



House of Commons  
Committee of Public Accounts

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**Coal Health  
Compensation  
Schemes**

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**Twelfth Report of Session 2007–08**

*Report, together with formal minutes, oral and  
written evidence*

*Ordered by The House of Commons  
to be printed 18 February 2008*

## The Committee of Public Accounts

The Committee of Public Accounts is appointed by the House of Commons to examine “the accounts showing the appropriation of the sums granted by Parliament to meet the public expenditure, and of such other accounts laid before Parliament as the committee may think fit” (Standing Order No 148).

### Current membership

Mr Edward Leigh MP (*Conservative, Gainsborough*) (Chairman)  
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Rt Hon Alan Williams MP (*Labour, Swansea West*)  
Phil Wilson MP (*Labour, Sedgefield*)

The following were also Members of the Committee during the period of the enquiry:

Annette Brooke MP (*Liberal Democrat, Mid Dorset and Poole North*) and  
Mr John Healey MP (*Labour, Wentworth*).

### Powers

Powers of the Committee of Public Accounts are set out in House of Commons Standing Orders, principally in SO No 148. These are available on the Internet via [www.parliament.uk](http://www.parliament.uk).

### Publication

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/pac>. A list of Reports of the Committee in the present Session is at the back of this volume.

### Committee staff

The current staff of the Committee is Mark Etherton (Clerk), Emma Sawyer (Committee Assistant), Pam Morris (Committee Secretary) and Alex Paterson (Media Officer).

### Contacts

All correspondence should be addressed to the Clerk, Committee of Public Accounts, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5708; the Committee’s email address is [pubaccom@parliament.uk](mailto:pubaccom@parliament.uk).

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## Summary

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In January 1998, the Department of Trade and Industry (now the Department for Business, Enterprise and Regulatory Reform) took responsibility for the accumulated personal injury liabilities of the British Coal Corporation. In the same year, the courts found the Corporation negligent in respect to lung disease caused by coal dust (Chronic Obstructive Pulmonary Disease or COPD) and hand injuries caused by using vibrating equipment (Vibration White Finger or VWF). Under the courts and in negotiation with claimant's solicitors the Department established two schemes to pay compensation. Both schemes are now closed to new claimants.

The Department received over three quarters of a million claims from former miners, their widows, or their estates for COPD (592,000) and VWF (170,000). By the time all the claims have been settled, the Department estimates that it will have paid some £4.1 billion in compensation.

The schemes posed a formidable challenge. Many claimants were elderly, ill and anxious to receive their compensation. The number of claims greatly exceeded the Department's initial forecasts of 173,000 COPD and 45,000 VWF claims. It was ill prepared for the number, and in some cases complexity, of claims made. Consequently some claimants have had to wait as long as ten years or more. In 2005, to address significant backlogs the Department, in negotiation with solicitors, introduced a fast track arrangement to process COPD claims. By September 2007, there were around 116,000 COPD claims and 12,000 VWF claims remaining to be settled. The Department is seeking to process most of the remaining VWF claims by March 2008 and COPD claims by February 2009.

The schemes were costly to administer. By completion, administration costs, including contractor and medical costs, are expected to total almost £2.3 billion. Claimants' solicitors and other representatives' fees account for just under £1.3 billion of this total. The Department's negotiation of the fees with solicitors was weak, with the result that it paid fees significantly in excess of costs. Some solicitors have also levied additional fees on successful claimants.

On the basis of a Report by the Comptroller and Auditor General,<sup>1</sup> the Committee examined the Department for Business, Enterprise and Regulatory Reform on its management of the two compensation schemes.

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1 C&AG's Report, *Coal Health Compensation Schemes*, HC (2006–07) 608



## Conclusions and Recommendations

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- 1. At the end of September 2007 the Coal Health Compensation Schemes had settled almost 650,000 claims but some 128,000 cases were still waiting settlement, some of which had waited up to ten years or more.** The Department and its contractors, working with solicitors, should retain sufficient numbers of skilled staff to settle the remaining claims as soon as possible.
- 2. The Department did not undertake a systematic appraisal of the alternatives to a court-based scheme.** Prior to the court's judgement, it had considered the possibility of putting the schemes on a statutory footing, where Parliament rather than the courts would determine the schemes' rules, but did not take this or other possible options further.
- 3. The Department did not seek actuarial advice during the planning phase.** As a result, it underestimated the likely volume of claims by over 300% and allocated an insufficient number of staff to manage the liability. Departments faced with establishing new compensation schemes should obtain professional actuarial advice to help inform decisions on scheme design and implementation.
- 4. For every £2 paid out in compensation more than £1 has been spent on administration.** For the COPD scheme, around 69% of claimants receiving compensation got less than the average cost of administering a claim. When drawing up compensation schemes Departments should test fast-track options for dealing with simpler claims to help reduce costs and provide a better service.
- 5. The Department's negotiation with solicitors on the original tariff was weak and has led to significant costs.** The Department did not include a review clause in its tariffs. Once its initial assumptions proved wrong it found itself locked into an expensive contract.
- 6. The Department has recouped about £41.8 million of the £80.6 million it expects to be repaid by solicitors following a recent court ruling on the tariff for dealing with fast-track COPD cases.** The Department should take vigorous action to pursue the amounts outstanding.
- 7. Some applicants, many of them elderly and ill, have found themselves paying additional charges to solicitors and other firms.** In some of these cases the firms did not properly inform claimants at the outset about these extra charges. The Department should continue to press the professional bodies to achieve repayment in full of all inappropriately levied charges.



# 1 Implementation of the Coal Health Compensation Schemes

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1. In January 1998, the Department of Trade and Industry (the Department for Business, Enterprise and Regulatory Reform since June 2007) took responsibility for the accumulated personal injury liabilities of the British Coal Corporation. In the same year, the courts found the Corporation negligent in respect to lung disease caused by coal dust (Chronic Obstructive Pulmonary Disease or COPD) and hand injuries caused by using vibrating equipment (Vibration White Finger or VWF). Under the courts and in negotiation with claimant's solicitors the Department established two schemes to pay compensation. Both schemes are now closed to new claimants.<sup>2</sup>

2. The Department received over three quarters of a million claims from former miners, their widows, or their estates for COPD (592,000), and VWF (170,000). By the time all the claims have been settled, the Department estimates that it will have paid some £4.1 billion in compensation.<sup>3</sup>

3. The Department did not, however, undertake at senior level a systematic appraisal of the options available for discharging the liability prior to the court judgements, for example establishing a statutory scheme. It had considered at working level some of the possible options, including offering the liability to reinsurance and the possibility of putting the schemes on a statutory footing, where Parliament rather than the courts would determine the schemes' rules. But once the Court had taken its decision the legal position became more complex. The closer the Department came to the Court decision the more restricted the options became.<sup>4</sup>

## *Time taken to process claims*

4. Some claimants have waited a long time for their compensation, causing frustration and anxiety to often elderly and ill claimants. The Department gave priority to living miners and their widows. The median time taken to process claims under the full COPD scheme was, at March 2007, 29 months. For VWF claims, it took 20 months. Performance in some individual cases was far worse. Some claims have taken more than ten years to process and some remain outstanding (**Table 1**).<sup>5</sup>

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2 C&AG's Report, paras 1, 2

3 C&AG's Report, paras 4, 5

4 Qq 6, 12; C&AG's Report, para 2.10

5 Q2; C&AG's Report, para 3.2

Table 1: Time taken to process OPD and VWF claims (at March 2007)

<b>COPD processing time for offers made after a medical assessment</b>			
	Average (months)	Maximum (months)	50% of claims dealt with in less than (months)
Miners	35	133	31
Widows' claims	33	131	28
Estate claims	31	134	27
<b>All claims</b>	<b>33</b>	<b>134</b>	<b>29</b>
<b>VWF processing time for general damages offers made after a medical assessment</b>			
	Average (months)	Maximum (months)	50% of claims dealt with in less than (months)
Miners	26	138	19
Widows' claims	31	126	25
Estate claims	30	138	25
<b>All claims</b>	<b>27</b>	<b>138</b>	<b>20</b>

Note: The maxima figures exclude cases still to receive offers after 31 March 2007, cases litigated outside the schemes and those which were withdrawn or denied.

Source: National Audit Office analysis of data from Capita Insurance Services.

### Estimates of the volume of claims

5. At the start, the Department had greatly underestimated the likely number of claims. In March 1998, just after taking over responsibility for the liabilities, the Department forecast that the number of claims during the life of the schemes would be of the order of 173,500 for COPD and 45,000 for VWF, compared with the eventual number of 592,000 COPD and 170,000 VWF claims (Table 2). The combined liability of the two schemes was expected to be some £614 million, compared to the eventual total of £4.1 billion.<sup>6</sup>

Table 2: Summary position of the VWF and COPD Schemes to September 2007

<b>VWF</b>	
Claims received	169,617
Claims settled <sup>1</sup>	157,301
Outstanding VWF claims	12,316
<b>COPD</b>	
Total COPD claims received	591,751
Claims settled	475,547
Outstanding COPD claims	116,204

Note: Claims settled figures includes claims which were denied and withdrawn

Source: Department for Business, Enterprise and Regulatory Reform

6. The Department had initially relied on forecasts prepared by the British Coal Corporation. It did not commission its own actuarial assessment of the likely number of claims and liabilities. In early 1998, the Department had not appreciated that the entitlement to compensation could be passed to the estate of the miner upon death and to subsequent estates if not claimed. The Department learned of this liability in late 1998 but it did not compile new estimates until 2001. Estate claims were to prove significant, accounting for 44% of COPD claims and 8% of VWF claims.<sup>7</sup>

7. The Department accepted that it should have examined the Corporation's forecasts at the beginning but had considered the Corporation to be the experts. The Department believe that even with more analysis the forecasts produced would have been subject to significant uncertainty. It did however accept that an actuarial assessment of the likely number of claims should have been undertaken.<sup>8</sup>

### **Complexity**

8. The challenge of processing the very large number of claims was exacerbated by the complexity of the schemes' rules. The rules for assessing claims were set out in Claims Handling Agreements (the Agreements). The Department had to negotiate each Agreement with a Claimants Solicitors' Group, drawn from over 300 solicitors representing all claimants. Each agreement also required the approval of the Court. The aim was to replicate, as closely as possible, the outcome the claimant would receive if they went through the full court process. By the time the cases were in the courts and nearing a judgement, the Department suggested that it would have been impractical to extinguish common law rights and that this had necessarily led to complicated rules and processes.<sup>9</sup>

### **The capacity to handle the claims**

9. Partly as a result of the number of claims being made and the complexity of the processes, the Department and its contractors significantly underestimated the capacity needed to process the actual number of claims made. It took several years to get the required capacity in place, both within the Department and in the range of other advisors required to process claims.<sup>10</sup>

10. Internally, the Department under-resourced its preparations at the outset. During 1998, it had devoted only two staff to managing the COPD and VWF liabilities, rising to three in November of that year. In 1998, the Department was taking decisions on the options open to it, starting negotiations over the schemes' agreements and putting in place the infrastructure to support the processing of claims. Lack of staff resources at this critical stage contributed to deficiencies in the initial planning of these schemes. The Department did not defend the level of staff resources devoted during the initial stages and

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7 Qq 3, 60, 64; C&AG's Report, paras 2.5 to 2.7

8 Qq 3, 60, 64

9 Qq 6, 12; C&AG's Report, paras 1.5, 2.10, 3.3

10 Qq 10, 35, 87, 89; C&AG's Report, paras 3.7, 3.13

acknowledged that lessons needed to be learned from this example on the proper management of risk.<sup>11</sup>

11. In September 2001, the Department brought in a senior secondee with programme management experience to strengthen its review of internal procedures to improve performance. The Department had begun to expand its capacity from 2000 but noted that particular difficulties had been created by the receipt of 294,000 COPD claims in the six months before closure to new claims in March 2004.<sup>12</sup>

12. Externally, there were also capacity problems. For example, both schemes required claimants to attend medicals to assess their illness. The scale of the COPD scheme was such that it was difficult to find the number of respiratory specialists required in the UK. Medical and employment records took longer to obtain, and were often incomplete, or did not exist. In addition, some solicitors and other claimant representatives were slow in dealing with their tasks.<sup>13</sup>

### ***Fast-track processing of claims***

13. The Department, with the agreement of the other parties and the Court, introduced a fast-track process for dealing with more straightforward COPD claims in 2005. By March 2007, this arrangement had successfully cleared some 174,000 claims. 50% of claims entering the fast-track process were processed within five months, demonstrating that simpler claims could be processed more quickly. The Department doubted that a fast-track process could have been introduced earlier, believing it had only been possible because, by 2005, all sides had experience of dealing with a large number of claims and hence knew what would work.<sup>14</sup>

14. The initial COPD Agreement had included an expedited arrangement but by March 2007 only 24,000 claims had been dealt with via this route. The expedited option had been open to all COPD claimants but had been primarily designed for those with a shortened life expectancy and who might be eligible for higher amounts of compensation.<sup>15</sup>

### ***Completing the schemes***

15. The Department has set “aspirational” dates for completing each scheme: by the end of October 2007 for VWF; and February 2009 for COPD. By September 2007 there were 116,000 COPD and 12,000 VWF cases remaining to be settled. The Department had hoped to virtually complete its processing of VWF claims by the end of October 2007, but this target has slipped to March 2008. The COPD scheme is still on track to achieve its target date of February 2009.<sup>16</sup>

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11 Q 14; C&AG’s Report, para 2.13

12 Qq 10, 35, 89; C&AG’s Report, para 3.9

13 Q 87; C&AG’s Report, para 3.7

14 Q 10; C&AG’s Report, paras 3.18, 3.19, Figure 4

15 Q 10; C&AG’s Report, para 3.17

16 Qq 4, 5; Ev 12–13; C&AG’s Report, para 4.2

16. The Department is likely to face a number of challenges to closing the schemes. During the lifetime of the schemes, the Department has sought to prioritise claims where the claimant has had a life-threatening illness. Cases raising difficult issues or policy questions have been deferred until the issues were settled. These issues include, for example, whether surface workers have a valid claim for compensation for exposure to dust. Some of the more difficult cases therefore remain outstanding.<sup>17</sup>

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<sup>17</sup> Qq 5, 26; C&AG's Report, paras 4.9, 4.10, 4.11

## 2 The cost of administering the Schemes

### Overall administrative costs

17. By the time all claims are processed the National Audit Office has estimated that for every £2 paid in compensation, over £1 will have been spent on administrative costs, which are forecast to total £2.3 billion. Almost £1 billion will be attributable to the cost of the Department's claims handlers, medical contractors, the cost of retrieving miners' employment records and its own legal advisers (Table 3). The Department's claims handler, Capita Insurance Services, won a competitive tender for the work in 2006 after buying the previous contractor, Aon in 2004.<sup>18</sup>

Table 3: The cost of processing claims

	<b>COPD Estimated Final Outturn £million</b>	<b>VWF Estimated Final Outturn £million</b>	<b>Total £ million</b>
Solicitors' costs	1,122	173	1,295
Medical costs	394	32	426
Other allocated	1	1	2
Claims handling (*)	273	207	480
Record extraction (*)	38	10	48
Legal services (*)	20	20	40
<b>Total</b>	<b>1,848</b>	<b>444</b>	<b>2,292</b>
<b>Average cost per claim</b>	<b>3,100</b>	<b>2,600</b>	

Note (\*): The Department does not break down by scheme its contractor costs. Its contractors receive composite payments covering the work done on all types of health claim, including COPD, VWF and other residual claims. In addition, the Department has not separately identified its in-house costs by scheme. The costs here have been apportioned based on a National Audit Office analysis of applied resources.

Source: National Audit Office analysis of Departmental data

18. Over 56% of the total cost will be attributable to the fees paid to the claimants' legal representatives which, when all claims are settled, will be in the order of £1.3 billion. The cost of legal representation was reimbursed under a fees tariff structure agreed in negotiation between the Department and the Solicitors' Group at the start of the schemes. Fees were only payable if claims were successful. At 31 March 2007, ten organisations had accounted for 61% of the amounts paid out (Table 4).<sup>19</sup>

18 Q 85; C&AG's Report, paras 5, 1.7, Figure 8

19 Q 40; C&AG's Report, para 3.22, Figure 8, Appendix 7

Table 4: Fees paid to claimants' representatives

<b>Total payments to the top 10 claimants' representatives by coal health fee income as at 31 March 2007</b>			
	<b>Ranking</b>	<b>Total £m</b>	<b>Number of partners</b>
Thompsons	1	123.6	36 equity partners plus 16 salaried partners (*)
Beresfords	2	115.0	3 partners
Hugh James	3	90.2	47 partners
Raleys	4	72.4	Declined to respond
Browell Smith & Co	5	54.6	Information not supplied
Mark Gilbert Morse	6	52.4	Information not supplied
Avalon	7	35.1	9 partners
Union of Democratic Mineworkers	8	31.6	Not applicable
Watson Burton LLP	9	31.3	Information not supplied
Graysons Solicitors	10	29.7	9 partners
<b>Total</b>		<b>635.8</b>	

(\*) Figures do not include Thompsons Edinburgh

Note: Figures do not cast correctly due to rounding

Source: Department for Business, Enterprise and Regulatory Reform: Information on number of partners supplied in response to a letter from the Department

19. Claimants' representatives, usually solicitors, were funded to provide a range of services. These included providing information to potential claimants about the schemes, for example details on the process involved and the criteria governing entitlement; advice, for example in the case of COPD claims whether to pursue a fast-track settlement or opt for the full medical assessment; assistance with the completion of various forms; and advice to the client on any offers made. In some cases, solicitors pursued issues not envisaged in the original claims handling agreement, for example the position of surface workers who might have inhaled dust.<sup>20</sup>

### *The solicitors' fees negotiated by the Department*

20. There were weaknesses in the Department's approach to negotiating the original tariffs with solicitors. The negotiations had taken place in the midst of uncertainty over the volume of claims and the practical operation of the schemes. Once negotiated, however, the tariffs were expected to operate for the life of the schemes with fees increased annually in line with inflation. As a result, the Department was effectively tied. At the time of the original negotiation, the Department believed that the schemes would be closed as early as 2001. The Department now accepts that the absence of a review clause in the agreements, allowing a review of tariffs in the light of experience, was an error.<sup>21</sup>

21. The structure of the tariffs also favoured solicitors who handled a large volume of claims. The estimates prepared for the Department on both VWF and COPD, for example,

<sup>20</sup> C&AG's Report, para 3.21

<sup>21</sup> Qq 18, 70, 76

had considered the processing of each claim as a discrete piece of work. The estimates therefore took no account of the economies of scale to be gained from processing large numbers of claims within the firms. As a consequence, the large amounts paid to some solicitors firms are significantly greater than the actual costs those firms incurred.<sup>22</sup>

22. Furthermore, a report by a Senior Costs Judge in early 2007 suggested that the fees payable under the COPD Claims Handling Agreement were higher than the costs that would be awarded following a conventional detailed assessment (Table 5). The National Audit Office estimated that, on the basis of the Cost Judge's findings, the total amount payable by the Department to solicitors could have been £295 million less.<sup>23</sup>

**Table 5: Estimates of COPD legal costs prepared by Senior Cost Judge (February 2007)**

Category of case	Assessment by Senior Cost Judge	Cost payable under the Claims Handling Agreement
Claim following full medical	£922	£2023
Widow and estate claims following full medical	£985	£2023
Expedited settlement	£725	£1061

Source: Court Judgement (3 April 2007): High Court of Justice, Queen's Bench Division (Neutral Citation Number: [2007] EWHC 672 (QB), Case No: 960177. <sup>24</sup>

23. The tariff structure has also thrown up some anomalies. Under the structure, a flat fee, varying according to the type of case, was payable irrespective of the amounts won for the client. In the case of COPD, the smallest amount awarded in compensation was as small as 50p yet solicitor costs alone in this case totalled £1,974. In November 2006 a Minimum Payment Scheme was introduced whereby claimants receiving offers of £500 or less had their money increased to £500 by their solicitors from the solicitors' own funds. The Department acknowledged that the agreement to guarantee these minimum payments had taken too long to achieve, though it had depended on the response from solicitors.<sup>25</sup>

### **Reducing the level of fees**

24. The Department has sought to negotiate down the legal fees where changes to the processing of claims have presented a justifiable reason. The Department believed the original tariff should not be applied to the fast-track arrangement introduced in 2005, as the level of work required would be lower. The Claimants Solicitors' Group contested this argument. The Scheme Judge ruled against the Department. On appeal the Department won a review of this decision. In April 2007, the High Court ruled that the fees for fast-track schemes should be set at levels lower than those in the original agreements. The Department expects this ruling to reduce the cost to the taxpayer by up to £100 million, and expected solicitors to repay £80.6 million of fees already paid over. Of this amount,

22 C&AG's Report, para 3.24

23 Qq 7, 8, 77, 79; C&AG's Report, para 3.27, Figure 10

24 Citation Number: [2007] EWHC 672 (QB), Case No: 960177. This judgement can be found at <http://www.bailii.org/ew/cases/EWHC/QB/2007/672.html>

25 Qq 16, 18, 72, 75

some £50 million was owed by the 10 firms that had already earned most from these schemes (**Table 6**). By early November 2007, the Department had recovered £41.8 million of the £80.6 million. The Court has set an end date of 31 March 2008 for repayment of these debts. The Department reported that those with any outstanding debt at that point will be asked to make a final lump sum payment.<sup>26</sup>

**Table 6: Total amount owed to the Department, prior to repayment, from the top 10 claimants' representatives in respect to COPD fast-track fees**

	<b>Firm</b>	<b>Amount sought by Department</b>
1.	Thompsons	£5,171,000
2.	Beresford	£13,817,000
3.	Hugh James	£5,781,000
4.	Raleys	£5,442,000
5.	Browell Smith & Co	£4,211,000
6.	Mark Gilbert Morse	£1,169,000
7.	Avalon	£8,538,000
8.	Union of Democratic Mineworkers	£2,342,000
9.	Watson Burton LLP	£2,448,000
10.	Graysons Solicitors	£1,796,000
	<b>Total</b>	<b>£50,714,000</b>

Source: Ev 17

25. In addition, for the VWF scheme, following negotiations and mediation, the Department has recently reached agreement on the tariff for successful services claims.<sup>27</sup> The Department estimated that this tariff would reduce costs by £20 million compared to those put forward by the Claimants Solicitors' Group.<sup>28</sup>

### **Additional charges to claimants from solicitors**

26. Some solicitors have deducted additional fees from the compensation paid to claimants. In some cases, claimants also had to pay fees to companies, known as claims farmers, which had invited applicants to submit their claims via them but in practice had simply passed their application on to a solicitor. In 2001, the Department raised the issue of additional charges with The Law Society, which argued that the charges were not improper provided the client had been informed in advance as to the charging arrangements and the amounts were not unreasonable. In 2003, the Department wrote to all solicitors requesting an assurance that they would not impose additional fees. Those solicitors who did not comply were removed from the list of solicitors provided to all potential claimants, although this did not preclude claimants using these solicitors if they wished. The

26 Qq 7, 44; Ev 17; C&AG's Report, para 3.28

27 These are claims to compensate claimants for assistance with tasks the disease sometimes prevents them undertaking, for example gardening tasks.

28 Q 7; Ev 12; C&AG's Report, para 3.28

Department wrote again in June 2007. The Department believes that around £3 million has been refunded by solicitors but no firm figures are available.<sup>29</sup>

27. The Department suggested this episode had highlighted disappointing professional behaviour. By October 2007, the Legal Complaints Service, an independent arm of The Law Society established in 2006, had recovered some £720,000 from 15 firms and three firms had been referred to the Solicitors' Regulatory Authority. On the issue of claims farmers, the Department reported that its experience had influenced the broader action taken by Government on claims farmers. In particular, under the Compensation Act 2006, the Ministry of Justice has created a Claims Management Regulation Monitoring and Compliance Unit to regulate this sector. A person offering claims management services must now, unless specifically exempt, be authorised to do so by the regulator.<sup>30</sup>

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29 Qq 19, 22, 80, 92; C&AG's Report, para 3.30

30 Qq 23, 82, 91

# Formal Minutes

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**Monday 18 February 2008**

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon

Mr Ian Davidson

Mr Philip Dunne

Mr Nigel Griffiths

Mr Keith Hill

Mr Austin Mitchell

Dr John Pugh

Geraldine Smith

Mr Alan Williams

Draft Report (*Coal Health Compensation Schemes*), proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 27 read and agreed to.

Conclusions and recommendations read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Twelfth Report of the Committee to the House.

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

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report.

[Adjourned until Wednesday 20 February 2008 at 3.30 pm.]

## Witnesses

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### Monday 22 October 2007

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**Sir Brian Bender KCB**, Permanent Secretary, **Ian McKenzie**, Director, Coal Liabilities Unit, and **Mark Jones**, Assistant Director, Coal Liabilities Unit (Contracts), Department for Business, Enterprise and Regulatory Reform

Ev 1

## List of written evidence

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1	Department for Business, Enterprise and Regulatory Reform	Ev 12, 16, 19
2	Mrs Ann Elizabeth Evans	Ev 13

## List of Reports from the Committee of Public Accounts 2007–08

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First Report	Department for International Development: Tackling rural poverty in developing countries	HC 172
Second Report	Department of Health: Prescribing costs in primary care	HC 173
Third Report	Building for the future: Sustainable construction and refurbishment on the government estate	HC 174
Fourth Report	Environment Agency: Building and maintaining river and coastal flood defences in England	HC 175
Fifth Report	Evasion of Vehicle Excise Duty	HC 227
Sixth Report	Department of Health: Improving Services and Support for People with Dementia	HC 228
Seventh Report	Excess Votes 2006–07	HC 299
Eighth Report	Tax Credits and PAYE	HC 300
Ninth Report	Helping people from workless households into work	HC 301
Tenth Report	Staying the course: the retention of students on higher education courses	HC 322
Eleventh Report	The compensation scheme for former Icelandic water trawlermen	HC 71
Twelfth Report	Coal Health Compensation Schemes	HC 350

# Oral evidence

## Taken before the Committee of Public Accounts

on Monday 22 October 2007

Members present:

Mr Edward Leigh, in the Chair

Mr Richard Bacon  
Mr Austin Mitchell

Mr Don Touhig  
Mr Alan Williams

**Sir John Bourn KCB**, Comptroller and Auditor General, **Tim Burr**, Deputy Comptroller and Auditor General, and **Peter Gray**, Director, National Audit Office were in attendance and gave oral evidence.

**Paula Diggle**, was in attendance.

### REPORT BY THE COMPTROLLER AND AUDITOR GENERAL

#### Coal Health Compensation Schemes (HC 608)

*Witnesses:* **Sir Brian Bender KCB**, Permanent Secretary, **Ian McKenzie**, Director, Coal Liabilities Unit, and **Mark Jones**, Assistant Director, Coal Liabilities Unit (Contracts), Department for Business, Enterprise and Regulatory Reform, gave evidence.

**Q1 Chairman:** Good afternoon and welcome to this sitting of the Public Accounts Committee, where today we are considering the Comptroller and Auditor General's Report, *Coal health compensation schemes*. We welcome back Sir Brian Bender, the Permanent Secretary at the Department for Business, Enterprise and Regulatory Reform. Sir Brian, will you introduce your colleagues, please?

**Sir Brian Bender:** Yes. On my left is Mr Ian McKenzie, who is director of the unit that deals with the coal health schemes, and on my right is Mr Mark Jones, who is an assistant director in that unit.

**Q2 Chairman:** The scheme was initiated as a result of court actions that were decided against the Government more than 10 years ago. Why have some men had to wait 10 years for the compensation due to them? For some of them, the compensation will be too late altogether.

**Sir Brian Bender:** May I begin by apologising to former miners and their families for the fact that many claimants have had to wait such a long time? A variety of factors have caused the delay. First, there has been a high volume of claims. Secondly, there was a significant surge within a short time scale, particularly before the cut-off date for the chronic obstructive pulmonary disease (COPD) scheme. The National Audit Office Report refers to that. In addition, the involvement of co-defendants and various policy issues needed resolving. A series of issues has complicated matters, therefore.

We have approached the Association of British Insurers, which says that, from research that it has undertaken, it currently takes approximately 1,000 days to process and close a compensation claim for injury in the workplace. We have taken action to resolve claims. We have given priority to living

miners and widows. We introduced the fast-track process, as the Report says, and we have identified ways of resolving bottlenecks.<sup>1</sup>

**Q3 Chairman:** All right, but if you do not mind me saying so, Sir Brian, that is not a good enough answer. You could surely have foreseen quite a lot of the problems at the start and more thorough planning could have been undertaken then. Is that not a fact? Paragraph 2.13 of the Report says that you employed only three officials at the beginning. At the height of the work, when you were clearly overwhelmed, you had 45 officials. There are many things that you have mentioned that, had you thought them through at the start—and if there had been sufficient numbers of officials rather than three—might have been put right.

For instance, you estimated 10 years ago that compensation would cost the taxpayer £614,000,000, whereas in fact it has cost £4.1 billion—that was a staggering underestimate. Many people looking at the source of the problem would reckon that it would be fairly easy to identify how many miners or ex-miners might claim, and what might be the broad problems. They might well ask themselves how on earth you got it so wrong at the beginning, why you had so few officials, and why you were so incapable of predicting the likely problems.

**Sir Brian Bender:** Again, there are two parts to that, Chairman. First, I fully accept that there are powerful lessons in terms of the initial resourcing and, as the Report indicates, further resources were

<sup>1</sup> *Clarification by witness:* The statistics provided were taken from a speech on Personal Injury Claims Process Reform to the Personal Injury Assessment Board Discussion Forum on 2 November 2006 by Stephen Hadrill, Director General, ABI. To clarify the exact statistic the ABI states it takes 1,000 days from an injury in the workplace to the compensation being closed.

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made available. Secondly, I take issue with those who say that we could have got it right. The Trade and Industry Select Committee said in its report of three or so years ago, “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 the demand for the . . . schemes”. It is easy to look back and say that we should have done better and that we certainly should have resourced better—I fully accept that—but to have estimated it accurately was a huge ask.

**Q4 Chairman:** Okay, we shall go into some of the details of how this has been run in a moment, and other colleagues can come in. However, I think that I had better ask you straight away: what can you now say to reassure claimants that they will get their money very quickly?

**Sir Brian Bender:** We are working on the completion of the schemes. The Report refers to that, and the letter that I sent on Friday two weeks ago updates that in some respects.<sup>2</sup> Having set up the fast-track scheme and having prioritised, as I have said, we now have set up target dates—aspirational end dates—for the closure of the schemes. That for vibration white finger (VWF) was originally set 18 months ago with a target of 300 claims left for about the end of this month. We will not achieve that, but we hope to be in a better place by next March. The COPD scheme is broadly on track for the target of 500 outstanding claims by February 2009. We are working hard to complete that, resolve the outstanding issues, and do the right thing.

**Q5 Chairman:** And so if we were to summon you back in a year’s time, everything would be paid up by then, would it?

**Sir Brian Bender:** No, Chairman. I think that we will have made considerable progress, but as I said, for the COPD scheme, the aspirational end date was 500 outstanding claims by February 2009. We are broadly on track for that. Some cases will depend on the resolution of outstanding issues, either through negotiation or in the courts.

**Q6 Chairman:** Now, if we look at paragraphs 5 and 12, looking at what your administration costs and what it has meant for the miners, we read that at the end of the schemes, for every £2 paid in compensation, more than £1 will have gone on administration—presumably that is a figure that you accept. In the case of COPD, 69% of claimants received less in compensation than what the scheme cost to administer. How can you possibly justify that?

**Sir Brian Bender:** Can I begin by explaining, rather than justifying, the key reason for the high level of costs? The Department considered it impractical to extinguish common-law rights, so the scheme was set up to ensure that claimants get the level of compensation to which they might reasonably have been entitled if they had pursued their claim under common law. That has necessarily led to complicated processes. We were one party to

a negotiated settlement, and were not in a position to control or reduce costs in the normal way. Again, that is something that Mr Boys Smith identified in his report.

For comparative information, the Association of British Insurers (ABI) has done some research that shows that for every £1 that is paid in compensation, over 40p is paid in legal and other costs. So, it is a complicated scheme, and that is the consequence. It is not something that I am proud of, but it is the consequence of the necessary complexity.

**Q7 Chairman:** If, for example, we look at figure 10 on page 24, we can see practical examples of the assessments by senior cost judges of what should be paid to solicitors, and what they have actually come out with. One must ask the question of whether the only people who seem to have done well out of this are lawyers. Is that a fair criticism?

**Sir Brian Bender:** They have done well out of it, Chairman. As more information has become available, we have sought to negotiate down the costs, as a result of which we had a favourable court ruling in April this year, which will seek to recover over £80 million from lawyers, plus £20 million savings, in cases that have not yet been settled for COPD.

**Q8 Chairman:** This is out of the £295 million in fees that you overpaid to solicitors, is it?

**Sir Brian Bender:** Can I just say on the £295 million—although the NAO can speak for itself—that that is a calculation that I believe was made in hindsight, based on knowledge available in 2007. At the time, that was not known; we were negotiating in the difficult circumstances that I described earlier. We are now in the process of either not paying or recovering £102 million on chronic obstructive pulmonary disease and £20 million on vibration white finger. Therefore, we are recouping, or not paying, significant sums of money.

**Q9 Chairman:** Halfway through the saga, did you not introduce a fast-track scheme?

**Sir Brian Bender:** Yes.

**Q10 Chairman:** I congratulate you on that. However, that begs the question: as the scheme has been so successful, why did you not introduce it from the start?

**Sir Brian Bender:** We did try. At the beginning, in 1999, we had an expedited tariff in the original claims handling agreement. If certain employment criteria were met and a certain spirometry reading was recorded, there was a fixed tariff. Only 24,000 claims were paid that way by the end of March 2004. The lesson is that such a scheme is successful only if there is sufficient knowledge to develop a tariff that both parties consider robust. Shortly before 2004, when we discovered the scale of the COPD claims—nearly half of them, or 294,000, were received in the six months before cut-off—we worked hard to introduce the fast track, and we did that by February 2005. To have done it earlier would have raised

<sup>2</sup> Ev 12–13

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questions about our knowledge and setting it at the right level. As I said, when we tried to do something at the beginning, we got very little take-up.

**Chairman:** Thank you.

**Q11 Mr Touhig:** Some £50 million has been paid out in compensation to nearly 10,000 of my constituents for chronic obstructive pulmonary disease and vibration white finger, and I am very pleased about that. It is a good scheme and it delivers justice to miners and their families. However, together, you and the solicitors have come pretty close to destroying public confidence in the scheme. You have done that, have you not?

**Sir Brian Bender:** Well, it is really important when you set up such a scheme—and this is one of the lessons for us—to try to manage claimants' expectations about time scale, size of compensation, and service standards. We have tried to communicate as effectively as we can, including through Ministers and Members of Parliament, but it is a really difficult issue.

**Q12 Mr Touhig:** I had over 500 live cases in my constituency. I take the point that you made in your apology right at the beginning that many people who made legitimate claims are not alive today to see the benefits. You and the solicitors created this scheme. I remember all the discussions going on for a year or so before the agreement was signed. You created this scheme, which the Report says was complex and contributed to the difficulty of clearing up the claims.

**Sir Brian Bender:** I have asked the question, as is referred to in the National Audit Office Report, about whether it would have been practicable to set up a statutory scheme. The best answer that we can come up with after all this time is that, once the judgment had been handed down, the court was effectively seized of the matter and any scheme would have had to give effect to the court judgment. Therefore, claimants could have ignored it if it was not in their best interests. We were dealing with a situation that was really difficult to get right.

**Q13 Mr Touhig:** I appreciate that. It is the biggest single compensation scheme in the history of the world, and I appreciate the amount of work that has gone into it. However, you made it immensely complex. The Report shows that you allowed the costs to spiral out of control to the extent—and the Chairman made this point at the beginning—that solicitors were paid more than the people for whom they were acting.

**Sir Brian Bender:** I am not sure whether that question is rhetorical or one that you would like me to answer.

**Mr Touhig:** I would like you to answer it.

**Sir Brian Bender:** I have explained how that happened. The only way one could have prevented it from happening would have been to set up at the outset the sort of fast-track scheme that we

introduced halfway through. As I said to the Chairman, our earlier attempts to do that resulted in very low take-up.

**Q14 Mr Touhig:** But you did not put in the right number of staff at the beginning. There was a massive underestimate. The figures about the numbers of claimants that the British Coal Corporation gave you were way out, but there was a health warning with them. In South Wales, there were at least 250,000 potential claimants. The Department would not accept that figure at the time. Now we see that about 69% of miners and their widows have received less in compensation than it has cost to administer the scheme. There must have been a warning light somewhere. I know you told us how much the insurance industry said it cost to administer the scheme, but some 70% of those who got compensation received less than it cost to administer the scheme.

**Sir Brian Bender:** I certainly cannot—and would not try to—defend the size of resource the Department put in at the beginning. There is a really powerful lesson there, which is made in the NAO's recommendations, and it is one that my Department and, I hope, those elsewhere in government, take to heart. I would repeat, however, what I said earlier about the Trade and Industry Select Committee, saying that it is not clear how the Department could have been expected to gauge better the demand for the schemes. Nonetheless, we should have resourced this more at the original time.

**Q15 Mr Touhig:** The solicitors really ran rings around you when they negotiated the fees. That is a clear implication from the Report. Do you know what is the smallest sum that you have paid out for compensation for chronic obstructive pulmonary disease?

**Ian McKenzie:** I think it is 59p, I seem to recall.

**Q16 Mr Touhig:** It says 50p here on page 22 of the Report. Will you tell us the solicitor costs for doing that claim?

**Ian McKenzie:** I am not familiar with that particular claim, but they would probably be in the realm of about £1,000 or more.

**Q17 Mr Touhig:** Could you write to us specifically and tell us, with the Chairman's agreement, how much you actually paid the solicitor for delivering a claimant 50p?

**Ian McKenzie:** If I can just add that, in terms of explanation, the key factors that would have contributed to that very low level of compensation, which we fully recognise does not in any way meet

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the expectations that the claimant probably set out with, relate to the issues of their smoking history and length of period underground—all those factors.<sup>3</sup>

**Mr Touhig:** What the judge said about smoking, yes.

**Ian McKenzie:** So we were right on that.

**Q18 Mr Touhig:** Why did it take you so long to agree with the solicitors on a minimum payment? This is it now, is it not—a £500 minimum payment? It took you so long to agree it.

**Ian McKenzie:** Yes. I cannot comment on the detail of the protracted negotiations because they took place before I arrived in my current role, but I recognise that the aspirations around achieving a minimum payment scheme went on much longer than was ideal. I certainly think that the catalyst for bringing that to an end was the agreement in Scotland last year, which effectively focused attention on resolving that issue. It was something that the Department was keen to see happening effectively, but it was something that was really in the hands of the solicitors to respond to.

**Sir Brian Bender:** Can I add one comment on that? Again, this is brought out in the Report. With hindsight, another thing that we should have done at the beginning was to have review clauses on the solicitors' fees, although it is fair to point out, again as the Report does, that the original agreement had assumed a registration cut-off in 2001. None the less, the absence of a review clause was a gap.

**Q19 Mr Touhig:** Absolutely. The Report tells us that some solicitors whose costs you were meeting entirely then added additional charges onto their clients' bills. Why did you not step in and put a stop to that?

**Sir Brian Bender:** Well, we have stepped in and it is now an issue that has been taken up by the various lawyer bodies, and some money has been recouped for that.

**Q20 Mr Touhig:** I got some money—£11,000—for two of my constituents back from lawyers, but this has been going on for years. The solicitors worked in partnership with claims farmers. Do you know what a claims farmer is?

**Sir Brian Bender:** Yes indeed: someone who farms the system in order to make sure that they get more claims.

**Q21 Mr Touhig:** Well I would describe a claims farmer in one word. A claims farmer is a parasite. One firm of solicitors in Leeds has on its website:

<sup>3</sup> *Note by witness:* Solicitor costs totalled £1,974 for the claim of 50p. The claim proceeded through all of the Claims Handling Agreement including Employment Verification and Medical Assessment Process and the costs reflect that. The reason that the compensation amount was so low is due to the claimant being diagnosed only with Chronic Bronchitis following the medical assessment. In addition the claimant only worked for 2 years underground after 1954 (the date of liability) and was a medium smoker for 19 years, therefore the claimant had a very low recoverable proportion of compensation of 0.01% and hence a such a low compensation amount.

“‘Claims Farmer’ is the shorthand phrase for those ‘claims companies’, who, through advertising, sign up injured victims to pursue their claims and when they have a big enough ‘crop’ of claims, sell them on to solicitors.” You know that a number of these solicitors have been working with claims farmers, and yet you have allowed that to continue.

**Sir Brian Bender:** In 2001, which was the first time that we raised it with the Law Society, it took the line that such charges—that is, charges deducting fees from compensation—were proper, provided that the amounts concerned were not unreasonable.

**Q22 Mr Touhig:** But you were meeting all the costs, Sir Brian.

**Sir Brian Bender:** It was only in 2003, when the scale of this became more apparent, that we took action. Over £3 million has now been refunded and the Legal Complaints Service is pursuing further complaints, but it is completely unsatisfactory. Indeed Ministers, both Malcolm Wicks from my Department and Bridget Prentice from the Ministry of Justice, wrote earlier this year to all solicitors in England and Wales asking them to repay all deductions.<sup>4</sup>

**Q23 Mr Touhig:** I appreciate and value that fact, but the justice is lacking here. A number of claims farmers—these parasites—were getting old and vulnerable people to sign agreements, which they then passed on to a solicitor of the claims farmer's choice, which required the solicitor, if the claim was successful, to deduct a sum of money to be paid back to the claims farmer. Solicitors knew that that was happening. I do not know what you call it; I call that fraud.

**Ian McKenzie:** Certainly the behaviour that we have seen involving some solicitors has given us a lot of cause for concern, hence the actions that Sir Brian has already outlined. Obviously, there is action being taken within the Solicitors Regulation Authority around some of those cases as well. On the broader issue of claims farmers, some of the experience that we have seen from the coal health schemes has been influential in broader Government action on claims farmers, which came forward within the Compensation Act 2006. The appointment of a new regulator under the aegis of the Ministry of Justice has taken action in that particular area.

**Q24 Mr Touhig:** One of my local newspapers ran an advert for a claims farm. My father was a miner—he is now dead—but I rang and said that my father might have a claim and asked how it would be progressed. “You simply register with us,” they said, “and pay a fee of £32, and if we are successful in getting the money, although we may never actually call in the solicitors, you then pay us an amount of compensation back.” They are only middlemen who try to get money out of people.

<sup>4</sup> Information provided, not printed.

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Mr McKenzie, in the newsletter that your Department published on 13 May, you say, “The Vibration White Finger scheme now has under 5,000 claims left to settle out of a total of 170,000”. Sir Brian, in a letter to the Committee on 12 July, you note that the forecast now is that we will be down to 5,000 claims for the first time by the end of October. Which one of you is right?

**Ian McKenzie:** The figures that we have provided to the Committee are our current best view of where we will get to by the end of the month.

**Q25 Mr Touhig:** So, it was not down to 5,000 in May as your letter says.

**Ian McKenzie:** I cannot recall. We believe that by the end of October there will be 5,500 claims that will not have had a first-time offer—that is what we regard as the key issue—and we are aiming continually to press down on that number. That is the figure that we have at the moment.<sup>5</sup>

**Q26 Mr Touhig:** I am running out of time, but there is one final point I would like to pursue. On 10 July 2000, you submitted a Minute to Parliament accepting liability to compensate surface workers. Why did you renege on that?

**Ian McKenzie:** You are very familiar with the history of the position on surface workers. The Department’s position at that time in that minute was to say that certain aspects of the position around surface worker cases would need to be reviewed and more substantively discussed.<sup>6</sup>

**Q27 Mr Touhig:** I am sorry, we are running out of time, but the Minute is quite clear: “The DTI proposes to accept that British Coal did not fully meet its responsibilities towards certain categories of workers in dusty jobs on the surface. In accepting that liability”—this is your Minute, not mine—“the DTI would propose to miners’ solicitors that compensation for surface dust exposure be handled within the current agreement.”

You then go on to say: “Acceptance of this additional liability”—again, this is another acceptance on your part that you are accepting liability—“will mean that current claimants can

extend their claim to cover time spent in dusty jobs on the surface and men who have only worked on the surface will be able to put in a claim”. You could not be clearer than that in a Minute could you?

**Ian McKenzie:** The Minute accepted liability for surface work in principle. However, it clearly states that accession to the claims handling agreement, which is the vehicle through which compensation is paid, would need to be negotiated in detail, and Parliament would be kept informed of the extent of the new liability as it became clearer. Subsequent to that minute, as I think you are familiar with some of the history that we have discussed before, new medical advice came before the Department—

**Q28 Mr Touhig:** You asked for medical advice, but that was three weeks before you submitted the Minute to Parliament. So, you submitted a Minute, accepting responsibility of not having the medical advice.

**Ian McKenzie:** There were certain pressures at that time in terms of the parliamentary calendar. I recognise where you are coming from, and the strong views that you have about it.

**Mr Touhig:** I am sure that we will return to it. My time is up, but I want to say one final thing. I think that this is a good scheme, and a lot of people in your Department have done a fantastic job in trying to ensure that it works. However, I think that you have done a great deal of damage to the public image through the way that some aspects of the scheme have been delivered. I agree that people will have benefited from it, but I regret the way that it has all come about and the way that you started handling it in a way that has cost so much more and meant that so many people who should have been compensated are not alive today to see that compensation.

**Q29 Mr Bacon:** Sir Brian, can I ask you to turn to page 47? You will see that paragraph 15 of the summary of the Boys Smith Report refers to information about the schemes being publicly available, and additional information being provided to the parties. It goes on, “Partly because of the degree of the suspicion that surrounds some discussion of the schemes, more material could be put into the public domain and it is important to be as proactive as possible in making information available.” What is that suspicion that surrounds discussion of the schemes?

**Ian McKenzie:** I think that it probably related to some aspects of the relationship that was of particular public interest at the time when the Boys Smith Report was commissioned. It was in relation to the relationship between the Department and the Union of Democratic Mineworkers (UDM), with regard to the claims-handling agreement that we had with it.

**Q30 Mr Bacon:** Sorry, could you expand? What were the suspicions?

**Ian McKenzie:** Allegations were being made at that stage with regard to certain aspects of transparency between the Department and the UDM.

<sup>5</sup> *Clarification by witness:* It should be clarified that information provided in the May 2007 Newsletter referred to there being under 5,000 VWF claims left to settle at that time. This referred to those claims in the General Damages category. The information provided to the PAC in October included both VWF General Damages and Services claims.

<sup>6</sup> *Clarification by witness:* Mr Touhig asked why the Department reneged on the Minute to Parliament accepting liability for Surface Workers. For clarification, the Committee should be made aware that subsequent to the Minute to Parliament, the Department did negotiate a settlement with the Solicitors Group that allowed those who had been exposed both below ground and on the surface in certain occupations to proceed through the CHA and receive compensation. The Department also made a proposal for the settlement of claims from those who were employed only on the surface in certain occupations. However, this proposal was rejected by the CG. The wider position on the Surface Workers cohort of claimants was addressed in the letter to the PAC of 8 October 2007.

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**Q31 Mr Bacon:** Allegations about transparency? Can you be more specific and describe what people said was occurring? Whether it was or not happening is a separate issue, but you can say here what was being said.

**Ian McKenzie:** The newspaper comments at that stage were about certain aspects of UDM activity relating to claims handling arrangements, as Mr Touhig referred to.

**Q32 Mr Bacon:** You pointed to Mr Touhig. Do you mean claims farming?

**Ian McKenzie:** The UDM works through an organisation called Vendside, which is regarded as being, effectively, a claims farmer.

**Q33 Mr Bacon:** What about the relationship between the Department and the UDM? You said that there was a lack of transparency in relation to that.

**Ian McKenzie:** That was before my time and I do not have detailed knowledge as such, but my understanding of the situation at that stage was that there perhaps was not as much visibility and that there had been a separate claims handling agreement with the UDM alongside the main claims handling agreement that we had with the co-ordinating group of solicitors.

**Q34 Mr Bacon:** Do you generally think that transparency in this sort of thing is a good idea?

**Ian McKenzie:** Yes.

**Q35 Mr Bacon:** I ask you to turn to page 17 of the Report. Paragraph 3.9 states that, "In September 2001 the Department brought in a senior secondee from Shell UK Limited with programme management experience to strengthen its review of internal procedures to improve performance." The table on page 18 is described as a "report by the Secondees from Shell UK Limited".

**Sir Brian Bender:** His name was Mark Pyman and he was brought in by the Department as an experienced senior programme manager to look at what we should do with regard to bringing in skills and resources to deal with the situation. That was one of the responses to the issues, such as under-resourcing and skills, that the Chairman and Mr Touhig have referred to.

**Q36 Mr Bacon:** Why is his name not referred to in the Report? Did you object to it during the clearance process?

**Ian McKenzie:** No.

**Q37 Mr Bacon:** Then, why was he not referred to?

**Ian McKenzie:** I am not sure whether that is the convention; I do not think that anyone is referred to.

**Q38 Mr Bacon:** On the contrary, Mr Boys Smith is referred to as a former senior civil servant. Lots of people are referred to, so I am curious. It looks so odd.

**Sir Brian Bender:** Well, we are not ashamed of it, Mr Bacon.

**Q39 Mr Bacon:** Can you explain, Mr Gray?

**Peter Gray:** We did not consider that matter. The Boys Smith Report is a published report and this was an internal Departmental paper.

**Q40 Mr Bacon:** I would like to return to the appendices, Sir Brian. On page 45, Appendix 7 lists the total payments to the top 10 claimants' representatives, most of whom were solicitors. You said earlier that the Government were going to try to claim back some monies from solicitors. Is any of that £1.048 billion, of which those payments to the top 10 claimants' representatives comprise £635 million, included in the money that you will seek back, or is that all parked, paid, done and dusted?

**Ian McKenzie:** These are monies that were paid to claimants' representatives.

**Q41 Mr Bacon:** These were fees.

**Ian McKenzie:** These were effectively fees paid to these organisations, and about £80 million of the £102 million that Sir Brian has referred to in relation to the fast-track recoupment process that we are aiming to achieve has to be recovered from the solicitors.

**Q42 Mr Bacon:** I am asking whether that £80 million is out of that pot of £102 million.

**Ian McKenzie:** It would bring that number down by £80 million.

**Q43 Mr Bacon:** Hang on. My question is about the £1.045 billion. The chart shows the £635 million paid to the top 10 claimants' representatives. As I understand it, the pot contains £1.045 billion, £635 million of which is broken down in this Report. Does the £80 million that you referred to come out of that pot of £1.045 billion?

**Ian McKenzie:** Yes.

**Q44 Mr Bacon:** Therefore, if things went well, you would only have paid the solicitors and the other claimants' representatives £900 million rather than £1 billion.

**Sir Brian Bender:** We have already recovered more than £30 million of that £80 million.

**Ian McKenzie:** The latest figures show that that figure is now up to about £38 million, which is about 48 % of that £80 million to be recovered.

**Q45 Mr Bacon:** That still leaves me gasping. I have not done a representative sample of taxpayers, but I guess that most would be pleased that injured coal miners were receiving money. I am sure that Mr Touhig's constituents are very pleased; I am sure that others, too, will be pleased. People would probably feel that it was a good use of taxpayers' money. However, you have been making individual solicitors multimillionaires, have you not?

**Sir Brian Bender:** I explained earlier—

**Q46 Mr Bacon:** I am sorry, but it was a question. Have you been making individual solicitors multimillionaires? Yes or no?

**Sir Brian Bender:** Large sums—

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**Q47 Mr Bacon:** Have you been making individual solicitors—

**Sir Brian Bender:** I have not asked them.

**Q48 Mr Bacon:** The answer is either yes or no. You either know the answer or you do not. Have you been making individual solicitors multimillionaires? Yes or no?

**Sir Brian Bender:** I cannot answer the question—

**Q49 Mr Bacon:** Why not?

**Sir Brian Bender:** I can say that Thompson's has received £123.6 million. The answer is probably—it may well be—yes, but I do not know.

**Q50 Mr Bacon:** Have you heard of Beresfords? It is a firm to which you paid £115 million. Do you know how many staff are employed by Beresfords?

**Sir Brian Bender:** I do not know.

**Q51 Mr Bacon:** It is a small firm in Doncaster, is it not? Do you know what was the salary the head of that firm, Mr Jim Beresford, in 2006?

**Sir Brian Bender:** No.

**Q52 Mr Bacon:** You do not know?

**Sir Brian Bender:** I do not know.

**Q53 Mr Bacon:** You have been hosing this money out of the door, including £115 million to Beresfords, but you are not even remotely curious that this man was paying himself—

**Sir Brian Bender:** I am deeply concerned about the sums of money that the legal firms have had. I have explained how it came about, and the actions that have been taken to try to claw some back. It is deeply regrettable.

**Q54 Mr Bacon:** You have been making those individuals multimillionaires, have you not?

**Sir Brian Bender:** That looks to be the case.

**Q55 Mr Bacon:** If it is the case, the word you need is “yes”. According to *The Guardian*—it could be incorrect, of course; 50% of what one reads in the newspapers is incorrect, but one never knows which half—

**Mr Mitchell:** Not *The Guardian*.

**Mr Bacon:** So says Mr Mitchell. I am sure that *The Guardian* is much better than that. According to that newspaper, Mr Beresford had a personal salary of £16.7 million in 2006. Under any view, the purpose of the scheme was not to make individual solicitors in Doncaster multimillionaires, was it?

**Sir Brian Bender:** I agree with you, Mr Bacon. No.

**Q56 Mr Bacon:** It was not, but none the less, that is what you managed to do.

**Sir Brian Bender:** The purpose of the scheme was plainly to try to ensure that vulnerable and disadvantaged people received proper advice.

**Q57 Mr Bacon:** I find it incredible that the programme management and the procedures—the project management put in place at the beginning—

did not identify some of the risks of such a huge compensation scheme. The Committee regularly deals with risk and risk management; and you, as a veteran of the Department for Environment, Food and Rural Affairs and the Rural Payments Agency fiasco, are probably more experienced with the mismanagement of risk than many in Whitehall. We have seen many attempts to manage or consider risk, but surely to goodness, with the health compensation scheme, one of the risks that would have to be dealt with very early on was whether there was any chance that the proposed scheme would turn some solicitors in Doncaster into multimillionaires. Should that question not have been asked pretty early on?

**Sir Brian Bender:** I tried earlier to explain to Mr Leigh why it was that the Department had not set up a statutory scheme, which would have been the simplest way to cut most solicitors out of it. Once we had something that had been seized of the court, when the alternative was for individuals to continue cases through the court, the risk was being run that it would result in very high payments—and it plainly was too high.

**Q58 Mr Bacon:** I appreciate that extinguishing people's common-law rights cannot be done easily, although in the right circumstances I presume that it can be done statutorily. It was in everybody's interest, apart from solicitors in Doncaster—and certainly in the interests of the taxpayer and the miners, and in your interests as an Accounting Officer—that those who should have the money should get it and that others should not be made multimillionaires in the process.

I turn to page 42, the summary of advice that I believe KPMG provided to the NAO. Am I correct, Mr Gray?

**Peter Gray:** Yes.

**Q59 Mr Bacon:** It was on the best practice that operators should consider. It does not include an item called: “Avoid making solicitors multimillionaires”, but that probably is covered by one of the rubrics, is it not? Is it subsumed in one of them?

**Peter Gray:** Not within them.

**Q60 Mr Bacon:** So KPMG did not think of it, either.

The following items in the box on page 42 have a cross on the right-hand side: “Obtain an actuarial estimation of population and costs, and an appraisal of the level of uncertainty”, and: “Obtain an actuarial assessment on the expected phasing of claims”. That is about involving actuaries in compensation schemes. We have heard that some of the people who might have benefited from this scheme are now dead. One does not have to be an actuary to know that actuaries work out how long people will live. Why was an actuarial assessment not done?

**Sir Brian Bender:** An assessment should have been done. I accept the NAO's view that it would have helped, but I do not think that it would have been a

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silver bullet. It would have shown a wide range of forecasts. As part of our current contingency planning, we are looking at actuarial studies of the potential scope of future claims, in the event that liability is established in other areas.

We are talking about something that happened quite a long time ago, in complicated circumstances. But I agree, with hindsight, that an assessment should have been done, as the NAO Report said.

**Mr Bacon:** I have run out of time. Thank you.

**Q61 Chairman:** Paragraph 3.29 is about other charges made to claimants by solicitors. Can you tell me whether Beresfords in Doncaster, for instance, was one of the firms of solicitors that charged additional fees to claimants?

**Sir Brian Bender:** Can we come back to the Committee on that point?<sup>7</sup>

**Q62 Chairman:** Yes, you can. Consequent on this line of questioning, I would like to have a note from you—you will not be able to answer now—that lists the 10 companies of solicitors that have taken the most out of the scheme and how many partners they have. On the part of the taxpayer, we should name and shame some of the solicitors who have made a fortune—salaries of up to millions of pounds a year—out of some of the most vulnerable people in society.<sup>8</sup>

**Sir Brian Bender** indicated assent.

**Q63 Mr Mitchell:** I presume that at the start you just accepted British Coal Corporation's assessment of the numbers. Why were actuaries not enlisted at that stage, so that you could have some check on them? The biggest explosion seemed to be in the number of cases coming forward.

**Sir Brian Bender:** Actually, the biggest explosion was when there was about to be a cut-off in the COPD scheme. Nearly 300,000 came forward at that stage. It was a few years later that the explosion happened.

**Q64 Mr Mitchell:** But the estimates in March 1998 were 173,000 claims for pulmonary disease and 45,000 for white finger. The actual figures were 591,000 and 169,000. They were three times higher.

**Sir Brian Bender:** It is a matter of fact, as you implied by the way you asked the question, that the Department relied primarily on British Coal's estimates. It had the greater knowledge and expertise. They were gross underestimates, and we should have challenged them—there is no doubt about that.

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<sup>7</sup> *Note by witness:* The Department has written to all 10 claimant representatives in Appendix 7 of the NAO's Report. Beresfords is one of the organisations to receive a letter in order to enquire about the deduction of fees, whether in respect of costs or for any other reason. However, it is apparent through the publication of Beresfords Accounts, which are in the public domain; they have made some provision to repay claimants. The Committee will receive an update on Beresfords after the 16 November 2007 deadline which was set for the solicitors to respond by.

<sup>8</sup> Information provided, not printed.

**Q65 Mr Mitchell:** Yes. I want to know why you did not challenge them.

**Sir Brian Bender:** Perhaps one of my colleagues could answer. I think the answer is that the Department believed at the time that British Coal knew their people and the data.

**Ian McKenzie:** In terms of the current experience but also going back to the experience at the time, the evidence that I have seen when trying to deal with the issues that the NAO has been studying is that there has been a build-up of medical knowledge about some of the factors that play into this. Going back to the Chairman's question about the time scales for the introduction of the fast-track scheme, I think that the Department was using actuarial evidence effectively from the passage of 100,000 claims through the scheme, and learning what was actually happening in respect of the medical evidence that was coming out. There was internal learning through the scheme's operation, and we were taking those lessons on board.

**Q66 Mr Mitchell:** Were either of the unions involved in planning the scheme?

**Ian McKenzie:** There was very close liaison, certainly with the co-ordinating group of solicitors throughout the development—

**Q67 Mr Mitchell:** Was it the unions? Was the UDM involved?

**Ian McKenzie:** Those solicitors were in the main acting for the trade unions.

**Q68 Mr Mitchell:** Was any special treatment given to the UDM? I see that it is No. 8 on the list of claimants' representatives by income, but the NUM is not mentioned. Why is that?

**Ian McKenzie:** The UDM had a claims handling organisation in Vendside. My understanding is that the NUM had disbanded its own in-house capability some time before these schemes were introduced, in favour of relying on solicitors to handle claims on its behalf.

**Q69 Mr Mitchell:** Right. So it was not that the UDM had any special access?

**Sir Brian Bender:** No. It had a mechanism through its claims handler.

**Q70 Mr Mitchell:** Okay. It looks as though one of the problems was the bad deal that you came to right at the start with the claimants' solicitors' group. Who negotiated that deal?

**Sir Brian Bender:** It would have been officials in the Department under the guidance of the court. As I said earlier, the important aspect to bear in mind is that it is a court-based scheme and we were obliged to negotiate all elements under the ruling and guidance of the court. Again, the Boys Smith Report recognises that: "Solicitor's tariffs appeared reasonable at that time". With hindsight, I think that the error that the Department made—I think that I said this earlier to one of the Members of the Committee—is not to have had review clauses in

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those agreements. I think that any figure, any negotiation, would have been fraught with uncertainty.

**Q71 Mr Mitchell:** Surely there is a case for negotiating a special deal at the start. You have got to deal, even on your own estimates, with a substantial number of claims. Why not negotiate an abatement?

**Sir Brian Bender:** I do not know whether there is anything that you can add to that, Ian.

**Ian McKenzie:** The reality is, as Sir Brian has already said, that a review clause would come into play. From my more recent experience, in that we are still actively negotiating in certain areas with the solicitors' group on the costs that we pay, the position that the Department now finds itself in is that it now has this ability to model more accurately what is going to happen, in terms of the claims that are still within the system.

**Q72 Mr Mitchell:** What was the basis of paying solicitors? What fees did they get? Was it a flat rate fee, or a fee proportionate to the amount claimed? What was it?

**Ian McKenzie:** It was a flat rate fee.

**Q73 Mr Mitchell:** How much?

**Ian McKenzie:** I do not have the figures that were agreed at that stage, as such, but there are various tariffs that apply for different ways in which the scheme operates.

**Q74 Mr Mitchell:** Why cannot you give us a figure?

**Ian McKenzie:** In terms of the current figure for the chronic obstructive pulmonary disease, or COPD, scheme, I think that it is about £1,700.<sup>9</sup>

**Q75 Mr Mitchell:** So, whatever happens, even if the claim is for two and thruppence and it is awarded 59p—I think that was what you said—the solicitor gets that sum of money?

**Ian McKenzie:** If the claim is successful, yes.

**Q76 Mr Mitchell:** That is incredible. How could you negotiate a deal like that? Is it solicitors negotiating with solicitors and scratching each other's backs? I mean, why are people so nice to the solicitors?

**Ian McKenzie:** As Sir Brian said, I think that the deal that was done at that stage, as such, took into account the information that was available to the officials in the circumstances of the negotiating pressure that they were working under.

**Q77 Mr Mitchell:** When it went on to a costs judge, I think that his judgment was the overcharging was to the extent of £295 million. Was all that amount recovered?

**Sir Brian Bender:** That was a view reached in 2007, with hindsight. That is indeed part of the rationale in respect of which we have been doing the recuperation.

**Q78 Mr Mitchell:** But that was subsequent. Was the £295 million recovered?

**Ian McKenzie:** It is not a figure that is recoverable; it is a figure that is extrapolated. Peter Gray can perhaps correct me, but essentially it was a figure that was extrapolated based on Master Hurst's costs judge assessment in 2006.

**Q79 Mr Mitchell:** But when these costs judges assess costs in court cases, the money cannot be claimed if the costs are cut.

**Ian McKenzie:** Yes. It is perhaps worthwhile just bringing out that the reason why that evidence is available to us, effectively, was that the Department spent two years seeking to reach a reasonable tariff on the fast-track scheme. My predecessors were not prepared to accept the position that the solicitors' group was taking, so we pursued the matter, fairly actively, through the court process for two years, seeking to get to a tariff. Master Hurst's work was part of that, and we achieved final resolution in April with the settlement that relates to the £100 million that we are seeking to recover.

**Q80 Mr Mitchell:** The Law Society has determined that additional charges were not improper provided that the client had been properly informed of the charging arrangements. Was it investigated whether the clients had been properly informed when cases arose?

**Sir Brian Bender:** There is a pilot going on in Mr Kevin Barron's constituency that is trying to ensure that there are proper information and complaints procedures, but as a result of that complaint, more than £3 million has been refunded to claimants.

**Q81 Mr Mitchell:** The Law Society's legal complaints department has referred some cases to the Solicitors Regulatory Authority for refusing to make redress.

**Sir Brian Bender:** Correct.

**Q82 Mr Mitchell:** So how much has been recovered?

**Sir Brian Bender:** Solicitors have refunded more than £3 million, according to my information. In addition, the Legal Complaints Service has recovered some £720,000 in fees from 15 law firms. It has also referred three law firms to the Solicitors Regulatory Authority.

**Q83 Mr Mitchell:** So the Law Society has not recovered very much.

**Sir Brian Bender:** It has not yet recovered enough.

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<sup>9</sup> *Correction by witness:* The basic solicitor fees tariff at the start of the COPD scheme (between September 1999 and March 2000) was £1,750. This is a basic tariff which is subject to change due to the circumstances of the claim. Due to RPI increases the basic tariff is now £2,159.

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**Q84 Mr Mitchell:** Not much.

**Sir Brian Bender:** Not much.

**Q85 Mr Mitchell:** Let us move on to the subject of the contractors. Capita Insurance Services was the contractor for central processing of the case work, and Capita Health Services and Atos Origin were the two contractors for medical assessments. Presumably they were making good money out of the work.

**Sir Brian Bender:** Yes. However, in Capita's case, for example, there was a re-tendering for the contract, which incentivised it to complete early. Capita won a competitive tender a couple of years ago.

**Q86 Mr Mitchell:** Has anything been recovered from Capita?

**Sir Brian Bender:** I do not believe that it has been overcharging us. Clearly, it has been carrying out a commercial operation. It got the job in the first place because it bought out the company that bought out the claims handling function of—

**Q87 Mr Mitchell:** At the time, the solicitors complained that the two medical assessment companies did not take on extra staff to do the work, as a result of which there were long delays. Is that correct?

**Sir Brian Bender:** That is a slightly different issue. There was a problem in obtaining sufficient medical expertise. Can you add anything on that, Ian?

**Ian McKenzie:** Yes. As I understand it, there is a constraint primarily within the COPD scheme in terms of the number of respiratory specialists in the UK who can undertake some aspects of the regime that we have in place.

**Q88 Mr Mitchell:** The solicitors did not staff up either. So two sets of organisations—solicitors and medical examiners—were handling a large number of complaints without taking on extra staff, despite the fact that those complaints caused you a lot of extra work and required a lot of extra staff at your organisation. Did that not ring alarm bells at all?

**Ian McKenzie:** The NAO paid tribute to the work that was done once the Department actually recognised the challenges of some of the things that it was dealing with, including the alignment that we sought to bring about between different aspects of what I might call the delivery chain. That allowed people to move through the compensation scheme, and the Department put a lot of effort into bringing that alignment about and ensuring that solicitors and contractors were all working on the same cohort of claims in order to bring them to a conclusion.

**Q89 Mr Mitchell:** When did alarm bells actually begin to ring about the scale of expenditure? When did you start getting complaints that solicitors in Doncaster and Nottinghamshire were suddenly driving around in Rolls-Royces and paying themselves millions of pounds?

**Ian McKenzie:** The response in terms of growing the resource base and the number of staff working on the scheme happened effectively in 2000.

**Q90 Mr Mitchell:** We had a letter from Mrs Ann Elizabeth Evans,<sup>10</sup> which presumably has been passed on to you; if not, it will be. She complains that her solicitors put in claims that were additional to those for which she had filled in the forms. The claim questionnaires were altered, particularly with regard to questions that potentially raised the most in terms of special damages. In other words, her claim was upgraded to a higher level than she wanted. She says that the answers that she was seeing on the copy documents on their file did not reflect questionnaires that she had sent to the solicitors in May 2001. Subsequently, she went to an independent solicitor who was concerned that the fraud contained within her file could be the subject of much wider practice. Have you had indications of fraud, and will you look into that case?

**Chairman:** That is a detailed question and you might wish to provide a note on it.<sup>11</sup>

**Sir Brian Bender:** We shall look into that. There is a separate issue on fraud, but some fraud has been detected, yes. I think that some 0.2% of claims have been found to be fraudulent and therefore either reduced or denied, as a result of which we have saved £20 million. There is a separate investigation—not against the taxpayer but involving the UDM, in which the Serious Fraud Office is involved. That has been written up in the press. I shall provide a note on the particular case to which Mr Mitchell referred.

**Chairman:** Thank you. The final questions are from Mr Williams.

**Q91 Mr Williams:** I think that most of the areas have been covered.

Looking at it personally, Sir Brian, is not the Law Society's argument somewhat obscene in that solicitors could make deductions from compensation, which often went to widows, to cover their costs for cases that they lost? To my mind that is utterly morally objectionable. As an individual, how do you feel about that?

**Sir Brian Bender:** I find it disappointing, and I think that many of the things that have happened in this case have highlighted—I am choosing my words carefully—significant issues of professional practice in the legal profession. Those matters are being pursued by the Legal Complaints Service and the regulatory authority. There has been a lot of disappointing professional behaviour.

**Q92 Mr Williams:** Of the 10 groups of solicitors listed in appendix 7, have any been asked to make repayment, and if so, have any not yet made it?

**Ian McKenzie:** When you refer to repayment, are you referring to deductions that they have made from claimants, or to repayment to us for the fast-track scheme?

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<sup>10</sup> Ev 13–16

<sup>11</sup> Ev 16–17

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**Mr Williams:** No, from claimants.

**Ian McKenzie:** It would not necessarily be to our knowledge, effectively. We have written to all firms. Ministers have written on several occasions—both in 2003 and, as Sir Brian mentioned, most recently earlier this year—to all firms involved in the scheme, urging them, if they have taken deductions without the claimant's knowledge, to ensure that those deductions are repaid. All firms have received a message from the Department to that effect.<sup>12</sup>

**Q93 Mr Williams:** Just as an exercise for the Committee, would you write to each of those 10 and get first the answer to my question?

**Sir Brian Bender:** Certainly, Mr Williams. Just to be clear: your question is not the reimbursement of overpayments to the Government, but about charging the claimant?

**Mr Williams:** Yes.

**Sir Brian Bender:** We will do that.<sup>13</sup>

**Q94 Mr Williams:** This is intriguing. That is the top 10 solicitors. Obviously, hundreds of solicitors are involved. Could you do us a table giving us a list of the lowest 10, just so that we can see whether any solicitors at all emerge suffering from deprivation as a result of this exercise?

**Ian McKenzie:** Yes.<sup>14</sup>

**Mr Williams:** I think all the points otherwise were covered by Mr Touhig and Mr Bacon. I am quite happy.

**Chairman:** Do you have a final supplementary, Mr Bacon?

**Q95 Mr Bacon:** Yes. Sir Brian, my question just arises out of your exchange with Mr Williams. You said to Mr Williams, "Just to be clear: you are not talking about overpayments to the Government." You presumably mean overpayments by the Government. Law firms would not make overpayments to you, would they?

**Sir Brian Bender:** Yes, you are correct. I was trying to distinguish between charging the claimants and overcharging the Government. I got my preposition wrong.

**Q96 Mr Bacon:** Yes, and for Mr Williams' benefit, you will send a note on charging the claimant?

**Sir Brian Bender:** Yes.

**Q97 Mr Bacon:** Would you send for my benefit a note on charging or over-charging the Government? To me, it will be just as interesting.

**Sir Brian Bender:** Will do.<sup>15</sup>

**Q98 Mr Bacon:** And also, out of those top 10, how much you expect back from any or each of them, and how much any or each of them has paid?

**Ian McKenzie:** We can certainly provide the information about recouping—effectively, what is owed by each organisation—and where we are against the repayment.<sup>16</sup>

**Q99 Mr Bacon:** When you said that Ministers had sent a letter on several occasions urging repayment, you had presumably taken legal advice about the standing of the letter and the lawful need on the part of the solicitors firms to pay you back that money? Have you?

**Ian McKenzie:** We did take legal advice. It was not about paying us back the money, but about ensuring that with the claimants on behalf of whom they were handling the claims, they had been clear where they had taken deductions, and that if they were taken without the claimants' knowledge, or inappropriately, effectively, the firms had an obligation to repay that money.

**Q100 Mr Bacon:** It was not about the payments that you were making to those solicitors firms?

**Ian McKenzie:** No. Correct.

**Q101 Mr Bacon:** So, you do not have legal advice that says, "These law firms have over-charged you, the Government, and you can get some of it back?"

**Ian McKenzie:** Well, we have: we have a court ruling.

**Q102 Mr Bacon:** Saying?

**Ian McKenzie:** The recruitment exercise—the £100 million to which we have referred several times—relates to the tariff that we were paid for the handling of fast-track cases. We pursued it through the courts for more than two years to reach a tariff that we felt was acceptable, and that was the court ruling that Mrs Justice Caroline Swift made in April. That is the ruling that we use to recover the money.

**Q103 Mr Bacon:** The basis of it was that the fast-track scheme had much lower procedural costs, and therefore that the solicitors should not have been charging as much?

**Ian McKenzie:** Exactly.

**Q104 Mr Bacon:** Which raises the question, given that you knew that the fast-track scheme was fast-track, swifter and lower-cost, why you did not—at the time—say to the solicitors, "Hey folks, for these faster, swifter, lower-cost schemes, we will expect a lower bill?"

**Chairman:** All right. Mr Bacon is out of time, so can we issue a note on that please? Mr Mitchell.<sup>17</sup>

**Q105 Mr Mitchell:** I cannot help contrasting the sums handed out here to miners with the niggardly sums that went to fishermen in compensation for loss of earnings and jobs in Icelandic waters, and, more important, in industrial compensation cases. It

<sup>12</sup> Information provided, not printed.

<sup>13</sup> Ev 20–23

<sup>14</sup> Ev 17

<sup>15</sup> *Note by witness:* This relates to the Department's position in respect of OROS cost recovery from individual organisations. As at 2 November 2007, the Department had recovered over £41.8 million which equates to 52% of the total debt (£80.6 million) which is to be recovered. The Court has set an end stop of 31 March 2008 for repayment of these debts. Those with any outstanding debt at that point will be asked to make a final lump sum payment.

<sup>16</sup> Ev 17–18

<sup>17</sup> Ev 18

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has been very difficult to get any industrial compensation for any of the diseases and disabilities inflicted by fishing, particularly white finger, which is not even recognised as a disease of fishing. That is just a rhetorical point, but there is a real grievance there. Can you think of any compensation scheme handled by any Government where the administration costs—£2.3 billion, mainly in the form of payments to miners' legal representatives—are more than half of the compensation that is handed out, which was £4.1 billion? Is that record equalled in any other scheme?

**Sir Brian Bender:** I cannot answer that. I do not know the answer to that question. I referred earlier to some more figures from the Association of British Insurers for the cost of handling their claims overall.

**Q106 Mr Mitchell:** Do you think that it is unlikely?

**Sir Brian Bender:** It is a very big scheme with very big numbers. It is also, as a Member of the Committee said earlier, the biggest ever industrial injury compensation scheme.

**Q107 Mr Touhig:** One very brief point. Can you tell us, Sir Brian, how many solicitors were in partnership with the claims handlers? Can you also

tell us whether you have seen copies of the agreements that claimants were expected to sign with the claims handlers? The agreements that I have state that the claims handlers would meet all legal and medical costs. They were being met by the taxpayer. Solicitors were aware of that. That was the point that I was trying to get across earlier and, to me, it seems flawed. Could you investigate it a bit further and come back to us on it?

**Sir Brian Bender:** I will do.<sup>18</sup>

**Chairman:** Well, that concludes our hearing, Sir Brian. It was clear to me at the start—Mr Touhig has rightly underlined this point—that this is a good scheme in terms of how it has helped miners. However, having said that, although it was clear to me that the planning was poor and that miners have suffered in terms of the long wait—some even died before they could receive any money—what has come out of the hearing and has been underlined this afternoon is the scandalous profiteering on the part of some solicitors on the back of the taxpayer. That is something that is not acceptable to us and we want to use our Report to drive home to those solicitors that such behaviour will not be acceptable in future.

<sup>18</sup> Ev 18

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 Memorandum submitted by the Department for Business, Enterprise and Regulatory Reform
 

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In advance of my appearance before the Public Accounts Committee on 22 October 2007 I thought it might be helpful to provide Members of the Committee with a brief update on the progress which has been made on the Coal Health Compensation Schemes since the NAO Report was published in July. Please note that the NAO has not audited the updated figures.

## 1. OVERALL UPDATE ON PROGRESSION OF SETTLED CLAIMS AS AT END SEPTEMBER 2007

The following table summarises the current position on progress in settlement of claims:

	<i>NAO Report (Based on End March 2007 Data)</i>	<i>At End Sept 2007</i>
<i>VWF</i>		
Total VWF claims received	169,617 (2.3, Page 11)	169,617
Claims settled <sup>1</sup>	145,000 (1.10, Page 9)	157,301
Outstanding VWF claims	27,000 (4.3, Page 26)	12,316
Estimate: awaiting a first time VWF offer or denial as at 31 October 2007	c. 6,000 (Figure 5, Page 19)	5,500
<i>COPD</i>		
Total COPD claims received	591,706 (2.3, Page 11)	591,751
Claims settled <sup>1</sup>	430,000 (1.10, Page 9)	475,547
Outstanding COPD claims	168,000 (4.3, Page 26)	116,204
Number of claims in OROS scheme <sup>2</sup>	170,000 (11, Page 6)	175,192
		100,253 (DOROS)
		74,939 (LOROS)
LOROS <sup>3</sup> claims paid	71,635 (96%) <sup>4</sup>	72,086 (96%)
DOROS <sup>5</sup> claims paid	61,695 (62%) <sup>4</sup>	81,377 (81%)
<b>Overall</b>		
Total compensation paid to date		£3.7 billion

<sup>1</sup> Includes denied & withdrawn claims

<sup>2</sup> Includes those claims that failed DOROS Qualification cut-off

<sup>3</sup> Live Optional Risk Offer Scheme LOROS (Fast Track)

<sup>4</sup> Figures provided by Capita as at end March 2007

<sup>5</sup> Deceased Optional Risk Offer Scheme DOROS (Fast Track)

## 2. VIBRATION WHITE FINGER (VWF) SCHEME

At paragraph 4.10 the NAO Report identified two issues which could complicate completion of the VWF Scheme:

- i. **Services Claims:** The NAO reported that about 17,000 claims remained to be resolved. We are now forecasting that we will be down to around 5,000 Services claims outstanding awaiting a first time offer by end October and have revised our planning assumptions to complete these by end of March 2008 with an intermediate milestone in December 2007. Key to achieving resolution of these claims remains co-operation from solicitors and claimants themselves in resolving questions on employment history.
- ii. **Co-Defended General Damages Claims:** We are now forecasting that we should be down to around 400 outstanding co-defended General Damages claims by end of October. The Department is continuing to apply the “best endeavours” process endorsed by the Court in September 2006 to achieve resolution of these claims. Where agreement can not be reached with co-defendants the process allows us to confirm a proportionate offer and as at the end of September, 131 such offers have been made.

The Department has now also settled the tariff to be paid to claimant representatives for VWF Services Claims. Following detailed negotiations and mediation the Department achieved a settlement representing a total cost of £48.87 million (£43.58 million for CSG firms and between £4.81 and £5.77 for UDM firms) which represents an estimated saving of around £20 million against the fees that the Claimants Co-ordinating Group of Solicitors were seeking to secure.

## 3. CHRONIC OBSTRUCTIVE PULMONARY DISEASE (COPD) SCHEME

At paragraph 4.11 the NAO Report identified two key issues which threaten the COPD closure date. The following aims to summarise the current position:

- i. **Surface Workers:** There are currently 10,000 claimants who worked solely on the surface whose claims have been denied on the grounds that there is no legal liability to compensate for injury to workers who were not employed underground. This has been disputed and preparations to take “test cases” to common law have been undertaken. Following a decision by Court in July 2007 this cohort of claimants has now been narrowed to around 5,500 claims from those that worked in Coal Preparation Plants on the surface. At 3–5 October Court hearing it was agreed that those representing claimants would now present position papers to the Court by December 2007. In response the Department will be providing details of the issues that we feel need to be addressed in resolution of these cases. The next stages of the process will then be discussed at the court hearing in week beginning 17 December 2007. The Judge has made clear that she would like to see the cases involved brought to trial next year to enable resolution of this long standing issue.
- ii. **Co-defendants:** The Department continues to recognise the issues associated with co-defended claims. To that end the Department presented a paper on the latest position to 3–5 October 2007 Court hearing. The Judge expressed her concerns on progress and urged all parties to make progress. To that end she also made an Order in relation to specific issues relating to the position with UK Coal and resolution of matters relating to calculators to confirm compensation entitlements.

In addition we can inform the Committee that progress has been made on the recovery of the overpayment of costs to solicitors in the light of the April 2007 ruling on the level of fees to be paid to claimant representatives for the handling of Fast Track cases. Around £80.7 million is to be recovered and as at the beginning of October 2007 some £33.6 million (42% of total) has been received. At the October Court hearing the Judge also ordered that all payments should be made by 31 March 2008.

## 4. KNEE LITIGATION

At paragraph 4.13 the NAO reported on the preliminary stages of the knee litigation seeking compensation for acceleration of osteoarthritis and meniscal damage to the knee.

A case management Court hearing was held on 28 September in Leeds to progress this case. As a result of submissions made by respective Counsel, the Judge ruled on a future timetable whereby the claimants must put forward their generic statement of case against the Department by 21 December 2007. The Department must then file its generic defence by 20 March 2008. A ruling on the costs cap is to be made before Christmas and further case management conferences should take place in early 2008.

### Letter from Mrs Ann Elizabeth Evans to Committee Chairman

Further to my conversation with Daisy Hodgson of the National Audit Office, I was advised to write to you following my discussions with her and the release of the National Audit Office's Report.

I am aware that you are the Chairman of the Committee of Public Accounts and that you are due to debate the above Report in October. The Report and the intended debate of this Report are of particular interest to me being a claimant of this scheme. I have, over the last nine years raised serious concerns regarding my claim and possible fraud within my claim.

I am aware that you are a Conservative MP and I have in the past received immense support from the then Shadow Welsh Secretary, Bill Wiggin and his secretary. (This was after Chris Bryant took over the seat from Allan Rogers when he retired, as he refused to assist me any further because he has destroyed Allan Rogers' files.)

As a Barrister and member of Inner Temple, I am also sure that you will appreciate the seriousness of the concerns that I have been trying to fetch out to the attention of the Government for the last nine years and I can only hope that I have now found someone who may be prepared to look at what has happened to my claim in the last 10 years.

My then MP, Allan Rogers, reported my solicitors to the then Solicitors Complaints, the then claim handlers, Irisc (Aon) now Capital, instructed their fraud department to come to Cardiff and see me (where a section 9 statement was taken against the solicitors) and inspect my papers, and furthermore I met with the Government Solicitors, Messrs Nabarro Nathanson in Sheffield who also raised the same concerns about the potential fraud that was evidence within my file.

However, the Law Society investigation took seven years to complete. Nabarro Nathanson took matters no further and having shown my papers to an independent solicitor recently, he is concerned that the fraud contained within my file, could be a much wider practice being exercised by solicitors for claimants. He believes that it could potentially open a can of worms into the financial assessment of damages in these claims.

I am therefore setting out for you the background of my case and would be most honoured if there is a potential that I could meet with you or an assistant before the Report is debated in public.

#### My Case:

My father William John Thomas was a miner having worked from 1932–78 at Fernhill Colliery, Rhondda. In 1996 he died from Industrial Disease recorded following inquest.

My mother died two years later in 1998. However, she was diagnosed with advanced breast cancer in Christmas 1997, one month before the final Judgment came from Mr Justice Turner. I had on behalf of my mother in September 1997, instructed Hugh James Solicitors to act in a potential claim for my mother as the widow. My mother had no capacity issues, but due to her physical mobility (severe arthritis) was not capable of handling her affairs. I was advised by Hugh James Solicitors in September 1997, five months before the Judgment, that her claim was registered and if the Judgment was in the claimants favour, then she would be one of the first widow claims to go through the system.

It was a total shock to us, three months later to discover that she now had terminal breast cancer and was given an estimated three months to live. As any daughter would, I contacted Hugh James Solicitors and advised them of the situation.

On release of the Judgment in January 1998, Hugh James Solicitors began a number of public meetings in the working men's clubs. Attending many of them myself to obtain information, I was advised by an employee of Hugh James Solicitors that despite the large volume of claims now flooding in, my mother was a priority as it was registered and due to her health decline.

With the release of interim payments to widows, my mother asked me to contact Hugh James Solicitors to see if her payment was in line (my mother was now defying the Doctors without treatment and was still alive although very ill). I was assured that as it was registered she was in the next batch. Such batch never arrived. I contacted NACODS, who contacted Hugh James Solicitors on my behalf. It was discovered that the claim had never been registered. From this day in, the fight with the solicitors began. I was now assured that they would try to get an interim payment through as soon as possible. In August 1998, my mother lost her fight against cancer and no interim payment ever arrived. I was told that should a cheque arrive it was to be returned and that the claim had now been lost. Refusing to accept this I took over the claim for the Estate. It was a hard fight with Hugh James Solicitors as I had already been told by them to move the file, but to do that I would have to pay their bill. I refused and instructed them to sort it out.

By Christmas 1998, I was now fighting for the right of the Estate where the widow had died between the Judgment and the handling agreement for *ex gratia* payment. This was written into the handling agreement. Matters became more intense as time went on and I found a source of help that was able to point me in the right direction of what questions I should be asking.

In May 2001, I was forwarded the claim questionnaire to be completed. Most of the information had already been completed by the solicitors. Boxes had been ticked and information had been written in by the solicitors. I contacted the solicitors and advised them that many of their answers were incorrect and I could not agree to signing the declaration at the end of each booklet. I was told that unless I signed it and returned

it to them they would refuse to look at it. I went through the questions as honestly as I could and added post it notes to those that I could not agree with. They were returned to Hugh James Solicitors and I was told on the telephone that someone would contact me to go through the form.

Time passed and no one contacted me. I telephone the solicitors and asked what had happened to the form, I was advised that it had been sent in. This now had been sent in without anyone contacting me.

At the same time, the Law Society was investigating the complaint for the delay in the registration of the claim that had resulted in no interim payment being received before my mother died. Also during this time, the handling agreement was finalised and a letter was then received from the solicitors advising that they now intended to warehouse all estate claims. Having come so far in this fight, I wrote personally to Mr Justice Turner to the Royal Courts of Justice on behalf of all Estate Claims. Asking not for us to be warehoused in particular to mitigating circumstances. Whilst not in court that day because I had recently fractured my leg, my correspondence to the court was read out. I also received a supportive letter from Mr Justice Turner and it was agreed that estate claims that had reached a certain point being what I veiled was the MAP stage would continue. The letter also stated that it had been my later mother's legal right to have received the interim payment before her death and also stated much to my surprise that the Judge had been told an offer had been made.

It would appear that the day before the hearing in November 2001, Hugh James Solicitors had overnight requested an offer to be calculated. That offer changed over the next three years no less than three times. I was advised not to accept the offer as they now wished to use my later father's case to pursue the Pneumoconiosis element of the claims. Then in December 2002, I was contacted by Hugh James Solicitors who stated that a new offer had been made (it had kept going up) but if I did not accept this now it was wrong and the Government were going to take £3,000.00 of it off of me. So he advised me to accept. Also, the Law Society had told me that they could not pursue the matter until the offer was accepted. Much against my principles, I accepted the offer as I had two brothers. This would now allow the Law Society to continue.

I was then advised by another solicitor to request a copy of my file. I never expected to find on the file what I did. The claim questionnaires were sent to Irisc for assessment together with the map for an offer. I never had any sight of the forms after they left me in May 2001. They were sent to Irisc in June 2001.

It is for this reason that I am writing to you as the Chairman of the Public Accounts Committee and it is for this reason that the Government Solicitors and Aon fraud team were involved. As a barrister with specialism in arbitration and criminal law, I am sure that you will understand why I feel so strongly that I have to give this information to you.

The claim questionnaires had been altered in particular to questions that raised the most special damages (damages as a result of the injury). The answers which I was now seeing on the copy documents on their file did not reflect the questionnaires that I had sent to them in May 2001. I immediately reported this to the Law Society and a fresh investigation began into my complaints.

On another question, they told the Law Society that had they not altered the answers, then there would have been no special damages due to the client under that head. Well I believe that if that was my honest answer, then no damages should have been awarded.

My late father retired in 1978, under a voluntary retirement scheme. Whilst he had been on sick leave up to his retirement, this was for dermatitis and photophobia of the eyes. I therefore ticked the appropriate box, however, on the amended form changed by the solicitors they had changed my answer to "retired early respiratory". This was not true, but as Nabarro's told me would make a huge difference to the special damages being five years loss of earnings as it was chest problems. They altered other answers which made a difference to the amount of damages and in particular, they altered the funeral account question.

Taking into account my father had only died in 1996, there was still a copy of the funeral account available. The question had simply asked for some proof of what was paid. I ticked the box, "yes" I had a bill, their copy now had no tick. Initially, they advised the Law Society they did not have a bill. The Law Society found a copy of the bill on their file and asked for their explanation. They claimed that it was only an estimate, despite stating it had been paid with thanks. They then said that Irisc would not accept it because it had family flowers on it and it could confuse the case worker. The Solicitors gave a full explanation to the Law Society that:

"Had they submitted the funeral account they had, in accordance with my instructions to them, then the damages on that section would only have been £143.00 that the claimant would have received. As they had not submitted the funeral account, the claimant had £300.00 plus interest. Therefore they told the Law Society that they had used their professional judgement and knowledge of the claim for the benefit of the client. The Law Society accepted this, stating that they agreed that they agreed that the forms had been changed after I had signed them, the only thing they had done wrong was not tell the client."

This is why I am so concerned about the claims. At the end of the day, there is a declaration on the forms that you are to the best of your knowledge and belief providing correct information.

What would have happened to me as a person had that form been spot checked and the information deemed to be incorrect as it is. I would have had a knock on my door and honestly would not have known what they were talking about. The solicitors would have said that I had signed the forms.

It may only be £300.00, but as was agreed by Nabarro's how many £300.00s are there and how much money that amount to out of the public purse? Could there be a pattern there in the questionnaires, like the questions about pigeons!

I am attaching a copy of the Law Society report in respect of this.<sup>6</sup> There are two reports because Hugh James Solicitors appealed the first report seeking judicial review proceedings to overturn their severe reprimands. However, the Law Society agreed to place the case before an independent panel for a second time to eliminate proceedings against them which is why there is a second report.

As you can imagine, all I wanted was an honest claim in what would have been legally entitled to the Estate for the illness and death that my father suffered. Instead I will never know if the claim is right or wrong or whether there will be a knock on my door for a fraudulent claim. I am sure that it may be of interest to see how many other claims are like this and the client is not aware that their answers may have been altered using their professional knowledge for the benefit of the client.

I am able to provide any further information that you may require as Chairman of the Public Accounts Committee and would kindly ask if I could bring my fight to you or a Member of your Committee before October.

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### **Supplementary memorandum submitted by the Department for Business, Enterprise and Regulatory Reform**

Question 90 (Mr Austin Mitchell): *Indications of fraud in the case of Mrs Ann Elizabeth Evans*

The Committee requested a note explaining the case of Mrs Evans. The Department has reviewed the history of the issues raised by Mrs Evans.

#### Complaints made by Mrs Evans

In 2001 Mrs Evans made multiple complaints to the Law Society against the solicitors (Hugh James in Merther Tydfil) who handled her compensation claim for respiratory disease in respect of her late father William John Thomas. The various documents attached to Mrs Evans' letter outline the complaints made. In particular Mrs Evans alleged that her solicitors had:

- delayed in "registering" Mrs Thomas' claim until May 1998;
- failed to make a timely application for an interim payment;
- failed to respond to individual letters and telephone calls;
- delayed in providing costs and client care information;
- provided advice and information that was confusing;
- failed to apply appropriate supervision to junior staff; and
- altered the claims form (claim questionnaire) without her knowledge or consent, in a way that artificially inflated the value of the claim.

#### Appeal to Law Society

Mrs Evans appealed the Law Society's original decision and this was reviewed by the Adjudication Panel and their ruling was handed down on 22 June 2005. The upshot being that Mrs Evans' appeal was upheld and two partners at Hugh James each received a severe personal reprimand from the Law Society in respect of their failure to properly supervise their staff. Additionally, it is clear from the Law Society's findings that the only reason a finding of misconduct had not been made is that (by reason of the poor supervision) it was not possible to identify the individual at Hugh James guilty of the misconduct. The Adjudication Panel raised Mrs Evans' compensation from £1,250–£5,000. Hugh James challenged the decision by way of Judicial Review.

Throughout the dispute Mrs Evans kept the Department (through its external lawyers Nabarro) apprised of her case and she also sent copies of the Law Society's report and findings to Sir Michael Turner, the Judge then overseeing the COPD scheme.

#### Department's consideration of the position

The Department carefully considered the issues raised, especially in terms of potential impact on the wider administration of the schemes. The main issue being the Law Society's finding that Hugh James Solicitors had altered Mrs Evans' claim questionnaire form. Furthermore, the nature of the supervisory failures by Hugh James Solicitors ("... monitoring individual files by computer screen and monitoring DTI

<sup>6</sup> Information provided, not printed.

statistics . . .”) raised concern that these failures were not limited to Mrs Evans’ case alone. It was also apparent that the two partners were two out of five members of the Co-ordinating Group (CG) of solicitors representing the claimants under the scheme.

A range of actions were undertaken:

- Nabarro (the Department’s legal advisers) held a full meeting with Mrs Evans on 29 June 2004;
- a request was put to Capita’s Security Investigation Department (SID) to filter out similar type cases intimated via Hugh James Solicitors for analysis;
- a letter dated 7 September 2005 was sent to the Senior Partner at Hugh James Solicitors requesting a full written explanation and detailing the organisational failures which have led to the findings against them, together with details of what changes have been made, in light of those findings; and
- a copy of the letter to Hugh James Solicitors was copied to a member of the Claimant’s Group, suggesting that the CG should raise the issue at the next Review Hearing and address the issue in its written report to the Court.

#### Current position

As far as the Department is aware the case remains subject to ongoing review by the Solicitors Regulation Authority (SRA). In these circumstances the Department is not currently in a position to take further action.

#### Question 94 (Mr Alan Williams): *10 organisations who have been paid the lowest coal health fee*

The table below lists the 10 claimant representatives who have received the lowest fee income as at the end of March 2007.

<i>Solicitor</i>	<i>No. of COPD Claims</i>	<i>COPD Solicitors Costs (exc Litigation) £’s</i>	<i>No. of VWF Claims</i>	<i>VWF Solicitors Costs (exc Litigation) £’s</i>	<i>COPD &amp; VWF Solicitor Costs (exc. Litigation) £’s</i>
Barry F Cosier Associates	4	30.00	0	—	30.00
Trueman	1	30.00	0	—	30.00
Walker Smith & Way	2	559.30	0	—	559.30
Frank Howard	6	—	2	587.50	587.50
Anderson Eden Solicitors	2	—	2	587.50	587.50
Moore & Blatch Solicitors	1	—	2	587.50	587.50
Huitson & Wittrick Solicitors	1	—	4	764.02	764.02
Pawson & Murray Solicitors	1	—	2	766.10	766.10
Richards & Lewis Solicitors	1	—	1	787.25	787.25
Tierney & Co Solicitors	1	—	1	949.40	949.40

#### Question 98 (Mr Richard Bacon): *How much the Department expects to recover from each of the 10 organisations in Appendix 7, and how much each of them has paid so far*

The table below sets out the total amount that the Department is seeking to recover from the top 10 claimants’ representatives<sup>7</sup> and the amounts recouped as at 2 November 2007. As at 2 November 2007, the Department has received £18.9 million and has a further £31.8 million to recover.

<i>Ranking</i>	<i>Solicitor</i>	<i>Total Debt (including interest)</i>	<i>Total Debt Recovered (incl. off set and write off)</i>	<i>Total Outstanding Debt</i>
1	Thompsons	£5,171,007.97	£3,449,270.05	£1,721,737.92
2	Beresford	£13,816,568.20	£2,374,269.16	£11,442,299.04
3	Hugh James	£5,780,597.30	£0.00	£5,780,597.30
4	Raleys	£5,442,336.63	£5,442,336.63	£0.00
5	Browell Smith & Co	£4,210,965.91	£4,210,965.90	£0.01
6	Mark Gilbert Morse	£1,168,813.14	£1,168,813.14	£0.00
7	Avalon	£8,537,854.68	£311,261.49	£8,226,593.19
8	UDM	£2,342,039.83	£52,405.46	£2,289,634.37
9	Watson Burton LLP	£2,447,613.47	£87,737.64	£2,359,875.83
10	Graysons Solicitors	£1,796,473.44	£1,796,473.44	£0.00
		<b>£50,714,270.57</b>	<b>£18,893,532.91</b>	<b>£31,820,737.66</b>

<sup>7</sup> By coal health fee income as at 31 March 2007 as set out in Appendix 7 of the NAO Report.

Avalon, ranked 7 in the table above, is contesting the Department's entitlement to recoup any money. As they are not members of the Claimant Group (CG), Avalon argues that the Court Order<sup>8</sup> is not binding on them. A Court Hearing to resolve this issue has been scheduled for w/c 26 November 2007. In the meantime the Department is beginning to recover the debt via a set-off arrangement of fees for claims due to the firm.

Question 104 (Mr Richard Bacon): *Fast Track Scheme Solicitor Costs*

The Committee requested a note explaining why the Department did not negotiate reduced solicitor fees when the Fast Track Scheme was introduced, as it knew it was a simpler process which required less legal input. At the end of February 2005, the Department introduced a fast track scheme, known as the Optional Risk Offer Scheme (OROS) aimed at cases likely to attract smaller amounts of compensation. The aim of this process was not only to speed up COPD compensation payments but also to cut down on medical and administration costs. An initial assessment of these savings estimated that OROS would reduce the life of the COPD Scheme by two years and could save the Department over £170 million.

The Department did seek to negotiate lower fees for the Fast Track scheme with the Claimants Group but a sensible compromise could not be reached. It was therefore left to the Judge to decide the figures. The Department thought that the figures awarded by the Judge were too high and successfully appealed to the Court of Appeal who set aside the Judge's figures and remitted the matter back to the Judge for re-hearing. Ultimately (and following a change of Judge) revised figures were awarded in April 2007 which were substantially lower than the awards of the original Judge.

Question 107 (Mr Don Touhig): *Solicitor partnerships with claims handlers*

The Committee asked the Department to investigate whether it had seen copies of the agreements the claimants had signed with solicitors. As these agreements are between the claimant and their representatives the Department would not expect to see copies. However, by chance the Department has seen some examples of such agreements, the first one being in 2000, which prompted it to act. Since the Department became aware of this issue, it has taken a number of actions to encourage solicitors to stop this practice. If a claimant wishes to enter into a separate agreement with their claimant representatives, the Department has no right to intervene to stop solicitors deducting fees. The Department remain of the view that the deduction of fees from the compensation without the knowledge of the claimant is unacceptable.

In 2001, the Law Society took the line that the charges were proper provided the amounts concerned were not unreasonable and that the client has been properly informed as to the charging arrangements (as stated in the report). In December 2003, the Department wrote to all solicitors requesting an assurance that they would not impose additional fees. Those solicitors who did not respond, were removed from the list of solicitors provided to all potential claimants, although this did not preclude claimants using these solicitors should they wish to do so. In the July 2005 review hearing Sir Michael Turner looked at the issue and urged that the practice of working with claims farmers stop and deductions cease. In June 2007, Malcolm Wicks and Bridget Prentice wrote a joint letter to all solicitors in England and Wales asking them to repay all deductions taken from compensation without the full understanding and agreement of the claimant.<sup>9</sup>

Whilst complaints about solicitors are a matter for the Legal Complaints Service to deal with, both this Department and the Ministry of Justice are continuing to monitor the position.

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**Further supplementary memorandum submitted by the Department for Business, Enterprise and Regulatory Reform**

During the Public Accounts Committee hearing on 22 October 2007, the Committee requested that the Department write to the 10 organisation named in Appendix 7 of the NAO Report on *Coal health compensation schemes*.

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<sup>8</sup> On 3 April 2007 the Court ruled in favour of the Department and solicitors were ordered to repay the difference between the original tariff paid by the Department and the new tariffs set by the judge. In a subsequent order, the Judge ruled that the solicitors were also liable to repay the interest incurred on the principal sum (at a commercial rate of 1% above the Bank of England base rate) and the overpaid VAT in respect of the principal amount.

<sup>9</sup> Information provided, not printed.

A copy of Sir Brian's letter to the organisations and a summary of the responses received, follows:

**Letter from Sir Brian Bender**

Dear Sirs

**COAL HEALTH COMPENSATION SCHEMES: PUBLIC ACCOUNT COMMITTEE HEARING  
FOLLOW UP**

Following the publication of the National Audit Office (NAO) report on the Coal Health Schemes, I appeared before the Public Account Committee, as a witness on Monday, 22 October.

During the proceedings there were a number of areas where the Committee requested further information. Two of those, relate directly to the claimants' representatives listed in Appendix 7 of the NAO Report. I have attached a copy of the relevant page.

The table lists the total payments to the top 10 claimants' representatives by coal health fee income as at 31 March 2007. The Committee has asked that we write to all the claimant representatives listed in Appendix 7 to enquire as to the deduction of fees whether in respect of costs or any other payment from claimant compensation paid under the Claims Handling Arrangements for either COPD or VWF.

To assist with responding to the Committee your response on the following points would be helpful:

- (a) Has your organisation ever undertaken this practice?
- (b) If so, has it sought to reimburse any fees so deducted to the claimants affected?
- (c) If so, how much money has been reimbursed to those claimants?

In addition, the Committee also raised questions on the amount of money paid to individual Partners/Directors of the claimant representatives in Appendix 7. In particular the Chairman of the Committee, Edward Leigh MP, asked that we provide the Committee with details on the number of Partners/Directors who have been or who are now Partners/Directors in the practice. Again to assist the Committee I would be grateful if you could confirm the number of Partners/Directors in your organisation and of this number how many have received income from such payments.

The Department has to respond to the Committee in a timely manner and therefore would be grateful if you could reply by 16 November 2007 to inform that response.

*Sir Brian Bender KCB*

Permanent Secretary, Department for Business, Enterprise and Regulator Reform

31 October 2007

**SUMMARY OF THE RESPONSES TO SIR BRIAN BENDER'S LETTER, 31 OCTOBER 2007, TO  
CLAIMANT REPRESENTATIVES IN APPENDIX 7 OF NAO REPORT**

1. The table below sets out the organisations the Department wrote to and the date of their response as at 13 December 2007. Where the Department did not receive a response by 30 November 2007, the organisation was sent a reminder to ensure they had received the initial letter and ask whether they intended to respond.

<i>Organisation</i>	<i>Date of Response</i>
Thompsons—Newcastle	15 November 2007
Thompsons—Cardiff	15 November 2007
Thompsons—Edinburgh	13 November 2007
Beresfords	13 November 2007
Hugh James	13 December 2007
Raleys	<i>Declined to Respond</i>
Browell Smith & Co	19 November 2007
Mark Gilbert Morse	16 November 2007
Avalon	4 November 2007
Union of Democratic Mineworkers	<i>No Response</i>
Watson Burton LLP	23 November 2007
Graysons Solicitors	15 November 2007

2. The Department asked the organisations to respond in four specific areas:

- (i) Has the organisation undertaken the practice of deducting fees whether in respect of costs or any other payment from claimant compensation paid under the Claims Handling Arrangements for either COPD or VWF?
- (ii) If so, has it sought to reimburse any fees so deducted to the Claimants affected?
- (iii) If so, how much money has been reimbursed to those Claimants?
- (iv) Confirm the number of Partners/Directors in the organisation and of this number how many have received income from such payments?

3. Of the 10 organisations (Thompsons has three main offices—hence the individual letters sent to each office) the Department received 10 responses and a summary of their responses drawing on verbatim comments from the letters is set out below:

#### THOMPSONS NEWCASTLE AND CARDIFF

- (i) A joint letter was received from Thompsons Newcastle and Thompsons Cardiff as a co-ordinated response on behalf of England and Wales. They confirmed that they have not received any contributions or payments in successful Claims Handling Agreement (CHA) cases for VWF or COPD other than costs paid by DTI (now BERR). As a firm Thompsons have not retained any part of any claimant's damages.  
Thompsons Newcastle/Cardiff act for a number of Areas of the NUM and for their members, including the Durham Miners Association (DMA). Thompsons say the DMA, which is a non-profit organisation, has been the subject of vilification. All the contributions from damages by successful Union claimants have been paid to the DMA. Unions have always used any contributions from damages to fund the various services provided by the Union. These services include test litigation, litigation support and administration of legal aid.
- (ii) Thompsons Newcastle/Cardiff confirmed the money has been reimbursed to those Claimants.
- (iii) The following refunds have been paid:
  - closed cases claims = 3,620 refunds £2,119,650.00
  - current cases claims = 576 refunds £128,408.00
  - = Total refunds £2,248,058.00
- (iv) Thompsons Newcastle/Cardiff has 36 equity partners and 16 salaried partners. None of them have received any income from any contributions from damages, as Thompsons have not retained any of those contributions. They have all been passed on to the DMA.
- (v) As part of Thompsons reply they attached a background briefing and a short summary of the history of the Trade Union funding litigation in the Coal Board cases.

#### THOMPSONS EDINBURGH

- (i) Thompsons Edinburgh confirmed that the firm has never deducted fees from claimant compensation under either CHA during the lifetime of the Coal Health Compensation Schemes. Thompsons Edinburgh has been content at all times to accept Handling Agreement fee tariffs.
- (ii) N/A.
- (iii) N/A.
- (iv) Thompsons Edinburgh did not confirm the number of Partners in their firm; however they did confirm that no Partner within the firm has received income from deductions from compensation because no deductions for solicitors' costs or fees have been made.
- (v) Thompsons Edinburgh wished to clarify that whilst the firm of Thompsons is shown in Appendix 7 as having received £123.6 million of fee income from the schemes that is not the figure received by Thompsons Scotland which is both financially independent from the sister firm in England and Wales as well as separately managed.

#### HUGH JAMES

- (i) Hugh James confirmed they have not made any such deductions.
- (ii) N/A.
- (iii) N/A.
- (iv) There are 47 Partners in Hugh James. The Partnership constituency has changed over the years.
- (v) For completeness, Hugh James has included a brief account of the firm's relationship with the Trade Union, NACODS South Wales "the Association", and that Union's involvement with the BCRDL. Please see the response letter from Hugh James which provided details on the way in which the Unions funded the test cases that led to the Claims Handling Agreement. For members who had a successful claim, Hugh James received the appropriate compensation payments by cheque. Where they had written client instructions to do so, they passed on those cheques (without making any deduction) to the Association. It is believed that the Association would then implement the above mentioned contribution arrangements and the member would receive whatever net sum was appropriate as a result. If Hugh James did not receive client instructions to send the cheque to the Association, they sent it directly to the client. Hugh James highlight in their response that only a handful of Association members asked them to send them their compensation cheques directly, demonstrating that the above arrangements to make contributions to the Association from their compensation has widespread support within the Association.

## BERESFORDS

- (i) Beresford confirmed that very early on in the scheme they made deductions from claimant's compensation (as allowed by The Law Society regulation).
- (ii) When it became evident to Beresford that there was little financial risk to the investment, they immediately stopped the practice of deducting compensation from claimants and have reimbursed every single penny back to claimants.
- (iii) Beresford did not confirm in their letter the amount of compensation paid back to Claimants.
- (iv) Beresfords confirmed that at the time of the income being generated there were 3 Partners within the business, the details of which are registered with Companies House.

## BROWELL SMITH &amp; Co

- (i) Browell Smith & Co acts on behalf of various Mining Unions ie certain Area Unions of the National Union of Mineworkers and NACODS. They confirm that as a firm they have never asked claimants to enter into any form of conditional fee agreement in this litigation nor have they double charged, nor have they sought to enter into any form of contingency agreement. Brownells have only ever claimed the fixed costs agreed with the Department of Trade and Industry and payable under the provisions of the British Coal Respiratory Disease Litigation and Vibration White Finger Handling Agreements. They state that they have been vociferous in arguing since 1998–99 both in the press and elsewhere, that the costs provided through the Schemes, were sufficient and did not require an uplift, although, with hindsight, in VWF the costs agreed were not adequate for the work involved.
- (ii) N/A.
- (iii) N/A.
- (iv) Browell Smith & Co Solicitors did not confirm how many Partners were within their firm.
- (v) Many areas of the National Union of Mineworkers are independent Trades Unions in their own right and therefore every area has its own arrangements for supporting compensation claims. One of the largest areas, for whom Browell Smith act, namely the Midlands Area of the NUM does not ask for any donation at all. However, other areas ask a claimant to make a voluntary donation to Union funds at the conclusion of a successful claim. If the claimant wishes to make a donation he will have made a separate voluntary agreement with the Union. If the claimant authorises Browell Smith to do so in writing, the donation is usually collected at source from the final payment of damages. Any donation made, is paid in full to the Trade Union and the solicitors do not receive any additional payment or benefit. Every claim is pursued at no legal cost to the claimant irrespective of whether or not they choose to make a donation. Browell Smith have also provided a copy of a report they made to the Lord Chancellors Department about the activities of some solicitors and claims farmers.
- (vi) Browell Smith & Co confirmed that they have seen many examples of claims farmers targeting elderly and vulnerable people and also of overcharging, undersettlement and poor service. They stated that they have never supported these practices and do not condone them.

## MARK GILBERT MORSE

- (i) Mark Gilbert Morse confirmed that they undertook the practice of deducting fees from claimant compensation.
- (ii) They confirmed that they reimbursed claimants.
- (iii) Mark Gilbert Morse confirmed they voluntarily reimbursed to all claimants all costs or deductions of any nature in full, with full interest from the date of any deduction to the date of payment to the claimant.
- (iv) Mark Gilbert Morse did not respond on the fourth point relating to the number of Partners.

## AVALON

- (i) Avalon confirmed that in the initial stages of dealing with the Coal Health Schemes Cases, under the guidance of the Law Society did make deductions from clients damages. Of the 36,000 claims, which Avalon Solicitors initially registered with the Coal Health Scheme, only 361 (1%) had any deductions made from the award.
- (ii) Upon receiving further guidance from the Law Society in January 2004, the Practice ceased taking deductions from settlements and has subsequently paid 100% compensation to all clients. Avalon stated they have taken all steps, often at the expense of the Practice to pay back monies along with any interest that had accrued at the prevailing Bank of England base rate at the time.

- (iii) Avalon confirmed that a total of £210,527.79 plus VAT and interest, equating to around £295,000 has been reimbursed to the Claimants. This represents refunds to 98% of the Clients who were originally deducted monies. Avalon confirmed that they continue to instruct search agents to assist them in locating the miners (or estates of the miners) who they have failed to locate.
- (iv) Since Avalon Solicitors has been handling Coal Health Scheme Cases, there have been nine Partners, over a six year period. They confirmed that all Partners have received monies from the scheme.

WATSON BURTON LLP

- (i) Watson Burton confirmed that they had received only payment from the DTI in the sums set by the DTI or by the Courts.
- (ii) N/A.
- (iii) N/A.
- (iv) Watson Burton did not respond on the fourth point relating to the number of Partners.

GRAYSONS SOLICITORS

- (i) Graysons Solicitors confirmed that no charges or deductions had been made from any clients' award of compensation for fees or costs.
- (ii) N/A.
- (iii) N/A.
- (iv) Grayson currently have nine Partners. The number of Partners in the firm has changed since they started dealing with the schemes and the number has varied between five and nine. Graysons confirmed that no Partners in the firm have received income from fees deducted from Claimants' awards of compensation, because no deductions for solicitors' costs or fees have been made.
- (v) Graysons raised the issue that they act (and continue to act) for private clients and for clients pursuing claims as members of the NUM (Derbyshire Area). Miners (and the Personal Representatives of deceased miners) who pursue their claims through the NUM (Derbyshire Area) do so pursuant to an agreement with the Union to pay a retired members contribution upon conclusion of a successful claim. In these cases a deduction from the Claimant's award of compensation may be made in accordance with the agreement entered into between the Claimant and the Union and subject to Graysons having the authority of the Claimant to make the deduction in favour of the Union.

18 December 2007

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