



National Audit Office

The compensation scheme for former Icelandic water trawlermen

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20 June 2007

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SUMMARY

1 The United Kingdom Government made agreements in the 1970s to end the ‘Cod Wars’ with Iceland. These agreements prevented UK vessels from fishing in Icelandic waters and contributed to the broader decline of distant water fishing.

2 As jobs were lost, on the basis of their interpretation of employment law at the time, Department of Employment officials advised trawlermen that they were not entitled to redundancy compensation from their employers. A court ruled in 1993 that this interpretation of the law was wrong. In response the Department of Employment set up an *ex gratia* scheme to compensate former trawlermen who had not sought a redundancy payment at the time of their dismissal. Former trawlermen, however, considered this

compensation scheme which linked payments to length of service with an employer did not recognise that their employment often required them to move between different vessels and employers.

3 In July 2000 the Department of Trade and Industry [the Department] announced a compensation scheme whose objective was to compensate “former distant water trawlermen who lost their jobs when the industry collapsed following settlement of the ‘Cod Wars’”. The scheme was targeted on former UK-based trawlermen who had worked in Icelandic waters. By March 2007 the Department had paid just under £43 million in respect of 4,400 claims, or 63 per cent of claims from or on behalf of around 7,000 former trawlermen.

4 In February 2007, the Parliamentary Commissioner for Administration [Ombudsman] reported the results of her investigation into the administration of the scheme following complaints from a number of claimants. Her report made three findings of maladministration: that the scheme was devised and launched before it was appropriate to do so; that there was a mismatch between what the scheme was intended to deliver and what it was capable of delivering through the scheme rules; and that the problems identified during the operation of the scheme should have led to a comprehensive review of the scheme, which did not happen.

5 This report focuses on value for money issues and was conducted in parallel with the Ombudsman's inquiry. The report draws lessons for future schemes and is intended to help inform the development of guidance for Government departments as recommended by the Ombudsman in her report.

Main findings and conclusions

6 The development of a scheme to compensate former trawlermen for loss of employment as a result of the settlement of the 'Cod Wars' posed the Department with a difficult challenge. Former trawlermen who had worked in Icelandic waters were not an easily identifiable group with a common employment history, but individuals who had served for varying periods on a range of vessels in Icelandic and other waters. Added to that, the 'Cod Wars' had ended over twenty years before.

7 The Department was under pressure to deliver, and it managed to pay some applicants within a reasonable time. But the scheme had significant shortcomings which inhibited efficient and effective delivery of the scheme objectives. Before the Department launched the scheme it did not know enough about the industry, its structure or working practices to enable it to draw up workable scheme rules. It did not check the availability and robustness of the evidence it would need to verify claims or establish how the rules would work in practice with applicants from different ports. In the difficult circumstances it faced, the Department was never likely to deliver a perfect solution, but better preparation would have put it in a stronger position to manage the uncertainties it faced.

8 Our detailed findings are:

- The Department did not develop a robust plan to implement the scheme, setting out targets, and the resources needed to meet those targets, with an assessment of the risks to achieving its objectives.
- The scheme cost £18 million more than the initial estimate of £25 million, primarily because the Department had to address additional issues affecting the scope of the scheme as claims came in. While an accurate initial budget would have been difficult to estimate given the uncertainty involved, presentation of a range of estimates based on sensitivity analysis of key variables would have made the Department's decision making more robust.
- Some claims took a long time to process, due to problems with the quality and availability of evidence, and uncertainties about interpretation of the scheme rules. But the Department did allocate additional staff once the initial rush of applications became clear.
- There is no evidence that in designing or interpreting the scheme rules the Department sought to discriminate in favour of some groups of claimants or against others. Under the rules claims from Hull were more likely to be paid, with higher amounts, than claims from other ports. The Department ascribes this to the greater dependence of Hull on distant water fishing in general. But the Department did not anticipate the likely impact of the rules on the different ports and therefore was not in a position to explain effectively its position when the scheme was launched, exacerbating the sense of grievance in the ports. Although this effect of the scheme rules was not fully anticipated, it could have been with better understanding of the industry.
- Our sample of 100 claims revealed 11 cases where former trawlermen were overpaid or underpaid by reference to the final scheme rules, due in some cases to operational errors, but in most cases because the Department lacked the evidence it needed to assess accurately whether claims were eligible for payment under the scheme rules. We found a further 25 cases in our sample where there was insufficient evidence to conclude with certainty that the claim decisions were correct.

Good practice points for future non-statutory schemes

We have drawn out the following good practice points which Departments should take into account when considering the establishment of similar schemes.

Scheme design

- 1 Departments should establish sound governance arrangements, with a senior responsible owner and project manager and a project board.
- 2 Departments should set realistic objectives to clearly define the purpose of the scheme and the target group. The objectives should be intelligible to potential applicants.
- 3 In establishing scheme rules, Departments should identify and consult widely with potential sources of knowledge and expertise in the sector.
- 4 Departments should assess the potential scale of claims under different rules, the likely number of claims and the likely profile of payments in terms of amount and timing – the latter being crucial for the Department’s financial management. The data and assumptions underpinning these estimates, and the sensitivity of estimates to variations or inaccuracies in those assumptions, should be explicitly stated and analysed. For larger schemes, Departments should consider the need for actuarial advice.
- 5 Departments should pilot the scheme, in particular to identify the effects of alternative rules and the availability of evidence to support claims.
- 6 In producing estimates of the costs of the scheme, Departments should identify uncertain factors and assess sensitivity to changes in key variables.
- 7 Departments should consider the likely unit cost of processing claims and compare this to the likely profile of compensation to be paid. Departments should consider whether it is appropriate to introduce a simplified procedure for dealing with small claims.
- 8 Governance should include effective risk management arrangements, covering the cost of claims, cost of administration, timeliness of processing, equity between claimants, effectiveness of targeting, fraud, and the completeness of evidence to support claims. Risks should be considered and reviewed as the design of the scheme evolves.
- 9 Departments should carefully consider the need for specific legislation to provide statutory authority for scheme expenditure, based on sensitivity analysis of the likely length and financial scale of the scheme.

Before the scheme is implemented

- 10 The implementation plan should include:
 - a indicative service standards, including target processing times and response times for enquiries.
 - b the profile of claim settlements over time, the proportion of determinations accepted by claimants, and those subject to appeals with a target date for closure.
 - c a procurement strategy for the administration of the scheme – including, where appropriate, outsourcing.
 - d a resource plan, covering the numbers of people required, skills and training requirements, whether for in-house delivery or as a reality check against tender submissions.
 - e a plan of the data recording, handling, manipulation and reporting requirements – including that needed for management reporting and financial control.
 - f a project timetable for procurement, publicity and launch activities, reviews and audit, and target dates for key milestones.
 - g a communications plan covering the publicity for the launch of the scheme and the handling capacity of subsequent enquiries.
 - h a procedures and operations manual for case officers, supervisory and management staff.
 - i explicit plans for dealing with appeals, including independent adjudication where appropriate.
 - j appropriate arrangements to deal with any policy questions that might arise affecting the scope of the scheme.
 - k an outline of the potential closure strategy – including the criteria dictating when closure might be announced, and the factors that might need to be considered.

After the scheme begins

- 11 In communicating with claimants, Departments should explain decisions clearly, and keep claimants informed if processing times are long. If claims cannot be settled quickly, Departments should consider making interim payments, especially if the basic eligibility is not in dispute.
- 12 Departments should fully document all supervision checks and controls, and record in detail the reason for each claim decision.
- 13 Departments should have effective and timely performance management arrangements in place to ensure that emerging performance issues are considered at the appropriate level.
- 14 Departments should evaluate progress shortly after the scheme begins to assess performance and identify areas for improvement, with a further evaluation after it has closed.



Background

1.1 This part explains the background to the scheme.

Scope of the scheme

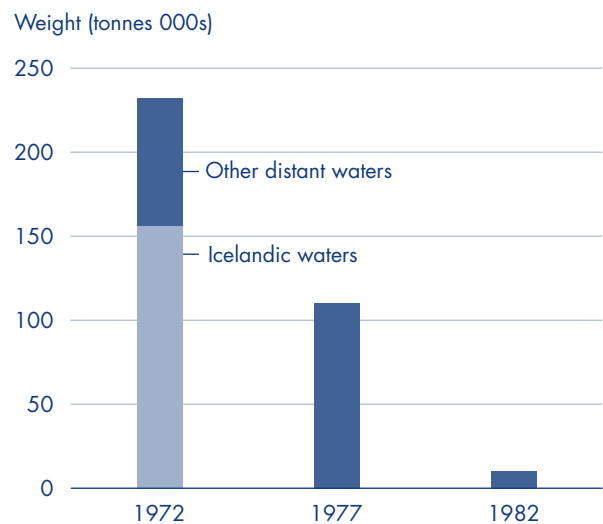
1.2 After the Second World War much of the UK fishing industry worked distant waters,¹ particularly those around Iceland, where for example 17 per cent of fish by weight were caught in 1972. Following a series of disputes between the UK and Iceland over access to these waters (known as the ‘Cod Wars’), the UK Government agreed in 1976 to phase out fishing by vessels based in the UK within 200 nautical miles of Iceland.² **Figure 1** shows the loss of access to Icelandic waters contributed, along with other factors, to a steep decline in the distant water industry.

1.3 The UK distant water industry was concentrated in a few ports, particularly Hull, Grimsby and Fleetwood and **Figure 2 overleaf** shows how severely these ports were affected as the distant water industry contracted. This in turn reduced employment opportunities for former Icelandic water trawlermen not all of whom could find alternative employment in the industry.

1.4 As the distant water industry contracted, the Government paid some £45 million to vessel owners which included compensation for loss of assets, but owners were not obliged to pass any payments on to trawlermen. In addition, vessel owners did not make statutory redundancy payments to trawlermen because of a presumption that they had been employed on a voyage-by-voyage basis and could not have accrued the minimum

two years’ continuous service needed to qualify for such payments. Former trawlermen could have tested their eligibility for redundancy payments before employment tribunals but many did not do so within the statutory time limits, in part as a result of advice from local Employment Department officials on the basis of their interpretation of employment law at that time. In 1982 former trawlermen established the British Fishermen’s Association to campaign for compensation.

1 Decline in landings of fish at UK ports from distant water areas, 1972–1982



Source: UK Sea Fisheries Statistics, Department for Environment, Food and Rural Affairs

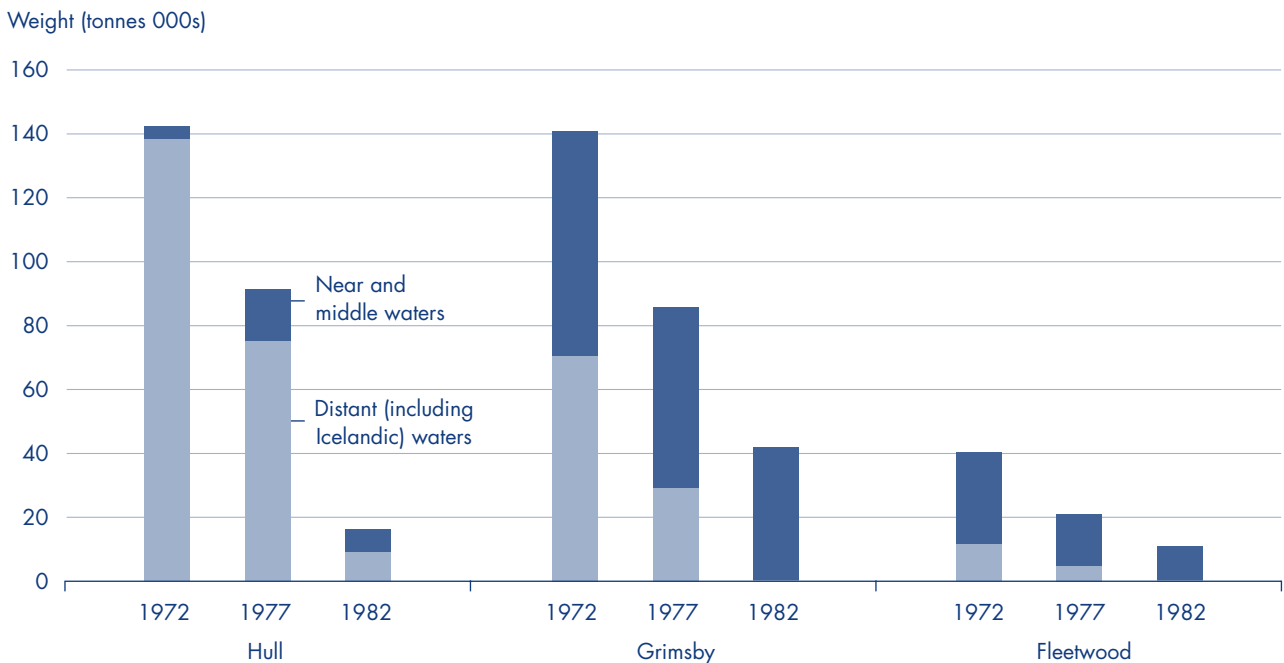
¹ Official Government statistics define the distant water industry by size of vessel (namely vessels of 140 feet and over in length) rather than location. Vessels of this size were capable of trawling the area around Iceland, together with for example the Barents Sea, the Norwegian Coast and the Grand Banks of Newfoundland.
² The 1976 Agreement allowed access for a maximum of 24 UK-based vessels (at any one time) for six months, after which all vessels based in the UK were prohibited. An earlier agreement between the UK and Iceland in 1973 restricted fishing by UK-based vessels within 50 miles of Iceland.

1.5 Following the pursuit of some cases through employment tribunals, the Court of Appeal ruled in 1993 that former trawlermen could in certain circumstances have been regarded as continuously employed and therefore had been entitled to statutory redundancy payments.³ The Government set up arrangements to make *ex gratia* payments to any former trawlermen who may have suffered due to advice by local Employment Department officials. The *ex gratia* scheme operated between 1993 and 1995, during which time responsibility for the scheme passed from the Employment Department to the Department of Trade and Industry as a result of Government reorganisation. Payments totalling some £14 million were made to almost 9,000 men. In keeping with statutory redundancy payment rules, former trawlermen had to demonstrate at least two years of continuous service with a single employer to qualify for payment, the size of which was then linked to length of service with that employer. The former trawlermen considered that this was insufficient compensation for the loss of their industry as a whole, because their employment often required them to move between different vessels and employers. Further, former trawlermen who had tested their eligibility through tribunals were excluded from

ex gratia payments because the Employment Department had deemed that they had not been misdirected. They therefore continued their campaign.

1.6 On 28 July 2000 the Department of Trade and Industry [the Department] announced a scheme whose objective was to compensate “former distant water trawlermen who lost their jobs when the industry collapsed following the settlement of the ‘Cod Wars’”.⁴ The scheme was targeted on former UK-based trawlermen who had worked in Icelandic waters. The Department stated that while it was not legally obliged to compensate former Icelandic water trawlermen, it recognised that they had suffered an injustice. The scheme, which opened to claims on 2 October 2000, was administered by the Redundancy Payments Service, now (and since 2004) part of the Insolvency Service, an Executive Agency of the Department. Responsibility for the development of policy with respect to the scheme (including the establishment of and changes to scheme rules and guidance to the Redundancy Payments Service on how to interpret the rules) lay with the Employment Relations branch within the Department. A timeline of the key events is at Appendix 2.

2 Decline in landings from distant and other waters by port, 1972–1982



Source: UK Sea Fisheries Statistics, Department for Environment, Food and Rural Affairs

NOTE

Data for landings from Icelandic waters by port are not available.

³ *Atkinson & Dickinson v Hellyer Brothers.*

⁴ The Department’s press notice announcing the scheme, 28 July 2000.

1.7 The main eligibility criteria governing payments from the scheme are set out in **Box 1**. In designing the rules officials sought to reflect the Department's objectives, by targeting compensation to those who depended on the industry (the rationale for specifying continuous service), and to those most likely to have been affected by the settlement of the 'Cod Wars' (the rationale for restricting eligibility to those whose fishing ended between 1974 and 1979 inclusive).

1.8 The scheme closed to applications in October 2002, by which time the Department had received claims from (or on behalf of) around 7,000 former trawlermen.⁵ Due to changes in the scheme rules and additions to the list of qualifying vessels, the Department continued to make payments on the basis of revised assessments of claims.

1.9 The Department made around 5,200 payments totalling nearly £43 million, in respect of some 4,400 claims.⁶ Successful claimants on average received around £9,700.

1.10 In February 2007 the Parliamentary Commissioner for Administration [Ombudsman] published a report⁷ of her investigation of complaints relating to the management of the scheme. The Ombudsman's remit was to establish whether individual complainants suffered injustice as a result of maladministration by the Department. Appendix 3 provides more detail on the Ombudsman's scope and findings.

1.11 This report examines the cost-effectiveness of the way the Department planned and implemented the scheme. It was prepared alongside the Ombudsman's investigation which focused on maladministration, and is intended to help inform the development of guidance for Government departments as recommended by the Ombudsman in her report.

BOX 1

Scheme rules – eligibility criteria

Former trawlermen were paid in proportion to the length of time spent on qualifying vessels. The former trawlermen's fishing records gave details of time spent on each vessel.

The Department regarded a vessel as qualifying if there was independent evidence¹ that it had made at least two trips to Icelandic waters in its lifetime.

Former trawlermen were entitled to compensation of £19.23 for each complete week (amounting to £1,000 per year) of a continuous period of work of at least two years on qualifying vessels, up to a maximum of £20,000.

Former trawlermen needed to show at least two years of continuous work on qualifying vessels, ending after 1 January 1974. Breaks of less than 12 weeks in fishing records counted towards continuous service, as did breaks of more than 12 weeks relating to unemployment, sickness or imprisonment. "Relevant breaks", involving breaks of more than 12 weeks during which time paid work of any kind and duration (other than on qualifying vessels) was undertaken, represented a break in continuous service.

The initial scheme rules determined that only former trawlermen whose last voyage on a qualifying vessel ended before 31 December 1979 would be eligible. In October 2001 the Department changed the rules to allow compensation payments to former trawlermen who continued working after 31 December 1979, although payments were made only in respect of voyages on qualifying vessels up to the end of 1979. The Department made this change to include a significant number of affected former trawlermen with long careers who the scheme was intended to capture, but who were ineligible under the original rules because they went back for isolated voyages after 1979, or because their vessels were converted to middle water fishing.

Where a former trawlerman had previously received payment under the *ex gratia* scheme, the Department made a deduction from his entitlement in proportion to the period of eligibility under the Icelandic waters scheme.

Source: Scheme rules

NOTE

¹ Examples of acceptable independent evidence included *Olsen's Fisherman's Nautical Almanac*, *Lloyds Register of Shipping* and *Fishing Times*.

⁵ The Department reported that it had also received some 4,000 duplicate claim forms as a result of the distribution of forms through a number of channels and, for example, where a former trawlerman was deceased and on whose behalf several dependents had made separate claims.

⁶ Some trawlermen received more than one payment due to successful appeals, more information or changes in the rules. Previous Departmental statements in Written Answers or press notices refer to the number of payments, not the number of successful claims, and in some cases to the number of claim forms received including duplicates.

⁷ *Put Together In Haste: 'Cod Wars' trawlermen's compensation scheme*, HC 313, Session 2006-07.



Implementation of the scheme

2.1 This part examines the Department’s management and implementation of the scheme.

Processing applications

2.2 In October 2000, the first month after the scheme opened, the Department received claims from over 3,700 former trawlermen and their dependants (54 per cent of the eventual total), and from a further 1,000 (16 per cent) in the following month.⁸ The Department did not expect to receive such a large number of claims at the scheme outset. More fundamentally, however, it soon became evident that processing some claims would raise more difficult questions about eligibility.

2.3 The Department did not set formal targets for the rate it planned to process claims before or after the scheme began. In a sample of 100 claims reviewed in detail by us, it took on average just under eight months for the Department to take an initial decision (**Figure 3**). In just over half the claims in the sample, the Department had to obtain further information and explanations about gaps in fishing histories from former trawlermen and other sources before it could reach an initial decision. But the Department took on average six months to reach this conclusion and request the information. A few cases took significantly longer, often requiring policy questions to be resolved first.

3 Time taken to process claims in the sample

Median time taken	Months	Number of claims affected
From receipt of claim to initial decision	7.5	98
Receipt of claim to initial decision – claims where no further information was requested	5.3	45
Receipt of claim to initial decision – claims where further information was requested	9.2	53
Receipt of claim to request for further information	6.5	53
From request for formal review to appeal decision	5.7	23
From request for adjudication to adjudication decision	1.2	10

Source: National Audit Office analysis of a sample of 100 claims

NOTE

The Figure shows the median time taken to complete each stage of the assessment decision. Some claims within the sample of 100 are excluded where dates of key stages were not recorded on the claim file.

⁸ Based on the date of receipt shown for each claim recorded on the Department’s database. Duplicate claim forms were not recorded on the database.

2.4 The initial delay was because the Department had not allocated enough staff. In November 2000, the Redundancy Payments Service had one manager, one supervisor and five case officers to process applications on a full-time basis. In the early months of the scheme the Department focused on claims which appeared both easier to process and more likely to be eligible for payment under the scheme rules. The Department quickly realised that more staff resources would be needed to address the backlog of claims, gradually increasing staff numbers to around 10 case officers by March 2001, and then doubling the number of staff to 20 by early May 2001. As **Figure 4** shows, this had an immediate effect on the processing of claims, with decisions made on over 600 claims in each of May and June 2001.

Applying the scheme rules

2.5 The main problems for the Department, however, lay in these aspects of the scheme rules:

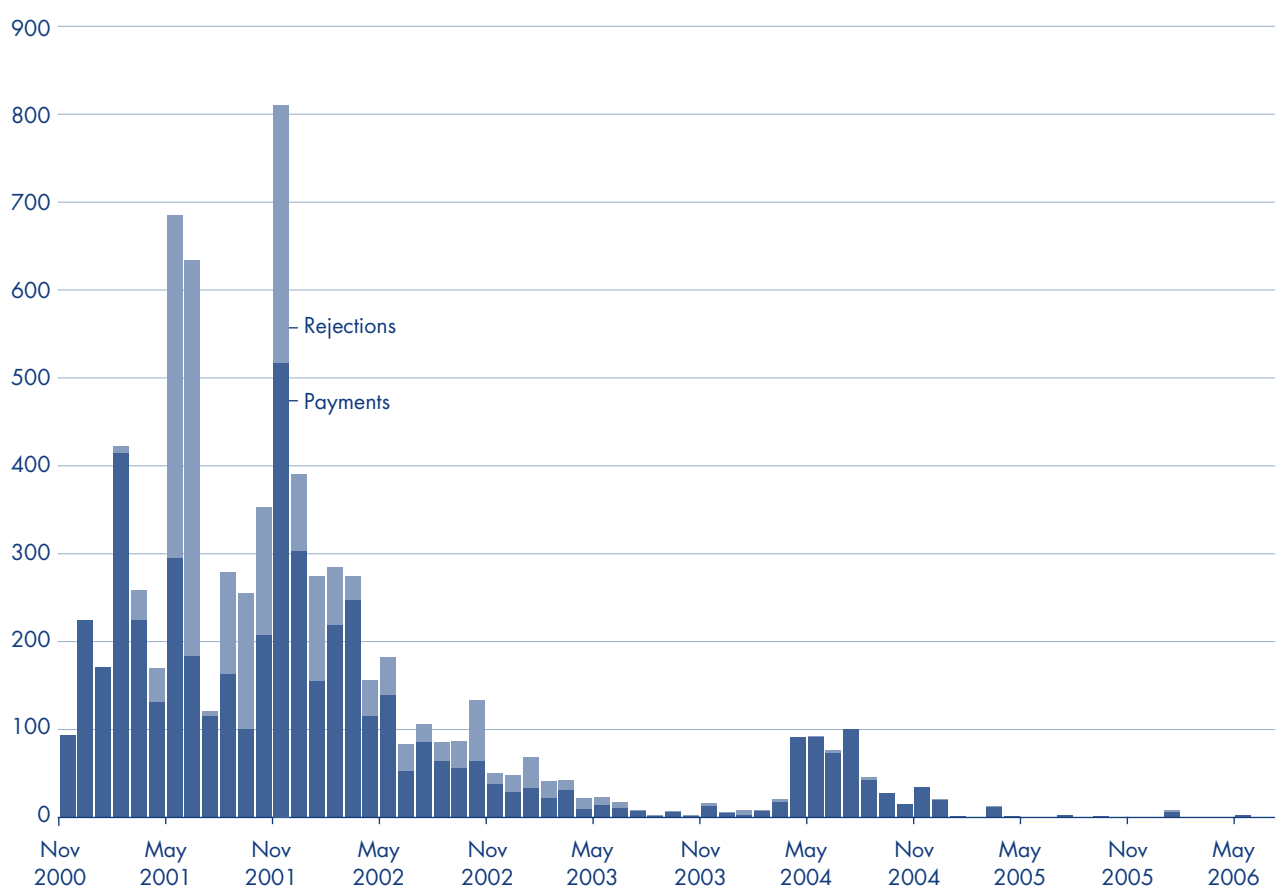
- applying the eligibility criteria;
- obtaining sufficient evidence to support claims; and
- resolving policy questions.

Applying the eligibility criteria

2.6 The Department sought to target compensation on trawlermen whose livelihoods had been directly affected by the outcome of the 'Cod Wars'. It therefore drew up scheme rules which sought to distinguish these trawlermen from those who had lost their jobs as part of the wider decline of the UK's deep sea fleet. In practice, this proved highly problematic.

4 The profile of processing of claims

Number of claims processed



Source: National Audit Office analysis of Departmental data

2.7 The Department had difficulties in establishing the criteria for identifying qualifying service. Very few, if any, of the vessels had fished Icelandic waters continuously; distant water vessels could pass through Icelandic waters on the way to other distant waters; while many middle water vessels were able to fish in Icelandic waters during periods of better weather and were also affected by the loss of fishing grounds, albeit to a lesser extent. The Department decided that firm evidence of a vessel making two trips to Icelandic waters in a lifetime would serve as sufficient evidence of dependence on Icelandic waters and therefore the vessel could be added to the qualifying list. Any service on such a vessel, irrespective of where that was, would qualify.

2.8 When the scheme opened in October 2000 the Department did not have a complete list of qualifying vessels. Shortly before that, representatives of former trawlermen from the British Fishermen's Association in Hull had supplied the Department with a list of the vessels they considered had fished in Icelandic waters from all ports. In January 2001, however, Redundancy Payments Service officials became aware that the list they were using did not include all of the vessels that may have met the qualifying criteria. Representatives from Grimsby supplied a list of more than 100 vessels not on the list that they said had fished in Icelandic waters from their port. The Department began verification work and continuously added vessel names to the qualifying list. It did not have a complete list of qualifying vessels until March 2004, 18 months after the scheme had closed to new claims.

2.9 The difficulty in compiling a list meant that:

- officials had to lay some applications aside to await decisions on whether service on particular vessels qualified;
- some calculations had to be revisited as more vessels were added to the list; and
- some awards were re-calculated only when the applicant appealed for the case to be re-examined by the Department.

These changes significantly complicated and added to the cost of the administrative process, and increased the inconvenience and delay experienced by some applicants.

2.10 The application of the break-in-service rule meant that there were significant differences in the average amounts paid to applicants in the different ports. The Department had not foreseen this outcome in its option papers during the design of the scheme. It received more claims from Hull than from other areas and average payments to former trawlermen and their dependents from Hull were also higher (at just over £11,400) than those living in other areas (**Figure 5**). The average amount paid in respect of eligible claims from all areas was around £9,700. Our examination suggested that the break-in-service rule affected proportionally fewer claims from Hull. The Department has argued that this reflected in part the varying dependency of different ports on Icelandic waters and therefore fitted with the scheme's objectives. The distant water fleet accounted for a greater proportion

5 Claims received from and payments to former trawlermen by geographic area

	Claims received		Paid claims		Total payments		Average payment to those paid
	Number	%	Number	%	£m	%	£
Hull	2,054	30	1,599	78	18.3	43	11,400
Grimsby	1,719	25	1,143	66	9.8	23	8,500
Fleetwood	740	11	462	62	4.4	10	9,500
Aberdeen	703	10	272	39	1.6	4	5,900
Other	1,733	24	924	53	8.5	20	9,200
All areas	6,949	100	4,400	63	42.6	100	9,700

Source: National Audit Office analysis of Departmental data

NOTE

The Department did not record claims received by port on its database. These data refer to the location of the claimant, which in some cases may differ from the port from which the former trawlerman worked due to the passage of time, tending to inflate the "Other" category. Hull and Grimsby areas here are defined by county council boundaries, and Fleetwood includes Blackpool addresses.

of fishing in Hull than in other ports (Figure 2) and almost all Hull vessels were large, distant water vessels which were more likely to meet the qualifying criteria. The other ports had mixed fleets, with near water and middle water vessels which were less likely to have been able to make the journey to Icelandic waters due to their size. Since trawlermen had moved from vessel to vessel under a 'pool system',⁹ it was more likely that they would encounter periods on non-qualifying vessels if they worked in a port with a mixed fleet.

Obtaining sufficient evidence to support claims

2.11 To determine eligibility, the Department needed a former trawlerman's contemporaneous fishing records, listing the vessels he had worked on; and (where there were gaps of more than twelve weeks in the fishing records) his National Insurance records, which could indicate whether he had undertaken paid work outside the industry during any gaps, thereby constituting a break-in-service. When the scheme started, the Department already held some fishing records of former trawlermen who had received payments under the *ex gratia* scheme. It did not, however, undertake an assessment of the quality or completeness of the evidence it held or needed before the new scheme began.

2.12 The Department had difficulty obtaining the evidence it needed. The Department had no access to centrally-held fishing records from the ports. Former trawlermen could access these records where they were still available, but many records were missing or incomplete, for example where they had been destroyed by fire. The Department therefore had to rely on some trawlermen providing their own evidence which, after over 20 years, they had not always retained. If the Department identified breaks of more than twelve weeks and sought further information, the former trawlermen could not always remember what they had been doing many years earlier, and dependants making claims on behalf of former trawlermen often did not have this information. Nevertheless, given the rules the Department had drawn up, it had no practicable alternative in assessing an individual's fishing background.

2.13 Although the Department had had statutory access to National Insurance records in administering the earlier *ex gratia* scheme,¹⁰ this access had been lost as a result of the transfer of Contributions Agency responsibilities for National Insurance from the Department of Social Security

to the Inland Revenue in 1999. The Department did not realise the implications of this change for the scheme and therefore did not arrange access to these records with the Inland Revenue before the scheme began. The Department approached the Inland Revenue informally in March 2001, and made a formal request in December 2001. This resulted in an agreement in 2002 whereby, in the absence of a statutory right of access, the Inland Revenue released National Insurance records with the written permission of the former trawlerman.¹¹

2.14 The difficulty of obtaining sufficient supporting evidence initially had an impact on the priority with which applications from different ports were dealt with. Officials had decided, before the scheme was launched, that claims should be processed on a first-come-first-served basis. This was not a realistic plan for dealing with a scheme where a large number of claims were received soon after the launch. In January 2001 the Department therefore decided on processing claims from applicants from Hull which were more straightforward than those from other ports because of a more complete Hull vessel list and relatively fewer breaks in service among Hull applicants. But, after a time, this began to create inconvenience and frustration for applicants from other ports. The Department's decision to recruit additional staff in April and May 2001 allowed it to process more applications from all ports.

Resolving policy questions

2.15 Ambiguity associated with the initial scheme rules and issues emerging during the administration of the scheme also complicated the processing of applications. At the start of the scheme, for example, the Department did not define precisely what it meant by Icelandic waters (and therefore did not have clear criteria against which to test whether vessels qualified). In March 2002 the Department defined Icelandic waters as extending to 200 imperial miles from Iceland.¹² Further, officials became aware that vessels traditionally recorded as fishing around the Faroe Islands (which had initially been excluded from the scheme) could have at some point trawled in an area that lay within 200 miles of Iceland. In March 2004 the Department concluded that 21 such vessels should be regarded as meeting the qualifying criteria and made available an additional £2 million for payments to former trawlermen who worked on these vessels.

9 Vessel owners and the Employment Department operated a pool system to ensure there were sufficient qualified trawlermen available to all vessel owners in the system. A trawlerman temporarily without a vessel was entitled to unemployment benefit but could be required to cover a vacancy on a vessel owned by a different company or lose his benefit entitlement.

10 National Insurance information obtained for the *ex gratia* scheme was in the form of computerised records from 1975-76 onwards, which did not cover earlier years and were therefore insufficient for the administration of the trawlermen scheme.

11 Formally, the National Insurance Contributions Office supplied the Department with records.

12 This limit equates to 174 nautical miles. The 1976 Agreement between the Governments of the UK and Iceland refers to arrangements for fishing within 200 nautical miles of Iceland.

Impact on accuracy of processing

2.16 The difficulty of obtaining sufficient evidence to support eligibility and problems with applying scheme rules meant that officials had to exercise significant discretion in deciding whether to award compensation in individual cases. They set aside some to await policy decisions but processed others. Amongst our sample, no claims were rejected because of errors by former trawlermen or their dependants in the completion of claim forms. There was evidence on claim files that the Department had made significant efforts to seek further information from claimants whenever there were information gaps in the claim form. Despite these efforts, discretion still needed to be exercised where supporting evidence was incomplete, for example in claims involving breaks in service before the Department had reached agreement with the Inland Revenue on National Insurance records. The Department's procedures to ensure consistency in decision making could have been more formally codified, for example in written guidance as scheme rules evolved and as new case officers were taken on.

2.17 Based on our sample, we concluded that the Department's decision was clearly in accordance with the scheme rules in 64 of the 100 claims (**Figure 6**). Case officers had exercised their judgement when deciding 35 of the claims, and the Department had subsequently found evidence to confirm or refute aspects of some of these claims.¹³ But we were unable to be certain, on the basis of the evidence held on file, that the Department's decision was in accordance with the final scheme rules in 25 of these claims, and there were nine overpayments and two underpayments:

- two overpayments due to errors at the time of payment, either in calculating the eligibility period or the entitlement amount;
- three overpayments where claims were paid before the Department had verified whether its list of vessels met the qualifying criteria, and where payment had been made in respect of service on some vessels which we found were not included on the Department's verified list;
- four overpayments in claims where due to limited evidence the Department had exercised discretion and given the benefit of the doubt in making payments, but where the Department subsequently uncovered evidence (after the agreement with the Inland Revenue on National Insurance records) showing that other paid work had been undertaken during breaks in service;
- one underpayment in a claim rejected because it came from Lowestoft (not regarded as a distant water port) but which met the final scheme rules qualifying criteria; and
- one underpayment where we found the initial decision had complied with guidance from policy officials at the time, but where an additional payment had not been made following a change in policy.

2.18 The nine overpayments in the sample as a whole amounted to £49,000, while the two underpayments amounted to some £2,800.

6 Assessment of Department decisions in a sample of 100 claims

	Claims where case officer judgement was not required	Claims where case officer judgement was required	All claims
Correct decision	61	3	64
Insufficient information to conclude with certainty	0	25	25
Overpayment	3	6	9
Underpayment	1	1	2
Total	65	35	100

Source: National Audit Office analysis of a sample of 100 claims

¹³ Where claims complied with policy decisions made by the Department in relation to, for example, the inclusion or exclusion of periods of illness, training and time spent working on ship refits.

The appeal process

2.19 When the first payments were made the Department introduced a two-step process to deal with potential appeals from applicants. Applicants unhappy with the initial Redundancy Payments Service decision, whether because of an outright rejection or about the amount awarded, could appeal to have their claim reviewed by a manager in the Employment Relations branch. Any applicants not satisfied with the result of this review could appeal to an independent adjudicator appointed by the Department. The adjudicator reviewed the case against the scheme rules but could not require that the scheme rules be reviewed.

2.20 The Department has no overall figures of the number of applicants appealing at each stage. Amongst our sample of 100 cases, there were 28 formal appeals, consisting of 18 claims where a payment had been previously made, and 10 initial rejections (**Figure 7**). Five appeals resulted in a change to the initial decision (from rejection to payment, or an additional payment), because of the subsequent addition of vessels to the qualifying list or the subsequent receipt of National Insurance records to rule out other paid work during breaks. A request for independent adjudication was made in 10 claims. Only one of these further appeals was successful, again due to the subsequent addition of vessels to the qualifying list. These figures do not include cases that were subsequently passed by applicants, via their Member of Parliament, to the Ombudsman to consider more fundamental questions regarding the operation of the scheme rules – five cases in all.

2.21 The outcome of the appeals noted above suggests that in most cases where an appeal was made the initial decision remained unchanged. The proportion of appeals in our sample was 28 per cent.

2.22 Factors likely to influence the appeal rate are likely to be the clarity of the scheme rules, particularly the eligibility criteria, and the efforts made to explain initial decisions to applicants. In communicating the decision to the applicant our examination indicated that the Department used standard rejection letters. These letters would have reduced the Department's administrative time and costs, at least in the first instance, but were worded in a way which could be misinterpreted by the recipient. Former trawlermen whose last "qualifying" voyage ended before 31 December 1973 were told, for example, that they had appeared to have left the industry before that date, even where they had continued fishing elsewhere in the industry (on non-qualifying vessels) after that date. Further, in its standard documentation with payments the Department did not (except in appeal decisions) explain to claimants the reasons for a "reduced" payment in claims where the eligible period was shorter than the former trawlerman's fishing history.

Forecasting the overall cost of the scheme

2.23 The Department initially estimated that the scheme would cost £25 million but the outturn was just under £43 million at March 2007. The initial estimate of the likely number of eligible applicants of 4,000, which compared well with the final number of 4,400, was based on an estimate provided by the British Fishermen's Association of 3,000 likely to be eligible, but increased to make allowance for the fact that 9,000 former distant water trawlermen had received payments under the earlier *ex gratia* scheme (although not all of these would have fished in Icelandic waters).

7 Rejections and appeals in a sample of 100 claims

	Number	Appealed	Decision changed	Adjudicated	Decision changed
Paid claims	68	18	5	5	1
Rejected claims	32	10	0	5	0
Claimant finished working after 1 January 1974 but had less than two continuous years on qualifying vessels	19	6	0	3	0
Left the industry or last qualifying voyage ended before 1 January 1974	8	1	0	1	0
Insufficient fishing records	3	3	0	1	0
No qualifying voyages	2	0	0	0	0

Source: National Audit Office analysis of a sample of 100 claims

2.24 The main source of the increase in expenditure over the initial estimate arose as result of changes to the scheme rules, in particular the Department's policy decision in October 2001 to allow claims from former trawlermen who worked after December 1979. The Department's data indicates that an additional £10 million was paid in respect of 1,150 claims as a result of this rule change. Without that change, the figures suggest that final expenditure would have been about £33 million, £8 million above the estimate. Much of this difference is due to the Department underestimating the average length of service of former trawlermen when it prepared its pre-scheme estimates. While an accurate estimate would have been very difficult given the uncertainty involved, presentation of a range of estimates based on sensitivity analysis of key variables would have made the Department's decision making more robust.

2.25 There are no reliable figures available on the cost of administering the scheme. Before the scheme began, the Department estimated that it would cost £250,000 to administer. This was based on the expected number of claims and the amount of time it might take a case officer to process a claim, plus allowance for postage, telephone and other miscellaneous costs. It is likely that this was an underestimate because the Department recruited significantly more staff to process claims, needed to resolve policy questions and took longer than expected to consider applications. On the basis of available data about staff numbers and assumptions about the time taken to process claims, we estimate that the true administrative cost of the scheme was between £670,000 and £1 million – less than 2.5 per cent of the amount paid out.

Statutory authority

2.26 The scheme was launched using general authorities available under the Appropriations Act and 1932 Public Accounts Committee Concordat which permit (with Treasury approval) expenditure on a service or activity lasting less than two years or costing less than £2.5 million¹⁴ a year. If these do not apply legislation is required to authorise the expenditure. In June 2000 the Department obtained Treasury approval to spend money on the scheme. This was on the basis that the scheme would be open to claims for just under two years, as happened, and that the activity would therefore last less than two years. Expenditure spanned a longer period as claims took time to consider and resolve.

14 At the time the scheme was announced, the limit was £900,000 a year.



Lessons to be drawn from this scheme

3.1 This Part seeks to draw out lessons to be learned for future compensation schemes.

The importance of planning

3.2 A scheme to compensate former Icelandic water trawlermen presented the Department with a number of significant challenges: particularly so long after the end of the 'Cod Wars'; understanding how the industry was structured at the time; and obtaining information on the employment patterns of individual trawlermen. Also, once the prospect of a scheme was announced, the Department would be under significant pressure from potential beneficiaries to get up and running a scheme that compensated trawlermen fairly, cost-effectively but also quickly.

3.3 The Department needed to develop a robust scheme design and practicable implementation plans. Such plans might have been expected to:

On scheme design:

- present options for the scheme design, including eligibility criteria; and
- consider pilot testing the preferred scheme design.

On drawing up an implementation plan:

- estimate the potential number of claimants and the likely cost of compensation;
- estimate the target processing time for dealing with claims and the phasing of any expenditure;
- estimate the staff and other resources required to process the likely number of claims and the associated administrative cost;
- put in place appropriate IT to enable cases to be managed and management information extracted;

- prepare procedure manuals and staff training and support;
- establish procedures for communicating with claimants and media;
- establish procedures for reviewing decisions and hearing appeals;
- plan periodic reviews of the performance of the scheme, including emergent issues;
- estimate the likely lifetime of the scheme and plan the closure; and
- assign clear responsibilities for implementing and overseeing the performance of the scheme.

3.4 We found that the Department had considered only some of the factors above before the scheme was opened to applications. The Department had been aware of the possibility of a scheme for some time before it was announced, but it did not start detailed preparations until a late stage. Policy officials had been working on options from May 1998, but did not begin detailed consideration of how the scheme would be administered until July 2000, the month when the scheme was announced. It opened to applications in October 2000.

3.5 Crucially, departmental papers indicate that officials from the Redundancy Payments Service, who would have responsibility for administering the scheme, were not involved in the planning until one month before its announcement and less than three months before it would open to applications. Prior to July 2000, the Department's attention was focused on how to frame the scheme rules. The officials who would be responsible for administering the scheme were not involved until a late stage.

Drawing up a design for the scheme

Consideration of options

3.6 The Department's policy objective for the scheme was to compensate "former distant water trawlermen who lost their jobs when the industry collapsed following the settlement of the 'Cod Wars'". The scheme was targeted on former UK-based trawlermen who had worked in Icelandic waters. The practical challenge faced by the Department was to distinguish these trawlermen from those who lost their jobs at around this time as a result of the parallel contraction of the distant water fleet. Officials at the Department of Trade and Industry and the Ministry of Agriculture, Fisheries and Food recognised this difficulty and had initially concluded that the scheme would have to be open in principle to all distant water trawlermen made redundant between 1976 and 1986. Officials at HM Treasury were concerned, however, that this might weaken the link between the compensation scheme and the actions taken by Government to settle the original 'Cod Wars'. In February 2000, officials from all three departments set up a team to explore the feasibility and design of such a compensation scheme.

3.7 In May 2000, Department of Trade and Industry officials put various options to Ministers for limiting eligibility, all of which, according to officials, would limit payments to former trawlermen who had worked for vessel owners known to have trawled in Icelandic waters. Proof of eligibility would be obtained from fishing records and National Insurance contribution records.

Pilot testing

3.8 The proposed scheme design was not pilot tested to ensure that it would work in practice, and we could not find evidence that such testing was considered. This meant that the Department did not know how complete or accessible the proposed evidence sources would be before the scheme went live, or indeed whether the scheme rules would produce results that met the policy objectives.

Consultation with industry experts

3.9 The absence of a pilot stage could have been mitigated by seeking the expertise of people within the industry to gain a clearer understanding of the composition of the industry and employment practices used at the time. Representatives from the British Fishermen's Association in the various ports made their own submissions to the Department, including explanations of how the industry had operated, after the scheme was announced in July 2000 and before its opening in October 2000. In addition, representatives of former trawlermen from the British Fishermen's Association in Hull supplied the Department with a range of other information relevant to the operation of the scheme, including an explanation of what former trawlermen might do during breaks in service. Before the scheme began, the Department held just one meeting with port representatives from Hull, Grimsby and Fleetwood to discuss the scheme rules (less than a month before the scheme opened), and apart from the Department's discussions with the Ministry of Agriculture, Fisheries and Food and HM Treasury, we could find no evidence that it had undertaken wider consultation. It would have benefited from the advice of former trawler owners, maritime trade associations or unions, local government or local historians at this stage. After the scheme began, the Redundancy Payments Service had to undertake a large amount of research and consultation with such sources to obtain evidence, which may have diverted resources from the processing of claims.

3.10 The Department had a great deal to achieve in a short space of time and needed to make the best use of the time available, which could have included undertaking a wider consultation once a scheme had been agreed in principle (February 2000). Such a consultation would have demonstrated activity and transparency to likely beneficiaries (provided that it avoided giving commitments to them), and could have helped to identify some of the eventual problems before the scheme began.

Drawing up the implementation plan

3.11 A robust implementation plan would have addressed each of the issues in paragraph 3.3 in some detail.

The Department did consider and plan for aspects of the scheme's operation, for example design and installation of IT hardware and software; design of claim forms, payment statements and publicity material; and recruitment of staff. But these plans were not sufficiently comprehensive to deal with the problems the Department experienced after launching the scheme.

Project oversight

3.12 The Department did not put in place appropriate governance arrangements for the project as a whole although the scheme was overseen by line managers. Another option, probably more common now in Government than at the time this scheme was set up, would be to designate a senior responsible owner, a project manager and a project oversight board.

Developing an appropriate procurement strategy

3.13 Departmental papers indicate that administration of the scheme by the Redundancy Payments Service was presented to Ministers as one option, with administration by the Ministry of Agriculture, Fisheries and Food as an alternative. The Department did not consider the option of contracting out the administration of the scheme, which was done, for example for the Coal Health Compensation Schemes at about that time (1999). The Redundancy Payments Service retained responsibility for the handling of claims and calculation of entitlement and contracted out the physical processing of payments. It is not evident why the contracting-out option was not at least considered at the time. It is possible that the elapsed time required for a full procurement process, probably around six months for a contract of this size, was too long for the deadlines the Department had set itself.

Management of risk

3.14 Compared to current best practice, risk management arrangements in the Department were less well developed when this scheme was set up. In this instance, the Department did not undertake a formal analysis of the risks to the delivery of its scheme objectives before the scheme began. Such analysis could have alerted the Department to the problems with quality and completeness of, or access to, relevant sources of evidence and prompted a review of the scheme rules. The Redundancy Payments Service and the Department's Internal Audit branch held a workshop in July 2001 to identify operational risks and how to manage them, but there was no formal review of the potential policy risks.

Managing data and reporting on performance

3.15 The responsible staff reported progress to senior officials and ministers on the number of payments made and the amounts paid, particularly during the first year of the scheme. But the Department did not develop a formal framework for reporting these and other indicators of performance. Such a framework could have started with consideration of how the Department planned to gather, record and organise information relating to claims, and how this would facilitate efficient data retrieval from paper and electronic records. The database was designed, however, solely to generate statements of payment for distribution to the payment contractors. The Department had limited scope to change the design of the database and to derive management information (when it was not designed for this purpose) once the scheme had started.

Determining the resources needed to manage the scheme

3.16 Before the scheme began the Department estimated that it would require one supervisor and five case officers to process claims and that these staff costs would be the main element in administration costs estimated at £250,000.¹⁵ In practice, the initial rush of claims exceeded the Department's planned processing capacity. The Department did not assess the likely profile of receipt of claims or the desired rate at which claims would be processed. To provide a robust basis for budgeting, resource plans should estimate the potential implications of different application rates and the impact on the likely profile of expenditure.

¹⁵ The upper estimate of a range of estimates prepared before the scheme began.

Development of procedures manuals

3.17 The branch dealing with policy was responsible for providing the Redundancy Payments Service with guidance on interpretation of the scheme rules. But the instructions it provided before the scheme began proved to be insufficiently detailed for the staff administering the scheme. The policy branch compiled more extensive guidance and revised versions of the scheme rules after the scheme had begun, but it did not produce (either before or during the scheme) a scheme procedures and operations manual for the use of all those administering the scheme. Such a manual could have covered matters to be referred to supervisory staff, the extent (if any) of case officer discretion and how issues were to be reported to senior management and addressed by them.

Procedures for reviewing policy questions

3.18 As discussed in Part 2, the Department established arrangements for appeals against decisions on individual claims, but these procedures applied only to the existing scheme rules, not whether the rules themselves were fair. In her report on the scheme in February 2007, the Ombudsman said that the extent of the issues identified should have led to a review of the scheme with the aim of realigning the detailed scheme rules with the policy intention behind the scheme.

3.19 Even where a scheme has been well-researched, there will always be a risk that individual scheme rules will not have anticipated all the circumstances raised by particular groups of claimants. A balanced judgement needs to be made of when it is appropriate to review a scheme's rules, recognising that there will probably be some claimants who lose out. But there should be procedures to allow emerging policy questions to be reviewed at an early stage.

Procedures for winding-up the scheme

3.20 Planning for such schemes should include consideration of how long the scheme will be open to applications and when it will be wound up. This should also cover how potential applicants will be made aware of the scheme and invited to apply before any cut-off date. In this case, the Department did consider the likely lifetime of the scheme and concluded that it should remain open to new applications for two years. To have kept it open longer would have required it to be placed on a statutory footing (paragraph 2.26).

3.21 The Department applied a cut-off date of 1 October 2002 to any new applications. The work by the Department to publicise the scheme and attract applications before the cut-off was largely successful in that the vast majority of potential applications were received before the final date.

APPENDIX ONE

Study methods

This Appendix summarises the methods used in the production of this report. Much of the work was undertaken to answer questions raised in correspondence from a Member of Parliament, prior to publication of the Ombudsman's report in February 2007.

Review of policy files

We reviewed the Department's policy files to gain background knowledge and in order to form an opinion on a number of issues, in particular the design, planning and administration of the compensation scheme, which could then be combined with evidence drawn from the other sources listed below.

Analysis of the Department's database

The Department established and maintained a database on which it recorded details of all claims received and assessed, including the address of the person making the claim, the Department's decision in each claim and the amount paid where applicable. We interrogated the Department's scheme database to establish the number of claims received; the number of payments and amount paid, and the geographic distribution of payments; and the proportion of claims affected by a break of more than twelve weeks in fishing records.

Sampling of claims files

The database did not record details of the Department's reasoning behind each claim decision. Nor did it allow us to determine how many claims went to appeal and adjudication, and how many claims were materially affected (through rejection or reduced payment) by a "relevant break".

To allow us to quantify these issues, and to form an opinion on whether the Department's decisions were consistent with the scheme rules, we selected and undertook a detailed review of a random sample of 100 claims. We did not have access to the database at the time the sample was selected, so (on the basis of the proportions of physical files stored at each location) 70 claims were selected randomly from sequential file numbers allocated to policy files stored in archive, and 30 claims were selected randomly from files stored at the Redundancy Payments Service at Watford, having (in the absence of sequential numbers) assigned numbers to files stored in alphabetic order.

Figure 8 overleaf summarises the proportions of paid and rejected claims, and the proportions of claims from each port, in our detailed sample. We then identified the port worked from in a random sample of 400 claims and checked that the geographic proportions within each sample were comparable. When we obtained access to the database, we checked that the sample proportions of paid and rejected claims were consistent with the population proportions.

The resources necessary to examine a statistically robust sample size for the purpose of extrapolation to the population as a whole would have been disproportionate, but we were able to draw both quantitative (within the sample) and qualitative conclusions about the 100 claims examined.

Review and analysis of claims files

The review of claims files was designed in order to get a better understanding of how the scheme was administered and how the design of the rules affected individual claimants' eligibility. It allowed us to establish whether the Department's controls operated effectively and illustrated the practical issues to be faced in processing typical claims. In particular, it provided us with a basis of evidence for assessing:

- 1 whether there was bias in the Department's application of the rules in individual cases; and
- 2 more generally how effectively the Department handled the claims process and whether, in the cases examined, the Department's decision was in accordance with the scheme rules.

Our analysis of the sample involved:

- assessing whether the Department obtained sufficient evidence to determine eligibility;
- assessing whether the Department calculated the payment (where appropriate) correctly in terms of the entitlement rules; and
- quantifying the time taken by the Department to process the claim, including requests for further information where necessary, and the time taken to complete appeals and adjudications where relevant.

8 Sample and population breakdown by port and payment status

	Detailed sample %	Larger sample %	Population %
Paid	68	66	63
Rejected	32	34	37
Geographically			
Hull	37	42	30
Grimsby	26	27	25
Fleetwood	17	11	11
Aberdeen	14	15	10
Other	6	5	24

Source: National Audit Office analysis of Departmental data and analysis of a sample of 100 claims

NOTE

The geographic distribution for each sample is by port, because it was possible to confirm this from fishing records on each claim file. The database did not record details of the port worked from, so the geographic distribution for the population covers the address at which the person making the claim lived at the time it was made. Movements away from port areas over time help to explain the higher proportion of "other" claims in the population than in the sample. Hull and Grimsby areas here are defined by county council boundaries, Grimsby includes Cleethorpes addresses, while Fleetwood includes Blackpool addresses.

Consultation with stakeholders

We consulted with the following stakeholders of the scheme and other relevant bodies:

- DTI officials; and
- The Ombudsman.

In our detailed review of a sample of 100 claims and review of the Department's policy files, we sought to capture the range of views expressed by scheme beneficiaries and their representatives, on their personal experience of dealing with the Department and on the scheme as a whole.

Interviews with DTI officials

We conducted interviews with two key Redundancy Payments Service officials responsible for administering the scheme from the Department's announcement in July 2000 onwards, and a case officer who processed claims. All of the officials responsible for policy matters before and during the scheme had left the Department before we began our examination.

Consultation with the Ombudsman

The Ombudsman published a report covering aspects of the trawlermen compensation scheme in February 2007 and we liaised with her staff to make best use of her findings and ensure consistency with our own findings.¹⁶

Comparison with other work on compensation schemes

To help form an assessment of factors contributing to the design and implementation of a successful compensation scheme, we reviewed several earlier reports by the Comptroller and Auditor General, namely:

- *Compensating Victims of Violent Crime*, HC 398, Session 1999-2000;
- *Getting it right, putting it right – Improving decision-making and appeals in social security benefits*, HC 1142, Session 2002-2003;
- *The 2001 Outbreak of Foot and Mouth Disease*, HC 939, Session 2001-2002; and
- *Home Office: Handgun Surrender and Compensation*, HC 225, Session 1998-99.

16 Report by the Parliamentary Commissioner for Administration (Ombudsman), PA-3032/0117 (C.1032/04).

APPENDIX TWO

Timeline

1 June 1976	UK Government agrees to fishing limits phasing UK-based vessels out from the 200 mile limit around Iceland, bringing the 'Cod Wars' to an end.
1982	The British Fishermen's Association was formed in Grimsby and Hull to campaign for a compensation scheme for redundant trawlermen.
22 October 1993	The Court of Appeal ruled in the <i>Hellyer</i> case that former trawlermen could in certain circumstances have qualified for statutory redundancy pay.
December 1993	In response to the Court of Appeal decision, the Employment Department opened a scheme to make <i>ex gratia</i> payments to former trawlermen.
1995	The <i>ex gratia</i> scheme closed to new claims, having paid out nearly £14 million to around 9,000 former trawlermen (or their dependents).
1 July 1997	The Trade and Industry Minister promised a review of the former trawlermen's case in a House of Commons speech.
June 1998	The Ministry of Agriculture, Fisheries and Food and the Department jointly prepared a paper exploring their options in responding to the British Fishermen's Association campaign.
October 1999	Following discussions with the Ministry of Agriculture, Fisheries and Food, Department officials made a submission to the Secretary of State for Trade and Industry outlining options for a compensation scheme.
28 July 2000	The Secretary of State for Trade and Industry announced plans to open a compensation scheme for former distant water trawlermen who lost their jobs when the industry collapsed following the settlement of the 'Cod Wars'.
2 October 2000	The trawlermen compensation scheme opened, administered from the Watford office of the Redundancy Payments Service, to run for two years.
27 March 2001	The Department decided to double the number of processing staff at the Watford office to deal with the backlog of claims in a reasonable timeframe.
5 April 2001	The first set of operational rules was drawn up to assist staff in processing claims following inconsistent treatment of similar claims early on in the scheme.
26 October 2001	The Department announced a rule change allowing those who continued to fish on former Icelandic trawlers beyond 1979 to qualify. Having paid out nearly £22 million thus far, an additional £10 million was made available for the anticipated 1,300 trawlermen now eligible to receive payment.

December 2001	The Department formally approached the Inland Revenue to arrange for access to former trawlermen's National Insurance records.
1 October 2002	The compensation scheme closed to new claims, having paid out £38 million to over 4,000 former trawlermen thus far.
17 November 2003	The Department announced an extension of the scheme with an amended vessel list, now including trawlers that had fished the Rosengarten and Working Man's Bank areas, traditionally recorded as Faroes vessels. The scheme rules were also amended so that no former trawlermen would receive payment for time spent in prison (although payments already made would not be reclaimed).
26 March 2004	A final extension of the vessel list is announced, following a period of appeal to identify any further relevant ships, adding 21 trawlers that sailed out of Aberdeen and Grimsby.
July 2006	The last remaining case in the scheme was paid, bringing the total number of claims paid to 4,400 at a value of just under £43 million.
22 February 2007	The Ombudsman published her report on the scheme.

APPENDIX THREE

Scope and findings of the Ombudsman's report on the scheme

This Appendix contains extracts from the Ombudsman's report covering its scope, findings and recommendations.

"Put together in haste: 'Cod Wars' trawlermen's compensation scheme"

Scope

My role and jurisdiction

6. My role is determined by the Parliamentary Commissioner Act 1967, as amended (the 1967 Act). The 1967 Act provides that my role is to investigate action taken by or on behalf of bodies within my jurisdiction in the exercise of their administrative functions. Complaints are referred to me by a Member of the House of Commons on behalf of a member of the public who claims to have suffered injustice in consequence of maladministration in connection with the action so taken.

7. When deciding whether I should investigate any individual complaint, I have to satisfy myself, first, that the body or bodies complained about are within my jurisdiction. Such bodies are listed in Schedules 2 and 4 to the 1967 Act. Secondly, I must also be satisfied that the actions complained about were taken in the exercise of that body's administrative functions and are not matters that I am precluded from investigating by the terms of Schedule 3 to the 1967 Act, which lists administrative matters over which I have no jurisdiction.

8. Mrs A's complaint was directed at DTI as this is the department responsible for the creation and, through their RPS division, the administration of the scheme. While my investigation has shown that officials from other government departments, (the then Ministry of Agriculture, Food and Fisheries (MAFF) and HM Treasury) were involved in discussions exploring the practicalities of a compensation scheme, I am satisfied that the actions complained about were taken in the exercise of the administrative functions of DTI. Their Ministers and

officials made the relevant decisions. DTI is listed in Schedule 2 to the 1967 Act and so it and its divisions and executive agencies are within my jurisdiction.

9. I may only investigate complaints about the actions or inactions of bodies within my jurisdiction. The British Fishermen's Association (BFA) and legal counsel are not within my jurisdiction and I refer to them merely to set in context the actions of DTI.

The complainant

15. Mr A was, for over 20 years, employed as a deep-sea fisherman. In 1972 he was working aboard a vessel which trawled deep waters, including those subsequently defined by the scheme as Icelandic. In February 1972 a refit of Mr A's vessel commenced following a major survey that took place every four years by the then Board of Trade (generally known as the Lloyd's survey). During the period of that refit, according to Mrs A's account, Mr A's employers were unable to make another Icelandic water vessel available to him (until May 1972) and he was left with no alternative but to take employment in North Sea fishing as directed by the employment officer on the dock at Grimsby.

16. Mrs A's claim on behalf of her late husband was received by DTI on 18 October 2000 and acknowledged. An award was made to her on 10 November 2001, based on Mr A's service from 19 May 1972 to 18 December 1979. That was because his continuity of service had been broken by a period of service in 1972 on a North Sea vessel, an invalid vessel under the scheme, during a between voyage break of longer than twelve weeks. Mrs A appealed that award but on 3 April 2002 DTI refused her appeal. Mrs A then appealed to the independent adjudicator appointed for the scheme. On 18 May 2002 the independent adjudicator rejected Mrs A's appeal.

The complaint

17. Mrs A complains of maladministration by DTI in devising the scheme and assessing compensation due to her late husband under the Trawlermen's Compensation Scheme. In particular, she complains that DTI failed to take account of regulations relevant at the time relating to unemployment benefit for fishermen and the consequences for them, should an Icelandic water vessel require a refit taking longer than twelve weeks. This resulted in a failure to make provision for such circumstances within the scheme's eligibility criteria, and failure within the scheme to allow sufficient flexibility to consider unanticipated or deserving circumstances. Had Mr A refused the North Sea work he was directed to by the dock officer, he would not have been able to claim unemployment benefit with the result that his family would have had no income. Work on another Icelandic water vessel remained unavailable to Mr A for a period of twelve weeks and three days.

18. Mrs A alleges, through the Member who referred her complaint to me, that she has suffered injustice in consequence, because DTI made an unjustified reduction in the amount of the award made to her on behalf of her late husband. The Member has also referred to me the (four) cases of those who make similar complaints to Mrs A.

Summary of findings

137. I have made three findings of maladministration. These are:

(i) that the scheme was devised and launched before it was appropriate to do so, with the effect that several critical factors were not considered and addressed by those responsible for devising the scheme rules before its launch;

(ii) that there was a mismatch between what the scheme was intended to deliver and what it was capable of delivering through the scheme rules. The rules lacked clear definitions; inconsistent interpretations were possible in respect of several key factors; those operating the scheme were unable to verify the entitlement of some applicants; there was no flexibility within the eligibility criteria; and administrative simplicity superseded alignment with delivering the policy intention; and

(iii) that the problems identified during the operation of the scheme which were added to incrementally should have led to a comprehensive review of the scheme with the aim of realigning the detailed scheme eligibility rules with the policy intention behind the scheme. This did not happen.

138. I now turn to determine what the consequences of this maladministration were for Mrs A and whether she has sustained an unremedied injustice as a result. What were the consequences for Mrs A?

139. In her complaint to me Mrs A claimed to have sustained injustice in the form of insufficient compensation under the scheme. That is, that the sum awarded to her – following her application to the compensation scheme on behalf of her late husband – reflected payment for only seven years' service. This had occurred because she had been unable to establish the continuity of his twenty years' service under the scheme's eligibility criteria, as the requirements of the 'pool system' had left him with no alternative but to take work which was classified as not being valid for the definition of the continuous period of work under the scheme rules.

140. The maladministration that Mrs A alleged had led to her suffering this injustice was the failure on the part of DTI to make provision for the effects of the 'pool system' when designing the eligibility criteria for the scheme. She also complained that, given that the scheme would have to deal with claims going back forty years, there had been a failure to make provision within the scheme to consider cases where there were deserving or unanticipated circumstances relevant to an individual applicant.

141. As a result, the remedy she seeks is compensation that fully reflects her late husband's service of more than twenty years on Icelandic water vessels.

142. I have found that the scheme was launched before proper consideration had been given to the complex context that the scheme was intended to reflect and to the widely varying individual circumstances of those whose loss of potential earnings the scheme was meant to compensate.

143. I have also found that the eligibility criteria for the scheme were unclear, capable of differing interpretations, and inflexible. That compounded the lack of full and developed understanding of the relevant issues that underpinned the way in which the scheme had been developed.

144. The scheme was, therefore, ineffective in that it failed to deliver compensation to all those whom it was intended to compensate.

145. Mr A had had a career of over twenty years as a deep-sea fisherman and appeared to be exactly the type of trawlerman at whom the compensation scheme had been aimed.

146. Mr A had been required to work for a short period of time on a non-qualifying vessel or otherwise lose his social security benefits. The way in which the scheme rules failed to recognise the full effects of the ‘pool system’ meant that Mrs A received significantly reduced compensation because of this technicality – one that would have been identified by anyone with a developed understanding of the ‘pool system’, the potentially unfair effects of which should have been considered as part of devising the scheme rules.

147. I consider that Mrs A could have reasonably expected to receive compensation for her husband’s 20 years’ service rather than the compensation award for seven years that she did receive. But was the failure to deliver this reasonable expectation a consequence of the maladministration I have identified in this report?

An unremedied injustice?

148. I consider that it was and I therefore uphold Mrs A’s complaint that she has suffered an unremedied injustice in consequence of maladministration.

149. Mrs A’s application was considered within a scheme whose eligibility rules were inconsistent with the policy objective that they were intended to deliver. Those rules had been devised in the absence of a fully developed understanding of the industry in which those who were eligible to claim compensation had worked.

150. Had the scheme been devised and introduced without the maladministration I have identified in this report, it would have been capable of recognising the effects of the ‘pool system’ on qualifying periods of employment – such as requirements made, as was made in Mr A’s case, that an individual must take on a specific job or lose social security benefits – and it would have been capable of dealing with exceptional or unanticipated circumstances.

151. That it was not capable of either of these things led directly to an injustice to Mrs A.

152. Had the problems identified by DTI during its operation led to a review of the scheme, with a view to remedying the design deficiencies in the eligibility criteria and to the introduction of an element of flexibility or discretion into the scheme rules, Mrs A’s case may have met more favourable consideration by those dealing with her application.

153. That this did not happen led directly to further inconvenience and distress to her.

Recommendations

154. I now turn to make recommendations to put right the unremedied injustice I have identified above. Having found that the way in which the scheme was devised and operated by DTI constituted maladministration causing injustice to Mrs A and others, I considered what recommendations I should make to DTI in order to remedy that injustice.

155. In doing so, I should emphasise that, where I find maladministration on the part of a body within my jurisdiction that causes an individual or individuals injustice that has not been remedied, my general approach is to seek to have that body put those caused injustice back into the position they would have been in, had the maladministration I have identified not occurred.

156. Where that is not possible, I look to other ways to remedy the injustice I have identified, for example, through the payment of compensation or by making changes to policies and procedures. This will depend on the circumstances of each case.

157. In making the following recommendations, I will bear this general approach in mind. I will also have regard to the nature of the maladministration I have identified, which relates to a scheme that is no longer in operation.

158. My first four recommendations are addressed to DTI – and relate to the position of Mrs A and those in a similar position to hers. My fifth recommendation is directed at the Government – and relates to the more general lessons that might be learned from this investigation and other similar investigations that I have conducted.

First recommendation

159. My first recommendation is that DTI should apologise to and make a consolatory payment to Mrs A, and to the other complainants identified in this report, to reflect tangibly the inconvenience and distress caused by the maladministration I have identified.

Second recommendation

160. My second recommendation is that DTI should review the eligibility criteria and scheme rules to ensure that they are consistent with the policy intention underlying the scheme.

Third recommendation

161. My third recommendation is that, once that is done, DTI should fully reconsider Mrs A's case, and the cases of the other complainants identified in this report, in line with the criteria which it determines are consistent with the policy intention as a result of the above review. In the event of any additional award, interest for loss of use of those funds should also be paid.

Fourth recommendation

162. My fourth recommendation is that, following the review, DTI should consider the cases of any individuals who claim to have suffered similar injustice as a consequence of the maladministration I have identified. If that is shown to be the case, DTI should apologise and make consolatory payments to them; should review their cases in line with criteria it determines are consistent with the policy intention; and, in the event of any additional award, interest for loss of use of those funds should be paid.

Fifth recommendation

163. My final recommendation relates to *ex gratia* compensation schemes more generally. During my investigation – and others that I have conducted into similar schemes – it struck me that no central guidance exists for public bodies that specifically relates to the development and operation of *ex gratia* compensation schemes. Such guidance can, in my view, only be helpful to them – and may well assist in preventing a reoccurrence of the problems I have identified in this report. I therefore recommend that such guidance be developed across government.

Conclusion

164. The Permanent Secretary accepted that the handling of the design and launch of the scheme had not been to the standard expected and that, with the benefit of hindsight, DTI should have undertaken a comprehensive review of the scheme, rather than make incremental changes. He agreed to make a consolatory payment of £1,000 to Mrs A and to each of the other four complainants identified in this report, and will apologise to them for the shortcomings that I have identified.

165. He accepted my second recommendation, that DTI undertake a review of the eligibility criteria and scheme rules to ensure that they are consistent with the policy intention underlying the scheme, and said that he intended to start that review immediately.

166. The Permanent Secretary also accepted my third and fourth recommendations. He said that, should Ministers decide that the criteria were not consistent with the policy intention, and that new criteria should be devised, DTI would design a scheme to ensure the rules were consistent with the policy intention. If the criteria were then designed in such a way as to widen eligibility, they would reassess all claims (where the maximum payment of £20,000 had not already been made) against the new criteria. Any additional entitlement would be paid with interest. In addition, DTI would apologise and make consolatory payments to all those who received additional awards as a result, to reflect the injustice they would have suffered. If any criteria were narrowed, DTI would not seek to recover payments from those who had received more than they would have been entitled to under the revised criteria.

167. As to the fifth recommendation, the Government have accepted the need for central guidance on the development and operation of *ex gratia* compensation schemes. The Permanent Secretary at HM Treasury has told me that HM Treasury is planning to take forward my recommendation for such guidance and that this work will be incorporated into the revision of 'Government Accounting', which I understand is due for publication later this year.

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