

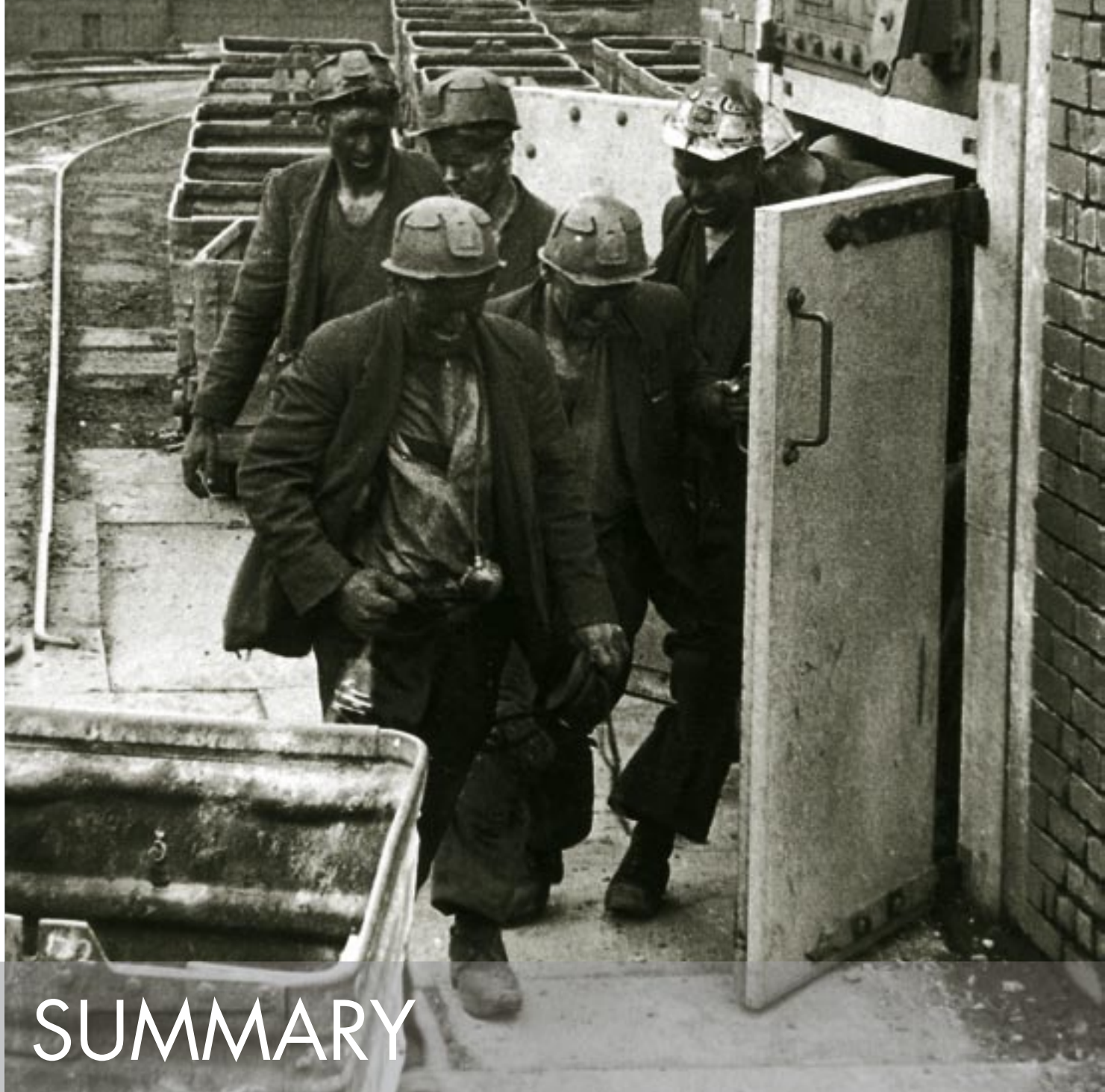


National Audit Office

# Coal Health Compensation Schemes

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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<sup>1</sup> 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.

<sup>1</sup> 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.<sup>2</sup> 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<sup>3</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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<sup>4</sup> 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<sup>5</sup> 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.

<sup>4</sup> *Managing Risks to Improve Public Services*, National Audit Office, 2003-2004 (HC 1078).

<sup>5</sup> 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.
- 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](http://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.

### 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.
- 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.