfully, there was guidance given for those dealing with cases where the 10% issue is live. Foskett J outlined a four-step procedure:

- State whether advice was given;
- The court should only go behind this if there is a ‘genuine issue’ as to whether this is accurate, to be resolved by production of either the claimant’s solicitor’s attendance note or a short witness statement from the solicitor;
- Where the advice was not given the argument over reasonableness must be raised in the points of dispute;
- The costs judge should try and reach a decision based on the arguments raised in the points of dispute and replies without any need for further evidence.

Whilst the claimants welcomed this turn around, a spokesman from the NHSLA stated that they agreed with the judgments at first instance and said: ‘It is inconceivable that a client would not consider the option of an additional 10% uplift on general damages a material factor. The omission to raise this factor, even if the claimant immediately rejected it, seriously calls into question the
adequacy of the advice given… Where one of two or more options available to a client is more financially beneficial to the solicitor, the need for transparency becomes ever greater'.

The NHSLA state that they continue to receive costs claims where there has been a switch of funding which involve millions of pounds of additional liabilities. Following the overturning of these three decisions, the claimant firm has called for the NHSLA to settle the 85 outstanding costs claims it has and several more from other practices. ³ However, this is unlikely to happen just yet as the NHSLA intend to appeal this decision.

We have reported on the first instance judgments in AH in edition 130 of BC disease news (here) and Yesil in edition 132 (here).

### HSE Annual Workplace Fatality Statistics

Provisional annual data for work-related fatal accidents in Great Britain’s workplaces has been released this week.⁴

The long term trend has seen the rate of fatalities more than halve over the last 20 years. However, provisional figures indicate that 144 people were killed while at work in 2015/2016 – up from 142 in 2014/5.

**Source: HSE Fatal Injury Statistics – Number and Rate of Fatal Injury to Workers, 1996/97 – 2015/16**

The new figures show the rate of fatal injuries in key industrial sectors:

- Forty three workers died in construction, the same as the average for the previous five years.
- In agriculture there were 27 deaths (compared to the five-year average of 32).
- In manufacturing there were 27 deaths (compared to five-year average 22), but this figure includes three incidents that resulted in a total of eight deaths.
- There were six fatal injuries to workers in waste and recycling, compared to the five-year average of seven, but subject to considerable yearly fluctuation.

There were also 103 members of the public fatally injured in accidents connected to work in 2015/16, of which 36 (35 percent) related to incidents occurring on railways.

HSE has also released the latest available figures on deaths from asbestos-related cancer. Mesothelioma, one of the few work related diseases where deaths can be counted directly, contracted through past exposure to asbestos killed 2,515 in Great Britain in 2014 compared to 2,556 in 2013.

### NHSLA Challenge ATE Premiums

Following the two recent decisions of Mewis v Burton Hospitals NHS Foundation Trust and Martin v Queen Victoria Hospital NHS Foundation Trust, the NHSLA has reported to have saved more than £6m by challenging ‘unreasonable’ after-the-event (ATE) insurance premiums over the past year.¹

The dangers of recoverable ATE premiums and the potential for them to be calculated at levels which represented what the courts were prepared to allow, rather than on a market basis were recognised immediately following the implementation of the Access to Justice Act 1999, which introduced ATE insurance.

Lord Bingham highlighted the issue in Callery v Gray (Numbers 1 and 2) [2002] 1 WLR 2000 where he said:

‘A third possible abuse was that claimants, although able to obtain after the event insurance, would be able to do so only at an unreasonably high price, the after the event insurers having no incentive to moderate a premium which would be paid by the defendant or his insurers and which might be grossly disproportionate to the risk which the insurer was underwriting. Under the new regime, a claimant who makes appropriate arrangements can litigate without any risk of ever having personally to pay costs either to those acting for him or to the other side and without any risk of ever having to pay an after the event insurance premium whatever the outcome’.

In the same judgment Lord Hoffman stated that: ‘There is only one restraining force on the premium charged and that is how much the costs judge will allow on an assessment against the liability insurer’.

The NHSLA claim that in their experience district judges have been ‘increasingly willing to disallow or reduce excessive ATE premiums’.

The case of Mewis, which was heard in Worthing County Court involved the upholding of a decision of District Judge Ellis to disallow a ‘block rated’ rather than a staged premium of £1,802.
DJ Ellis had ruled that the premium was not reasonably and proportionately incurred, noting that no medical evidence relating to breach of duty or causation had been produced, and the hospital trust had apologised in full.

The case of Martin, heard in Leeds County Court, similarly involved the upholding of a district judge’s decision to reduce an insurer’s block-rated premium from £3,843 to £2,500 after applying the new proportionality test contained in CPR r 44.3. In addition to this, the claimant was awarded £7,000 after treatment was delayed because the NHS trust had lost a biopsy sample. A medical report had been obtained for the claimant at a cost of £3,591, which was reduced to £2,400 on assessment.

Judge Belcher, giving judgment said that: ‘The real issue between the parties is whether the question of proportionality applies to the costs figure for the case as a whole as opposed to individual costs items, specifically in this case the ATE insurance premium’.

In relation to the first instance decision he said: ‘the district judge was plainly considering the issues of proportionality and exercising his judgement that the cost of the ATE premium was not proportionate. The district judge has found, in effect, that it was open to this claimant to bring the claim using a cheaper insurance product. That decision was made in the context of proportionality, not in the context of whether the premium charged was a reasonable amount for a block-rated policy. The latter would have required either expert evidence or evidence of premiums in other block-rated policies, before the district judge could have made further enquiry into that issue. However, I do not consider the same is true when the district judge was exercising his discretion in relation to proportionality’.

Ultimately, it was concluded by Judge Belcher that ‘...the district judge was entitled to exercise his discretion in the way he did, and was well within the ambit of his reasonable discretion in doing so. It would not be open to me on appeal to interfere with that exercise of his discretion even if I thought it was appropriate to do so’.

The £6m that the NHSLA claim to have saved comes from the challenging of ATE premiums in 1,437 cases of which they achieved costs reductions in 846 of those. These savings should be seen within the context of the full cost of ATE premiums throughout 2015/16 which they estimate as being £38.2m in 2,849 cases. The cost of challenging these claims should be borne in mind.

Feature
Ultraviolet Radiation: The Risk to Outdoors Workers – Part 1

Introduction

In the UK it is estimated that 5.5 million people have been exposed to ultraviolet (UV) radiation through their work. The main source of UV radiation is from the sun. Research conducted by Imperial College, London has shown that each week 5 people in the UK are diagnosed with skin cancer due to occupational sun exposure accounting for 2% of all skin cancers. Skin cancer is the most common cancer across the globe with incidences rising in the UK at a faster rate than in the rest of Europe.

This week we present the first in a two part feature in which we explore occupational exposure to UV radiation. In part one of this feature we will explore what UV radiation is, what are its effects and who is at risk from UV radiation? In part two we will look at the law in the UK and what employers’ responsibilities are in terms of protecting workers against exposure to the sun. We will also consider existing workers’ compensation claims paid out in Australia and go on to deliberate the potential for claims being brought in the UK and what the legal obstacles would be for such claims.

What Is Ultraviolet Radiation?

UV radiation is part of the solar radiation emitted by the sun. The sun emits different kinds of radiation including, the visible light that we can see, the infrared radiation that we feel as heat and the UV radiation that tans our skin.

The sun is the primary source of UV radiation to which humans are exposed, although there are other sources, such as UV lamps, lasers, and sunbeds etc.

UV radiation can be further broken down into three distinct bands:
- UVA – this accounts for around 95% of the UV radiation reaching the earth’s surface. This type penetrates deeply into the skin and is principally responsible for premature ageing and wrinkling of the skin, as well as skin cancer.
- UVB – although this type of UV radiation is more damaging than UVA, affecting outer layers of the skin and causing sunburn and ultimately skin cancer, the majority of this type of UV radiation is filtered by the ozone layer before reaching the earth’s surface. It is thought that about 10% of the UVB rays actually reach the Earth’s surface.
- UVC – this is the most dangerous type of UV radiation, but is mostly prevented from reaching the earth’s surface by the ozone layer.

The World Health Organisation (WHO), developed the UV Index to raise public awareness of the risks of excessive exposure to UV radiation. The index is a measure of the level of UV radiation. The values of the index range from zero upward – the higher the index the greater the potential for damage to the skin and eye and the less time it takes for harm to occur.
Exposure will vary according to the time of day, the time of year, the altitude and how strong the solar radiation is in different parts of the world. The closer to equatorial regions, the higher the levels of solar UV. Some studies, for example one in the UK which monitored UV levels from 1989 to 2008, suggest that solar radiation levels are getting steadily higher year on year.\(^7\)

The WHO state that even for very sensitive fair-skinned people, the risk of short-term and long-term UV damage below a UVI of 2 is limited and under normal circumstances no protective measures are needed.\(^8\)

**What Are The Health Effects of Overexposure?**

The WHO state that prolonged human exposure to solar UV radiation may result in acute and chronic health effects on the skin, eye and immune system with sunburn being the best-known acute effect of excessive UV radiation exposure.\(^9\)

Sunburn is a reaction to over-exposure of UV radiation whereby the top layers of skin release chemicals that make blood vessels expand and leak fluid causing swelling, pain and redness. Without protection from the sun, UV radiation starts to penetrate deep into the layers of the skin and damages skin cells. Sometimes, the sun damages skin cells so severely that they must be destroyed. Peeling after sunburn is the body's way of getting rid of damaged cells that could lead to cancer. Although skin peels and new skin layers form, some damage can still remain.\(^10\)

Over the longer term, UV radiation induces degenerative changes in cells of the skin, fibrous tissue and blood vessels leading to premature skin aging, photodermatoses (skin condition related to an abnormal reaction to UV radiation), actinic keratosis (dry patches of skin from years of sun exposure) and inflammatory reactions in the eyes.

In the most serious cases, skin cancer can occur from prolonged UV radiation.

However, it is also known that small amounts of UV can be beneficial for people and is essential for the production of Vitamin D which is important for the maintenance of healthy bones and teeth and actually aids in the protection against cancer, type 1 diabetes and multiple sclerosis.\(^11\)

Below is a graph which shows the relationship of exposure to UV radiation and the burden of the relative disease to which it puts you at risk of:
UV Exposure and Skin Cancer

In 1992, the International Agency for Research on Cancer (IARC) classified UV radiation as a definite carcinogenic to humans for cutaneous malignant melanoma. In 2012, this was reviewed and upheld. Cancer Research UK state that overexposure to UV radiation is the main cause of both malignant melanoma and non-melanoma skin cancer. Getting painful sunburn, just once every 2 years, can triple your risk of melanoma skin cancer.

Melanoma is cancer of the pigment-containing cells known as melanocytes, which are mainly found between the dermis and epidermis skin layers, but are also found in other places, such as the hair and the eye. Melanoma that occurs on the skin is known as cutaneous melanoma.

There are 4 main types of cutaneous melanoma:

- **Superficial spreading melanoma**: the most common, accounts for around 70% of cases, grows outwards initially then downwards into the deeper skin layers;
- **Nodular melanoma**: approximately 25% of UK melanomas, they develop quickly and grow down into skin, usually found on parts of the body that are infrequently exposed;
- **Lentigo maligna melanoma**: appear on body parts with high sun exposure, usually the head, neck and face;
- **Acral lentiginous melanoma**: found on the skin of the palms of the hands and the soles of the feet.

Generally, symptoms of melanoma include a mole that is getting bigger, changing shape, changing colour, bleeding or crusting, and becoming itchy or painful.

In 2013, there were 14,509 new cases of malignant melanoma in the UK, of which around half were diagnosed in those aged 65 or over. 49% of cases were in males. A crude incidence rate is 23 new cases for every 100,000 males in the UK and 23 for every 100,000 females. Incidence is highest in the South West and South East of England. In the UK, the incidence rate of malignant melanoma has increased by 360% since the 1970s. Despite improvements in survival rates over the last 25 years, the numbers of deaths and of newly diagnosed cases have increased steadily in the last decade.
These graphs show that the number of diagnoses per year is increasing, and the number of deaths in men is increasing more than that in women. Though there are generally more diagnoses among women, there are more deaths among men.

This data gives us a general picture of the incidence of skin cancer in the UK overall but how many of these are attributable to an individual’s employment?
Occupational Skin Cancer

The Institute of Occupational Safety and Health (IOSH) have launched the ‘No Time to Lose Campaign’ to beat work related cancers and as part of this they have sponsored one of the biggest research projects into occupational UV radiation to date. A research team led by Dr Lesley Rushton of Imperial College London, published a major report entitled ‘The Burden of Occupational Cancer In Great Britain’ which focused on malignant melanoma skin cancers.\(^1\) The research found that 2 per cent of all cases of malignant melanoma in Britain can be attributed to occupational exposure to UV radiation.\(^1\) They found there were 48 deaths and 241 new cases of occupational malignant melanoma in a single typical year.

When these figures are combined with those taken from earlier research carried out by Imperial College London into non-melanoma skin cancers the statistics show that as many as five people a day on average in the UK are being diagnosed with a form of skin cancer contracted at work.

The construction industry account for a large number of those cases of malignant melanoma in the Imperial College London study, with 44 per cent of the deaths and 42 per cent of the registrations. Other sectors with high exposure were agriculture, public administration and defence and land transport. This is significant for the purposes of employer’s liability as the construction sector is a major employer and accounts for around 6% of the UK workforce.\(^1\) The agricultural sector accounts for around 1% of the UK workforce.\(^2\)

Other individuals at risk include, glaziers, grounds and landscape workers, outdoor-based police officers, outdoor leisure and entertainment workers, outdoor play supervisors, painters and decorators, postal workers, professional outdoor-based sportspeople, railroad workers, refuse and recycling collectors, road workers, roof workers, signage and outdoor advertising installers, telecoms engineers, traffic and parking workers, water treatment workers.\(^2\)

The tables below, taken from the Imperial study show the cancer registrations and deaths for malignant melanoma by industry.

<table>
<thead>
<tr>
<th>Industry/Job category</th>
<th>Exposure level category</th>
<th>Main Industry Sector</th>
<th>Registrations</th>
<th>Registrations</th>
<th>Registrations</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>MEN</td>
<td>WOMEN</td>
<td>TOTAL</td>
</tr>
<tr>
<td>Agriculture and hunting</td>
<td>F</td>
<td>A-B</td>
<td>40</td>
<td>15</td>
<td>55</td>
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<tr>
<td>Construction</td>
<td>F</td>
<td>A-B</td>
<td>90</td>
<td>11</td>
<td>101</td>
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<tr>
<td>Electricity, gas and steam</td>
<td>O</td>
<td>C-E</td>
<td>4</td>
<td>2</td>
<td>6</td>
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<tr>
<td>Fishing</td>
<td>O</td>
<td>A-B</td>
<td>1</td>
<td>1</td>
<td>2</td>
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<tr>
<td>Forestry and logging</td>
<td>F</td>
<td>A-B</td>
<td>2</td>
<td>1</td>
<td>3</td>
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<td>Land transport</td>
<td>O</td>
<td>G-Q</td>
<td>8</td>
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<td>21</td>
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<td>Other mining</td>
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<td>C-E</td>
<td>3</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Personal and household services</td>
<td>O</td>
<td>G-Q</td>
<td>1</td>
<td>1</td>
<td>2</td>
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<tr>
<td>Petroleum refineries</td>
<td>O</td>
<td>C-E</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Public administration and defence</td>
<td>O</td>
<td>G-Q</td>
<td>23</td>
<td>2</td>
<td>25</td>
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<td>Recreational and cultural services</td>
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<td>G-Q</td>
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<td>4</td>
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<td>Sanitary and similar services</td>
<td>O</td>
<td>G-Q</td>
<td>3</td>
<td>5</td>
<td>8</td>
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<tr>
<td>Water transport</td>
<td>O</td>
<td>G-Q</td>
<td>1</td>
<td>1</td>
<td>2</td>
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<tr>
<td>Water works and supply</td>
<td>O</td>
<td>C-E</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>Total</td>
<td>Total</td>
<td>184</td>
<td>57</td>
<td>241</td>
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</table>

*F=Farmer, O=Outdoor worker
It can be seen that the construction industry has the highest number of both registered cases and deaths due to malignant melanoma. The University of Nottingham research into work attitudes to sun safety in the construction sector found that two thirds of construction workers outside for an average of nearly seven hours a day thought they were not at risk or were unsure if they were. More than half (59 per cent) of those questioned by researchers reported having sunburn – a major contributor to skin cancer – at least once in the last year. Researchers also found a ‘macho culture’ in some parts of the industry and misconceptions about the threat of UVR in climates like the UK’s – cloud cover does not give total protection from UV radiation.22

The second most at risk industry according to the Imperial research is agriculture and hunting. There is an abundance of research into the risk of occupational sun exposure in the agricultural sector, particularly in farmers.

Numerous studies into occupational exposure risks from sunlight show that an individual’s risk is not only dependent on the industry in which they work but also their skin colour, age and the duration of which they are exposed to the sun. The HSE highlight that an individual should take particular care if they work outside and have, fair or freckled skin that doesn’t tan, or goes red or burns before it tans, red or fair hair and light coloured eyes or a large number of moles.

Conclusion

We have outlined in this article what UV radiation is and its links to skin cancer. It is clear from the research that over exposure to the sun and UV radiation poses a significant risk to industries traditionally associated with outdoors working. The main industries which have been recognised as posing a particular risk are construction and agriculture. It is thought that there are now 48 deaths and 241 new cases of occupational malignant melanoma arising each year in the UK.

In next week’s feature we will examine the potential for future disease claims in this area and the legal obstacles such claims would face.
References


7. Ibid


16. Data from The burden of occupational cancer in Great Britain Cutaneous malignant melanoma and occupational exposure to solar radiation Report submitted to the IOSH Research Committee

17. Dr Lesley Rushton, Sally Hutchings, ‘The Burden of Occupational Cancer In Great Britain: Cutaneous Malignant Melanoma and Occupational Exposure to Solar Radiation’


21. Ibid at 1.

Disclaimer

This newsletter does not present a complete or comprehensive statement of the law, nor does it constitute legal advice. It is intended only to provide an update on issues that may be of interest to those handling occupational disease claims. Specialist legal advice should always be sought in any particular case.

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