

File note of internal meeting: - 5 September 2006, Room 508 Wellington House

Subject: Review of vCJD Trust compensation scheme

Attendees: Jonathan Stopes-Roe, Brian Bradley, Mark Gidden (SOL), Eileen Lawrence, Ted Goff and Glen Clarke

Context and rationale for revision

1. The Chair of vCJD Trust view was that the relatively high level of costs, and the processing delays associated with the present scheme, arose from the complex nature of the Trust Deed. He now proposed radical changes to the scheme, which included a standard lump sum award in all cases. Its value would be based upon the average of the equivalent payments made to date. In addition there would be provision for dependency based upon the arrangements in the existing scheme. The application of discretion would also be largely eliminated, making for a simpler, quicker and more economic scheme. The new scheme would apply to new claimants arising after a set date.
2. The merits of the proposed new scheme and how it contrasted with the existing scheme were discussed. Wider considerations of the scheme were discussed elsewhere.

Numbers of victims and costs of scheme

3. It was agreed that although vCJD incidence had been in decline for some years it would be helpful to view any changes to the scheme in the context of projection of the incidence trend for the medium/short term. We would also need a more detailed understanding of the proposed changes to the scheme and the likely costs. It was agreed that apart from costs, DH is broadly content with existing scheme, which has met the original aims of (mostly) satisfying the needs of victims and families and avoiding the risks of litigation. The current incidence was very low – less than 5 cases per year – and the ratio of costs to claims would improve if this continued or lessened further. If the incidence remained at the present level the costs of the scheme would become less important, which would undermine the argument for changing the scheme on costs grounds: other drivers for change would need to be considered.
4. The issue of the delays in making payments, particularly discretionary payments, was discussed, and it was agreed that speedier payments could be made if some fresh Trustees were brought in, possibly with a corporate finance or insurance assessment background, who were accustomed to the sort of tough decisions facing the Trust.

Action: Check projections of vCJD incidence and trends in life-expectancy from epidemiological models,
Ask Charles Russell & Co for a more detailed specification of proposed new scheme and where it varies from existing scheme. In particular:

This document is subject to legal professional privilege

- will all old cases that were paid less than the new flat rate receive increases?
- Will this be a wholly new Trust, or an amendment of the existing Trust?
- Seek clarification on the full costs of the scheme e.g. what do they mean by "allowing for inflation & life expectancy?"
- If the low incidence continues (or declines) can we still argue for changing the scheme on cost grounds?
- Ask [Justin Fenwick to ask?] Sir Robert Owen if he would consider appointing new Trustees to sharpen the approach to difficult decisions

Risks associated with changing the scheme or remaining with existing scheme

5. It was agreed that the benefit of change to the scheme would be to reduce the administration costs and make payments to victims more speedily, so that the award is available for the benefit of the victim at the earliest possible stage, rather than for the family after his death. It was also agreed that we need a detailed analysis of the legal and "political" risks in changing, or not changing, the scheme.

Action DH to draft arguments for and against change, to inform submission to MS(PH)

Undertaking the consultation

6. Following a wide ranging discussion it was agreed that the Trustees and the Trust's administrators would be best placed to take forward the consultation. The Department would ask vCJD Trust to provide details on how they propose to undertake the consultation process. The Department would need to be assured that the proposed changes to the scheme have widespread support, in the light of the responses to the consultation.

Action: Department to discuss consultation process with vCJD Trust and agree action plan

Ministerial submissions - Timescales

7. It was agreed that submissions would be put to Ministers at strategic 'check points' in the process, the first one establishing the will of Ministers to follow this path, after taking advice from Justin Fenwick QC. It was also agreed that any changes to the scheme from 1 April 2007, would require a variation of the Trust Deed, which would be preferable to attempting to set up a new Trust Deed.

Action: Submission to SofS/MS(PH) in early October 2006

Discussions with Justin Fenwick QC

8. It was agreed that we needed to have an understanding of any legal pitfalls in the proposed new scheme and to identify any inherent risks. We would also appreciate Justin Fenwick's development of Leigh Ann's initial advice.

Action: Mark Gidden agreed to identify the legal issues that would need to be discussed with counsel on 14 September.