



National Audit Office

BRIEFING

Administration of time-limited compensation schemes



The National Audit Office scrutinises public spending on behalf of Parliament. The Comptroller and Auditor General, Tim Burr, is an Officer of the House of Commons. He is the head of the National Audit Office which employs some 850 staff. He and the National Audit Office are totally independent of Government. He certifies the accounts of all Government departments and a wide range of other public sector bodies; and he has statutory authority to report to Parliament on the economy, efficiency and effectiveness with which departments and other bodies have used their resources. Our work saves the taxpayer millions of pounds every year: at least £9 for every £1 spent running the Office.

This Briefing was prepared by Andrew Packer and Simon Reason, under the direction of Peter Gray. Simon Banner, Nicola Coy and David Howes assisted.

Contents

Welcome	5
Overview	6
The Ombudsman's principles	7
Lessons to be drawn from National Audit Office reports	8
The views and experiences of practitioners	10
<hr/>	
Phase 1: Determining the extent of the liability	18
Understanding the overall liability or obligation	19
Options for discharging the liability	21
<hr/>	
Phase 2: Designing the scheme	22
Setting the scheme rules	23
Designing the processing systems	24
Preparing the implementation plan	27
<hr/>	
Phase 3: Implementation	28
Communicating with claimants and stakeholders	29
Working in partnership with contractors	30
Monitoring progress	32
Reviewing progress	33
<hr/>	
Phase 4: Scheme wind down and closure	34
Options for closure	35
Setting the closure dates	35
Processing the remaining claims	36
Additional information	37
Post closure	38
<hr/>	
Additional reading	39

4 Administration of time-limited compensation schemes



Welcome

Setting up and delivering time-limited compensations schemes often poses a significant challenge for public bodies. By definition, citizens eligible for compensation will already have suffered some form of hardship and distress. For some schemes, the applicants may be elderly and infirm. These citizens have a reasonable expectation that their application will be treated fairly and expeditiously. Yet, for public bodies these schemes can pose a tremendous challenge. The events to which the compensation relates may have happened some years before. Establishing workable eligibility criteria, assessing the potential number applicants, obtaining evidence to support eligibility and processing applications can quickly test the capacity and expertise of public bodies.

This publication seeks to help officials with little experience of such compensation schemes. It provides practical briefing points arising from recent examinations by the National Audit Office and draws upon influential work by the Parliamentary and Health Service Ombudsman. The briefing does not necessarily cover all the issues that need to be considered when delivering a new compensation scheme, as each scheme will to some extent raise new issues. This briefing, however, supplements and is consistent with the section on remedies in HM Treasury's recently published *Managing Public Money*. It also reflects issues outlined in *Principles for Remedy* published by the Parliamentary and Health Service Ombudsman.

We are very grateful for the help afforded to us by officials in the Coal Liabilities Unit and Employment Relations Directorate at the Department for Business, Enterprise and Regulatory Reform, and the Redundancy Payments Service, now part of the Insolvency Service, who readily shared their experience of running such schemes. We are also indebted to Tom Riddell and his team at KPMG who drew upon their considerable experience of practice in the insurance industry in helping us.

I hope you find this Briefing helpful.

Peter Gray, Director

July 2008

Overview

The difficulty of administering various forms of time-limited compensation scheme has formed the subject of a number of official reports over recent years. These reports have come from a range of sources including the Select Committees, the Parliamentary and Health Service Ombudsman and the National Audit Office. This Briefing draws heavily on these sources.

The Briefing's practical information is supplemented by the views and experiences of five practitioners who were interviewed by the National Audit Office in March and April 2008.

THE OMBUDSMAN'S PRINCIPLES

In March 2007, the Parliamentary and Health Service Ombudsman published her 'Principles of Good Administration' (available at ombudsman.org.uk). These Principles set out the sorts of behaviour the Ombudsman expects when public bodies deliver public service. The Principles drew on the Ombudsman's experience of handling complaints over some forty years. Although the Principles are generic to all forms of public administration, they are particularly relevant to the design and administration of compensation schemes. The Ombudsman identified six key principles – see below.

Principles of Good Administration – published by the Parliamentary and Health Service Ombudsman

1 Getting it right

- Acting in accordance with the law and with due regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2 Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.

- Responding to customers' needs flexibly, including, where appropriate, coordinating a response with other service providers.

3 Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
 - Stating its criteria for decision making and giving reasons for decisions.
 - Handling information properly and appropriately.
 - Keeping proper and appropriate records.
 - Taking responsibility for its actions.
- #### 4 Acting fairly and proportionately
- Treating people impartially, with respect and courtesy.
 - Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
 - Dealing with people and issues objectively and consistently.

- Ensuring that decisions and actions are proportionate, appropriate and fair.

5 Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6 Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
 - Asking for feedback and using it to improve services and performance.
 - Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.
-

LESSONS TO BE DRAWN FROM NATIONAL AUDIT OFFICE REPORTS

The National Audit Office has published a number of reports highlighting lessons to be drawn from the administration of recent compensation schemes (see page opposite). These reports suggest that the best results are achieved when public bodies:

- put in place the right governance and project management arrangements to oversee, challenge and manage the development of the scheme. Officials should draw upon the arrangements set out in the Gateway™ Process published by the Office of Government Commerce;
- commit sufficient effort and the right skills at the outset to designing and planning for implementation of the scheme;
- design scheme procedures as an end-to-end system with the aim of minimising potential bottlenecks – piloting key aspects of the proposed scheme may be essential;
- design should take a whole-life view of the scheme from the start including how the scheme might eventually be wound up;
- consider the likely number and profile of likely applicants and the capacity needed to process applications from different types of applicant expeditiously;
- consider the likely administrative cost of processing claims at the outset and set this against the likely amounts to be paid out; and
- have in place a strategy for dealing with external pressures in a structured and confident way, including the management of expectations.

Recent NAO reports focused on the administration of compensations schemes

The 2001 outbreak of foot and mouth disease (HC 939 Session 2001-02: 21 June 2002)

In February 2001, foot and mouth disease was confirmed in Essex. The disease was eradicated in September 2001.

Farmers received £1.2 billion in compensation from the Department for Environment, Food and Rural Affairs (formerly the Ministry of Agriculture, Fisheries and Food) under the Animal Health Act 1981 for the over four million animals that were slaughtered for disease control purposes. Individual farmers received payments ranging from £20 to over £4 million. The average payment to farmers (some 9,300) was around £125,000. The Department expected to pay £10 million in fees to the valuers of animals.

Under a new associated voluntary scheme (Livestock Welfare Disposal Scheme) farmers received over £200 million from the Rural Payments Agency (formerly the Intervention Board) to alleviate the suffering of animals that were indirectly affected by the foot and mouth disease due to restrictions on the movement of animals, for example to alternative pasture. The scheme, which cost a further £205 million to run, differed from the scheme for slaughtered animals in that the payments to farmers did not have to reflect the value of the animals killed, a set of tariffs being used instead.

The compensation scheme for former Icelandic water trawlermen (HC 530 Session 2006-07: 29 June 2007)

The UK Government agreed in 1976 to phase out fishing by vessels based in the UK within 200 nautical miles of Iceland. This followed a series of disputes with Iceland that became known as the “Cod Wars”. In July 2000, the Department of Trade and Industry announced a scheme to compensate relevant former trawlermen (i.e. employees rather than vessel owners).

The Department made around 5,200 payments totalling nearly £43 million, in respect of some 4,400 claims. Successful claimants on average received around £9,700.

Coal health compensation schemes (HC 608 Session 2006-07: 18 July 2007)

In 1998 the Department of Trade and Industry took over responsibility for the accumulated personal injury liabilities of the British Coal Corporation. In that year the High Court found the Corporation negligent in respect of a lung disease, caused by coal dust, known as Chronic Obstructive Pulmonary Disease (COPD); and the Court of Appeal confirmed an earlier High Court decision of negligence in respect of hand injuries caused as a result of using vibrating equipment, known as Vibration White Finger (VWF).

The Department, in negotiation with claimants' legal representatives and subject to the approval of the High Court, introduced two schemes, one for COPD and one for VWF, to compensate former miners. The Department employed a contractor to administer and assess claims. It also contracted with independent medical assessors to carry out medical examinations. The Department met the cost of the claimant's legal representation, where these claims were successful.

The VWF scheme closed to new claims at four dates from September 2002 to January 2006 depending on the type of claimant and the type of claim. The COPD scheme closed to new claims in March 2004.

By March 2007 the Department had received over 591,000 COPD claims and 169,000 VWF claims, of which around 168,000 COPD and 27,000 VWF claims remained outstanding. The median settlement under the COPD scheme was around £1,500 and for the VWF scheme £8,300.

When all the claims are settled the Department expects to have paid some £4.1 billion in compensation and spent some £2.3 billion in administration costs.

All the published reports in this briefing are available from our website at www.nao.org.uk

The views and experiences of practitioners



Tom Riddell
SENIOR ADVISER, KPMG



Ian McKenzie
DIRECTOR, COAL LIABILITIES UNIT –
DEPARTMENT FOR BUSINESS, ENTERPRISE
AND REGULATORY REFORM (BERR)



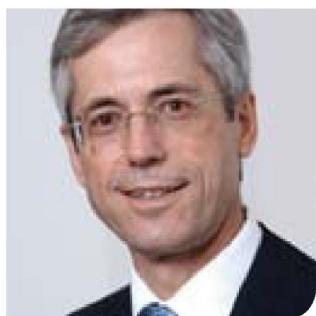
Alison Reeves
DEPUTY DIRECTOR, FOOD AND FARMING
GROUP – DEPARTMENT FOR ENVIRONMENT,
FOOD AND RURAL AFFAIRS (DEFRA)



Gordon Askwith
DIRECTOR OF OPERATIONS,
REDUNDANCY PAYMENTS SERVICE



Sue Gamble
REGULARITY AND PROPRIETY BRANCH,
HM TREASURY



Tom Riddell
SENIOR ADVISER, KPMG

Q: In your experience of compensation schemes within the UK and abroad, what are the three things that scheme administrators often do well?

Well with the assistance of computerised records, I think that compensation schemes usually now have very good records, and conduct the payment side of things efficiently.

Secondly, I think that the schemes are usually pretty good at weeding out false claims. Of course that can have a downside that genuinely eligible parties then resent the hoops they have to go through to prove their eligibility.

Third, I'd nominate cost efficiency generally. Typically the pure admin costs are a pretty low proportion of the total costs consumed by the scheme relative to the amount paid out in benefits. However as

soon as there is any complexity in the criteria for eligibility, for example because medical diagnosis or legal analysis and dispute is involved, schemes are very quickly criticised for the proportion of the total scheme funding which is consumed in costs or legal fees and so is not paid out in benefits.

Q: What are the three things that scheme administrators often do less well?

I think I would list communication as an issue that could normally be handled better. One of the biggest challenges is to get the money to the eligible parties quickly, but at the same time follow proper procedures to avoid paying out on ineligible claims. For some typically employment related diseases, such as asbestosis, the victim can have quite a short life expectancy after diagnosis, so it is very important that any delay in payment is minimised. Individuals can quickly resent and be emotional about any delays that they don't believe are justified, particularly if compensation is being paid for injury or disease. Whether it is funded by insurance or the public purse, there still have to be rules to ensure only the right people are paid. Administrators don't always handle the communication aspects of this as well as they could.

Next I think I would list forward planning at the start of the scheme. Compensation schemes often have a political dimension to them. This can mean the compensation package is put together hurriedly in response to a crisis or a political imperative, without the luxury of much time for the administrators to plan properly.

If I had to nominate a third aspect that is sometimes done less well, I think it would be responsiveness. Compensation schemes have something the applicant wants, but they are not really selling anything. Organisations which have to sell their services in competition with others have a better reputation for responsiveness than organisations which don't. It is perhaps too easy for compensation schemes to slip to lower response standards.

Q: What's the one key piece of advice you would offer anyone embarking on a scheme?

My key piece of advice would be to sink more effort into the research and planning stage than people would initially think justified. Getting the eligibility rules specified as objectively and clearly as possible, and researching the likely eligible population accurately so that resources can be planned properly, will pay off handsomely in the long term.



Ian McKenzie
DIRECTOR, COAL
LIABILITIES UNIT –
DEPARTMENT FOR
BUSINESS, ENTERPRISE
AND REGULATORY
REFORM (BERR)

Q: What were the main challenges BERR faced in administering schemes which are under the direction of the Courts?

It's helpful to put the establishment of the Coal Health schemes in context in responding to this question. These schemes arose out of litigation. British Coal defended claims brought against them by their former employees on advice that there was a good chance of success. However, the Court found British Coal liable and the schemes were established by orders of the Court as a mechanism for compensating the claimants in respect of that liability. When the Department inherited the liabilities of British Coal, the litigation was already seized of the Court, meaning that there wasn't really a choice in how the compensation was dealt with – we had to follow the rulings made by the Court.

Nevertheless, since the original Court rulings on liability nearly 10 years ago we can see both pros and cons of the Court's involvement. On the positive side, the Court's involvement means we have mechanisms in place to resolve issues. This can play both ways but in recent years the Court has been helpful in driving a timetable for resolution of outstanding claims. It provides a regular public forum where our position can be set out and challenged in an open way.

The disadvantages of the Court's involvement are that it is expensive and resource intensive. We can be ordered to do things we don't necessarily agree with. It can extend timescales for resolving issues – our Court hearings are regular but it can still take more than one hearing to secure a ruling. Explaining decisions where matters of complex legal argument are involved is challenging, as is explaining to the Minister why he cannot take decisions under the Court's control whilst he remains accountable to Parliament.

Q: How did BERR respond to an unexpected surge of claims for the Chronic Obstructive Pulmonary Disease (COPD), and what lessons might this offer for administrators of other schemes?

Over 590,000 claims were received under the COPD Scheme with nearly 50 per cent of them arriving in the six months before closure to new applications. The reasons for the late surge are complex

but included – rightly – the requirement to publicise the Scheme to maximise awareness. But this was combined with some intermediaries seeking to generate claims – many of which were weaker based on evidence to support them. These have subsequently taken much more time and effort to enable them to even begin to be processed.

We monitored the late surge of claims very carefully working closely with our contractors to model the potential timescales for settlement. This information, combined with real world experience of processing the first 100,000 claims, gave us evidence to discuss with those representing claimants and the Court ways to fast track claims likely to attract smaller amounts of compensation.

Based on this we collectively developed the Optional Risk Offer Scheme (OROS) stripping out parts of the handling process – notably the detailed medical assessment. OROS has been a great success with over 170,000 claims settled via that route; and estimated savings of over £324 million from cutting the medical records and assessment process enabling scarce medical resources to focus on stronger claims. We estimate OROS has cut the scheme duration by at least 3 years.

The key lessons from our experience are:

- make sure you have robust management information about the volume of claims coming in and be transparent about the issues;
- mandate levels of key information for every claim to ensure that they can be processed through the initial stages;
- set a deadline for registration of claims and get Ministers buy-in to it and stick to it! This is much easier said than done but it's crucial.

Q: What advice would you offer to scheme administrators when claimants are represented by intermediaries?

This is a challenging area! For us having intermediaries representing claimants has played an important role in helping claimants understand their obligations and entitlements; cascading information; managing settlement timescale expectations; and ensuring claimants provide claim information as quickly as possible. They also provide useful inputs to ensure scheme rules are reasonable.

For us the most challenging part of working with intermediaries came at an early stage when we were seeking to negotiate the costs they would receive for their role. The lessons we learnt were:

- make sure you have the right skills to support cost negotiations;

- ensure you have the ability to model the costs and impacts of different outcomes;
- challenge assumptions on the tasks involved in handling claims;
- consider piloting the process;
- make provisions in any agreement that is reached for a review clause but recognise that this could be used by both parties;
- look for benchmarking evidence; and
- get the support of Ministers for your negotiating position especially if you need time to test the assumptions.

For the COPD scheme the nature of the negotiations meant that we had to agree costs up front. For other elements of the VWF scheme we have paid interims costs but then used actual evidence to agree the final tariff towards the end of the process. There are pros and cons in both approaches. In reality there is no magic formula and you are likely to be under great pressure to reach agreement so get organised.

Q: How have you sought to protect the confidentiality of the personal information that BERR has collected in settling claims?

The Coal Health Compensation Schemes have made use of large volumes of sensitive personal data including details about each claimant's employment and medical history. Keeping all that data safe has been challenging and over the 10 years that the schemes have been in operation the concerns about personal data security have grown.

The solicitors involved in representing claimants are governed by their own professional code of conduct which includes responsibilities towards the information provided by their clients. However, the involvement of so many parties – there have been over 700 solicitors representing claimants – makes this challenging.

We recognised this at an early stage. We made awareness of the obligation to protect the personal data being handled by our contractors a key requirement. Recent events which have hit the headlines have caused us to review our processes again and we have made further changes to aspects of the processes to seek to minimise the risks of unintended disclosure.

We make sure all contractors have clear data security policies in place. We use audit to check the policies are also applied in practice on the ground. We have enhanced the security of arrangements for sending records between contractors and claimant representatives by using couriers, recorded delivery etc. and for access to electronic data.



Alison Reeves
DEPUTY DIRECTOR, FOOD
AND FARMING GROUP
– DEPARTMENT FOR
ENVIRONMENT, FOOD AND
RURAL AFFAIRS (DEFRA)

Q. The Foot and Mouth epidemic in 2001 received much media attention. What advice would you offer when a compensation scheme is subject to significant media and Parliamentary interest?

It is always better to draw up the scheme with stakeholders in advance, not in the height of an emergency. With this in mind, I would offer the following advice:

- Always involve your stakeholders.
- Be clear about the rationale for Government intervention, and have a communication strategy to explain it.
- Publish the criteria and trigger points in advance; not least so stakeholder/businesses can be clear on the risks they need to own and have contingency plans for.
- Anticipate the media and Parliamentary interest and have a communications strategy ready for it.

Q. How did you balance, on the one hand, assessing compensation levels whilst, on the other, ensuring fairness between claimants?

The key lesson learned from the 2001 epidemic is about reaching agreement with stakeholders before an exotic disease outbreak on the way compensation will be assessed.

We are now better prepared:

- We now publish valuation rate cards on the Defra web site.
- We are clear about the legal base for payments and whether the policy should be new for old, or replacement valuations.
- We have a process for the special or exceptional cases (for example: high genetic index stud bull owned by a breeding company, as opposed to a stock bull owned by a farmer) and organise individual assessments in these cases.
- We have also appointed a panel of monitor valuers to ensure consistency in the delivery of valuation policy.

Q. What was the most significant challenge created by the demands of handling a large volume of cases with pressure to make payments quickly?

I don't think it's possible to give one significant challenge; we faced many in 2001. If I had to give the top three, they would be:

- our capacity to handle a surge in claims – you need contingency plans for being able to bring in more people quickly and who can easily apply the rules of the scheme;
- deciding what was fair and reasonable, which took time and resource to resolve; and
- ensuring we had an auditable system.

Q. What lessons has Defra learned from the 2001 compensation scheme?

I think there are several key reasons:

- be clear on the rationale for Government intervention;
- have your scheme agreed with stakeholders and published in advance – as I mentioned earlier we now publish valuations on the website;
- think about unintended consequences before you finalise the details, for example the tax consequences for claimants;
- deliver a sound audit trail; and
- be clear about exceptions and special cases and build in flexibility to handle them.



Gordon Askwith
DIRECTOR OF
OPERATIONS, REDUNDANCY
PAYMENTS SERVICE

Q: What do you feel is particularly important during the set-up and implementation phases of a compensation scheme?

In terms of set up – do the research and know your subject! It's very difficult to band aid once the scheme is up and running. In our case, there was a clear lack of understanding within the policy team about the industry and how it operated.

As regards implementation – don't bow to pressure and rush into launching a scheme before it's properly developed. In our case the implementation was rushed – a pilot run would have demonstrated very quickly the flaws in the initial rule set – all the material required to do this was available. The second big issue is to not make changes "on the hoof" – many amendments made to the scheme were ill-considered and often undertaken just to support earlier ill-considered judgments. Within reason, there's nothing wrong in making a mistake but it's better to admit it then compound it with another one!

Q: What were the main challenges arising from the passage of time since the claimable period?

In many cases, we were trying to establish what a fisherman was doing as many as fifty years ago. Very little independent evidence is available to support claims of employment this long ago – even an organization as obsessive about record keeping as the Civil Service had very little information that we could draw on. Most of the employers within the industry ceased to trade many years ago, thereby removing another possible source of information. And it's unreasonable to expect individuals to have a clear recollection of what exactly they were doing so many years ago. These factors inevitably led to "grey areas" when trying to establish an individual's entitlement.

However, the local press and community in all of the ports were very keen to provide whatever assistance they could. We spent many hours trawling (sorry!) through the newspaper archives at each port to build up an understanding of how the industry actually worked

Q: How might working between policy makers and scheme administrators be improved?

In a word, communication. The administration group had little or no input into the scheme design and no input into the underlying policy decisions. We were given a set of un-tried rules and a very tight timetable to get the process up and running. This failure to engage effectively with each other dogged the scheme throughout its brief life.

With hindsight, both the policy and administration teams should have worked closely together from the schemes inception. The effect of various policy options and therefore rules should have been properly assessed by undertaking "dummy running" to establish their effectiveness and the difficulty operationally of any proposed rules.

Q: What methods of communication with claimants worked well for the Trawlermen Scheme?

The fishing community is a very tightly knit one. Without doubt, our most effective communication was by word of mouth within the community following discussions with their representatives. We put a lot of effort into establishing good links with the local community via the British Fishermen's Association, MPs, local authority help centres etc and this was certainly a good investment. We also undertook surgeries at the ports, which proved very popular and allowed us to dispel some of the many rumours that used to do the rounds.

We did of course use more formal channels such as adverts in the "Fishing News" and local newspapers along with close liaison with the local port MPs.



Sue Gamble
REGULARITY AND
PROPRIETY BRANCH,
HM TREASURY

Q: What are your general observations and experiences of compensation schemes in each of the three key phases: set-up; implementation; and closure?

Neither Parliament nor the public find poor quality public services acceptable. Public sector organisations should therefore define what their customers, business counterparties and other stakeholders can expect of them and review these standards from time to time using customer feedback, including from complaints, to reassess whether these standards remain appropriate.

When it is identified that a public sector organisation has caused injustice or hardship because of maladministration or service failure, they should consider providing remedies so that, as far as reasonably possible, they restore the wronged party to the position that they would be in had things been done correctly. This does not always mean financial remedy, but can include an apology, an explanation or putting something that has been done wrong, right. This is often done on an individual basis, but where a

number of people have been affected by maladministration the department should consider developing a scheme. It is also important that they consider whether their policies and procedures need to change, to prevent the failure reoccurring.

It is at the set up stage that departments should be liaising with the Treasury through their normal Treasury Spending Team contacts. This stage is key, but there is often a great and necessary pressure to do things quickly. It is important that the research is done thoroughly and ideas sensibly tested. The considerations are much the same as should be made for any new policy or project, including whether it is a new service. If there is a need for a formal compensation scheme to be set up, this is often a flag that legislation is required too.

Experience also indicates that there are some specific issues that need careful thought when dealing with compensation schemes. These include:

- Are the scheme rules clear and easy to apply?
- Is there good, readily available guidance for both payers and recipients?
- Will the application of the rules result in fair and proportionate remedies?
- Will the outcomes achieve what was intended?

Implementation of any compensation scheme, although mainly process, needs to be closely monitored and the feedback used. Key questions include:

- Is the scheme reaching the intended population?
- Is the spend, both administration costs and scheme expenditure, within budget?
- Is it working in the expected way?

Closing the scheme should have been planned for at the beginning so that the trigger points for winding down are recognised and acted upon. The whole project should be reviewed and properly reported. Experience shows that there are always loose ends, for which responsibility and resources always need to be allocated.

Q: How should Departments keep HM Treasury informed of developments on individual compensation schemes?

Public sector bodies should consult the Treasury before finalising any compensation scheme that they are developing. The Treasury will be looking at issues relating to the regularity, propriety and value for money of the planned scheme. Once Treasury approval has been given there is no need to consult the Treasury further unless there are individual cases that exceed agreed boundaries or delegated limits.

Q: Although it is important to keep the public informed there is a risk that public statements may compromise a Department's position on liability to pay compensation, what advice might you offer them?

Clearly the public sector policy of transparency needs to be followed, but care needs to be taken where this could raise expectations or costs. Where this position appears likely to arise it is important that appropriate legal advice is sought. The aim should be to be as open as possible. When deciding whether financial remedies might be appropriate, each organisation should consider the legal rights of the other party or parties, the potential effects on its reputation and the impact on its future business.

Q: How important is it for Departments to consider the budgetary, Estimates and accounts disclosure aspects of compensation schemes?

Obviously it is key that departments' officials consider these aspects, the same as they would for any other spending decision. It helps ensure that the department can afford the scheme, is legally able to spend the money on this purpose and keeps Parliament informed of what has happened. The position needs to be regularly monitored as the scheme develops, as things change.

Q: What information can "Managing Public Money" offer those involved in compensation schemes?

At the high level, Managing Public Money chapter 3, on the role of the Accounting Officer. It includes the duty to offer redress for failure to meet agreed customer standards, while box 3.1 sets out the standards expected of the Accounting Officer's organisation. The guidance in Managing Public Money also suggests, at chapter 4, that consideration should be given to arrangements for redress after poor delivery when planning any policy or project. The main detail in Managing Public Money concerning compensation schemes is in annex 4.14: Remedy. This covers various sorts of remedy that may be offered, when each may be appropriate and gives public bodies pointers to the things they need to consider when proposing a compensation scheme. This is also where departments can find information on when the Treasury needs to be consulted, the reporting requirements and links to the Parliamentary and Health Service Ombudsman's standards of remedy.

Phase 1

Determining the extent of the liability

Summary

Ensure at the outset that the extent of the liability is fully understood and quantified as far as possible.

Evaluate the full range of options for discharging the potential liability at an early stage and decide, in principle, on the likely form of any potential scheme.



UNDERSTANDING THE OVERALL LIABILITY OR OBLIGATION

Time and effort invested at the outset in clarifying the Department's obligations and the extent of its financial liabilities are likely to greatly assist the Department to: (a) avoid the payment of compensation that is not due and (b) adopt systems for processing claims that are efficient and effective. The Department should be mindful of the following good practice:

- Monitor potential liabilities – the Department should review the likelihood of such liabilities materialising. This assessment should be updated regularly and action taken to manage the risk as the likelihood of the liability maturing becomes clearer.
- Ensure the basis of the Department's liability or obligation is clear. It may arise from a number of sources: statutory, contractual, litigation and common law, or a perceived moral obligation where hardship has been suffered consequent to State action, notwithstanding the absence of legal liability.
- Take legal advice on the nature of the Department's potential obligations as soon as possible and keep in mind the need for legal advice at each stage as the prospect of a scheme evolves. Legal advice is likely to be needed at points throughout the lifetime of the Scheme.
- Ensure the limit of the Department's liability or obligation is clear. The aspects to this are:
 - the legal defences that are available, notably statutory time bars;
 - contributory factors for which the Department is not liable, for example other causes of a disease that can be ascribed to the claimant's lifestyle;
 - co-defendants, for example where employees work over a number of years with various employers in the same industry; and
 - the nature and boundaries of any perceived moral obligation.
- Assess the extent of the total liability or obligation. Consider the size of the total population of potential claimants, the likely propensity to submit a claim, the likely amounts payable, and the expected timing of payments. Bear in mind that the extent of the liability may extend to widows or the estates of eligible claimants.
- Take actuarial advice where and when appropriate. Estimation work should normally include a report by a qualified actuary who will produce estimates of the population of claimants and the total financial liability. The estimates should include, if possible, an assessment of the size of any sub-populations that might warrant different processing procedures under any proposed scheme. Crucially, the actuary will provide an assessment of the uncertainty attached to any estimates. It is good practice in the private sector for an insurance company to have a periodic actuarial review of liabilities, typically annually. The Department should consider doing this too. Actuaries should be asked to refine the initial estimates as more and better data becomes available.

A Department may come under pressure at this early stage to make public statements as to its position on liability. Until actuarial advice has been received and a policy decision taken on liability, particular care needs to be taken to prevent poorly judged statements compromising the Department's legal position.

Photograph courtesy of Spa Press/Rex Features



The Department should establish whether it has the appropriate industry knowledge before setting the terms of grant schemes, and seek relevant external advice if it does not.

Committee of Public Accounts recommendation, February 2008

OPTIONS FOR DISCHARGING THE LIABILITY

A Department may have a range of options for discharging its liabilities. Choices are likely to narrow over time, so early consideration is desirable. The following points should be kept in mind:

- At an early stage, evaluate the range of options available for discharging the potential liability. These may include, but not be limited to: statutory schemes where eligibility and the broad features of the scheme are decided by Parliament and ex gratia schemes where no legal liability is admitted but the Department decides to make a payment.
- Where the liability is the subject of court action, the Department's response will be related to its assessment of the probability that the courts rule against it. In such instances, the Department may choose to negotiate with the parties on options above. It may decide, however, to leave cases to be settled individually through the courts or accept the possibility of a scheme developed and agreed at the behest of the court with the agreement of the various parties. Whatever the situation, it is likely that the closer the Department comes to facing a decision, whether as a result of a court decision or public pressure, the practical options open to it will diminish. An option appraisal conducted at an early enough stage and reviewed regularly is likely to offer the Department the greatest opportunity for shaping how any resulting scheme should be administered. The appraisal should encompass all the main costs the Department may be required to bear, such as any fees payable to claimants' representatives.
- Consider the likely profile of expenditure on the scheme over time and how this will be financed. The Department's finance team will need to be involved at an early stage in helping to assess and plan for the potential financial implications of the scheme, including the assessment of contingent liabilities. Their input is especially important where actuarial advice indicates that expenditure could be substantial.

Phase 2

Designing the scheme

Summary

Ensure planning covers the full lifecycle of the scheme, allowing it to be implemented effectively and wound-down efficiently.

Establish clear eligibility criteria – understandable to officials and potential claimants.

Decide whether to process claims in-house or contract out. If the latter, decide whether to appoint a principal contractor.

Ensure that the implications of proposed scheme rules are properly understood and tested prior to implementation.

Model the likely cost of administering claims for different categories of claimant and the amount of compensation likely to be at stake.

Ensure that effective oversight is established and maintained throughout the lifetime of the scheme by establishing arrangements to monitor, challenge and advise on the work of the project team.



Once the prospect of a scheme looms, and the broad nature of that scheme has been determined, the Department will need to decide how the potential compensation scheme might operate. This process will require the Department to consider a host of issues, ranging from setting workable criteria for determining eligibility, deciding the evidence it will need to support eligibility and the likely timescale for the scheme, to deciding whether to contract out the administration of the scheme and managing the expectations of claimants. Departments need to make effective use of the time available and devote sufficient resources to what can be a significant task. Once the Department announces publicly that it accepts responsibility for the liability it will be under significant pressure from stakeholders to start making payments as soon as possible.

During the design stage, the Department should seek to draw upon the expertise of other parts of government, and other organisations, with relevant experience of administering similar schemes. Where other public organisations are already interacting with the potential claimant groups, the Department should explore the scope for working in partnership, such as pooling resources and sharing information.

SETTING THE SCHEME RULES

The Department may wish to take account of the following:

- Set clear policy objectives for the scheme. The objectives should help define the scope of the scheme and help the Department consider how best to manage the scheme.
- Draw up clear eligibility criteria for compensation and define the level of evidence needed to support claims. While this process may not be straightforward, it potentially has significant implications for the cost of the scheme and the ease with which the scheme can be managed. Where the scheme is being drawn up under the auspices of the court to replicate the compensation paid under a common law settlement the discretion available to the Department may be more limited. The criteria should be clearly understandable to both officials and potential claimants. More complex criteria may help target compensation more carefully but this will need to be balanced against the fact that complex criteria may confuse potential applicants, prompt fruitless applications and contribute to a potentially greater number of appeals. The Department should model the potential impact of different eligibility criteria on the likely number of claimants and cost.
- Test the availability of evidence to support eligibility using the proposed criteria, bearing in mind that some evidence may have been lost over time or may be particularly costly or time-consuming to obtain.
- Consider whether some categories of claimants should be subject to special procedures to expedite payment of compensation. Such procedures might apply, for example, to those who are elderly, ill, or particularly needy in some way.

- Where there is a joint liability with other parties, the Department should consider how this will be managed. The Department will need to consider whether it will pay only its share of the total compensation due, or all of it and then recover from the relevant third-parties their shares. The latter will include the practicality of recovery, for example when liability involves a number of industries and occupations; and an assessment of the likely level of success. Before a policy decision is taken to pay in full and not recover all the monies due from third-parties, for example for moral reasons, the Department should explore the financial implications that would arise.
- Once the Department has publicly accepted responsibility for the liability, it should consult widely with potential sources of knowledge and expertise in the sector on the proposed scheme design. In many instances, this consultation may be the only way of gaining an indication of the workability of proposed scheme rules and whether they are likely to be fair to different categories of potential claimants. Where compensation is related to employment history, for example, the availability of historic records to support eligibility and local working practices may vary significantly across different categories of claimant, region of the country and period of service.
- Test the proposed scheme rules before launching the scheme fully. The extent of testing should be proportionate to the likely cost and risks associated with the scheme. Using a sample of different types of claim, the Department should test, for example the ease with which the eligibility criteria can be applied by officials in practical circumstances, the likely availability of supporting evidence, and the ease with which the application forms are likely to be used by potential applicants.

DESIGNING THE PROCESSING SYSTEMS

- The outline design of processing systems should take place in parallel with the design of the scheme rules. The individuals likely to be responsible for implementing the scheme should play a part in advising on the practicality of the scheme rules. Bear in mind that comparatively small changes to the scheme rules and eligibility criteria could have a potentially big impact on the ease with which the scheme can be managed.
- Seek to maximise the use of electronic systems, and to minimise paper-based systems, to process claims.
- Secure expert advice. To help identify potential delivery options, make sure there is sufficient specialist expertise on hand at an early stage to advise on the design of processing systems.
- Consider delivery options. The Department may have an existing in-house capability, but it is possible, especially for large compensation schemes, that it will wish to engage contractors to process claims. For especially large schemes, it is possible that more than one contractor will be required to deal with different aspects of the scheme. The Department will need to consider its strategy for contracting out, for example whether to appoint a prime contractor to have responsibility for appointing its own delivery partners, or to take the lead itself and manage the various contractors directly.
- Consider when to start the process for contracting out, if this is the chosen route. Significant contracts will take time to let, with the time allowed for a tendering process having to comply with OJEU requirements.



Photograph courtesy of Isaac Newton, www.rnrsbaccharite.co.uk

The Department should pilot the proposed rules using a cross section of different types of applicant. It should use the results of this pilot to determine what changes are needed to enable delivery of the scheme's objectives.

Committee of Public Accounts recommendation, February 2008

- Map the processes. Prepare an outline process map that shows the sequence of the tasks and how they will be assigned, together with decisions that will need to be taken and who will be required to take them, to complete an individual claim. If contractors are used, this responsibility may fall to the contractor in which case the Department may wish to obtain assurance on these points. Use these outline process maps to identify potential issues that might affect the processing of claims, for example the availability of appropriate skills and expertise, for example medical expertise.
- Obtain assurance that sufficient capacity can be put in place to manage the likely volume of claims. Particular attention should be paid to identifying potential bottlenecks. The opening of the scheme to new applications is likely to prompt a large volume of applications in the initial stages. Explicit attention will need to be given to the service standards the Department wishes to achieve, for example in terms of median processing times and modelling the implications these standards will have for the required processing capacity. In some situations, it may not be possible to put in place the required capacity immediately in which case the Department will need to have a strategy in place for managing the expectations of claimants and other stakeholders.
- Consider explicitly the likely unit cost of considering claims from different categories of claimant. The Department should prepare a cost model to assess whether the likely administration costs are acceptable – this model should include any costs where the Department will be billed for expenditure incurred by others, for example the travel costs of claimants attending interviews/medicals etc. The Department should assess the likely unit cost of processing claims and compare this to the likely profile of compensation to be paid; depending on the findings, consider whether it is appropriate to adopt simplified processing procedures for dealing with particular cohorts of claims, for example those of low value.
- Check that the proposed system will enable proper financial control to be exercised.
- Adequate arrangements need to be in place to maintain the physical and electronic security of personal data – consult guidelines issued by the Information Commissioner.
- Ensure management information requirements form an integral part of systems design, to enable performance to be monitored reliably; for example, early identification of bottlenecks in the processing of claims and progress towards the completion of key stages.
- Put in place effective arrangements to detect duplicate payments and prevent fraud. Seek advice from officials with experience of designing systems to combat these risks. The arrangements put in place will need to be sensitive to how these arrangements might be perceived by legitimate applicants and avoid unwarranted criticism of heavy-handedness.
- Establish arrangements to consider appeals from claimants quickly and effectively. The arrangements should enable decisions to be reviewed thoroughly within the Department and clear feedback provided to appellants. If not satisfied, appellants should have the opportunity to appeal to an independent party.

PREPARING THE IMPLEMENTATION PLAN

- Draw together the development work into an implementation plan (see box below) for approval by the project board, senior officials and ministers, as appropriate.

Aspects that should be considered for inclusion in an implementation plan

- Indicative service standards, including target processing times for different types of claim
 - A profile of claim settlements over time, and estimate of the proportion of determinations accepted by claimants and the potential number of appeals
 - A procurement strategy, setting out the options for administration of the scheme – including, where appropriate, out-sourcing – and the reasons for the preferred approach
 - A resource plan, covering the numbers of staff likely to be needed to deliver the scheme, including specialist skills
 - A plan of the data recording, handling and reporting requirements – including that needed for management reporting and financial control
 - A project timetable for procurement, publicity and launch activities, scheduled reviews and audit activity; and target dates for key milestones in handling claims
 - A communications plan covering the publicity to be generated in connection with the launch of the scheme and the enquiry handling capacity to be available during the life of the scheme
 - The scope, likely costs and benefits for allowing individual claimants, or their representatives, electronic access to information databases
 - to help speed up the receipt of information from claimants
 - A procedures and operations manual for case officers and supervisory staff
 - Explicit plans for dealing with appeals, including independent adjudication where appropriate
 - The arrangements to deal with any policy questions that might arise affecting the scope of the scheme
 - An outline of the potential closure strategy – including the criteria dictating when closure might be announced, the factors that might need to be considered and how they could be handled, and a timeline for the scheme.
-

Phase 3

Implementation

Summary

Prepare a strategy for bringing the scheme to the attention of potential claimants and for managing the expectations of potential claimants.

Establish effective arrangements for communicating with contractors, tracking emerging issues and problem solving.

Put in place arrangements for handling queries from claimants seeking information on progress with their claim.

Monitor the numbers of claims being received and be in a position to adjust processing capacity to handle the volume of work.

Make provision to formally review progress soon after the scheme is launched and at suitable intervals thereafter.



COMMUNICATING WITH CLAIMANTS AND STAKEHOLDERS

Effective communication with claimants and other stakeholders will be critical throughout the implementation phase to help manage expectations and maintain public confidence in the scheme. The Department will need to consider a range of issues, for example:

- Prepare a strategy for bringing the scheme to the attention of potential claimants. In some instances, lists of potential claimants may already exist in some form, but in other situations the Department may have to rely on media coverage and local bodies to help reach all potential applicants.
- Consider the information and advice likely to be required by claimants. Particular attention should be given to how vulnerable and disadvantaged claimants might gain access to the information and advice needed to make a claim. Bear in mind that some claimants may not have access to the internet and some may have significant difficulty in understanding application forms and the associated guidance. To address these needs, the strategy might involve, for example, enlisting the help of local bodies or the voluntary sector in providing advice.
- Manage the expectations of potential claimants. Previous experience of compensation schemes suggests that many claimants will make their application within the first few weeks and months of a scheme being announced, with another potential rush when the closing date for applications begins to loom. For very large schemes, or instances where the calculation of the amount of compensation due may be complex, it may take some time before cases can be fully considered and compensation paid. Departments should, from the start, try to provide a realistic assessment to claimants of how long claims might take to be processed on average.
- Consider how to handle queries from claimants seeking information on progress with their claim. Claimants can often be frustrated if they make a claim and hear nothing back for some months. Even if claims have to wait their turn, it will be better to say this from the start and be open with claimants. The Department will need to consider how to route such queries, for example whether to use a single contact number, and the feasibility of keeping individual claimants informed of progress on their claim.
- Where claimants are represented by intermediaries, most probably solicitors, the Department may need to consult on how information is to be imparted to claimants. A formal structure may also be needed to manage exchanges with the intermediaries on procedural and related matters.
- Make arrangements to brief relevant Members of Parliament on the plans for implementing the scheme and how claims are to be dealt with. In some constituencies, Members of Parliament may find themselves dealing with issues raised by constituents and are therefore likely to welcome being kept informed.
- Identify other relevant organisations that might benefit from briefing on how the scheme is to be implemented, for example unions, local advice bodies etc.

WORKING IN PARTNERSHIP WITH CONTRACTORS

Successful implementation will depend on a successful partnership with the Department's contractors. Even with the best plans, unexpected issues are likely to emerge as the scheme is rolled out. A constructive and open partnership on the part of all parties to the contract is much more likely to result in a flexible and effective response to problem solving.

- Put an effective contract in place. The incentives and penalties put into the contract should enable the Department and contractor work towards common objectives. Some of the issues addressed in contracts of this type are highlighted below.

Examples of issues covered in contracts for processing compensation claims

- | | | |
|---|---|---|
| ● A defined methodology for the calculation of claims, or provision for its development | ● Expected average response times | ● Flexible fee structures particularly relating to incentives and penalties |
| ● Guidelines on standards of service required | ● Targets for processing claims | ● Procedures for reporting and dealing with complaints |
| ● Procedures for the authorisation of general communications and standard documents | ● Procedures for reporting outputs to enable monitoring of progress and performance | ● An adjudication or appeal procedure for disputed claims |
| | ● Procedures for validating performance | |
-

- Establish effective communication arrangements with contractors to allow issues and risks to be discussed as they emerge, potentially weekly for large schemes. These arrangements should allow issues to be escalated to senior levels within the Department depending on the significance of the issues emerging.
- Try to avoid an adversarial relationship developing when things do not go quite to plan. Remember, claimants are unlikely to care much about the back-room functions – their priorities are likely to be speed of settlement, fairness and accuracy.
- Ensure that the Department will receive timely, accurate and relevant management information reports. Use them. In particular, regularly examine the pace at which casework is progressing through each key stage. Compare scheme performance against strategic targets and timescales; and, if necessary, devise mitigating options.
- Complete a regular review of risks.
- Maintain a consistent approach with the Department's contractors.
- Take timely action to address poor contractor performance.



Welfare schemes should have clear objectives and eligibility criteria which can be readily checked.

Committee of Public Accounts recommendation, March 2003

MONITORING PROGRESS

Even with thorough planning, the launch of a new scheme has potential to raise unexpected issues that need attention. The Department needs to be in a position to identify such issues quickly and take appropriate action.

- The rate at which claims are submitted will, to some degree, be uncertain. The Department, and its contractors, will need to be in a position to adjust their processing capacity appropriately to meet the processing times envisaged in the original plan and the expectations given to clients. An ability to cope with the rate of incoming applications, and an ability to react quickly to any variances from plan from the start, will be critical to the effective implementation of the scheme.
- Consider establishing stakeholder forums to help provide feedback to the Department and its contractors.
- If claims cannot be settled quickly, consider whether arrangements should be introduced to make interim payments, especially if the basic eligibility is not in dispute. But consider any downsides, for example the diversion of effort from the final settlement of claims.
- Some claims may raise issues not envisaged when the scheme rules were drawn up and may need to be set aside to await a policy decision. The Department should recognise such issues may arise and have arrangements for dealing with them, and keep claimants informed.
- Where joint liability exists (e.g. co-defendants in a legal case), ensure that monies due from third parties are being recovered.
- Ensure that emerging performance issues are considered at the appropriate level.

Case studies from NAO reports (1999 and 2007): Examples of Departmental responses to unexpected events

Handgun surrender and compensation

The Department found that it was able to process far fewer claims each week than expected, leading to delays. It responded by preparing plans to more than double the original complement of staff processing claims to 115. The delays resulted from:

- weaknesses in the design of the scheme and claim forms, which made checking difficult;
- the intermittent unavailability of the computer system which had been introduced quickly; and
- the need for Departmental staff to handle a large volume of enquiries about the progress of claims.

Coal health compensation schemes

The following actions were taken by the Department in response to a rising number of claims outstanding:

- The Department brought in a private sector senior secondees with programme management experience to strengthen its review of internal procedures to improve performance. As

a result of this and changes already being introduced by the Department, a new project board was established for both schemes to exert greater project management control. In addition, the number of Departmental staff was increased from some 20 to about 40 and further secondees with experience in project management and the settlement of insurance claims were engaged to provide professional input.

- The Department introduced a fast-track option, known as the Optional Risk Offer Scheme (OROS), that was aimed at remaining cases likely to attract smaller amounts of compensation. The procedures for processing these cases were simpler than the standard procedures. This provided benefits to both the Department and claimants, as administration costs were lower than the standard process and cases could be completed more quickly. The compensation offered to claimants choosing this fast-track option reflected the amounts already paid to a

significant number of claimants who had their claim processed under the standard procedures.

- The Department also took steps to improve, over time, the scope and format of the information it received from its claims handling contractor to enable the Department to track the progress of casework more effectively.
- The Department also oversaw a series of initiatives aimed at improving quality and productivity in the processing of claims. Solicitor Liaison Managers were appointed at the claims handling contractor to tackle operational difficulties more effectively. In addition, electronic procedures were extended to include the scanning in of paper based employment records at the various archive facilities and, at the claims handling contractor, the scanning of over 30 million sheets of primary documentation. These initiatives lead to more efficient processing of claims and a substantial financial saving for the taxpayer.

REVIEWING PROGRESS

- Plan to evaluate progress early in the life of a scheme to assess performance and identify areas that are working well and where improvements might be made. The review should cover the extent to which the scheme is meeting its objectives. The results of the review should be submitted to the programme board for consideration. Ministers should be advised of any significant issues.
- Formally consider the finding of reviews and take swift appropriate action.

Phase 4

Scheme wind down and closure

Summary

Take a planned approach to the wind-down and closure of the scheme.

Estimate the potential number of claims outstanding before announcing closure dates for new applicants.

Take adequate steps to ensure that all categories of potential claimant are alerted well in advance to any closure dates for new applications.

Incentivise contractors to work towards an efficient wind-down of the scheme.

Seek confirmation that the wind-down of processing capacity will still enable the remaining claims to be dealt with expeditiously.



OPTIONS FOR CLOSURE

The initial implementation plan for the scheme should contain an outline of how the scheme might be wound-up and the timescale when this might begin. As the scheme is taken forward details of how the scheme might be wound-up should be further developed. A structured approach will be needed, drawing upon legal and actuarial advice where necessary. The following factors might need to be considered:

- The Department should consider the expected costs of maintaining the scheme for remaining claims versus the potential cost and practicality of alternatives (such as reinsurance, statutory amendment of common law rights, or reversion to court determination of claims on an individual basis as and when they arise);
- Consider any legal issues that might need to be borne in mind before closing the scheme. The main specific legal options to terminate liability may involve:
 - if the compensation is statute based, closure under the existing or amended terms of the enabling legislation;
 - termination by the natural expiry of claims;
 - if the compensation is based on a common law liability, agreement with the defendants' legal representatives and, if a joint action, the courts; and
 - termination by special legislation overriding a common law basis of liability (see additional information overleaf).

SETTING THE CLOSURE DATES

- The Department should estimate how many potential claimants have yet to claim before deciding upon any closure date. If necessary, the Department should seek advice from actuaries. The aim should be to identify any groups of potential claimants who seem to have missed out. If a closure date is set too early, the Department risks closing the scheme before large numbers of eligible applicants have become aware of it, leading to unfair treatment, or sparking a rush of applications that becomes difficult to handle with the processing capacity available.
- The Department should make all reasonable efforts to ensure that the existence of the scheme is brought to the attention of potentially eligible claimants. This may require further advertising, and other promotional effort, to alert claimants to any closure date.

PROCESSING THE REMAINING CLAIMS

Winding down the arrangements for paying compensation can be just as much a challenge for a Department as the start-up. Retaining sufficient staff with the right skills is likely to be critical to achieving continued efficient delivery of compensation, especially if there is a cohort of more difficult cases. The following factors need to be kept in mind:

- Continue to control administration costs.
- The Department should put appropriate incentives and penalties into its contracts with contractors to incentivise them to complete the processing of claims efficiently and effectively. Cost efficient completion of claim applications is less likely to be achieved if there is an element of staff working themselves out of employment. It is therefore good practice to align the interests of stakeholders as best possible by providing incentives designed to encourage efficient closure. These might include financial incentives for claims handling staff or outsource organisations, based on case closure volumes or on particular milestones achieved by specified dates.
- The Department should consider how best to deal with the claims still to be processed. Towards the end of the scheme, the claims still to be settled are likely to comprise a higher proportion of more difficult cases. This strategy may involve taking a more robust line on some categories of cases, or offering a compromise in return for settlement, bearing in mind the likely cost of continuing to keep administrative resources in place.
- With regard to resource management in the Department and its contractors during wind-down, matters likely to need planning well in advance will include: termination of contractual obligations, such as to landlords, outsource providers and utility suppliers; and reductions in staffing numbers, possibly through redundancy or further outsourcing, while using measures such as retention bonuses to retain skilled processing staff and key managers.
- Before closure, consideration must be given to any remaining entitlement to recover contributions from co-defendants, if applicable, and how this will be pursued.

Additional information

COMMON LAW LIABILITIES

A public sector scheme which has been implemented under the authority of the courts rather than statute, to mirror liability established under common law, such as coal health compensation schemes, will not achieve finality of liability simply by the closure of the scheme, unless all future potential claimants have become ineligible, as a result for example of the operation of the statute of limitation.

The reason for this is that schemes without a statutory basis offer claimants an alternative to, rather than a replacement of, court action to seek damages. Such a scheme could normally be closed at any time unilaterally, leaving the common law liability unresolved. There may be claimants who are as yet unaware of the scheme, their symptoms, or the closure date who are not subject to time bar at the time of closure and who remain entitled to pursue a claim through the courts.

Scheme termination despite the possibility of further claims may still be considered an appropriate step towards ultimate closure. This could be the case, for instance, if the level of remaining potential claims is expected to be low enough to justify leaving their outcome to individual court cases, or because a political judgment is made that sufficient opportunity for compensation has been offered, and that it is fair to force any remaining claimants to establish their own claims through the courts, as they would be forced to do in the private sector.

Whilst a scheme remains available and pays at levels approximating the likely court awarded damages, a claimant would be expected to prefer claiming under the scheme rather than taking court action, because the cost implications to the claimant of mounting a claim are less of a barrier to claims under the scheme than under court action.

ACTUARIAL AND LEGAL ADVICE

Actuarial advice is necessary to determine what volume, value and phasing of claims might still be expected in the future. Factors relevant will be evidence of the last point in time of employment at which the causal conditions could still have been present; the populations employed at various time periods; the latest medical research as to the potential lag or latency period between exposures and symptoms; volume patterns experienced on claims already received; and legal limits to claiming, such as imposed by the statute of limitations.

Legal advice would also be necessary, first to give the actuaries the correct basis for their assumptions as to when claimants will be time barred, and secondly to provide the compensating body with advice as to the closure options available to it.

POST CLOSURE

- If any remaining liability is expected after closure of the compensation scheme, practical arrangements will need to be made to be put in place for dealing with this liability. This may include the need to retain some expertise and to maintain access to records to ensure duplicate claims are identified, and to address information requirements such as to comply with subpoenas.
- On the matter of the management of records, the Department should refer to its public obligations and its wider policy on this matter. In particular, it should ensure that it can comply with *Freedom of Information (FOI)* requests, and that internal and external audit teams are able to access the information they need.
- The Department should develop a checklist of residual issues, which would be similar to any business closure.
- The extent to which all outstanding issues have been cleared should be reported to the programme board.

Case study from an NAO report (2007): Example of managing the closure of schemes

Coal health compensation schemes

The Department set aspirational dates for the effective closure of both schemes. In setting these dates the Department took account of the fact that a significant proportion of the remaining claims raised complicated issues. The Department mapped out the risks it faced, including the need to work effectively with its contractors and solicitors, and sought to put in place arrangements to manage these issues.

The Department and its contractors, working with solicitors, should retain sufficient numbers of skilled staff to settle the remaining claims as soon as possible.

Committee of Public Accounts recommendation, March 2008

Additional reading

- You may find it worthwhile to refer to two documents published by the Parliamentary and Health Service Ombudsman: *Principles of Good Administration* and *Principles for Remedy*. Both documents can be viewed on its website (www.ombudsman.org.uk).
- You may also find it useful to refer to “The Green Book” (<http://greenbook.treasury.gov.uk>), guidance issued by HM Treasury on *Appraisal and Evaluation in Central Government*. The guide seeks to help Government departments and agencies appraise and evaluate their activities.
- You should be mindful of the requirements of Managing Public Money (<http://managingpublicmoney.treasury.gov.uk>) issued by HM Treasury. Particularly relevant are:
 - Chapter 4.5 (Control of expenditure) and the associated Annex 4.7 on the arrangements for preventing, countering and dealing with fraud;
 - Chapter 4.11 (Non-standard transactions) and the associated Annex 4.13 (Special Payments);
 - Chapter 4.12 (Standards of Service); and
 - Annex 4.14 (Remedy).
- Further guidance on fraud related matters is contained in HM Treasury’s *Managing the Risk of Fraud – A Guide For Managers*. It has also published, with the National Audit Office, the guide *Good Practice in Tackling External Fraud*.

Postscript

I hope you have found the briefing material helpful. If you have any observations, including any suggestions for improvement, please do not hesitate to let me know on peter.gray@gro.

Peter Gray, Director

