National Audit Office

Coal Health Compensation Schemes

REPORT BY THE COMPTROLLER AND AUDITOR GENERAL | HC 608 Session 2006-2007 | 18 July 2007

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John Bourn
Comptroller and Auditor General
National Audit Office

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The National Audit Office study team consisted of:

Daisy Hodgson, Andrew Packer and Simon Reason, under the direction of Peter Gray. Additional assistance was provided by Jon Cable, Andy Dinning, Wifgi Gebrial, Santosh Gora, Clare Rapkins and Martin Welsh.

This report can be found on the National Audit Office web site at www.nao.org.uk

For further information about the National Audit Office please contact:

National Audit Office
Press Office
157-197 Buckingham Palace Road
Victoria
London
SW1W 9SP

Tel: 020 7798 7400

Email: enquiries@nao.gsi.gov.uk

CONTENTS

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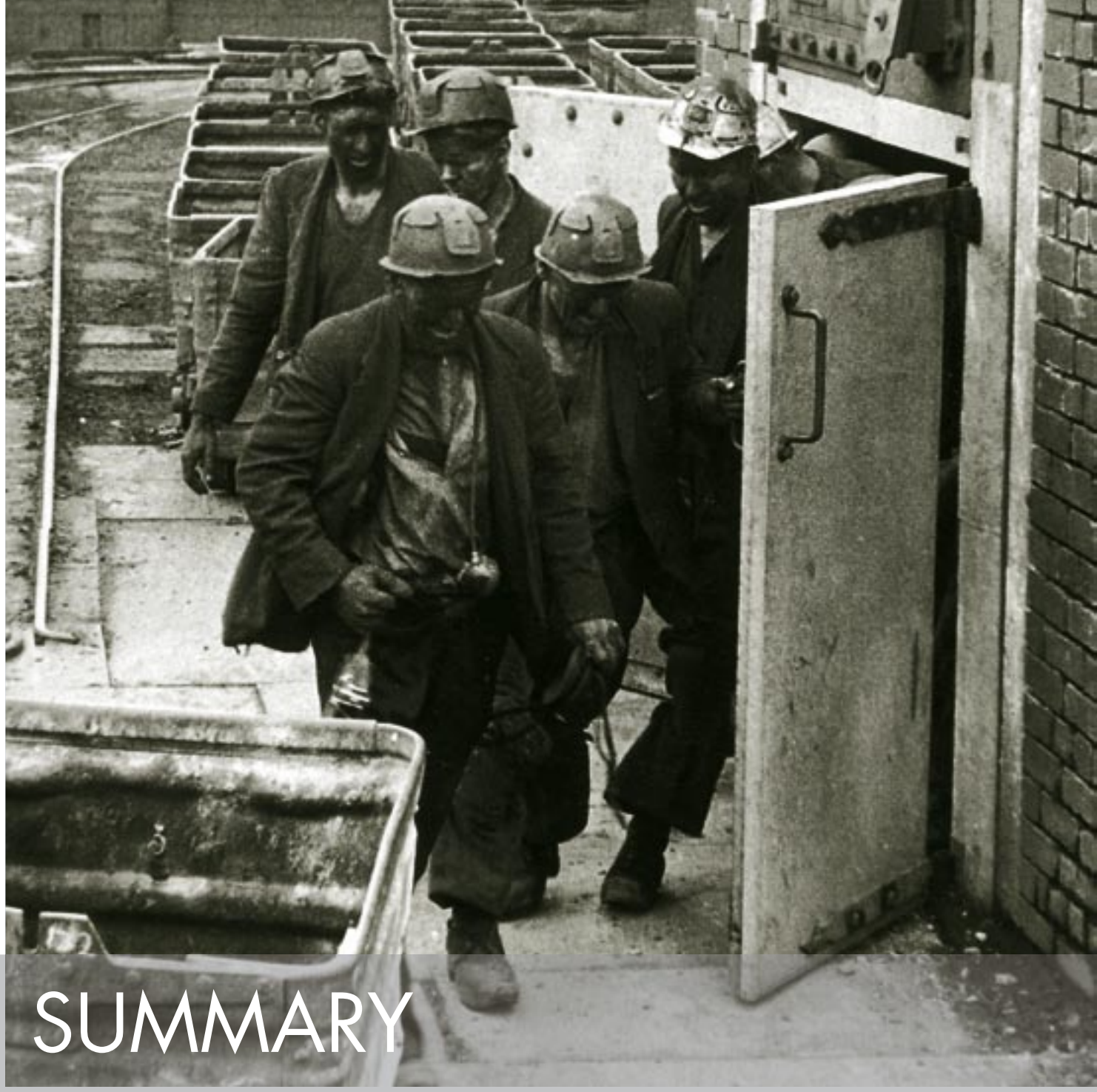


SUMMARY

1 In January 1998 the Department of Trade and Industry, restructured and renamed in June 2007 the Department for Business, Enterprise and Regulatory Reform (the Department), took over responsibility for the accumulated personal injury liabilities of the British Coal Corporation (the Corporation). The High Court found the Corporation negligent in January 1998 in respect of lung disease caused by coal dust, known as Chronic Obstructive Pulmonary Disease (COPD). And in July 1998 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).

2 The Department, in negotiation with the Claimants Solicitors' Groups[1] and subject to the approval of the High Court, introduced two schemes, one for COPD and one for VWF, to compensate former miners. Potential claimants could make applications for compensation via their legal representative. The Department contracted initially with IRISC, and since 2004 Capita Insurance Services, 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.

1 The Claimants Solicitors' Groups are steering groups each led by the same three firms of solicitors, whose role is to represent the interests of claimants.

3 The two schemes remain under the jurisdiction of the High Court in England and Wales, which continues to require regular updates of progress, usually around three times a year. The Court also continues to rule on matters where the claimant and the Department cannot agree.

4 By March 2007 the Department had received over 591,000 COPD claims and 169,000 VWF claims. These greatly exceeded its initial forecasts of 173,500 and 45,000 respectively and it had to increase significantly the resources applied to process applications as the schemes evolved. Difficulties in dealing with the number of claims and the complexities posed by some of them also led to long delays in paying compensation for some claimants. By the end of March 2007, just over 168,000 COPD claims and 27,000 VWF claims remained outstanding; the median settlement under the COPD scheme was around £1,500, taking some 29 months to process claims; and for the VWF scheme £8,300, and some 20 months.[2] The median settlement for COPD claims reflects the fact that settlements are discounted to take account of the effects of smoking and impairment caused by normal levels of dust in the air, for which the Corporation was not responsible.

5 In 2005, the Department set a target to achieve effective closure to processing VWF claims by 31 October 2007 and COPD claims by 16 February 2009. When all the claims are settled the Department expects to have paid some £4.1 billion in compensation. It is also likely to have spent some £2.3 billion in administration costs, in the form of payments to miners' legal representatives, the cost of its contractors[3] and its own legal costs.

Overall conclusion and main findings

6 The Department always faced a formidable challenge in establishing two schemes on this scale to compensate people who were often elderly, ill, and anxious to receive the compensation rightfully due to them. The schemes were large and raised challenging issues reflecting the complexity of the coal industry, the nature of the illnesses involved, and the long time period over which the Corporation had been found negligent. The task was significantly complicated by the common law nature of the schemes where each rule and procedure must be negotiated with the claimants' solicitors and where any differences of opinion are resolved through the courts. From the start, the Department was under pressure from all parties to get the schemes up and running.

7 When the final claims have been discharged the Department will have settled more than three quarters of a million cases. This would be in itself a major achievement, but the Department might have been able to deliver the schemes more quickly and more cost-effectively had it been better prepared at the time of the Court rulings and more particularly in the period of transition of responsibility from the Corporation. The Department produced limited strategic oversight or forward planning on how it would handle any resulting liability and insufficient resource was allocated to the task. This lack of preparation was to make the Department's task significantly more difficult to administer, require substantial effort to put right, and cause frustration and upset to some claimants. These schemes illustrate vital lessons that should be learned should Government departments be required to establish other compensation schemes in the future.

8 When developing the schemes, the Department relied primarily on Corporation estimates until 2001. These estimates significantly underestimated the number of potential claimants. They also failed to recognise that the liability would include claims on behalf of the estates of deceased miners, not just widows. An actuarial assessment at the time the schemes were being developed would have helped identify where the uncertainties lay and would have allowed these to be taken into account when designing and negotiating the details of the schemes. However, as the Department's 2001 review of the assumptions underlying the estimates on COPD demonstrated, the spectrum of results is likely to have been very broad, still giving rise to considerable uncertainty.

9 The Department set out to pay compensation without a systematic in-depth option appraisal being considered at more senior levels within the Department. There is evidence that some options were considered at working level, for example the possibility of putting the schemes on a statutory footing, but by the time of the court judgements the range of options open to it had already narrowed significantly. Also, in order to ensure equity between claimants, combined with the need to negotiate with parties representing claimants, the Department made the process complex without testing the practical implications of the rules being drawn up, particularly where the amounts of compensation might be small.

2 The monetary figure for VWF includes general damages and services compensation; it does not include wage loss compensation. The duration figure applies only to general damages claims. See Appendix 2 for an explanation of the types of compensation available.
3 Including claims handlers, medical specialists and records management.

10 Once the scale of the problems began to become clear, the Department took action to address the challenges posed. In 2001 it brought in a senior secondee with experience of programme management. It improved strategic oversight and programme management; recruited a broader range of skills onto its team; and further work with contractors, such as the computerisation of some records, helped to speed up processing and deliver efficiency gains. In 2004, as part of a wider study of risk management in government, the National Audit Office[4] found that the Coal Liabilities Unit had demonstrated effective risk management, making it an integral part of day-to-day project management and communication with all parties.

11 It has taken years of intensive effort for the Department and its contractors to get to a position where it is addressing more effectively the factors inhibiting the processing of remaining claims and reducing the claims outstanding. Some of this has reflected the sheer size of these schemes, for example the need for the Department's medical contractors to employ large numbers of specialist staff which were not available in the numbers required. The Department has sought to simplify some procedures. Most notably, working with solicitors and the Court, it took action to reduce the volume of outstanding COPD claims, which had reached 400,000 in 2004, by introducing a fast-track option in 2005, known as the Optional Risk Offer Scheme. Some 170,000 claimants have now chosen this option.

12 The COPD scheme has been particularly costly to administer. We estimate that, at 31 March 2007, around 69 per cent of all claimants paid compensation have received less than the average cost of administering the claims (£3,200 per claim up to March 2007). For the VWF scheme the equivalent figure is around seven per cent. The fast-track option for COPD, which the Department developed from its experiences administering the scheme, has helped to reduce both administrative costs and the timescale for claim settlements.

13 The Department's approach to negotiating the original fees tariffs with solicitors in 1999 was weak. Whilst this was not a standard procurement matter where the Department could select its suppliers, its preparation lacked the depth of analysis that might ordinarily have been expected to support its negotiations in a commercial setting. The negotiations took place in the midst of pressure to reach agreement, uncertainty over the likely number of claims and the practicalities of operating the schemes, yet the Department tied itself into an agreement which made no provision for the tariff to be reviewed in the light of experience. At the time, the Department believed that the closure of the schemes to new claims would happen within around two years. The Department was therefore in a weak position once the assumptions underpinning its initial analysis proved to be erroneous.

14 An analysis prepared by a Cost Judge – in connection with a recent challenge by the Department of costs payable under the fast-track COPD scheme – has suggested that the costs payable under the original tariff were in excess of the levels that would be awarded following a conventional detailed assessment based on data currently available. We have calculated that, had costs payable to solicitors been in line with the findings of the Cost Judge several years later, the total amount payable by the Department to solicitors would have been £295 million less. We are not suggesting that the Department was able to negotiate an agreement from the outset at the levels identified by the Cost Judge as only limited information was available. This reinforces the desirability of introducing a review clause in such instances, although such a clause can work to the advantage of either party. There are no comparable figures available for VWF general damages[5] claims. Drawing on lessons learnt throughout the schemes, the Department is currently negotiating the tariff to be paid for VWF services claims.

15 Although still tied to the original agreements, the Department has sought to negotiate down the costs associated with subsequent changes to the schemes. It contested, for example, the fees payable on the fast-track COPD procedure because of the lower level of solicitor input. The Court ruled in April 2007 that the fees for the fast-track procedure should be set at levels lower than those where a claim involves a full medical assessment. The reduction in fees arising from this ruling is likely to reduce the cost to the taxpayer by up to £100 million.

16 The Department has set aspirational dates for the effective completion of both schemes. A significant proportion of the remaining claims, however, raise complicated issues. The Department has mapped out the risks it now faces, including the need to work effectively with its contractors and solicitors, and has sought to put in place arrangements to manage these issues. Closure of the schemes will not, by itself, finally discharge all liabilities and will not prevent future coal health related claims being brought against the Department. The Department is aware of these risks and applying its experience from the COPD and VWF schemes in managing them.

4 *Managing Risks to Improve Public Services*, National Audit Office, 2003-2004 (HC 1078).
5 See Appendix 2 for definitions of the damages available under each scheme.

Lessons for the future

These schemes illustrate the significant administrative challenges that can be posed when operating on this scale. The following points highlight some of the key issues to be taken into account should departments be asked to take forward similar compensation schemes in the future. It should be read in conjunction with forthcoming guidance due to be published by HM Treasury.

Pre Start-up/start-up

- When a potential new liability is identified it must be monitored regularly and, taking account of how likely it is to come to fruition, sufficient action should be taken to manage the risks.
- As soon as a liability looks likely to crystallise departments should:
  - establish a project board, with independent input, preferably by the Chair, with suitable seniority and skills to take a strategic view of how the liability should be managed.
  - conduct a full options appraisal based on how the liability might be discharged. This should be based on all available data including, where the liability could be large, an actuarial analysis. The options appraisal should explicitly assess the costs of alternative delivery mechanisms.
  - put sufficient resources in place sufficiently early to enable the necessary analyses to be completed to support the decisions to be taken during the planning stage.
- From the start, have a strategy in place for managing the expectations of likely claimants and other stakeholders. As soon as the liability is decided, the department will be under intense pressure to begin payments quickly.
- Departments should take actuarial advice at an early stage and draw upon actuarial advice throughout the scheme before key decisions are taken, for example setting the dates for scheme completion. The actuarial analysis should seek to identify, amongst other analyses, the likely number, value and type of claims, and consider the likely profile of payouts to help inform the scheme design and financial management.
- In tandem with drawing up the scheme rules, departments should test the practicality and cost of what is being proposed by reviewing the quality of evidence likely to be available to support eligibility and the likely impact of the arrangements on claimants, particularly where they may be elderly or ill.

Implementation

- The implementation plan should include:
  - indicative service standards, including target processing times for different types of claim.
  - 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, the enquiry handling capacity to be put in place at launch and subsequently.
  - consideration of the scope for allowing individual claimants, or their representatives, access to progress information on their case via the internet, subject to assessment of the likely costs and benefits.
  - an outline closure plan setting out the expected time line for the scheme and how closure might be handled.
  - a procedures and operations manual for case officers, supervisory and management staff.
  - explicit plans for dealing with appeals, including independent adjudication where appropriate.
  - appropriate 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, and the factors that might need to be considered.
- In working with their delivery partners, departments should draw upon best practice to develop an effective partnership that draws on the skill and experience of contractors in developing schemes and problem solving. Examples of good practice can be found in the NAO publication *Driving the Successful Delivery of Major Defence Projects: Effective Project Control is a Key Factor in Successful Projects*, HC 30, May 2005 available at www.nao.org.uk.
- 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.
- Departments should have effective and timely performance management arrangements in place to ensure that emerging performance issues are considered at the appropriate level. In addition where there is a level of uncertainty contracts should include a provision to review certain performance indicators including remuneration.
- 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.

PART ONE

Background to the schemes

1.1 When the working pits of the British Coal Corporation (the Corporation) were privatised in 1994, the Government at that time decided to retain responsibility for meeting any potential personal injury liabilities arising as a result of publicly-owned mining activities. This included diseases for which the Corporation had already accepted liability or was in the process of settling, for example for noise induced hearing loss, and other claims where the Corporation was contesting liability. This liability transferred to the Department in January 1998.

1.2 In the same month, the High Court in England and Wales found the Corporation negligent in respect of lung disease caused as a result of coal dust, known as Chronic Obstructive Pulmonary Disease (COPD), see Appendix 2. The disease has varying severity, ranging from chronic bronchitis to emphysema, which seriously affects quality and longevity of life (see box). Under the judgement, the Corporation, and hence the Department, was liable for disablement caused by coal dust as a result of working for the Corporation after 1954 (1949 in Scotland) but not for the effects of smoking or impairment caused by normal levels of dust in the air.

Chronic Obstructive Pulmonary Disease (COPD)

COPD is a medical condition that affects the lungs. The main symptom is breathlessness, which results from the lungs being unable to get sufficient oxygen into the blood, and hence to the muscles, to allow normal exertion. Severity depends on the extent of lung damage. A mild form of COPD is chronic bronchitis, which is non-disabling and reversible. Emphysema is a severe form that is life-shortening due to a permanent narrowing of the airways. Smoking is the primary cause of chronic bronchitis and emphysema in the general population. In 1993, chronic bronchitis and emphysema were added to the list of industrial diseases that qualify for the payment of State disablement benefit.

1.3 In July 1998, in a separate group action, the Court of Appeal confirmed the High Court finding that the Corporation was negligent in respect of hand injuries caused as result of using vibrating equipment, known as Vibration White Finger (VWF), see Appendix 2. The condition is irreversible and untreatable (see box). As a result of the litigation, the Department was liable for disablement caused by service after 1 January 1975.

Vibration White Finger (VWF)

VWF involves damage to blood vessels, which causes parts of the fingers to go white due to the reduced flow of blood, and damage to nerve endings, resulting in numbness and tingling. The severity of the condition varies. In its mild form there is temporary numbness. As it becomes more serious there is a progressive loss of dexterity. It can require amputation in extreme cases. The disease is irreversible and untreatable. Discomfort becomes worse upon exposure to cold. Practical problems include difficulty in doing up buttons or holding small objects.

Establishment of the schemes

1.4 For both COPD and VWF liabilities the High Court ordered the Department to agree, with the claimants' solicitors, schemes for assessing individual levels of compensation. These arrangements applied to claims already registered and to individuals who wished to introduce a claim. The High Court continues to monitor progress and be available to resolve disagreements between the claimants' solicitors and the Department.

1.5 The Department, in negotiation with the claimants' solicitors, drew up plans for separate schemes for COPD and VWF. The purpose of these schemes is to replicate for each claimant, as closely as possible, the outcome if they had gone through a full court process. For each scheme the solicitors were represented by a Claimants Solicitors' Group,

drawn from the group of over 300 solicitors representing all claimants. The rules for assessing claims were set out in Claims Handling Agreements[6] (the Agreements), see box below. The agreements for each scheme were subject to approval by the High Court. The VWF scheme Agreement was finalised in January 1999, and the COPD scheme in September of the same year. Each Agreement includes a tariff of fees for remunerating claimants' legal representatives. There are separate Agreements for Scotland.

Claim Handling Agreements

After the conclusion of each set of litigation the Department prepared a Claims Handling Agreement (for VWF this was titled an Arrangement) in negotiation with the Claimants Solicitors' Group[7], setting out:

- the tariff of damages;
- the procedures to be followed in processing claims, including measuring individual disability;
- how entitlement to damages would then be calculated, including for COPD the weighting of smoking, dust and years of employment;
- instructions and guidance to medical staff;
- the various forms that claimants and medical staff would be required to complete depending on the circumstances of the claimant, notably whether the miner was still alive or deceased;
- the arrangements for dealing with claimants who died while their claims were processed;
- some of the standard letters to be used by the Department's claims handling contractor; and
- the fees payable to solicitors.

Both Agreements had to be agreed in detail with the solicitors. In England and Wales, for COPD, these negotiations began in February 1998 and were concluded in September 1999. The corresponding dates for VWF were July 1998 and January 1999. An Agreement specifically covering COPD claimants in Australia and New Zealand was signed in January 2003.

There are separate Agreements for Scotland which were negotiated on behalf of all Scottish claimants by the Scottish area of the National Union of Mineworkers (NUM) and their solicitors. They were signed in January 1999 (VWF) and June 2000 (COPD) and are identical to those covering England and Wales save where there are variations in the law between the legal systems. This principally arises in relation to posthumous claims. The Agreements are open to all Scottish claimants irrespective of NUM membership.

The Department negotiated separate Handling Agreements with the Union of Democratic Mineworkers (UDM), signed on 28 January 1999 (VWF) and 17 November 1999 (COPD). Except for fees these Agreements are identical.

1.6 Since signing the Agreements, a number of additional elements have been agreed between the parties. These include, for example: a settlement for Services claims under the VWF scheme to compensate for assistance with tasks such as gardening which the disease sometimes prevents claimants undertaking (see Appendix 2); and for COPD the introduction of a fast-track scheme known as the Optional Risk Offer Scheme (see Chapter 3, paragraph 3.18).

The application process

1.7 The Department has employed a number of contractors to administer the Agreements. Initially, it took over the Corporation's existing contracts: IRISC for processing health claims; Nabarro Nathanson (now called Nabarro) for legal support; and Hays Commercial Services and Business Healthcare for records management. The Department let further contracts mainly for medical services. IRISC was purchased by Aon[8] in 1997, which in turn was purchased by Capita Insurance Services in 2004 and which won a subsequent retendering of the contract in 2006. The contractors are listed at Appendix 6.

1.8 Applicants were required to register their claim with the Department's processing contractor through an advisor, usually a solicitor. Potential applicants included the estates of deceased miners. Claimants who were still alive would be asked to attend a medical examination or have a medical examiner visit them. An outline of the broad process for each scheme is shown in Appendix 4.

1.9 The COPD scheme was closed to new applications in March 2004; VWF closed to new applications in October 2002 for live claims and January 2003 for posthumous claims. A summary of the number of claims made in England, Scotland and Wales is given in **Figure 1 overleaf**. In 2005, the Department set a target to achieve substantive completion[9] of processing VWF claims by 31 October 2007, and COPD claims by 16 February 2009.

The outcome

1.10 By the end of March 2007 some 430,000 COPD and 145,000 VWF claims had been settled. This included the denial of 6,500 COPD and 1,600 VWF claims. And the withdrawal by the claimant of a further 44,000[10] COPD and 33,000 VWF claims. The remainder remain to be settled.

6 The Agreement covering VWF was titled an Arrangement.
7 Some solicitors representing claimants are not members of the Claimants Solicitors' Groups and were not involved in these negotiations.
8 Aon continued to use IRISC as its trading name.
9 In the case of the COPD scheme, substantive completion is defined as less than 500 cases outstanding and, in the case of VWF, less than 300 cases outstanding.
10 If a claimant's representative accepts notification of denial the claim is reclassified as withdrawn.

External reviews

1.11 Two reviews have been conducted on the Coal Health Compensation Schemes to date:

- In March 2005 the Trade and Industry Committee of the House of Commons reported on the Coal Health Compensation Schemes. It focused on the position of the schemes at the time immediately preceding the report and the future risks to scheme completion.
- In July 2005 the Minister for Energy announced a further review of the schemes with a different locus. It had two objectives: first, to review the integrity of the administration of the schemes; and second, to consider whether the arrangements for dealing with fraud were adequate. It was undertaken by Stephen Boys Smith, a former senior official in the Home Office, with the support of secondees from the Department. The findings, published in November 2005, are summarised at Appendix 8.

Scope of report

1.12 This report examines:

i) the Department's planning for the schemes, including the initial forecasts (Part 2);

ii) the implementation of the schemes, including the cost of administration (Part 3); and

iii) the Department's strategy for closing the schemes (Part 4).

1.13 This review was prompted by requests from Members of Parliament to augment the reviews already conducted, in particular to draw out potential lessons that might aid the administration of future schemes. The objective of this review is to examine the extent to which the Department has managed the schemes effectively and efficiently. The study methods are summarised at Appendix 1.

1 Breakdown of COPD and VWF claim numbers by country (at 31 March 2007)

	England		Scotland		Wales		Total	
Total COPD claims received								
Overall	443,681		50,826		97,199		591,706	
■ Miners	189,570	43%	18,185	36%	34,804	36%	242,559	41%
■ Widow and Estate claims	254,111	57%	32,641	64%	62,395	64%	349,147	59%
Total VWF claims received								
Overall	137,166		11,521		20,930		169,617	
■ Miners	118,845	87%	9,280	81%	17,686	85%	145,811	86%
■ Widow and Estate claims	18,321	13%	2,241	19%	3,244	15%	23,806	14%

Source: The Department's claims monitoring statistics

PART TWO

The planning of the schemes

2.1 This Part examines the Department's preparations for launching the new schemes, including its arrangements for forecasting the potential number of claimants and its appraisal of the options for meeting its liabilities.

Estimating the potential number of claimants and liabilities

2.2 The Department needed properly researched estimates of the likely liabilities and the number of claims to inform the design of the schemes, ensure adequate resources were in place to process applications quickly and inform public expenditure planning. Even if the uncertainties associated with the figures were great, the Department needed to know the limits within which it should plan. Our work suggested that there were serious shortcomings in the Department's approach at this early stage.

2.3 In March 1998, just after taking over responsibility for the liabilities, the Department forecast that the number of claims during the life of the schemes would be of the order of 220,000, comprising 173,500 for Chronic Obstructive Pulmonary Disease (COPD) and 45,000 for Vibration White Finger (VWF). It only forecast forward the financial liability until 2003, when it then believed a significant majority of claims would be settled; the combined liability of the two schemes was expected to be some £614 million. There was no sensitivity analysis conducted on these estimates. These estimates were to fall significantly short of the eventual number of claims of 591,706 for COPD and 169,617 for VWF, and the eventual liability, now expected to total up to £4.1 billion **(Figure 2)**.

2.4 The Corporation had previously warned the Department that the compensation liability could be significant. The Corporation's final estimate (June 1997) had assessed the COPD liability at between £500 million and £2 billion, with VWF at £50 million to £250 million but possibly more. The supporting estimates suggested that the most likely number of claims for VWF would be in the range of 25,000 to 50,000; and for COPD between 75,000 and 300,000. These estimates were highly sensitive to the underlying assumptions.

2 Summary of claims estimation conducted by British Coal Corporation in 1996 compared to the Department's forecast at March 1998 and outturn estimate at March 2007

	VWF		COPD	
	Total Claims	Liability	Total Claims	Liability
British Coal Estimate (1997)	25,000 to 50,000	£50m to £250m(+)	75,000 to 300,000	£500m to £2,000m
DTI estimate (March 1998)	45,000	£163m[1]	173,500	£451m[1]
DTI estimate (March 2007)	169,617	£1,632m	591,706	£2,416m

Source: National Audit Office analysis of the Department's papers

NOTE

1 The Department's March 1998 financial estimates were projections to scheme completion (2003 for COPD and 2001 for VWF).

2.5 The Department was able to draw upon the Corporation's estimates but its March 1998 figures were not an actuarial estimate, simply a very broad 'best guess' of the population of mineworkers potentially exposed;[11] the proportion of applicants likely to claim, based on previous health claims experience; and medical advice on the possible nature of injuries. The Corporation's estimates had indicated a significant level of uncertainty attached to the likely number of claims, but there is no indication that the Department took this into account in its planning. At no point during the planning for these schemes did the Department seek actuarial advice on the potential population, the likely number of claims including the likely range of uncertainty, their likely composition or the cost.

2.6 The Department did not appreciate at this point (in early 1998) that under general legislation an entitlement to compensation could be passed to the estate of the miner upon death and to subsequent estates if entitlement had still not been claimed. It had previously considered that the liability would extend only to direct dependants, particularly widows, and it became aware of this wider scope to the liability only in late 1998. The Corporation had not factored this wider entitlement into its earlier estimates. The Department did not, however, commission a further investigation of its likely impact on the number of claims or the level of compensation.

2.7 This omission, and the failure to follow-up, was to prove significant. In 2001 the Department commissioned PricewaterhouseCoopers LLP (PwC) to review its assumptions to determine the provision for COPD claims. PwC concluded that the number of miners working underground between 1954 and 2000 was of the order of 1.3 million. It highlighted there was much uncertainty around the chances of an underground worker contracting COPD and his subsequent propensity to claim; its best estimate was 200,000 to 300,000 claims, but it highlighted the risk that this figure might be a severe underestimate. In terms of the future claimant profile it highlighted that there might be a surge in claims on behalf of deceased miners towards the latter part of the scheme's life cycle. Compared to the Department's initial estimates, much of the subsequent rise in the number of claims can be ascribed to the impact of estate claims on the overall total. Estate claims were to account for 44 per cent of COPD claims and eight per cent of VWF claims.

Designing the schemes

2.8 The Department's planning prior to the High Court judgements on COPD and VWF in January and June 1998 was limited. The legal defence of the COPD and VWF litigation was led by the Corporation. The Department took the view that the Corporation was better placed than itself to handle the legal defence – the Corporation's senior management, officers, lawyers, claims handlers and records staff were judged to have knowledge and experience unavailable within the Department. Responsibility for the liabilities was therefore not transferred to the Department until January 1998.

2.9 In February 1998 the Department started the arrangements to deal with the COPD and VWF liabilities. It formed an Energy Liabilities Committee, appointing officials to oversee the liabilities.[12] In November 1998 it established a dedicated Coal Health Claims Unit, comprising three officials, including for the first time a dedicated senior member of staff. Much of the time of the new Coal Health Claims Unit, and the deliberations of the Energy Liabilities Committee, was immediately occupied in completing the negotiation of the Agreements.

2.10 The Government had announced in July 1995 its decision to transfer the COPD and VWF liabilities to the Department by the end of 1997. There is evidence that during this period, and preceding the Court judgements, the Department stood back to assess its options for discharging the liabilities. At working level it did consider some of the possible options including offering the liability to reinsurance and the possibility of putting the schemes on a statutory footing – where Parliament rather than the Court would determine the scheme rules. We could find no evidence, however, of a more systematic in-depth option appraisal being considered at more senior levels. Once the courts had reached their decision, most of the options previously open to the Department would have become much more problematic to implement without being drawn into a common law process. It is not possible for the National Audit Office to say whether the other options would have been viable.

11 This also includes the type of exposure, for example for COPD, the quantum of damage by dust varies among collieries; it was not until a 'dust model' was finalised in 2001 that this could be quantified.

12 This was renamed the Coal Liabilities Committee in January 1999 and is now called the Coal Liabilities Strategy Board.

2.11 At the time of the Court judgements the Department did not have the information that would be needed to inform the design of a new scheme. In particular, it did not know the likely level of compensation to be paid across the population of claimants and, for COPD, it had no information to quantify the profile of severity of COPD and the extent to which smoking would reduce compensation entitlement. In many respects, much of this information would only have become available once cases began to be assessed. Recognising that such information might be needed, and using actuarial expertise to identify significant uncertainties, could have helped the Department take a broader view of the options available. This could have included grouping different types of claimants so that administration costs reflected more closely the level of compensation payable, for example by using less intensive procedures to process claims where the miner smoked and had a short period of qualifying service **(see Case Example 1)**. Obtaining such information, for example from samples of cases, however would have taken time at a point when the Department was under pressure to get the schemes up and running.

2.12 Previous personal injury claims in the coal industry, such as those for pneumoconiosis and noise induced hearing loss, though on a smaller scale, might have offered some useful lessons to be learned or highlight potential risks (see box). The cost of common law claims, for example, under the Noise Induced Hearing Loss Scheme had suggested that administrative costs could be comparable to the amounts of compensation paid out.

CASE EXAMPLE 1

An example of the effect of smoking and short qualifying service taken from the COPD claims handling database

Ms A submitted a COPD claim in June 2001on behalf of her father, who died in the 1980s. He had worked as a coal face worker in three different mines for some 50 years until mid 1960s. Ms A recorded that her father experienced breathlessness when walking short distances and needed help with tasks which might cause exertion, such as gardening. His cause of death was shown on the death certificate as bronchopneumonia and pneumoconiosis: he was a light smoker for 60 years and was judged to be 30 per cent disabled at the time of his death. Due to the miner's smoking history, and only 11 years of qualifying employment, the Department was liable only for seven per cent of his disability: Ms A received approximately £800 in damages in 2004.

The Coal Workers Pneumoconiosis Scheme 1974

The Coal Workers Pneumoconiosis Scheme is a no-fault scheme set up in 1974 as a private agreement between the British Coal Corporation and: the National Union of Mineworkers; the National Association of Colliery Overmen, Deputies and Shotfirers; and the British Association of Colliery Management.

The scheme provides compensation to mineworkers (or their families) who have certain respiratory diseases, but principally pneumoconiosis, by 1) lump sum payments partly for disability but also for the claimant waiving his right to a common law claim through the Court, 2) weekly or monthly benefits to compensate for loss of earnings. The Department assumed the liability on 1 January 1998; the scheme is administered by Capita Insurance Services.

Eligibility is dependent on (a) 10 years employment in a Corporation mine, (b) payment of Industrial Injuries Disablement Benefit for pneumoconiosis (for lump sum payments) and (c) payment of Incapacity Benefits (for weekly/monthly loss of earnings payments).

Since 1974 there have been some 90,000 claims and approximately £150 million in lump sum payments and some £45 million of loss of earnings payments. Since 2000, claims have averaged 100 per month. The average lump sum payment is £2,700. There are currently some 95 Loss of Earning claims receiving, on average, £1,000 per month. It takes, on average, some 23 months to settle a pneumoconiosis claim. A major factor affecting this average is the practice of claimants delaying their acceptance of the Department's offers until their applications for the relevant State benefits, listed above, have been completed.

Noise Induced Hearing Loss

Industrial hearing loss is also known as noise induced hearing loss (NIHL). It can be defined as irreversible damage to the ears caused by exposure to high levels of noise. Miners' claims are brought against the Corporation; the Department assumed this liability on 1 January 1998.

The Corporation negotiated the settlement of claims on an individual basis. It did so initially by negotiating a tariff with the principal mining unions, entering into agreements with the unions directly, and their appointed legal representatives. As miners left the industry, many of them left the union and when they later became aware of their hearing loss they brought claims through high-street firms of solicitors. The change in the profile of cases led the Corporation to enter into arrangements for the settlement of noise claims not only with trade unions, but with those firms that had large volumes of claims. In general, the Department has continued with those agreements.

Noise induced hearing loss claims are not handled under a specific scheme. There are two types of claim, one settled under the Iron Trade Tariff and the other through common law. The average settlement under the Iron Trade Tariff is approximately £1,500 with costs and disbursements ranging from £485 to £800. Claims under common law have an average settlement of between £3,000 and £3,500. Negotiated costs range from £2,000 to £4,000.[13]

Since 1997 there has been some 40,000 hearing loss claims totalling £70 million in compensation. Around 1,400 remain to be settled. The rate at which claims are received is slowing and stands at 100 per month. The average settlement is in the order of £1,750 and takes some 18 months.

Source: The Department (March 2007)

13 Answer to a Parliamentary question 11 July 2005 http://www.publications.parliament.uk/pa/cm200506/cmhansrd/cm050718/text/50718w18.htm

2.13 Our work has suggested that the weaknesses in the Department's initial management of these liabilities, especially its forecasting, were exacerbated by:

- **Lack of resources.** It devoted insufficient staff to managing the COPD and VWF liabilities. After privatisation of most of the collieries in 1994 the Department's overriding objective was to minimise its involvement with these liabilities, initially assigning half of one person's time. By 1 January 1998, when these liabilities were legally transferred from the Corporation to the Department, two staff were assigned, rising to three in November of that year. Departmental papers as early as 1996 suggest that a lack of resources within the Department impeded undertaking the analyses required. The timeline at Appendix 3 provides details of the build up of staff over time.

- **Failure to follow some of the routine steps that the insurance sector would take when planning for a potential liability of this nature.** While the Department had access to the skills and experience in handling claims needed to negotiate the Agreements,[14] it lacked at these crucial early stages the skills and knowledge to manage liabilities of this scale, including actuarial expertise. Appendix 5 of this report highlights some of the steps often taken now within the insurance industry when faced with such liabilities.

14 When the liabilities were legally transferred to the Department in 1998 it took over the Corporation's contract with Nabarro for legal services and the contract with IRISC for handling health claims. The legal support provided to the Department by Nabarro was supplemented by the Department's in-house legal team. Later the Department also deployed consultants from PwC and Deloitte with experience in insurance and claims handling, together with risk management.

PART THREE

Implementation

3.1 This Part looks at the Department's implementation of the Coal Health Compensation Schemes. It considers: the speed at which claims were settled; the Department's response to the emerging challenges; and, the costs of administering the schemes.

The settlement of claims

3.2 The median time taken by the Department, its contractors and claimants' representatives to process claims under the Vibration White Finger (VWF) scheme has been 20 months and for those going through the full assessment process under the Chronic Obstructive Pulmonary Disease (COPD) scheme 29 months **(Figure 3)**. Some claims have taken significantly longer, and some remain to be cleared. Others were handled more quickly. In part this is due to the Department's early agreement with the Claimants Solicitors' Group to prioritise claimants by cohort, with claims from living miners and widows handled first followed by estates.[15] Where possible, this resulted in claims from living miners with the most pressing health needs being considered first. Interim payments were also made. Using the fast-track route for COPD claims, introduced in its current form in 2005, the Department and its contractors have reduced average processing times to 19 months for claims processed via this route **(Figure 4 overleaf)**.

The causes of long processing times

3.3 The complexity of the scheme rules, which were a negotiated outcome, contributed to the difficulty of clearing claims, placing significant demands on all parties to bring together the information needed to process applications. To protect the interest of taxpayers, the Department needed sufficient information to verify claims but, in some instances, the information was either not easily available or incomplete. The schemes, for example, required the applicant to complete a questionnaire and, for COPD, signed mandates allowing access to: General Practitioner

3 Processing times[1] for COPD and VWF claims to post-medical offer at 31 March 2007

VWF processing time for General Damages offers made after a medical assessment

Cohort	Average[2] (months)	Maximum[3] (months)	50 per cent of claims dealt with in less than:[4] (months)
Miners	26	138	19
Widows' claims	31	126	25
Estate claims	30	138	25
All claims	**27**	**138**	**20**

COPD processing time for offers made after a medical assessment

Cohort	Average[2] (months)	Maximum[3] (months)	50 per cent of claims[4] dealt with in less than: (months)
Miners	35	133	31
Widows' claims	33	131	28
Estate claims	31	134	27
All claims	**33**	**134**	**29**

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

NOTES

1 All duration figures are rounded down to the nearest month.

2 This is the mean duration. The calculation is based on the duration of claims in the schemes between the date of registration and the date of last known offer; it does not include cases litigated outside of the schemes or those which were withdrawn or denied.

3 This excludes cases litigated outside of the schemes, those which were withdrawn or denied and those still to receive offers after 31 March 2007.

4 This is the median duration.

5 This table does not include VWF services claims which were made by around one quarter of all claimants. The median settlement time for the services component of these claims is an additional 36 months.

15 For example, while the COPD Claims Handling Agreement was being negotiated, the Department began its programme of spirometry medical tests (see Appendix 2) to help rank claimants by disability. It also used this test to make interim payments.

records, hospital records, Benefits Agency records, Social Security (Local Office) records, pension scheme records, British Coal medical records, colliery workers pneumoconiosis records, redundancy records and, in the case of estate claims, the post mortem record. For estate claims, copies of the deceased's death certificate, marriage certificate (if appropriate), Grant of Probate or Letters of Administration and, if available, evidence of funeral expenses also had to be furnished.

3.4 For applicants with valid claims the process could be frustrating and time consuming. Miners' representatives interviewed by us believed that the information required was not always proportional to the amounts of compensation at stake. Appendix 4 illustrates, in simplified form, the information flows necessary to successfully process a claim.

3.5 The operational implications, especially the infrastructure requirements, of the Agreements were not fully considered by the Department during the initial negotiations with the Claimants Solicitors' Group. The Agreements set out exactly how claims would be assessed with the aim of achieving a similar outcome for the claimant had he progressed his case through the courts; consequently, the Agreements are very detailed. The COPD Agreement runs to 625 pages and has since been supplemented by 13 protocols dealing with specific aspects of claim handling, for example smoking history. Similarly, the VWF Agreement runs to 747 pages and is supplemented by two protocols.

4 COPD processing time in months[1] for fast-track offers to living claimants

Cohort	Average[2] (months)	Maximum (months)	50 per cent of claims[6] dealt with in less than: (months)
Fast-track[3]	24	127	19
Fast-track alone[4]	6	24	5
Expedited[5]	15	124	12

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

NOTES

1 All duration figures are rounded down to the nearest month.

2 This is the mean duration.

3 Live Optional Risk Offer Scheme – for miner claimants only, available from 28 February 2005. These figures represent the total time the claimant was in the COPD compensation scheme.

4 These figures represent the total time the claimant was in the fast-track procedure.

5 The Expedited Scheme was available from September 1999.

6 This is the median duration.

As far as we could determine, the Department did not, when in the midst of negotiations, assess the practicality and cost-effectiveness of the proposed processes. Neither did the Department, following the negotiations, pilot the processes from end-to-end to test the overall robustness of each scheme and to address unforeseen problems before committing resources. The Department was under significant pressure from all parties to get the schemes up and running.

3.6 As the Agreements were applied, considerable bottlenecks began to occur and these delayed settlement of the claims and caused frustration for applicants **(see Case Examples 2, 3 and 4)**. Regional monitoring groups were set up by Ministers in 1999 – comprising Members of Parliament, solicitors, trade unions and the Coal Industry Social Welfare Organisation – to monitor progress on the settlement of COPD claims and to consider how the processing of these claims might be speeded up.

CASE EXAMPLE 2

Shortage of information delayed the process

Mr B is a 55 year old who worked as a labourer for the Corporation, and other employers, over some eight years. He made a VWF claim in July 1998 and filed a completed questionnaire in May 1999. Because of Mr B's work with different employers the claims handler, Capita, had difficultly obtaining a complete picture of his employment history; it was not until July 2002 that his employment records were confirmed. Following a request for further information, in December 2004 Mr B's solicitor submitted a witness statement to confirm the type of tools he used in his job. In March 2006 Capita requested Mr B's GP records, and these underwent medical review in October 2006, over eight years after the claim was first filed. Our examination found little evidence on file to explain some of the significant delays. As at 31 March 2007 this claim is not settled.

CASE EXAMPLE 3

There were delays in providing medical assessments

Mr C is a 76 year old who worked underground for 42 years from the age of 17 for both the Corporation and other, smaller, mine operators. He filed his COPD claim in March 1998. Some 20 months of Mr C's total claim duration was due to delays in medical assessments. Departmental files do not explain the causes of these delays. His initial medical was requested by the claims handler, IRISC, in March 1999 and it was not undertaken until January 2000. With the help of his solicitor, Mr C completed his claim questionnaire in July 2000. Receipt of this questionnaire at IRISC triggered a request for a full medical assessment. Again, a delay meant this was not completed until May 2001. A further delay in locating the claimant's employment history at a mine not operated by the Corporation meant an interim payment was not made until June 2004, over six years after the claim was first submitted. As at 31 March 2007 this claim is not settled.

3.7 The Department, and its contractors, faced a number of challenges:

- Key elements of the processing procedures did not work as intended. The main medical assessment process for each scheme required the Department to develop bespoke processes which required specialist medical staff. Initially, these staff were not available in the numbers required. The scale of the COPD scheme, for example, was such that it was difficult to find the number of respiratory specialists required in the UK. This shortfall took time to resolve, including using retired doctors and recruitment overseas.
- Medical and employment records took longer to obtain, and were often incomplete, did not exist, or were voluminous.
- Some solicitors and other claimant representatives were slow in dealing with their tasks and returning fully completed claims questionnaire forms. The Agreements placed few deadlines on solicitors. To help ensure that all those still wishing to register a claim could do so in the run-up to scheme closure, the Department relaxed the initial claimant information required of solicitors. This caused some later bottlenecks when delays occurred in supplying the required remaining information.
- The processes for capturing the primary data (notably the application forms) were largely paper based, resulting in significant amounts of paperwork for transfer to the computerised database. With the introduction of the password protected CoalClaims website in 2002, solicitors could submit new details electronically about their clients although most preferred not to at that stage.[16] In addition, some medical reports were submitted electronically by contractors, including 110,000 VWF general damages medicals.
- Certain claims began to raise issues not covered in the initial Agreements, despite their length. Referred to as "policy issues", these necessitated further negotiations with Claimants Solicitors' Group so that changes and additional elements could be agreed. Some issues remain to be resolved and are covered in Part 4.

CASE EXAMPLE 4

The evidential requirements took time to fulfil

Mr D is a 49 year old who worked as a fitter for the Corporation for some five years in different roles. When he filed his VWF claim in August 2000 his solicitor provided what it felt was sufficient evidence of Mr D's work history. The claims handler, IRISC, needed additional evidence of the type of fitting work performed by Mr D to assess whether he used vibrating tools. By April 2001 IRISC had not been able to validate Mr D's work history with information from the solicitor or the Department's contractors so it asked the claimant to provide witness statements; these were not forthcoming and were requested again in September 2001. The claimant's solicitor wrote to IRISC to complain about the delay in processing the claim.

Eventually, in July 2003, Mr D's claim was passed to the IRISC's dedicated investigation team which confirmed the employment group but turned down the claim due to insufficient time exposed to vibrating tools. After an appeal and further investigation in April 2005 the claim (now handled by Capita) was reinstated and a medical assessment requested. An offer was made in December 2005 for general damages but was rejected pending the outcome of a services claim – applicants can make a separate claim in respect of impairment to their ability to perform everyday tasks, known as a service claim. Information to support this services claim was provided by the solicitor in December 2005. In April 2006 Capita contacted Mr D's 'helper' to assess his services needs. The general damages and services claims were settled in July 2006.

The Department's response to the delays

3.8 By March 2001 there were some 97,000 VWF and 133,000 COPD claims outstanding, and these figures were rising. The Monitoring Group in England identified that a blame culture between the contractors, together with an adversarial relationship between the Department and the Claimants Solicitors' Group that could be traced back to the original litigation with the Corporation, was hampering progress.

3.9 In September 2001 the Department brought in a senior secondee from Shell UK Limited with programme management experience to strengthen its review of internal procedures to improve performance. His report made a number of recommendations, summarised in the box overleaf. As a result of this and changes already being introduced by the Coal Claims Unit team, a new project board was established for both COPD and VWF to exert greater project management control. In addition, the number of Departmental staff was increased from some 20 to about 40 and further secondees[17] with experience in project management and the settlement of insurance claims were engaged to provide professional input.

16 Solicitors can also view the progress of their clients' claims and 94 per cent of solicitors have used this facility.
17 From PricewaterhouseCoopers and latterly Deloitte & Touche.

3.10 The Department also took steps to improve, over time, the scope and format of the information it receives from its claims handling contractor to enable it to track progress. Information was needed to try to meet the needs of various stakeholders, including the Courts, Members of Parliament, and claimants.

3.11 The Department also oversaw a series of initiatives aimed at improving quality and productivity. Solicitor Liaison Managers were appointed at Capita to tackle operational difficulties more effectively. In addition to the Coal Claims website and the submission of medical records electronically (paragraph 3.7), greater use of computerised procedures included the scanning in of employment records at the various archive facilities and, at Capita, the scanning of over 30 million sheets of primary documentation, leading to the more efficient processing of claims. The Department reported that the work at Capita had resulted in a saving of £5.2 million for the taxpayer.

Review of COPD and VWF schemes (January 2002) – Summary of recommendations

Strategy Clarify the objectives and timeframe, strengthen the delivery organisations, revisit the contract strategy, refocus the working arrangements between the Department and the plaintiffs' solicitors, strengthen feedback procedures.

Planning Build an end-to-end capacity plan for each scheme for the next three years. Support this with resource plans for each contractor, a communications plan, an IT plan, and small project plans. Put in place a single project management methodology. Manage all projects more rigorously.

Operations Strengthen the contractors' capability to manage and to operate processes end-to-end. Define more clearly the accountability of each party, strengthen the decision making capability.

Control Strengthen both operational control and the periodic review processes so that progress against plan and upcoming issues are regularly monitored. Strengthen the feedback to and from those on the ground.

Report by the Secondee from Shell UK Limited

3.12 In 2004, as part of a wider study of risk management in government, the National Audit Office used the Coal Liabilities Unit as a case study and highlighted specific areas of good practice in the use of risk management: to set up and manage large and novel projects with multiple partners by thinking about risk so that it became an integral part of day-to-day project management and communication with all parties; to establish positive and open relationships with key stakeholders; to allow time and sufficient resources for risk management; and to be prepared to take calculated risks.

Addressing the claims outstanding on the VWF scheme

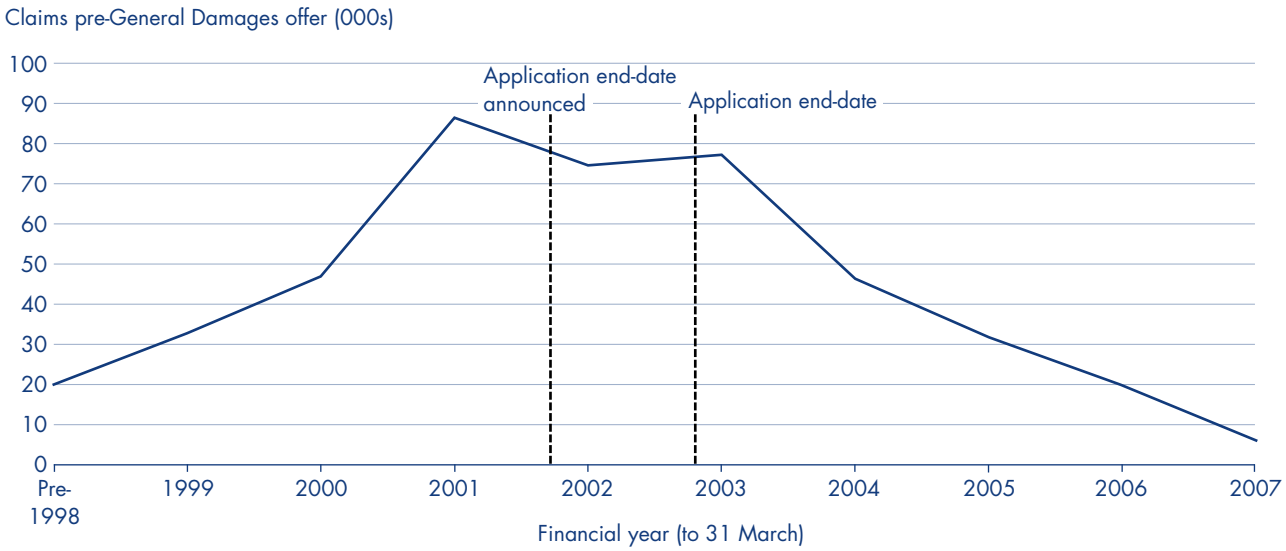
3.13 To address the claims outstanding on the VWF scheme, the Department asked its contractors to expand the capacity to conduct medicals from 2,300 to 3,600 a month during 2000 and to 4,600 a month by August 2001. IRISC, the Department's claims handler at that time, also improved its capacity by increasing VWF scheme staff from 271 in December 2001 to 354 in July 2002. These efforts began to increase the numbers of claims which had received a General Damages offer steadily from 2003 onwards **(Figure 5)**.

Addressing the claims outstanding on the COPD scheme

3.14 Problems persisted with the COPD scheme. From 2002 to 2004 there was a significant under-utilisation of the capacity available to complete the main COPD medical. This was due, initially, to insufficient completed applications from claimants via their representatives; without a completed claims questionnaire the claim could not enter the medical assessment process. Once these questionnaires were logged delays began to occur in performing the initial spirometry testing (see Appendix 2) and in claimants attending full medical assessment appointments.

3.15 The claims outstanding experienced on the COPD scheme were, however, to be significantly exacerbated by the surge of applications received by the Department following its announcement in March 2003 that the Scheme would close to new applications in March 2004. In 12 months, the claims at the pre-offer stage rose from some 150,000 to over 400,000 **(Figure 6)**. This had been in contrast to the Department's experience on VWF where the forewarning of closure for September 2002 had caused a much smaller and manageable receipt of applications and hence had less impact on the claims outstanding (Figure 5).

5 Vibration White Finger claims awaiting a General Damages offer



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

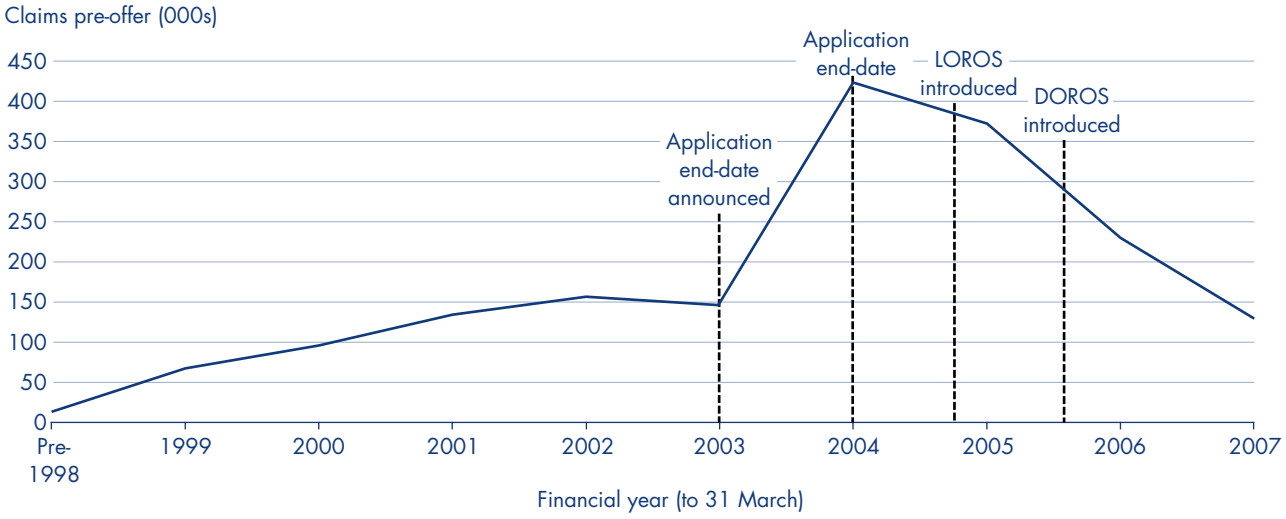
NOTES

1 This chart shows by financial year the number of claims received less: the numbers of General Damages offers made; the number of claims settled by denial; and the number of claims withdrawn.

2 Claims which have received an offer or have been denied are not considered 'settled' until either the outcome is formally accepted by the claimant's representative or the claimant accepts payment for the claim.

3 This chart does not include data on the number of claims for Services damages. Only claimants who have received a General Damages offer are eligible to claim for Services. As at 31 March 2007, there were some 17,000 claims that had received a General Damages offer but were awaiting the outcome of their Services claim.

6 Chronic Obstructive Pulmonary Disease claims awaiting an offer



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

NOTES

1 This chart shows by financial year the number of claims registered less: the number of offers made after a full-medical; the number of offers made to miners through the fast-track process; the number of payments made to widow and estate claimants through the fast-track process; the number of claims settled by denial; and the number of claims withdrawn.

2 Claims which have received an offer or have been denied are not considered 'settled' until either the outcome is formally accepted by the claimant's representative or the claimant accepts payment for the claim.

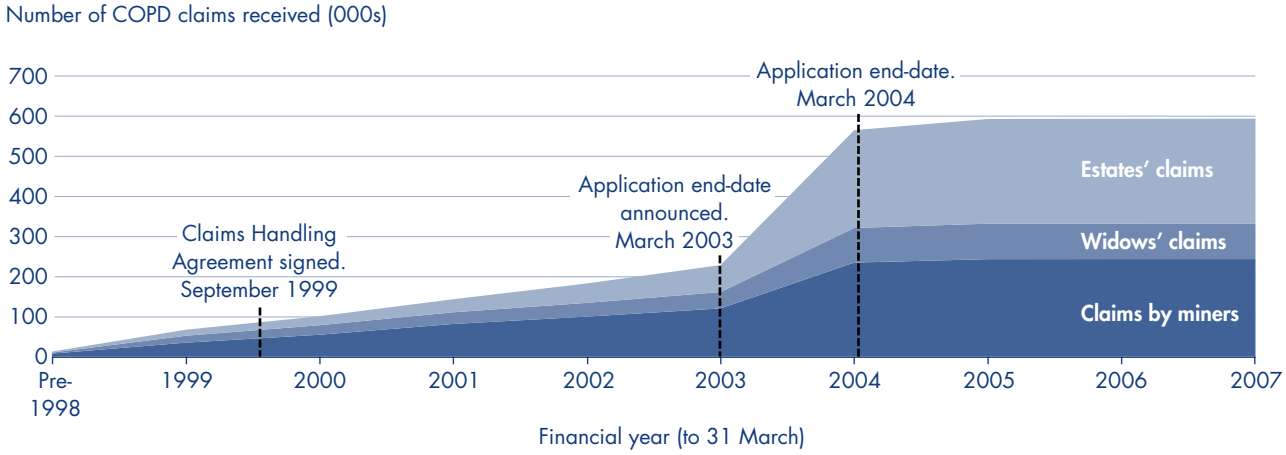
3.16 The Department did not seek actuarial advice on the likely number of outstanding claims when end dates were being considered. These dates were agreed with the Claimants Solicitors' Group and ratified by the Courts on condition that the Department conducted a national advertising campaign to make potential claimants aware of the cut-off. The Department expected its advertising campaign to increase the rate at which claims were lodged but not to the extent it experienced. Our analysis at **Figure 7** shows that the increase can be ascribed in part to a significant rise in the number of estate claims as potential applicants began to realise that claims could be made. This was encouraged in the advertising carried out by some solicitors and other claimants' representatives.

3.17 The Department and the Claimants Solicitors' Group, with approval from the Court in 2005, responded to the rise in claims outstanding on the COPD scheme by proposing a "fast-track" means of processing applications. Although an expedited claims route formed part of the original Agreement it had not been extensively used; of the 430,000 claims processed by 31 March 2007, only 24,000 had been dealt via this route. The expedited option was open to all claimants but was primarily designed for those with a shortened life expectancy whose medical evidence indicated that higher than average amounts of compensation would be payable. It was an opt-in scheme.

3.18 Introduced at the end of February 2005, the later fast-track scheme, known as the Optional Risk Offer Scheme (OROS), with separate procedures for live (LOROS) and estate (DOROS) claims, was aimed at cases likely to attract smaller amounts of compensation. The eligibility criteria were less stringent than the expedited route and the compensation offered reflected the amounts paid to claimants in a similar position – based on experience, including medical evidence, of over 100,000 COPD compensation payments. All living COPD applicants who had not yet attended a full medical examination were automatically added to the Optional Risk Offer Scheme, unless they opted-out to join the full assessment process – usually where the individual was advised by their legal representative that they might have a larger claim.

3.19 The fast-track process had an immediate and significant impact on the processing of applications and on reducing the claims outstanding (Figure 6). By 31 March 2007, some 75,000 LOROS offers had been made, 96 per cent of which were accepted. The DOROS scheme is an opt-in arrangement; some 99,000 of these offers had been accepted by the same date.

7 The announcement of cut-off dates led to a rise in the number of COPD claims



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

NOTES

1 Litigation completed January 1998.

2 The above chart is based on claim status as at 31 March 2007.

The cost of administering the schemes

3.20 At the end of March 2007, our estimate of the total forecast cost of administering[18] the COPD and VWF schemes was £2.3 billion. Our analysis shows that the average cost of processing a claim up to the end of March 2007 was £3,200 for COPD and £2,600 for VWF **(Figure 8)**. In comparison to the compensation paid out, the administrative costs are significant. **Figure 9 overleaf** shows the profile of compensation payments paid out for COPD and VWF. For the COPD scheme, at 31 March 2007, around 69 per cent of claimants paid compensation have received less than the average cost of administering claims. For the VWF scheme, the equivalent figure is around seven per cent.[19] Based on the information available it is not possible to identify separately the scheme costs associated with each cohort within each scheme, for example the unit cost of dealing with fast-track claims under the COPD scheme.

8 Estimates of administrative costs per claim

Type of expenditure	COPD		VWF	
	Up to 31 March 2007 £m	Estimated final outturn £m	Up to 31 March 2007 £m	Estimated final outturn £m
Allocated costs				
Solicitors costs[1]	917	1,122	128	173
Medical costs	365	394	31	32
Other allocated	1	1	1	1
Sub-total	1,283	1,517	160	207
Apportioned costs[2]				
Claims handling	209	273	189	207
Record extraction	32	38	8	10
Legal services	16	20	16	20
Sub-total	257	331	214	236
Total	**1,540**	**1,848**	**374**	**444**
Claims completed	431,327	591,706	144,857	169,617
Average cost per claim	3,200 [3]	3,100	2,600	2,600

Source: National Audit Office analysis of Departmental data

NOTES

1 Includes fees paid to the Claimants Solicitors' Group and the Union of Democratic Mineworkers.

2 The Department does not breakdown by scheme its contractor costs. Its contractors receive composite payments covering work done on all types of health claim, including COPD, VWF and other residual claims. In addition, the Department has not separately identified its in-house costs by scheme. For the purposes of this analysis we have apportioned costs based on our analysis of applied resources. See also Appendix 1.

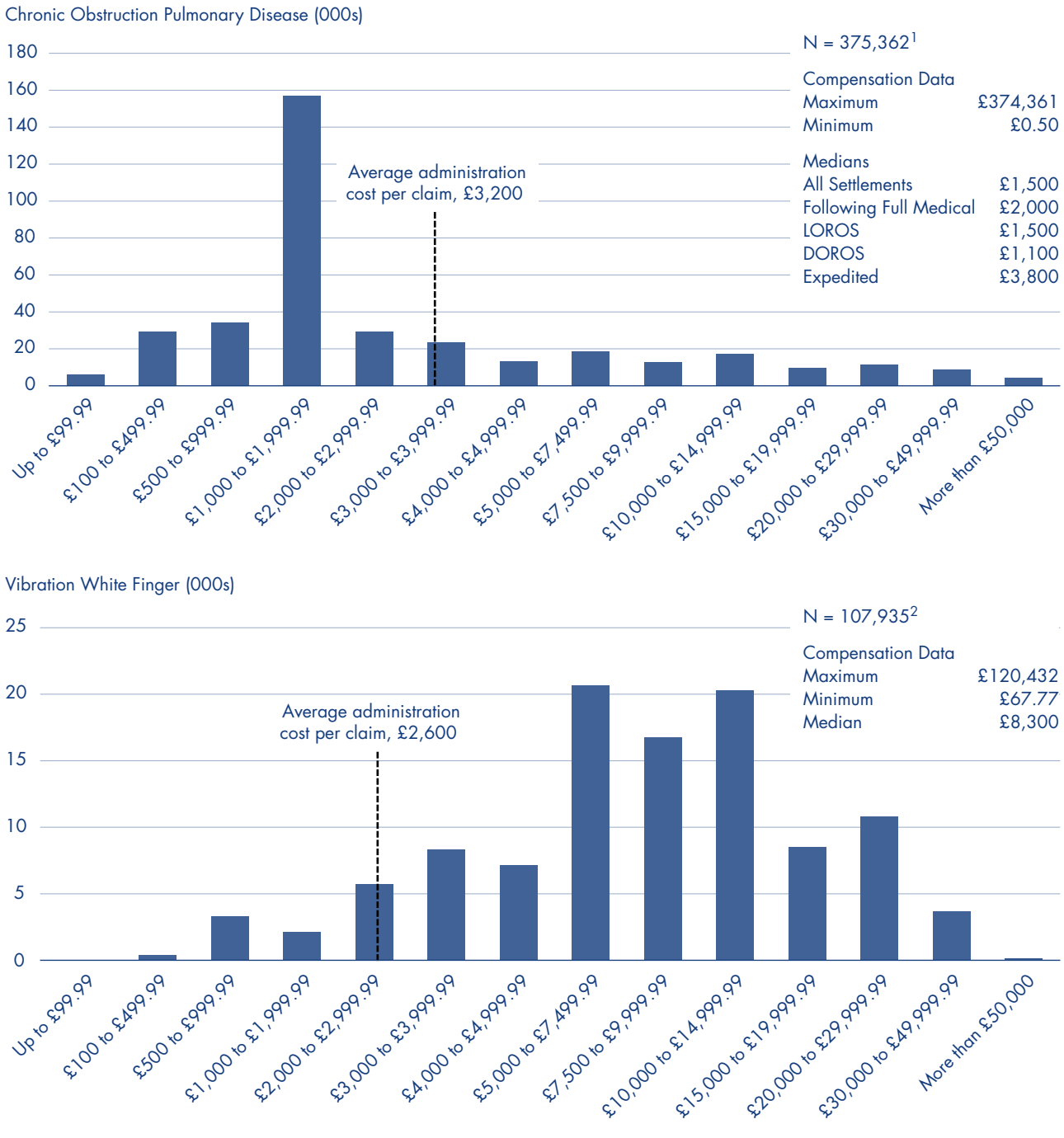
3 Costs allocated to both schemes include pre-payments against claims which have yet to be settled; for example the Department has incurred expenses for medicals in the period up to 31 March 2007 which have not yet led to settled claims. Where possible we have removed the pre-payment to identify the average cost for each settled claim. £3,200 should be seen as the upper boundary.

4 The Department does not capture its own resource costs applied to the Coal Health Compensation Schemes.

5 Figures do not cast due to rounding.

18 Figure 8 outlines the components of administrative costs and is based on the assumptions noted in the figure and the limitations outlined in Appendix 1.
19 This includes general damages and services compensation payments but excludes wage loss settlements; see Appendix 2 for definitions.

9 Spread of compensation payments to 31 March 2007



Source: National Audit Office analysis of the database of Capita Insurance Services

NOTES

1 This is the number of settled COPD claims which received a payment under any head of damages, excluding those which were litigated outside of the scheme.

2 This is the number of settled VWF claims which received a payment of either General Damages only or General Damages and Services, excluding those which were litigated outside of the scheme.

3 The high number of COPD settlements in the range £1,000 – £1,999 is significantly influenced by the take up of Optional Risk Offers.

4 Since November 2006 a Minimum Payment Scheme is in operation. Claimant's offers of £500 or less are increased to £500 by their solicitors from its own funds. The solicitor continues to receive payment from the Department as defined by the Agreements.

Solicitors costs

3.21 The cost of meeting claimants' solicitors', and other representatives', fees is expected to account for around 61 per cent of the expected administrative costs for COPD and 39 per cent for VWF. This expenditure has funded some important services, particularly considering the age and infirmity of some of the clients. The legal representatives were expected to provide: information about the schemes, for example details of the process involved and the criteria governing entitlement; advice, for example, in the case of COPD claims of whether to pursue a fast-track settlement or opt for the full medical assessment; assist with the completion of various forms; advise the client on any offers made and, in some cases, pursue issues not envisaged in the original claims handling agreement (covered in Part 4 of this report).

3.22 The cost of legal representation has been reimbursed according to the fees tariff structure agreed, in negotiations, between the Department and the Claimants Solicitors' Group at the start of the COPD and VWF schemes, and included in the Agreements.[20] Broadly, there is a basic fee that depends on the main characteristics of the claim (for example a claimant undergoing a full COPD medical assessment) and additional sums to cover specified situations that give rise to extra work (for example mediation). Claimants, or their solicitors, bear their own costs of representation if their claim is denied or withdrawn, which mirrors what would happen in a private legal action.[21] Claimants are not, however, at risk of paying any costs to the Department, which would be the normal practice under common law. At 31 March 2007 claimants' representatives, mainly solicitors, had received £1,045 million in fees, 61 per cent of which was paid to 10 organisations (Appendix 7).

3.23 The main negotiations over the tariff for solicitors' fees took place in 1998 and 1999, as part of the negotiations over the Agreements. The negotiations for each scheme were handled separately.

- VWF scheme (general damages): The initial negotiations with the Claimants Solicitors' Group were handled on the Department's behalf by its claim handling contractors, at that time, IRISC, with assistance from the Department's legal adviser, Nabarro. IRISC based its opening position on its experience of costs in other compensation schemes and Nabarro's understanding of labour rates in the legal market: estimates were drawn up on how much partner and other staff would be needed based on an assumption of 50,000 cases. It was not until September 1998 that the Department, via its legal team, took an active involvement in negotiations and drew upon assistance from the Treasury Solicitor's Department. Serious consideration was given to the costs provisions only in November 1998. By this point, however, the Department was under pressure to complete the negotiations over the Agreement and the tariff. Without an Agreement, including settlement of the fees issue, large scale processing of claims could not commence. Agreement was reached in January 1999.
- COPD scheme: Drawing upon its experience of VWF, the Department was involved from the start of negotiations in March 1999. The Claimants Solicitors' Group developed a cost model in March 1999 to estimate the fees it would need to process each individual case. Based on an estimated workload of 70,000 COPD claims and following advice from IRISC and the Treasury Solicitor's Department, the Department made attempts to negotiate down the level of fees sought by solicitors. These negotiations often proceeded line by line and took some months to finalise. The Department, however, did not develop its own cost model and found itself arbitrating between advice from the Treasury Solicitor's Department and the sums sought by the Claimants Solicitors' Group. Again, the Department was under pressure from solicitors to reach agreement.

3.24 There were weaknesses in the Department's approach to negotiating the original tariffs. Given the amounts likely to be at stake, the Department's preparation lacked the depth of analysis that might ordinarily have been expected to support its negotiations in such cases. The estimates prepared for the Department on both VWF and COPD, for example, had considered the processing of each claim as a discrete piece of work and had taken no account of the potential economies of scale to be gained from processing large numbers of claims within the firms.

3.25 The commercial negotiations over the tariff structure also took place in the midst of great uncertainty over the likely number of claimants and, despite the Agreements, uncertainty over how the practicalities of operating the processes would work out. Once negotiated, the tariffs were expected to operate for the lifetime of the schemes with fees increased in line with inflation each year. The Department had negotiated no provision to allow the tariff to be reviewed in the light of experience. At the time, the Department believed the closure date for receiving new claims under both schemes would happen

20 Due to policy issues the Agreements are not exhaustive, where claims arise which are not covered by the Agreement fees are considered separately and may lead to Court involvement.

21 Unsuccessful claimants may still claim their travel costs to medical centres; and the Department also bears all its own administration costs, notably the medical processes. In private litigation these costs would be claimable by the defendant.

in around two years which influenced its approach. It was therefore effectively tied to the initial agreement, although changes or additions to the schemes would be subject to separate negotiations as and when they arose, and was consequently in a weak position once the assumptions underpinning its initial analysis proved to be erroneous.

3.26 The amounts paid under the COPD tariff negotiated by the Department are likely to have been significantly in excess of the actual costs. A report by a Senior Costs Judge in early 2007 – prepared in connection with a recent challenge by the Department of costs payable under the fast-track COPD scheme – suggested that the fees payable under the COPD Claims Handling Agreement were in excess of the levels of costs that would be awarded following a conventional detailed assessment **(Figure 10)**. The assessment was based on an in-depth scrutiny of 57 cases. A separate analysis prepared for the Department prior to the court hearing involving 500 cases, but not at the same level of detail, also suggested that the fees payable were likely to be in excess of actual costs.

3.27 Based on the number of COPD claims settled to date, we have calculated that, had costs payable to solicitors been in line with the findings of the Cost Judge, the total amount payable by the Department to solicitors would have been £295 million less. In practice the Department had limited information at the time of the negotiation and it would probably have taken time for solicitors to achieve the economies of scale that were subsequently to arise. Figures were therefore not available at the time of the negotiations. This reinforces the desirability of introducing a review clause in such instances, although such a clause can work to the advantage of either party. There are no equivalent figures for VWF costs.

3.28 As the fees in the original Agreements were derived from a commercial negotiation, in the absence of any review clause, all parties were tied to them. The Department has made strenuous efforts to negotiate down the costs associated with subsequent changes to the schemes.

- **Introduction of the fast-track procedure for COPD claims.** The Claimants Solicitors' Group argued that the original solicitors' fees tariff should apply to the fast-track scheme, but the Department considered the level of work involved to be lower, due to, economies of scale, and the grade of staff used, and that the fees should reflect this. The Department referred the matter to the Scheme Judge who initially ruled in favour of the Claimants Solicitors' Group in 2005. The Department contested this judgement on appeal and won a review of the initial judicial decision. Further legal process ensued. The Court's final review, completed in April 2007, ruled that the fees for the fast-track schemes should be set at levels lower than those in the original Agreements, although not as much as the Department wished. The Court took the original agreed expedited tariff as its starting point, in effect the original contract, rather than the more recent estimates of actual costs noted at Figure 10. Nevertheless, the reduction in fees arising from this ruling is likely to reduce the cost to the taxpayer by up to £100 million, as at April 2007, compared to the cost borne had it not contested the issue, supporting the Department's decision to pursue this matter.
- **VWF Services Claim.** The Department has also not been able to reach agreement with the Claimants Solicitors' Group on the fees payable in respect of the services head of damages of the VWF scheme, which was implemented in 2004. The offer made by the Department, which was based on its analysis of work schedules provided by solicitors for the purposes of calculating an interim fee, was rejected. The matter was referred to the Scheme Judge in September 2006, who ordered a sample of 49 new cases to be assessed. A ruling is expected from the Court in Summer 2007.

10 Estimates of COPD legal costs prepared by Senior Cost Judge (February 2007)

Category of case	Assessment by Senior Cost Judge	Cost payable under the Claims Handling Agreement
Claim following full medical	£922.50	£2,023
Widow and estate claims following full medical	£985.50	£2,023
Expedited settlement	£725.50	£1,061

Source: Court Judgement (3 April 2007): High Court of Justice, Queen's Bench Division[2]

NOTES

1 All figures are given at 2005-2006 financial year prices.

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

Other charges made to claimants by solicitors

3.29 When negotiating the original VWF tariff structure the Department assumed that the amounts paid to solicitors would meet all their costs in successful cases and that claimants would not face additional charges. Subsequent wider developments alerted the Department to the risk that it might have to meet the cost of additional charges should they be levied. To address this risk the Department ensured that the COPD Agreement limited its liability to sums payable under the tariff of fees in the Agreement, while making it clear its anticipation that these fees would represent the total sum charged by solicitors.

3.30 In 2000, the Department became aware that some solicitors' firms were indeed deducting fees from the compensation paid under the schemes in addition to the fees being paid by the Department. The Department has no figures available on the extent of this practice and how much has been deducted. These arrangements remain a private matter between individual solicitors and their clients and the Department has no legal responsibility for them. In 2001, the Law Society, the regulatory body for solicitors, took the line that additional charges were not improper provided the amounts concerned were not unreasonable and the client had been properly informed as to the charging arrangements. The supporting argument was that such charges were fair as the Department paid no fees for unsuccessful claims.

3.31 Where additional fees were charged to claimants the Department was not in a position to prevent solicitors following this practice or compel them to repay the additional fees. In December 2003, the Department did, however, write to all solicitors handling COPD and VWF claims requesting an assurance that they would not impose additional fees. Those solicitors who did not were removed from the list of solicitors provided to all potential claimants, although this did not preclude claimants using these solicitors should they wish to.

3.32 In January 2004 the Law Society's Compliance Board issued a statement[22] that, in making an additional charge to the client, there was likely to be a finding of inadequate professional services unless full information was given to the client at the start of the matter, and the additional charge involved was itself reasonable; it also considered that sufficient information (for cases started after April 2000) included the solicitor advising the client that many other solicitors did not make any additional charge. The Law Society subsequently wrote to all solicitors handling COPD and VWF claims reminding them to review all cases handled.

3.33 A special report by the Legal Services Ombudsman in April 2006 criticised the Law Society for its failure to investigate miners' complaints properly. The Ombudsman concluded that the Law Society had let complainants down. The Law Society rejected the Ombudsman's findings on the basis that the number of cases referred to the Ombudsman was extremely low; solicitors had been told to make repayments; and the Society had advertised in mining areas to inform individuals where to seek help.

3.34 In January 2006 the Law Society established an independent claimant handling arm[23], the Legal Complaints Service (LCS). The LCS has received 1,671 service complaints related to the Coal Health Compensation Schemes to 31 March 2007[24], 183 were lodged since January 2007. It has recovered some £570,000 in deductions from 15 law firms and has referred three firms, representing around 130 claims, to the Solicitor's Regulatory Authority for refusing to make redress.

3.35 In June 2007, Ministers from the Department and the Ministry of Justice wrote to all participating solicitors urging them to return, without further delay, deducted monies where the claimant had not been provided with full information at the outset.

3.36 In some instances additional fees, or voluntary contributions, were also deducted by solicitors on behalf of the National Association of Colliery Overmen, Deputies and Shotfirers (NACODS) and the National Union of Mineworkers. Such deductions have also been made by the Union of Democratic Mineworkers (UDM), but this union registered claims through its in-house claims handling company, Vendside, instead of using solicitors. The UDM handled directly about 17,000 COPD and 12,000 VWF cases.

3.37 Two matters involving the UDM are currently under investigation:

- The UDM has passed some of its casework to solicitors, some of whom have subsequently submitted bills at the rates in the main Agreements rather than at the lower rates in the UDM's Agreement.
- The Serious Fraud Office is conducting a joint investigation with South Yorkshire Police into a suspected serious fraud in relation to the handling of health claims. The matter was referred to the Office in July 2005 by South Yorkshire Police.

22 Miner's Compensation Claims, Law Society Compliance Board Policy Statement, 15 January 2004.
23 Prior to this the complaints function was part of the Law Society, but decision making on individual cases was wholly independent of the Law Society Council.
24 This includes complaints made to the Law Society from January 2004.

PART FOUR

Completion

4.1 This Part examines the Department's exit strategy for completing the Coal Health Compensation Schemes: its objectives; the arrangements for achieving the objectives; and the management of outstanding issues.

Targets for completion

4.2 The Department has set aspirational dates for completing each scheme: 31 October 2007 for Vibration White Finger (VWF) and 16 February 2009 for Chronic Obstructive Pulmonary Disease (COPD). The Department has set a series of milestone dates, along with expected actions, leading up to the achievement of these dates. The Court is aware of these dates.

4.3 Operationally, under the terms of the contract with Capita and subject to any agreed contract variations, substantial completion occurs when there are fewer than 500 claims remaining to be settled in the COPD scheme and 300 claims in the VWF scheme.[25] At March 2007, there were still some 27,000 VWF claims and some 168,000 COPD claims to be processed; some of these require resolution of policy issues before they are settled.

Arrangements for achieving the Aspirational Scheme End Dates

4.4 The Department has arrangements in place to identify the key risks to achieving the end dates. The risk register maintained by the Coal Liabilities Unit records the key risks under five broad headings: external, governance, reputational, operational and contractual risks. This approach continues the good practice in risk management previously identified in the Coal Liabilities Unit by the National Audit Office in 2004.[26] Our analysis of the Department's risk register at December 2006, conducted with support from our consultants KMPG, suggested that the Department had identified the main risks to delivery and the actions it would take to mitigate these risks.

4.5 The Department also took steps to improve, over time, the scope and format of the information it receives from its claims handling contractor to enable it to track progress. Information is needed to meet the needs of various stakeholders, including the Courts, Members of Parliament, and claimants.

Potential barriers to completion

4.6 The Department faces a number of challenges to achieving effective closure including: maintaining consensus with all parties on the achievement of the end dates; having appropriate contractual arrangements to ensure contractors work towards the end dates; monitoring performance to ensure issues arising are resolved quickly; and resolving any outstanding issues affecting groups of claims. It will be crucial for the Department to maintain sufficient staff within the Coal Liabilities Unit to manage these risks and the complex issues noted below, and not reduce its capacity too quickly.

4.7 The Department's latest contract with Capita Insurance Services, agreed in 2006, contains incentives and penalties to encourage the contractor to discharge its tasks accurately, effectively and efficiently in line with the completion timetable. The incentives include a fixed annual fee; incentive payments conditional on achieving satisfactory levels of service and timetables **(outlined in Figure 11)**; and variable completion bonuses.

4.8 The Department's contracts with its medical suppliers – Atos Origin and Capita Health Services, agreed in 2001 and 2002 respectively – do not contain specific provisions related to the achievement of end dates. Both

25 In legal terms, completion occurs when the infrastructure for discharging liabilities is dismantled.
26 C&AG's report, *Managing Risks to Improve Public Services*, HC 1078, Session 2003-04.

contractors are remunerated on a per test basis and are contracted to make available a minimum number of medical assessment appointment slots each month (3,000 for COPD). Both are key to the timely completion of the schemes. The Department conducts monthly operational meetings with both contractors to monitor progress; it will need to achieve a fairly even delivery of cases through medical assessment process if it is to meet the desired end dates. This objective could be complicated by the issues outlined below.

4.9 A significant proportion of the remaining claims may raise more complex issues. During the lifetime of the schemes, the Department has sought to prioritise claims where the claimant has had a life-threatening illness, either as a result of age or disease. Cases raising difficult issues or policy questions were deferred until the issues were settled. This means that some of the more complex and time consuming cases will have to be dealt with in the remaining cohort.

Challenges on the VWF scheme

4.10 Two issues could complicate completion of the VWF schemes:

- **Services claims.** An individual who is prevented from performing certain tasks, such as gardening, due to injury resulting in VWF can lodge a services damages claim under the scheme. When this cohort of claims was included in the Agreement in 2002, the Department and its advisors envisaged a relatively small number of claimants who could be dealt with on a case by case basis. There have been, however, some 40,000 of these claims, of which 17,000 remain to be settled; these claims are the most complex to process and the most at risk of fraudulent submissions.
- **Co-defended general damage claims.** In some cases as well as working in mines operated by the Corporation, applicants have worked in privately owned mines or for private contractors in and around Corporation mines for which the Corporation is not liable **(see Case Example 5 overleaf)**. Under the court judgements the Department is only liable for the compensation due to the miner during his employment by the Corporation (subject to the start dates set out in the judgement), but has an obligation to co-ordinate the involvement of the co-defendants. In these cases, the third party operator, or co-defendant, is responsible for the balance of the compensation; there can be multiple co-defendants. The Department estimates that some 1,700 further co-defended claims for VWF will need to be processed by scheme completion. The co-defendants, however, do not have to commit to the closure dates. At a hearing in September 2006 the Court sanctioned the payment of proportional offers where the Department has demonstrated "best endeavours" to achieve resolution of the claim; this aims to accelerate payments to claimants by the private contractor, which in conjunction with the Department's settlement will discharge the VWF liability to the claimant.

11 The contract with Capita Insurance Services offers financial incentives for completion of the VWF and COPD schemes subject to the achievement of certain performance standards

Vibration White Finger

- Compliance with audit requirements (for example accuracy rate in processing claims)
- Volume of claims handled
- Speed with which Services claims are challenged and processed
- Speed with which Services claims offers are settled

Chronic Obstructive Pulmonary Disorder

- Compliance with audit requirements (for example accuracy rate in processing claims)
- Volume of claims handled
- Processing speeds for claims questionnaires and Deceased Risk Offers
- Capacity planning advice

Non scheme specific service levels

- Data accuracy – data in the management systems must be accurate
- Correspondence – to be correctly archived and an appropriate and accurate response sent within 20 working days
- Management information – reports to be produced to an agreed timetable

Source: The Department's contract with Capita Insurance Services

CASE EXAMPLE 5

The effect of the co-defendant issue

Mr E is a 50 year old miner who lodged a claim for VWF injury in 2000. He spent 15 years as a coal face worker, with the majority of this employment being at Corporation mines. In the mid 1990s his pit was privatised and he moved to another privately operated mine soon after. His original medical assessment in 2002 resulted in an offer of £300. He appealed this decision and a level of damages has been agreed. By the end of March 2007 Mr E has yet to receive his settlement as the insurance company for the privately operated mines are disputing their liability.

Challenges on the COPD scheme

4.11 Two issues could threaten the COPD closure dates:

- **Surface workers.** COPD is caused by the ingestion of "guilty dust" which the court has deemed, in the case of successful claims, is the result of working underground for the Corporation. There are currently about 10,000 COPD claims that the Department deem invalid because employment with the Corporation was on the surface. The Claimants Solicitors' Group argue that some of these surface workers were often exposed to dusty conditions, particularly those working in coal preparation plants, and sometimes spent time underground. Once a claim has been registered in the COPD scheme it can only be formally closed in four ways: acceptance of the Department's offer of compensation; denial of the claim by the Department; withdrawal of the claim by the claimant; and through a process known as "Strike Out" whereby the Court rules that a case is closed. A Court hearing for a direction on the claims from surface workers is scheduled for July 2007.
- **Co-defended claims.** By March 2007, it is estimated that some 16,000 co-defended COPD claims had been received. Unlike VWF claims, the Department does not co-ordinate the involvement of co-defendants and is therefore making proportional offers in respect of employment with the Corporation. We understand the Claimants Solicitor's Group has advised solicitors to reject these offers as acceptance is not in the best interests of the claimants. For co-defended claims in respect of the individuals who worked for the Corporation's contractors, the Department has paid the full compensation award and has reached an agreement with the contractors for a contribution to the amount paid out.

The Department's outstanding liability

4.12 Closure of the schemes will not, by itself, finally discharge the liability. This will occur only if all future potential claimants have become ineligible, for example due to the Limitation Act 1980. The Department has sought to close claims where there is no entitlement, together with those where there has been no response to its offer or where the offer has been rejected and not resolved by mediation, by adopting the process known as "Strike Out" (paragraph 4.11 refers). In exceptional circumstances, however, a claim that has been struck out can still be pursued through the courts.[27] It is possible, therefore, that there will additional claims for damages after a scheme is closed.

4.13 In addition to further VWF and COPD claims, it is possible that legal action may be taken in pursuance of other claims. The South Wales branch of the National Association of Colliery Overmen, Deputies and Shotfirers, supported by some areas of the National Union of Mineworkers[28], is currently funding legal action regarding the alleged acceleration of osteoarthritis and meniscal damage of the knee caused by working conditions in mines. The litigation is still in the early stages of a Court process and, to protect the taxpayer's interest, the Department's position is that liability must be demonstrated.

4.14 To inform decisions on the staffing levels of the Coal Liabilities Unit beyond 2009-10, contractor resources and budget implications, the Department commissioned independent actuarial advice in March 2007 on the outstanding liabilities of miscellaneous coal health related claims. This analysis will include those litigated VWF and COPD claims that fall outside the current schemes as well as emerging types of claim.

27 As a general rule a claimant whose case has been 'Struck Out' loses the right to make a further claim. But there are exceptions, for example if there has been procedural impropriety or new evidence comes to light.
28 Durham Mechanics (Derbyshire), Scotland and South Wales.

APPENDIX ONE

Study methods

1 This Appendix summarises the methods employed by the National Audit Office in producing this report.

Use of external expertise

2 The National Audit Office employed KPMG LLP to provide expert advice on good practice in the public and private sectors (with particular reference to the insurance industry) in controlling administration costs and risks for major projects, programmes of work and compensation schemes. It reviewed the factors likely to be relevant to:

a **The set-up** of any large compensation scheme, for example: scoping and planning; and establishing structures and resources;

b **The administration** of any large compensation scheme, for example: communication; claims handling; settlement payments; and management controls

c **The closure** of any large compensation scheme, for example: options to terminate; closure timings and processes; incentive structures; resource management; and procedures for handling outstanding liability.

3 It assessed the Department's exit strategy against this good practice information. Appendix 5 offers a summary of the good practice paper.

Qualitative case analysis

4 The National Audit Office conducted qualitative analysis of a purposive sample of 63 claims. This allowed us to examine in-depth the issues affecting the processing of claims and consider how they affected individual claimants. A purposive sample is not intended to be statistically representative of a population; rather it is used to identify the full range of likely scenarios which occur as a result of a situation or action (in this case, a claimant's involvement in the COPD or VWF compensation schemes).

5 We used information held on Capita Insurance Services' database to identify the range of possible outcomes of making a claim and the division of settled cases across each outcome. This formed the basis of a purposive sampling frame, used to identify a range of types of cases to examine in depth. Individual cases were selected at random within the parameters of the sampling frame. Information relating to the processing of each case was captured anonymously using a template and cross-referenced, in order to draw out common themes.

Quantitative data analysis

6 The National Audit Office obtained anonymised data from both the COPD and the VWF claims databases, in excess of 100 million data points, in order to undertake our own analysis. There were 591,706 COPD claims and 169,617 VWF claims which were progressed through the schemes and the database captures a significant amount of information on each claim from application to settlement, for example: the original claim paperwork, work history, medical records, medical assessment results, and correspondence.

7 We used this data to assess key metrics for each of the schemes, for example: the throughput of cases; the time taken to reach key milestones; the level of claims outstanding; and the value of different types of payment to claimants and solicitors. Much of this analysis had not been undertaken by the Department before. The data generated has been used extensively throughout this report.

8 Using the management information that the Department receives from Capita Insurance Services, we calculated the average administration cost for a VWF claim and for a COPD claim at 31 March 2007, together with the expected outturn costs for each scheme. As highlighted in Figure 8, the Department does not apportion costs incurred by its contractors across each of the schemes. The National Audit Office, using data supplied by the Department and Capita Insurance Services, made a series of calculations based on the application of contractor resources. These calculations and the underlying assumptions were discussed and agreed with the Department. The data represented in Figure 8 is a summary of the costs of each scheme; the resultant single average cost per claim figure is for each scheme as a whole and does not take into account the outcomes for the different cohorts found within each scheme. Data is not available to perform an analysis to this level of granularity or to indicate a change in costs over time.

Process mapping

9 A process map is a visual representation of a sequence of events. The National Audit Office used information gathered from court reports and Capita Insurance Services to develop process maps of the COPD and VWF compensation schemes. These were used to demonstrate the various ways in which a claim could progress through the schemes; highlight potential bottle-necks in the process; and identify Departmental action to refine these processes. These process maps are recreated in Appendix 4.

Audit interviews

10 Throughout the study the National Audit Office held semi-structured interviews with staff at a range of levels within the Coal Liabilities Unit of the Department. Staff at the Department with a previous responsibility for the COPD and VWF schemes were also interviewed. In addition to this we conducted semi-structured interviews to capture a range of views on the handling of the Coal Health liabilities from the early 1990s to date. We interviewed staff of the following:

i Nabarro (previously known as Nabarro Nathanson, solicitor to the Department)

ii Capita Insurance Services (claims handling contractor to the Department)

iii Atos Origin (medical contractor for COPD and VWF general damages claims)

iv Claimants Solicitors' Group

v The Coal Industry Social Welfare Organisation

vi The National Union of Mineworkers

KPMG LLP conducted an additional semi-structured interview with the representatives of:

- Capita Health Solutions (medical contractor for VWF services claims).

Consultation with Members of Parliament

11 Many Members of Parliament have constituents who have made claims through one, or both, compensation schemes. In addition, many Members were involved in the Coal Health Claims Monitoring Groups. The National Audit Office wrote to a selection of Members inviting them to discuss their views on the Department's handling of the liabilities and the experiences of their constituents. As a result we held meetings with seven Members; in one instance they facilitated meetings between the National Audit Office and a constituent.

Review of policy files, management information and other key documents

12 The National Audit Office reviewed Departmental papers of relevance to the Coal Health liabilities, from the early 1990s onwards, to make judgements on a range of issues, particularly, transfer of liability, estimates of the scale of liabilities, management oversight of scheme development, procedural challenges and Ministerial communications. The National Audit Office also reviewed court reports arising from hearings on the compensation schemes in order to identify major events which occurred within each scheme.

13 This review included the work of PricewaterhouseCoopers LLP (PwC), which is engaged by the Department to report on the work of Capita Insurance Services. PwC is charged with ensuring, amongst other functions, that offers made to claimants comply with certain aspects of the Claims Handling Agreements; it audits a sample of the value of the offers made to claimants and reports on the technical accuracy of the offer. The National Audit Office reviewed a selection of PwC's audit reports.

APPENDIX TWO

The diseases and related compensation arrangements

Chronic Obstructive Pulmonary Disease

The disease

1 Chronic Obstructive Pulmonary Disease (COPD) is a medical condition that affects the lungs. The main symptom is breathlessness, which results from the lungs being unable to get sufficient oxygen into the blood, and hence to the muscles, to allow normal exertion. Severity depends on the extent of lung damage. A mild form of COPD is chronic bronchitis, which is non-disabling and reversible. Emphysema is a severe form that is life-shortening due to a permanent narrowing of the airways.

2 Smoking is the primary cause of chronic bronchitis and emphysema in the general population. The death rate for smokers is six times greater than for non-smokers.

3 The extent of lung damage is assessed by a spirometer. This measures the volume of air expelled in a single forced breath following a deep breath in. A key measure is FEV1 (Forced expiratory volume). This is the maximum expulsion during the first second. A rating of 60-80 per cent indicates mild COPD, 40-60 moderate and less than 40 per cent is severe.

The liability

4 The British Coal Corporation (the Corporation) began receiving claims for COPD in the late 1980s, culminating in a group action in 1993. This litigation led to a High Court judgement in 1998 that found the Corporation liable for COPD caused by working underground (see timeline at Appendix 3). Exposure to dust on the surface was not covered by the judgement.

5 The judgement, which specifically excluded liability for the effects of smoking, incorporated a matrix and formula developed by the claimants' primary medical expert to apportion injury between smoking and dust (see box aside). The example shows how smoking can reduce the claimant's entitlement to damages substantially.

6 The judgement also excluded liability for the effect caused by normal levels of dust in the air, for which the Corporation was not responsible. The remaining liability is apportioned to exclude employment before 1954 (1949 in Scotland), the date set by the Court as the point when the Corporation became negligent because it should have then known that coal dust causes COPD and have taken reasonable steps to protect its workforce.

Summary of the full Medical Assessment Process

7 A Medical Assessment Process (MAP) was specifically designed to assess COPD claims. It determines the nature and extent of injury, whilst taking account of the judgment and mirroring common law. For live claimants there are two stages:

- **1st stage** This is a screening spirometry to test lung function. This indicates the extent of any lung damage (paragraph 3 above) but not the cause or level of disability, and was designed to prioritise claimants so that the eldest and most severely injured could be dealt with first.

Smoking matrix

	High dust exposure	Moderate dust
Light smoking	0.5	1
Average smoking	1.0	2
Heavy smoking	1.5	3

Apportionment of causation

$$\text{Proportion due to job} = \frac{\text{years of underground work}}{\text{years of underground work} + (\text{ratio} \times \text{years of smoking})}$$

Example: 20 years underground, high dust, 40 years of heavy smoking

$$\text{Proportion due to job} = \frac{20}{20 + (1.5 \times 40)} = \frac{20}{80} = 0.25 \text{ of full damages}$$

- **2nd stage** This stage has more complex lung function tests and, on the same day, a consultation with a respiratory consultant. The doctor, who has the claimant's medical records and a copy of his claim, produces a detailed medical report (known as the "MAP") that rates the injury in graduations of 10 per cent. The doctor also assesses, by talking to the man and looking at his records, how his disability developed in the past and will progress in the future. The difficulty of diagnosing COPD and making these judgements of progression requires specialists of consultant status.

8 The procedures for deceased men are based on medical records.

Types of compensation

9 There are two types of compensation for claimants who complete the full medical process:

i **General damages** – This compensates for pain, suffering and loss of amenity; and

ii **Special damages** – This covers financial losses due to the injury (see box below).

10 About 24,000 claimants selected the option of an "expedited payment". This option is based on the spirometry test plus a minimum period of employment. These are termed risk offers, as they are made without an examination of medical records or the involvement of a doctor. Although 'full and final' offers, they are pitched significantly lower than had the claim gone through the MAP, but they allow earlier payment.

Examples of heads of special damages

Loss of earnings – compensation for an inability to work, or get a job at all, from the time of being unable to work due to COPD until the point at which he would have expected to retire.

Loss of benefits in kind – compensation for benefits normally received by those employed in the industry, such as concessionary fuel (free coal).

Redundancy – had the man not had to stop work due to COPD he might have received significant redundancy payments when his pit closed.

Pension – not only would the man lose money due to a reduced number of years of qualifying employment, his surviving wife too would end up out of pocket had he died prematurely due to COPD.

Nursing care – at advanced levels of injury a man could require nursing assistance well beyond the ability of his family to provide, at a high cost (up to £57,000 per year if bed-bound in the home).

11 Although still extant, the "expedited payment" has been overtaken from 2005 by the Optional Risk Offer Scheme (OROS) which is split into LOROS for live claimants and DOROS for deceased claims (i.e. widows and estates). The principle and process are broadly the same as the "expedited payment" except that LOROS is an opt-out arrangement (i.e. claimants automatically receive an offer, which they may reject in favour of the full medical process – if they believe they will get higher damages from completing a full medical assessment).

12 Arrangements have also been put in place for claimants to receive interim payments.

Vibration White Finger

The disease

13 Vibration White Finger (VWF) is a medical condition affecting the fingers. It involves damage to nerves and blood vessels, which causes parts of the fingers to go white due to the reduced flow of blood; and damage to nerve endings, which results in numbness and tingling. The severity varies. In mild form there is temporary numbness. As the disease becomes more serious there is a progressive loss of dexterity. It can require amputation in extreme cases. The disease is irreversible and untreatable but without further exposure the damage stabilises. Discomfort becomes worse upon exposure to cold. Practical problems include difficulty in doing up buttons or holding small objects.

The liability

14 The British Coal Corporation (the Corporation) received its first VWF claim in 1981. Liability was denied and no compensation paid. The Corporation did not consider that there was sufficiently prolonged use of vibrating tools in situations, such as drilling into very hard rock, that might give rise to a foreseeable risk of vibration white finger. Further claims were received, culminating in a group action in 1994. The High Court judgement of 1996 found the Corporation liable from January 1975. The Corporation appealed against this judgment and lost. In 1997 there was a further hearing of lead actions, together with a further appeal by the Corporation to contest the levels of awards and to clarify the threshold for negligent exposure to vibration. The Court of Appeal ruled on these matters in July 1998 (see timeline at Appendix 3).

Summary of the full medical assessment process

15 A scale to classify the condition was established by Dr Pelmear in 1968, a leading expert, and Professor Taylor, an industrial hygienist. Initially this related only to vascular damage as demonstrated by whitening of parts of the fingers, but was refined in 1986 to cover nerve damage (Stockholm scale). Each hand and each of the three parts of each finger is classified separately.

16 The Medical Assessment Process (MAP) is based on the Stockholm scale. However, application of the scales is not straightforward. Measurement is not only dependent upon the accurate reporting of the symptoms by the claimant to the doctor, but also the doctor's evaluation of the claimant's description of his symptoms.

17 The Department established the Independent Medical Advisory Group to develop an effective MAP that allowed consistent volume delivery. The outcome was a MAP involving three main tests by a trained technician within a controlled environment (e.g. ambient temperatures and a period of acclimatisation for the claimant) and a consultation:

i **Cold provocation test:** The claimant places both hands in cool water at 15 degrees C for five minutes before a re-warming of the fingers that is carefully monitored electronically and measured according to a standard scale. The slower the re-warming, the greater the injury. However, it can provide both false negative results (i.e. fail to identify the existence of VWF) and false positives (i.e. suggesting injury when there is none). In 2001 this test was discontinued on the advice of the small team of experts comprising the Medical Reference Panel. Based on the Medical Advisory Group, the Panel was established to monitor the operation of the MAP and to recommend changes as necessary.

ii **Vibrotactile threshold test:** Here the forefinger and little finger of each hand are tested for their ability to detect varying levels of vibration. This starts from zero, increases and then decreases to zero again, with the claimant having a series of unpredictable cycles. A standardised scoring scale is used to measure injury to the nerves.

iii **Thermal aesthesiometry test:** Again the forefinger and little finger are used, this time to determine sensitivity to changes in temperature of a metal plate over a number of cycles. This too measures neurological damage, which is then scaled.

iv **Examination:** The claimant is then seen by a doctor who is specifically trained to interpret the test results and make an assessment of the overall injury due to VWF, discounting other conditions which can produce similar test results or symptoms. The doctor also conducts further specified tests (see box below).

Examples of the additional tests by a doctor

a A dexterity test, with the claimant being asked to pick up small objects with each hand. Dependent on the co-operation of the claimant, so this assessment is inherently subjective.

b An Allen test, which assesses vascular injury, where the doctor squeezes the arteries in the wrist, the man raises his arm and then drops it back down to see how quickly blood flows back into the hand.

c A Purdue pegboard test that assesses dexterity as the claimant places small cylinders into a cribbage-like board. It can be unreliable.

Types of compensation

18 There are three categories of claims (see box below).

Categories of VWF claim

"A" Claims where Court proceedings commenced on or before 22 January 1999.

"B" Claims:

- i Where Court proceedings commenced after 22 January 1999 and a medical report was served with those proceedings
- ii Which have not resulted in the commencement of Court proceedings but where a medical report has been served on the claimant's behalf or had been commissioned prior to 25 March 1999 and subsequently served.

"C" Claims which have not resulted in the commencement of Court proceedings and where a medical report has not been served on the claimant's behalf.

19 Three main types of damages may be claimed:

a **General Damages** for pain, suffering and loss of amenity;

b **Smith and Manchester** for handicap on the labour market; and

c **Services** for assistance with gardening, window cleaning, DIY, decorating, car washing and car maintenance.

20 For the purposes of making a claim there are three occupational groups (see box below).

Occupational groups

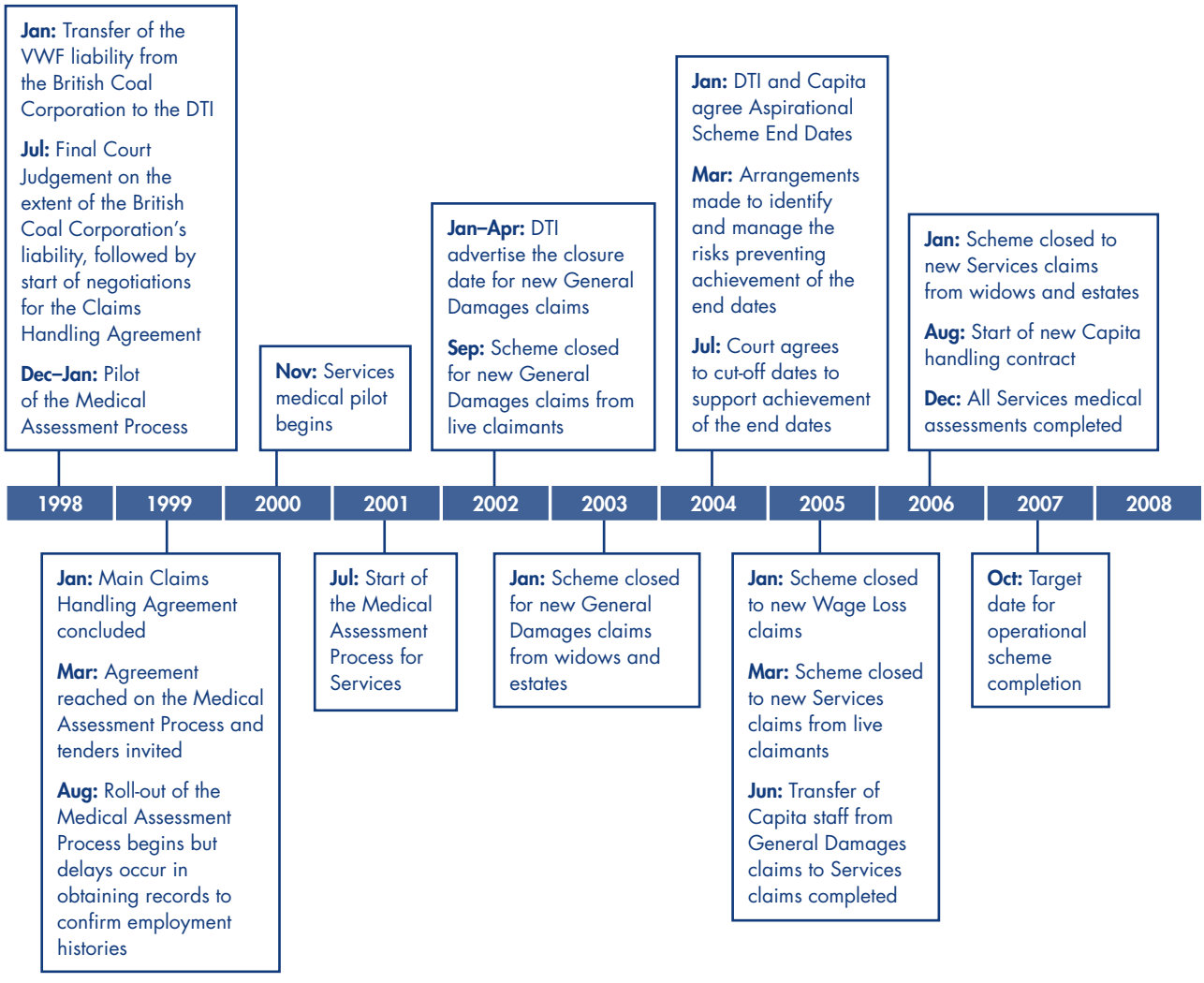
"Group 1"	Occupations where the use of hand held vibratory or percussive tools was recognised as a substantial part of the occupation (Examples from defined list: Face Production Team, Roof Bolter).
"Group 2"	Occupations where the use of vibratory or percussive tools was not necessarily a substantial part of the job, but use by individuals within this group may well have been significant (Example from defined list: General Underground Labourer).
"Group 3"	Any occupations not shown in the defined lists of Group 1 and Group 2 (e.g. canteen staff, crane driver, and loco driver and guard (underground and surface)).

21 There is no expedited option due to the need to complete an exhaustive medical to ensure a fair assessment (paragraphs 5 and 6 on page 31), but arrangements have been put in place for claimants to receive interim payments.

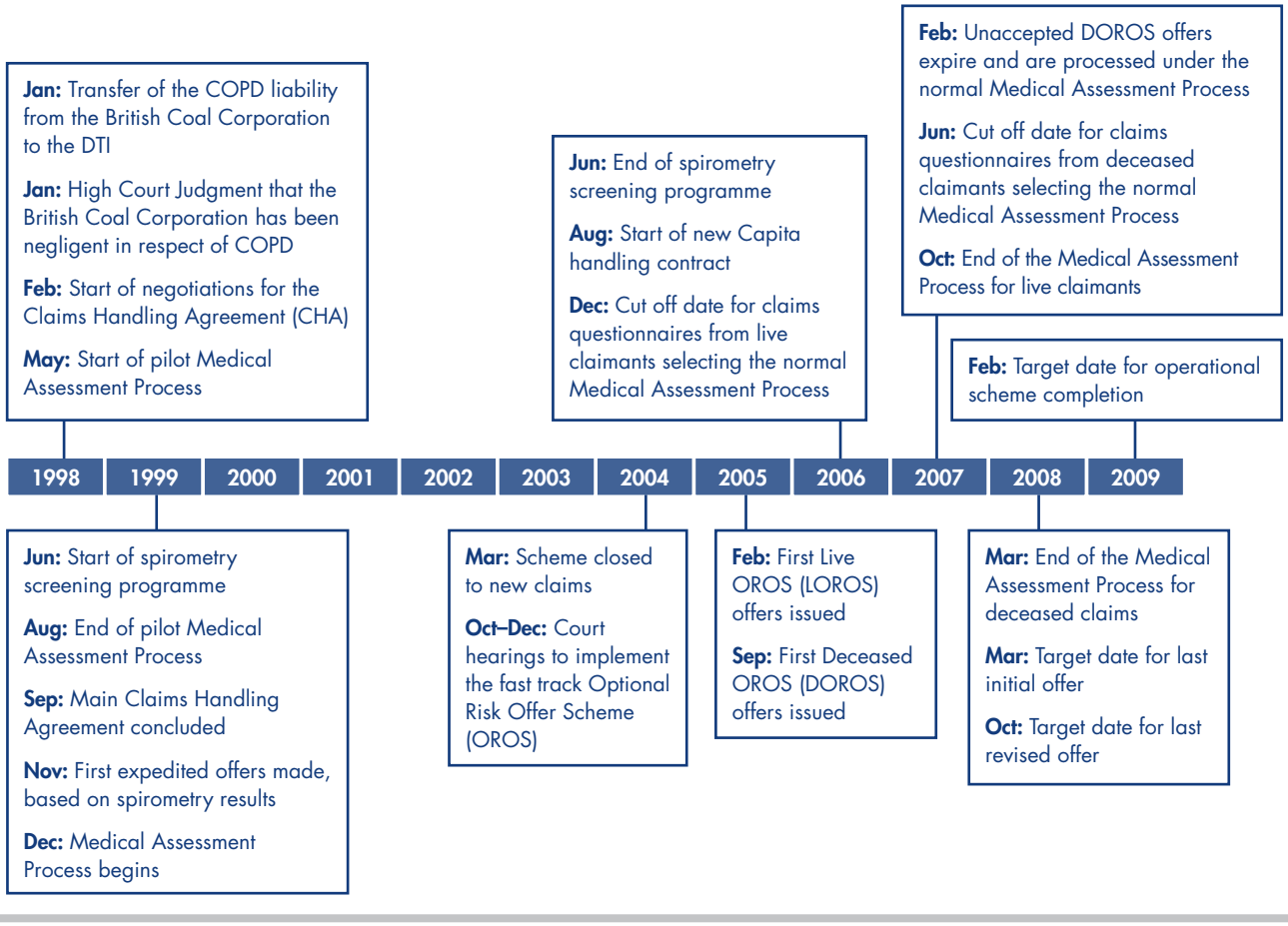
APPENDIX THREE

Timelines

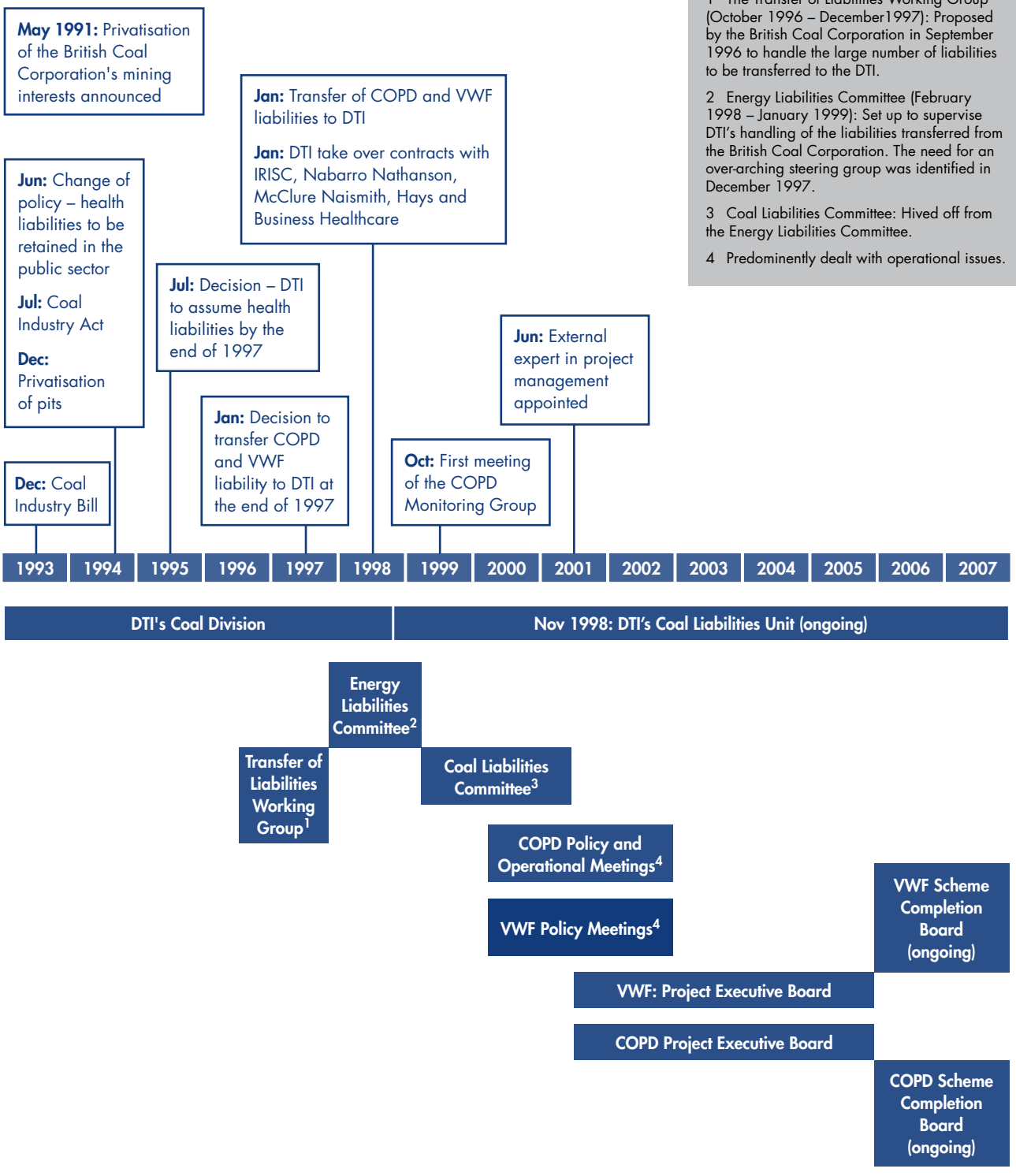
Vibration White Finger Timeline



Chronic Obstructive Pulmonary Disease Timeline



Timeline of the Department's management structures, 1993 to 2007



NOTES

1 The Transfer of Liabilities Working Group (October 1996 – December1997): Proposed by the British Coal Corporation in September 1996 to handle the large number of liabilities to be transferred to the DTI.

2 Energy Liabilities Committee (February 1998 – January 1999): Set up to supervise DTI's handling of the liabilities transferred from the British Coal Corporation. The need for an over-arching steering group was identified in December 1997.

3 Coal Liabilities Committee: Hived off from the Energy Liabilities Committee.

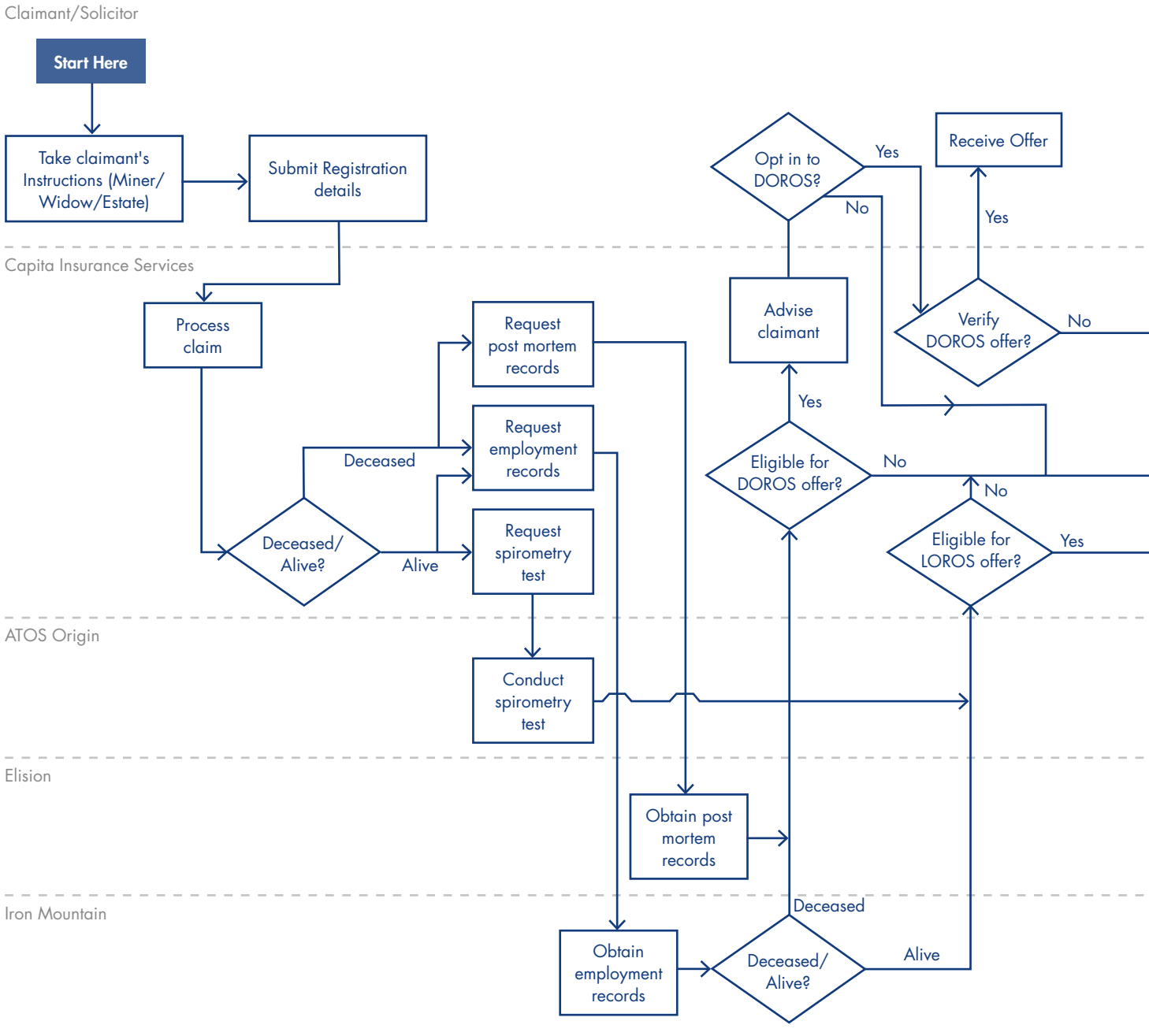
4 Predominently dealt with operational issues.

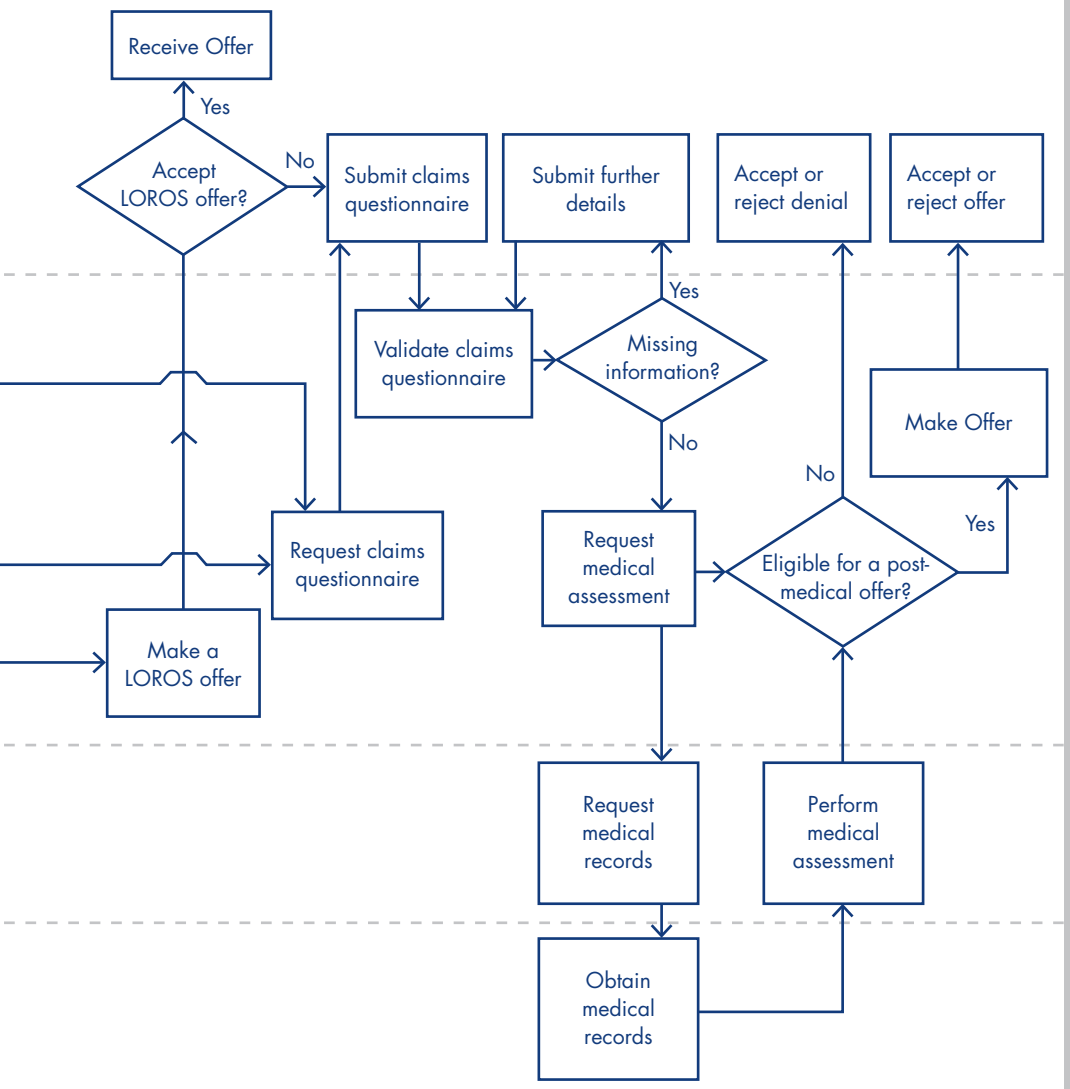
	1995	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Number of DTI staff on COPD and VWF work	0.5	2	10	14	18	21	29	28	26	23	20
Supporting agency staff and consultants at DTI	0	0	0	0	0	10	11	17	12	9	7

APPENDIX FOUR

Process maps

Main Stages of the Chronic Obstructive Pulmonary Disease (COPD) process since 2005



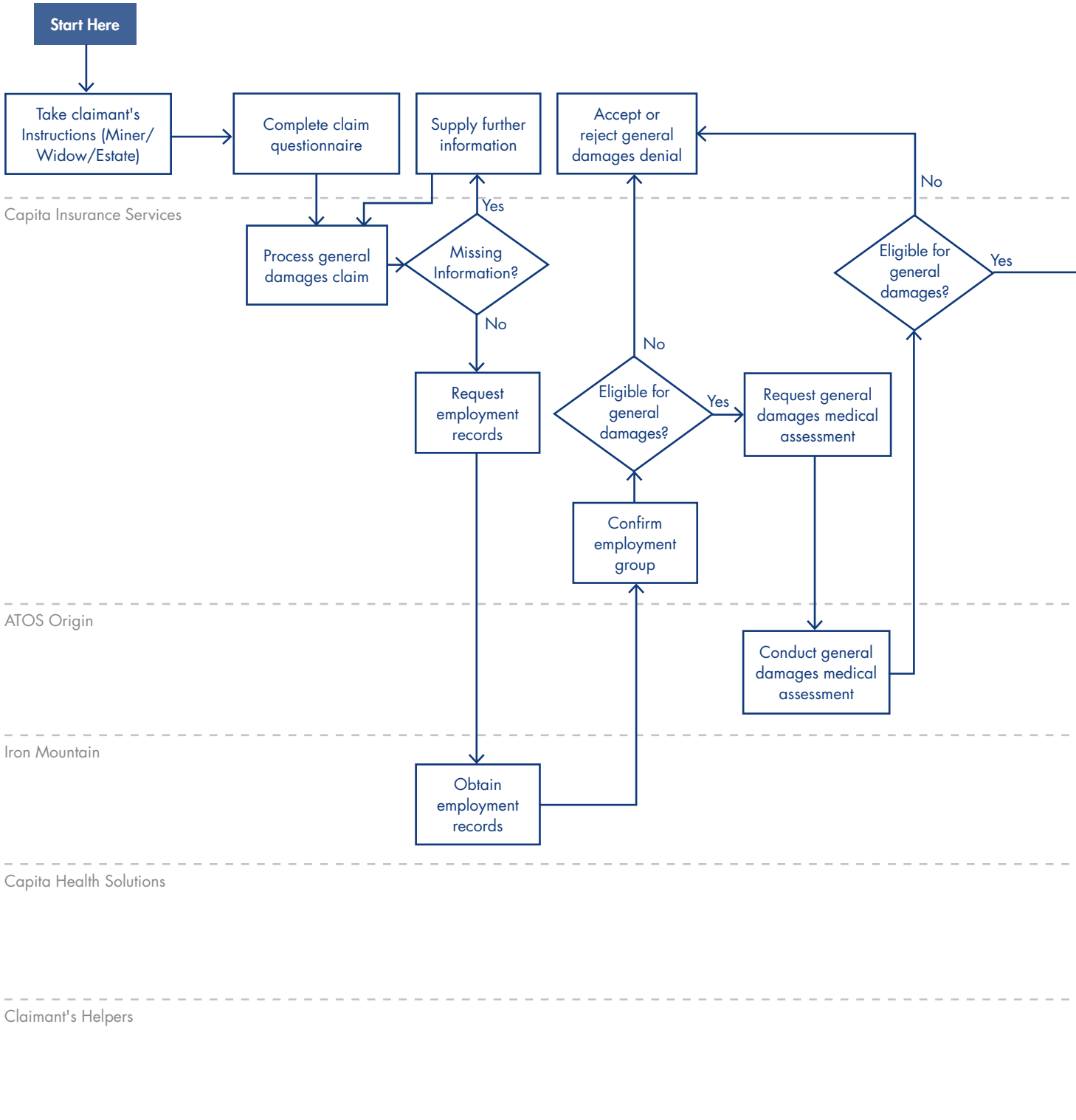


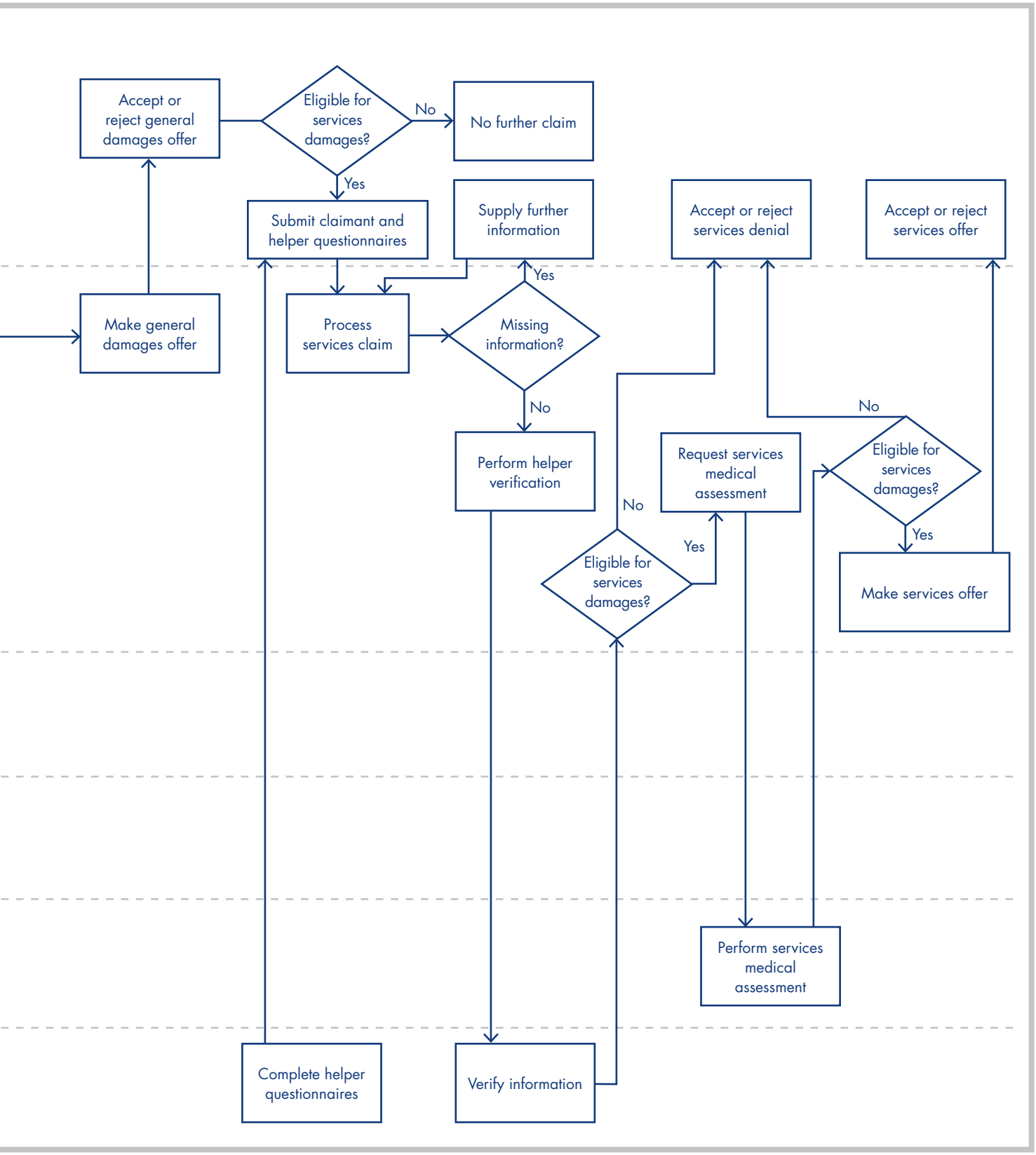
NOTES

1 All claimants who were eligible for Deceased Optional Risk Offers (DOROS) were advised, through their solicitors, in September 2005. The solicitors were required to indicate before February 2007 whether or not their claimant accepted the offer.

2 Eligibility for a Live Optional Risk Offer (LOROS) was determined on the basis of both a claimant's employment history and their spirometry test result.

Main Stages of the Vibration White Finger (VWF) process




Accept or reject general damages offer
Eligible for services damages?
No
No further claim
Yes
Submit claimant and helper questionnaires
Supply further information
Accept or reject services denial
Accept or reject services offer
Make general damages offer
Process services claim
Missing information?
Yes
No
Perform helper verification
Request services medical assessment
Eligible for services damages?
No
Yes
Eligible for services damages?
No
Yes
Make services offer
Perform services medical assessment
Complete helper questionnaires
Verify information

APPENDIX FIVE

Best practice

1 As outlined in Appendix 1, the National Audit Office employed KPMG LLP to provide expert advice on current good practice in the public and private sectors (with particular reference to the insurance industry) in controlling administration costs and risks for major projects, programmes of work and compensation schemes. It provided a best practice guide on the start-up, administration, and completion of compensation schemes. The following are extracts from its report drawn upon in the main body of this report.

Scheme start-up

2 KPMG set out the matters which an operator following good practice should currently consider during the scoping and planning phase if faced with a major compensation scheme based on disease associated with particular employment. These are included below, with an appraisal, by the National Audit Office, of the Department's performance next to each.

Steps taken by insurance companies to manage uncertain liabilities	Conducted by the Department – pre-start/start-up
Obtain an actuarial estimation of population and costs, and an appraisal of the level of uncertainty	✘
Obtain an actuarial assessment on the expected phasing of claims	✘
Review the alternatives to meeting the liabilities, including their practicality and cost	Partial
Determine the qualifying criteria required for a claimant to be eligible for compensation	✔
Assess the quantum of the compensation payable to claimants	✔
Identify available defences to claims and contributory factors that reduce liability	✔
Plan for the level of expertise necessary to determine a claimant's eligibility to claim	✔
Identify and plan for opportunities for recovery or contribution from third parties	✔
Identify alternative options for processing claims and complete a cost-benefit analysis	✘
Stress test the impact of the chosen scheme on the initial planning assumptions	✘

Scheme administration

3 KPMG highlighted the generic topics likely to be relevant to the administration of any large compensation scheme, including:

a effective communications with all stakeholders;

b the setting of claims handling specifications, processing rules, and agreement for a tariff of plaintiff's costs;

c payments management, including fraud prevention; and

d management control, including the setting of performance indicators and incentives.

Scheme completion

4 KPMG reviewed the factors likely to be relevant to the completion of a large compensation scheme. It highlighted the type of issues which must be resolved in deciding to terminate a scheme; these could include whether the majority of the eligible population had claimed, the costs of maintaining sufficient infrastructure, and any factors limiting liability. It recommends actuarial advice be used to determine the volume, value and phasing of claims that might be expected in the future. In making the decision for scheme completion the Department's performance lacked the quality of analysis KPMG would expect.

5 Other important activities listed by KPMG are shown below, with an appraisal by the National Audit Office of the Department's performance alongside:

Best practice activities in scheme completion	**Department's performance**
The determination of appropriate completion timing and process	=
Incentives to claims processing contractors to achieve the completion targets	✔
Compromise offers to settle the most difficult claims	=
Maintaining sufficient resource during the wind-down phase	✔
Setting procedures for handling further liabilities after scheme closure	✔
Asset recovery from, for example, co-defendants	=
Maintaining records to deal with residual enquiries	✔
Producing final reports for key stakeholders	Too early to comment

Key = signals work in progress

APPENDIX SIX

Contractors

1 The following chart is a list of contractors engaged by the Department to administer and advise on the COPD and VWF schemes.

COPD and VWF schemes: Contractors involved in the processing of claims and providing advice

Current (previous) contractor	COPD activity	VWF activity
Capita Insurance Services, since 2004 (Aon, trading as IRISC, from 1998 and before that, IRISC)	Central processing of casework	
Nabarro[1]	Legal services: England and Wales	
McClure Naismith	Legal services: Scotland	
Iron Mountain (Hays Commercial Services)	Collection/Storage of employment records	
Business Healthcare	Collection/Storage of former British Coal Corporation medical records	
Capita Health Solutions		Medical assessments: Services
Atos Origin (Healthcall provided the COPD service to November 2002)	Medical assessments/Spirometry[2] screening from November 2002	Medical assessments: General damages
Elision[3]	Collection of medical records from GPs and hospitals	

Source: National Audit Office analysis of the Department's contracts

NOTES

1 Nabarro was known as Nabarro Nathanson prior to March 2007.

2 See Appendix 2 for a description of medical tests.

3 Elision is contracted to Atos Origin. All other contracts are with the Department.

4 A further company, Hyperlink, is responsible for the website www.coalclaims.com.

APPENDIX SEVEN

Fees paid to claimants' representatives

Total payments to the top 10 claimants' representatives by coal health fee income as at 31 March 2007

Solicitor	Total	
	Ranking	£m
Thompson's	1	123.6
Beresfords	2	115.0
Hugh James	3	90.2
Raleys	4	72.4
Browell Smith & Co	5	54.6
Mark Gilbert Morse	6	52.4
Avalon	7	35.1
Union of Democratic Mineworkers	8	31.6
Watson Burton LLP	9	31.3
Graysons Solicitors	10	29.7
Total[1]		635.8

Source: Capita Insurance Services

NOTES

1 This figure represents 61 per cent of the total fees paid to claimants representatives (£1,045m) at 31 March 2007.

2 The figures exclude payments made to solicitors as a result of the original litigation.

3 Figures do not cast correctly due to rounding.

APPENDIX EIGHT

The Boys Smith report

1 The Department commissioned a review of the coal health compensation schemes in July 2005. It was undertaken by Stephen Boys Smith, a former senior civil servant. The following is a synopsis of the report's conclusions and recommendations published in November 2005.

General conclusions on the schemes

2 The schemes have resulted in the expenditure of very considerable amounts of public money in former mining areas and in the associated towns and cities.

3 The review concluded that the nature of these highly complex schemes, which had resulted directly from litigation and were supervised by the Courts, meant that:

a Parliament scrutinises the management of the schemes by the Department but, because of the role of the Courts, is unable formally to hold it to account in the normal way;

b tension is inherently likely to arise between the parties. This is not conducive to the straightforward despatch of business; and

c this is not the best way to administer compensation for so many people and which incurs high costs.

Conclusions on the administration of the schemes

4 The risk management systems of the Department and its contractors had developed since the schemes began. The current systems reflected best practice, and are believed to be well operated and effectively integrated into the Department's management of the schemes. There are effective auditing arrangements for the medical assessment processes.

Conclusions on fraud

5 Measures to address inaccurate or improper claims are built into the schemes and are central to maintaining their integrity. Although no other specific procedures to counter fraud were in place at the start of the schemes, it is believed that those now in place to prevent, detect and pursue fraud are a sensible and proportionate response to the issue.

6 The counter-fraud arrangements show valuable savings in relation to their costs and details of these arrangements should remain confidential.

Conclusions on competence

7 Although it is unfortunate that there were not originally more accurate estimates of the number of claimants and of the costs, it is not believed that better estimates could have been made at the time, given the paucity of data and the lack of precedent for compensation schemes of this kind and complexity. Better estimates would not have materially altered the nature of the schemes.

8 Solicitor's tariffs appeared reasonable at that time but do not adequately reflect the more routine nature of the work now being undertaken.

9 Not all solicitors have charged fees of successful claimants and some solicitors who did this in the past have since discontinued the practice. The position the Law Society now takes on this – namely that solicitors should first tell claimants that they are able to receive a similar service elsewhere at no extra cost – should apply retrospectively. This would mean that claimants should now be able to seek the reimbursement of any fees they may have paid in the past if, when they made their claims, they had not been told that they could receive a similar service elsewhere at no extra cost. It should be for the legal profession to take this matter forward.

10 The schemes did not explicitly rule out solicitors charging fees of successful claimants. The Department acted reasonably in drawing the matter to the attention of the Law Society.

11 The nature of these schemes, where the Department is one party to a negotiated settlement and where the courts and not the Government take the decisions on the shape of the schemes, means that the Department is not in a position to control or reduce costs in the normal way. Discussion of public expenditure has therefore to focus on those areas where it might be possible to secure savings, such as solicitors' costs, or on making efficiencies in the handling of claims.

Conclusions on topical issues

12 The practice whereby some solicitors and claims handlers make payments to trade unions out of settlements is not inherently improper so long as the claimant voluntarily agreed to this in advance. There seems no reason why the Department, which was a party to the negotiations and not a regulator, should have insisted that the schemes explicitly disallowed these payments.

13 Views about claims under the VWF schemes for those who are no longer able to undertake certain day-to-day tasks (the VWF Service claims) vary very widely, some saying that the system is very generous and others that the procedures are needlessly stringent. The arrangements are fair to claimants while containing reasonable measures to prevent fraud, though this is the area where claims are more likely to be exaggerated than any other.

14 Given the nature of the schemes and the need to meet the requirements of the Courts, simpler medical assessment processes could not have been used.

15 A considerable amount of information about progress with the schemes is now publicly available. Additional information is provided to the parties. Partly because of the degree of the suspicion that surrounds some discussion of the schemes, more material could be put into the public domain and it is important to be as proactive as possible in making information available, including about the terms of the UDM VWF agreement signed in 1999. Commercially confidential information should however continue to be safeguarded.

Recommendations

16 If the Government is ever in future faced with a comparable situation; either where it has to implement a court judgement imposing a liability to pay compensation, or where it believes it would face such a judgement if a legal case were completed; it should very carefully examine alternative ways of proceeding.

17 In developing their work on risk management the Department should consider whether:

- to include on the risk register issues which have the potential to become matters of significant public or political debate; and
- periodically to review closed risks to determine whether they should be re-opened.

18 The Department should examine carefully, with a view to implementation, all the recommendations that emerge from the present audit of the operation of fraud investigation procedures.

19 The Department should pay particular attention to ensuring that surveillance of claimants is considered carefully in the context of all the measures available to combat abuse of the schemes and is employed only where appropriate. In principle its use is entirely proper.

20 The Department should consider how best to corroborate UDM data, in particular that relating to the completeness of the list of all claims handled, in order to reach a view, in which it can be confident, on the extent of any non-compliance.

21 If in the future an agreement between two parties is set up, similar to those between the Department and UDM/Vendside, designed to regulate the costs payable to third parties, there should be explicit safeguards with a view to binding those parties to the intended arrangements.

22 The Department should consider options for moving the determination of the costs of solicitors and other claimants' representatives on to a basis that more accurately reflects the nature of the work actually undertaken by these representatives.

23 The reviewers have considerable sympathy with those who argue that it would be right to consider means whereby those who did not when they started their claims receive advice in the form that the Law Society now requires – namely that they would be able to obtain a similar service elsewhere for nothing – should be reimbursed any additional fees paid to solicitors. Subject to the outcome of any legal proceedings there might be about this matter, it is recommended that steps should be taken to enable such claimants to seek a reimbursement of the extra fees they paid, should they wish to do so. It is recommended that this is a matter for the legal profession, and not the Government, to pursue.

24 It is recommended that:

a Consideration be given to ensuring that the valuable lessons learnt from administering the coal health compensation schemes, which are being continually and helpfully documented by the Department, be available to all those in government to whom they might be relevant in future, whether in the context of setting up other compensation arrangements or in the context of other major projects.

b Particular note be taken of the most significant lesson, namely the importance of adequately resourcing major projects from the start.

25 On making public information about the Coal Health Compensation Schemes, it is recommended that:

c the full details of all the schemes are made available to all the stakeholders and to the public at large;

d the periodic court reports on both COPD and VWF should be made publicly available as soon as possible after the hearings;

e The Department takes a proactive and maximalist approach to the provision of information on the website and in other ways; and

f the information policy of the Department on the coal health schemes should take full account of the strength of the views some hold about the subject as a whole and should seek to pre-empt any cause for grievance.

26 It is recommended that, in respect of the costs of its contractors, the Department should apply the normal criteria in the provision of information that is commercially confidential.

Main actions taken by the Department as a result of the report:

- Risk management now covers reputational risk.
- Vigorous challenge of solicitors tariffs for COPD fast-track claims costs to ensure their fees reflect the work undertaken.
- Working with the Legal Complaints Service on ways to make claimants aware of the Service and how they can seek reimbursement of additional fees paid to solicitors.
- Provided the Department's project centre with relevant information to highlight the lessons learned and to seek ideas on how they can be distributed across Government. Suggestions include project templates and mentors.
- Governance strengthened by the appointment of a non-executive on the Legal Services Group Board as Chair of Coal Liabilities Strategy Board.

Source: The Department, April 2007

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