



House of Commons
Trade and Industry Committee

**Coal Health
Compensation
Schemes: Government
Response to the
Committee's
Fourteenth Report of
Session 2004–05**

**Thirteenth Special Report of
Session 2005–06**

*Ordered by The House of Commons
to be printed 21 March 2006*

HC 993
Published on 29 March 2006
by authority of the House of Commons
London: The Stationery Office Limited
£0.00

The Trade and Industry Committee

The Trade and Industry Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Department of Trade and Industry.

Current membership

Peter Luff MP (*Conservative, Mid Worcestershire*) (Chairman)
Roger Berry MP (*Labour, Kingswood*)
Mr Brian Binley MP (*Conservative, Northampton South*)
Mr Peter Bone MP (*Conservative, Wellingborough*)
Mr Michael Clapham MP (*Labour, Barnsley West and Penistone*)
Mrs Claire Curtis-Thomas MP (*Labour, Crosby*)
Mr Lindsay Hoyle MP (*Labour, Chorley*)
Mr Mark Hunter MP (*Liberal Democrat, Cheadle*)
Miss Julie Kirkbride MP (*Conservative, Bromsgrove*)
Judy Mallaber MP (*Labour, Amber Valley*)
Rob Marris MP (*Labour, Wolverhampton South West*)
Anne Moffat MP (*Labour, East Lothian*)
Mr Mike Weir MP (*Scottish National Party, Angus*)
Mr Anthony Wright MP (*Labour, Great Yarmouth*)

Powers

The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/parliamentary_committees/trade_and_industry.cfm.

Committee staff

The current staff of the Committee are Elizabeth Flood (Clerk), Grahame Allen (Inquiry Manager), Clare Genis (Committee Assistant) and Joanne Larcombe (Secretary).

Contacts

All correspondence should be addressed to the Clerk of the Trade and Industry Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5777; the Committee's email address is tradeindcom@parliament.uk.

Thirteenth Special Report

The previous Committee published its Fourteenth Report of Session 2004–05¹ on 6 April 2005. The Government's response was received on 1 March 2006. It is published as an Appendix to this Special Report.

Appendix: Government response

This is the Department's response to the Committee's report of March 2005. The Committee is aware of the reasons for the delay in responding. As the Committee knows, at the end of July 2005 the Minister for Energy, Malcolm Wicks, set up an external independent review into the operation of the coal health schemes in response to a series of critical articles in the press alleging fraud and mismanagement. In the circumstances, it was agreed with the Committee that the Department would defer a response to the Committee's report until the external review had been published and that its findings would be covered in the response.

The external review, conducted by Stephen Boys Smith (a former senior official in the Home Office) was published on 15 December with a statement by the Minister for Energy on its findings.² Mr Boys Smith was assisted by two full-time staff and the review was the outcome of an extensive three-month study into the schemes, including interviews with a wide range of stakeholders.

The Department is now able to reply to the Committee's report in the light of the review. The Department welcomed the report. In particular, we were pleased to see in the body of it the recognition of the efforts the Department and its contractors, together with claimant solicitors, have made in putting into operation these large and complex schemes. We are currently paying out around £2m a day in compensation, have detailed plans in place for the closure of the vibration (Vibration White Finger (VWF)) scheme by end-2007 and are now working up similar plans for the lung disease (Chronic Obstructive Pulmonary Disease (COPD)) scheme, in the light of the successful introduction of the Fast Track process for speeding up delivery.

In the Conclusions and Recommendations of the report, the Committee naturally focussed on what were issues and areas of disagreement with the Claimants' Group (CG) at the time. The Department sets out below a response and update on the issues raised, drawing where relevant on the further work of the external review. Taking the points in turn:

The scale of the problem

Part of the press criticism which led to the external review was that the Department had failed to get a grip on the likely volumes of both schemes, particularly the COPD scheme. The Committee's conclusion had, however, noted that 'it was not clear how DTI could

1 Fourteenth Report from the Trade and Industry Committee, Session 2004-05, *Coal Health Compensation Schemes*, HC 375-I

2 The Report is available at http://www.dti.gov.uk/coalhealth/pdf/ex_review.pdf

have been expected to gauge better the demand for the schemes'.³ The external review looked at this matter in some depth (Section 17) and fully concurred with the Committee's conclusion. There was very little useful evidence for making any estimates and no-one else was at the time suggesting the sort of volumes which have materialised. The Department's forecasting of public expenditure on the schemes has always made clear that the key unknowns were how many claims would be made.

The Department recognised in its evidence to the Committee that there were difficulties and delays in getting these complex schemes off the ground and that, with hindsight, more resource should have been employed in planning and operationalising. The review emphasises the importance of learning this lesson widely within the Department and within government (Section 26). It also notes the dynamic nature of the schemes and that many changes have been made over the years to improve efficiency (Section 5).

The review was asked specifically to review the integrity of the schemes and recommend any measures to improve administration. It found that the administration of the schemes is basically sound and that, aside from continuing efficiency improvements, no further major changes are needed to improve the running of the schemes.

Respiratory Disease

Minimum Payments

Under the terms of the Claims Handling Agreement (CHA), offers are low in circumstances where the miner had little disability, he smoked or had little relevant employment. The low value claims have already been through the whole claims assessment process and received a fair offer under the CHA. The Department wants to assist the Claimants Group (CG) in administering arrangements to top up these low offers from their costs in order to get the cases through the system but the priority for us is in assessing the claims still going through the process.

The Department believes that we have reached agreement with the CG on the principle, and the parties are now discussing the detail of a scheme. Prior to the General Election we received a new proposal from the CG and the Minister for Energy responded in July to welcome the initiative and to seek clarification of 2 issues. The CG had to sound out solicitor firms on their willingness to sign up to the proposal and, we understand, had also to take advice from the Law Society as to whether it breached the Solicitors' Code of Conduct on fee-sharing. They confirmed that the Law Society had suggested the use of a waiver to overcome any difficulties and in October they came back to the Minister confirming the number of solicitors who were content with the approach recommended by the Law Society. The Minister has since confirmed that the Department is willing in principle to administer a minimum payments scheme funded by solicitors' costs, subject to agreement on the detail. It is hoped that a satisfactory agreement can be reached which would enable payments to be made in a few months time.

³ Fourteenth Report, para 20

Fast Track

The Fast Track scheme is now fully operational and has been very successful in speeding up offers and settlements. The live scheme started on 28 February and up to the end of the year there had been over 64,000 offers. Take-up has been 92% of those made offers. The deceased scheme started in September and some 21,000 offers were made by the year-end. The deceased scheme is on an opt-in basis and out of a potentially eligible pool of 125,000 there is predicted to be an 80% take-up i.e. around 90,000 opt-ins. The volume of COPD offers has more than doubled in 2005 because of the Fast Track initiative: up to 150,000 from 70,000 the previous year.

The high take up of Fast Track means that there is now medical capacity available to handle quickly any claim where we have a full Claims Questionnaire (CQ). Claimants are not opting for Fast Track because they don't want to face delay in getting compensation. In fact, a key issue now is ensuring that solicitors keep up the flow of CQs so that we can keep the assessment centres occupied. Fast Track live offers will be completed when the spirometry cut-off date is agreed with the CG. The Department's proposed completion date is end June 2006 for live cases and February 2007 for deceased. The end-date for the scheme overall will depend entirely on how efficiently we can get in the CQs to handle all the cases going through the full process. The Department is working closely with the CG on this.

The Committee referred in their report to delays in implementing Fast Track and noted in their conclusions concern about failure to resolve differences with the CG about levels of compensation and fees.⁴ In fact, Fast Track for live cases went into operation on time on 28 February 2005 and the Department met the targets which had been set for number of offers, rising to 2000 a week. The introduction of the lower level of tariff was held up while the CG queried the figures for the tariff. The Department's calculation had followed the judge's ruling and had been independently audited. The CG asked the judge to defer introduction of the Fast Track scheme but as they produced no evidence to substantiate their concerns he declined.

The Department does consider that the level of solicitor fees set for Fast Track work is too high. We appealed the judge's ruling on this and the appeal was heard just before Christmas. The Court of Appeal upheld our action and the issue has been referred back to the scheme judge to reconsider in the light of the Court of Appeal's judgement. The Department's view is that Fast Track is intended to be a simple scheme, removing a lot of processing work both on our, the defendant's, side and also on the solicitors' side. Volume processing should also reduce costs. The judge will now have to decide, in the light of evidence from the solicitors about how they have actually handled these cases over the past months, what the appropriate level of costs should be. It should be an easier issue now to determine fair costs as the Fast Track has actually been in operation for some time and it is a matter of looking at what costs have been rather than of forecasting what they might be. The judge is expected to decide the matter at a hearing in May. (The court activity on solicitors' costs does not, of course, affect the levels of compensation.)

⁴ *Ibid.*, para 41

This action on costs is in line with the recommendations of the review that the Department should work to ensure, within the constraints upon us within a court-based compensation framework, that solicitors' costs properly represent payment for work done (para 18.9).

Surface Workers

The CG said quite plainly to the Committee that they could not sustain a legal case to establish liability for COPD in surface workers. The Committee recognised this in its Conclusions but nevertheless recommended that a way forward be found on 'political and moral' grounds.⁵ Nigel Griffiths, the then Minister, agreed to look at any new material on this issue. The CG did present further documentation to the Department but this was material which had been considered previously. The Minister for Energy wrote to the CG in May to confirm that he could not accept claims into the COPD scheme, the Department so informed the court and the 9,000 surface-only cases which had been registered in anticipation of being able to be dealt with under the scheme have now been formally denied.

This does not mean that those who feel they have a good claim cannot pursue it. The Minister for Energy confirmed in a debate on 7 February that the Government was not denying all liability but just recognising that compensation could not be dealt with within the framework of the existing lung disease scheme. Potential claimants can bring a case at common law for personal injury in the normal way and the Department is aware that claimants' solicitors are actively reviewing a number of cases with a view to proceeding down this route. The Minister undertook to monitor the progress and outcomes of the cases received and to consider any generic issues arising from them which might lead to a streamlining of the assessment process. He is to report back to the House on this when a reasonable number of these cases have been dealt with. He noted that some potential claimants might be deterred from making a claim by the possibility of it failing and liability for costs falling on them; but he felt that solicitor firms and unions who have made considerable sums out of the lung disease scheme could find a way to take on this financial risk themselves.

Vibration Scheme

Group 3 Claims

The Department recognises the concern there has been in mining communities that the Group 3 part of the VWF scheme is operated fairly. The Department considers, however, that the Committee's report does not acknowledge the substantial changes that have been made to the process to improve consistency in decision-making and transparency of the reasons for decisions. Many of these changes have followed advice from the Monitoring Groups (who have focussed heavily on this issue) about perceived weaknesses in the process previously. In addition, there are clear procedures for disputing decisions: an informal disputes procedure, a formal one and ultimately referral to the independent Vibration Reference Panel.

⁵ *Ibid.*, para 44

The Committee asked the Department to see that the Group 3 process is implemented in accordance with the spirit and not the letter of the agreement.⁶ We feel we do now have a robust and fair process in place. But this is bound to be a contentious part of the scheme as men have to prove that they were exposed to vibrating tools when their records or job descriptions suggest otherwise. The claimants' statements have to be properly assessed when many thousands of pounds of compensation will hang on the decision: the Judge accepted that a higher evidential burden should be placed on these claimants. Around 50% of Group 3 claims have been accepted but the other 50% have not made mining sense or have failed to establish sufficient vibration exposure.

The external review looked at the Group 3 process and its conclusions are set out in Section 23. It concludes that 'the Group 3 process is fair to claimants while having in place reasonable measures against fraudulent claims.'

The Committee will want to note that Capita met both the targets the Department had set for it for end-September: substantial completion of Group 3 claims and settlement of the remaining general damages claims, where reasonably practicable. Numbers left within the general damages stage are small—only some 10,000 claims are yet to have a final decision or offer—and the next milestone is to further reduce this figure to below 7,500 by the end of July. However, we need solicitors and co-defendants to play their part to help bring claims to a conclusion.

Services Claims

Very substantial amounts of money are being paid out in compensation for services (where the claimant needs help with household tasks because of his disability)—over £110m so far and nearly £500m overall forecast. It is clearly important that these claims are properly assessed.

The Department does not accept that the settlement of claims has been undermined by how Capita have been allowed to implement the procedure. The procedure was worked through in detail in a pilot conducted with the co-operation of the CG before the main process was put in place. There were teething problems both in claims assessment on our side and with solicitors but these have been worked through. There are a few outstanding issues which are holding up some claims but the Department is hopeful of resolving these shortly with the CG. If we are not able to agree, the judge in charge of the scheme will decide them at the next hearing in April.

Fraud is a concern in this area of the schemes. 64% of potential fraud cases examined are services, and 81% of fraud cases where action is taken to reduce or deny are services claims. Again, we have to have processes which are firm but fair.

The external review looked at services processes and concluded: 'We find that the process is fair to claimants while having reasonable measures in place to discourage and prevent outright fraud.'—para 24.8.

⁶ *Ibid.*, para 52

The Department expects to have completed initial assessments and MAPs in all services claims by the end of this year and to have substantially finished the scheme by the end of next year.

Stalled claims

In 2003 the Department took steps to bring to settlement all remaining claims. As a consequence, the scheme end dates were defined along with further cut-off dates and the development of a stalled claims process. Together these tools have helped to provide certainty about claims yet to be worked and the stalled claims process (implemented in 2004) has helped to kick-start thousands of claims which would otherwise have lain dormant with solicitors. Criticisms of the process were aired by the CG before the Judge who nevertheless supported its implementation and now, two years later, it is very much part of business as usual.

Implementing Change

The Committee is critical of the Department's record in encountering 'teething troubles' when introducing or changing procedures. The Department notes, however, that the Committee has looked only at those cases where there have been problems. There have been many examples over the years of changes which have gone smoothly: the Extended Expedited Initiative on COPD (to broaden the number of claimants made early offers or interim payments); the development of complex electronic calculators for both COPD and VWF (to reduce time spent by both assessors and solicitors in working out compensation); and the expansion of electronic solutions such as CoalClaims.com are all major changes that have been successfully implemented over the years. Moreover, they have contributed significantly to expediting the schemes as the benefits in terms of greater efficiency have been shared with the CG and their membership. Most recently the introduction of the COPD Fast Track has been a very radical change to a complex scheme and has been achieved seamlessly with close cooperation between ourselves and the CG in the planning. The benefit of a co-ordinated project and implementation plan resulted in all timelines and predicted volumes of offers being achieved.

Moreover, 'teething troubles' can never be totally anticipated. Any change in complex procedures is bound to run the risk of unforeseen problems, either for our contractors or for the solicitor firms at the sharp end. The Department does address carefully the risks in introducing change and seeks to mitigate them—the NAO and the external review have commended our risk management procedures—but has acted quickly to address any problems that have nevertheless occurred.

Fraudulent claims

The Committee noted that it was satisfied with the measures in place to deal with fraud in the schemes.⁷ Given the press allegations about fraud in the schemes last summer, the external review was asked specifically to address this matter fully in its report. The review concludes (Section 14), as the Committee did, that the measures in place are appropriate and proportionate.

⁷ *Ibid.*, para 65

The Committee will want to note that the fraud allegation in the press reports centred on the criminal investigations underway into the conduct of individuals working for the UDM and its claims handling company, Vendside. That investigation has now been taken over by the Serious Fraud Office and the Department has worked closely with the SFO to give assistance wherever it could. They have recently confirmed to the Department that, while their investigations are continuing, there is no evidence of any fraud against the Department.

Claims Handling Companies

The Committee expressed concern about the activities of claims handling companies.⁸ This concern was widespread and the government has, as the Committee will be aware, now introduced legislation to regulate their activities.

Relationship with other Stakeholders

The Committee noted, as did the external review, that relations with the CG were to some extent bound to be adversarial given the nature of the court-based framework we operate in.⁹ On the other hand, it is fair to point out that over the 6 years that the schemes have been running countless changes in both policy and operation have been negotiated and agreed between the parties to ensure the efficient and fair operation of the schemes—without recourse to the courts. On operational issues working relations have been good, with both sides wanting to get processes right and claims flowing smoothly. On policy issues, the CG obviously want to seek the best for the claimant and the Department has to have regard for how far its liability extends, personal injury case law precedents and the cost to the public purse. Sometimes, the Department and the CG are not able to agree, even after long negotiation, and in these circumstances we ask the court to rule to decide the issue.

The Department is concerned that the Monitoring Groups do not feel they have access to all the information they need.¹⁰ The only information the Department has been asked for and not released is the list of Key Fraud Indicators (which we consider it would not be in the public interest to reveal) and the list of names of the mining experts who are assessing Group 3 claims (we provided instead details of their experience and background on the pits worked in). The Department has asked the Groups to let us know of any information they do not have but would like.

The external review looked at Stakeholder relations and noted the very considerable amount of information about the schemes which the Department puts into the public domain. It noted also what it considered an unwarranted level of suspicion about the schemes and their operation. It recommended that the Department could usefully add certain things to its publication list: full copies of the claims handling agreements, including the UDM agreements, and the periodic court reports. This has already been done.

⁸ *Ibid.*, para 68

⁹ *Ibid.*, para 73

¹⁰ *Ibid.*, para 76

The Department continues to provide a monthly update to the House on both schemes and the website has detailed information on the schemes and breakdowns by constituency of claims/payments etc. The Department will happily consider providing any further information the Committee would find helpful.

The operation of the huge coal schemes has come in for a lot of scrutiny over the past year. The Department has made the major changes needed to improve the efficiency of the schemes. We are now over half way and planning for run-down on both the schemes. The end is in sight on VWF—end—2007—but still some way off in COPD given the bigger numbers and the later cut-off date. We are probably looking at 2009. The last cases in both schemes will be the particularly complicated ones, probably involving co-defendants. There is much detailed work to do in planning for closure and the Department is working closely with the CG to ensure that solicitor firms are aware of the targets and the key part that solicitors play in keeping up the flow of claims documentation to feed the process and push the remaining claims through.