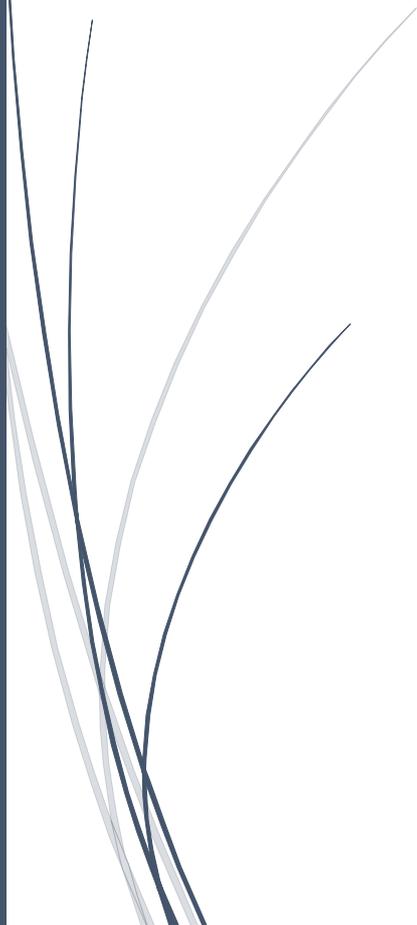




Department
for Work &
Pensions



Diffuse
Mesothelioma
Payment Scheme
Annual review
2016/17





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Any enquiries regarding this publication should be sent to us at

Private Pensions and Arm's Length Body Partnership Team

Diffuse Mesothelioma Payment Scheme

Department for Work & Pensions

Caxton House, 1st Floor

Tothill Street

London

SW1A 9NA

Email: CAXTONHOUSE.DMPS@DWP.GSI.GOV.UK

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EXECUTIVE SUMMARY



I am pleased to publish the annual review of the Diffuse Mesothelioma Payment Scheme (DMPS), which covers the period 6 April 2016 to 5 April 2017 (the financial year 2016/2017). This review covers the scheme's activities in its third year of operation.

This report sets out key performance data and assesses the extent to which the scheme's objectives have been met. It also provides more information on the levy that funds the DMPS and discusses the results of the audit and the recommendations of the Oversight Committee.

The average (mean) award to successful applicants in the scheme's third year of operation was around £141,000, an increase from £135,000 on the previous year. Since the scheme was launched in April 2014 it has helped over 760 sufferers of mesothelioma with £98 million awarded in compensation.

I would like to thank Gallagher Bassett International Ltd., the scheme administrator, and Tracing Services Ltd., who collect the scheme's levy, for their commitment and hard work since the scheme began operations. I would also like to thank the members of the DMPS Oversight Committee for giving up their time to help review the performance of the scheme and assess its effectiveness. Finally, I would like to thank the insurance industry for their continued support of the scheme via the levy.

Sarah Newton

Minister for Disabled People, Health and Work

Introduction

BACKGROUND

The Diffuse Mesothelioma Payment Scheme (DMPS) was launched in April 2014 and began taking applications from July 2014. This report covers the DMPS's third year of operation, for the financial year 2016/17.

The DMPS was set up to provide payments to sufferers of mesothelioma who were negligently exposed to asbestos at work but are unable to pursue a civil claim because their former employer no longer exists and their former employer's insurer cannot be traced. In this, the third year of operation the scheme has paid out £31.4 million in compensation to 200 successful applicants with the average award being around £141,000.

The insurance industry acknowledged their failure to keep adequate records and therefore agreed to fund the DMPS via a levy on active employers' liability insurers. The levy is set and paid annually, and varies in amount depending on the number and age of applicants. To ensure the insurers and not employers fund the DMPS, Government agreed that the levy would not exceed 3 per cent of the employers' liability market in any one year.

The DMPS is currently administered by Gallagher Bassett, who won the contract following a competitive tender exercise and whose contract has been extended until 31 March 2018.

DIFFUSE MESOTHELIOMA: CAUSES AND CONSEQUENCES

Mesothelioma is a cancer arising in the mesothelium, which is a layer of tissue that surrounds organs of the chest, abdominal cavity and pelvis. Diffuse mesothelioma is a condition describing the primary tumours that arise in the mesothelium. This cancer is commonly found in the lungs and is heavily linked to asbestos exposure. It is a "long-latent" disease, where symptoms may not appear for a significant period, sometimes thirty to forty years post-exposure.

THE ROLE OF EMPLOYERS AND THE INSURANCE INDUSTRY

Employers

The Employers' Liability (Compulsory Insurance) Act 1969 requires all employers in Great Britain to insure liability to their employees for injury or diseases sustained throughout the course of their employment.

This 1969 Act provides that employees who sustain injuries at work have a right to compensation from their past or present employers. Despite this, many claims are difficult to bring. In the case of a “long-latent” disease this can be due to the difficulty in finding employers’ insurance policies in order to bring proceedings in the courts.

Insurance Industry

To address this, the insurance industry agreed to finance a scheme that pays a lump sum to individuals exposed to asbestos by their employers whether negligently or as a result of a breach of a statutory duty, and who are unable to bring an action for damages through the courts against past employers or their employers’ insurers. This scheme is one of last resort and is exclusively for those who have not received any payment or been able to take any civil action against their employer as a result of the disease.

THE LEVY

The DMPS is funded by an annual levy paid by the insurance industry. The Diffuse Mesothelioma Payment Scheme (Levy) Regulations 2014 place an obligation on active insurers in the employers’ liability insurance market to pay towards the cost of the levy based on their relative market share. As the DMPS is demand led, the levy is recalculated each year to take account of any changes in the number of applications. Should applications increase, the levy will rise, and should they decrease the levy will fall.

To ensure the insurers and not employers fund the DMPS, Government agreed that the levy would not exceed 3 per cent of the employers’ liability market in any one year.

Tracing Services Ltd. (a subsidiary of the Motor Insurers’ Bureau) is currently under contract to collect the levy on behalf of the Department.

On 18 January 2017 the Government announced the total sum of the third annual DMPS levy of £40.4m, the vast majority of which to be collected during 2017-18. This levy was based on data from the second year of operation. This figure included £5.2m to accommodate a levy shortfall from the previous year. This shortfall was in part due to underestimating the number of claims awaiting assessment at the point of announcing the levy. In addition, a larger number of applicants than anticipated qualified for the 100 per cent (of civil compensation) tariff that came into effect from February 2015.

The calculation of the levy in year 3 was made as follows:

Projected total payments + Administrative costs + under levy (year 2) = Total year 3 levy

£35,100,000 + £100,000 + £5,200,000 = £40,400,000

The projected total payments were calculated using management information provided by the scheme administrator from the preceding 12 months.

Looking ahead, there remain challenges in accurately setting the levy amount where relatively small numbers of claims are involved. Factors such as an unexpected rise in the number (albeit slight) of younger applicants to the scheme lead to difficulties in estimating overall payment amounts precisely. Additionally, those eligible to claim the tariff payments at 100 per cent of the civil compensation payment equivalent are now the majority of those individuals making a claim to the scheme, meaning the overall average amount of payments to sufferers has increased. All costs incurred by the DMPS are included in the calculation.

SCHEME RULES

In order to receive a payment, applicants must demonstrate that they meet all the eligibility criteria. An applicant must make a claim to the scheme administrator and supply information and supporting evidence on their individual circumstances. The application form is available electronically via the DMPS website, <https://mesoscheme.org.uk>, or in paper format by calling the scheme administrator on 01786 455 888. The evidence required to support the application should typically include:

- a copy of the diagnosis of diffuse mesothelioma;
- proof of employment history;
- a witness statement detailing how the exposure to asbestos occurred; and/or
- confirmation that they are unable to make a civil claim (the results from an Employers' Liability Tracing Office search).

DMPS payments are subject to recovery of benefits rules. This means any relevant social security or government lump sum payments already paid in respect of diffuse mesothelioma are recoverable from any DMPS payments. This is to ensure, in line with other benefits, that a person does not receive a payment twice for the same condition.

Dependants of sufferers who have died may also be eligible for a payment.

SCHEME OBJECTIVES

The DMPS has two main objectives

- a) To provide a scheme of last resort for individuals who are unable to bring an action for damages against a negligent employer or their insurer and who have also not received damages or a specified payment in respect of diffuse mesothelioma.

A key principle behind the DMPS is that it is specifically for sufferers unable to obtain compensation by civil proceedings. The DMPS is not meant to be a replacement for civil claims. It should never undermine civil procedures nor become sufferers' primary port of call for a lump sum payment in respect of their diffuse mesothelioma. Therefore, it is the scheme administrator's responsibility to ensure rigorous checks are made for all claims and to ensure all alternative options have been pursued.

- b) To provide an application and decision making process that is simple, impartial, quick and sensitive to sufferers' and their dependants' circumstances.

The short life expectancy of sufferers engaging with the scheme requires timely and accurate processing. This requires systems that produce swift but accurate decision-making. These systems should then be supplemented with an application process that is simple, straightforward and does not cause unnecessary distress to the applicant or delay an eventual payment.

To achieve this, the scheme administrator must have a good understanding of the disease and its effects; be sensitive in interactions with applicants and their dependants or representatives; and carry out its functions quickly and efficiently. Delivering upon this objective also means the scheme administrator must provide a value for money service.

Scheme Monitoring and Performance

This chapter provides an assessment of how the DMPS has delivered against its objectives during its third year of operation, and looks in more detail at the high level data.

SCHEME MONITORING

The Department's overall assessment of performance draws upon a number of sources:

- monthly management information provided by the scheme administrator;
- performance against agreed service standards; and
- official statistics for 2016/2017¹ published in July 2017.

The Department holds bi-monthly meetings with the scheme administrator to scrutinise the scheme administration against key performance indicators. Issues raised in the past year included the scheme administrator's contractual, financial and operational performance. The management information provided typically included the following:

- number of applications received;
- whether those applications were successful or unsuccessful and the reason for rejecting unsuccessful applications;
- method of application (via the website or post);
- average (mean) award to successful applicants;
- breakdown of age and gender of applicants;
- number of reviews requested and their outcome;
- number of reviews that are subsequently referred to First-tier Tribunal;
- timescale relating to different elements of the process; and
- number of complaints.

There have been no complaints made by applicants since the scheme was launched.

INDEPENDENT AUDIT

During summer 2017, PricewaterhouseCoopers (PwC) carried out a third independent audit of the DMPS. Their sample testing indicated that GBI continue to operate largely well

¹ <https://www.gov.uk/government/statistics/diffuse-mesothelioma-payment-scheme-statistics>

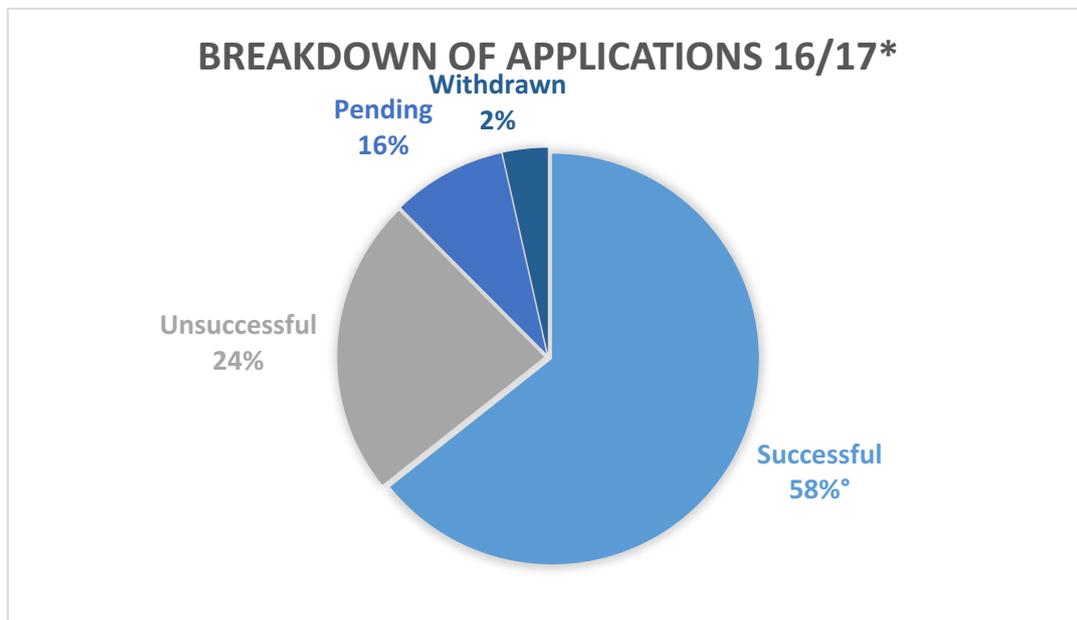
designed controls over its administration of the scheme, including improvements in control design around claim security so as to build prevention mechanisms to deter fraudulent claims. An automated tariff calculator had also been put in place.

In this year’s audit, PwC observed that a further few minor process improvements could be made, which the scheme administrator will work towards implementing. There were also a couple of key subjective risk areas around the scheme’s eligibility requirements concerning employer negligence and self-employment. It was noted that these areas need to be carefully handled with GBI and the Department continuing their collaborative work on these issues to ensure only appropriate claims are paid.

OFFICIAL STATISTICS

Key findings from the official statistics published in July 2017:

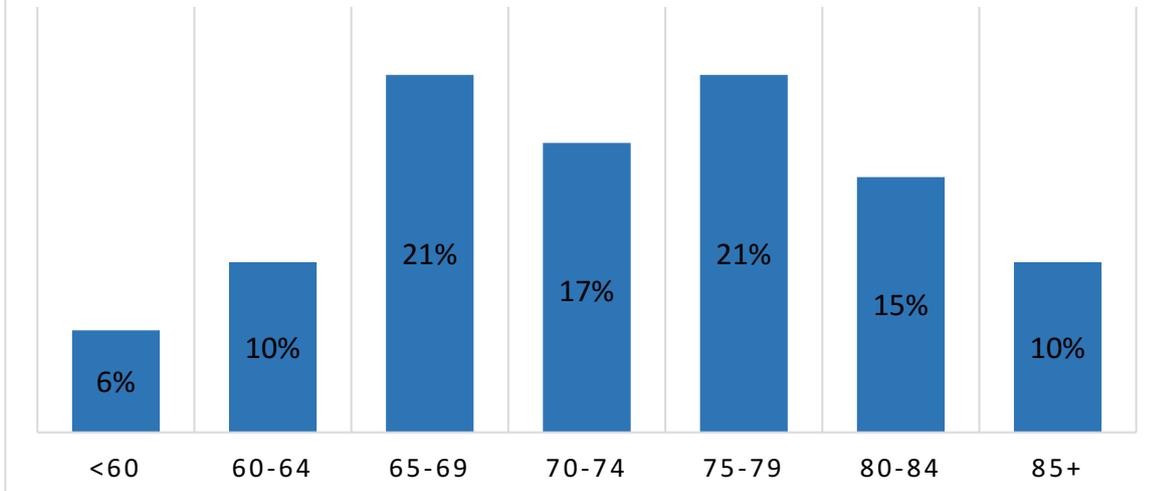
- average (mean) award to successful applicants was around £141,000 in the last 12 months, an increase from £135,000 on the previous 12 months;
- 345 applications were received in the last 12 months;
- 200 applications were successful;
- 85 applications unsuccessful;
- 55 applications pending a decision; and
- 5 withdrawn applications.



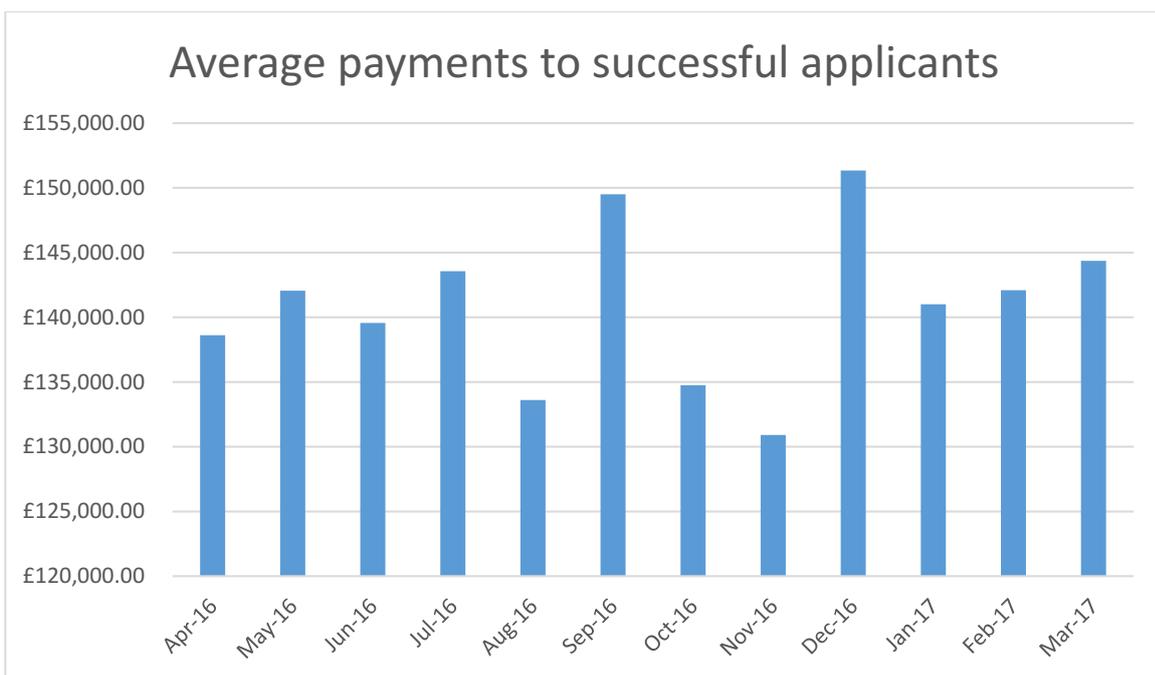
*Please note all figures are rounded.

°Removing pending applicants, 69 per cent of applications received in the last 12 months were successful.

AGE RANGE OF APPLICANTS



Average payments to successful applicants



The fluctuation of average payments is down to a small variation in successful applications over different months. Also the age of the sufferer at the date of diagnosis can vary each month. For example, a small increase in younger sufferers in any given month will lead to a higher average tariff awarded.

ANNUAL REPORT OF THE OVERSIGHT COMMITTEE

The Oversight Committee serves as an independent advisory service to the Department of Work and Pensions (DWP) providing stakeholder perspective on the scheme and complementing the monitoring function carried out by the DWP, ensuring that eligible people are receiving payments through a reasonable and efficient process, and ensuring that the scheme receives sufficient scrutiny.

TERMS OF REFERENCE

The full [Terms of Reference](#) are on the Gov.uk website

MEMBERSHIP

The membership of the Oversight Committee is made up of representatives from key interest groups with links to stakeholders and end users:

Independent Chair	Baroness Rita Donaghy
Asbestos Victims Support Group (AVSG)	Graham Dring
Trades Union Congress (TUC)	Hugh Robertson
Insurance Industry (Royal Sun Alliance)	Steve Bellingham
Association of Personal Injury Lawyers (APIL)	Bridget Collier
Forum of Insurance Lawyers (FOIL)	Laurence Besemer

STATUS OF OVERSIGHT COMMITTEE

The Oversight Committee's legal status is a stakeholder working group.

DWP retains formal responsibility for monitoring the performance and administration of the scheme. DWP is not bound to accept nor act upon any of the findings of the Oversight Committee. Contract management activities in relation to the administration of the scheme remain the sole responsibility of DWP.

Appropriate secretarial support for the Oversight Committee is provided by the relevant policy team within DWP.

FUNDING

Members of the Oversight Committee give their time on a voluntary basis.

ACTIVITIES

The Oversight Committee has held three meetings during its third year (2016 – 2017) and Minutes are available on the Gov.uk website:

<https://www.gov.uk/government/groups/diffuse-mesothelioma-payment-scheme-oversight-committee>

Much of the Committee's work was conducted off-line. It considered the monthly Management Information Reports from the scheme administrator, Gallagher Bassett International (GBI).

Although the Committee did not deal directly with scheme users, it continues to monitor the processes of the DWP, including noting the time it takes to receive certificates from the Compensation Recovery Unit (CRU) and the number of cases taken to First Tier Tribunals (FTT).

THE COMMITTEE'S APPROACH

In the third year of the scheme the Committee continued to monitor the processes and information systems already established. This was recorded in an action log provided by the DWP secretariat. These included legal representation, the number of applicants who were eligible to apply under a different scheme, and publicity and communications as they applied to the scheme.

SUMMARY OF MANAGEMENT INFORMATION

Since April 2014, 1120 applications have been received, with 760 accepted, 265 denied, 40 withdrawn and 55 decisions pending.

The total compensation paid out is £80.1m. Of this, CRU received £17.6m. The average per applicant of CRU repaid was £23,928.88.

A more detailed analysis of the statistics for the total period of the scheme is on the website:

<https://www.gov.uk/government/statistics/diffuse-mesothelioma-payment-scheme-statistics>

REVIEWS AND COMPLAINTS

There were no formal complaints, but there were 25 reviews of the 85 unsuccessful applicants in 2016/17. This resulted in a different outcome in 5 cases. This was often because additional information was supplied by the applicant that had not been available to the scheme administrator at the time of the first decision.

FIRST TIER TRIBUNALS (FTT)

A total of 30 applications have been made to FTTs, the results of which the Committee continues to monitor. The Committee noted that the Tribunal outcomes were showing good decision-making by the scheme administrator.

COMMENTS

The Committee was satisfied that it received full cooperation and appropriate information in order to carry out its work.

It accepted that compensation payments were being made in a timely manner.

Although publicity is not part of the Committee's [terms of reference](#), it has tried to satisfy itself that all possible steps were being taken to ensure that eligible applicants were aware of the scheme. The scheme administrator's website has been used more extensively and the DWP provided the Committee with an up-date on developing publicity strategies.

OUTLINE OF WORK

Second Review of Redacted Cases

The Committee held a special meeting in April 2017 to review a small sample of redacted cases. A total of 20 redacted cases were reviewed. In some cases there was confusion about the sequence of dates. The explanation was that the considerable photocopying exercise had introduced some dates which were not relevant to the casework. The Committee agreed that the administration of the scheme, as illustrated by the redacted cases was very satisfactory and that, in some cases, considerable effort had been made to ensure that information was provided at the appropriate time. It was agreed that the review exercise had been very worthwhile.

Potential for Applicants to be Disadvantaged

Arising from the previous Annual Report, the Committee asked the DWP to investigate the potential for applicants to be disadvantaged as a result of Employers' Liability Tracing Office (ELTO) search results not specifying dates of insurance cover. The scheme administrator indicated that they have the legislative competence to re-open a claim if the customer requested a review of the original decision or new evidence was provided.

Solicitor-led Cases

Also arising from the previous Annual Report, the Committee reviewed the number of solicitor-led cases versus claimant-led cases in 2016 - 2017. The scheme administrator had drawn a small sample of both solicitor-led and claimant-led claims and observed that an equal number of reminders (for additional information) had been sent in both sets of cases. Also of note was that both types of claims in the sample appeared to have equivalent success/fail rates.

However, since the start of the DMPS, management information shows that 83% of applications were solicitor-led and 17% by individuals. Success rates were 75% of applications which were solicitor-led compared with 25% for claimant-led applications. The difference in success rate was noted by the Committee.

General Issues

The Committee asked for further information about the ELTO searches. The DWP confirmed that, in cooperation with ELTO and the scheme administrator, it would carry out a retrospective review to see if an employer with an insurer had subsequently been discovered. Any information arising from this review would be shared with the Committee.

On the Management Information provided it was noted that the average payment had increased from £135,000 the previous year to £141,000 which may be due to the tariff increasing from 80% to 100%, and that the percentage of solicitor-led claims over claimant-led were increasing. The Committee noted the number of withdrawn claims. Although no reasons were given as to why an applicant would withdraw their claim, the expressed view was that the overall number of unsuccessful claims was quite high. One of the main reasons why a claim would be denied was the issue of negligent exposure not being proven. The Committee is seeking further information on the circumstances surrounding negligent exposure where that is cited as a reason a claim is unsuccessful.

Scheme Administrator

The Committee continues to be impressed by the quality of service provided by the scheme administrator, GBI. The company continued to be open and informative about its work and gave full co-operation to the Committee.

Secretariat

The Committee is grateful for the support of the DWP policy team in providing a part-time secretariat, facilitating communication between various agencies and servicing Committee meetings.

Particular thanks are due to Stuart Whitney, Annette Loakes, Hazel Norton-Hale and Catherine Hegarty.

CONCLUSIONS BY THE CHAIR

This is the third year of the scheme and of the Committee's work. The Committee consists of volunteers representing very different organisations and I am grateful to all members for their collegiate approach and their hard work.

Rita Donaghy

November 2017

