

# Nellie Kershaw, Turner and Newall, and Asbestos-Related Disease in 1920s Britain

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Asbestos, it has been said, ‘can truly be called the 20th-century mineral’.<sup>1</sup> Until the late-Victorian period it had few commercial applications, but its exceptional strength, versatility and fire-resistant properties meant that it was soon being used for products as diverse as non-combustible cigarette papers and fireproof bulkheads for Royal Navy warships. But while the emergent British asbestos industry experienced substantial, if uneven, growth, particularly during the First World War (see Table at end), it remained comparatively small in terms of the numbers it employed. The 1921 census yielded a figure of 3,762 workers, of whom 2,502 were men and 1,260 women. By 1931 the number employed had risen by some 14% to 4,286 (2,687 men and 1,599 women).<sup>2</sup> This workforce was distributed amongst dozens of factories, there being at least 176 asbestos manufacturers in 1933.<sup>3</sup>

Throughout its existence the British asbestos industry was concentrated on two areas: greater London and the industrial north-west of England, principally Lancashire. The only other significant production took place in the West Riding of Yorkshire. Within Lancashire the main industrial centre was the county borough of Rochdale. Indeed, in

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1. J. C. Gilson, ‘Man and Asbestos’, *Annals of the New York Academy of Sciences* 132 (1965–6), p. 9.
2. *Census of England and Wales, 1921: Industries* (HMSO: 1924), Industry Tables, p. 7; *Census of England and Wales, 1931: Industries* (HMSO: 1934), Industry Tables, p. 4.
3. ‘Annual Report of the Chief Inspector of Factories and Workshops for 1933’, Cmd 4657, *Parliamentary Papers* (hereafter *PP*) (1933–4) 11, p. 1082.

1931 more than 25% of the asbestos workers of England and Wales were to be found in that town. Although not the only asbestos manufacturer located in Rochdale, Turner Brothers Asbestos Co. Ltd (TBA) was by far the largest. Founded in the 1870s as a textile firm, TBA was soon supplying asbestos textiles, including insulating mattresses for steam boilers and other products, to the engineering industry. In 1920 it combined with three other asbestos enterprises, one of which was Newall's Insulation of Washington, County Durham, to form Turner and Newall (T&N). Five years later the new firm was floated on the London stock exchange.<sup>4</sup>

There was a 'downside' to this picture of business expansion, for during the 1920s several deaths were attributed to a form of pulmonary fibrosis caused by the inhalation of asbestos dust. A new disease, to which the name 'asbestosis' was attached in 1925, had been discovered.<sup>5</sup> An investigation carried out by one of the medical inspectors of factories in 1928–9 confirmed that the inhalation of asbestos dust in sufficient quantity could cause serious illness and death.<sup>6</sup> As a result,

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4. On the origins and early development of T&N, see *Turner and Newall Limited: The First Fifty Years, 1920–1970* (T&N, Manchester: 1970); N. A. Morling, 'The History of Turner Brothers Asbestos Company Limited', *Transactions of the Rochdale Literary and Scientific Society* 24 (1960) pp. 49–64. Following T&N's formation, TBA and the other constituent companies retained their separate identities and separate boards of directors. For purposes of clarity, this paper employs the T&N designation throughout.
  5. S. R. Gloyne, a leading medical authority, referred to the use of asbestos as having 'produced a new variety of pulmonary fibrosis': 'The Presence of the Asbestos Fibre in the Lesions of Asbestos Workers', *Tubercle* 10 (1929), p. 404. In 1898 the lady inspectors of factories had drawn attention to the 'evil effects of asbestos dust'. Over the next decade or so the annual reports of the Chief Inspector of Factories included a handful of brief references to asbestos and health. In 1906 a London physician told an official committee of the one case of occupationally related asbestos disease with which he was acquainted. See 'Annual Report of the Chief Inspector of Factories and Workshops for 1898', Cd 27, *PP* (1900) 11, p. 179; 'Departmental Committee on Compensation for Industrial Diseases, minutes of evidence', Cd 3495, *PP* (1907) 34, p. 1203.
  6. E. R. A. Merewether, *Report on Effects of Asbestos Dust on the Lungs and Dust Suppression in the Asbestos Industry* (HMSO: 1930). The epidemiological study was undertaken by Edward Merewether. One of the engineering inspectors of factories, Charles Price, then investigated problems of ventilation and dust extraction.

the government took several actions. Under the terms of the Workmen's Compensation Act 1925 and the Workmen's Compensation (Silicosis and Asbestosis) Act 1930, it made provision for the compensation of asbestotics and their dependants in the form of the Asbestos Industry (Asbestosis) Scheme 1931.<sup>7</sup> This was supported by an Asbestos Industry (Medical Arrangements) Scheme 1931, which, *inter alia*, provided for the medical examination of those workers deemed to be most at risk.<sup>8</sup> With a view to reducing dust levels in the industry, the government also introduced the Asbestos Industry Regulations 1931. These provided, among other things, for the installation of exhaust ventilation equipment in the dustiest parts of asbestos factories (the so-called 'scheduled' areas), the enclosure of certain dust-producing machines, the wearing of protective clothing and breathing apparatus, and the exclusion of juveniles from certain processes.<sup>9</sup> Although these measures did not eradicate asbestosis, a number of authorities held, as late as the 1960s, that they made asbestos factories much safer.<sup>10</sup>

In the 1950s, Richard Doll confirmed earlier suspicions that the inhalation of asbestos dust was causally linked to lung cancer.<sup>11</sup> In the 1960s another form of cancer, mesothelioma, was found to be caused by asbestos dust. Although new industrial health regulations were put in place in 1969, it soon became clear that the so-called 'magic mineral' was chronically flawed. It is fair to say, therefore, that the twentieth century witnessed not only the spectacular rise of asbestos as a valuable commodity but its equally spectacular fall from grace as a material that poses a grave threat to human health. As a result, the UK asbestos-

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7. 15 & 16 Geo. V c. 84; 20 & 21 Geo V c. 29; SR & O 1931 no. 344. The scheme was operative from 1 June 1931.
  8. SR & O 1931 no. 341 (operative from 1 June 1931).
  9. SR & O 1931 no. 1140. Most of these regulations came into operation on 1 March 1932. Some were deferred for six months and a few for twelve.
  10. See, for example, G. M. Bonser, J. S. Faulds and M. J. Stewart, 'Occupational Cancer of the Urinary Bladder in Dyestuff Operatives and of the Lung of Asbestos Textile Workers and Iron-Ore Miners', *American Journal of Clinical Pathology* 25:1 (1955), p. 132; D. Hunter, *The Diseases of Occupations* (English Universities Press: 1955), p. 881; C. L. Sutherland, "Pneumoconiosis – Its Effects and Complications", *Transactions of the Association of Industrial Medical Officers* 10 (1960), p. 13; P. Hugh-Jones, 'Complications of Asbestosis', *British Medical Journal (BMJ)*, 30 April 1960, p. 1351.
  11. R. Doll, 'Mortality from Lung Cancer in Asbestos Workers', *British Journal of Industrial Medicine* 12 (1955), pp. 81–6.

manufacturing industry has virtually ceased to exist.<sup>12</sup> Elsewhere, however, notably in Japan and the former Soviet Union, the mineral remains in strong demand. Furthermore, with its products so widely distributed, and with ongoing personal injury and buildings litigation in Britain and, notably, the United States, the legacy of the asbestos industry will remain for years to come.

The first identifiable person known definitely to have died from an asbestos-related disease was Mrs Nellie Kershaw, a young woman from the borough of Rochdale. Her case history, which has been discussed on several previous occasions, has been regarded as important for a number of reasons. First, it provided Dr William Cooke with material for an article, published in 1924, that has come to be recognized as the first description of pulmonary asbestosis (though he did not use this term) in the medical literature.<sup>13</sup> Second, it initiated a process that led to the introduction both of the Asbestos Industry Regulations 1931 and of a compensation scheme for asbestos workers. Third, it supposedly symptomizes the ungenerous and uncaring response of T&N to the illness and death of one of its workers. Thus, David Jeremy has argued that '[a]t the inquest on Mrs Kershaw in 1924 the Turner and Newall directors' main concern was to shift the blame for the victim's death away from the company'.<sup>14</sup> Fourth, and as a direct consequence of the negative attitude of T&N, it supposedly represents a missed opportunity in terms of tackling and eliminating the problem of

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12. Between 1973 and 1997, UK asbestos imports fell from a peak of 190,000 to 4,820 tonnes. In 1998 the Health and Safety Commission issued a consultative document that proposed 'a prohibition on the importation, supply and use of chrysotile asbestos [the only form of asbestos now permitted to be imported], except in certain well defined and limited cases': 'Proposals for Amendments to the Asbestos (Prohibitions) Regulations 1992', CD 140 (HSE: 1998) pp. 1–2.
  13. W. E. Cooke, 'Fibrosis of the Lungs due to the Inhalation of Asbestos Dust', *BMJ*, 26 July 1924, p. 147; see also W. E. Cooke, 'Pulmonary Asbestosis', *BMJ*, 3 December 1927, pp. 1024–5.
  14. I. J. Selikoff and M. Greenberg, 'A Landmark Case in Asbestosis', *Journal of the American Medical Association (JAMA)* 265, 20 February 1991, pp. 898–901; D. J. Jeremy, 'Corporate Responses to the Emergent Recognition of a Health Hazard in the UK Asbestos Industry: The Case of Turner & Newall, 1920–1960', *Business and Economic History* 24:1 (1995), p. 257; G. Tweedale and R. C. Warren, 'A Case in Point: Morality and Paternalism in the Asbestos Industry: A Functional Explanation', *Business Ethics. A European Review* 7:3 (1998), pp. 88–9; B. I. Castleman, *Asbestos: Medical and Legal Aspects* (Aspen Law & Business, Englefield Cliffs, NJ: 1996), pp. 7–8.

asbestos-related disease virtually 'at birth'.<sup>15</sup> This research note re-examines the Kershaw case and, in particular, reviews the behaviour of Mrs Kershaw's employer. Based to a large extent on papers from the T&N archive at Trafford Park, Manchester, it argues that several aspects of the Kershaw case have been exaggerated, misinterpreted, or overlooked and, accordingly, that it provides scant justification for vilifying the T&N of the 1920s.

Nellie Kershaw (1891–1924) was a native of Rochdale. She left school at the age of twelve in 1903 and commenced work at a local cotton factory.<sup>16</sup> She soon moved to an asbestos works (Garsides), which was not associated with T&N, where she was employed for the bulk of her working life, a period of fourteen years.<sup>17</sup> Her final employer was T&N, by whom she was intermittently employed over a period of some four and a half years, during which time she was actually in work, for a total of around thirty-two months, as a 'rover'.<sup>18</sup> A rover's task was to operate a roving frame, a piece of equipment used to convert asbestos fibre into 'roves'; in other words, it drew out threads, thereby making them ready for spinning.<sup>19</sup> The reasons for Nellie Kershaw's lengthy breaks from work with T&N, amounting to almost two years, are not entirely clear, although Selikoff and Greenberg suggest that motherhood, rather than ill health, provides the

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15. The missed opportunity argument is made principally by Selikoff and Greenberg, 'A Landmark Case', *JAMA*, pp. 898–901.
  16. Selikoff and Greenberg are clearly mistaken in giving 1913 as her school-leaving date. Oddly, they also state in the article's abstract that the Kershaw case started 'in 1898': *ibid.*, p. 898.
  17. Aside from an entry in *Clegg's Commercial Directory of Rochdale* (1916), p. 280, which indicates that James A. Garside was an asbestos manufacturer at 359 Edenfield Road, Rochdale, the Local Studies Library holds no information on Garsides.
  18. In evidence given at the inquest into Kershaw's death, Percy Kenyon, then works manager at Turner Bros. Ltd., Rochdale, said that the 'Deceased came to my firm on the 31st December 1917, she left on the 25th July 1918 returned on the 28th January 1919, left again on the 16th April 1920 commenced again October 1921 left finally July 1922' (punctuation as in original): Inquest evidence of P. G. Kenyon, Kershaw file, drawer 0052, T&N archive, Trafford Park, Manchester.
  19. *Oxford English Dictionary* (1989). The dictionary definition refers to a roving frame only in relation to cotton manufacture. It is presumed that the machine performed the same function in the preparation of asbestos fibre.

explanation.<sup>20</sup> Certainly, at the time of her death she had a child aged about three and a half. Whatever the reason for her absences, it should be emphasized that Kershaw was on the payroll of T&N for less than 15% of her time as an asbestos worker. In July 1922, ill health rendered her permanently unfit for work. She died on 14 March 1924. A post-mortem examination carried out on the day following her death was indecisive, but subsequent, microscopic, examination of her lungs established the 'primary' cause of death as 'pulmonary fibrosis of the lungs due to the inhalation of mineral particles'; the secondary cause was 'tuberculosis of the lungs'.<sup>21</sup> At the time of her death, Mrs Kershaw had been absent from the T&N workforce for some twenty-one months.

The Kershaw case really began in July 1922, in which month Nellie Kershaw was examined by her general practitioner (GP), Walter Joss. Until that time she had been 'comparatively well', but on this occasion Joss certified that his patient was 'unable to follow her occupation' as a result of a medical condition that he characterized as 'asbestos poisoning'. He also diagnosed tuberculosis, a disease he had never previously found to be present in his patient. He did not, however, name this disease on the national insurance certificate that he completed for Mrs Kershaw. Armed with her medical certificate, Kershaw took the next step of applying for benefit under the terms of Part I of the National Insurance Act 1911.

As is well known, national insurance was one of the keystones of the pre-First World War welfare reforms of the Liberals. It sought, among other things, to tackle the problem of poverty by providing payments to insured workers who lost their jobs or experienced ill health to the extent that they were unable to work and therefore receive wages. National health insurance (NHI) provided insured workers, though not their dependants, with free access to a GP (but not, with the exception of tuberculosis sufferers, to hospital treatment) plus income replacement by means of sickness and disablement benefits at a rate of 10s. (50p) per week for males for 26 weeks and 5s. (25p) thereafter. An insured woman's entitlements were 7s. 6d. (37.5p) per week for 26 weeks and 5s. thereafter. There was also a maternity grant of 30s.

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20. Mrs Kershaw appears to have given birth in the autumn of 1920, in other words during the longer of her absences from the T&N payroll. Clearly, at the time of her departure in April 1920, she would have known that she was pregnant: inquest evidence of Frank Kershaw, 14 March 1924, Kershaw file, drawer 0052, T&N archive.

21. *Rochdale Observer*, 22 March and 5 April 1924.

(£1.50). The health insurance scheme was far wider in scope than its unemployment counterpart. Membership was obligatory for almost all manual workers between the ages of sixteen and seventy and open to white-collar workers whose annual income did not exceed £160. Finance was provided by contributions from employees at a rate of 4*d.* per week for men and 3*d.* for women, employers (3*d.* per week) and the taxpayer (2*d.* per week). The administration of sickness, disablement, and maternity benefit was placed in the hands of 'approved societies' or insurance committees.<sup>22</sup>

In the (correct) belief that she was covered by the terms of the National Insurance Act 1911, Nellie Kershaw submitted Joss's medical certificate to the Newbold Approved Society (NAS) of which she was a member. However, her application for benefit was refused on the grounds that she was suffering from an occupational disease, namely the 'asbestos poisoning' that Joss had diagnosed. As Kershaw herself wrote to T&N, probably in August 1922: 'I have not got a penny from the State Insurance, they would not pay me anything, because it was put on the Doctors Certificate Asbestos Poisoning'.<sup>23</sup> The NAS, as later became clear, believed that Kershaw ought to have claimed for benefit from her employer under the terms of the Workmen's Compensation Acts.<sup>24</sup> It is at this point that the Kershaw case becomes confused. The reality is that Nellie Kershaw had no legitimate workmen's compensa-

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22. 1 & 2 Geo. V c. 55.

23. Nellie Kershaw's NHI certificate signed by Walter Joss, 24 July 1922, and undated letter from Nellie Kershaw, Kershaw file, drawer 0052, T&N archive.

24. The first Workmen's Compensation Act was passed in 1897. It allowed workers in certain occupations, or their dependants, to obtain financial benefit without having to prove negligence on the part of their employers, provided that they could show that they were unable to work as a result of injury (or death) that arose 'out of and in the course' of employment. The act did not cover cases of sickness. Under the terms of the Workmen's Compensation Act 1906 (6 Edw. VII c. 58), compensation could be claimed for death or physical incapacity occasioned by six specific industrial diseases: lead, arsenic, phosphorus, and mercury poisoning, anthrax, and ankylostomiasis. Though this list was extended over the ensuing years, at no time during the 1920s did it include any asbestos-related conditions. At all times injured or sick workers could sue their employers for damages instead of pursuing a workmen's compensation claim: P. W. J. Bartrip and S. B. Burman, *The Wounded Soldiers of Industry: Industrial Compensation Policy, 1833-1897* (Clarendon Press, Oxford: 1983); P. W. J. Bartrip, *Workmen's Compensation in Twentieth Century Britain* (Avebury, Aldershot: 1987).

tion claim against T&N. This was because asbestos-related disease was not compensable under the legislation as it stood in the 1920s. Her claim should have been met by the NAS; in turning it down, the society was at fault. Curiously, its error was not identified by Selikoff and Greenberg, and hence their mistaken comment that '[u]nfortunately, as the sickness certificate given to her by her physician, Dr Joss, bore the diagnosis "asbestos poisoning" rather than a non-occupational cause that would have entitled her to sickness pay, she was not qualified for benefits from that source'.<sup>25</sup>

When Nellie Kershaw wrote to T&N pointing out that she had been sick for some weeks and unable to obtain NHI benefit, she simply described her plight. On this occasion she made no financial claim against her employer, neither did she make any other demand – even though a later letter from the company indicates, somewhat cryptically, that she 'made a certain application to us'.<sup>26</sup> T&N responded to Kershaw's letter in two ways. First, Walter Joss was invited to explain his diagnosis of 'asbestos poisoning' and to visit T&N's Rochdale factory where, 'As you know, the hygienic conditions ... are far ahead of the average local works. We have been repeatedly congratulated by the Home Office and we are anxious to get to the bottom of any case where ill effects are alleged to have resulted from working on these premises'.<sup>27</sup> Second, the NAS was requested 'kindly [to] state the grounds upon which payment under the National Health Insurance is withheld'.<sup>28</sup>

In his reply, Joss ignored the invitation to make a factory visit. Jeremy maintains that he also refused 'to change his medical opinion'.<sup>29</sup> In fact, Joss did not repeat his diagnosis of 'asbestos poisoning', preferring to characterize his patient's condition as one of 'severe bronchial catarrh and irritation' – which, clearly, differs from his earlier judgement. Although he went on to express his opinion that Mrs Kershaw was 'not a suitable subject for work in an asbestos factory', even one 'run under the very best conditions' and that, as a result, he had advised her to 'exit from such employment', the only reason he gave for her unsuitability was his 'knowledge of her family history'. Joss made no suggestion that T&N was a poor employer or that health standards in its factory were notably hazardous. Jeremy also claims

25. Selikoff and Greenberg, 'A Landmark Case', *JAMA*, p. 898.

26. TBA to NAS, 31 August 1922, Kershaw file, drawer 0052, T&N archive.

27. TBA to Dr Joss, 23 August 1922, Kershaw file, drawer 0052, T&N archive.

28. TBA to NAS, 31 August 1922, Kershaw file, drawer 0052, T&N archive.

29. Jeremy, 'Corporate Responses to the Emergent Recognition of a Health Hazard', *Bus. and Econ. Hist.*, p. 257.

that Joss replied to T&N in a terse scrawl in which he refused 'to violate his Hippocratic oath by discussing one of his patients with a third non-medical party'. Now while Joss's reply was not particularly neat, it presents no problems of legibility. The note is concise, but in so far as the word 'terse' implies rudeness, it is an inappropriate description of a letter that begins: 'I am sorry I have been unable to reply to your letter of Aug. 23 sooner having been in Scotland until this week'. Neither can it be said that Joss declined to discuss Mrs Kershaw's medical condition, for he informed his correspondent of his (amended) diagnosis.<sup>30</sup>

So much for Joss's response; what of the NAS? Its reply, signed by its president, J. Blomley, adhered to the position that it had no obligation to support Mrs Kershaw during her illness: 'The Doctor states on his first certificate that this member is suffering from asbestos poisoning and as this appears to be a case which comes under the Workmen's Compensation Acts we are unable to pay sickness benefits under the National Health Insurance Acts.'<sup>31</sup> By replying thus, the NAS's president shows himself to have been either ignorant of the law (as was probably the case) or duplicitous. T&N sought clarification by requesting the society to 'state definitely under which Section of the Workmen's Compensation Act you consider that this case should be placed?'<sup>32</sup> The NAS was slow to reply to this invitation, but when the response finally arrived it was feeble in the extreme: 'It is on the Doctor's certificate which states that "The above named [Nellie Kershaw], who is a member of the Newbold Approved Society is suffering from "asbestos poisoning" that we base our claim for compensation. That, to my mind, should be sufficient evidence of the person's eligibility for the payment' (double quotation marks as in original).<sup>33</sup>

This exercise in 'buck-passing' prompted T&N to inform the NAS of three indisputable reasons as to why there could be no liability under the terms of workmen's compensation legislation. First, asbestos was not a poison and 'asbestos poisoning' not a recognized medical

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30. Walter Joss to TBA, 14 September 1922, Kershaw file, drawer 0052, T&N archive.

31. J. Blomley to TBA, 1 September 1922, Kershaw file, drawer 0052, T&N archive.

32. TBA to NAS, 4 September 1922, Kershaw file, drawer 0052, T&N archive.

33. Blomley to TBA, 13 September 1922, Kershaw file, drawer 0052, T&N archive.

condition;<sup>34</sup> second, asbestos poisoning was not a scheduled disease; and, third, Mrs Kershaw had not suffered an accident. All of this being the case, the NAS was urged 'to pay Benefits due from the time this member reported the matter to you'.<sup>35</sup> Blomley then retreated somewhat – though not very helpfully:

This appears to be one of those complex cases, in view of the Doctor's report, that requires some decision from those who are able to give it and it is for the member to take what action she deems necessary to obtain compensation to which, I think, she is fully entitled if the medical certificate is worth anything.<sup>36</sup>

Aware that an impasse had been reached, T&N referred the matter to its insurers. In so doing, the company repeated its belief that Mrs Kershaw's claim 'rightly belongs to the National Health Insurance Scheme'. It also made some comments (discussed below), to the effect that 'it will be exceedingly dangerous to admit any liability whatever in such a case' and that it had already done 'all in our power to repudiate the claim', which subsequent commentators have interpreted in such a way as to suggest that it was a bad employer.<sup>37</sup>

It is self-evident that these wrangles did nothing to benefit Nellie Kershaw, who had become, in effect, a pawn in a game of financial chess. On 25 September 1922 she asked her employer what was being done about her case:

I have been at home nine weeks now and not received a penny, as I think it is time there was something from you, as the National Health refuses to pay me anything. I am needing nourishments and the money I should get would buy them. I have lost nine weeks wages now through no fault of my own. Hoping you will answer me as soon as possible.<sup>38</sup>

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34. In a 1911 report, the Chief Lady Inspector of Factories, Adelaide Anderson, referred to the asbestos industry as a 'non-poisonous' dusty trade: 'Annual Report of the Chief Inspector of Factories and Workshops', Cd 6239, *PP* (1912–13) 11, p. 728. The term 'asbestos poisoning' was not in 1924 – and never has been since – currency in medical literature.

35. TBA to NAS, 15 September 1922, Kershaw file, drawer 0052, T&N archive.

36. Blomley to TBA, 16 September 1922, Kershaw file, drawer 0052, T&N archive.

37. TBA to London & Lancashire Insurance Co. Ltd, 21 September 1922, Kershaw file, drawer 0052, T&N archive.

38. Letter from N. Kershaw, 25 September 1922, Kershaw file, drawer 0052, T&N archive.

After discussions with its insurers, T&N advised Mrs Kershaw of the steps she should take if she wished to pursue a claim against them under workmen's compensation legislation. If, as was clearly anticipated, such steps were to prove fruitless, and her approved society continued to remain unhelpful, she was advised to consult a solicitor.<sup>39</sup> At this point the document trail goes cold. It recommences in March 1924, the month of Nellie Kershaw's death, with newspaper reports, inquest evidence, and letters relating to Mrs Kershaw's illness and decease. Selikoff and Greenberg state that '[n]o record has been discovered of how the Kershaws managed during the last 20 months of Nellie Kershaw's life'.<sup>40</sup> In saying this they overlook the fact that, as stated on the death certificate reproduced in their paper, she had a husband in employment as a slater's labourer.<sup>41</sup> It follows, therefore, that there was a family income. More crucially, however, as we now know, Nellie Kershaw's claim for national insurance benefit eventually succeeded, for as her husband said in his inquest evidence, the 'National Health Insurance paid her 7/- [35p] a week from July [1923] till the first week in January [1924]'.<sup>42</sup> Even though his evidence went on to say that 'she has not received anything from the firm of Turner Bros.', it follows that T&N's interpretation of its legal and financial liability to Mrs Kershaw was borne out.

This paper concludes with some more general reflections upon the wider significance of the Kershaw case – a tragic one, involving as it does the death of a comparatively young woman who left a husband and young child. In particular, it is lamentable that Mrs Kershaw did not obtain the financial assistance, to which she had a clear case, as soon as she was eligible to receive it. That she went without benefit unnecessarily was clearly the result of a dispute about liability between her employer, T&N, and the approved society of which she was a member. This dispute was not about *whether* Mrs Kershaw should receive benefit but who should pay it. At no time did T&N deny that Nellie Kershaw was a victim of ill health; at no time did it argue that she was undeserving of assistance. Even though several writers have used the Kershaw case both to vilify the company and to demonstrate

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39. TBA to N. Kershaw, 4 October 1922, Kershaw file, drawer 0052, T&N archive.

40. Selikoff and Greenberg, 'A Landmark Case', *JAMA*, p. 899.

41. Neither was Frank Kershaw unemployed, though in July 1924 he was not at work as a result of a builders' strike: Memo., 25 July 1924, Kershaw file, drawer 0052, T&N archive.

42. Inquest evidence of Frank Kershaw, 15 March 1924, Kershaw file, drawer 0052, T&N archive.

fundamental flaws within it – including a culture of ‘denial’ – there can be no doubt that its interpretation of the law was correct.<sup>43</sup> it was not legally liable to compensate Mrs Kershaw.

On the other hand the NAS, to which, of course, T&N contributed funds on behalf of its insured workers, including Mrs Kershaw, was financially responsible to those unable to work as a result of sickness. After much foot-dragging the NAS finally acknowledged this and paid up. Nevertheless, Tweedale and Warren regard it as natural that the NAS should have been unaware of its obligations to a member. They see T&N’s behaviour, on the other hand, not in terms of the company accurately determining the law, but as evidence that it ‘took refuge behind the fact that asbestos [*sic*] was not yet scheduled under the Workmen’s Compensation Act’.<sup>44</sup> At first sight it is curious that no writer who has reviewed this case has deemed fit to give the NAS the criticism it deserves. It takes but little reflection to appreciate, however, that a defunct, provincial friendly society offers an uninviting ‘target’ for criticism, whereas an extant multinational company involved in the manufacture of a demonized product provides easy prey.<sup>45</sup> From this perspective the Kershaw case appears, as much as anything, to exemplify the aphorism: ‘Never let the facts get in the way of a good story’.

It is true that T&N declined to offer Mrs Kershaw or her widower *ex gratia* payments, and that it urged her to seek benefit from the source to which she was legally entitled. It is presumably in this respect that Tweedale and Warren accuse the company of adopting ‘a legalistic view of compensation’.<sup>46</sup> However, given that the company contributed to national health insurance (just as it also paid for workmen’s compensation insurance), this cannot be seen simply as a means of escaping a financial obligation. As for its determination to ‘repudiate’ a workmen’s compensation claim, and its recognition that it would be exceedingly dangerous to admit liability, these reflections need to be seen in the context of the ongoing dispute with the NAS

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43. Jeremy, ‘Corporate Responses to the Emergent Recognition of a Health Hazard’, *Bus. and Econ. Hist.*, p. 264; Tweedale and Warren, ‘A Case in Point: Morality and Paternalism in the Asbestos Industry’, *Bus. Ethics*, pp. 88–9.

44. Tweedale and Warren, ‘A Case in Point: Morality and Paternalism in the Asbestos Industry’, *Bus. Ethics*, p. 89.

45. T&N was the subject of a take-over by a US corporation, Federal Mogul, in late 1997.

46. Tweedale and Warren, ‘A Case in Point: Morality and Paternalism in the Asbestos Industry’, *Bus. Ethics*, p. 88.

about liability. To suggest, as Jeremy does, that T&N's main concern was to avoid opening 'the floodgates to a stream of claims for compensation' is not only unsubstantiated by the documentation but also at odds with the statistical reality, for the earliest annual statistics of asbestos-related mortality for the whole of the British asbestos industry show an average of under 12 deaths per year in the period 1931–40 inclusive.<sup>47</sup> To be sure, in evidence given at the inquest on Mrs Kershaw, Joss referred, albeit somewhat ambiguously, to seeing 'ten or a dozen cases a year' of asbestos-related lung disease in patients employed in the asbestos industry. On the other hand, when William Cooke 'hunted through the medical literature' in 1924, he could 'find only one case of suspected lung irritation caused by asbestos'.<sup>48</sup>

More feasibly, T&N might have been worried that if victims of ill health could effectively opt whether to receive workmen's compensation payments or national insurance benefits, they would always choose the former because they stood to gain more. If this were to happen, workmen's compensation insurance premiums would rise, perhaps dramatically. Public policy would also be undermined, for the basis of the workmen's compensation system was that eligible workers were a privileged group and therefore that those who suffered injury or certain forms of ill health ('arising out of and in the course of their employment') should be entitled to financial benefits denied to others, even if they were similarly incapacitated and hence unfit for work. Of course, all of this is speculative; nothing should be read into T&N's determination to 'repudiate' a workmen's compensation claim and avoid admitting liability beyond a desire to see that those responsible for assisting Mrs Kershaw accepted their obligations.

However, if one persists with the exercise in 'virtual history', it is instructive to speculate about what would have happened if the compensation scheme set up in 1931 to cover asbestos workers – the Asbestos Industry (Asbestosis) Scheme 1931 – had existed in 1922. There can be little doubt that Mrs Kershaw first encountered the asbestos dust that was to kill her during the fourteen years that she worked at Garsides Asbestos Factory. Dr Cooke certainly thought this was the case for, after giving his opinion that the primary cause of Mrs Kershaw's death was fibrosis brought about by 'mineral particles in the

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47. Jeremy, 'Corporate Responses to the Emergent Recognition of a Health Hazard', *Bus. and Econ. Hist.*, p. 257. Figures for asbestosis deaths have been derived from the annual reports of the Chief Inspector of Factories.

48. Inquest evidence of William Cooke and Walter Joss, March 1924, Kershaw file, drawer 0052, T&N archive.

lungs originated from asbestos', he went on to state that the 'Fibrosis must have begun many years ago. Perhaps ten years ago.'<sup>49</sup> In other words, it began long before she began to work for T&N. This being the case, it follows that had the 1931 compensation scheme been in operation during her lifetime, T&N would have been able to maintain, with a good chance of success, that part of the obligation to compensate Mrs Kershaw rested with the employer (Garsides) with whom Mrs Kershaw spent most of her working life.<sup>50</sup>

Finally, we need to consider the suggestion of Selikoff and Greenberg that T&N's approach to the Kershaw case represented a missed opportunity, the consequence of which was decades of unnecessary suffering:

One can only speculate on what might have happened if Turners, which was a prominent company in the industry, had acknowledged Mrs Kershaw's claim and had recognized the hazard presented by asbestos. Employees, factory floor supervisors, and management would have been alerted to the hazard and would have begun to seek effective controls. Turners, through the Trade Association, would have ensured that other members would follow suit; insurance companies might also have insisted on such measures to decrease their liabilities; public awareness would gradually have come into being; public health authorities would have responded with appropriate regulations and rules; engineers would have developed means of avoiding exposures; and men and women could have worked with much less risk and have suffered much less disease. All these eventually came to pass, but it took years, decades.<sup>51</sup>

It is hardly necessary to point out that the key phrase in the above passage is 'speculate on what might have happened', for there is nothing to indicate that any of the above would have occurred in the way suggested if T&N had behaved differently in 1922. Here, of course, we are back in the realms of 'what if' history. In this author's view, the likelihood is that little would have been different if T&N had financially assisted Nellie Kershaw in 1922, for it is highly unlikely that a compensation payment to a single victim would have initiated the chain of events foreseen by Selikoff and Greenberg. Indeed, the manner in

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49. Inquest evidence of William Cooke, March 1924, Kershaw file, drawer 0052, T&N archive.

50. *Asbestos Industry (Asbestosis) Scheme 1931* (SR & O 1931 no. 344), s. 8.

51. Selikoff and Greenberg, 'A Landmark Case', *JAMA*, p. 900.

which Selikoff and Greenberg link awareness of danger to, for example, the discovery of engineering solutions (seemingly with no intervening development period) is fanciful to the point of absurdity. No matter how T&N had behaved in 1922 it would still have been necessary for a scientific study to have been undertaken before the asbestos industry, which was then seen to be making a product of vital national importance for which there was no viable alternative, was unambiguously recognized as being dangerous. It would then have been necessary to devise practical solutions.

In other words, outcomes are the consequences of processes. It is feasible to see the death of Nellie Kershaw as the first step in a process that led to the Asbestos Industry Regulations 1931, which themselves constituted a step towards tackling an imperfectly understood hazard. The 1922 dispute between T&N and the NAS about compensation or benefit payments was irrelevant in terms of 'solving' the asbestos problem. In 1922–4 the real 'motor of history' in the asbestos context was Nellie Kershaw's death, for this led to an inquest, which led to William Cooke's pathological examination and his article in the *British Medical Journal*, which in turn led to the publication of further articles. These contributed to the government taking notice and ordering an inquiry by one of the medical inspectors of factories, the findings of which suggested the need for an engineering inquiry, the results of which indicated a regulatory way forward, and so forth. In this sense, at least, we can say that Nellie Kershaw did not die in vain.

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**Table 1:** UK imports of raw asbestos (tons), 1900–28

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1900	4595
1902	3928
1904	5879
1906	6864
1908	6586
1910	7219
1912	7696
1914	14714
1916	26712
1918	19887
1920	20782
1922	9340
1924	15080
1926	23404
1928	25403

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Note: To nearest ton, alternate years. From 1920, the data became far more detailed. In this table the figures for 1900–18 inclusive refer to imports of raw asbestos. Those for 1920–8 inclusive are for raw and fibre asbestos imported and retained in the UK. Consequently, pre-1920 figures are not strictly comparable with those for 1920–8.

Source: *Annual Statement of the Trade of the United Kingdom with Foreign Countries and British Possessions* (HMSO: 1901–1931).