



Institute  
and Faculty  
of Actuaries

# GIRO40

8 – 11 October, Edinburgh



10 October 2013



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and Faculty  
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## Update from the UK Asbestos Working Party

Robert Brooks (PwC), Avital Kaye (PwC),  
Dan Beard (E&Y) & Daniel Sykes (RSA)

ertise  
ponsorship  
Thought leadership  
Progress  
Community  
Sessional Meetings  
Education  
Working parties  
Volunteering  
Research  
Shaping the future  
Networking  
Professional support  
Enterprise and risk  
Learned society  
Opportunity  
International profile  
Journals  
Support

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## Agenda

- Comparing Experience 2009 to 2012
- HSL / HSE Update
- Claims Recovery Unit Update
- Legal and Other Developments
- Key Points & Next Steps

## Comparing Experience 2009 to 2012

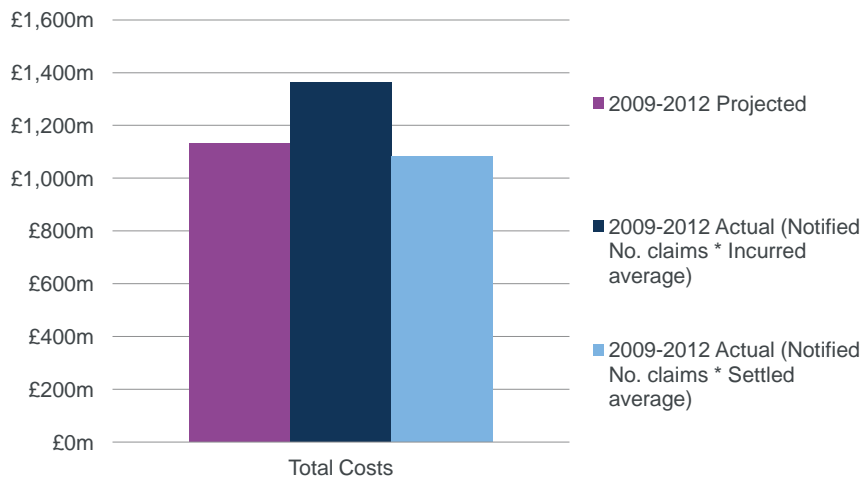
## Survey Background

- Survey carried out each year as at 31 March
- Mesothelioma - claims vs. claimants
- 80% market coverage
- Improved “unidentified” asbestos-related claim numbers

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5

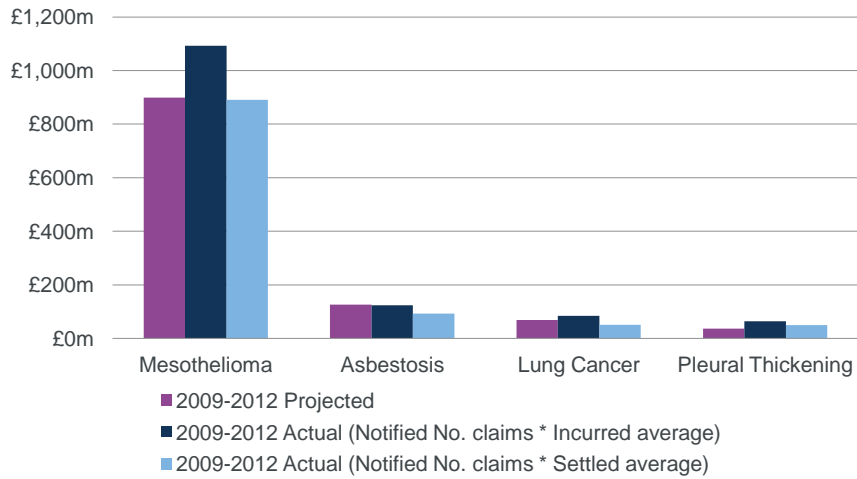
## Actual vs. Projected Experience



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6

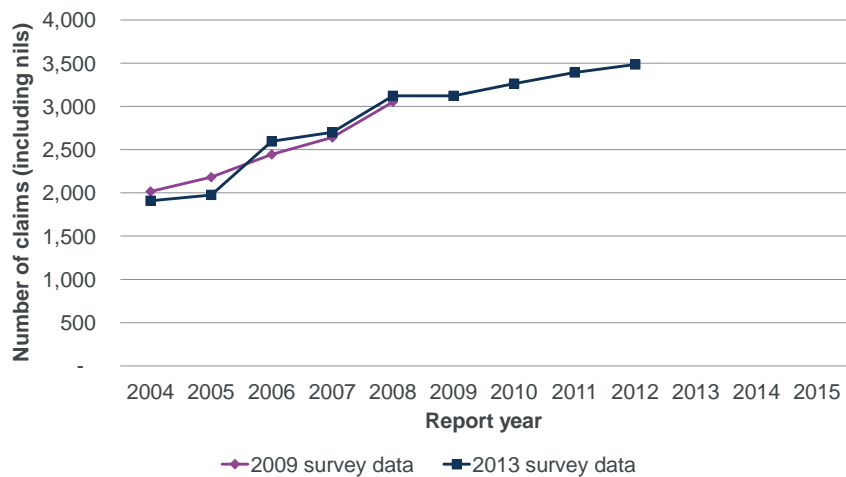
## Actual vs. Projected Experience



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7

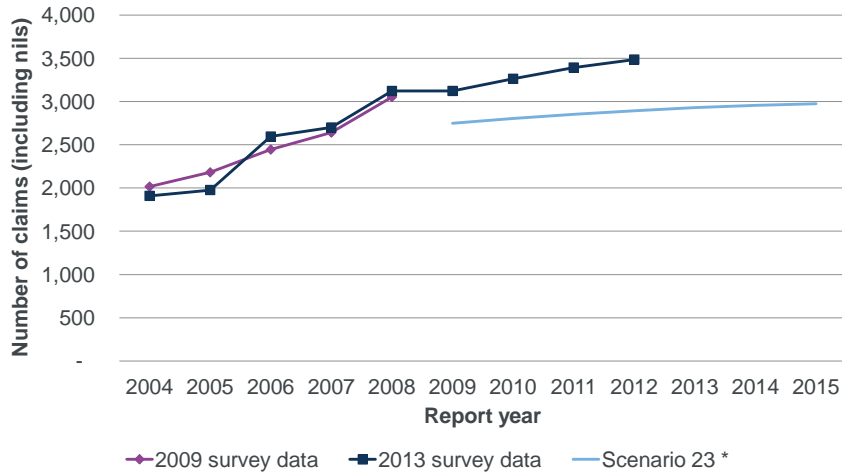
## Mesothelioma: Number of Claims



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8

## Mesothelioma: Number of Claims

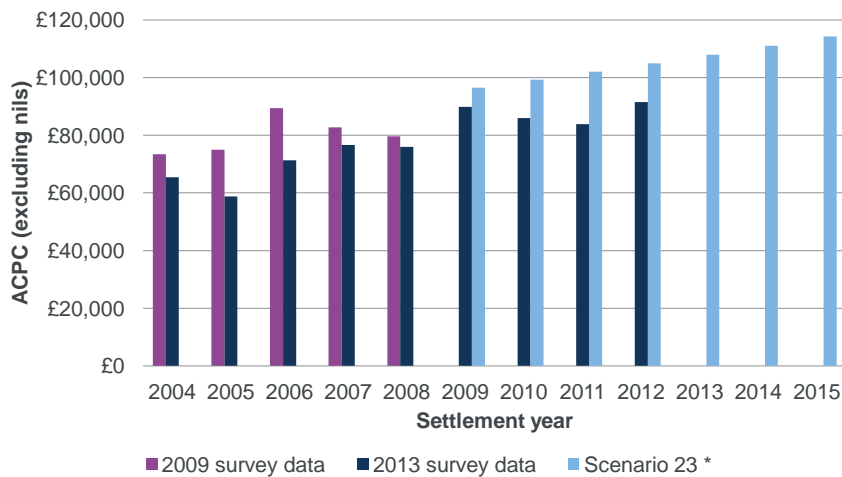


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\* Assuming nil rate of 21%

9

## Mesothelioma: ACPC

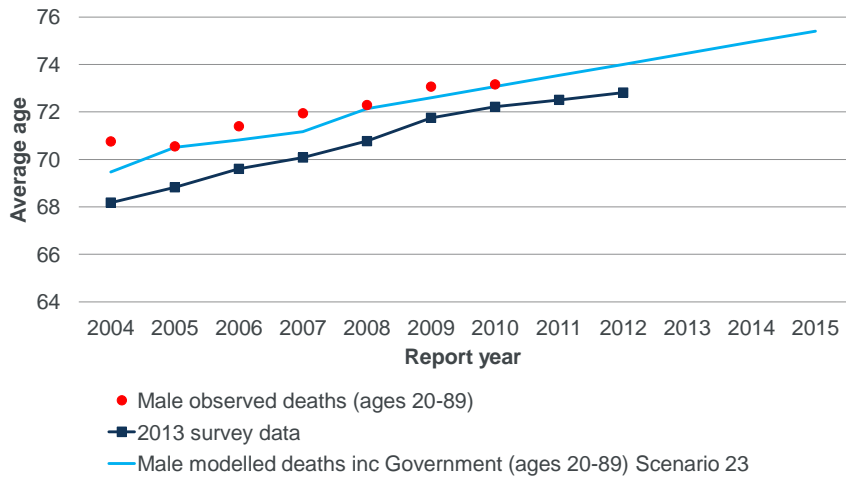


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\* Assuming nil rate of 21%

10

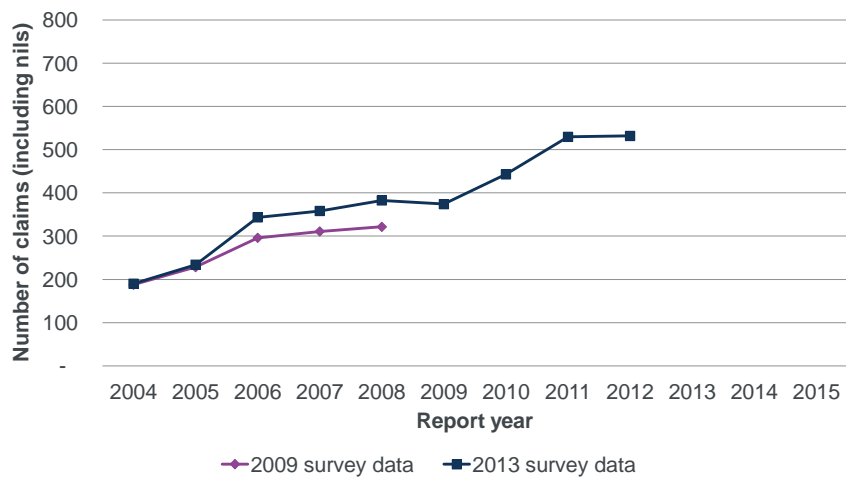
## Mesothelioma: Average Age



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11

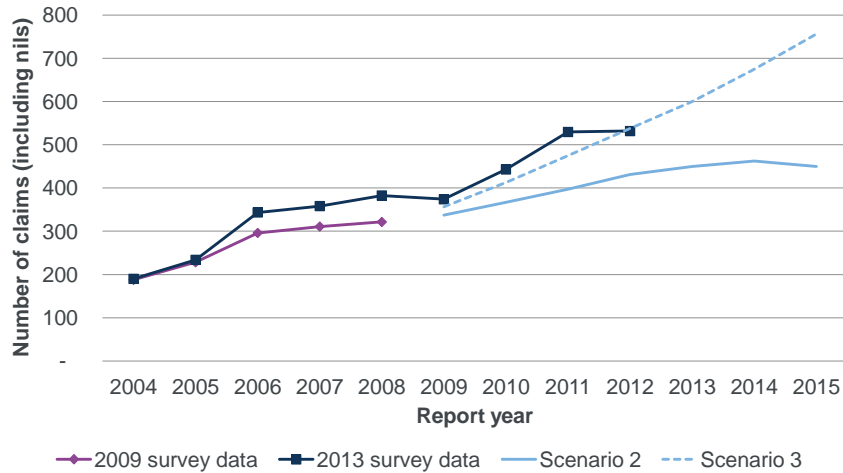
## Lung Cancer: Number of Claims



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12

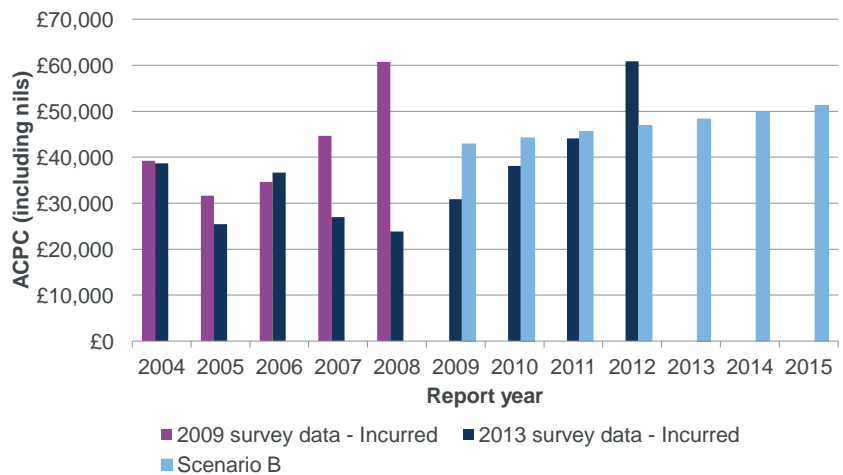
## Lung Cancer: Number of Claims



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13

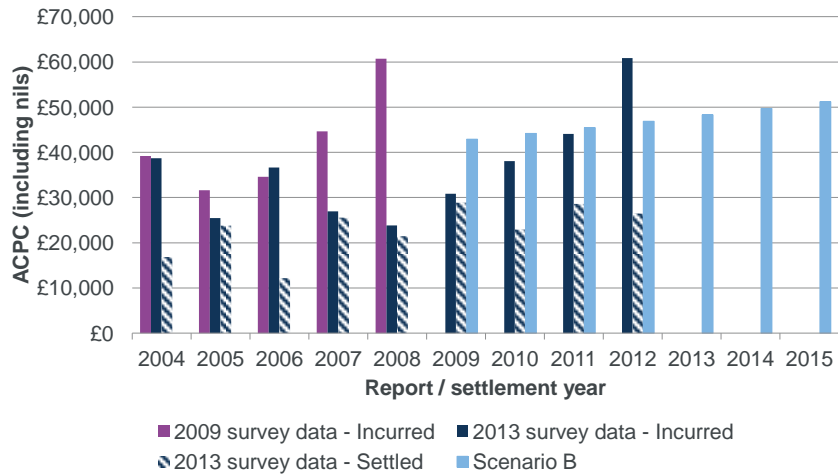
## Lung Cancer: ACPC



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14

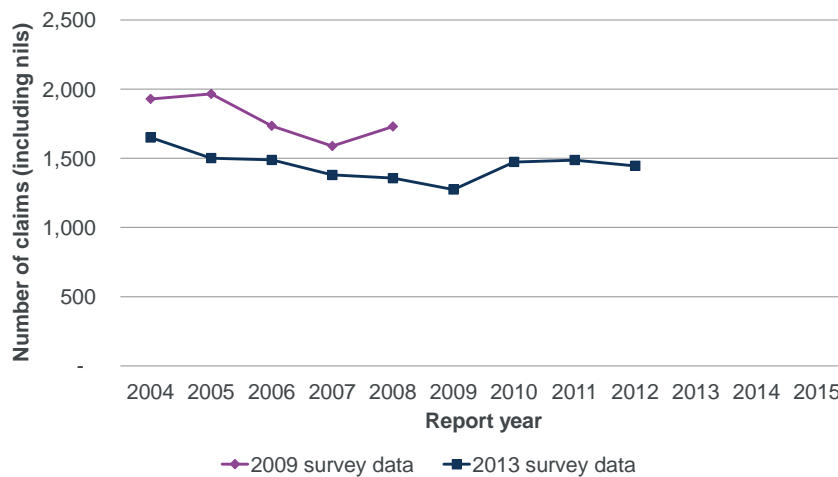
## Lung Cancer: ACPC



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15

## Asbestosis: Number of Claims

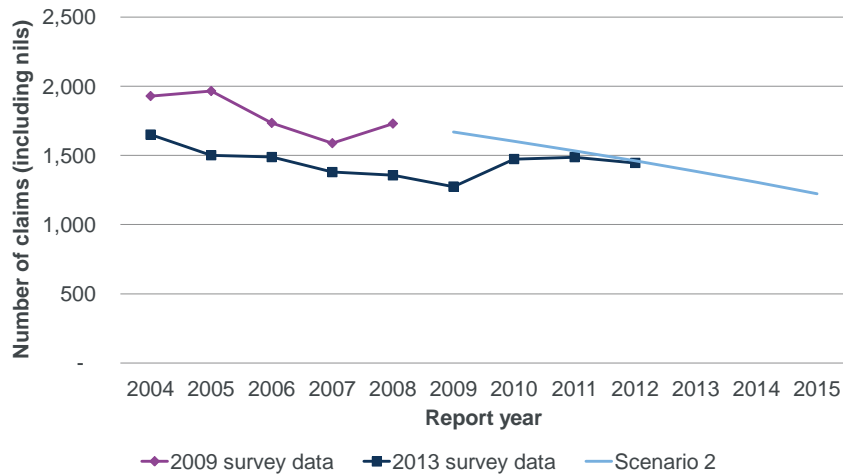


10 October 2013

16



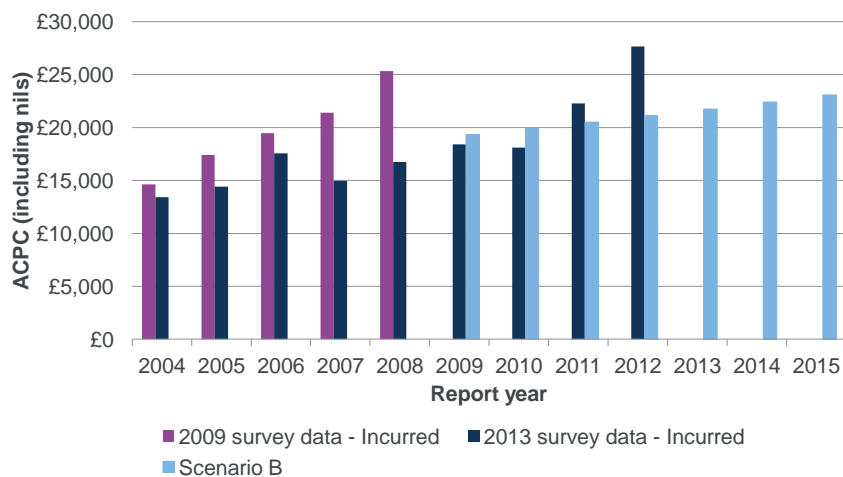
## Asbestosis: Number of Claims



10 October 2013

17

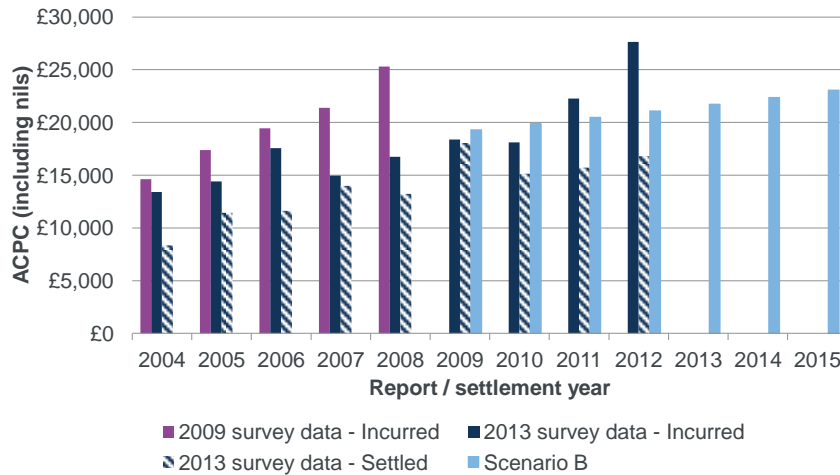
## Asbestosis: ACPC



10 October 2013

18

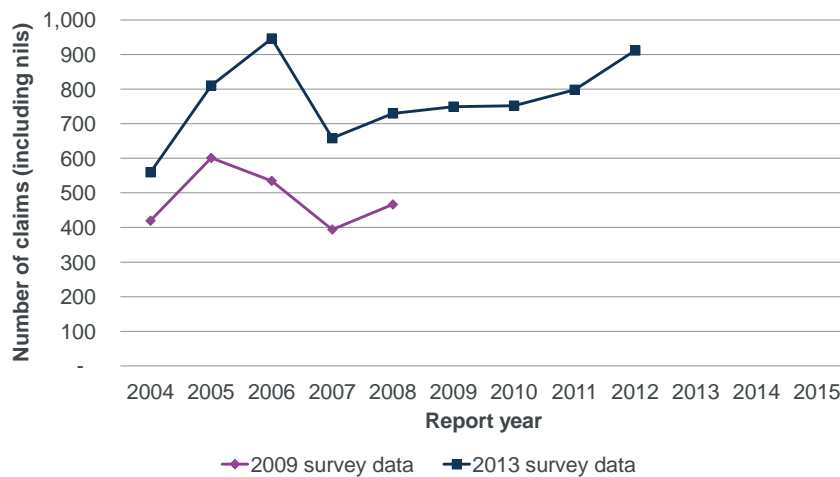
## Asbestosis: ACPC



10 October 2013

19

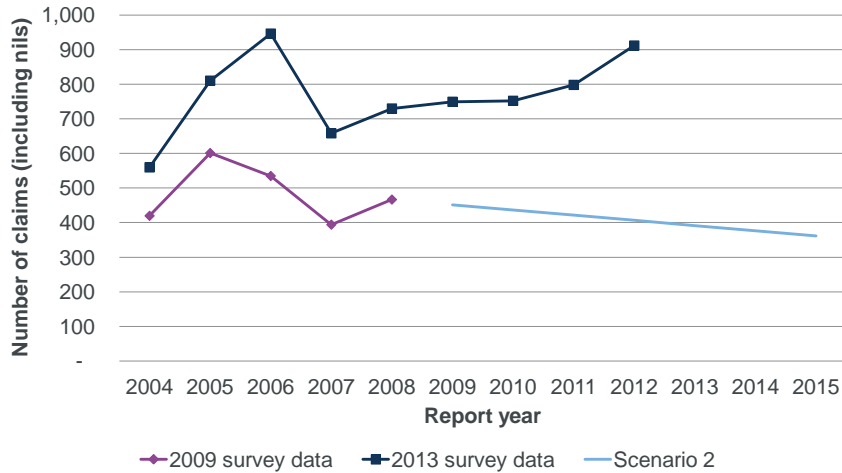
## Pleural Thickening: Number of Claims



10 October 2013

20

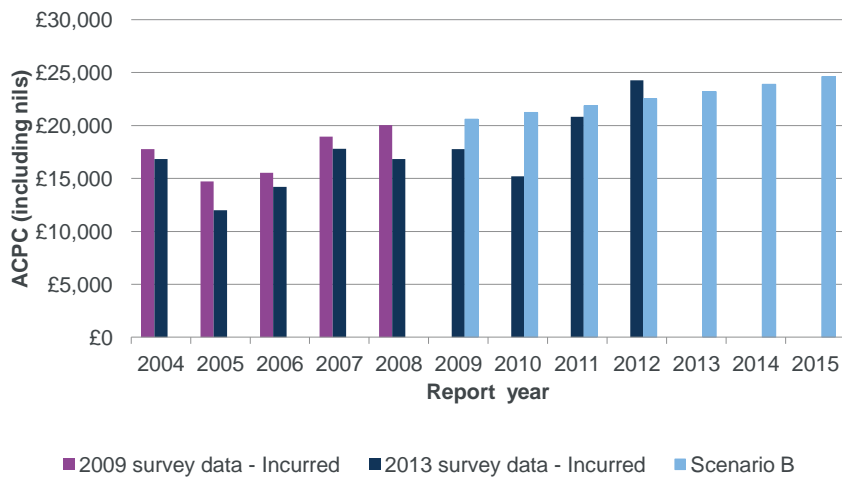
## Pleural Thickening: Number of Claims



10 October 2013

21

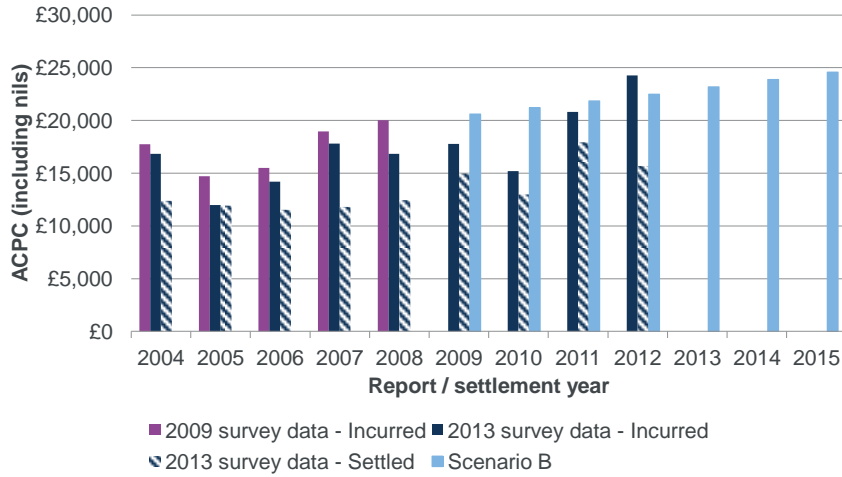
## Pleural Thickening: ACPC



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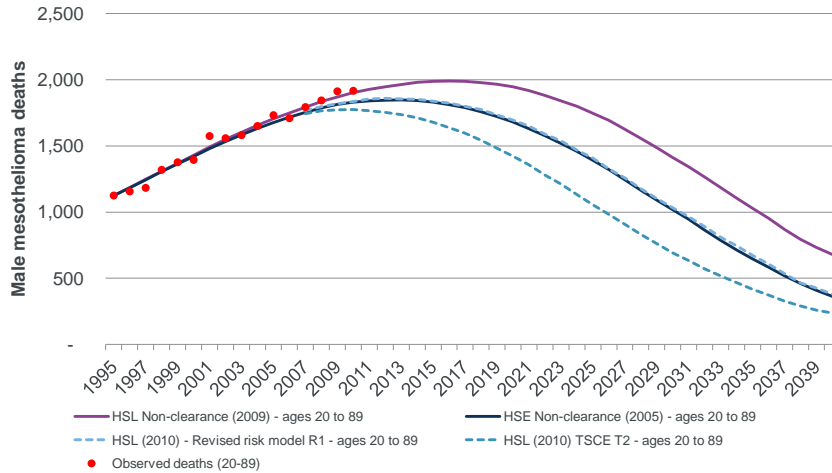
22

## Pleural Thickening: ACPC



## HSL / HSE Update

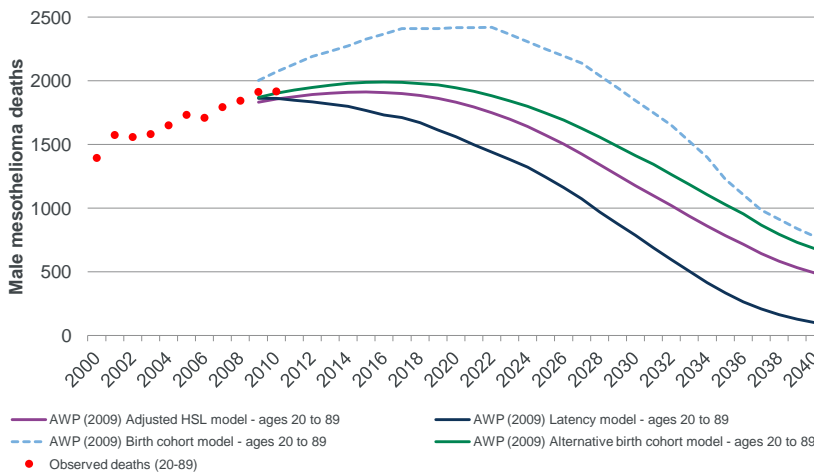
## Possible model error remains high



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25

## Possible model error remains high



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26

## Outlook – HSE Updates

- HSE produced Two Stage Clonal Expansion (“TCSE”) model in 2010 as well as previously established “non-clearance” model
- Later this year, the HSE will publish a revised fit of their “non-clearance” model for both males and females
- AWP will review the final estimates when published
- Expected results to be very similar to the 2009 “non-clearance” model used by the AWP in their estimates
  - Same calibration with an additional 4 years of deaths data

## Claims Recovery Unit Update

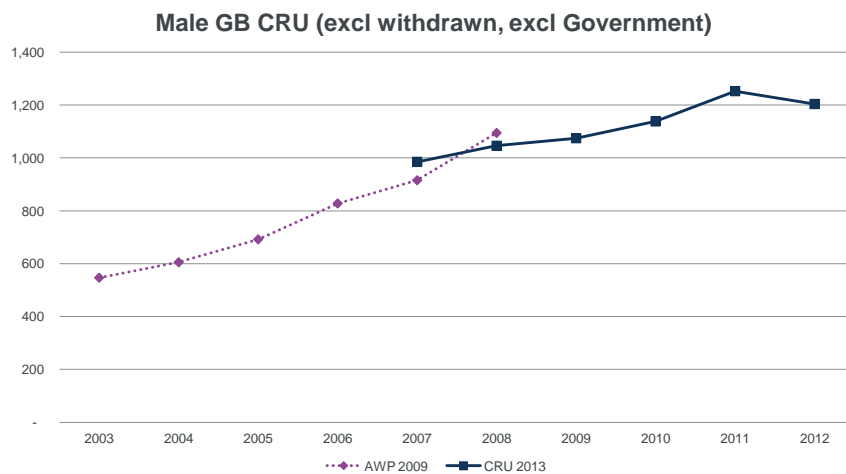
## Background

- The Claims Recovery Unit (“CRU”) exists to claw back benefit payments made in respect of insured losses from insurers
- Data available via Freedom of Information requests provides an input into the AWP mesothelioma analysis
  - Count of customer numbers serves as cross check on claims trends
  - Total customer numbers used as an indicator of claims propensity

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29

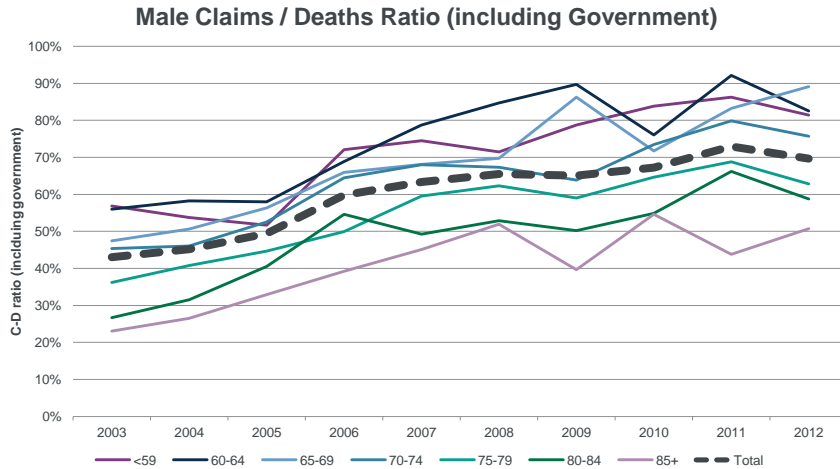
## CRU Claimants Count



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30

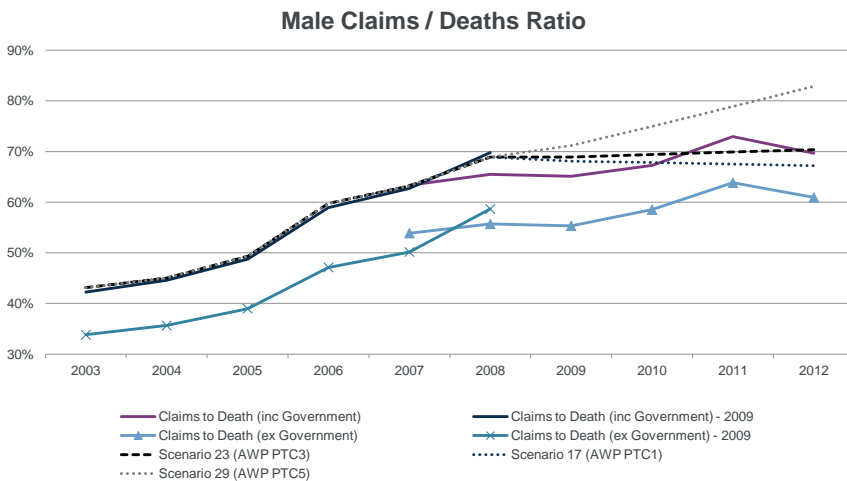
## Claims to Deaths Ratio (1)



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31

## Claims to Deaths Ratio (2)



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32



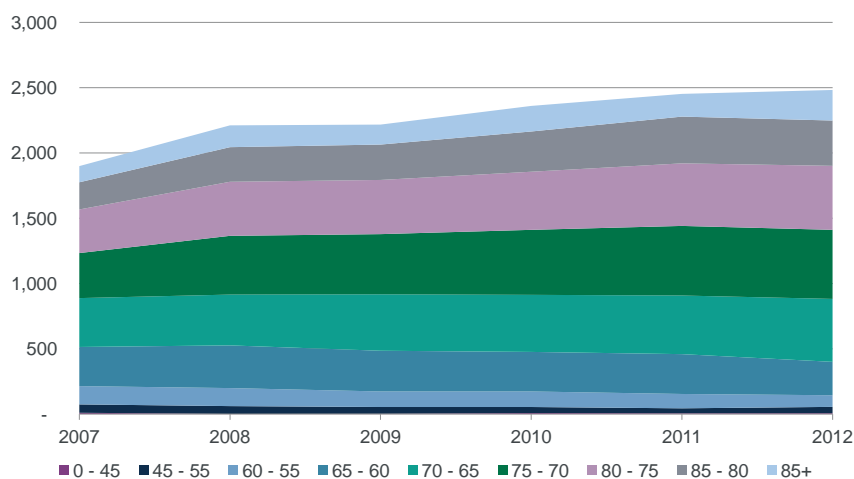
## Data Interpretation – Caveat Emptor

- In the last year, questions have emerged in the AWP's interpretation of CRU data
- Data set includes unique customer number previously assumed to be individual Mesothelioma sufferers – this is not correct
- Multiple records may mean trends in numbers of Mesothelioma sufferers data are blurred by changes in number of customers per suffer
- AWP plan to engage with CRU to test if this means we need to re-visit propensity assumptions
- Analysis of numbers of records shows similar trends

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33

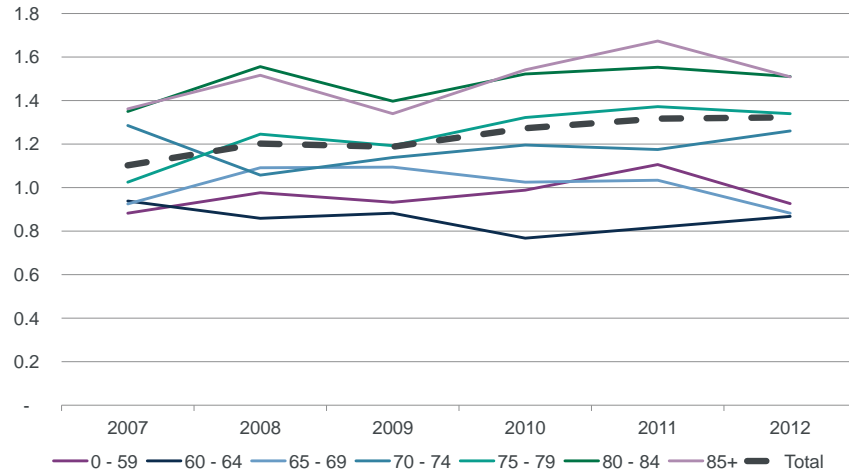
## Numbers of Records – All Records



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34

## Records to Deaths Ratio – Employed Males



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35

## Legal and Other Developments

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36

## Legal and Other Developments

- ELTO
- Trigger Litigation
- LASPO / Simmons v Castle
- MSS
- MoJ Consultation
- International Energy Group Ltd v Zurich Insurance plc
- Scotland and Wales

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37

## Employers' Liability Tracing Office (ELTO)

- Replacement for (voluntary) ELCOP
- Online EL policy database (ELD) and tracing service
- Database contains new and previously traced policies
  - 'Simple' user search of online records
  - 'Extended' search sent to insurer/s monthly, with mesothelioma fast-tracked
- Tracing service sets and audits insurer tracing standards

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38

## Employers' Liability Tracing Office (ELTO)

- 155 members representing 99% of current EL market
- ELD now contains over 9 million current and historic policies
- 76% search success rate (simple searches not followed up + positive hits on extended searches) overall
- Claim success rate for mesothelioma is 61% but 66% of mesothelioma *claimants* successfully trace a policy

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39

## Employers' Liability Tracing Office (ELTO)

- ELTO aims to deliver best practice tracing across the market:
  - Reduction in claimants failing to trace
  - Increase in traced coverage
  - Reduction in Compensation Act untraced coverage
- More claims, smaller shares?

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40

## Trigger Litigation

- Seeking to clarify what triggers a policy to pay a claim to victims of mesothelioma
- Bolton Metropolitan Borough Council v MMI and CU
  - Public liability policies
  - “Injury occurring” wording
- Durham v BAI (run-off) and others (“Trigger Litigation”)
  - Employers liability policies
  - “Injury ‘sustained’ or disease contracted” wording

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41

## Trigger Litigation

- On the 28th March 2012 the Supreme Court handed down its judgment based on a 4-1 majority
 

*Reflecting the wider commercial purpose of employers' liability cover, that disease is said to have been "sustained" or "contracted" in an employers' liability policy when it is caused and not when the disease manifests itself many years after the exposure, applying the principles set out in Fairchild*
- Employers' liability policies respond on an exposure basis regardless of wording (unlike public liability policies)
- Return to the basis used prior to the litigation

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42

## LASPO/Simmons v Castle

- A 10 year review looking into the costs in civil litigation completed by Lord Justice Jackson in January 2010
- Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) passed May 2012 – law from April 2013
- After amendment in the House of Lords, mesothelioma was excluded
- However, 10% uplift in general damages recommended by Jackson was implemented through Simmons v Castle case in 2012 – this includes mesothelioma

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43

## Mesothelioma Support Scheme (MSS)

- Proposal for mesothelioma support scheme included in Queen's Speech 2013
- Will provide awards for occupational mesothelioma sufferers who can't trace a compensator, funded via a levy on EL premiums
- Scheme likely to begin operation mid 2014

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44

## MoJ Consultation

- In July 2013 the MoJ published a paper asking for views on the following in relation to mesothelioma claims:
  - Pre action protocol
  - Secure claims gateway
  - Fixed recoverable costs regime
  - Reinstatement of mesothelioma within LASPO

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45

## IEG v Zurich

- Claimant died from mesothelioma after exposure to asbestos in Guernsey
- IEG settled claim for damages and then sought recovery from the insurer under EL policies covering 6 of 27 years exposure
- Commercial court ruled Guernsey law applied: UK Compensation Act 2006 did not apply and insurer's liability limited to the period under which the claimant had been insured
- Insured appealed this verdict

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46

## IEG v Zurich

- Court of Appeal ruled in February 2013
- Insurer to provide a complete indemnity
- No contribution by solvent insured to insurer - contrary to the ABI guidelines
- Looks to a layman like 'all sums without contribution'
- Permission has been granted to take the case to the Supreme Court with a hearing likely in 2014

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47

## Scotland and Wales

- Scotland: Overall, awards in Scotland are now typically twice those elsewhere
  - The compensation regime for wrongful death differs in Scotland from that in England and Wales, in particular in relation to *loss of society* payable to individual relatives.
  - Specific cases over the last few years have increased the levels of awards typically claimed.
  - In addition The Damages Act (Scotland) 2011 increased amounts payable for loss of income
- Wales
  - The Welsh Assembly has proposed a Bill to recover NHS costs for asbestos related disease from insurers

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48



## Key Points & Next steps

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49

## Key Points

- Three years of experience little cause for changes
  - Mesothelioma number of claims and costs in-line with estimates (Claimants to Deaths Ratios are stable)
  - Lung cancer greater numbers but lower costs
  - Shift between Asbestosis and Pleural Thickening claims due to re-classifications
- HSE will be recalibrating their “non-clearance” model
- Legal uncertainty continues

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50

## What will the AWP do now?

- Release an excel copy of the latest HSE model parameters (when papers have been published)
- Continue to collect market data on a yearly basis
  - Next due for March 2014



**Questions**



**Comments**

Expressions of individual views by members of the Institute and Faculty of Actuaries and its staff are encouraged.

The views expressed in this presentation are those of the presenter.