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Trade and Industry Committee

Coal Health Compensation Schemes

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The Trade and Industry Committee

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Footnotes

In the footnotes of this Report, references to oral evidence are indicated by 'Q' followed by the question number. References to written evidence are indicated in the form 'Appendix' followed by the Appendix number.

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Summary

The Department of Trade and Industry is responsible for the administration of the two largest personal injury compensation schemes in the world—one for Chronic Obstructive Pulmonary Disease (COPD) contracted by exposure to coal dust, the other for Vibration White Finger (VWF) for hand injuries caused by the use of vibrating tools. The DTI took on these liabilities from British Coal on 1 January 1998 under the Coal Industry Act 1994, and introduced the schemes following court judgements in 1997 and 1998. There are nearly 770,000 claims registered under the two schemes, which are both now closed to new claimants. To date, more than £2.3 billion has been paid in compensation and the Department has estimated that total costs will exceed £7.5 billion once all claims have been settled.

Although the Government failed initially to recognise the scale of the problem and therefore the likely demand for compensation under the schemes, it is not clear to us how a better estimate could have been produced. Had it been possible to do so, those involved in negotiating the details of the schemes—claimants' representatives and the DTI—might have recognised that the complexity of the compensation arrangements, based as they were on common law, was not suitable for schemes of such size. With the benefit of hindsight it is clear that the original underestimate of the scale of the problem meant that the resources allocated to the compensation schemes were inadequate from the outset and that mistakes were made. Since then, however, the Government and its contractors have invested heavily to address the original shortcoming and all of the stakeholders in the process have made significant efforts to make the system work better. Unfortunately, there remain issues still to be resolved.

We welcome the efforts that have been made by both the Government and claimants' solicitors to accelerate the settlement of claims made under both schemes, as the courts have instructed. Unfortunately either disagreements between solicitors and the DTI or its contractors, or the way in which the Department has chosen to implement changes, appear to have delayed the improvements or prevented such efforts from being fully effective. For example, it seems unlikely that agreement will be reached on any system which would deliver a minimum COPD payment to claimants. This is to be regretted as such a scheme could have reduced administrative costs and accelerated the settlement process for many claimants.

The activities of claims handling companies in the settlement process provoked concern and criticism from virtually all of our witnesses. We feel that better and more direct regulation would have curbed the worst behaviour exhibited by such companies in respect of the coal health compensation schemes.

The transparency with which the DTI and its contractors operated was questioned not only by claimants' solicitors but also by the monitoring groups established by Ministers to provide an independent source of advice on the implementation of the two schemes. We are particularly concerned that the monitoring groups feel that they are being denied information and access to Ministers. This defeats the object of their existence.

1 Introduction

1. Under the terms of the Coal Industry Act 1994 the liabilities of British Coal were transferred to the Department of Trade and Industry on 1 January 1998. It had not been feasible to pass them on to purchasers of British Coal's assets due to uncertainty over the nature and size of the liabilities and the difficulty in obtaining employer's liability insurance. British Coal was taken to the High Court in two separate group actions and found liable to pay compensation for damage caused to miners through excessive use of vibrating tools (in July 1997) and through exposure to coal dust (in January 1998).¹ British Coal was found negligent in relation to injury caused by vibrating tools from 1975 and from exposure to coal dust from 1954 (1949 in Scotland). The courts ruled that, after these dates, British Coal should have been aware of the risks and should have taken steps to protect its employees against coal dust, fumes, and vibration.²

2. The courts instructed the DTI to work with miners' solicitors to agree detailed arrangements to assess compensation. In response to the courts' instructions the DTI established the Coal Liabilities Unit to negotiate Handling Agreements and to process ex-miners' claims for compensation under two personal injury schemes—one for Vibration White Finger and one for Chronic Obstructive Pulmonary Disease.³ The Handling Agreements were concluded by 1999 and were designed to mirror English common law as far as possible and cover how liability is established and compensation paid. They were intended to be a more efficient alternative to the normal legal process, which would have involved the courts in the adjudication of thousands of claims from miners and widows which the DTI estimated at the time might have taken 15-20 years to be settled. Although the Court judgements related only to England and Wales, similar arrangements were negotiated to allow Scottish claims to be processed in the same way.⁴

3. We decided to review the progress made by the Coal Liabilities Unit in the settlement of damages claims more than five years after the conclusion of the Handling Agreements. We are grateful to those who submitted written evidence, and to the Parliamentary Under-Secretary of State,⁵ his officials from the Coal Liabilities Unit, representatives from the DTI's contractors, ATOS Origin and Capita-IRISC and the Claimants' Solicitors Groups (CSG), for their oral evidence.

¹ Appendix 2, para 4

² www.dti.gsi.gov.uk/coalhealth

³ Appendix 2, paras 9-10

⁴ *Ibid*

⁵ Nigel Griffiths MP

2 Background to the coal health schemes

4. There are two schemes, both of which are now closed to new claims. The scheme for those suffering from ‘Vibration White Finger’ (VWF) disease (now called Hand Arm Vibration Syndrome) caused by using vibrating tools closed at the end of October 2002. Vibration White Finger is a condition which affects the hand or hands to varying degrees of severity with symptoms falling within two broad categories, vascular, induced by cold intolerance, and sensorineural, which include reduced dexterity, numbness and tingling. General damages are payable in respect of the condition varying according to the age of the claimant and the severity of the disease. In addition, where proven damages may also be payable for handicap on the labour market, for the inability to undertake tasks (or services)—for example, DIY, gardening, basic car maintenance—and for wage loss.

5. The Chronic Obstructive Pulmonary Disease (COPD) Scheme considers claims from miners suffering from respiratory disease (chronic bronchitis and emphysema) resulting from work in the dusty conditions found in a mine. This scheme closed at the end of March 2004.

Implementation of the schemes

Handling Agreements

6. By 1999 a Handling Agreement had been negotiated for each scheme with solicitors representing the large numbers of firms involved. Each Agreement defined the role and responsibilities of claimants’ solicitors; the DTI’s claims handlers and medical assessors; and any others involved in the process; the fee due to claimants’ solicitors for handling their case; and laid down the medical assessment process (MAP) to be followed in each case. We were told that both agreements were underpinned by the principle that each claimant should receive the compensation he would have expected to get if he had pursued his claim under common law through the courts, and were designed to give claimants a fair entitlement tailored to reflect their disability.⁶

7. The Handling Agreements were approved by the judges concerned who are still in overall charge of the process of paying out the compensation. The DTI reports back regularly to the judge on progress (3-4 times a year for each scheme). The Handling Agreements are contracts between the DTI and the miners’ solicitors. Any changes can only be introduced by mutual agreement.⁷ Separate Handling Agreements were signed with the Union of Democratic Mineworkers (UDM), a fact which drew criticism from the English Monitoring Group and the CSG.⁸ However, the Parliamentary Under-Secretary of State assured us that these Agreements were identical to those signed with the Claimants’ Solicitors Groups except for the levels of costs paid, which were lower as the UDM handled

⁶ Appendix 2, para 7

⁷ *Ibid*

⁸ Appendix 5, para 35; Appendix 8, para 9

claims through their own claims handling agent.⁹ The same offer had been made to the National Union of Mineworkers.¹⁰

Delivery

8. We were told that claims were registered on behalf of claimants (or if deceased, their relatives) by solicitors, who are represented by the Claimants Solicitors Groups (one Group for each scheme). Capita-IRISC now acted as the DTI's claims handler. The medical assessment procedures for both COPD and VWF claims were handled by the DTI's appointed medical assessors, Atos Origin. In addition, the specialised MAP2 for VWF claimants who claim for Services—additional assistance in carrying out household tasks such as gardening and DIY—was conducted by Capita Health Solutions.¹¹

The process

9. A detailed representation of the claims and assessment processes was given in Figures 1 to 3 of the DTI's memorandum.¹² To begin the claims process, each claimant completed an application pack, which was lodged with a solicitor who registered it with IRISC, a company now owned by Capita following the takeover of responsibility for administration of the schemes from Aon-IRISC. Capita-IRISC requested the British Coal employment and other records from Iron Mountain, a document storage company employed by the DTI to store these data, which are the property of the Department.¹³ Thereafter, the process varied according to the type of claim being made. For each scheme, however, there was an agreed disputes resolution procedure. Claimants also retained the right to pursue a common law claim should they so wish.

VWF claims

10. For each VWF claim, the occupational history of the claimant was used to determine if there was a valid claim for VWF. If this was established, the claimant was invited to undergo the medical assessment, which would include a secondary assessment (MAP2) if assistance for services had been claimed. Once the MAP had been completed, the results were provided by IRISC to the solicitor, and settlement should be reached using a model based on the time over which the claimant was exposed to vibrating machinery. The Handling Agreement for VWF identified three occupational groups for the purpose of determining the level of compensation payable:

- *Group 1* – where vibratory tools were generally recognised as a substantial part of the occupation;
- *Group 2* – where the use of such tools were not necessarily a substantial part of the job, but may have been used; and

⁹ Q120

¹⁰ Q121, Appendix 3

¹¹ Appendix 2, paras 9-10

¹² Appendix 2, Figures 1 to 3

¹³ Appendix 2, paras 14-22

— *Group 3* – where such tools should not have been used and evidence of use was required to support a claim for compensation.

11. VWF claims were assessed against a generally agreed scale of injury by a physician using information provided by the claimant backed up by medical testing. This assessment established the “staging” of the disease which was then read across to agreed tariffs in the Claims Handling Agreement and a settlement offer was made by Capita-IRISC.

COPD claims

12. Having submitted a claim giving details of ill health, work history and smoking habits, the claimant would be invited for a Spirometry Test for lung function. Although this test established the extent of lung damage and not the cause, it did allow the assessors to prioritise claimants to ensure that the oldest and most severely damaged claimants were put through the assessment procedure first. Depending on the result of this, the claimant might be given an expedited offer which would speed up the process of payment. If the expedited offer was rejected by the claimant, or if on the basis of the Spirometry Test he was not entitled to an expedited offer, the claimant would be submitted to the full MAP before an offer of compensation could be made. In this a respiratory specialist, aided by lung function test results, medical records and a consultation with the claimant (in live cases), diagnosed any diseases and assessed disability due to COPD discounting comorbidity, other disabling conditions for which the DTI was not liable.¹⁴ Atos Origin told us that it employed about 50 respiratory specialists at assessment centres throughout the country to assess the COPD claim by means of the Respiratory test and the full MAP. A medical reference panel oversaw the medical process.¹⁵

Prioritisation of all claims

13. The Handling Agreements provided for claims from the most elderly and ill claimants to be given priority, followed by other surviving claimants, widows of claimants, and then estate claims (not from widows). The last are being processed only as and when Capita-IRISC resources permit.¹⁶

Rate of progress

14. The volume of claims has been much higher than anyone expected and the DTI and CSG agreed that the unforeseen number of claims has led to administrative and other problems, although they disagreed over the causes for delay.¹⁷ At the time of the lead case trial judgment there were fewer than 5,000 VWF cases and the DTI’s best estimate was that this would rise to about 40,000. On COPD, the figures were 30,000 and 70,000.¹⁸ The DTI acknowledged that they did not have a firm basis for making these estimates—British Coal had estimated their total liability very much lower (only £50m was included as a provision

¹⁴ Appendix 2, paras 14-16

¹⁵ Q 72

¹⁶ Appendix 2, para 12

¹⁷ *Ibid*, para 31; Appendix 5

¹⁸ *Ibid*, para 32

in their accounts).¹⁹ In the event, nearly 170,000 VWF claims have been registered and 576,000 claims for COPD have been made.²⁰

15. As at 9 January 2005, Capita-IRISC had settled 97,000 claims for VWF in full. A total of £1.1 billion of compensation had been paid. For COPD, 172,000 claims had been settled in full and final offers made in another 179,827 cases. In all £1.29 billion had been paid in compensation for COPD. The DTI expects to pay about £7.5 billion in compensation under the two schemes.²¹

DTI's Aspirational End Dates

VWF

16. The DTI have defined a number of aspirational end dates for the VWF scheme. The Department reported that by the end of December 2004 the first of these had been achieved—the issue of offers for general damages to all claimants who had undergone their medical assessment. The DTI intends that all general damages claims should be settled by the end of September 2005. Capita IRISC has been asked to complete investigation of VHF Group 3 claims by the same time. VWF medical assessments for Services claims are to be complete by the end of 2006, and all Services claims should be settled by the end of 2007.²²

COPD

17. At the current rate of progress, the COPD scheme would extend up to 2009 for live claimants, and 2011 for deceased claims. The DTI estimated that, under the arrangements for expedited claims to be introduced from 1 March onwards (and which are discussed below), the end dates should be brought forward to 2007 for live claims and 2009 for deceased claims.²³

¹⁹ *Ibid*

²⁰ *Ibid*

²¹ Appendix 2, para 3

²² *Ibid*, paras 74-75

²³ *Ibid*, para 72

3 The scale of the problem

18. We found general agreement that the scale of the problem had been under-estimated and that this had a bearing on the efficiency with which the compensation schemes were administered from the outset. The Minister acknowledged that the DTI and others had seriously underestimated the number of claims that could be made after the two schemes had been approved by the courts.²⁴ The Department speculated that, had the scale of the problem been recognised at the time, those negotiating the Handling Agreements might have recognised that the complexity of the Agreements, while accurately reflecting common law and the court judgments, was not suitable for such a large scale exercise. The complexity of the Agreements had slowed delivery of compensation, and a simpler scheme that involved more averaging of compensation payments would have been quicker to deliver, if less fair to some individuals.²⁵

19. The English Monitoring Group was concerned that what its members saw as the “extraordinarily complicated” compensation arrangements were underpinned by an adversarial approach, which the Group attributed to a hangover from the original court process.²⁶ From its inception the Group had worked with all interested parties to “obviate the blame culture which had developed” at the beginning of the exercise.²⁷ It seems that such a culture might not have dissipated entirely. The CSG disputed the Minister’s assertion that the mining unions and claimants solicitors had been involved in any initial scoping exercise:

“Neither the unions nor claimants’ solicitors were involved initially in estimating likely claim volumes and capacities in either scheme. It appeared to the Claimants’ Group after agreeing the COPD claims’ handling agreement, that there had been inadequate planning and provision for what was likely in our view, to be very many more claims than the DTI envisaged.”²⁸

20. It is not clear from the evidence submitted to us how the DTI, with or without the input from other interested parties, could have been expected to gauge better the demand for the coal health compensation schemes, although it is disturbing that the Department’s initial estimates were so wide of the mark. What is more important, however, is the way the Department and its contractors reacted once the true scale of that demand was recognised.

21. It was generally agreed that the implementation of the compensation schemes got off to a difficult start.²⁹ The CSG identified a number of problems with the way the project had been approached. It was critical of the efficiency of the scheme administrators and in particular of the company originally appointed by the DTI to perform the medical

²⁴ Q 119

²⁵ Appendix 2, para 36

²⁶ Appendix 8, para 6

²⁷ *Ibid*

²⁸ Appendix 7

²⁹ Q119

assessment procedures for COPD, Healthcall.³⁰ The DTI explained that after the Court Judgments of 1997 and 1998 it had been under pressure to ensure that compensation started to flow quickly to claimants, particularly those with lung disease, many of whom were old and sick and some dying of the disease. As soon as the structure and basic details of the Agreements were settled, the process had to be implemented immediately without any opportunity to test the Department's plans by means of a pilot scheme.³¹

22. Instead, it had adopted the approach of developing processes over time as problems had been identified by its contractors and claimants' solicitors. It had replaced its original contractor for medical assessment; and after claims began to increase in 2000 it had increased the resources available to its contractors to enhance claims handling systems and encouraged the use of electronic systems amongst claimants' solicitors.³² For example, Capita-IRISC told us that it had increased the number of staff employed to handle claims from 150 in 2000 to 1,400 in 2005.³³ The company had developed compensation calculation models for use by its staff and solicitors to assess their clients' claims with a view to speeding up the settlement process.³⁴

23. The Department identified a number of constraints on the speed with which claims could be processed which have been exacerbated by the high volume of claims. The key constraint on the COPD process has been the number of respiratory specialists in the UK that were available for the medical assessment process. There were only 600 respiratory specialists in the UK: about 200 were involved in the scheme.³⁵ There had been two main constraints on the rate of progress with the VWF scheme. Initially, the provision of training records to confirm the occupation of claimants was slow. The use of electronic data imaging between Capita-IRISC and Iron Mountain had largely solved this problem. More recently, it became clear that the remaining general damages claims had a high level of co-defendant involvement, where the claimant had worked for both British Coal and for privately-owned mines. Such cases were more complex.³⁶

Scheme administration and the DTI's oversight

24. The CSG identified longstanding and continuing concerns about the planning and procedures for claims handling and the organisation and deployment of both IT and human resources by the DTI's contractors. The Group was also concerned about the DTI's oversight and management of its contractors and its ability to hold them to account.³⁷ The CSG identified a number of problems common to both schemes in the past. It claimed that there had been difficulties in obtaining the training and employment records that were essential to demonstrate a claimant's right to compensation.³⁸ It criticised IRISC's inability

³⁰ Appendix 5

³¹ Appendix 2, para 27

³² *Ibid*, paras 32 and 38-40

³³ Q 91

³⁴ Q 94

³⁵ Q 136

³⁶ Appendix 2, para 35

³⁷ Appendix 5

³⁸ *Ibid*

to respond to claimants' solicitors' correspondence and resolve inquiries and to match incoming documentation from claimants' solicitors to files.³⁹ It drew our attention to the high turnover rate among staff handling claims at Capita-IRISC, which it claimed was as high as 25 percent in 2004.⁴⁰ The CSG also expressed concern about the effectiveness of the training provided to IRISC staff and pointed out that much of it seemed to be "on the job training".⁴¹ The CSG maintained that all of these factors had contributed to unsatisfactory performance on the part of the contractor dealing with the claims adjustment part of the settlement process and a poor understanding of the Claims Handling Agreements themselves.⁴² While the Group acknowledged that Capita-IRISC had tried to address many of these shortcomings, the company had failed to address them all to the CSG's satisfaction.⁴³

25. For Capita-IRISC, Kate Roy⁴⁴ acknowledged that the number of claims had caused problems during the early years of the schemes. However, she explained that IRISC had increased the throughput of claims for both schemes for every year since the Claims Handling Agreements had been agreed, as was required in the company's contract with the DTI.⁴⁵ As previously discussed, staffing had been increased to the point where 1,400 staff were employed in four sites in former mining areas across the country.⁴⁶ Martin Trainer⁴⁷ told us that since Capita took over the business less than 12 months ago it had put in place a Business Improvement Programme designed to increase productivity and the quality of implementation of the schemes.⁴⁸

26. Jeff Wilson⁴⁹ defended his company's record on training. He pointed out that Capita-IRISC had developed bespoke training for its staff, with appropriate mentoring and coaching. He felt that the quality of the company's training was reflected by the fact that its staff were recruited by solicitors involved in the schemes.⁵⁰ Ms Roy told us that 28 percent of staff who left Capita-IRISC were subsequently employed by such solicitors. She acknowledged that staff turnover was running at 25 percent, but did not feel that this was too surprising in areas of high employment like Sheffield.⁵¹ The company sought to address the problem through its Business Improvement Programme.⁵²

27. For its part, the DTI rejected the suggestion that it exercised inadequate supervision over its contractors. The Department acknowledged that the main risks to smooth delivery

³⁹ *Ibid*

⁴⁰ Qq 12 and 19

⁴¹ Q 10

⁴² Appendix 5, Q 9

⁴³ Q 3

⁴⁴ Ms Roy is Operations Director, Capita-IRISC

⁴⁵ Q 90

⁴⁶ Q 91 (Roy)

⁴⁷ Mr Trainer is Chief Executive Officer, Claims Outsourcing, Capita-IRISC

⁴⁸ Q 91 (Trainer)

⁴⁹ Mr Wilson is Technical Director, Capita-IRISC

⁵⁰ Q 94

⁵¹ Q 95

⁵² Q 96

of compensation had been operational problems and delays due to changes in policy or process and operational risks between the service providers and solicitors. However, the Coal Liabilities Unit closely monitored the performance of its service providers and had put in place a programme of regular auditing of the systems, processes, and disaster recovery arrangements operated by its contractors.⁵³ The DTI's risk management processes had been commended by the National Audit Office.⁵⁴

28. With the benefit of hindsight it is clear that the original underestimate of the scale of the problem meant that the resources allocated to the compensation schemes were inadequate from the outset and that mistakes were made. Since then, however, the Government and its contractors have invested heavily to address the original shortcoming and all of the stakeholders in the process have made significant efforts to make the system work better. In general, these efforts have borne fruit. There are, however, a number of specific points of disagreement between claimants' representatives and the Government and its contractors. The most significant of these are discussed below.

⁵³ Appendix 2, para 50

⁵⁴ National Audit Office, *Managing Risks to Improve Public Services*, HC 1078 (2003-04)

4 Current problems: COPD claims

Minimum payments

29. The Coalfield Communities Campaign (CCC) drew our attention to the low level of some of the offers made to claimants. In the Campaign's view, an ex-miner with lung damage should be entitled to a fair payment no matter what other contributing factors were taken into account. Low offers placed an additional burden on the administrative system because claimants were unwilling to settle their case and the amount of resources used to process these claims was disproportionate to the sums received by the miners. The Campaign cited an example where solicitors were being paid £2000 for a claim that was worth only £200 to the claimants, and pointed out that on top of this had to be added the cost of the services of DTI's contractors involved in the process. It was suggested to us that it was "unhelpful to create an impression that the claimants themselves benefit from the schemes the least."⁵⁵ The CCC and others had made the case for a minimum payment for COPD claims on the basis that there was both a moral and a practical case to make a minimum payment where damage to the lungs from working in the mines was established.⁵⁶ The CCC contended that by rigidly applying the Handling Agreement and the mathematical formula that was supposed to work out a fair apportionment of liability, the DTI's contractors were making offers far below those made in other types of court settlement, such as for accidental injury.⁵⁷

30. The CSG told us that, from the start of the COPD scheme in 1999 (in England and Wales) the DTI had refused to accept the need for a minimum payment scheme, even though such schemes apply for diseases such as industrial deafness and pneumoconiosis.⁵⁸ The Minister explained that the Government could not create a precedent and overrule the amount that was calculated using a formula approved by the courts: to do so would leave open the possibility that any litigant who was dissatisfied with a court decision on compensation against a Government department or agency could demand a higher 'ex gratia' payment.⁵⁹ On the other hand, Andrew Tucker from the CSG felt that, in effect, the Handling Agreement for VWF did have a minimum payment incorporated into it, on the basis that if a claimant qualified for compensation he would receive £500.⁶⁰

31. In the absence of a Government-funded minimum payment, the CSG proposed in March 2004 that solicitors would meet the cost through a scheme by which compensation offers falling below £500 would be topped up to that amount from a fund created by a reduction in the increase in solicitors' costs that would normally have occurred through the Retail Price Index mechanism included in the Handling Agreement. The CSG believed that the introduction of such a scheme would increase the clearance rate.⁶¹ The Group

⁵⁵ Appendix 1, para 3.2

⁵⁶ *Ibid*, para 3.3

⁵⁷ *Ibid*, paras 3.4-3.6

⁵⁸ Appendix 5

⁵⁹ Q 137

⁶⁰ Q 20

⁶¹ Appendix 5; Q 21

estimated that at the time the proposal was made a reduction of 50 percent in solicitors' RPI increase would have been adequate to fund the scheme for the estimated 3,500 potential beneficiaries.⁶² Since then, the number of known potential claimants had risen to 7,500, and the 'RPI fund' would not be large enough to fund a £500 payment to all of these.⁶³

32. The Minister explained that the he had been supportive of the general concept of a solicitor-funded top-up of compensation to achieve a minimum payment for all claimants.⁶⁴ The DTI's principal objection to the CSG's proposal, however was that the 'RPI fund' would never have produced the level of funding needed to ensure that all claimants whose COPD compensation offers were less than £500 could have their compensation increased so that they received that amount.⁶⁵ The DTI subsequently produced evidence to support its assertion that the shortfall for the first year of operation would have been of the order of £400,000.⁶⁶ The DTI had proposed an alternative, administratively simpler scheme, whereby the Department paid over to a claimant's solicitor the amount sufficient to cover the compensation to be paid plus the solicitor's fees: the solicitor would make up the client's payment to £500 from the amount paid in legal fees, in this case £2,300.⁶⁷

33. The CSG told us that it was in the process of canvassing opinion amongst solicitors on the DTI's proposal, but early results were not promising. It would appear that the CSG proposition was broadly acceptable to most solicitors, while the DTI's preferred method was easier for solicitors to refuse. Gareth Morgan of the CSG told us:

"The suggestion that we made whereby a fund was put aside for this was much easier to persuade every solicitor to buy into and they were not then having to deal with individual cases. The DTI model is that each solicitor takes less in costs per case that he has for less than £500. Our concern about this is that it makes it much easier for solicitors to say, "I do not want any part of this," and that is what we now have with the UDM group of solicitors. They represent a large number of claims. If other solicitors then take the same view as the UDM it becomes very difficult. It would be much easier to implement it on the model that we suggested."⁶⁸

34. It appears unlikely that agreement will be reached soon, if at all, between the Government and claimants' solicitors or, indeed, amongst the solicitors themselves, on any system which would deliver a minimum COPD payment to claimants. This is to be regretted as such a scheme could have reduced administrative costs, accelerated the settlement process for several thousand claimants and delivered payments of a level closer to the fees paid to their legal representatives.

⁶² Q 20

⁶³ Q 24

⁶⁴ Q147

⁶⁵ Q 145

⁶⁶ Appendix 3

⁶⁷ Q 147

⁶⁸ Q 25

Fast-track offers for COPD

35. The Judge overseeing the scheme, the DTI and the CSG all agreed that the current rate of progress with COPD claims was unacceptable and the parties entered into negotiations on ways to speed up the settlement of claims. With effect from 28 February 2005, live claimants under the COPD scheme have been able to obtain ‘fast-track’ offers after a Spirometry test, with the intention that the settlement process should be accelerated for suitable claimants. Under the ‘fast-track’ arrangements, following the Spirometry test a claimant would be classified under one of four categories. He would then have the option of accepting a payment based on the average for his spirometry category in settlement of his claim. Those who do not wish to take the payment retain the right to a full medical assessment. It has been estimated that 100,000 live ‘fast track’ offers could be made in the first year of operation.⁶⁹

36. In addition to live fast track offers, the Court has ordered that in posthumous cases where there is no indication of COPD on a death certificate (‘category 3’ cases), widows and families of deceased miners should be able to obtain ‘fast-track’ payments if they wished to do so. The DTI intended that widows would be offered £1,400 under these circumstances, while other relatives would be offered £1,000. ‘Deceased’ claims where the death certificate did give an indication of COPD would still proceed through the full medical assessment process without a fast track offer. It was estimated that as many as two-thirds of the remaining posthumous claims could be eligible for a ‘fast-track’ offer.⁷⁰ At the time of our inquiry, no date had been set for the introduction of this particular ‘fast-track’ scheme.

37. The Coalfield Communities Campaign supported the concept of voluntary ‘fast-tracking’.⁷¹ While the CSG agreed to the principle, it had complaints about the way in which the ‘fast-track’ schemes were developed and doubts over some of the details of the schemes and how effectively they would be administered.⁷² The CSG told us that the ‘fast-tracking’ concept had developed from a previous ‘expedited payment’ scheme which had worked quite well.⁷³ However, in September 2004 the DTI had introduced a proposal that fast-tracking should be compulsory.⁷⁴ Under this proposal, claimants would have to resort to the common law process if they did not wish to accept the Department’s offer.⁷⁵ The English Monitoring Group told us that, in the event, following strong representations from the Ministerial Monitoring Groups, Members of Parliament and claimants’ representatives, the Department withdrew its proposal.⁷⁶

38. For the DTI, the Minister told us that the Department had consulted interested parties on a compulsory scheme simply because the Court had ordered it to do so. Having taken

⁶⁹ Appendix 5

⁷⁰ Appendix 2

⁷¹ Appendix 1, para 3.10

⁷² Appendix 5

⁷³ Q 30 (Evans)

⁷⁴ Appendix 5

⁷⁵ Appendix 8, para 16

⁷⁶ *Ibid.*

soundings, it had decided not to proceed with the scheme on a compulsory basis.⁷⁷ Ann Taylor⁷⁸ explained that the compulsory scheme would have covered only those claimants whose respiratory function was normal on spirometry testing. She claimed that only about 6 percent of those people would have been found to have a disability during the full medical assessment process. Since the compulsory scheme had been abandoned, the fast-track concept had been widened to include many more claimants.⁷⁹

39. The CSG representatives were also unhappy that, at the time they gave evidence, they were still in dispute with the DTI over the size of compensation to be paid and solicitors' fees just days before the introduction of the 'fast-track' scheme for live claimants, and the uncertainty over the timing of the introduction of the scheme for widows and other family claimants:

“The DTI appears to have been content to let the Court rule upon the substance of the ‘fast track’ offer and associated costs to be paid to claimants’ representatives, rather than to engage in substantive negotiation, whether over the fast track tariff of payments or costs or over the important matters of detail that require to be ironed out so that the ‘fast track’ procedures might be introduced speedily and effectively.”⁸⁰

40. The Group was also doubtful that the level of compensation proposed by the DTI for widows and family claimants would be sufficient to encourage the acceptance of 'fast-track' offers, and thereby accelerate progress towards completion of the task.⁸¹

41. We welcome the development of the ‘fast-track’ approach to the problem of clearing the backlog of COPD claims. It will give claimants the option of settling their claim quickly or pursuing their case through the full assessment procedure, with the delay that this might entail. It should also reduce the demand for those assessment procedures and allow assessment resources to be focussed on the cases that need them. We are concerned, however, that the DTI and claimants’ solicitors have failed to resolve their differences over issues such as fees and payments to claimants. It is in the interests of claimants and taxpayers that these differences are resolved quickly and without recourse to the courts.

Compensation for surface workers

42. We were told that, despite prolonged pressure from the Monitoring Groups and claimants' representatives, the DTI had refused to accept claims from workers whose duties were performed above ground or who spent less than five years working underground.⁸² The Department justified its position on the basis of the opinion of its medical experts who, as Nick French⁸³ explained, had advised that on the basis of the evidence available on surface dust exposure, the levels of breathable dust on the surface would be too low to

⁷⁷ Q 136 (Griffiths)

⁷⁸ Ms Taylor is Director of the Coal Liabilities Unit, DTI

⁷⁹ Q 136 (Taylor)

⁸⁰ Appendix 5

⁸¹ Q 130 (Evans)

⁸² Appendix 2, Appendix 5

⁸³ Nick French is Assistant Director, VWF Operations, DTI

cause COPD in all but the most extreme susceptible cases.⁸⁴ The CSG told us that it had obtained records which demonstrated that dust levels could reach “quite high levels” in coal preparation plants, but those records were insufficiently comprehensive. One explanation for this was that the respiratory dust regulations applicable at the time did not require the National Coal Board and, subsequently, British Coal to monitor dust levels on the surface.⁸⁵

43. The CSG estimated that 3,500 to 5,000 people were affected by this decision. Group litigation on their behalf had been ruled out when the DTI refused to waive its right to legal costs if it won the litigation, thereby exposing the claimants to significant legal costs.⁸⁶ The Minister pointed out that it was open to an individual to take a civil legal action on his own behalf,⁸⁷ but the CSG felt that the potential costs of such an action would be prohibitive.⁸⁸ The Group felt that resolution of the problem was not a legal issue: it was more of a moral and political question. Peter Evans compared the small number of potential claimants in this category with the total number of claimants in the VWF and COPD schemes:

“We estimate that between 3,000 and 5,000 people are affected by this in a scheme which now has over half a million people registered and it is worth contrasting with what is known as the ‘rest of the world’ protocol. You could be in Venezuela and make a claim under this scheme if you had been employed in a British coalmine but if you were employed on the surface you cannot. That just does not seem to us to be fair.”⁸⁹

44. We were encouraged that, after discussing the legal arguments against allowing claims from this group of workers and the correspondence between the DTI and the CSG on this issue,⁹⁰ the Minister gave us an undertaking that the Department would give “maximum consideration to resolving [the issue].”⁹¹ **We hope that a solution can be found which allows ex-surface workers to be admitted to the COPD scheme. While we recognise that the DTI’s current position may be legally watertight, it does not seem to us to be just.**

⁸⁴ Q 150

⁸⁵ Q 33 (Morgan)

⁸⁶ Appendix 5

⁸⁷ Q 148

⁸⁸ Q 33 (Morgan)

⁸⁹ Q 33 (Evans)

⁹⁰ Qq 148-153

⁹¹ Q 154

5 Current problems: VWF

VWF Group 3 claims

45. The assessment of VWF Group 3 claims has caused particular difficulties between the CSG and Capita-IRISC due to the difficulty in establishing, to the satisfaction of the contractor, sufficient evidence of tortious exposure by claimants in this Group, which included ex-locomotive drivers, transfer point attendants and those deputies whose work did not include coalface or development work. Delays occurred with the assessment of the evidence provided by Group 3 claimants and a backlog of such claims built up. The CSG attributed these delays to the lack of a mechanism for resolving disputes over the claims and a lack of uniformity of approach by the company in dealing with their resolution.⁹² The English Monitoring Group conducted an assessment of the problems associated with the processing of Group 3 claims, and concluded that “the timescales within the Handling Agreement [for VWF] were totally unrealistic.” In some cases work records requested by solicitors had not been provided two years after the initial request.⁹³

46. In order to clear the backlog, the DTI and the CSG agreed the Occupational Group Procedure (OGP) to enable the speedy assessment of Group 3 claims. The OGP set out the evidence that was required to be submitted by the claimant and specific witnesses in a standardised questionnaire. The CSG told us that the underlying logic of the OGP was that if a claim was presented in a form that fulfilled the stated requirements for information and if the evidence provided was believable and made ‘mining sense’, then that claim would be accepted and settled.⁹⁴ The Group criticised the implementation of the OGP by Capita-IRISC on a number of counts.

47. According to the CSG, the OGP’s requirements have been used by Capita-IRISC as a procedural bar for the processing of claims on other grounds, and the company has refused to consider cases in which the evidence submitted does not exactly meet its interpretation of the OGP’s requirements without detailed explanation as to why those requirements cannot be met. The CSG implied that the additional bureaucracy required from Capita-IRISC had persuaded some people to abandon their claim:

“IRISC will not consider claims that do not meet the requirements of the OGP unless they pass the quality audit that they devise, and part of the quality audit is checking that you have got the right number of statements in from appropriate witnesses. In circumstances where those requirements are not met they will only consider a claim if a request is made for discretion which requires the claimant to demonstrate that there are some exceptional circumstances and to set out in detail the steps that they have taken to trace the witnesses, so there are other hurdles that have to be overcome. It is fair to point out that requests for discretion are largely accepted but it is an additional step that the claimants have to go through. It is fair to point out that the DTI have accepted that where claimants are elderly or in posthumous claims then that satisfies the criteria for ‘exceptional’, but nonetheless there is a series of

⁹² Q 4 (Maddocks)

⁹³ Appendix 8, para 26

⁹⁴ *Ibid*

steps that has to be gone over and at various points along the way people have dropped out of the process.⁹⁵

48. The Group felt that the iterative process by which this type of claim is assessed added unnecessary delay to the settlement of claims. The CSG were also critical of the way in which the claims adjusters employed by Capita-IRISC to assess Group 3 claims on the basis of their mining experience operated in practice. The Group expressed concerns about their application of ‘mining sense’. Another major concern related to the relative weight that the adjusters gave to different types and different elements of evidence. The CSG felt that in a number of cases disproportionate weight was given to documentary evidence which was not relevant to vibration exposure but which would be contradicted by evidence from the claimant and his witnesses, who often included mine officials.⁹⁶ Similar concerns were expressed by the English Monitoring Group, which was also critical of the adequacy of the guidelines within which the specialist claims adjusters worked.⁹⁷ The Coalfields Communities Campaign provided some specific examples to support its contention that Capita-IRISC had not implemented the OGP properly.⁹⁸

49. The CSG and the English Monitoring Group drew our attention to the difficulty that some claimants had in providing the necessary statements from qualified witnesses to support their claim. While the Monitoring Group welcomed the DTI’s willingness to establish a national witness database to assist with this process, it had been disappointed that the database included only witnesses identified by claimants, who were denied access to the Department’s own witness database. The Group pointed out that the Department’s witnesses could have been asked for their agreement to the disclosure of their names and addresses to satisfy the requirements of the Data Protection Act. Furthermore, the Department has decided that the national database could not be used retrospectively to assist those claims which had been denied when claimants could not provide witness details. This decision had been badly received in the mining areas.⁹⁹

50. Jeff Wilson defended Capita-IRISC’s implementation of the OGP and suggested that the company was simply following the procedures agreed between its employers, the DTI, and the claimants’ solicitors:

“Capita’s job is to assess the evidence to make sure the employment criteria are met. It is important that when information and evidence is submitted in the Occupational Group Procedure, it follows the form of proper evidence in terms of claims, questionnaires and witness statements. There will be instances where we will have to quality check that information and return it to the solicitors. I understand the concerns regarding the Group 3 adjusters, but what we have employed are 61 individuals who have got 1,500 years of mining experience. Ultimately, what they are trying to assess is the evidence before them. What we try to do is encourage our adjusters to look for ways to pass a claim rather than fail it. We should be alive to the

⁹⁵ Q 4 (Maddocks)

⁹⁶ Q 8

⁹⁷ Appendix 8, paras 37-41

⁹⁸ Appendix 1, Section 4

⁹⁹ Appendix 8, para 44

fact that approximately 50% of the claims which they have assessed have been accepted.”¹⁰⁰

51. The DTI’s ‘aspirational end date’ for the settlement of all Group 3 claims is September 2005. The CSG were sceptical about the chances of this aspiration being fulfilled in practice. The Group pointed out that to meet this end date investigations would need to be completed in 7,500 cases. To achieve this task Capita-IRISC would need to significantly increase the rate of investigation to an average of 825 cases per month—much higher than had been achieved before.¹⁰¹ In reply, the DTI estimated that there would prove to be about 6,600 cases to be cleared by September—5,400 claims which were ready for investigation but not completed and an estimated 1,200 additional cases that could arise by the deadline for the submission of supporting evidence of 30 June 2005. The Department acknowledged the need for increased performance and productivity but told us that Capita-IRISC had taken a number of steps to achieve this, including the recruitment of additional investigators. The DTI remained confident that all outstanding claims would be cleared by September.¹⁰²

52. It seems to us that a lack of adequate guidance from the Department to IRISC on how the VWF scheme was to be implemented caused confusion and created delays in the settlement process, leading to a backlog of unsettled claims. The Department eventually responded positively to the problem and developed the Occupational Group Procedure (OGP) in collaboration with the claimants’ representatives. Unfortunately, it appears that, in some cases, the way in which Capita-IRISC and the DTI have chosen to implement the OGP has caused further delay to settlements and created resentment among claimants. We accept that all compensation claims must be investigated properly. We are not convinced, however, that the DTI and its contractors have taken all possible steps to ensure that the OGP has been implemented in keeping with the spirit with which it was conceived as opposed to the letter of the agreement itself. It remains to be seen if the Department’s target for the satisfactory completion of Group 3 settlements will be achieved.

VWF services claims

53. The CSG told us that, although the Handling Agreement for VWF which was approved by the Court in 1998 covered claims for the costs of assistance with ordinary tasks which VWF sufferers could no longer perform, DTI had initially failed to establish with IRISC a procedure for assessing such claims. Consequently, IRISC had made no arrangements to assess such claims. In 2001 DTI and the CSG agreed a detailed procedure for the handling and assessment of these ‘services’ claims. This ‘Services Agreement’ required a claimant to complete a standardised form, which also required information from those who provided assistance with tasks, payment for which a claim was made. This approach was intended to speed up the claims process by limiting the evidence required to assess claims and providing for the assessment of claims by reference to agreed tariffs, depending upon the

¹⁰⁰ Q 98

¹⁰¹ Appendix 6

¹⁰² Appendix 3

severity of the claimant's VWF, and after taking into account any separate medical conditions which would have limited the ability to do the tasks in any event.¹⁰³

54. Once again, the CSG complained about the implementation of this Agreement by IRISC, which it accused of conducting overly-detailed investigations and requiring information which was not relevant to the claim under investigation, thereby introducing delay into the procedure.¹⁰⁴ The CSG called some of the questioning of services claims "inept",¹⁰⁵ and claimed that Capita-IRISC staff were inadequately trained for the task.¹⁰⁶ A deadline for the submission of evidence by claimants has been imposed by the Court and the CSG was concerned that this would result in an increase in the rate of claims just before the deadline, which would in turn slow down the claims handling process.¹⁰⁷

55. For Capita-IRISC, Jeff Wilson and Kate Roy suggested that such problems might have been encountered at the first stages of the implementation of the 'Services Agreement' but that extensive training and feedback from solicitors had improved the performance of their staff. The company was also confident that they had arrangements in place to deal efficiently with the increase in correspondence to be expected from the imposition of the deadline.¹⁰⁸ The CSG acknowledged that the "mishandling" of claims by Capita-IRISC had been reduced, but that claimants still experienced delays in agreeing a settlement of their claim.¹⁰⁹

56. It seems to us that, once again, the DTI was slow to ensure that, from the start, its contractor had clear instructions on how to implement part of the Claims Handling Agreement for VWF. In this case, too, the Department's good intentions in trying to produce a streamlined procedure for the settlement of VWF Services claims has been undermined by the way in which it has allowed Capita-IRISC to implement that procedure.

¹⁰³ Appendix 5

¹⁰⁴ *Ibid*

¹⁰⁵ Appendix 7

¹⁰⁶ Q 9

¹⁰⁷ Appendix 5

¹⁰⁸ Qq 101-106

¹⁰⁹ Appendix 7

6 Issues associated with both schemes

Stalled claims

57. The CSG told us that there were significant numbers of claims which had been stuck or “stalled” in the settlement process for both schemes, although those for VWF Services were of most immediate concern given the impending target for completion.¹¹⁰ Early in 2004, DTI gave forewarning that it was considering the introduction of a procedure to expedite claims that had been stalled on the solicitors’ side of the claims handling process. The CSG wanted to widen the procedure to include claims stalled within Capita-IRISC and the other contractors. However, at the end of July 2004 the DTI tabled a detailed proposal addressing only the problem of claims stalled with claimants or their solicitors.¹¹¹

58. Between 1 October and 20 December 2004 Capita-IRISC informed claimants’ solicitors involved in more than 4,000 cases that their client’s case was subject to the stalled claims procedure and therefore the timetable towards closure of the claim within three months had begun to operate. In order to keep the case open the claimant had to provide all the information which Capita-IRISC had requested in the past but which had not yet been provided. If a substantive response to such a letter was not received within the three month period the claim would be closed. We heard that this demand created a significant extra burden on solicitors and claimants, to no practical effect. The CSG alleged that Capita-IRISC could not cope with the flood of information received in response to the letters, delaying the process further and that the stalled claims remained stalled.¹¹²

59. For the DTI, Christine Chamberlain¹¹³ assured us that that the system had recovered from the delays caused by the attempt to deal with the stalled claims for VWF damages, (which had been ordered by the judge overseeing the scheme) which she regarded as “teething troubles” which were inevitable with the introduction of a new process. She explained that the Department had needed to establish the reasons for any delay to the 10 to 12 percent of general damages claims that remained unresolved. She felt that the onus was on the claimant’s solicitor to keep track of progress with clients’ cases and inform the Department of any problem with the progress of the case. In any event, the 4,000 claims about which the CSG had complained represented only 3 percent of all VWF claims.¹¹⁴ The Minister told us that the DTI and the CSG were in discussions over the question of how to deal with stalled claims in both the VWF and COPD schemes, and he hoped that agreement could be reached soon.¹¹⁵

60. Yet again, Capita-IRISC’s attempt to carry out its instructions from the Department, which on this occasion was acting on the instruction of the court to resolve the problem of stalled claims, has resulted in delay, confusion and resentment

¹¹⁰ Q 28

¹¹¹ Appendix 5

¹¹² Q 28

¹¹³ Ms Chamberlain is Assistant Director, VWF Operations, DTI

¹¹⁴ Q 133

¹¹⁵ Q 132

among claimants’ representatives and, we imagine, their clients. This is another example of the ‘teething troubles’ that seem to have occurred whenever the DTI or its contractor has tried to do something new.

Fraudulent claims

61. The DTI told us that Capita-IRISC’s claims handlers were trained to use a set of ‘Key Fraud Indicators’ developed by the company to identify potentially fraudulent claims. They had been developed by the company’s counter-fraud department and were based on analysis of claims which had already been referred for investigation to identify the types of fraud and fraudulent activity occurring under the Schemes.¹¹⁶ Capita-IRISC told us that of the more than 750,000 claims made under both schemes, 1,500 (0.2 percent) had been referred for further investigation because of concerns identified during the claims validation process.¹¹⁷

62. While the CSG agreed that it was appropriate for the DTI to attempt to detect fraudulent claims,¹¹⁸ the Group had severe reservations about the way that potential fraud was investigated. It told us that potentially fraudulent cases were investigated by a specialist unit, the Security Investigation Department (SID). The CSG was concerned that the DTI had refused to discuss the procedures under which the SID operated. It alleged that investigators were reluctant to explain the basis for the investigation of a claim and would not identify the matters under scrutiny. The Group was unhappy that investigators sought to interview the claimant, an unusual step in civil litigation, and one which had created difficulties due to the lack of transparency over the reasons for the interview. It was concerned that the investigative process added further delay to the settlement of claims,¹¹⁹ while only a small number of investigations resulted in claims being denied or reduced in settlement value.¹²⁰

63. Of the 1,594 claims referred for investigation to date,¹²¹ about 800 had been concluded.¹²² Of these, 156 claims had been denied as a result of investigation and a further 132 cases had resulted in reduced settlement offers. A total of £3.1 million had been saved as a result.¹²³ The DTI told us that the annual running cost of the SID was £500,000. The CSG pointed out that this did not represent the full cost of the unit’s work because costs would be incurred both by Capita-IRISC and by solicitors.¹²⁴ The DTI had agreed to meet the extra costs payable to claimants’ representatives once a claim had been settled, as is normal practice, so the full cost of fraud investigations would not be known for some time.

¹¹⁶ Appendix 3

¹¹⁷ Q 107

¹¹⁸ Appendix 5

¹¹⁹ Q 45

¹²⁰ Appendix 5

¹²¹ Q 161

¹²² Q 108

¹²³ Q 161

¹²⁴ Appendix 7

64. The CSG stressed that claimants who settled for less than the full amount they had sought should not necessarily be regarded as having made a fraudulent or exaggerated claim. Claimants may be willing to accept reduced offers for a number of reasons, including the difficulties experienced in tracing reliable witnesses, and the frustration occasioned by delays in the process. The Group felt that it was difficult to say whether the savings quoted by the DTI represented a reliable guide to the benefit to the taxpayer derived from the work of the SID.¹²⁵

65. No-one could seriously question the right, indeed the duty, of the DTI to establish procedures within the coal health schemes to prevent and detect fraudulent or exaggerated claims. We are satisfied that the measures in place are what should be expected, given the size and complexity of the task of administering the schemes. As the Minister told us, however, the vast majority of people are perfectly honest, and we would expect the Department's investigators to approach their task with tact and sensitivity.

The performance of claimants' representatives

66. It seems that, in some cases, claimants have had cause to complain about the service provided by their legal representatives. The English Monitoring Group identified two problems. First, the Group reported that it had received complaints about the operation of claims handling companies. It felt that the way the Handling Agreements had been designed, having been modelled on common law procedures, had encouraged the involvement of these companies, as had changes in Legal Aid arrangements and the emergence of "no win no fee" agreements. We were told that many had signed up to various arrangements whereby additional fees were being charged or a proportion of a settlement could be deducted by the solicitor even though the solicitors were paid by the DTI. Ministers had been forced to write to all solicitors to confirm that extra fees should not be charged and should be repaid if this had occurred. The Group welcomed the willingness of the Law Society to examine complaints brought by Members of Parliament about such actions.¹²⁶ The Group concluded that:

"There is inadequate regulation of claims farmers who often raise expectations of compensation levels and their cold calling techniques often cause distress, particularly to the elderly."¹²⁷

67. The need for better regulation of claims handling companies was recognised by the CSG.¹²⁸ Andrew Tucker told us that the current approach required the solicitors to control the activities of claims handlers and that it would better if they were regulated directly by the Law Society.¹²⁹ The Law Society told us that this would require a change in Government policy. Before March 2004, solicitors were not permitted to pay third parties for the referral of cases. The rule was designed to ensure that there were no improper

¹²⁵ Appendix 7

¹²⁶ Appendix 8, paras 8-10

¹²⁷ *Ibid*, para 50

¹²⁸ Q 56

¹²⁹ Q 58

influences constraining the independence of advice given by solicitors to their clients. However, this rule has been criticised by the Office of Fair Trading as being anti-competitive, and was changed in March 2004. Under the current rules, solicitors are permitted to pay claims handlers for the referral of cases provided that the charges are transparent to the client; the claims handler does not attract business in an unacceptable way, such as cold calling; and the solicitor remains free to advise the client in the client's best interests. We learned that the rule is currently under review. The Law Society's powers of regulation apply only to solicitors, and to others employed in solicitors' practices but it does not have the power to regulate claims handling companies themselves.¹³⁰ However, in a speech given today, the Lord Chancellor announced his intention that claims handlers should be subject to direct regulation,¹³¹ as the Law Society advocated.

68. From the evidence submitted to us, and from our own experiences as Members of Parliament, we feel that the activities of claims handling companies should be better regulated than is currently the case. We welcome the Lord Chancellor's commitment to introducing legislation to bring the claims management sector within the regulatory net through the establishment of a front-line regulator.

69. The EMG was also concerned about the standard of service provided by some solicitors who, it said, had concentrated on drumming up business at the expense of making adequate preparations for the task in hand. A common complaint concerned the difficulties that clients had in communicating with their solicitor. The EMG felt that the fee structure incorporated into the Handling Agreements provided little incentive, other than a solicitor's own professional conduct, for solicitors to check Capita-IRISC's assessment of the compensation payable. It expressed doubts about the ability of some firms to check accurately compensation levels when they had a high volume of claims and few qualified solicitors.¹³²

DTI's relationship with other stakeholders

70. Some of our witnesses, while acknowledging the size of the task of the DTI and its contractors, expressed varying degrees of dissatisfaction at the working relationship between the Department and others with an interest in the schemes. Taking the COPD scheme as an example, the Coalfields Communities Campaign, acknowledged that, after an initial period when the scheme administration struggled to cope, "successive Ministers, the DTI and the organisations under them have worked hard to improve matters."¹³³ However, the CCC noted that problems persisted, and that "in general, people in the coalfields remain dissatisfied with the way the schemes have been operating."¹³⁴ It also commented that an element of an adversarial approach remained in the way claims were being handled. So did the English Monitoring Group:

¹³⁰ Appendix 9

¹³¹ Lord Falconer of Thoroton, speech to Health and Safety Executive Seminar, *Compensation Culture*, 22 March 2005

¹³² Appendix 6, para 9

¹³³ Appendix 1, para 2.4

¹³⁴ *Ibid.*, para 2.6

“The claims initially started as an adversarial process, improved significantly but has reverted to a more adversarial approach which may be partially explained by the introduction of end dates for various stages of the process, designed to conclude the compensation arrangements at the earliest possible opportunity and therefore relieve Departmental officials from what may be regarded as a deflection from the current overall political remit of the DTI.”¹³⁵

71. The CSG agreed that the Department appeared to have adopted a more adversarial approach latterly. Speaking about the introduction of the ‘fast-track’ schemes, Gareth Morgan told us:

“I think the outstanding issues are as a result of the real difficulties we find in trying to negotiate matters with the Department. In the past a lot was done by negotiation and agreement but over time there seems to have been a hardening of attitudes and it is now very difficult to have any meaningful negotiations on many topics.”¹³⁶

72. In replying to this criticism, the Minister stressed the common cause that linked all interested parties—that of ensuring that claimants are properly compensated as quickly as possible. In his view, at least some of the complaints presented to us by the CSG had arisen because DTI officials were complying with instructions delivered by the court.¹³⁷ He offered his own view of the situation:

“Last year has been a frustrating time for the solicitors; they have had high hopes in certain areas of these compensation claims, with, as far as I am aware—and I can assure the Committee they cooperated fully with them—but some of the areas they thought would bear fruit for their clients just did not, and I think perhaps that frustration is reflected in their statements about cooperation. I take all criticisms seriously, and I do not believe that these are fair criticisms.”¹³⁸

73. We have been struck by the adversarial tone that ran through the evidence given to us by the CSG on the one hand and by the DTI and its contractors on the other. This is to some extent unsurprising, given the fact that the coal health schemes were designed on the basis of common law. Given the commitment expressed by both sides to the objective of completing the task of delivering the appropriate level of compensation to claimants as quickly as possible, we are concerned that differences between the Department and claimants’ representatives should be settled by negotiation rather than confrontation before the courts.

74. The EMG and the Scottish Monitoring Committee (SMC) both complained about a lack of transparency on the part of the DTI and the difficulty that they had encountered in obtaining access to information. The SMC summarised their frustration as follows:

“Our function is not to ‘rubber stamp’ the process. In order to have a positive role it is necessary that we are in receipt of all relevant paperwork and offered invitations to

¹³⁵ Appendix 8, para 47

¹³⁶ Q 30 (Morgan)

¹³⁷ Q 125

¹³⁸ Q 126

all relevant meetings at which important points of principle and issues are likely to be discussed with the Minister. Whilst we do not say that the Minister should follow all of our recommendations in every case it seems to us that recommendations made should be considered by the Minister and if he disagrees with them then he should meet with us and be able to account for his views and also take account of the views that are expressed to him by Monitoring Committee personnel. This has not happened and increasingly, Monitoring Committees are not kept properly informed and so are not able to advise the Minister as they should.”¹³⁹

75. Ann Taylor rejected such suggestions:

“We have tried very hard to be open with solicitors and other stakeholders. We do have joint operations meetings. We have provided masses and masses of information to the solicitors’ group and other people. That is certainly something that we have tried throughout the whole of this process to do. It is difficult and we have probably failed in all sorts of areas, but we have tried very hard to be as transparent as possible.”¹⁴⁰

76. DTI officials may believe that they are doing all they can to be transparent with all involved with the coal health schemes. However, we are concerned that the Ministerial Monitoring Groups feel that they are not being given the information and access to Ministers they need to fulfil their role. The independent monitoring of an activity of a Government Department by volunteers appointed by Ministers should not be “fraught with difficulties” as they have found.¹⁴¹

¹³⁹ Appendix 4, para 7

¹⁴⁰ Q 165

¹⁴¹ Appendix 8, para 50 g

Conclusions and recommendations

The scale of the problem

1. It is not clear from the evidence submitted to us how the DTI, with or without the input from other interested parties, could have been expected to gauge better the demand for the coal health compensation schemes, although it is disturbing that the Department's initial estimates were so wide of the mark. What is more important, however, is the way the Department and its contractors reacted once the true scale of that demand was recognised. (Paragraph 20)
2. With the benefit of hindsight it is clear that the original underestimate of the scale of the problem meant that the resources allocated to the compensation schemes were inadequate from the outset and that mistakes were made. Since then, however, the Government and its contractors have invested heavily to address the original shortcoming and all of the stakeholders in the process have made significant efforts to make the system work better. In general, these efforts have borne fruit. There are, however, a number of specific points of disagreement between claimants' representatives and the Government and its contractors. (Paragraph 28)

COPD minimum payment

3. It appears unlikely that agreement will be reached soon, if at all, between the Government and claimants' solicitors or, indeed, amongst the solicitors themselves, on any system which would deliver a minimum COPD payment to claimants. This is to be regretted as such a scheme could have reduced administrative costs, accelerated the settlement process for several thousand claimants and delivered payments of a level closer to the fees paid to their legal representatives. (Paragraph 34)

Fast track offers for COPD

4. We welcome the development of the 'fast-track' approach to the problem of clearing the backlog of COPD claims. It will give claimants the option of settling their claim quickly or pursuing their case through the full assessment procedure, with the delay that this might entail. It should also reduce the demand for those assessment procedures and allow assessment resources to be focussed on the cases that need them. We are concerned, however, that the DTI and claimants' solicitors have failed to resolve their differences over issues such as fees and payments to claimants. It is in the interests of claimants and taxpayers that these differences are resolved quickly and without recourse to the courts. (Paragraph 41)

Surface workers

5. We hope that a solution can be found which allows ex-surface workers to be admitted to the COPD scheme. While we recognise that the DTI's current position may be legally watertight, it does not seem to us to be just. (Paragraph 44)

VWF group 3 claims

6. It seems to us that a lack of adequate guidance from the Department to IRISC on how the VWF scheme was to be implemented caused confusion and created delays in the settlement process, leading to a backlog of unsettled claims. The Department eventually responded positively to the problem and developed the Occupational Group Procedure in collaboration with the claimants' representatives. Unfortunately, it appears that, in some cases, the way in which Capita-IRISC and the DTI have chosen to implement the OGP has caused further delay to settlements and created resentment among claimants. We accept that all compensation claims must be investigated properly. We are not convinced, however, that the DTI and its contractors have taken all possible steps to ensure that the OGP has been implemented in keeping with the spirit with which it was conceived as opposed to the letter of the agreement itself. It remains to be seen if the Department's target for the satisfactory completion of Group 3 settlements will be achieved. (Paragraph 52)

VWF services claims

7. It seems to us that the DTI was slow to ensure that, from the start, its contractor had clear instructions on how to implement part of the Claims Handling Agreement for VWF. In this case, too, the Department's good intentions in trying to produce a streamlined procedure for the settlement of VWF Services claims has been undermined by the way in which it has allowed Capita-IRISC to implement that procedure. (Paragraph 56)

Stalled claims

8. Capita-IRISC's attempt to carry out its instructions from the Department, which on this occasion was acting on the instruction of the court to resolve the problem of stalled claims, has resulted in delay, confusion and resentment among claimants' representatives and, we imagine, their clients. This is another example of the 'teething troubles' that seem to have occurred whenever the DTI or its contractor has tried to do something new. (Paragraph 60)

Fraudulent claims

9. No-one could seriously question the right, indeed the duty, of the DTI to establish procedures within the coal health schemes to prevent and detect fraudulent or exaggerated claims. We are satisfied that the measures in place are what should be expected, given the size and complexity of the task of administering the schemes. As the Minister told us, however, the vast majority of people are perfectly honest, and we would expect the Department's investigators to approach their task with tact and sensitivity. (Paragraph 65)

Claims handling companies

10. From the evidence submitted to us, and from our own experiences as Members of Parliament, we feel that the activities of claims handling companies should be better

regulated than is currently the case. We welcome the Lord Chancellor's commitment to introducing legislation to bring the claims management sector within the regulatory net through the establishment of a front-line regulator. (Paragraph 68)

DTI's relationship with other stakeholders

- 11.** We have been struck by the adversarial tone that ran through the evidence given to us by the CSG on the one hand and by the DTI and its contractors on the other. This is to some extent unsurprising, given the fact that the coal health schemes were designed on the basis of common law. Given the commitment expressed by both sides to the objective of completing the task of delivering the appropriate level of compensation to claimants as quickly as possible, we are concerned that differences between the Department and claimants' representatives should be settled by negotiation rather than confrontation before the courts. (Paragraph 73)
- 12.** DTI officials may believe that they are doing all they can to be transparent with all involved with the coal health schemes. However, we are concerned that the Ministerial Monitoring Groups feel that they are not being given the information and access to Ministers they need to fulfil their role. The independent monitoring of an activity of a Government Department by volunteers appointed by Ministers should not be "fraught with difficulties" as they have found. (Paragraph 76)

Formal minutes

Tuesday 22 March 2005

Members present:

Mr Martin O'Neill, in the Chair

Mr Roger Berry

Mr Richard Burden

Mr Michael Clapham

Judy Mallaber

Linda Perham

The Committee deliberated.

Draft Report (Coal health compensation schemes), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 76 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.—(*The Chairman.*)

[Adjourned *sine die*.

Witnesses

Wednesday 23 February 2005

Mr Andrew Tucker, Mr Roger Maddocks, Mr Peter Evans, Mr Gareth Morgan and Mr Lawrence Lumsden, **Claimants' Solicitors Groups**

Tuesday 1 March 2005

Ms Sue Gibson, Dr Colin Wigley and Mr Simon Chipperfield, **Atos Origin Medical Services**

Mr Martin Trainer, Mr Jeff Wilson, Ms Kate Roy and Mr John Tizrad, **Capita-IRISC**

Mr Nigel Griffiths MP, Mr Nick French, Ms Ann Taylor CBE and Ms Christine Chamberlain, **Department of Trade and Industry**

List of written evidence

- 1 Coalfield Communities Campaign
- 2 DTI
- 3 DTI (supplementary)
- 4 Scottish Ministerial Monitoring Committee
- 5 Claimants Solicitors Group
- 6 Claimants Solicitors Group (supplementary)
- 7 Claimants Solicitors Group (supplementary)
- 8 English Ministerial Monitoring Group
- 9 The Law Society
- 10 Capita-IRISC