Parliamentary and Health Service Ombudsman

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

HC 313

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2nd Report
Session 2006-2007
Presented to Parliament Pursuant to
Section 10(4) of the Parliamentary
Commissioner Act 1967

Ordered by
The House of Commons
to be printed on
21 February 2007

HC 313
London: The Stationery Office
£18.00

Foreword

I am laying this report before Parliament pursuant to section 10(4) of the Parliamentary Commissioner Act 1967 because I consider that it is in the public interest to do so. The report contains the results of the investigation I have conducted following a number of complaints that I received about the administration of the ex gratia compensation scheme for Icelandic water trawlermen which was operated by the Department of Trade and Industry between October 2000 and October 2002.

The results of this investigation naturally are of interest to those affected by the events that are outlined in this report. The loss of the Icelandic water fishing industry in the aftermath of the resolution of the 'Cod Wars' of the 1970s had a profound effect on whole communities.

The scheme to provide compensation for the livelihoods that were lost as a result was a much welcomed initiative by the Government to remedy the effects of the collapse of the industry on those directly involved.

That the operation of the scheme led to many complaints as a result of certain perceived administrative shortcomings in the way that the scheme had been devised and announced and as to the way that applications for compensation were handled is a matter of regret.

The findings and recommendations I make in this report – and the Government's response to them – will, I hope, both provide a full explanation as to what went wrong and result in a positive outcome for the people who complained to me.

The issues I have dealt with in this investigation are, however, by no means specific to this particular ex gratia compensation scheme or limited to the administrative practices within the Department of Trade and Industry.

On 12 July 2005, I laid a report before Parliament that set out the results of my investigation into complaints about the administration of the ex gratia compensation scheme, operated by the Ministry of Defence, for British groups interned by the Japanese during the Second World War.

In that report – A Debt of Honour – I set out my findings that those who complained to me had been caused injustice in consequence of maladministration. I found that:

- the scheme had been devised overly quickly and in such a manner as to lead to a lack of clarity about eligibility for compensation;
- the announcement of the scheme had been unclear and imprecise and gave rise to confusion and misunderstanding;
- when problems had been identified no review of the impact of new eligibility criteria on applicants whose cases had been already decided had been undertaken; and
- applicants had not been given sufficient information when the new eligibility rules were enforced.

In addition to the recommendations I made on that occasion to remedy the injustice caused to those directly affected by that scheme, I also made three more general recommendations, which I took up with the Government.

These were that, in the absence of detailed rules or a statutory basis, ex gratia compensation schemes should always be devised with due regard to the need to give proper examination to all of the relevant issues before a scheme is announced or advertised. Once advertised and implemented, any changes to eligibility criteria within a scheme should be properly publicised and explained to those potentially affected by such changes. And where a scheme is the subject to mounting problems, a considerable number of complaints, or other criticisms from Parliament or the courts, it would be good administrative practice to review that scheme.

The reader of this report will see that many of the issues I identified in relation to the scheme covered by A Debt of Honour arose similarly in relation to the scheme covered by this report. An effective ex gratia compensation scheme that accords with principles of good administration would have:

- scheme rules that are clearly articulated and which directly reflect the policy intention behind the scheme;
- systems and procedures in place to deliver the scheme which have been properly planned and tested;
- sufficient flexibility built in to the rules and procedures to recognise the level of complexity in the subject matter covered by the scheme; and
- mechanisms which enable the success of the scheme in delivering its objectives to be kept under review.

That did not happen in either case.

In addition to making recommendations to remedy the injustice I have determined was caused to the representative complainant in this investigation and to others in a similar position to her, I have therefore also recommended that central guidance for public bodies should be developed that specifically relates to the development and operation of ex gratia compensation schemes.

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

I welcome this commitment and hope that, through this guidance which should be of considerable assistance to those tasked with the administration of ex gratia compensation schemes, this report will make a lasting contribution to the improvement of the delivery of public services.

Ann Abraham

Parliamentary and Health Service Ombudsman

February 2007

Introduction

1. This report sets out the results of my investigation into a complaint by Mrs A, referred by Austin Mitchell MP, about the ex gratia compensation scheme for Icelandic water trawlermen which ran between October 2000 and October 2002.

2. The compensation scheme was devised by the Department of Trade and Industry (DTI) and administered by the Redundancy Payments Service (RPS), a division of DTI located at Watford.

3. The report does not contain every detail investigated by my staff but I am satisfied that nothing of significance has been omitted.

4. Mrs A's complaint, on behalf of her late husband, was one of a number of complaints about the same matters received by my Office. Given that these complaints related to the same scheme and to similar matters I decided to conduct one investigation into the administration of the scheme. This investigation - which used Mrs A as a representative complainant - covers all the complaints about these matters that I have received.

5. There are three annexes to this report. Annex A contains the eligibility criteria for the scheme and the procedure for making claims upon it. Annex B is a detailed chronology of the events leading to the creation of the scheme and which therefore provide the context for Mrs A's complaint. Annex C is a brief outline of those complaints I have received that are similar to that of Mrs A.

My role and jurisdiction

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

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

8. Mrs A's complaint was directed at DTI as this is the department responsible for the creation and, through their RPS division, the administration of the scheme. While my investigation has shown that officials from other government departments, (the then Ministry of Agriculture, Food and Fisheries (MAFF) and HM Treasury) were involved in discussions exploring the practicalities of a compensation scheme, I am satisfied that the actions complained about were taken in the exercise of the administrative functions of DTI. Their Ministers and officials made the relevant decisions. DTI is listed in Schedule 2 to the 1967 Act and so it and its divisions and executive agencies are within my jurisdiction.

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

The campaign for a compensation scheme

10. In the late 1970s and early 1980s, following the then Government's agreement in 1976 to recognise a 200 mile fishing limit around Iceland in order to resolve the third dispute with the Icelandic authorities over fishing rights, generally known as the 'Cod Wars', almost all remaining distant water trawlermen in the UK were made redundant. The BFA was formed in the early 1980s to campaign for what the distant water trawlermen believed to be fair compensation for the loss of their industry.

11. Due to the nature of the distant water trawlermen's employment, which required them to move regularly between vessels and operators, they were generally regarded as being employed on a casual basis, endorsed in some cases by officials at the then Employment Department, so that they could not then qualify for statutory redundancy payments. In 1993, following a decision by the Court of Appeal that trawlermen could, in certain circumstances, qualify for redundancy payments, arrangements were introduced whereby DTI made ex gratia payments to distant water trawlermen who could, at the time of their redundancy, have met the qualifying conditions for a statutory redundancy payment but had failed to submit a claim because they had been advised that they would not qualify. The trawlermen believed the ex gratia payments failed to reflect the effects of working practices within the industry because the criterion for statutory redundancy payments was used, which required a minimum of two years' continuous service with a single employer, when the nature of the trawlermen's employment required them to move regularly between vessels and operators. The effect of this was that some trawlermen with thirty-five years' service had received only £450.

12. Following the General Election of 1997, the distant water trawlermen intensified their campaign. In November of that year the then DTI Minister met a delegation of MPs from those ports most affected by the redundancies. At the conclusion of the meeting the Minister said he would work with his MAFF counterpart to ensure a co-ordinated government response. In March 1998 the MPs jointly signed a letter to the DTI Minister which criticised the previous ex gratia scheme as being completely at odds with the fact that the distant water trawlermen worked inside a 'scheme' also known as 'the pool system'.

13. In July 1997 the Member for Hull West and Hessle addressed the House of Commons about his concerns for the distant water fishing industry and described the pool system as operated by the shipowners and the then Employment Department, the objective of which was to ensure that there was an adequate number of qualified trawlermen readily available for all companies participating in the system. For example, when a trawler was tied up, perhaps for a refit, the trawlermen were entitled to unemployment benefit and would remain in the system. However, if the Employment Department decided, in conjunction with a participating company, that it would be appropriate for a trawlerman to cover a vacancy on a trawler that belonged to a different company, irrespective of which waters the trawler fished, the trawlerman was compelled to accept or had his benefit stopped. In March 1998, in a letter written by the

port MPs to the then Minister of State at DTI, they described that system as one operated in conjunction with the then Employment Department which required the trawlermen to be available to work for any employer they were directed to. In August 1999 a senior DTI official explained to his colleagues the position of the trawlermen with respect to social security benefits in a discussion about the available options for responding to the BFA campaign. He said the trawlermen were fully entitled to unemployment benefit, but once in receipt of it, they were never regarded as being available for work by the then Employment Department and so were never directed to non-fishing work. It was the normal practice for fishermen to be obliged to sign on at a special benefit office set up by the then Employment Department situated in the Fish Dock, rather than at their local office, for which they had the support and assistance of the trawler owners. Messengers, known as 'ships runners', liaised direct with the then Employment Department and would inform them if a man was wanted again. This system was unique as the men were not technically unemployed and could have been paid 'shore pay' from their employers instead of benefit.

14. In October 2000, in response to the trawlermen's campaign, DTI introduced a scheme - the Trawlermen's Compensation Scheme - to compensate fishermen formerly employed in Icelandic waters who had lost employment following the settlement of the last of the 'Cod Wars' in 1976. Under the eligibility criteria for the scheme a claim could be made in respect of the last continuous period of work undertaken by the former Icelandic water trawlerman, provided that period of work lasted for at least two years prior to 1 January 1980 and ended on or after 1 January 1974. The scheme defined a continuous period of work as 'work as an Icelandic water trawlerman during which there were no relevant breaks between voyages of more than twelve weeks'. A 'relevant break' for the purpose of the scheme meant a break of more than twelve weeks during which work, of any duration, other than work as an Icelandic water trawlerman was done. Payment was made on the basis of £1,000 for each year at sea with a maximum entitlement of £20,000.

The complainant

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

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

The complaint

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

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

My investigation

19. The Member first asked me to investigate Mrs A's complaint in a letter of 30 September 2003. Following preliminary enquiries of DTI, my Office sent the statement of Mrs A's complaint to the then Permanent Secretary at DTI on 19 December 2003 and requested his comments on my proposed investigation of the complaint along with copies of documents concerning the formulation of the compensation scheme, notes of meetings and copy correspondence with interested parties, and any other documents that might help our understanding of the background to the scheme and the factors that were taken into consideration. The Permanent Secretary replied on 3 February 2004 with a memorandum of events by way of response to the statement of complaint. He made clear that the relevant files were available for inspection, were they needed. On 20 February 2004 my staff made a preliminary examination of DTI's files relevant to the complaint.

20. My investigator then went through those files examining the way in which the scheme was devised and administered, with particular reference to the rule concerning 'relevant breaks' and its impact upon the 'pool system'.

21. Mrs A was interviewed at her home on 16 November 2004. She said she believed that her husband worked on distant water vessels from about 1947 (although the available records show him working from 1949) up until about 1978. He spent a lot of time in Icelandic waters. She commented that the letters 'VG' entered on her late husband's port record (a record of the vessels on which he worked and when) meant 'very good' and reflected his character, ability and general conduct. He was highly regarded and had an excellent reputation. Mrs A told me that when her husband worked on vessels prior to 1972, if the vessel could not sail again immediately, the owners tried to retain as many of the crew as possible. They would try to get them all on another boat to try to keep the crew together. She explained that with most repairs or refits where a vessel was idle, it would normally only be so for two to three weeks unless major engine repairs were required, which would take much

longer. However, where the vessel was subject to a Lloyd's survey that took place every four years, the refit time was usually three to four months. She was sure her husband had worked aboard distant water trawlers that had had lengthy periods tied up in excess of three months, but he had always been asked to join another distant water vessel.

22. Mrs A told me that in February 1972 her husband would have much preferred to stay at home once his then vessel, the Ross Rodney, had to undergo a lengthy refit. That was particularly so because Mrs A was unwell at the time. However, the operation of the 'pool system' was such that he had no choice. She said that 'the trawler owners behaved like Gods'. Her husband had been told, a few weeks after he had been discharged from the Ross Rodney, that he was required to work aboard a North Sea vessel, the Saxon Forward. If he had refused he would not have been able to obtain unemployment benefit. It was simply not possible to keep a family of five without any income at all and it was in that sense that her husband had had no choice. It was literally a question of taking the job offered or the family would starve. Mrs A said she felt aggrieved at the outcome of her claim on the compensation scheme.

Requests for further information

23. My investigator wrote to HM Treasury on 17 August 2005 and requested minutes of meetings, emails or notes of conversations which related to the Treasury's consideration of DTI's proposals for the compensation scheme. A member of their Science and Industry team replied on 17 October 2005 and enclosed emails and submissions made to the Chief Secretary concerning the scheme. During the investigation requests were also made to DTI for further information or for clarification of information already provided. I am grateful for the co-operation of both departments.

Genesis of the scheme

24. During the summer of 1999, officials from DTI and MAFF worked on a submission to put to their respective Secretaries of State in order to respond to the campaign by the BFA and the port MPs. On 18 October 1999 officials sent a submission to the then Secretary of State. The submission noted that, in dealing with the question of compensation scheme administration, payments would relate to time spent at sea over a period going back some 40 years. That would produce practical difficulties of administration and a number of hard cases for which the Government would face criticism. A briefing document attached to the submission explained that in June 1976 concern had been expressed by Ministers in Cabinet with reference to a government funded scheme of compensation, which was also opposed by the Treasury. Their concern centred on the difficulty that would be encountered in identifying those who had suffered genuine hardship as a result of the agreement with Iceland, and in devising clear eligibility criteria. MAFF had estimated a loss of 600 jobs in consequence of the agreement with Iceland but almost all distant water trawlermen were made redundant over the following few years. It would clearly be impossible to tell which jobs were lost as a result of that agreement and which due to other factors. Therefore, in principle, any new compensation scheme should be open to all former distant water trawlermen made redundant in the period 1976-86.

25. On 14 February 2000 officials at HM Treasury sent a submission to the Chief Secretary. They said that the DTI/MAFF proposal that a scheme should be open to distant water trawlerman made redundant between 1976 and 1986 would weaken any link between the compensation scheme and the actions of the Government. They emphasised their view that the need was for a tightly focused scheme. It

would be sensible to ask DTI to confirm that any practical problems could be overcome. In a briefing paper attached to that submission, officials noted that the Chief Secretary might like to ask, in terms of defensibility, whether information existed that would allow a scheme to be operated fairly. On 28 February 2000 representatives from DTI, MAFF and HM Treasury agreed that a small team of officials from those three Departments should conduct a scoping exercise to explore the feasibility and design of a compensation scheme and what it might contain. They would report to Ministers by 28 April 2000.

26. On 14 April 2000 officials at DTI sent a submission to the Secretary of State that referred to a suggestion by the Minister of State that they meet BFA representatives to discuss information they could provide in support of claims for compensation. The officials recommended that no such meeting take place until the Secretary of State had decided in principle to go ahead with a compensation scheme. Officials said they were at that time preparing a note addressing the issue of the adequacy of information on which to assess claimants' eligibility. The officials were satisfied that they could provide a positive response on the point and the information offered by the BFA was not required for the scoping exercise, although the BFA information would fill in gaps in their existing records.

27. On 9 May 2000 DTI officials sent a submission to the Secretary of State attached to which was a paper suggesting three options for limiting eligibility under the scheme. The paper noted that with all three options payments could be restricted to those former trawlermen who had worked for vessel owners known to have trawled in Icelandic waters - although in practice most vessel owners were likely to have had interests in most distant water fishing operations. A further eligibility condition that could reasonably be imposed with all three options was a requirement for two years' continuous service within the industry (disregarding short between-voyage breaks) but not necessarily with the same employer. That could be justified on the basis that a claimant should be able to demonstrate a certain degree of commitment to the industry in order to be eligible for compensation. On 24 May 2000, in a submission to the Chief Secretary, Treasury officials stated that in terms of adequacy of records, DTI was confident that payments could be restricted to former trawlermen who worked for vessel owners known to have trawled in Icelandic waters. Proof of eligibility could be obtained from copies of the relevant fishing records and/or National Insurance contribution records from the then Department of Social Security (DSS).

28. On 22 June 2000 the Chief Secretary to HM Treasury wrote to the Secretary of State at DTI and said he was prepared to agree to a compensation scheme. That was on the basis of a requirement of two years' continuous service in the industry (not necessarily with the same employer); a payment of £1,000 per year of service at sea; payment under the previous ex gratia arrangements 1993-95 was to be offset against the claimant's entitlement under the new scheme; share fishermen were to be included; there would be payment in full to widows and dependants of deceased trawlermen. He proposed a limit of £10,000 on individual payments (subsequently increased before the launch of the scheme in October 2000 to £20,000). He also proposed that the scheme be limited to those who left the industry during 1974-79 but did not provide any reason for selecting that option. In terms of timescale he said they should look to expedite the scheme quickly and an announcement could be made in the summer. Given the normal rules on expenditure incurred without specific statutory authority the scale of the scheme (over £900,000

per annum) must be concluded within two years, in order to avoid primary legislation. He therefore proposed that the deadline for admitting claims should be 31 December 2002.

Development of the scheme

29. On 29 June 2000 DTI officials were asked to take forward the drafting of a note on the scheme's eligibility criteria fleshing out the basic criteria agreed by the Chief Secretary to HM Treasury. In answer to a question from a senior official, they said they thought they were sufficiently advanced in their preparations that the Secretary of State could invite claims on the scheme at the forthcoming Party Conference. On 7 July 2000 DTI officials met to discuss a paper concerning the proposed scheme including the eligibility criteria. The paper suggested that in order to be eligible for payment under the scheme, a claimant must have worked at sea as a fisherman for a continuous period of at least two years ending on a date between 1 January 1974 and 31 December 1979; for one or more vessel owners who carried out fishing in Icelandic waters; and did not continue or resume working at sea as a fisherman at a later date. An occasional interval of up to one or two months - for example, an interval between voyages or between work for different vessel owners - should not be taken to break continuity for those purposes and should be counted as part of the continuous period. The paper asked whether there was any need to clear the proposals with Ministers or HM Treasury or MAFF, and also asked whether there was any merit in consulting the BFA on eligibility criteria, once an official announcement of the scheme was made.

30. In July 2000 the Chairman of the Hull BFA sent to DTI officials a list of reasons for a break in a trawlerman's service record. He said that was why the Government's two year rule in which to qualify for compensation could seriously affect a trawlerman's sea record and thus his entitlement to compensation. Any gaps in a man's record caused legitimately by the reasons on the list should be disregarded when the two year rule for qualifying was calculated. Among those reasons were time off the ship's log when the ship's annual survey could last for days or weeks and every four years the Lloyd's survey, which would take the ship out of service for weeks. When a ship was lost, survivors would get twelve weeks' survival pay on shore. He did not say the list was exhaustive. On 11 July 2000 RPS staff asked DTI officials for clarification on the time limits for the occasional interval between voyages. On receipt, that question was highlighted and '3-4 months' written beside it with the '4' crossed through. On 18 July 2000 DTI officials replied to RPS. They said that a gap in service of more than three months, whatever the reason for it, should be taken as breaking continuity for the purposes of the scheme. The BFA had at one time given them details of the reasons why people might not be at sea and the longest reasonable gap was twelve weeks' leave for survivors of a sunken vessel. That condition should be rigorously applied. On the same day officials noted that the Secretary of State had wanted a firm opening date to be included in the initial announcement of the scheme; officials suggested 1 October 2000.

31. On 28 July 2000 in a written answer to the House of Commons, the Secretary of State said that *'the Government recognised that former Icelandic distant water trawlermen suffered an injustice. Many lost their jobs through the settlement of the "Cod Wars" by the then Government and received little or no help. Given the exceptional circumstances in which they lacked basic employment protection we intend to remedy this by establishing a new scheme of compensation to be administered by my Department's Redundancy Payments Service. Further details of the scheme and when and where claim forms will be available are to be*

announced before it is formally opened on 2 October'.

32. On 2 August 2000 DTI officials told the Minister of State that the Secretary of State had approved a meeting between DTI officials and the BFA. Although officials had previously spoken to the Hull BFA Chairman by telephone, they asked the Minister's office to make arrangements. On 15 August 2000 a policy official notified the office of the Minister of State that they had agreed 8 September 2000 for a meeting with the Chairman and other members of the Hull BFA. Meanwhile, on 7 August 2000 DTI's legal section asked policy officials whether a break from the industry of less than three months broke continuity. A policy official replied on 8 August 2000 and said a break of three months would break continuity of service. The BFA had given them 101 reasons why there were breaks in service and none of them was longer than twelve weeks. That is why they had opted for that period. The way the fishing industry was run in ports like Hull and Grimsby was that all trawler owners belonged to the same 'pool' and the trawlermen could go out on any trawler they wanted. That was why they were never considered in the past to qualify for statutory redundancy payments as they signed on and off after each voyage. On 17 August 2000 DTI officials sent a draft of the compensation scheme to the legal section for their consideration. The draft included a section that allowed for appeals to an independent adjudicator for a final decision.

33. On 18 August 2000 the legal section replied and attached their redraft of the scheme. The redraft said that a claim could be made in respect of the last continuous period of work of at least two years undertaken by former Icelandic trawlermen provided the continuous period of work ended on a date between 1 January 1974 and 31 December 1979, and work as an Icelandic trawlerman was not resumed after the date on which the continuous period of work ended. They noted that one effect would be that a trawlerman who worked for more than two years, had a break of three months and then worked for less than two years after that would get nothing. They asked whether policy officials were happy with that and they said that they were. The legal section's redraft defined 'continuous period of work' as a period of work as an Icelandic water trawlerman during which there were no breaks between voyages to Icelandic waters (for whatever reason, including but not limited to illness or fishing on vessels outside Icelandic waters) of more than twelve weeks. Breaks of less than twelve weeks, even if in total these added up to more than twelve weeks, counted towards the period of work. The legal section noted that a trawlerman who worked on local vessels for the majority of his time but did an Icelandic trip every three months or so could make a claim. Officials said they were content to live with that. The legal section had understood that mixed service (vessels that sailed both distant and middle waters or distant waters and the North Sea as opposed to just one of those) was rare; officials confirmed that and said they believed it was virtually unknown.

34. On 24 August 2000 the Minister of State's office sent a memo to policy officials in which he agreed that the draft note on eligibility and procedure for the scheme should be sent to the Chairman and Secretary of the Hull BFA prior to the scheduled 8 September 2000 meeting. The Minister also suggested that it would be wise to invite representatives from the other ports to come in separately to see policy officials. He said it might also be wise to write to the port MPs indicating that that was the intention of officials, given the close links between the port MPs and representatives of local fishing communities. The Minister commented that there may well be other problems that emerged in the course of

those meetings.

35. On 3 September 2000 the Chairman of the Hull BFA wrote to a DTI official and enclosed an amended (as of 1 September 2000) list of reasons for breaks in a trawlerman's service together with an agenda. The agenda listed 41 points. Point 13 concerned breaks in service and referred to the amended list of reasons. The Chairman wished to know whether some or all of those breaks would figure in the calculation of payments. If not all, then which of the reasons he had provided would not qualify for payment? On 4 September 2000 officials wrote to the BFA representatives for Hull, Grimsby and Fleetwood and said that the eligibility criteria had been agreed by Ministers. The purpose of the meeting on 8 September 2000 would therefore be to discuss ways of ensuring that former trawlermen eligible for payment got it as quickly as possible. They enclosed a copy of the application form and a definition of the scheme criteria drawn up by DTI's legal section. A copy of the guidance notes would be available at the meeting.

36. On the 8 September 2000 a DTI official took a note of the meeting with the BFAs. Point 7 on that note recorded that the BFA had said that allowing a twelve week gap in employment was not enough. A trawlerman could be waiting for a job after getting a Mate's ticket and that would extend the gap between voyages. They explained about 'walkabout' which meant a man was blacklisted and that getting a job often depended on the whim of the trawler owners. Trawlers could also be laid up because they had already fished their quota. They suggested that up to six months should be allowed between voyages before continuity was considered broken and that 'special circumstances' might justify an even longer between-voyage gap. They said that radio operators should be included in the scheme. A policy official ended the meeting by explaining that the BFA's points would be put to the Secretary of State for consideration. Later that same day the legal section sent policy officials amendments to the scheme documents which they thought reflected that morning's meeting, as they meant that the scheme would then include those who worked on ships which may have spent most of their time on trips to other waters, provided they made at least two Icelandic water trips. If they made any Icelandic water trips that meant they must have been distant water vessels. A policy official replied and said they intended to put a submission to Ministers to ask for decisions on the radio operators point and whether or not they should allow some exceptions to the twelve week rule on breaks in continuity and also to ask them to sign off the documentation.

37. On 11 September 2000 a policy official sent a submission to the Secretary of State in which he pointed out that the need to consider special exceptions and supporting evidence for longer than twelve week breaks, which could be so difficult to obtain so long after the event, would increase the complexity of the scheme and the length of time taken by RPS to assess claims. The submission recommended that, on balance, longer gaps should be allowed in the case of sickness or injury, where supported by documentary evidence, but that no other exceptions should be made. The Secretary of State replied on 13 September 2000 and said he was happy to have special exceptions for those who had journey gaps of more than twelve weeks, although he wished the official to confirm that the Minister of State was happy with the proposal.

38. On 18 September 2000 the Minister of State emailed policy officials concerning the submission to the Secretary of State. He said that regarding gaps of more than twelve weeks, of course illness or injury should not count against the men but there were other circumstances such as 'walkabout' where trawlermen were left to kick

their heels for longer than twelve weeks before finding a ship. They needed to be flexible in recognising that those with whom they wished to deal were those who left to take other jobs and then returned. They should be identifiable. A policy official replied and explained that the difficulty he saw with allowing breaks of more than twelve weeks for reasons such as 'walkabout' was that it was unlikely that reliable documentary evidence would be available so long after the event to prove the reason for the break. If they looked at it the other way round and said they would disregard all breaks of over twelve weeks where the reason for the break was that a former trawlerman took a break outside the industry for a time, checking the claims would be much more difficult. National Insurance records would have to be checked and the then Benefits Agency asked if they were willing to take that work. It would also increase the costs of the scheme.

39. Later that same day the Minister of State and the policy official continued their discussion at a meeting. The Minister's outstanding concern was the rule that between-voyage gaps of more than twelve weeks should be regarded as breaking continuity. He wanted to limit that to between-voyage gaps in which the former trawlerman took employment outside the distant water fishing industry, so that between-voyage gaps of whatever length would be disregarded if they were for reasons other than those including but not limited to injury, illness, 'walkabout', and training at naval college. The Minister pointed out that in practice the trawlermen would not have had between-voyage gaps of more than twelve weeks voluntarily, unless it was to work outside the industry, so any such gap could be assumed to have been imposed upon them, or at least not have been of their own making. He did not define what he meant by working outside the industry. The official pointed out that such a rule would make it more difficult to validate claims but the Minister responded that the number of claimants who had between-voyage gaps of more than twelve weeks, and who could not provide documentary evidence of the reasons for them, would be small.

40. The policy official subsequently recorded that the problem he saw with what the Minister proposed was that it would put the onus on operational staff to consider potentially many different types of documentary evidence of reasons for between voyage gaps of more than twelve weeks. If the exception to the twelve week rule was limited to cases of injury or illness as policy officials had proposed, the onus would then be on the claimant to prove that he was ill or injured during the case in question. However, the Minister clearly had strong feelings on the point. Policy officials identified the difficulty as an operational one rather than one of policy and in principle they could make the change the Minister had requested. Subject to any comment from RPS, policy officials suggested that the change be made.

41. On 25 September 2000 policy officials emailed the office of the Secretary of State and said that the proposals for the scheme had been discussed with the Minister of State. He had had one concern about the conditions for breaks in continuous service, which was the issue of 'special exceptions'. They had addressed that by amending the scheme documentation to make clear that continuity was regarded as having been broken by any between-voyage gap of more than twelve weeks where during that gap the claimant was, for part or all of the time, engaged in work outside the industry. That meant work on vessels other than those that trawled in Icelandic waters. Other between-voyage gaps of more than twelve weeks would all be disregarded on the assumption that they must have been for reasons beyond his control and that it would be unfair to regard him as having left the industry during that

period. The amendment would make it more difficult and time consuming for RPS staff to validate claims where the issue arose, but it would produce a fairer result and be welcomed by the BFA. On 29 September 2000 an official sent an email to colleagues attaching the press release dated 2 October 2000 announcing the opening of the scheme. On the same date an official told the office of the Minister of State by email that the scheme application form and accompanying notes had been successfully delivered to the ports of Hull, Grimsby and Fleetwood in time for the formal opening of the scheme on that day.

Operation of the scheme

42. On 24 October 2000, following a query from the legal section, policy officials clarified that the wording of the scheme document meant that a period of work of less than two years after a break would be enough to disqualify claimants in respect of their earlier service, however long that was, but would not be enough to qualify them for the scheme. Although that was the intention, policy officials foresaw problems if they received claims from people who had worked for twenty years, had a break in service, and then did one more voyage before leaving the industry.

43. On 29 November 2000 the office of the Minister of State emailed policy officials concerning a constituent of the Minister, a former trawlerman, whose daughter had a condition that was not properly diagnosed until she was aged 18, by which time it was far too progressed to be treated properly. The former trawlerman had taken breaks of service of more than three months to help treat his daughter who went through several serious operations with the aim of improving her condition. Policy officials replied the same day and said that the former trawlerman's breaks in service to look after his daughter should not present a problem in terms of calculating his claim. The breaks should be treated as part of his continuous period of service - as he was not working for another employer outside the industry during those periods.

44. On 16 January 2001 at a meeting to discuss financial implications for the scheme, RPS staff reported that very few of the trawlermen had between-voyage breaks where they worked outside the industry. It was becoming very difficult to find out which ships had actually sailed to Iceland. They also pointed out that, according to the maps, parts of the Faroes' territorial waters were actually within 200 miles of Iceland which meant that those who had fished the Faroes would also be eligible. RPS staff said they had also discussed the position of those working in dry dock or other such activities with a policy official. It was confirmed the claims were valid unless the trawlerman concerned was actually working outside the industry. On 31 January 2001 policy officials discussed by email how they applied the compensation rules in practice. They had drawn up a list of vessels that had sailed to Icelandic waters although it was not yet finalised. If the trawlerman worked on a vessel not on that list continuity was broken so that the start of the period used to calculate compensation was determined by the start date of the trip on a listed vessel which immediately followed the voyage on an unlisted vessel. If the periods between voyages on a listed vessel were all twelve weeks or less it did not matter what the claimant did in the break periods. Whatever he did it did not break continuity. If any period between voyages on a listed vessel was more than twelve weeks it broke continuity if there was good evidence that the claimant did any work whatsoever, no matter how short the duration, during that period. If the claimant did not do any work in that period it did not break continuity no matter how long the period. However, if that

were correct they might need to discuss a situation in which a claimant went to Australia for five years. Officials agreed that it could look exceptionally generous if, for example, someone had gone to Australia for five years, had not done any work in that period, and had then returned to the industry for a period of at least two years.

45. On 14 February 2001 there was a further meeting between policy officials and RPS staff to discuss the financial implications of the scheme. RPS staff said they were confident they could establish a list of vessels that had sailed to Iceland but not what they did after 1979. DTI officials said the BFA had not been quite so frank with them as they might have been about what happened to the deep-sea trawling industry after 1979. The meeting noted that the trade publication 'Fishing News' had a list of trawlers returning to port and where they had been. Officials agreed to check the publication's archives. The notes of the meeting record that officials would have to advise Ministers of the possible overspend if they simply paid everyone who fished in Iceland, no matter what. They could also add that the scheme was set up in a hurry, at the insistence of Ministers, and that they were still having discussions with the BFA right up until the days before the scheme opened. They also knew more about the trawler industry than they did at the beginning and that was why some of the problems had arisen. On 27 February 2001 the Secretary of the Grimsby BFA wrote to a policy official. She described as appalling the decision to refuse compensation to a former trawlerman because he took work on a trawler sailing out of Australia rather than go on the benefit system.

46. On 20 March 2001 the Secretary of the Aberdeen BFA emailed a policy official. He said he was disappointed to see serious faults and discrepancies in the scheme. It was clear that that situation had developed as a direct consequence of Ministers receiving and responding to invalid information from unqualified sources in the form of advice, instructions and personal opinions from deckhands unqualified to comment on industrial relations or maritime matters of such importance. He said there was no shortage of bona fide advice from experienced and qualified marine personnel fully prepared to contribute to the debate. A policy official replied the same day. He said when the scheme rules were drawn up the previous year Ministers and officials took careful account of advice and information from a wide range of different sources, including experienced and qualified marine personnel.

47. On 17 April 2001 there was an exchange of emails between policy officials concerning the definition of an 'Icelandic Water Trawlerman'. They said that the definition had been quite carefully constructed to meet the demands of the BFA. One official pointed out that they had had numerous discussions with the Minister of State and exchanged emails with his office about various aspects of the scheme rules before they were finalised. He was sure that the definition of an 'Icelandic Water Trawlerman' had come up at some point, although he was doubtful whether anything specific would have been recorded in writing. The rules had been cleared with the Secretary of State who had approved them, having been assured by the Minister of State that the BFA were content with them. However, he did not think they had ever gone into the level of detail that they were then doing.

48. On 23 April 2001 policy officials discussed a draft of operational rules for the scheme in order to assist RPS staff. In attempting to clarify who would qualify as an Icelandic Water Trawlerman the draft said that shore based work on an Icelandic trawler, for example, repairing the boat or its nets, did not count as work as an Icelandic Water Trawlerman. In clarifying the definition of a relevant break under the scheme

rules, the draft noted that it would frequently be a key factor in determining the amount of compensation. The draft provided some examples of what did and what did not break continuity. Time spent in prison did not break continuity of service as the prisoner was not doing paid work for an employer. Fulfilling duties in the armed forces, Royal Naval Reserve or National Service did not break continuity as it was not paid employment for an employer. The draft operational rules, in one example, explained that a man had a period exceeding twelve weeks between voyages and during part of that time he was employed working on repairs to the vessel in harbour. The work in harbour was paid work for an employer and did not count as working as an Icelandic Water Trawlerman. On that same day a policy official saw an article in the Hull Daily Mail in which the Minister of State was reported to have said in relation to the scheme that the system had to be more flexible. Other policy officials wondered whether the Minister had really said that. The Minister's office then confirmed by email that the Minister had informed them that he had made that remark.

Changes to the rules of the scheme

49. On 19 June 2001 a policy official sent a submission to the new Minister of State in which the Minister was informed that there was concern about the scheme in the local media covering the fishing ports and among the port MPs, particularly the Member for Hull West and Hessle and the referring Member. On 17 July 2001 the referring Member faxed a letter to the new Secretary of State in which he referred to the problems that had arisen in the administration of the compensation scheme. Among the many points he made he said there was a major problem over breaks in service. Those could arise from a whole series of causes - engineering or repair work on the vessel, Lloyd's survey lay-ups, illness, injury, family illness and holidays all needed to be allowed for. Yet there was another problem in Grimsby which he urged should not be accepted as producing a break in service. When an owner had no vessels sailing to Iceland, where a vessel was overcrewed, or where there was a disciplinary offence, fishermen were required to work on North Sea or Middle Water vessels. They had no choice. If they refused they lost their jobs. The Fishermen's Employment office on the dock required them to take any vessel available or lose their benefit. That was a basic part of the conditions of employment for distant water trawlermen. It could not, therefore, be regarded as a break or used as an excuse to shorten service or disqualify.

50. Also, on 17 July 2001, policy officials sent a briefing paper to the Secretary and Minister of State which identified issues that had been frequently raised concerning the scheme including the issue of breaks in service. The paper explained that the port MPs had asked for certain breaks in service to be discounted, but that was not possible under the scheme rules. It noted that the BFA had also been concerned about between-voyage gaps of more than twelve weeks breaking continuity both for the purposes of the two year qualifying period and calculating the amount due. They had argued for 'special exceptions' that would justify a longer between-voyage gap being disregarded. It had finally been agreed by the then Secretary of State that all gaps, of whatever duration, should be disregarded, unless the former trawlerman took work outside the industry, in which case the twelve week rule would stand. Under the scheme rules, continuity was broken only by a between-voyage gap of more than twelve weeks during which other work (including other fishing on non Icelandic vessels) was done. All other gaps counted as part of the period of continuous service as an Icelandic Water Trawlerman, regardless of what was done during them.

However, one effect had been that some former trawlermen who had 15 or 20 years' service on Icelandic water vessels and then did some shore work or fished on non Icelandic water vessels for a time before returning to the industry found that they did not qualify for a payment, or qualified only for a reduced amount, as their work outside the industry broke their continuity for the purposes of the scheme rules.

51. On 18 July 2001 the Secretary of State met the port MPs to discuss their concerns about the compensation scheme. Earlier that day, officials had briefed her as to what issues the MPs might raise with her and the referring Member had made a number of points among which were breaks in service. Officials said MPs had more or less asked them to ignore certain breaks in service where there was a 'deserving' case. However, if they 'bent' the rules for one, there was no justification for not doing the same for any other person. The Member for Hull West and Hessle had also raised breaks in service but officials believed that the rules had not been understood. They thought it was just unfortunate that some people took shore work - for very valid reasons - but it still broke continuity under the scheme rules. At the meeting with the port MPs the Secretary of State said she realised there were certain cases that did not fall within the rules. The MPs therefore had an opportunity to tell her and the Minister of State about their concerns. The Member for Cleethorpes said there were several issues, one of which was how breaks in service were defined. The referring Member referred to his faxed letter of 17 July 2001 and emphasised that 'some vessels had been forced to fish in the North Sea' and that should not be counted as a break in service. Following that meeting, the Secretary of State said she required a further meeting and noted that there was a gulf between the expectation of the scheme and the actual scheme rules. She and the Minister of State needed to see an analysis of the different groups that included trawlermen who left the industry altogether - for unemployment, or for non-fishing jobs - trawlermen who left Icelandic fishing and went into other fishing either on non Icelandic vessels, converted ex-Icelandic vessels or non-converted Icelandic vessels. She wanted to understand how each group, and there could be other categories, was treated under DTI's view of the scheme rules and why.

52. On 30 July 2001, following a further meeting between the port MPs and DTI officials on 24 July 2001, the Secretary of State asked her officials to provide a submission with advice on how they could move forward. On 31 July 2001 officials sent a submission to the Secretary of State that discussed various suggested rule changes and their cost. Paragraph 8 of that submission discussed the issue of whether voyages on vessels not on the list of Icelandic water trawlers should not break continuity but should count towards it. If that change were adopted it would go a long way to severing the link between the scheme and the 'Cod Wars' settlement. In effect, so long as a man made a specified number of voyages on Icelandic water trawlers his entire fishing history would often count towards the calculation of compensation. In practice such a change would have to be combined with abandoning the 1979 cut-off point otherwise all those who continued any kind of fishing after 1979 would be disqualified. The financial cost would almost certainly be enormous and could as much as double the cost of the scheme. As to the point about whether voyages made from overseas ports to which trawlermen were posted by their employers should not break continuity, officials believed the number of such cases to be in the order of 100. If that were correct the financial implications would not be great but it would represent a further

major step away from the objective of the scheme and would make it harder to justify not making the more significant change of counting service on all non-Icelandic vessels. On 6 August 2001 the Secretary of State's office told officials that the Secretary of State had seen the submission. She wished officials to obtain legal advice from counsel on the risks of the scheme being legally challenged by way of judicial review, because there was a mismatch between expectations and what the scheme actually delivered - as well as some ambiguities in the rules of the scheme. On the point as to whether voyages on non-Icelandic vessels should not break continuity but count towards it, she commented that that approach looked untenable.

53. On 31 August 2001 DTI's legal section sent instructions to counsel to advise in conference on the risk of challenge to the scheme by way of judicial review in the event that certain rules changes were made, of which there were six options labelled A-F. Option E was that work on non-Icelandic vessels should not be counted as other work which, if done during a break from work on Icelandic vessels of more than twelve weeks, would break continuity. The effect of option E would be that the continuous period of work could be treated as not being broken by 'relevant breaks' of longer than twelve weeks from work on Icelandic water vessels, where the paid work done during those breaks was other fishing work such as work done out of non UK ports or fishing in the North Sea. Since breaks of longer than twelve weeks where no other paid work was done could count towards the continuous period of work (if, where possible, evidence of the absence of other work during the break was provided) such fishing work could effectively attract compensation. Another effect of the change would be that a sufficiently long period of work on Icelandic water vessels would not be cancelled out by a 'relevant break' of longer than twelve weeks (where the work in question was other fishing work) followed by a period of Icelandic water vessel work which was not long enough to qualify for compensation. Equally, a trawlerman who had a long period of service followed by a relevant break of more than twelve weeks in which he did other fishing followed by a shorter 'last continuous period of work of at least two years' would be compensated in respect of the whole of that time.

54. The notes of the conference with counsel on 4 September 2001 reveal that option E was discussed and it was noted that it was necessary to consider continuity in connection with it. Although the twelve week break had an arbitrary flavour they did have a good reason for some such rule, in that men must have been dependent on, and committed to, Icelandic water fishing work in order to be eligible for compensation. Additionally it was the BFA who had suggested that anything over twelve weeks would mean that men were effectively out of the industry. No one had been suggesting that there was anything wrong with the twelve week rule although it had produced some hard cases such as the man who was onshore to look after his sick wife and who did some onshore work. Although that was a hard case it was not the kind which would have been reasonably foreseeable, such that the decision to make the rule could be said to be perverse. The point of option E (saying that work on vessels other than Icelandic water vessels did not break continuity and qualified for compensation) was to alleviate the hard case of a man who had a long career on Icelandic water vessels but who was unable to establish continuity in the relevant five year period. If the amendment were made it would create bizarre anomalies like one of the case examples given to counsel. The example given was of a man who had spent his whole

career working on inshore and middle water vessels most of which did not go to Icelandic waters at all. However, he made one trip towards the start of his career and one in 1978 towards the end of his career on vessels that had at some time made a couple of trips to Icelandic waters (not when he was on them) and so qualified as Icelandic water vessels. Without the change as suggested by option E he had no valid claim to compensation. However, if option E were implemented all his voyages between the two trips on Icelandic water vessels would count towards compensation so that he would receive a significant amount despite not having been to Icelandic waters and not fished on any vessel which was significantly affected by their closure. They were entitled to take that into account when considering option E. They were also entitled to treat the fact that the option would weaken the link with the 'Cod War' settlement as an important policy consideration.

55. The conference discussed another option which was to discount other fishing work when assessing whether continuity was broken but only to compensate in respect of Icelandic water vessel work. That would avoid overcompensation of trawlermen such as the one in the example and alleviate the hard case problem but the link to the 'Cod Wars' would still be weakened. It would also be very expensive and administratively difficult to compensate in respect of each voyage on an Icelandic water vessel. A challenge by someone excluded as a result of not taking option E would be that the decision to exclude him was perverse. One could not say that such a challenge would definitely fail - its strength would depend on its facts. At that stage it appeared, however, that challenges of that kind ought to be capable of being defended. It was accordingly defensible not to take option E. The decision to take that option was substantially one of policy.

56. On 15 October 2001 the Secretary of State wrote to the Chief Secretary to the Treasury. She said that DTI had received numerous representations from port MPs and other representatives of the former trawlermen about certain aspects of the scheme that they considered were operating unfairly. Having considered the issues fully and in the light of legal advice she had concluded that the eligibility criteria for the scheme should be changed. The total cost of the scheme could go up to around £35 million - around £10 million more than they had thought. She was prepared to find the additional resources necessary to fund the rule changes from other DTI priorities. She hoped that, in the light of that, the Chief Secretary felt able to agree to her proceeding as she had suggested. On 22 October 2001 the Chief Secretary to the Treasury replied. He agreed that, given counsel's opinion, it would be pragmatic to relax the criteria as suggested rather than face the costly experience of a judicial review if the likelihood was that a case would be won. However, he expected it to be a once and for all change that did not lead to further challenges by claimants at the new boundaries of the compensation scheme. In order to ensure that that was the case he asked the Secretary of State to look at both the presentation and the impact of the changes, before making any announcement.

57. On 26 October 2001 the Secretary of State announced changes to the rules in the compensation scheme. She said *'Following the rule changes I have decided to make, distant water trawlermen who continued fishing after the end of 1979 on former Icelandic water vessels will no longer be disqualified from receiving compensation for that reason'*. The effect of the change to the rules was that all former distant water trawlermen who had two years' continuous service prior to 1980 on vessels that trawled in

Icelandic waters and who finished that service on or after 1 January 1974 would then be eligible for compensation, subject to the other requirements of the scheme. Service on those vessels after 1979, or after the end of the qualifying period of continuous service, would not, however, count towards the period for calculating payments. Furthermore, periods of service on former Icelandic vessels of less than two years which took place between 1974 and 1979 and after a relevant break from working on those vessels, would no longer disqualify claimants.

Continued dissatisfaction with the scheme rules

58. On 30 October 2001 policy officials saw an article in the Grimsby Telegraph in which the referring Member was quoted as saying that the extra £10 million for the scheme was very good news. He went on to say that there were two problems which remained unresolved which meant that trawlermen could not rejoice at that stage. One problem was that breaks in service were causing problems for some people. Fishermen who had fished Icelandic waters could have been put on North Sea vessels and that was counting against them. It was being seen as a break in service when in fact it was part of the condition of service. That same day the office of the Secretary of State emailed a policy official and asked whether the issues raised by the referring Member in that article were really a problem and did they involve further changes to the rules or just changes in the list of Icelandic vessels. They required advice as Ministers or officials might need to make it clear to the referring Member that there would be no more rule changes. The policy official replied that the issues could well be a problem and would shortly provide further and better particulars. On 31 October 2001 a policy official noted that the Member for Hull West and Hessle had written in requesting a change in the rules so that periods on non Icelandic vessels should not stop someone being paid or paid less. The case involved a break of about a year on non-valid vessels during 1972-73.

59. On 15 November 2001 policy officials sent a briefing to the Minister of State in readiness for a meeting with the port MPs scheduled for 21 November 2001. They summarised the recent rule changes and said that the Government was then satisfied that the scheme was properly targeted and was not prepared to make any further rule changes. A 'relevant break' was classed as a break from work on an Icelandic water vessel of longer than twelve weeks during which other work was done. That meant any work other than on vessels that trawled in Icelandic waters. In effect that meant that a number of former trawlermen who had many years' unbroken service on Icelandic water vessels ended up receiving no payment at all as they did not have a two year consecutive period on Icelandic water vessels leading up to their final voyage. As the majority of those breaks occurred after 1974 they could then be ignored and more people would receive a payment. On 21 November 2001 the port MPs met the Minister of State, policy officials and representatives from RPS. The Member for Hull West and Hessle welcomed the recent changes but said that there were still minor problems, equally valid to the claimants. Continuity/breaks in service were still a problem as were invalid vessels. The continuity clause was a problem for most port MPs who shared their examples. A problem for Aberdeen and Grimsby was the 'pool' system where men were required by employers to take the next job that came up irrespective of whether it was on an Icelandic water vessel or not - this meant that many had found it difficult to satisfy the scheme criteria. The referring Member said that trips to Australia should not count towards the £1,000 per year but should not break continuity. The Member for Aberdeen Central said that the MPs were not requesting a further change in the

scheme rules but that there should be scope for flexibility in the interpretation of the criteria and, in particular, to take on board circumstances that led to breaks in service.

60. On 18 December 2001 the legal section sent a letter of instruction to counsel. They summarised the rules of the scheme regarding continuity for counsel. They concluded that summary with an example. A break from work on Icelandic water vessels of ten weeks during which a trawlerman did ten weeks' work as a window cleaner would not break continuity, whereas a break of thirteen weeks during which a trawlerman did one day's work as a window cleaner would break continuity. The original proposal for what would constitute a break in continuity was a period of eight weeks rather than twelve, regardless of what was done during the period. The BFA had argued that it was often the case that men were away from Icelandic water work for longer than eight weeks, for many legitimate reasons. They had suggested that there should be a list of possible reasons for being away from work and that breaks during which those things were done which were longer than eight weeks would not break continuity. It was felt that having a list of permitted reasons for breaks would be too difficult to administer and that it would be too difficult to draw up a comprehensive list in advance, leaving scope for matters to be disputed later. Ministers therefore decided to have only one activity, which if done at all during a break of longer than twelve weeks, would break continuity. That activity was 'work other than work as an Icelandic water trawlerman'. Doing anything else during a break would not break continuity provided there was no 'other work' done during the break. The legal section explained to counsel that they thought there might be a risk of challenge to the decision not to count the prior service on Icelandic water vessels of someone who worked for more than twelve weeks on other vessels at the direction of their employer, when the prior service of someone who spent eight years in prison was not discounted and their time in prison was included in the calculation of the period compensated for. That decision could be regarded as irrational. On 20 December 2001 the legal section held a telephone conversation with counsel. On compensation payable to prisoners he agreed that the position looked unattractive and that it threw up a potential irrationality challenge. However, an applicant for judicial review would have the problem of establishing locus standi to bring a challenge. No one was being deprived of anything by the application of the rule it just resulted in more payments being made than might otherwise be the case. There was definitely scope for a challenge, however, and if counsel were advising an applicant, it would be to make a challenge based on the overall unfairness/irrationality of the scheme which was highlighted by the contrast between prisoners and those who were sent by their employers to work on non Icelandic water vessels (a failure to treat like cases equally).

61. On 20 December 2001 a DTI official wrote to her counterpart at the Inland Revenue (the Revenue) (which now had responsibility for the administration of National Insurance contributions) concerning DTI's requirements for information about National Insurance contributions for certain claimants under the compensation scheme. She explained that the maximum payment would relate to a 20 year period and explained the scheme rules on continuity of work and relevant breaks. They had a number of claimants with breaks of more than twelve weeks but had no information about whether or not they took any paid employment during that break. DTI knew the name, National Insurance number and the precise period for which they sought information and they required

detailed records of any National Insurance contribution made or credited during those periods. She confirmed that there might be around 500 claimants for whom they sought information.

62. On 14 January 2002 the Chairman of the Hull BFA wrote to the Minister of State. He said the purpose of his letter was to express the great concern of the former trawlermen of Hull who were experiencing real difficulty in the processing of their claims. One of the main reasons for this difficulty related to the lengths of a break in service which took them over a twelve week period. The result was that many men were only receiving a fraction of the money genuinely due to them. From the first meeting on 8 September 2000 that the Hull BFA attended with policy officials and representatives from RPS, the issue had remained unresolved ever since. A policy official had confirmed that breaks of up to twelve weeks would be disregarded. That official was advised by the Chairman that there would inevitably be cases of more than twelve weeks. His response was that each case would be looked at sympathetically. At no point, in the opinion of the Chairman, did he confirm that breaks in service of over twelve weeks would automatically be discounted or would lead to a reduction in the compensation due to trawlermen. He argued that it was reasonable to consider that a trawlerman who returned to shore for a period in excess of twelve weeks after working on trawlers may have had valid reasons for doing so. If that were the case then the breaks should be counted as continuous service. The Chairman recalled that after the 'Cod Wars', with the trawler fleet in rapid decline, there were more men than trawlers and hence longer onshore breaks where the men were effectively unable to work but still registered as distant water trawlermen as their records showed. He asked the Minister to reconsider the then current view held by RPS on the question of breaks in service.

63. On 28 January 2002 the Revenue replied to DTI's letter of 20 December 2001 concerning their request for information about National Insurance contributions that they had sought for some time in order to assist with the verification of claims on the scheme. The Revenue said they had explained when they met RPS representatives in March 2001 and a number of times since then that there was no statutory gateway between the Revenue and DTI for the purpose that DTI sought. The Revenue understood that the information sought by DTI related to the years prior to 1975. Before 1975 the records were kept and still were in manual form. However, those records did not hold details of employers during the year unless the employer was part of the Graduated Pensions Scheme and even then only as far back as 1961. It was impossible to say how the records maintained met DTI's requests. The Revenue was not resourced to carry out work for other departments so DTI would be expected to meet the costs in full and confirm that in writing in advance. If DTI decided to take their request further, it would have to go before the Revenue's Approvals Board and take its chance with all the other prospective new work.

64. On 11 March 2002, in discussing in an email a problem that had arisen as to whether the reference in the scheme to 200 miles meant nautical or imperial miles, a policy official recognised that, legally, the scheme rules could mean something other than what they intended them to mean. The rules had been put together in some haste and they were concerned at the time that they should be as straightforward as possible for operational staff to work with. On 12 March 2002 the legal section commented upon the 200 mile problem. They made the point that if there had been a conscious policy decision that the scheme should refer to imperial rather than nautical miles then the legal section should have

been instructed in those terms. If policy officials were not aware at the time of the distinction between nautical and imperial miles, then the reality was that the scheme had been devised on a mistaken assumption - perhaps because of an insufficient knowledge of the fishing industry or not consulting the appropriate people.

65. On 20 March 2002 policy officials issued revised eligibility criteria and procedure for making claims that superseded the version issued on 2 October 2000 and reflected the changes to the rules (see Annex A). The same day, a policy official provided some 'lines to take' for the Secretary of State for a meeting with the Member for Aberdeen Central scheduled for 13 May 2002. The Member was likely to raise the point that trawlermen in Aberdeen worked the 'pool system' which meant that they frequently moved between vessels and had less opportunity to build up continuous service on Icelandic water vessels. The line to take was that that type of system was not unique to Aberdeen. Trawlermen in Grimsby and Fleetwood had similar working patterns. The reason why those in Aberdeen had more broken service in the Icelandic water industry was that there were fewer Icelandic water vessels. The Member was also likely to raise the point that trawlermen should not be penalised for having worked on non-Icelandic water vessels when, had they been in prison, their service would have been counted as continuous. The line to take was that if the trawlerman left the Icelandic water industry for a period of longer than twelve weeks and during that period he did other work, he cannot be considered to have remained dependent on the industry for his livelihood during that period. If he subsequently returned to the industry for a continuous period of two years or longer then clearly he became dependent upon it again and was entitled to compensation based on that latter period. 'Other work' had to include work on vessels that never went to Icelandic waters. Otherwise a claimant could receive compensation for long periods of inshore or other fishing work unrelated to the Icelandic water industry. If a trawlerman had a break between voyages on Icelandic water vessels but did no other work, then he was considered to have remained reliant on the industry throughout regardless how long the break was and regardless what he did during it. That allowed for the fact that there were many bona fide reasons why trawlermen had long breaks between voyages including unemployment, injury, illness, walkabout, training etc. That generous provision did mean that periods in prison could count toward continuity - but only if the individual worked in the Icelandic water industry before his sentence and returned to it immediately afterwards having done no other work in between. The Member was likely to say that periods of service on Icelandic water vessels should be aggregated and breaks disregarded. The line to take was that the Government could not agree to that. It would constitute a major change in the scheme rules and would add unacceptably to its cost.

66. On 13 May 2002 a policy official sent a briefing note to the Secretary of State for her meeting with the Member for Aberdeen Central that evening. The official recommended that the Secretary of State resisted any pressure from the Member to make further changes to the scheme rules. He said that the Member was likely to raise concerns about the way in which the scheme rules impacted on Aberdeen based trawlermen and would argue that those rules should be changed or interpreted 'more flexibly' to reflect their 'special circumstances'. In each of the four main ports involved in Icelandic water trawling - Hull, Grimsby, Fleetwood and Aberdeen - the industry had certain distinctive features. However, the scheme rules were designed to be as fair as possible to all former trawlermen affected by the

settlement of the 'Cod Wars' in the 1970s irrespective of the port out of which they fished. It would have been neither practical nor desirable to have had different rules for different ports. He therefore recommended that the Secretary of State stand by her earlier view that the changes made the previous autumn should represent a final settlement.

67. On 15 May 2002 a policy official emailed colleagues concerning a telephone conversation she had had that morning with the independent adjudicator, who informed her about a meeting he had had with the Member for Aberdeen Central. The Member had told him that he was not asking the Secretary of State to change the rules but to reinterpret them. The adjudicator told him that the way in which he wanted to reinterpret the rules was not possible. The Member replied that he was more or less aware of that but he had to try. The adjudicator had also warned that the port MPs were considering an application for judicial review over the scheme because it was flawed. Part of the case would be that DTI had not taken the 'pool system' into account. The policy official stated that, as her colleagues knew, they were perfectly aware of the 'pool system' when they did the ex gratia arrangements and so were fully aware of it for the scheme. She had thanked the adjudicator for the warning and told him they had been warned about the possibility of judicial review previously and had sought legal advice on the matter. The purpose of her email was to advise that the matter had raised its head again. She said *'I have not copied it to legal at this stage in case they start worrying about it'*.

68. On 10 June 2002 an official sent a briefing to the Minister of State in preparation for the meeting the Minister was to have later that day with the port MPs. The briefing explained that the MPs would raise the issue of breaks in service and explained the meaning of 'relevant break' under the scheme rules. The briefing said that in effect that had meant that a small number of former trawlermen who had many years' unbroken service on Icelandic water vessels ended up receiving a very small payment as their continuity was broken by fishing on invalid vessels. That same day the Minister of State met the port MPs together with policy officials and RPS representatives. The Member for Cleethorpes explained that some former trawlermen had many years service on Icelandic water vessels but their continuity had been broken towards the end of their career by some short trips on non-valid vessels. That meant that they only received payment for a couple of years. That situation had been made worse by the fact that a number of former trawlermen had been paid who never went to Iceland at all. The Minister explained that there were no 'fishing passports' and that was why the scheme had had to rely on the vessels on which people had sailed. In addition, Treasury costings were done on the assumption that breaks of over twelve weeks would break continuity. The Member for Hull West and Hessle replied that former trawlermen were sent to such places as Lowestoft to fish by the former Employment Department otherwise they would have lost their unemployment benefit. He emphasised that that would not require any rule changes, which the MPs realised would be difficult, but an extension of the list that already existed of allowable reasons for a break in continuity. The Member for Aberdeen Central said that paragraph 3.2 of the scheme rules made things difficult. He confirmed that trawlermen had no control over where they went to fish and unemployment benefit would have been lost if they had not complied. As a lawyer, he was concerned with equity - payments had been made to people who had had long breaks away from the industry (such as prison) and that was unfair. He considered that the rules should be subject to a judicial review as they had not

been brought in by way of Statutory Instrument. However, he considered that an addition could be made to the 'exemptions' in the rules whereby people with many years' service on Icelandic water vessels could have their invalid service counted. A policy official explained there were no such exemptions in the rules. The only thing that broke continuity was 'work other than as an Icelandic water trawlerman' and that included fishing on non-Icelandic water vessels. The Minister confirmed that to discount invalid service in the way suggested would need a change in the rules and the Secretary of State had made clear she was not prepared to make any more changes. The Member for Aberdeen Central replied that he did not think that it was possible to stop legal action as the scheme was not being targeted at those who were meant to receive payments and that the scheme would be open to ridicule if that ever got into the papers. The Member for Hull West and Hessle did not want to open the floodgates; they just wanted those few cases to be looked at again.

69. On 21 June 2002 officials from the Minister of State's office emailed policy officials concerning a letter from the referring Member to the Minister that related to Mrs A and required a reply. He had sent the Minister a copy of his letter to the adjudicator of 17 June 2002 concerning the decision to reject Mrs A's appeal against the award made to her. He pointed out in that letter that the Icelandic water vessel on which Mr A had sailed in 1972 required a refit that lasted more than twelve weeks and Mr A had never ceased or had any intention to cease his employment as an Icelandic water trawlerman. He had had no choice but to accept whatever vessel was offered to him during the period of his own ship's refit and thus remained an Icelandic water trawlerman during that period. His service as an Icelandic water trawlerman was not breached by the fact of the vessel's refit and the benefit regulations at that time meant that he had to take whatever vessel he was given during the period of the refit. The referring Member therefore viewed it as incorrect to interpret the period of the refit of Mr A's ship as a break in service under the regulations, as well as being manifestly unjust. On 26 June 2002 the adjudicator replied to the referring Member concerning Mrs A's appeal. He said that while he understood that Mr A had taken the break from Icelandic water work in 1972 'for perfectly understandable reasons' that break constituted a 'relevant break' under the rules of the scheme. He was in no doubt whatsoever that DTI's decision in the case was correct in accordance with the rules of the scheme. On 10 July 2002 the Minister of State replied to the referring Member. He said he had noted the content of the letter to the adjudicator but it was up to the adjudicator to make a final decision on the claim having considered all the information at his disposal.

70. On 22 August 2002 a policy official emailed a colleague in Scotland and said that they had discussed the fact that the Aberdeen trawlermen and their representatives had been lobbying Scottish Ministers about the Aberdeen 'pool system' and the fact that fewer former Icelandic water trawlermen from Aberdeen had qualified for payments. By way of background, the official sent excerpts from letters sent by the then Minister of State to a number of Scottish MPs. She advised that the Member for Aberdeen Central had always attended the meetings with Ministers in London to discuss the progress of the scheme and represented the trawlermen of Aberdeen and they were always aware of the 'pool system' when the scheme rules were first drawn up. One excerpt from one of the Minister's letters said the following. 'You may be assured that I am fully aware of the nature of the Aberdeen "pool system". This type of system was not unique to Aberdeen. A similar system

operated in Grimsby and, to a lesser degree in Hull. The fact that fewer vessels went to Icelandic waters from Aberdeen means that it is more of a problem for former Aberdeen trawlermen. However, by the same token, they were also less directly affected by the closure of Icelandic waters as a result of the settlement of the "Cod Wars"'.

71. On 27 November 2002, following consideration of the issue of whether, under the scheme rules, trawlermen who had a longer than twelve week break from fishing in Icelandic waters and during it were requested by their employer to make voyages from non-UK ports amounted to 'other work', particularly in the light of then recent comments from the scheme's independent adjudicator and concerns of policy officials, DTI's legal section emailed policy officials and said their view was that it would be difficult to persuade a court that the adjudicator's view on the issue was wrong. They therefore considered that they should concede that a voyage which did not start and end in the UK need not count as 'other work' as it then did. On 2 December 2002 the Minister of State met with the port MPs together with policy officials and representatives from RPS. The MPs raised the question of the inclusion of vessels on the list and also breaks in service. The referring Member suggested that policy officials could take into account the reason for taking work outside the industry (such as if his wife was seriously ill). Officials suggested that that would be open to challenge for not using discretion in other cases that people considered to be just as valid and it would be very difficult to 'hold the line'. They had to apply the rules of the scheme strictly and fairly. The Minister agreed to write to the Member for Aberdeen Central and explain how breaks in service were calculated and what circumstances broke continuity of service.

72. On 24 January 2003 the referring Member wrote to the Minister of State. He said that the break in service rule was being unreasonably interpreted as not only a break from fishing (apart from being sent to prison) but also as work in the North Sea. Such breaks were more common on the Grimsby side of the Humber because that port had more alternative forms of fishing which men were required to pursue (by the dock office, and the eligibility rules for unemployment benefit, as well as by the owners' own rules) if no Icelandic trips were available, but also for qualifications such as Mates' and Skippers' tickets since some owners, such as Ross, required that those taking tickets should work for a specified time in the North Sea to gain experience before being put back into Icelandic fishing. In Hull, with no alternatives, if someone left fishing that was a clean break and they therefore qualified for compensation. In Grimsby, particularly as the industry ran down, there were alternatives and those were then being wrongly interpreted as breaks in service. Hence compensation payments to Grimsby trawlermen were often less, particularly if they qualified for two years between 1972 and 1979 but were cut off because of a break from long previous service. The result was a perceived injustice which had caused a lot of bad feeling south of the Humber and needed to be put right. The Minister had indicated he would bear the Grimsby complaints in mind in his closing decisions on the scheme and the referring Member thought that he must do so. That meant not treating North Sea work as a break in service.

DTI's response to the complaint

73. Where I decide to conduct an investigation into a complaint referred to me, the provisions of section 7(1) of the 1967 Act require me to afford the principal officer of the

department or authority concerned an opportunity to comment on any allegations contained in the complaint. In response to the statement of complaint in Mrs A's case DTI said that the scheme rules had made clear that compensation was only payable for the **last period** of continuous employment on Icelandic water vessels that lasted for two years or more and that ended after 1 January 1974. Any break of more than twelve weeks away from fishing in Icelandic waters broke continuity if other work was done during the break. DTI said the independent adjudicator had rejected Mrs A's appeal on 18 May 2002. The adjudicator had accepted that DTI was right to pay Mrs A only for the period after 19 May 1972. In his letter to Mrs A, the adjudicator explained that the reason why Mr A fished on the Saxon Forward (a non-valid vessel) was quite understandable but, under the rules of the scheme, it constituted a 'relevant break'. The decision of the adjudicator was final. DTI did not believe that the only reason why Mr A fished on the Saxon Forward (a non-valid vessel) was that he was left with no alternative by the Unemployment Benefit Office, while waiting for a vessel to be refitted. It appeared there were other factors. They referred to a letter from Mrs A's representative of 26 April 2002, in which he stated that Mr A had stayed at home at the relevant time in 1972 to look after his wife, who was in poor health. They also referred to a letter from Mrs A to the adjudicator of 26 February 2002, in which she stated that her husband fished on the North Sea at that time in 1972 on the advice of a doctor because of her health.

74. DTI explained that the purpose of the twelve week rule was that the scheme should only compensate those who earned their living almost exclusively from Icelandic water fishing - people who had been doing other work had not suffered such a serious loss of employment. If a former trawlerman was sick, unemployed, suspended, sitting for a mate's ticket or waiting for a refit, it did not break continuity. The only thing that broke continuity in a between-voyage gap of more than twelve weeks was 'work other than as an Icelandic water trawlerman'. It was almost inevitably the case that, wherever a line was drawn, whether it was a cut-off date or some other qualifying condition, someone would fall just the wrong side of it. DTI had taken the view that it was necessary to set limits in that way, otherwise they would have had to decide between cases involving all kinds of 'personal' issues and that is what would have made the scheme almost impossible to administer.

75. DTI subsequently told me that officials believed that they had understood the 'pool system' and the nature of the distant water industry when devising the scheme. One official involved in the scheme had worked on the previous ex gratia scheme 1993-95, and in setting up that scheme officials had consulted the Sea Fishing Authority and some trawler owners. While DTI accepted that, with hindsight, the design and launch of the compensation scheme in October 2000 had not been to the standard expected, officials had researched MAFF and Hansard extracts and a book on the trawling industry when considering various options for the scheme. Although they acknowledged that they had failed to fully review the scheme when problems arose, they had addressed those problems, albeit incrementally, and had then reassessed claims already paid. They said that they believed they had fully recognised the complexity of the distant water industry and had made the scheme as flexible as they could, and that at the time they could not have done any better. As to National Insurance records, while they agreed that they had not approached the Revenue about such records until over a year after the scheme was launched, they said that there had not been any difficulty previously in obtaining that

information for the 1993-95 ex gratia scheme (as a result of which they did hold National Insurance information on some trawlermen), and so they could not have foreseen that there was no gateway with the Revenue for that information when the scheme was devised.

Findings

76. Having set out above and in the Annexes to this report the evidence disclosed by my investigation, I now turn to consider whether that evidence suggests that Mrs A has sustained injustice in consequence of any maladministration in the actions or inaction of those responsible for devising and operating the ex gratia compensation scheme.

77. In order to determine this, I will consider three questions: first, whether maladministration occurred; secondly, what, if so, were the consequences of any such maladministration; and, thirdly, whether Mrs A has suffered an injustice as a result which has not been remedied.

78. Before doing so, I will set out the approach that I have used to ascertain whether the actions or inaction of DTI in relation to the scheme constituted maladministration. This approach is one that I would use when considering complaints about any ex gratia compensation scheme similar to the one that forms the subject of Mrs A's complaint.

My approach to maladministration in this context

79. I consider that, in order for any ex gratia compensation scheme both to accord with principles of good administration and to have a reasonable prospect of being run effectively, a number of conditions need to be satisfied.

80. These conditions relate to the policy intention behind the scheme; the rules and systems that are devised to govern the operation of the scheme in the light of that intention; the way in which the scheme is administered; and whether the scheme is monitored to ensure that it is able to continue to meet its objectives once it becomes operational.

81. In detail, the conditions that I would expect to be satisfied are:

(i) that those responsible for **setting the policy intention** behind the scheme - that is, what the scheme is meant to recognise and how, broadly, that is to be achieved - should formulate, articulate and, where appropriate, announce that intention clearly, setting defined objectives that are not ambiguous and which are workable and can reasonably be delivered by those who will take forward the work to devise the detailed rules and systems of the scheme;

(ii) that those responsible for **devising the detailed scheme rule**s should have sufficient knowledge of the background to the sector and the events, issue or problem that the scheme is intended to recognise or address, to enable them to devise eligibility rules and the systems to support the scheme that are fit for purpose. That is, allowing sufficient time where necessary:

- to research the context to establish all the factual considerations that are relevant to the subject matter of the scheme and which may need to be reflected in the detailed eligibility criteria - to ensure that, where the subject matter is complex, such complexity is recognised within the scheme rules by a degree of flexibility which enables those operating the scheme to deal with unusual or unanticipated cases fairly and appropriately;

- to consult those with particular expertise about that subject matter where such knowledge is not readily available within the relevant

Department or agency - including, where possible and appropriate, seeking the views of those representing the people who may be most directly affected by the scheme;

- to seek advice from whatever source is appropriate - be it from legal or other professional advisers, from other Departments or agencies which have operated similar schemes, or from external consultants with relevant experience - as to the practical issues that may arise in the operation of the scheme as it is envisaged, before finalising draft scheme rules; and

- to pilot the scheme, where possible, to enable those who will administer claims under the scheme to receive proper training and to allow those who will manage the operation of the scheme to identify any potential systemic problems, before the scheme becomes fully operational - thus limiting the scope for any such problems to impact adversely on those who are (potentially) covered by the scheme;

(iii) that those responsible for **operating the administrative systems, policies and** other **infrastructure of the scheme**, once it is in operation, should fully understand the rules of the scheme, making informed and properly recorded decisions on each case - and should apply the rules consistently and fairly having regard to the relevant circumstances of each applicant;

(iv) that those administering and managing the scheme should put in place systems to enable them to undertake **effective monitoring of the operation of the scheme**. Where they find that the rules and systems that are being operated are ineffective, unworkable or unfair, prompt action should be taken to review the scheme and to rectify any problems that are identified - while ensuring that such action does not unfairly affect those whose cases have already been decided.

82. Having regard to the above four conditions, I would expect an effective scheme to have scheme rules that are clearly articulated and which directly reflect the policy intention behind the scheme, to have systems and procedures in place to deliver the scheme which have been properly planned and tested, to have built in sufficient flexibility in rules and procedures to recognise the level of complexity in the subject matter covered by the scheme, and to have mechanisms which enable the success of the scheme in delivering its objectives to be kept under review.

83. Any scheme which does not meet these criteria will not have been designed or operated in accordance with principles of good administration.

84. However, that does not mean that it necessarily follows that I will uphold any complaint from an applicant to such a scheme who is dissatisfied with the result of their application.

85. When considering whether maladministration has occurred, I will always have regard to the circumstances relevant to each case. I will consider the extent to which the action taken in the particular situation departs from principles of good administration - and whether such a departure is reasonable in all the relevant circumstances. I will also consider the nature of any deficiencies in the design and operation of a scheme - and also consider the effects of those deficiencies on the person making the complaint. I then have to consider whether those effects constitute an unremedied injustice to that individual which should be put right.

86. Having set out my general approach to determining whether maladministration occurred in relation to complaints about ex gratia compensation schemes, I now turn to make findings in relation to Mrs A's specific complaint -

and those similar complaints identified in Annex C to this report.

Did what happen constitute maladministration?

87. I will now turn to determine whether that evidence discloses maladministration. I will make four findings. Two of these relate to the development of the scheme - that is, the genesis of the scheme and whether the resulting eligibility criteria were fit for purpose. A further two relate to the operation of the scheme - that is, how claims were assessed and whether the ability of the scheme to deliver its objectives was properly monitored.

The genesis of the scheme

88. It is clear that the events which the ex gratia compensation scheme were intended to recognise and the financial losses for which it was to compensate occurred during the 1970s and 1980s (paragraph 10). This may seem obvious and hardly a matter of special note to the reader of this report.

89. However, this - coupled with the fact that the policy decision to establish the scheme was at least in part a response to a campaign for what was seen as adequate compensation that had originated in the early 1980s (paragraph 10) - meant that, in this case, it was not necessary to work up detailed scheme rules and supporting processes quickly or without proper consideration of all the relevant factors that might have borne on the delivery of an effective scheme.

90. I recognise that, in some cases, government departments or agencies have to deliver ex gratia compensation schemes very speedily in order to deal with emergencies or unforeseen circumstances. However, this was no emergency.

91. Indeed, my first finding is that the scheme was devised and launched before it was appropriate to do so. Given the complexity of the industry to which it related, the time elapsed since the relevant events had occurred, and the lack of direct knowledge of the subject matter on the part of those responsible for the scheme, what happened did not accord with the principles of good administration that I have outlined above - and was so far short of what was appropriate in the circumstances that this constituted maladministration.

92. The first submission to Ministers recommending the setting up of a scheme in response to the campaign for compensation was made on 18 October 1999 (paragraph 24). It had been agreed on 28 February 2000 to establish a small inter departmental group to conduct a scoping exercise and to explore the feasibility and design of a scheme. This group was required to report to Ministers within two months (paragraph 25).

93. Following the work of this group, agreement in principle to the establishment of an ex gratia scheme had been given by the Chief Secretary to the Treasury on 22 June 2000 (paragraph 28). The intention to establish the scheme was announced by way of a written Parliamentary answer on 28 July 2000 (paragraph 31). The scheme was launched on 2 October 2000 and had a deadline for admitting claims of 31 December 2002 (paragraph 28).

94. Thus, the scheme was developed in the approximately 12 month period between 18 October 1999 and 2 October 2000. That may not, at first sight, appear to be an unreasonable timescale for such a project.

95. However, it is not the timescale within which the scheme was developed itself that I criticise. Rather, I am concerned that the scheme was devised without full appreciation of the nature of the industry, of the differing working practices in each of the affected ports, and of

the detailed provisions of the 'pool system' (paragraphs 12 and 13) - and how these factors might affect individual claims.

96. Furthermore, I am also concerned that the scheme was launched in this context in spite of warnings - from those who had a more detailed understanding of these matters - that the scheme as it was proposed was not fit for purpose.

97. This came to be accepted by officials once the scheme had been launched. As noted in paragraph 45 of this report, officials had recognised in February 2001 - four months into the operation of the scheme - that some of the problems that had been encountered were a necessary consequence of the haste with which the scheme had been developed.

98. The note of the meeting referred to in that paragraph stated:

'... the Scheme was set up in a hurry, at the insistence of Ministers, and... we were still having discussions with the BFA right up until the days before the Scheme opened. We also know more about the trawler industry than we did at the beginning and this is why some of these problems have arisen.'

99. It might equally have been noted that, during the 'discussions' with the BFA immediately before the launch of the scheme, the BFA had been warning officials that the scheme would not deliver its policy objective.

100. I note the assertion made by an official in March 2001 (paragraph 46) that, when the scheme had been devised, Ministers and officials had taken careful account of advice and information from a wide range of different sources, including experienced and qualified marine personnel.

101. However, I have seen no evidence that would support such an assertion. While there had been some informal telephone conversations between officials and the office-bearers of the Hull BFA prior to August 2000 (paragraph 32), officials had only met representatives of the BFA some three weeks before the scheme had been launched. That appears from the evidence I have seen to be the extent of consultation with those with direct knowledge and experience of the relevant industry.

102. The scheme was launched before the resolution of all the outstanding issues that were then known to relevant officials to constitute potential problems. Such problems included:

(i) the difficulty of distinguishing between those individuals who had lost their job as a result of the agreement with Iceland and those who had lost their job for other reasons, which had been identified in a paper attached to the DTI submission of October 1999 (paragraph 24). This became an ongoing issue during the operation of the scheme;

(ii) the difficulty of obtaining confirmation of individual eligibility, a potential solution for which - the interrogation of National Insurance contribution records - had been suggested by Treasury officials in May 2000 (paragraph 27). However, DTI did not make a formal approach about obtaining access to those records until more than one year after the scheme had been launched (in December 2001 - paragraph 61). It was established in January 2002 that DTI could not obtain that information easily (paragraph 63), with the result that officials were not able to satisfactorily verify complex claims; and

(iii) the difficulty of identifying which vessels had trawled in Icelandic waters. A paper attached to the DTI submission of 9 May 2000 (paragraph 27) set out three options for eligibility under a scheme and suggested that payments could be restricted to those former trawlermen who had worked for vessel owners known to have trawled

in Icelandic waters - although in practice, most vessel owners were likely to have had interests in most distant water fishing operations. However, by 16 January 2001 (paragraph 44) officials were conceding that it had been very difficult to find out which ships sailed to Iceland and also pointed out that according to maps, parts of the Faroe Islands' territorial waters were actually within 200 miles of Iceland, so that those who fished the Faroes might also be eligible for the scheme.

103. Equally, several critical issues were never considered by those responsible for devising the eligibility rules before the launch of the scheme.

104. For example, in March 2002 the issue arose as to the interpretation of the scheme criterion above, which depended on the claimant having trawled within '200 miles' of Iceland - and specifically whether that reference was intended to have been to imperial or nautical miles (paragraph 64). I would concur with DTI's legal adviser, who commented at the time that this was a relevant consideration which appeared to have been ignored - perhaps because of a lack of awareness of the industry, a failure to properly consult those with direct knowledge and experience, or the haste with which the scheme had been devised.

105. Another example is the failure prior to January 2001 to consider the position of trawlermen who had gaps of longer than twelve weeks between voyages because they had been in prison and to consider whether that counted as 'other work' that broke continuity (paragraph 44). That discussion, once it had begun three months into the operation of the scheme, was to continue throughout its life.

106. In summary, as events unfolded after the launch of the scheme it became clear that the eligibility criteria had been devised and the scheme launched before several critical factors had been properly considered and addressed by those responsible for devising the scheme rules. It is to the adequacy of those rules that I now turn.

The scheme rules

107. My second finding is that the scheme eligibility criteria that were devised did not properly reflect the policy intention behind the scheme. This mismatch

- between what the scheme was supposed to deliver and the design of the mechanism to achieve this intention - did not accord with the principles of good administration that I have outlined above. It was so far short of what is acceptable in the circumstances that this constitutes maladministration.

108. The policy intention underlying the decision to establish the scheme was, in the words of the original scheme rules, *'to compensate former UK-based Icelandic water trawlermen for the loss of their industry due to the settlement of the "Cod Wars" of the mid 1970s'*.

109. A letter sent by the relevant Minister in July 2000 (Annex B) to MPs with a constituency interest in the scheme - in which the decision in principle that a scheme should be established was announced, to coincide with the written Parliamentary answer referred to above - reinforced this, and stated that:

'... former Icelandic water fishermen who lost their jobs when the industry collapsed following the settlement of the "Cod Wars" of the mid-1970s are to receive Government compensation. This is because the Government recognises that the former Icelandic water fishermen suffered an injustice when many of them lost their jobs through no fault of their own and received little or no help.'

110. The letter went on to set out 'certain strict criteria' for the scheme, which provided that:

- payment would be restricted to those *'who left the industry between 1974 and 1979 and had two years' continuous service in the industry, but not necessarily with the same employer';*
- payment would be made *'on the basis of £1,000 for each year at sea with a maximum entitlement of £20,000';*
- surviving dependents would also be entitled to claim where eligible former fishermen were deceased; and
- *'sums received under ex gratia redundancy payments arrangements operated by the Government between 1993 and 1995 [would] be offset against payments under the new scheme'.*

111. As my report sets out in some detail, both above and in Annex B, such an intention - to compensate former UK-based Icelandic water trawlermen for the loss of their industry due to the settlement of the 'Cod Wars' of the mid 1970s

- was not delivered by the scheme. I consider that this was in no small part down to the nature of the rules that were devised prior to the launch of the scheme.

112. The rules for the scheme lacked clear definitions. Officials struggled to determine in each case whether the claimant had worked as an 'Icelandic water trawlerman', what was the extent of 'Icelandic waters', and even whether the '200 mile' limit had been expressed in nautical or imperial miles when the scheme rules had been devised.

113. There were also differing interpretations of the rules throughout the life of the scheme as to the work that attracted compensation and work which did not. On 16 January 2001, work in dry dock had represented a valid claim (paragraph 44). By 23 April 2001, it did not count as work as an Icelandic water trawlerman (paragraph 48).

114. Moreover, officials had no procedure for verifying difficult claims where fishing records were unavailable once it became clear, rather late in the day, that access to National Insurance contribution records could not be obtained without further time and cost. This had the effect of making the scheme virtually unworkable.

115. There was also no flexibility in the scheme rules - unclear as they were - to recognise the complexity of the industry and the individual circumstances of those potentially covered by the scheme. There was no provision for deserving or unanticipated cases. This left no room for common sense or compassion.

116. Furthermore, it appears that a desire on the part of DTI for simplicity in the rules of the scheme to assist officials to operate it outweighed recognition of the complexity of the distant water industry. This put the operational needs of DTI ahead of ensuring that the scheme delivered the policy intention behind it - and the expectations of those covered by it. Examples of this approach include:

(i) the belief expressed in December 2001 that having a list of permitted reasons for breaks as suggested by the BFA, who had provided a list of criteria that reflected common situations within the industry, would be too difficult to administer (paragraph 60);

(ii) the recognition by an official in March 2002 that the rules had been put together in some haste due to a concern that they should be as straightforward as possible for operational staff to work with (paragraph 64); and

(iii) the rejection in June 2002 (paragraph 68) and December 2002 (paragraph 71) of

amendments to the scheme rules suggested by MPs. These aimed to recognise real instances of individuals who had been denied payment due to the inflexible nature of the scheme rules, but who would reasonably have expected to come within the scope of the scheme if it had been operated in line with the policy intention said to lie behind it. Officials said that this would have been open to challenge and it would be very difficult for them to 'hold the line' against other suggested improvements.

117. What I have described above - the lack of clear definitions in the scheme rules, the inconsistency of interpretation afforded in some cases, the inability of those operating the scheme to verify the entitlement of some applicants, the lack of flexibility in the eligibility criteria, and a desire to achieve simplicity for those operating the scheme at the expense, however unintentional, of a full and fair consideration of the applications of all those who had worked in such a complex industry - would all become contributory factors in ensuring that the scheme would not operate effectively.

118. It seems to me that all this was a direct consequence of the failings I have already identified above. Had the launch of the scheme been delayed until all issues had been properly considered and until the eligibility criteria proposed by DTI had been properly discussed with those with greater knowledge of the industry, things would have been very different.

119. The scheme appeared to be set up to fail: not with any deliberate intent, but by failure to have proper regard to the policy behind the scheme and to recognise and provide for the complexity of the general industry and the specific individual circumstances to which the scheme related.

120. I now turn to examine how the scheme handled applications.

Assessing claims under the scheme

121. While I am clear, for the reasons I have already given, that the scheme failed to deliver compensation - or sufficient compensation - to all those who it had been intended should receive such compensation, I have seen no evidence that the scheme did not operate within the rules that were set for it. Nor have I seen anything to suggest that the delivery of the scheme failed to meet appropriate customer service standards, although I am aware of the concerns which were expressed at the outset of the scheme that payments should be made quicker than was the case at that time.

122. My third finding is therefore that, while the scheme could not deliver the policy intention that underlay it, there is no basis on which I can find that officials who administered the scheme provided a service which fell so far short of the standard that the applicants could reasonably expect that it constituted maladministration.

123. There were clearly problems in administering the scheme, but those were not related to the service provided by the relevant officials considering individual applications. I make no criticism of those who operated the scheme on a daily basis or those who, like the adjudicator, had to work within the rules of the scheme as they had been determined.

124. I now turn to the problems that were identified - and to assess how DTI dealt with evidence of the difficulties in delivering the intention of the scheme due to its design, which arose during the operation of the scheme.

Monitoring the effectiveness of the scheme

125. My fourth finding is that DTI responded in a wholly unsatisfactory manner when problems were identified during the operation of the scheme.

126. Within a few weeks of its launch, officials

had identified difficulties with the scheme and its design (paragraph 42). When officials and RPS staff met in January 2001 (paragraph 44), they spoke of increasing problems with the scheme - and, by February 2001 (paragraph 45), were prepared to advise Ministers of a possible overspend.

127. By April 2001 officials had expressed concerns about the definition of an Icelandic water trawlerman (paragraph 47) and their attempt at redrafting operational rules for the scheme had revealed further difficulties, for example in relation to the position of those who had served a term of imprisonment during a between-voyage gap of longer than twelve weeks (paragraph 48).

128. What I find striking is the failure by DTI to fully review the scheme in the face of such increasing problems.

129. Officials recognised in June 2001, when they briefed the then new Secretary and Minister of State (paragraphs 49 and 50), that there had been concerns about the scheme in the ports affected as well as among the port MPs. However, it appears that those officials failed to grasp the significance of those concerns.

130. It was left to the Secretary of State, who seemingly heard about the scheme's problems at her meeting with the port MPs on 18 July 2001 (paragraph 51), to note the gulf between the expectations prompted by the policy intention underlying the scheme and the scheme rules as they had been designed - and to call for an analysis of how the scheme rules impacted on the various groups of trawlermen covered by the scheme.

131. The Secretary of State then requested suggestions from her officials as to how they could move forward - and required counsel's advice on the risks of legal challenge to the scheme by way of judicial review (paragraph 52). Officials then had the benefit of discussing the issues with counsel in conference (paragraphs 54 and 55).

132. Yet, even then, DTI officials appeared not to understand how the industry worked in practice and the complexities of the individual circumstances of those affected by the 'pool system', which often meant that trawlermen had to undertake specified jobs or risk losing social security benefits. That was so despite the 'pool system' being one in which public bodies had participated. None of this was raised with counsel, which was a missed opportunity to address all of the ineffectiveness and unfairness of the scheme.

133. The initial advice provided by counsel, in the words of the notes of the first conference held with DTI officials, was that the scheme was open to challenge for a number of reasons, including that:

'...the scheme cannot have been intended to have the arbitrary and unfair effect of compensating those who continued to obtain lucrative work in the fishing industry, but not compensating those who worked slightly longer in the dying industry... .'

134. The notes continue to summarise the advice of counsel as being that while there were *'good points'* in support of the DTI's position, it was considered *'that a judicial review would have a real prospect of success, despite the fact that we have a respectable case'.*

135. Given the knowledge that officials now had that the scheme had been deficiently designed, that it was having unintended consequences, and that there were ongoing problems in defining key terms and in verifying complex applications, it seems to me that, quite aside from seeking legal advice on the prospect

of challenge to the scheme, it would have been appropriate for those commissioning such advice to have also sought to fully understand the causes of the deficiencies in the scheme and to seek to develop solutions to those deficiencies. Only a comprehensive review of the scheme would have achieved that.

136. The failure to review the scheme and to ensure that it effectively delivered the policy intention of providing compensation to those who had suffered injustice as a result of losing their livelihood due to the settlement of the 'Cod Wars' was so far from what was reasonable in the circumstances that it constituted maladministration.

Summary of findings

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

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

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

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

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

What were the consequences for Mrs A?

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

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

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

142. I have found that the scheme was

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

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

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

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

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

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

An unremedied injustice?

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

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

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

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

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

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

Recommendations

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

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

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

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

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

First recommendation

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

Second recommendation

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

Third recommendation

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

Fourth recommendation

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

Fifth recommendation

163. My final recommendation relates to ex gratia compensation schemes more generally. During my investigation - and others that I have conducted into similar schemes - it struck me that no central guidance exists for public bodies that specifically relates to the development and

operation of ex gratia compensation schemes. Such guidance can, in my view, only be helpful to them - and may well assist in preventing a re-ocurrence of the problems I have identified in this report. I therefore recommend that such guidance be developed across government.

Conclusion

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

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

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

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

Annex A

TRAWLERMEN'S COMPENSATION SCHEME

ELIGIBILITY CRITERIA AND PROCEDURE FOR MAKING CLAIMS

(REVISED AND RE-ISSUED ON 21 NOVEMBER 2001. THIS DOCUMENT SUPERSEDES THE VERSION ISSUED ON 2 October 2000)

1. Purpose of scheme

The purpose of this scheme is to compensate former UK-based Icelandic water trawlermen for the loss of their industry due to the settlement of the "Cod Wars" of the mid-1970s.

2. Persons eligible for compensation under the scheme

2.1 Former Icelandic water trawlermen are eligible for compensation under the scheme.

2.2 "Former Icelandic water trawlerman" means -

- an individual;
- who worked at sea on vessels which fished out of UK ports and made voyages (not necessarily exclusively) to Icelandic waters;
- for one or more owners of such vessels.

2.3 "Vessel which fished out of UK ports" means a vessel which started and ended its trawling voyages at a port in the United Kingdom.

2.4 "Icelandic waters" means the waters within 200 miles of the Icelandic coast.

2.5 A share fisherman - that is, a fisherman paid by a share in the gross earnings or profits of the vessel on which he worked - may be a former Icelandic water trawlerman.

2.6 A radio operator may be a former Icelandic water trawlerman.

2.7 Shore-based workers are not former Icelandic water trawlermen.

3. Periods in respect of which a claim for compensation may be made

3.1 (a) A claim may be made in respect of the last continuous period of work undertaken by the former Icelandic-water trawlerman, provided that period-

- Lasted at least two years prior to 1 January 1980; and
- Ended on or after 1 January 1974.

(b) If the former Icelandic-water trawlerman's last continuous period of work ended after 31 December 1979, it shall be treated as having ended on 31 December 1979.

3.2 "Continuous period of work" means a period of work as an Icelandic water trawlerman during which there were no relevant breaks between voyages of more than twelve weeks. A "relevant break" for these purposes means a break during which work (of any duration) other than work as an Icelandic water trawlerman was done. Breaks (whether relevant or otherwise) of less thank twelve weeks, even if in total these add up to more thank twelve weeks, count towards the continuous period of work. Breaks of longer than twelve weeks that were not relevant breaks may count towards the continuous period, provided that where possible evidence of the reasons for the breaks is supplied with the claim form (see paragraph 7.9) and provided that work as an Icelandic water trawlerman was resumed before 31 December 1979.

3.3 Subject to paragraph 3.1(b), the continuous period of work in respect of which the claim is made should be calculated from the date on which the first voyage as an Icelandic water trawlerman in that period began, to the date on

which the last such voyage ended, inclusive of these dates.

3.4 Subject to paragraph 3.2, periods of work with different owners of vessels which fished out of UK ports may together count as continuous periods of work.

4. Who may make a claim under the scheme ("claimant")

4.1 A claim may be made by a former Icelandic water trawlerman.

4.2 A claim may by made by the personal representative or executor(s) of a former Icelandic water trawlerman who is deceased.

4.3 A claim may be made by the trustee in bankruptcy of a former Icelandic water trawlerman who is bankrupt, or, where the estate of a former Icelandic water trawlerman has been sequestrated in Scotland, by the permanent trustee on that estate.

4.4 Where a former Icelandic water trawlerman is incapable by reason of mental disorder of managing and administering his property and affairs, a claim may be made on his behalf.

5. How to make a claim

5.1 Claims must be made by completing the appropriate form. This is available from the Watford office of the Redundancy Payments Service (RPS).

5.2 All claims will be acknowledged in writing on receipt by the Watford office of the RPS.

6. Time limit for making a claim and requests for missing information

6.1 Completed claim forms must be received at the Watford office of the RPS on or before 1 October 2002. No claim forms first received at that office after that date will be considered under any circumstances.

6.2 If a claim form is incomplete, or is not accompanied by sufficient supporting evidence (see paragraph 7), the claimant will be requested in writing to supply the missing information or documentation, which must be supplied within four weeks of the request. If it is not reasonably practicable for the claimant to supply the information or documentation within that timescale, the claimant must inform the Watford office of the RPS of that fact within that timescale and the information or documentation must then be supplied as soon as is reasonably practicable. If these conditions are not met, the claim will be rejected.

7. Evidence to be provided in support of claim

7.1 In order for a claim to be paid, it must be supported by a reasonable amount of documentary evidence on which to assess eligibility and the gross amount of compensation due. This should normally take the form of photocopies of fishing records and/or national insurance contribution records which demonstrate that the former Icelandic water trawlerman was employed as such during the period in respect of which the claim is made.

7.2 Where a former Icelandic water trawlerman or his personal representative has received one or more payments under the ED/DTI ex-gratia redundancy payments arrangements for former trawlermen (which operated between 1993 and 1995) the information in paragraph 7.1 should already be held on file by the RPS and the claimant will not normally be asked to provide it again. However, the RPS reserves the right in all cases to seek further supporting evidence from the claimant (whether in relation to ED/DTI ex gratia redundancy payments or otherwise).

7.3 In exceptional cases, e.g. where it can be demonstrated that fishing records were lost in a

fire or similar circumstances, the RPS may be prepared to accept a sworn statement from the claimant in lieu of documentary evidence.

7.4 Where a claim is made by the personal representative of a former Icelandic water trawlerman, a copy of the grant of probate or letters of administration must be supplied with the claim form. If the estate of a deceased former Icelandic water trawlerman is being administered and wound up in Scotland, a copy of the confirmation or certificate of confirmation must be supplied with the claim form by the executor.

7.5 Where a former Icelandic water trawlerman dies during the consideration of his claim, the claim may be pursued by his personal representatives or executor(s), who should supply the copy documents referred to in paragraph 7.4.

7.6 Where a claim is made by the trustee in bankruptcy of a former Icelandic water trawlerman, a copy of the certificate of appointment must be supplied with the claim form. Where a claim is made by the permanent trustee on the sequestrated estate of a former Icelandic water trawlerman, a copy of the act and warrant must be supplied with the claim form.

7.7 Where a claim is made on behalf of a former Icelandic water trawlerman who is incapable by reason of mental disorder of managing and administering his property and affairs, a copy of the relevant court order must be supplied with the claim form.

7.8 Where a claim is made by a former Icelandic water trawlerman acting by his attorney, a copy of the instrument creating the power of attorney must be supplied with the claim form.

7.9 If a claim relates to a period during which there was a break between voyages of more than twelve weeks, documentary evidence must where possible be supplied with the form which demonstrates the reason for the break. Where the break was due to the former Icelandic water trawlerman being ill or injured, for instance, examples of suitable evidence would include copies of hospital records, copies of doctors' notes or evidence of payment of sick or invalidity benefits. If no evidence is provided in respect of a break between voyages of more than twelve weeks, the RPS will obtain copies of national insurance contribution records to ascertain whether or not any work other than work as an Icelandic water trawlerman was done during that break. If so, the period of work will not be regarded as continuous.

8. Consideration of claim

8.1 Claims will be considered by officials at the Watford office of the RPS. If the criteria for eligibility described in paragraphs 2 and 3 are met, and if the procedure described in paragraphs 4 to 7 is followed, compensation will be payable, calculated as described in paragraph 9.

8.2 Claimants will be notified in writing as to whether or not their claim has been successful. If the claim has been unsuccessful, the reasons will also be given.

9. Amount of compensation payable to successful claimants

9.1 Payment will be calculated as follows:

- gross amount of compensation: £19.23 for each complete week of the continuous period of work in respect of which the claim is made, with an extra £0.01 added for each complete thirteen week period, up to a maximum of £20,000 in total;

- net payment to claimant: gross amount of compensation less the total amount of any payment or payments made to him (or his personal representative) under the ED/DTI ex-

gratia redundancy payments arrangements for former trawlermen in respect of the period to which the claim for compensation relates (but not in respect of any earlier period or periods).

9.2 Reductions in respect of such ex-gratia redundancy payments already received will be made from the maximum possible compensation of £20,000. This means, for example, that a former Icelandic water trawlerman who worked as such for a continuous period of 25 years, and who received £8,000 under the ex-gratia redundancy payments arrangements, would be entitled to £12,000 in compensation under this scheme (£20,000 less £8,000).

10. Method of payment

Payment will be made in pounds sterling in all cases, regardless of the claimant's place of residence. Payment will be by cheque or direct bank transfer.

11. Appeals

11.1 If a claimant is dissatisfied as a result of the rejection of his claim or the amount of compensation paid to him, he may write, setting out his grievance and the reasons for it, to-

Assistant Director
ER2b
Department of Trade and Industry
UG59
1 Victoria Street
London
SW1H 0ET

11.2 If the Assistant Director agrees that the claim should have been accepted, or a higher amount of compensation should have been paid, he may substitute his decision for that of the officials at the Watford office of the RPS. In such circumstances, the Assistant Director will notify the claimant in writing.

11.3 If the Assistant Director does not think that the claim should have been accepted, or that a higher amount of compensation should have been paid, he will notify the claimant in writing. If the claimant is dissatisfied with the Assistant Director's decision, the claimant may appeal to an independent adjudicator for a decision as to whether or not the claim should have been accepted, or a higher amount of compensation should have been paid. Details of how to contact the independent adjudicator will be given by the Assistant Director when he notifies his decision to the claimant. An appeal will be considered by the independent adjudicator only if it is received by him within twelve weeks of the Assistant Director's decision being notified to the claimant. The independent adjudicator will notify the claimant in writing of his decision, and once he has done so, neither he nor the Assistant Director will consider the appeal any further.

Annex B

Chronology of main events

1997

01/07/97 The Member for Hull West and Hessle addressed the House of Commons about his concerns for the distant water fishing industry and outlined the ex gratia payment scheme introduced in 1993 following a Court of Appeal decision that trawlermen could, in certain circumstances, qualify for redundancy payments. The ex gratia scheme introduced arrangements whereby the Department of Trade and Industry (DTI) made ex gratia payments to trawlermen who had failed, as a result of being misdirected by officials of the then Employment Department, to submit a claim. Eligibility was restricted to those who had not complained to an industrial tribunal and who could, at the time of their redundancy, have met the qualifying conditions for a statutory redundancy payment, one of which was a period of at least two years' continuous service with a single employer. Awards were calculated according to the usual formula for redundancy payments. During that address he said that the criterion for that scheme that a claimant had to have worked for the same employer for two years failed to recognise the unique nature of the industry and the way that ships were crewed. Trawlermen worked in what was called 'the scheme', also known as the 'pool system', which was operated by the ship owners and the then Employment Department and one of its objectives was to ensure that there was an adequate number of qualified fishermen readily available for all companies participating in the scheme. When a trawler was tied up, perhaps for a refit, the trawlermen were entitled to unemployment benefit and would remain in the scheme. However, if the Employment Department decided in conjunction with a participating company that it would be appropriate for a trawlerman to cover a vacancy on a trawler that belonged to a different company, the trawlerman was compelled to accept or had his benefit stopped. For that and many other reasons relating to the industry, discontinuity of employer was a fact of life. The referring Member then addressed the House and said that he echoed his honourable friend's plea for a fair deal for fishermen.

05/11/97 Members representing three of the ports most affected by the collapse of the distant water fishing industry, Hull, Grimsby and Fleetwood, met the then Minister of Trade to discuss their concerns. Also in attendance were representatives of the British Fishermen's Association (BFA) formed following the collapse of the industry to campaign for compensation for the former fishermen.

In a joint submission handed to the Minister at that meeting the Members set out the case for further government compensation. The submission stated that Hull, Grimsby, Fleetwood and Aberdeen were the only ports engaged in distant water fishing - Grimsby, Fleetwood and Aberdeen to varying degrees, Hull exclusively. An inquiry in 1969 had led to the setting up of Registration Schemes in all key ports. Within the scheme was an individual pension provision for holiday pay and the continuation of long standing arrangements whereby trawlermen had to be ready to work on any ship with any company. When a trawler was tied up for a period, perhaps for a refit, the fishermen would be entitled to unemployment benefit but were never redirected to non-fishing work. They were kept inside the scheme by explicit agreement with the Employment Department provided they were able to go to sea with another company. Such decisions by the then Employment Department led to discontinuous employment with a

particular company, although continuity was retained within the scheme.

Because the arrangements under the ex gratia scheme that commenced in 1993 had followed the criterion for statutory redundancy payments (requiring a minimum of two years continuous service with a single employer), some fishermen with 35 years' service in the industry had received only £450, while the exclusion of those who had pursued cases to industrial tribunals had resulted in 17 former fishermen who had unsuccessfully pursued such cases receiving nothing. The Members asked that a new scheme be set up to better reflect the working practices within the industry and to offer compensation more in line with promises that had been made by Ministers at the time of the industry's collapse. DTI's note of the meeting recorded the main points raised by the fishermen and their MPs among which was the statement that it had been the then Board of Trade's requirement that fishermen signed off by 'mutual discharge' after each voyage, otherwise they did not get their unemployment benefit.

1998

31/03/98 The Members for Hull West and Hessle, Great Grimsby and Blackpool North and Fleetwood jointly signed a letter to the then Minister of State at DTI that attached a draft letter to be sent to all Labour MPs that was also jointly signed by the three Members. Paragraph 5 of the draft letter criticised the previous ex gratia scheme. It was completely at odds with the fact that trawlermen worked inside a 'scheme' operated in conjunction with the Employment Department that required them to be available to work for any employer that they were directed to.

1999

Summer 99 Officials from DTI and the then Ministry of Agriculture, Food and Fisheries (MAFF) worked on a submission to be put to their respective Secretaries of State that outlined options available to respond to the campaign by the BFA and the port MPs. A meeting of officials at DTI on 10 August 1999 discussed the cause of the downturn in the industry, statutory redundancy payments, continuity of employment, a comparison with a compensation scheme for steelworkers and the position as to social security benefits. With regard to the latter it was noted that all deep-sea fishermen paid a full National Insurance stamp and schedule E PAYE income tax at the full rate. They were fully entitled to unemployment benefit. However, once in receipt of benefit the fishermen were never regarded as being 'available for work' by the Employment Department and so were never directed to non-fishing work. It was the normal practice for fishermen to be obliged to sign on at a special benefit office set up by the Employment Department with the support and assistance of the trawler owners and situated in the Fish Dock, rather than at their local office. Messengers, known as 'ships runners', liaised direct with the Employment Department and would inform them if a man was wanted again. This system was unique as the men were not technically unemployed and could have been paid 'shore pay' from their employers instead of benefit. The then Department for Social Security (DSS) had confirmed that trawlermen were entitled to social security benefits, in particular income support, which was not dependent on National Insurance contributions but was means tested.

18/10/99 A DTI policy official sent a submission to the Secretary of State. Attached to the submission was a paper concerning compensation for former trawlermen which discussed, under subheadings, the background to the request for a scheme by the trawlermen, an analysis of their case for compensation,

conclusions, options and potential costs. The submission noted that, in dealing with the question of any compensation scheme administration, payments would relate to time spent at sea over a period going back some 40 years. That would produce practical difficulties of administration and a number of hard cases for which the Government would face criticism.

The attached paper noted that the BFA accepted that Government was under no legal obligation to set up any scheme of compensation. Their case was essentially a moral one. The paper acknowledged that the nature of employment arrangements in the fishing industry precluded normal redundancy or social security benefits at the time, as the former trawlermen were wrongly regarded as 'casuals'. The paper also noted a previous suggestion by the then Employment Department for a Government funded scheme of compensation. That had been opposed by Treasury, and concerns had been expressed by Ministers in Cabinet in June 1976 over the difficulty that would be encountered in identifying those who had suffered genuine hardship as a result of the agreement with Iceland, and in devising clear eligibility criteria. At that time MAFF had estimated that up to 600 jobs would be lost as a result of the agreement with Iceland. However, almost all distant water trawlermen were made redundant over the following few years. It would clearly be impossible to tell which jobs were lost as a result of the agreement with Iceland and which due to other factors, so any new scheme of compensation would have to be open in principle to all former distant water trawlermen who were made redundant during the relevant period - say, 1976 to 1986. The paper also noted that it was in 1983 that the then Employment Minister made a commitment that eventually led to the establishment of the ex gratia arrangements. The paper explained that those arrangements were always envisaged as having the quite different and specific purpose of compensating former trawlermen whose circumstances indicated that they could have been disadvantaged by official misdirection as to their statutory entitlement.

The paper pointed out that, if Ministers were to decide in favour of establishing a special scheme of compensation to meet the former trawlermen's demands, there would be two significant practical obstacles to overcome. The first was that neither MAFF nor DTI had any spare capacity within their budgets as set following the Comprehensive Spending Review. Treasury would therefore have to agree to provide new money before any such initiative could be taken. The second obstacle was that, although the annual Appropriation Act would as a matter of law give Ministers sufficient authority to make payments to the former trawlermen, the Government's own administrative rules on finance indicated that a scheme lasting more than two years and involving payments of more than £900,000 per annum would need to be the subject of primary legislation. That had been confirmed with Treasury officials. Given that there was no immediate prospect of parliamentary time being found for such legislation the practical consequence was that the bulk of the payments would have to be made within two years of the scheme's establishment. Any made after that period (e.g. where late claims or appeals were allowed) would have to be kept to an absolute minimum. That would clearly impose constraints on the scheme's rules and operation.

If those practical obstacles were overcome administrative arrangements would then have to be established for the delivery of a new scheme. One option was for that to be taken on by the DTI's Redundancy Payments Service (RPS), a division of DTI located in Watford. That, however, would represent a significant new workload for RPS at a time when resources were already very

stretched. There was clearly a considerable difference between processing claims based on and calculated in line with statutory redundancy entitlement, as was done under the old ex gratia arrangements, and administering a completely new scheme of compensation payments for former trawlermen. Equally, MAFF had no experience in dealing with employment matters in the fishing industry. Which department should take on any scheme would ultimately be a matter for collective ministerial decision. The paper noted that the best estimate of the overall net cost of a scheme that met the demands of the BFA in full would be in the region of £25 million with administration costs of £200,000 plus. The paper suggested imposing clear eligibility criteria. Examples were two years' continuous employment in the industry as a whole, taking into account only complete years of service in calculating compensation, excluding claims from dependants where the former trawlerman was deceased, imposing a strict time limit for the submission of claims and requiring clear documentary evidence of entitlement. The paper recognised that some of those suggested rules could be legitimately criticised as unfair - a requirement for clear documentary evidence, for example, would be likely to exclude many otherwise eligible claimants as officials knew that complete fishing records were often unavailable so long after the event. Recognising the concern of Ministers in June 1976 regarding the framing of eligibility criteria, the paper acknowledged that the problems after twenty-three years would be many times greater.

25/11/99 Officials at HM Treasury sent a submission to the Chief Secretary. They advised him that there were issues about the practicality and effectiveness of a scheme intended to provide compensation to a group of people adversely affected by a Government decision more than twenty years previously. At the time it was estimated that the conclusion to the Cod War reduced employment in fishing by about 600. It was, by 1999, impossible to disentangle those 600 from the wider decline in the fishing industry at the time which was due to other trends. MAFF and DTI had proposed that any new scheme be open to all distant water trawlermen made redundant between, say, 1976-86. They estimated the total number of claimants at around 4,000 (but with a wide margin of uncertainty). That would plainly weaken any link between the compensation scheme and the actions of the Government. MAFF and DTI had also identified a number of serious administrative problems with operating a scheme so that it was both (a) equitable and (b) defensible in terms of accounting for Government money. Those problems did not appear to have been resolved.

2000

02/02/00 The Prime Minister's Policy Unit wrote to the Secretary of State at DTI and said that while in principle the Prime Minister agreed some compensation should be offered he was concerned about the cost. The Policy Unit understood that the unwillingness of DTI and MAFF to find the money needed to offer compensation was the major reason why progress had not been made. They wondered whether a meeting between the Policy Unit, Treasury, DTI and MAFF would assist with progress.

11/02/00 An official from HM Treasury emailed a colleague concerning the proposals for a compensation scheme. He was concerned about the practicality of paying compensation on a fair and defensible basis after so many years; he had not seen an unequivocal statement from DTI that they thought that could be done. In any event he thought the scheme should be significantly cut back from the proposal floated the previous October which was compensation

to everyone who lost their job in the deep-sea trawler industry in the period 1976-86. He preferred to focus much more tightly on the period immediately after the Cod War ended in 1976, for example, 1976-78, so that the cost of the scheme would be more like £10 million rather than £25 million.

14/02/00 Officials at HM Treasury sent a submission to the Chief Secretary. They reinforced their views on the need for a tightly focused scheme and explained that they had discussed the issue of funding a scheme with officials from MAFF and DTI and also with a representative from the Prime Minister's Policy Unit who had said that the imperative was to have a solution some time that calendar year. They said that it would be sensible to ask DTI to confirm that the practical problems with providing ex gratia payments after so many years could be overcome and recommended that an assurance was sought that a compensation scheme such as the one proposed could be devised and administered fairly, in line with the requirements for public propriety. The submission recognised that the scheme was a charged issue in the former fishing ports but said that the only case for agreeing to a scheme was political. In a briefing paper attached to that submission prepared for the purpose of the Chief Secretary's meeting with the port MPs on 16 February 2000, officials noted that with regard to the extent of the scheme, the Chief Secretary might like to consider how eligibility might be limited to those who lost their jobs in 1976-77. In terms of defensibility they suggested that the Chief Secretary might ask whether information existed that would allow a scheme to be operated fairly.

28/02/00 A Treasury official wrote to the private secretary to the Secretary of State at DTI. He referred to a meeting that had taken place on 23 February 2000 attended by representatives of the Policy Unit, DTI, MAFF and Treasury and some special advisers. Those attending the meeting had agreed that the practicalities of a compensation scheme should be explored further without reaching any decision. They further agreed that a small team of HM Treasury, DTI and MAFF officials should convene to explore the feasibility of a scheme. The objective was a scoping exercise to determine whether it was possible to design a viable scheme and what that might contain. The group would report to ministers by 28 April 2000. The letter listed those issues that should be considered.

24/03/00 The Minister of State sent a minute to a DTI official that suggested officials met representatives of the BFA to discuss the information they said they could provide in support of compensation claims by former distant water trawlermen.

14/04/00 Officials sent a submission to the Secretary of State in which they said that although a meeting with the BFA could be useful as it might help them to fill gaps in their existing records, they recommended that no such meeting took place until the Secretary of State and his ministerial colleagues had decided in principle to go ahead with a compensation scheme. The submission also noted that the BFA information related only to Hull, Grimsby and Fleetwood, while they had to take account of potential claims from other ports involved in distant water trawling, in particular, Lowestoft, Aberdeen and Milford Haven. Officials from DTI, MAFF and the Treasury were then preparing a note responding to questions raised at the 23 February 2000 meeting and one of the issues the note would address was the adequacy of the information available on which to assess claimants' eligibility. The officials were satisfied that they could provide a positive response on the point. The information offered by the BFA was not therefore required for the purposes of their then scoping exercise. Officials believed

that at that stage a meeting with the BFA was bound to raise expectations, even if they made it clear there was no commitment on the part of the Government to go ahead with a scheme and the meeting was merely to ascertain what information the BFA could provide. Nevertheless, any information the BFA could provide would be helpful as it would help officials to fill in gaps in their own existing records.

09/05/00 DTI officials sent a submission to the Secretary of State attached to which was a paper designed to respond to the scoping questions posed by the Treasury following the meeting on 23 February 2000. The paper said that the collapse of the distant water fishing industry was generally recognised to have occurred between 1974 - when the second of the 'Cod Wars' ended - and 1979. Statistics showed that trips by British vessels to Icelandic waters ceased after 1976 - when the third and last of the 'Cod Wars' ended - and those to other distant waters significantly declined. The paper gave three options for limiting scheme eligibility. The scheme could be open to those who left the industry between 1974 and 1979 (option 1), which would fully satisfy the former trawlermen and those campaigning on their behalf but may bring within the scheme's coverage some who left the industry for reasons unrelated to the settlement of the 'Cod Wars'. The scheme could cover the years between 1976 and 1979 (option 2) which would exclude all those who left the industry before the last of the 'Cod Wars' ended, but would still cover virtually all those who did so after that point. If the scheme were to cover the years between 1976 and 1977 (option 3), that would be more sharply focused, but would be likely to be criticised as unfairly excluding some who genuinely lost their jobs due to the 'Cod Wars' although not in the immediate aftermath of the final one. The paper noted that in all three cases, payments could be restricted to those former trawlermen who had worked for vessel owners known to have trawled in Icelandic waters - although in practice most vessel owners were likely to have had interests in most distant water fishing operations. A further eligibility condition that could be reasonably imposed, regardless which of the three options was taken, would be a requirement for two years' continuous service within the industry (disregarding short between-voyage breaks) but not necessarily with the same employer. That could be justified on the basis that a claimant should be able to demonstrate a certain degree of commitment to the industry in order to be eligible for compensation; and the former trawlermen's representatives had indicated that they would be content with such a condition. Proof of eligibility could be obtained from copies of the relevant fishing records and/or from National Insurance contribution records available from the then DSS.

The paper accompanying the submission made the point that the DTI spending review bid did not cover the cost of a scheme. DTI officials, in discussion with their Treasury and MAFF counterparts, had made clear that if DTI was to run the scheme additional funding would be required to meet the cost. If the Secretary of State and his colleagues went ahead with a scheme the issue of its funding would therefore need to be addressed as part of the Spending Review 2000 process. The paper also dealt with a prospective timetable. Under Treasury rules a scheme involving payments of more than £900,000 per annum had to conclude within two years if it was not to be subject to primary legislation. If Ministers went ahead with a compensation scheme officials recommended that claims be admitted during the period 1 April 2001 to 31 December 2002 with no exceptions made for any received after that date. That would allow for all claims to be processed and action completed within the financial years 2001 - 02

and 2002 - 03 and allow time for RPS to recruit required additional staff, for claim forms and other scheme literature to be drawn up and printed, and for publicity arrangements to be put in place before the scheme opened. That was dependent upon RPS receiving a supplementary running cost allocation representing a proportion of the £250,000 estimated administrative costs. The intention to run a scheme could be announced in the summer if Ministers wished to do so.

24/05/00 In a submission to the Chief Secretary a Treasury official noted that the report of officials from MAFF, DTI and HM Treasury proposed that if a scheme went ahead an announcement could be made in the summer with payments under the scheme made from April 2001 onwards to a cut-off of December 2002. He thought there was a risk of criticism that that timetable was too slow as a summer announcement would create an expectation which would not be satisfied for at least another nine months. There would be further pressure from MPs and trawlermen's representatives to meet claims on a shorter timescale. DTI had indicated that a reasonable period for paying out on claims would be four months from the announcement which would allow sufficient time for recruiting the team, establishing forms and systems, advertising, and receiving and processing claims. Should the Chief Secretary feel that the timetable should be shortened, as a higher political priority, some applications could be paid from October 2000. As to the three options put forward for a scheme, officials recommended that the Chief Secretary reject option 1 and accept option 3 which would limit the cost to £13 million. Should he wish to open up the compensation scheme to a wider group of trawlermen, they recommended option 2 as the next best alternative. The submission stated that in terms of adequacy of records DTI was confident that payments could be restricted to former trawlermen who worked for vessel owners known to have trawled in Icelandic waters. Proof of eligibility could be obtained from copies of the relevant fishing records and/or National Insurance contribution records from the DSS. Many of those documents were submitted or had been obtained under the previous ex gratia scheme. The key issue would be the rigorous cross-checking of claims to protect against fraud.

22/06/00 The then Chief Secretary to the Treasury wrote to the Secretary of State at DTI. He had seen the report compiled by officials and he was prepared to agree to a compensation scheme. That was on the basis that the assumptions in the report were accepted regarding a requirement of two years' continuous service in the industry (not necessarily with the same employer); a payment of £1,000 per year of service at sea; payment under the ex gratia arrangements was offset against the claimant's entitlement under the new scheme; share fishermen were to be included; and payment in full to widows and dependants of deceased trawlermen. He proposed a limit of £10,000 on individual payments. He proposed that the scheme be limited to those who left the industry during 1974-79 but did not provide any reason for selecting that option. In terms of timescale, the Chief Secretary said that they should look to expedite it quickly and an announcement could be made in the summer. In order to meet applications and payments made during 2000-01 he would be prepared to make available access to the reserve, with costs incurred from April 2001 forming part of DTI's settlement in Spending Review 2000. Given the normal rules on expenditure incurred without specific statutory authority the scale of the scheme (over £900,000 per annum) must be concluded within two years, in order to avoid primary legislation. He therefore proposed that the deadline for admitting claims

should be 31 December 2002 as set out in the report.

29/06/00 Officials were asked to comment on a draft submission and take forward the drafting of a more detailed note on the scheme's eligibility criteria fleshing out the basic criteria then agreed by the Chief Secretary to the Treasury. In commenting upon the submission a senior official commented that he wished to make two announcements; one to be made soon and one when applications can be made. The Secretary of State would no doubt wish the gap to be a minimum. He asked whether they could get into a position where the Secretary of State could invite claims at the party conference and whether they could promise that payments would be made to early applicants by Christmas. He was then advised by the author of the submission that they were sufficiently advanced to enable the Secretary of State to invite claims at the party conference, if he wished to do so, and that payments to early applicants were likely to be made by Christmas, but he should not give a firm promise.

07/07/00 DTI officials met to discuss a paper concerning the proposed compensation scheme that included proposed eligibility criteria. The paper suggested that in order to be eligible for payment under the scheme, a claimant must have either worked at sea as a fisherman for a continuous period of at least two years ending on a date between 1 January 1974 and 31 December 1979, for one or more vessel owners who carried out fishing in Icelandic waters and did not continue or resume working at sea as a fisherman at a later date. An occasional interval of up to one or two months - for example, an interval between voyages or between work for different vessel owners - should not be taken to break continuity for those purposes and should be counted as part of the continuous period. The paper asked whether there was any need to clear the proposals with Ministers or HM Treasury or MAFF, and also asked whether there was any merit in consulting the BFA on eligibility criteria, once an official announcement of the scheme was made. (I have not seen any notes of the meeting on 7 July so do not know the agreed answer to that question.)

July 2000 The Chairman of the Hull BFA sent to DTI officials a list which contained 16 reasons for a break in a trawlerman's service record. He said that was why the Government's two year rule in which to qualify for compensation could seriously affect the trawlerman's sea record and thus his entitlement to compensation. Any gaps in a man's record caused legitimately by the reasons on the list should be disregarded when the two year rule for qualifying was calculated. Among those reasons were: time off the ship's log when the ship's annual survey could last for days or weeks; every four years the Lloyd's survey would take the ship out of service for weeks; the company asking you to sign off the ship's log; the ship breaking down; the ship being scrapped; companies loaning men out to other companies; and men on standby under companies instructions. When a ship was lost, survivors would get twelve weeks' survival pay on shore. He did not say that the list of reasons was exhaustive.

11/07/00 Officials from RPS sent a fax to their colleagues at DTI that contained a list of questions regarding the scheme. One of those questions referred to clarification on the time limits for the occasional interval. On receipt, that question was highlighted and '3 /4 months' written beside it with the '4' crossed through.

18/07/00 In framing a response to the RPS questions DTI officials thought that the scheme should not be restricted to people who were made redundant or became unemployed. Even if they resigned or took jobs elsewhere, that may

have been effectively forced on them by the collapse of Icelandic water fishing (and it also removed one further issue for operational staff to consider). Furthermore (on a point of drafting emphasis) they really needed to tell operational staff what they had decided the eligibility criteria were to be rather than making suggestions. They would then simply be following instructions in processing claims. The officials noted that the Secretary of State wanted a firm opening date to be included in the initial announcement and they suggested 1 October 2000.

That same day DTI officials sent a response to the list of questions from RPS. At point 10, under time limits, they said that any gap in service of more than three months, whatever the reason for it, should be taken as breaking continuity for the purposes of the scheme. (The BFA had at one time given them details of the reasons why people might not be at sea and the longest reasonable gap was twelve weeks' leave for survivors of a sunken vessel.) That condition should be rigorously applied.

20/07/00 DTI officials provided RPS 'with lines to take' in the form of questions and answers when dealing with telephone enquiries. One question was 'what happens if I stopped fishing for a short period?'. The provided answer said that they would discount breaks of up to three months but a period of service with longer breaks than that would not be counted as continuous.

28/07/00 DTI officials discussed arrangements for the official announcement of the scheme. They circulated a draft of a letter, for signature by the relevant Minister, to the port MPs informing them of the decision to establish a scheme. It was decided that an official should speak to the Chairman of the Hull BFA or someone else from the BFA by telephone to inform them of the news. That same day an official recorded the conversation with the Chairman in an email. The official filled him in on the details of the scheme and told him that they would be having a meeting with him shortly to get the help of the BFA with some further detailed matters. They would send him a copy of the press notice. He said that the only distant water trawlers sailed from Hull, Grimsby and Fleetwood - certainly not from Milford Haven, although there may have been the odd one from Lowestoft. He did not know about Aberdeen. He said he had been through a list of 2,800 vessels and identified 197 distant water trawlers. He had passed that information to the Member for Hull West and Hessle.

02/08/00 A DTI official emailed the office of the Minister of State and said that the Secretary of State had approved a meeting between officials and the BFA. Although officials had had telephone conversations with the Chairman of the Hull BFA they asked the Minister's office to make the arrangements.

07/08/00 The legal section in DTI sent a memorandum to policy officials that contained a number of comments and questions in relation to the scheme. One question was whether a break of less than three months from the industry broke continuity. On 8 August a policy official replied and referred to a meeting between the policy and legal sections concerning the scheme that afternoon. The reply said that a break of three months from the industry did break continuity. The BFA had given them 101 reasons why there were breaks in service and none of them was longer than three months. That is why they had opted for that period. The way the fishing industry was run in ports like Hull and Grimsby was that all trawler owners belonged to the same 'pool' and the trawlermen could go out on any trawler they wanted. That was why they were never considered in the past to qualify for statutory redundancy payments as they signed on

and off each voyage. The official also explained that the limit on individual payments had been set at £20,000 for a full 20 years at sea. That same day a policy official spoke with the Secretary of the Hull BFA and confirmed that a meeting was planned with the BFA where the points they wanted to raise would be discussed with officials.

15/08/00 A policy official notified the office of the Minister of Sate that they had arranged a meeting for 8 September 2000 with the Chairman and the other members of the Hull BFA. The meeting would be a chance to discuss the eligibility criteria and the application form and other concerns the BFA might have.

17/08/00 Policy officials sent the draft scheme document to the legal section for consideration. It included a section concerning appeals against decisions to reject claims which said that any such appeals should, in the first instance, be referred to the Assistant Director ER2 at DTI's London headquarters. If the appeal was not upheld it would be referred to an independent adjudicator for final decision. They would appreciate a swift response as they were firmly committed to a 2 October 2000 start date for the scheme and there was still quite a lot to be done before then. That same day policy officials sent RPS a family tree of the Hull trawling fleet and sixteen reasons (dated July 2000) why trawlermen might have a break in service of up to three months. They should note it said *'12 weeks'* on one of them.

18/08/00 The legal section sent a response and attached their redraft of the scheme documentation. The redraft said that a claim could be made in respect of the last continuous period of work of at least two years undertaken by former Icelandic trawlermen provided the continuous period of work ended on a date between 1 January 1974 and 31 December 1979; and work as an Icelandic trawlerman was not resumed after the date on which the continuous period of work ended. The legal section noted that that meant that a trawlerman who worked for more than two years had a break of three months and then worked for less than two years after that would get nothing. They asked whether policy officials were happy with that. Policy officials replied that they were. The legal section's redraft said that 'continuous period of work' meant a period of work as an Icelandic water trawlerman during which there were no breaks between voyages to Icelandic waters (for whatever reason, including but not limited to illness or fishing on vessels outside Icelandic waters) of more than twelve weeks. Breaks of less than twelve weeks, even if in total these add up to more than twelve weeks, counted toward the continuous period of work. The legal section noted that a trawlerman who worked on local vessels for the majority of his time but did an Icelandic trip every three months or so could make a claim. Unless there was some minimum requirement for the amount of time spent on Icelandic trips someone who only occasionally worked on them could benefit. Officials said they were content to live with that. The legal section gathered that mixed service was rare and the policy section may be content to keep it simple and not have such a requirement. Officials confirmed mixed service was rare. They believed mixed service was virtually unknown.

22/08/00 Policy officials were requested to brief the Minister of State the following day on the compensation scheme and a general progress update, together with queries raised by the Chairman of the Hull BFA about qualification conditions.

24/08/00 The office of the Minster of State sent a memo to policy officials. The Minister's main concern was about qualification for payment for those who had given up distant water fishing but had continued to fish elsewhere. The Minister was happy to agree that

the draft note on eligibility and procedure, together with the draft claim form, should be sent to the Chairman and Secretary of the Hull BFA prior to the 8 September meeting. The Minister also suggested that it would be wise to invite representatives from the other ports to come in separately to see policy officials. He suggested it might also be wise to suggest to the Secretary of State that he write to the port MPs indicating that that was the intention of officials. That could be useful given the close links between port MPs and representatives of local fishing communities. The Minister commented that there may well be other problems that emerged in the course of those meetings - he was only concentrating on the one issue. On 24 August policy officials wrote to the BFA representatives for Grimsby and Fleetwood and informed them that as part of the exercise to ensure that people who were eligible to receive payments did so, a meeting had been arranged with BFA officials for 8 September. Officials were working on various matters, including the detailed eligibility terms and the meeting was to discuss various matters to help in that process. The Chairman of the Hull branch would be attending and officials understood from him that he would also cover issues concerning the ports of Grimsby and Fleetwood. If the Grimsby and Fleetwood representatives had any information that they thought policy officials should have relating to the issue, they would be pleased to receive it.

30/08/00 A policy official made a file note of telephone conversations with the BFA representatives for Grimsby and Fleetwood on 29 August 2000. The Grimsby representative was upset that she had not been invited to the meeting and an official had explained that they had not thought she was fit to travel. The representative said she would attend in a wheelchair and two colleagues would accompany her. She made clear there was a poor relationship between the Grimsby and Hull branches of the BFA. The official asked her about Aberdeen and she said she had represented them too in the past. She confirmed that 'only a few' were distant water trawlerman. She then said that 1979 was too early for a cut-off date. The representative for Fleetwood also confirmed that the Grimsby and Hull branches did not see eye to eye but she would also attend the meeting with two colleagues from Fleetwood. That same day a policy official sent to the legal section first drafts of the background note and guidance note relating to the overall scheme and eligibility criteria.

31/08/00 The legal section emailed policy officials with their comments on those two documents. They thought it important to spell out exactly what periods could be claimed for so that applicants did not waste time completing the application only to find a three month break made them ineligible. They had therefore expanded the eligibility paragraph. It was still a bit confusing and although policy officials wanted to keep things short they might consider putting in examples to illustrate who may be ineligible to claim. One such example was a former trawlerman who worked in Icelandic waters from 1968-1973, had a break of one year during which he did other work, and then returned to Icelandic water trawling for three years from 1975-1978. He would be eligible for compensation in respect of the period he worked during 1975-1978 which was his last continuous period of at least two years. The revised background note described a continuous period as one in which there were no breaks of longer than twelve weeks. A trawlerman need not have worked for the same employer during the period of his claim. If he had a break of longer than twelve weeks from Icelandic water trawling work (for example, due to illness or fishing outside Icelandic waters), his claim could

only relate to Icelandic water trawling done after the end of that break. Breaks of less than twelve weeks, even where they added up to more than twelve weeks in total, counted towards the continuous period. The revised guidance note requested applicants to give details of any breaks in employment and the reasons for them. A break of more than twelve weeks would break the period of continuous service and would reduce their payment.

03/09/00 The Chairman of Hull BFA wrote to a policy official and enclosed an amended list of reasons for breaks in a trawlerman's service, amended as of 1 September 2000. Included in that list were trawlermen who worked by new vessels during the Fitting Out period; men on 'walkabout' due to employers' petty treatment of the men; and men who worked on shore side for the company whilst waiting for a trawler berth. He also enclosed some suggestions for an agenda. The agenda listed forty-one points. Point 13 concerned breaks in service and referred to the list of reasons amended on 1 September. The Chairman wished to know whether some or all of those breaks would figure in the calculation of payments. If not all then which of the reasons he had provided would not qualify for payment.

04/09/00 Policy officials wrote to the BFA representatives for Hull, Grimsby and Fleetwood and explained who would be in attendance at the meeting. The letter said that the eligibility criteria had already been agreed by Ministers. The purpose of the meeting would therefore be to discuss ways of ensuring that former trawlermen eligible for payment got it as quickly as possible. They enclosed a copy of the application form and a definition of the scheme criteria drawn up by DTI's lawyers. A copy of the guidance notes would be available at the meeting.

08/09/00 A meeting took place between policy officials, officials from RPS and representatives of the BFA. A DTI official made a note of the meeting. Point 7 of that note recorded that the BFA had said that allowing a twelve week gap in employment was not enough. A trawlerman could be waiting for a job after getting a Mate's ticket and that would extend the gap between voyages. They also explained about 'walkabout' - i.e. blacklisting - of some former trawlermen and said that getting a job often depended on the whim of the trawler owners. Trawlers could also be laid up because they had already fished their quota and could not go back to sea until the next one was due. There were a lot of injuries at sea and it was considered that these should be classed as 'Acts of God'. They suggested that up to six months should be allowed between voyages before continuity was considered broken and also that 'special circumstances' might justify an even longer between-voyage gap. They said that radio operators should be included in the scheme. They agreed to provide a definitive list of what they considered to be 'special circumstances'. A policy official said that DTI would need to consider the question of what evidence might be available to verify what claimants were doing during between-voyage gaps. A policy official ended the meeting by explaining that officials could not themselves agree to change any significant aspect of the scheme rules; the BFA's points would need to be put to the Secretary of State for consideration and, if necessary, a decision. He agreed to take that forward and let the BFA know the outcome.

That same day there was an exchange of emails between the legal section and policy officials. The legal section thought changes made to the scheme document reflected that morning's meeting as they meant that the scheme would then include those who worked on ships which may have spent most of their time on trips to other waters, provided they made at least two

Icelandic water trips. If they made any Icelandic water trips that meant they must have been distant water vessels. A policy official replied that he intended to put a submission to Ministers the following Monday to ask for decisions on the radio operators point and the point about whether or not they should allow some exceptions to the 'twelve week rule' on breaks in continuity and also to ask them (subject to those points) to sign off the documentation.

10/09/00 The Chairman of the Hull BFA wrote to a policy official and said that he felt there was a need for a further meeting prior to 2 October with the three separate branches of the BFA but the meetings should be separate and individual in the light of the disappointments of 8 September meeting. He believed one of the Grimsby BFA representatives had disrupted the meeting. He requested answers to the points on the agenda he had submitted as due to the disruptions it was not possible to discuss relevant matters. The Chairman also wrote to RPS and enclosed a copy for the policy official. In that letter he made clear that because of the disruption the purpose of the meeting became lost. They did not finalise those details that needed to be finalised. There would have to be a further meeting to finalise the definition of Icelandic/distant water trawlerman and the criteria that surrounded that definition. He suggested separate and individual meetings.

11/09/00 A policy official sent a submission to the Secretary of State concerning the scheme. He said that the 8 September meeting had proved very helpful to them despite heated disagreements between BFA members from different port areas. The BFA were concerned at the proposed rule that any between-voyage gap of more than twelve weeks, for whatever reason, should be disregarded as breaking continuity both for the purposes of the two year qualifying period and for the purposes of calculating the amount of payment due. They argued that there should be a list of 'special exceptions' (including sickness or injury) which, if supported by documentary evidence, would justify a longer between voyage gap being disregarded. Officials had pointed out that the line had to be drawn somewhere if the continuity conditions were to be meaningful, and that the need to consider special exceptions and supporting evidence (which could be difficult to obtain so long after the event) would increase the complexity of the scheme and the length of time taken by RPS to assess claims. They had invited the BFA to submit urgently a list of special exceptions they thought should be included which they expected to receive later that week. If there was any delay it might not be possible to incorporate any changes in time for the scheme opening date. The submission recommended that on balance longer gaps should be allowed in the case of sickness or injury, where supported by documentary evidence, but that no other exceptions should be made.

13/09/00 The office of the Secretary of State emailed the policy official. They said the Secretary of State had seen his submission and was happy to have special exceptions for those who had journey gaps of more than twelve weeks. He wished the policy official to check that the Minister of State was happy with that proposal.

18/09/00 The office of the Minister of State emailed policy officials about those matters arising from the meeting with the BFA and the submission to the Secretary of State. Regarding gaps of more than twelve weeks, the Minister said that of course illness or injury should not count against the men but there were other circumstances such as 'walkabout' where trawlermen were left to kick their heels for longer than twelve weeks before finding a ship. They needed to be flexible, recognising that

those with whom they wished to deal were those who left to take other jobs and then returned. They should be identifiable. The Minister wanted to know whether it was true that that rule was not applied to the ex gratia scheme. A policy official replied and said that 'walkabout' was one of the issues raised at the meeting with the BFA. The difficulty he saw with allowing breaks of more than twelve weeks for reasons such as that was that it was unlikely that reliable documentary evidence would be available so long after the event to prove the reason for the break. If they looked at it the other way round and said they would disregard all breaks of over twelve weeks except where the reason for the break was that a former trawlerman took a break outside the industry for a time, checking the claims would be much more difficult. National Insurance records would have to be checked and the Benefits Agency asked if they were willing to take that work. It would also increase the costs of the scheme. He was happy to discuss the matter further with the Minister at a meeting scheduled for the following day.

Policy officials met with the Minister of State. The Minister's outstanding concern was the rule that between-voyage gaps of more than twelve weeks should be regarded as breaking continuity. He wanted to limit that to between-voyage gaps, *in which the former trawlerman took employment outside the distant water fishing industry*, so that between-voyage gaps of whatever length would be disregarded if they were for reasons other than that (including but not limited to injury, illness, 'walkabout', and training at naval college). The Minister pointed out that in practice the trawlermen would not have had between-voyage gaps of more than twelve weeks voluntarily, unless it was to work outside the industry, so any such gap could be assumed to be imposed upon them, or at least not be of their own making. He did not define what he meant by working outside the industry so as to clarify, for example, whether work on a distant water vessel in dry dock was work within or outside the industry. The official pointed out that such a rule would make it more difficult to validate claims. The Minister argued that the number of claimants who had between-voyage gaps of more than twelve weeks, and who could not provide documentary evidence of the reasons for them, would be small. The policy official said he would think about it further. The problem that policy officials saw with what the Minister proposed was that it would put the onus on operational staff to consider potentially many different types of documentary evidence of reasons for between-voyage gaps of more than twelve weeks. If the exception to the twelve week rule was limited to cases of injury or illness as policy officials had proposed, the onus would then be on the claimant to prove that they were ill or injured during the case in question. However, the Minister clearly had strong feelings on the point. The difficulty, as policy officials saw it, was an operational one rather than one of policy. It was clear that in principle they could make the change the Minister had requested. Subject to any comments from RPS, policy officials suggested that the change be made and they accept that the processing of claims would take a little longer where the issue actually arose.

25/09/00 Policy officials sent RPS revised copies of the scheme document and referred in particular to paragraphs 3.2 and 7.9 of the eligibility criteria and the procedure for making claims as they reflected the changes requested by the Minister of State. Paragraph 3.2 defined a 'relevant break' as a break during which work of any duration other than work as an Icelandic water trawlerman was done. Breaks, whether relevant or otherwise, of less than twelve weeks, even if in total they added up to more than twelve weeks, counted towards the continuous

period of work. Breaks of longer than twelve weeks that were not relevant breaks might count towards the continuous period provided that, where possible, evidence of the reasons for the breaks was supplied with the claim form and provided that work as an Icelandic water trawlerman was resumed before 31 December 1979.

A policy official emailed the office of the Secretary of State and said that the proposals for the scheme had been discussed with the Minister of State. He had had one concern about the conditions for breaks in continuous service, i.e. the issue of 'special exceptions'. They had addressed that by amending the scheme documentation to make clear that continuity was regarded as having been broken by any between voyage gap of more than twelve weeks where during that gap the claimant was, for part or all of the time, engaged in work outside the industry. That meant work other than on vessels that trawled in Icelandic waters. Other between-voyage gaps of more than twelve weeks would all be disregarded on the assumption that they must have been for reasons beyond the former trawlerman's control. Examples were illness, injury, 'walkabout' or training at naval college and that it would be unfair to regard him as having left the industry during that period. The amendment would make it more difficult and time consuming for RPS staff to validate claims where the issue arose, but it would produce a fairer result and would be welcomed by the BFA.

24/10/00 Following a query from the legal section policy officials clarified that the wording of the scheme document meant that a period of work of less than two years after a break would be enough to disqualify the claimant in respect of their earlier service, however long that was, but would not be enough to qualify them for the scheme. Although that was the intention policy officials foresaw problems if they received claims from people who had worked for twenty years, had a break in service, and then did one more voyage before leaving the industry.

16/11/00 The Member for Waveney wrote to the Secretary of State about a constituent who was a former Icelandic water trawlerman. The constituent had applied for compensation under the scheme but had found he was ineligible as he had had a break of six months from Icelandic water work in the period 1974-79. He had remained at sea but as there was no work available in the Icelandic fleet he was forced to take work out of Lowestoft in non-Icelandic waters. He wondered whether there was any flexibility in the scheme that would allow something to be done to help his constituent.

21/11/00 The Secretary of State replied. He said the scheme criteria had been designed to be relatively generous in disregarding breaks in service but where a former trawlerman had more than twelve consecutive weeks doing other work, his livelihood was not regarded as having been dependent upon the Icelandic water industry during that period and his continuity of service was therefore broken. He was sure the Member would understand that there was no discretion under the scheme for aspects of the eligibility criteria to be disregarded in individual cases.

29/11/00 The office of the Minister of State emailed policy officials concerning three constituents of the Minister who had raised queries concerning their eligibility under the scheme. One case concerned a former trawlerman whose daughter had a condition that was not properly diagnosed until she was aged 18, by which time it was far too progressed to treat properly. The former trawlerman had taken breaks from service of more than three months to help treat his daughter who went through several serious operations to try and improve her condition. Policy officials replied the same day

and said that the former trawlerman's breaks in service to look after his daughter should not present a problem in terms of calculating his claim. The breaks should be treated as part of his continuous period of service - as he was not working for another employer outside the industry during those periods.

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16/01/01 At a meeting to discuss the financial implications of the scheme RPS reported that very few of the trawlermen had between-voyage breaks where they worked outside the industry, such as the one who was in prison. It was becoming very difficult to find out which ships had actually sailed to Icelandic waters. The BFA had originally provided a list of 26 ships that had sailed from Grimsby to Icelandic waters. However, RPS had received a list of over 120 ships supposed to have sailed to Icelandic waters but there was nothing to substantiate that. The BFA had said identification of ships would be easy as they had to be licensed but it transpired a licence was unnecessary and approaches to MAFF had not produced anything of substance. RPS pointed out that according to maps, parts of the Faroes' territorial waters were actually within 200 miles of Iceland which meant that those who had fished the Faroes would also be eligible. A submission would be put to the Minister in which, among other matters, he could be asked to write to his opposite number in MAFF to see if that department could produce a list of vessels that sailed to Iceland. A similar question could be put to the then Department for the Environment, Transport and the Regions. RPS said they had also discussed the position of those who were working in the dry dock or other such activities with a policy official. It was confirmed the claims were valid unless the trawlerman concerned was actually working outside the industry.

29/01/01 At a meeting policy officials and RPS representatives discussed those people who had started work on Icelandic trawlers and had then gone on to do middle-water work, returning to Icelandic water trawling at the end of the period. It was agreed that continuity would be broken in those circumstances; claimants should only be paid for their last period of Icelandic water employment. It was also confirmed that breaks of less than thirteen weeks, for any reason at all, were to be discounted.

31/01/01 The discussion among policy officials as to how they applied the compensation rules in practice continued by email. They had a list, at that time yet to be finalised, of vessels that had been to Iceland. If a former trawlerman had worked on vessels on that list and there was not any break of more than twelve weeks then the claimant was entitled to £1,000 per year subject to a limit of £20,000 on individual payments. If the trawlerman worked on a vessel not on that list continuity was broken so that the start of the period used to calculate compensation was determined by the start date of the trip on a listed vessel which immediately followed the voyage on an unlisted vessel. If the period between voyages on a listed vessel were all twelve weeks or less it did not matter what the claimant did in the break periods. Whatever he did it did not break continuity. If any period between voyages on a listed vessel was more than twelve weeks it broke continuity if there was good evidence that the claimant did any work whatsoever, no matter how short the duration, during that period. If the claimant did not do any work during that period it did not break continuity no matter how long the period.

However, if that were correct they might need to discuss a situation in which a claimant went to Australia for five years. Service on a vessel not on the list did not break continuity if it was done during a break of less then twelve weeks between

service on vessels that were on the list. The officials agreed that, under the scheme rules, between-voyage breaks of whatever length were disregarded if no work was done during them. The BFA had argued, and Ministers agreed, that it would be unfair if service was broken by periods of illness, injury, 'walkabout', training, national service etc. They had toyed at one point with the idea of drawing up a list of special circumstances that would not break continuity. In the end they decided that that would pose so many operational difficulties - in that in each case the claimant would have had to have been asked to provide documentary evidence of the reason for a particular break - as in practice evidence might not be realistically available to him after so many years. Processing staff would have to check and verify the evidence and so it seemed that the only sensible solution was to disregard any break apart from one of more than twelve weeks in which the claimant did other paid work. That could be easily checked from National Insurance contribution records. It was noted that RPS thought that was not as straightforward as was first believed. Officials agreed that it could look exceptionally generous in some cases if, for example, someone had gone off to Australia for five years and not done any work in that period. But those would be very few and far between. As a rule of thumb it seemed reasonable to suppose that if someone did no work during a between voyage break it was generally for reasons beyond their control and it was fair to deem them to have been still dependent on the Icelandic water industry for their livelihood.

01/02/01 Policy officials compiled and discussed a list of frequently asked questions and the answers in order to clarify how certain terms in the scheme rules were intended to be interpreted. One question was 'What did a continuous period of work mean?'. The answer said that a continuous period of work meant any period during which a claimant had 'no relevant break' of more than twelve weeks between the end of one voyage on a vessel on the DTI list and the start of another voyage on the DTI list. A 'relevant break' was a break during which other work, of whatever duration and of whatever kind, was done. Other work included other fishing work on a vessel not on the DTI list, in effect, a vessel that never went to Icelandic waters. If no other work was done in the break, that break was not a 'relevant break' and would be counted as part of the period of continuous service, regardless how long it lasted. That applied regardless of whether the break was due to illness, injury, 'walkabout', unemployment, national service, training, imprisonment or any other reason. Unless a person did other work during the break, he was deemed to have remained dependent on the Icelandic water fishing industry for his livelihood. Breaks of less than twelve weeks between the end of one voyage on a vessel on the DTI list and the start of another voyage on a vessel on that list were counted as part of the continuous period of service, regardless how many such breaks there were and what was done during them.

14/02/01 There was a further meeting between policy officials and RPS representatives to discuss the financial implications of the scheme. The record of the meeting shows that part of the discussion focused on the compilation of the list of vessels that had sailed to Iceland. RPS officials said they were confident they could establish a list of ships that went to Iceland but not what they did after 1979. If a trawlerman left the industry after 1979 he would only be eligible under the scheme if the relevant boat had been converted for types of fishing work other than in Icelandic waters. However, RPS officials said it was proving difficult to ascertain whether a boat had been converted. It would also be difficult for the claimant trawlerman to

provide proof of conversion. They said Ministers should be warned about the problem. It was agreed that a submission should be sent to the Secretary of State linking the problem to the possible increase in the costs of the scheme. DTI officials said that the BFA had not been quite so frank with them as they might have been about what happened to the deep-sea trawling industry after 1979. The meeting noted that the trade publication 'Fishing News' had a list of trawlers returning to port and where they had been. The meeting agreed that officials would check the publication's archives. The meeting noted that a number of trawlermen were unhappy as they had already had their claims rejected due to the difficulties in identifying whether a particular vessel had sailed to Iceland, and there were likely to be stories about it soon in the local press for the port areas. That might be a convenient 'peg' on which to hang the submission to the Minister. The notes of the meeting recorded that officials needed to get Ministers 'on their side' and to agree to all the rules.

The notes of the meeting record that officials would have to advise Ministers of the possible overspend if they simply paid everyone who fished in Iceland, no matter what. They would also have to advise that the Finance, Resource and Management (FRM) section of DTI would not countenance them just paying out without any limits. They could also add that the scheme was set up in a hurry, at the insistence of Ministers, and that they were still having discussions with the BFA right up until the days before the scheme opened. They also knew more about the trawler industry than they did at the beginning and that was why some of the problems had arisen. RPS suggested that it might be worth looking at the notes of the meeting with the BFA before the scheme opened to see what had been decided. A policy official made it clear that nothing had been agreed at that meeting, they had simply listened to what they had to say, without making any promises at all. They discussed whether a copy of the guidance should go to the BFA. While it was agreed they should have a copy of the final document officials should take care to ensure they did not give the impression that they were **revising** the rules, but were simply **interpreting** them to ensure clarity. There should not be any **consultation** with them; the new guidance was simply to **inform** them.

27/02/01 The secretary of the Grimsby BFA wrote to a policy official. In that letter she described as appalling the decision to refuse compensation to a former trawlerman from Grimsby because he took work on a trawler sailing out of Australia rather than go on the benefit system.

20/03/01 The secretary of the Aberdeen BFA emailed a policy official. He said he was disappointed to see serious faults and discrepancies in the scheme. It was clear that situation had developed as a direct consequence of Ministers receiving and responding to invalid information from unqualified sources in the form of advice, instructions and personal opinions from deckhands unqualified to comment on industrial relations or maritime matters of such importance. There was no shortage of bona fide advice from experienced and qualified marine personnel fully prepared to contribute to the debate. A policy official replied the same day. He said when the scheme rules were drawn up the previous year Ministers and officials took careful account of advice and information from a wide range of different sources, including experienced and qualified marine personnel.

17/04/01 In the course of an exchange of emails between policy officials concerning the definition of an Icelandic water trawlerman, one official said that they could be quite clear about how they at official level originally intended the

scheme rules to be interpreted. The definition of an Icelandic water trawlerman was quite carefully constructed to meet the demands of the BFA who had consistently argued that the closure of Icelandic waters dealt a fatal blow to the viability of the whole distant water industry. That was not just intended for those vessels that happened to have trawled in Icelandic waters in the period just prior to the closure, but also to address the concerns that both they and the Treasury had to see a set of rules that targeted the payments as effectively as possible and allowed for claims to be properly validated. They had had numerous discussions with the Minister of State and had exchanged emails with his office about various aspects of the scheme rules before they were finalised. He was sure that the definition of an Icelandic trawlerman must have come up at some point, although he was doubtful whether anything specific would have been recorded in writing. The rules themselves had been cleared with the Secretary of State who had approved them having been assured by the Minister of State that the BFA were content with them, which the official believed they had been at the time. However, he did not think they had ever gone into the level of detail as they were then doing.

23/04/01 Policy officials discussed a draft of operational rules for the scheme to assist RPS. In attempting to clarify who would qualify as an Icelandic trawlerman the draft said that shore-based work on an Icelandic trawler, for example, repairing the boat or its nets, did not count as work as an Icelandic trawlerman. In clarifying the definition of a 'relevant break' the draft noted that it would frequently be a key factor in determining the amount of compensation. A relevant break was one which was over twelve weeks during which the claimant was in paid employment other than as an Icelandic water trawlerman. Breaks between voyages, defined as breaks between voyages on vessels on the DTI list, of twelve weeks or less could be discounted. It did not matter how many such breaks there were or what claimants did in such breaks. Breaks of more than twelve weeks were discounted only if they were satisfied that the claimant did no paid work for any employer during any part of the break period. Work on a vessel not on the DTI list was not a relevant break if it took place in a period of twelve weeks or less between voyages on vessels that were on the DTI list. The draft provided some examples of what did and did not break continuity. Time spent in prison did not break continuity of service as the prisoner was not doing paid work for an employer, but work on repairs to an Icelandic boat in harbour did break continuity of service as it was paid work for an employer. Fulfilling duties in the armed forces, in the Royal Naval Reserve or National Service did not break continuity as it was not paid employment for an employer.

The draft operational rules, in one example, explained that a man had a period exceeding twelve weeks between voyages on an Icelandic water trawler but part of the time he was employed working on repairs to the vessel in harbour. If that period could be deducted the break would be under twelve weeks and so would not be a relevant break. The work in harbour was paid work for an employer and did not count as working as an Icelandic trawlerman. The break was thus a relevant break and the period of claim ran from the end of that break. Another example concerned a man who had a long break because he was in prison. That did not break continuity because he had not done paid work for an employer. Time in prison counted towards time working as an Icelandic trawlerman. In taking on board comments on the draft made by colleagues the author of the draft pointed out that a lot of the questions asked by RPS reduced down to 'did they have to apply the rules even in

difficult cases?'. The draft aimed at telling them that the answer was 'Yes'.

A policy official saw an article in the Hull Daily Mail in which the Minster of State was reported to have said in relation to the scheme that the system had to be more flexible. Other policy officials wondered whether the Minister had really said that. The Minister's office then confirmed by email that the Minister had informed them that he had said that.

19/06/01 A policy official sent a submission to the new Minister of State. It said that the prospect of longer timescales and also the way in which the scheme rules impacted in practice had given rise to concerns in the local media covering the fishing ports and their MPs, in particular the referring Member and the Member for Hull West and Hessle. Those concerns centred on three main points. Firstly, compensation payments were not going through fast enough; second, the referring Member was concerned that payments were mainly going to Hull and few to Grimsby; and, finally, a contention that the rules of the scheme acted to exclude some former trawlermen who deserved compensation, in particular those who fished after 1979.

17/07/01 The referring Member sent a fax to the new Secretary of State that concerned the problems that had arisen in the administration of the compensation scheme. Among the many points he made he said there was a major problem over breaks in service. Those could arise from a whole series of causes - engineering or repair work on the vessel, Lloyd's survey lay-ups, illness, injury, family illness and holidays all needed to be allowed for. It would be unreasonable not to do so. Yet there was another problem in Grimsby which should also be accepted as not producing breaks in service. When an owner had no vessels sailing to Iceland, where a vessel was overcrewed, or where there was a disciplinary offence, fishermen were required to work on North Sea or middle water vessels, sometimes run by the same owner, but often on just any vessel. They had no choice. If they refused they lost their jobs. The Fishermen's Employment Office on the dock required them to take any vessel available or lose their benefit. That was a basic part of the conditions of employment for distant water trawlermen. Fail to observe it and the trawlerman was out of a job. It could not, therefore, be regarded as a break or used as an excuse to shorten service or disqualify. He also said that all kinds of anomalies had arisen from decisions. RPS and the Government had to examine payments already made and compare them with cases refused so as to ensure consistency. Some trawlermen had been refused for being on vessels which had since been added to the list. They were not told of that change. Some had been paid whose vessels were not on the list while others on the same vessels had not been paid. Some had been paid who never went near Iceland. Individuals who worked after 1979 in fishing were paid up to 19 February 2001. Others in the same position were then being held back. Ensuring consistency was a big job. Yet it was the only safeguard against complaints of maladministration. The Member concluded that Ministers should be aware that the fishing bush telegraph carried information about every inconsistency far and wide. Unless DTI could take clear, consistent, decisions and ensure prompt and efficient administration it would create a huge sense of injustice and render itself very vulnerable to action on maladministration or judicial review.

Policy officials sent a briefing paper to the Minister and Secretary of State that also attached background papers. The briefing paper also dealt with some frequently raised issues among which were breaks in service. It pointed out that MPs had been asking for certain breaks in service to

be discounted but that was not possible under the scheme rules, which had anyway been made significantly more generous in that regard than originally intended before the scheme opened. The BFA had raised some concerns about the issue of breaks in service at a meeting with officials before the scheme opened. They had argued that the eligibility criteria should not exclude former trawlermen who had periods of work on vessels that trawled in Icelandic waters at certain times during the year but in other waters at other times (for example, during the winter months, when the exceptionally harsh weather conditions in Icelandic waters prevented some vessels from going there). In response to that the scheme rules were amended to make clear that all former trawlermen who had continuous periods of work on vessels which made voyages to Icelandic waters would be potentially eligible, even if the voyages those vessels made were not exclusively to Icelandic waters. Service on vessels that never trawled in Icelandic waters, however, did not count under the scheme (unless done during a break of less than twelve weeks between voyages on qualifying vessels). Some Grimsby members of the BFA appeared to suggest that they would like eligibility extended to all distant water trawlermen or even to middle water trawlermen as well, regardless whether or not the vessels on which they worked ever fished in Icelandic waters but that would have been outside the parameters of the scheme as agreed with the Treasury.

The briefing paper noted that the BFA had also been concerned about between-voyage gaps of more than twelve weeks breaking continuity both for the purposes of the two year qualifying period and for the purposes of calculating the amount of payment due. They argued for 'special exceptions' that would justify a longer between-voyage gap being disregarded. It had finally been agreed by the then Secretary of State that all gaps, of whatever duration, should be disregarded, unless the former trawlerman took other work outside the industry, in which case the twelve week rule would stand. Therefore under the scheme rules, continuity was broken only by any between-voyage gap of more than twelve weeks during which any other work (including shore work or other fishing on non-Icelandic water vessels) was done. All other gaps counted as part of the period of continuous service as an Icelandic water trawlerman, regardless of what was done during them, which could include periods of sickness, injury, 'walkabout', training, national service or even terms in prison. However, one effect of that had been that some former trawlerman who had fifteen or twenty years' service on Icelandic water vessels and then did some shore work or fished on non-Icelandic water vessels for a time before returning to the industry found that they did not qualify for a payment, or qualified for only a reduced amount, as their work outside the industry broke their continuity for the purposes of the scheme rules. MPs had identified a number of such cases and had asked that such breaks be discounted. The paper also discussed the DTI's list of vessels. Officials accepted that when the scheme opened their list of Icelandic water vessels had not been wholly accurate. There had been insufficient time available to carry out the detailed research required. That might have led to errors in both directions but they would not reclaim payments, even if later information suggested they should not have been made. Since then they had made strenuous efforts and devoted considerable resources to ensure the accuracy of the list by checking reliable published sources.

18/07/01 Officials also provided further information as to what issues the individual port MPs might raise at a meeting with the MPs in a submission to the Secretary of State. The

referring Member had made a number of points, among which were breaks in service. Officials believed that the rules relating to them were simply not understood. The BFA and MPs had stipulated that breaks in service should break continuity but that was later relaxed at their request. Only work outside the industry or work on non-Icelandic water vessels broke continuity - not periods of sickness, injury, spells in prison etc. Officials had been more or less asked to ignore certain breaks in service where there was a 'deserving case'. However, if they 'bent' the rules for one, then there would be no justification for not doing the same for any other person. No one had denied that there were some very 'deserving' people who had fallen just the wrong side of the rules. The Member for Hull West and Hessle had also raised the issue of breaks in service and again officials believed that the rules had not been understood. It was just unfortunate that some people took shore work - for very valid reasons - but it still broke continuity under the scheme rules. He had also referred to hardship cases and quoted many cases of widows, people in severe financial difficulties and those who were terminally ill. They were paying those who were ill as quickly as possible but could not simply pay those who 'needed the money' regardless of the scheme rules. If there had been no compensation scheme then they would have had the same problem. The Member for Hull West and Hessle claimed that the rules had been changed and that that had happened while he was away on holiday. That was not true; nothing had changed since the scheme had first been set up. Officials pointed out, however, that concepts of what the **rules meant in practice** had changed as individuals who were expecting to receive a payment had been refused because they had fallen the wrong side of the line.

At the meeting with the MPs, the Secretary of State said the Government had consulted the BFA when they established the scheme rules and had carefully considered their views. She realised, however, that there were certain cases that did not fall within the rules. The MPs thus had an opportunity to tell her and the Minister of State about their concerns. The Member for Cleethorpes said that there were several issues, one of which was how breaks in service were defined. There had been a wrong interpretation of what the scheme was supposed to do. The referring Member said that he had faxed his concerns to the Secretary of State the previous day. Some vessels had been forced to fish in the North Sea and that should not be counted as a break in service. He required clarity on some aspects of the scheme. The Members for Aberdeen Central and Fleetwood asked for consistency in the application of the rules and the Member for Hull West and Hessle said that speed was not the main thing but accuracy.

Following the meeting with port MPs on 18 July 2001, the Secretary of State wanted a further meeting with them to cover those points for which there had been insufficient time that day. She also sent an email to policy officials. She said *'I'm quite worried by what I heard this morning. There is clearly a gulf between the expectation of the scheme - compensation for all trawlermen who lost their livelihood because of the 'Cod Wars' (which seemed to mean all fishermen who had ever fished in Icelandic waters) - and the actual scheme rules. But there is also the issue of whether we are actually being consistent in our treatment of trawlermen under the scheme rules'.* She and the Minister of State needed to see an analysis of the different groups that included trawlermen who left the industry altogether - for unemployment; or for non-fishing jobs; trawlermen who left Icelandic fishing and went into other fishing - a) on non-Icelandic vessels; b) on converted ex-Icelandic vessels; c) on non-converted Icelandic vessels. The Secretary

of State wanted to understand how each group (and there could be other categories) was treated under DTI's view of the scheme rules and why. She said *'I think it would also be helpful if officials were to meet the port MPs again, to pursue other points of detail, so that the MPs can let us have a summary note before Nigel (the Minister of State) and I try to resolve the problem. I must say that from what I've heard this morning, I think we will have to try very hard indeed to find some more money. A nightmare, but so is the alternative. It might also help to have chapter and verse on some of the cases where the MPs were claiming inconsistent treatment - with officials' view on whether there are different circumstances to explain different outcomes, or whether earlier cases may have been wrongly decided'.*

30/07/01 The Secretary of State's office emailed policy officials and thanked them for the note of the meeting with the port MPs of 24 July 2001. In consequence the Secretary of State required a full submission on how they could move forward. She was aware that any further investigation of the options would have resource implications so it would be helpful if the submission could include an indication of the cost of the various options and how the money could be found.

31/07/01 Policy officials sent a submission to the Secretary and Minister of State on the way forward. The submission discussed the cost of various rule changes that had been suggested. At paragraph 8 the submission discussed the issue of whether voyages on vessels not on the list of Icelandic water trawlers should not break continuity but should count towards it. If that suggested change were adopted it would go a long way to severing the link between the scheme and the 'Cod Wars' settlement. For that reason if Ministers were attracted to that option it would need to be put to the accounting officer. In effect so long as a man made a specified number of voyages on Icelandic water trawlers his entire fishing history would often count towards the calculation of compensation. In practice such a change would more or less have to be combined with abandoning the 1979 cut-off. Otherwise all those who continued any sort of fishing after 1979 would be disqualified. Port MPs would then be even less happy than at present. The financial cost would almost certainly be enormous. It could as much as double the cost of the scheme. As to the point about whether voyages made from overseas ports to which trawlermen were posted by their employers should not break continuity, officials believed the number of such cases to be in the order of 100. If that were correct the financial implications would not be great but it would represent a further major step away from the objective of the scheme and would make it harder to justify not making the more significant change of counting service on all non Icelandic vessels.

06/08/01 The Secretary of State's office emailed policy officials and said she had seen the submission of 31 July and the comments of the Minister of State of 2 August 2001 (which were not on file and which we have not therefore seen). The Secretary of State did not yet want to make a decision but preferred to discuss further with the Minister of State and officials. She had detailed and general comments. As to whether voyages on vessels not on the list of Icelandic water trawlers should not break continuity but should count towards it she commented that that approach looked untenable. More generally she commented that there was a real mismatch between expectations and what the scheme actually delivered - as well as some ambiguities in the rules of the scheme. She would therefore like to seek advice from counsel on the risks of judicial review.

31/08/01 The legal section sent further instructions to counsel to advise in conference on 4 September. They told counsel that five rule changes were 'on the table' in isolation or in combination. Two of those changes were:

- Work on vessels which were not Icelandic water vessels should not count towards the qualifying period for compensation but did not break continuity.
- Work on vessels fishing out of foreign ports should not count towards the qualifying period for compensation but did not break continuity so long as their employer had posted men to such ports.

counsel was asked to advise in conference as to the risk of successful legal challenge to the compensation scheme if any one of six options labelled A-F to change the rules were implemented. Option E was that work on vessels other than Icelandic water vessels should not be counted as other work which, if done during a break from work on Icelandic water vessels of more than twelve weeks, would break continuity.

The effect of option E would be that the continuous period of work could be treated as not being broken by 'relevant breaks' of longer than twelve weeks from work on Icelandic water vessels, where the paid work done during those breaks was other fishing work such as work done out of non-UK ports. Since breaks of longer than twelve weeks where no other paid work was done could count towards the continuous period of work (if, where possible, evidence of the absence of other work during the break was provided) such fishing work could effectively attract compensation. Another effect of the change would be that a sufficiently long period of work on Icelandic water vessels would not be cancelled out by a 'relevant break' of longer than twelve weeks (where the work in question was other fishing work) followed by a period of Icelandic water vessel work which was not long enough to qualify for compensation. Equally, a trawlerman who had a long period of service followed by a relevant break of more than twelve weeks in which he did other fishing followed by a shorter 'last continuous period of work of at least two years' would be compensated in respect of the whole of that time. Counsel was referred to paragraphs 8 and 10 in the 31 July submission to the Secretary of State and paragraphs 13 and 14 in the 26 July submission. The legal section took the view that options E and F were matters of policy which could be taken up without legal risk. Making such changes without making one of the main changes sought by the BFA could leave them open to criticism, however.

August 01 The BFA Aberdeen sent to policy officials a document entitled 'Practical Pointers'. The principal points made by the document represented what would have been put to the Government had such an opportunity been made available to the trawlermen of Aberdeen. Point 1 related to the 1979 cut-off point and point 2 concerned the rule about two years' continuous service. Point 2b said that the twelve week break in service rule created unnecessary problems. It could normally be accounted for in most cases via prolonged injury time, a common event in a high risk industry. Promotional development of three to four months at nautical college, depending on qualifying time, although that had been recognised and accepted by administrators. To undergo major repair or maintenance work to a deep-sea trawler, unlike modern timescales, could be a lengthy procedure and it often took a crewman many more weeks to finally rejoin his ship and shipmates and that rendered the twelve week rule of little use or relevance.

04/09/01 The conference with counsel discussed option E and noted that it was necessary to consider continuity in connection with it. Although the twelve week break had an

arbitrary flavour they did have a good reason for some such rule, in that men must have been dependent on, and committed to, Icelandic water fishing work in order to be eligible for compensation. Additionally, it was the BFA who had suggested that anything over twelve weeks would mean that men were effectively out of the industry. No one had been suggesting that there was anything wrong with the twelve week rule although it had produced some hard cases such as the man who was onshore to look after his sick wife and who did some onshore work. Although that was a hard case it was not the kind which would have been reasonably foreseeable, such that the decision to make the rule could be said to be perverse. The point of option E (saying that work on vessels other than Icelandic water vessels did not break continuity and qualified for compensation) was to alleviate the hard case of a man who had a long career on Icelandic water vessels but who was unable to establish continuity in the relevant five year period. If the amendment were made it would create bizarre anomalies like one of the case examples given to counsel. The example given was of a man who had spent his whole career working on inshore and middle water vessels most of which did not go to Icelandic waters at all. However, he made one trip towards the start of his career and one in 1978 towards the end of his career on vessels that had at some time made a couple of trips to Icelandic waters (not when he was on them) and so qualified as Icelandic water vessels. Without the change as suggested by option E he had no valid claim to compensation. However, if option E were implemented all his voyages between the two trips on Icelandic water vessels would count towards compensation so that he would receive a significant amount despite not having been to Icelandic waters and not fished on any vessel which was significantly affected by their closure. They were entitled to take that into account when considering option E. They were also entitled to treat the fact that the option would weaken the link with the 'Cod War' settlement as an important policy consideration.

Another option would be to discount other fishing work when assessing whether continuity was broken but only to compensate in respect of Icelandic water vessel work. That would avoid overcompensation of trawlermen such as the one in the example and alleviate the hard case problem but the link to the 'Cod Wars' would still be weakened. It would also be very expensive and administratively difficult to compensate in respect of each voyage on an Icelandic water vessel. A challenge by someone excluded as a result of not taking option E would be that the decision to exclude them was perverse. One could not say that such a challenge would definitely fail - its strength would depend on its facts. At that stage it appeared, however, that challenges of that kind ought to be capable of being defended. It was accordingly defensible not to take option E. The decision to take that option was substantially one of policy.

15/10/01 The Secretary of State wrote to the Chief Secretary to the Treasury. She said that DTI had received numerous representations from port MPs and other representatives of the former trawlermen about certain aspects of the scheme that they considered were operating unfairly. Having considered the issues fully and in the light of legal advice she had concluded that the eligibility criteria of the scheme should be changed. The total cost of the scheme could go up to around £35 million - around £10 million more than they had thought. She was prepared to find the additional resources necessary to fund the rule changes from other DTI priorities. She hoped that, in the light of that, the Chief Secretary felt able to agree to her proceeding as she had suggested.

22/10/01 The Chief Secretary to the Treasury replied. He agreed that, given counsel's opinion, it would be pragmatic to relax the criteria as suggested rather than face the costly experience of a judicial review if the likelihood was that a case would be won. However, he expected it to be a once and for all change that did not lead to further #challenges by claimants at the new boundaries of the compensation scheme. In order to ensure that that was the case he asked the Secretary of State to look at both the presentation and the impact of the changes, before making any announcement.

30/10/01 Policy officials saw an article in the Grimsby Telegraph in which the referring Member was quoted as saying that the extra £10 million for the scheme was very good news. He went on to say that there were two problems which remained unresolved which meant that trawlermen could not rejoice at that stage. Breaks in service were causing problems for some people. Fishermen who had fished Iceland could have been put on North Sea vessels and that was counting against them. It was being seen as a break in service when in fact it was part of the condition of service. The second problem was that many vessels which fished the Faroe Islands also fished Iceland. If they fished north of the Faroes they were in Icelandic waters. That same day the office of the Secretary of State emailed a policy official and asked whether the issues raised by the referring Member in that article were really a problem and did they involve further changes of the rules or just changes in the list of vessels? They required advice as they (officials or the Minister) might need to make it clear to the referring Member that there would be no further changes to the rules. The policy official replied that the issues raised could well be a problem. Further and better particulars would be provided shortly. The Secretary of State's office responded that they required advice urgently because it appeared sensible to stamp on any new requests before the trawlermen turned it into a new campaign. Officials continued to discuss the two issues by email. They recognised that the argument that vessels which went to the Faroes should be regarded as Icelandic water trawlers could give them another significant problem. They needed to cover that and the breaks in service when submitting the rule changes for Ministerial approval. The Minister of State would not be sympathetic to further concessions. However, they needed to make sure they had a clear, Ministerially-agreed, and robust position. The legal section would be advised so that they had early warning though they did not think there could be a risk of challenge as their policy and practice had always been clear and consistent. As attention would from then on inevitably focus increasingly on the issue of breaks in service they required an update on the position regarding access to National Insurance records.

31/10/01 The discussion continued. A policy official noted that the Member for Hull West and Hessle had written in requesting a change in the rules so that periods on invalid vessels should not stop someone being paid or paid less. The case involved a break of about a year on non-valid vessels during 1972-73. Another letter had just arrived from the Member for Waveney. He wanted a change so that fishing out of Lowestoft on non-valid vessels should not count either. They needed to make clear to Ministers that the port MPs were not going to give up and go away on some of these issues and that it would be necessary to take a robust line on no further rule changes.

15/11/01 A policy official sent a briefing to the Minister of State in readiness for the Minister's meeting with port MPs on 21 November 2001. The briefing explained that on 26 October 2001 the Secretary of State had

announced two major changes to the compensation scheme. First, former trawlermen who fished on former Icelandic water trawlers after 31 December 1979 would no longer be disqualified from receiving compensation. Secondly, periods of service on former Icelandic water vessels of less than two years which took place between 1974 and 1979 and after a relevant break from working on those vessels, would no longer disqualify claimants. The official noted that the Government was satisfied that the scheme was properly targeted and was not prepared to make any further rule changes. Further briefing on other points that might be raised by the port MPs were attached as an annex. The further briefing in the annex dealt, firstly, with the impact of the change in the scheme rules. The briefing noted that as the industry was running down a number of trawlermen were forced, for various reasons, to take work on non-Icelandic water vessels. According to the scheme rules payment was calculated on the last period of continuous service on Icelandic water vessels in which there were no 'relevant breaks' of more than twelve weeks. A 'relevant break' was classed as a break during which other work was done. That meant any work other than on vessels that trawled in Icelandic waters. In effect that meant that a number of former trawlermen who had many years' unbroken service on Icelandic water vessels ended up receiving no payment at all as they did not have a two year consecutive period on Icelandic water vessels leading up to their final voyage. As the majority of those breaks occurred after 1974 they could then be ignored and more people would receive a payment.

21/11/01 The port MPs met the Minister of State, policy officials and representatives from RPS. The Member for Hull West and Hessle welcomed the recent changes but said that there were still minor problems, equally valid to the claimant. Continuity/breaks in service were still a problem as were invalid vessels. The continuity clause was a problem for most port MPs who shared their examples. A problem for Aberdeen and Grimsby was the 'pool' system where men were required by employers to take the next job that came up irrespective of whether it was on an Icelandic water vessel or not - this meant that many had found it difficult to satisfy the scheme criteria. The referring Member said that trips to Australia should not count towards the £1,000 per year but should not break continuity. The Member for Aberdeen Central said that the MPs were not requesting a further change in the scheme rules but that there should be scope for flexibility in the interpretation of the criteria and, in particular, to take on board circumstances that led to breaks in service.

18/12/01 The legal section sent a letter of instruction to counsel. They summarised the rules of the scheme regarding continuity for counsel. They concluded that summary with an example. A break from work on Icelandic water vessels of 10 weeks during which a trawlerman did ten weeks' work as a window cleaner would not break continuity, whereas a break of thirteen weeks during which a trawlerman did one day's work as a window cleaner would break continuity. The original proposal for what would constitute a break in continuity was a period of eight weeks rather than twelve, regardless of what was done during the period. The BFA had argued that it was often the case that men were away from Icelandic water work for longer than eight weeks, for many legitimate reasons. They had suggested that there should be a list of possible reasons for being away from work and that breaks during which those things were done which were longer than eight weeks would not break continuity. It was felt that having a list of permitted reasons for breaks would be too difficult to administer and that it would be too difficult to draw up a

comprehensive list in advance, leaving scope for matters to be disputed later. Ministers therefore decided to have only one activity, which if done at all during a break of longer than twelve weeks, would break continuity. That activity was 'work other than work as an Icelandic water trawlerman'. Doing anything else during a break would not break continuity provided there was no 'other work' done during the break.

The legal section explained to counsel that they thought there might be a risk of challenge to the decision not to count the prior service on Icelandic water vessels of someone who worked for more than twelve weeks on other vessels at the direction of their employer, when the prior service of someone who spent eight years in prison was not discounted and their time in prison was actually compensated. That decision could be regarded as irrational.

20/12/01 The legal section held a telephone conversation with counsel. On compensation payable to prisoners he agreed that the position looked unattractive and that it threw up a potential irrationality challenge. However, an applicant for judicial review would have the problem of establishing locus standi to bring a challenge. No one was being deprived of anything by the application of the rule it just resulted in more payments being made than might otherwise be the case. There was definitely scope for a challenge, however, and if counsel were advising an applicant, it would be to make a challenge based on the overall unfairness/irrationality of the scheme which was highlighted by the contrast between prisoners and those who were sent by their employers to work on non-Icelandic water vessels (a failure to treat like cases equally).

A DTI official wrote to her counterpart at the then Inland Revenue (the Revenue) about DTI's requirements for information about National Insurance contributions for certain claimants under the compensation scheme. She explained that a maximum payment would relate to a twenty year period and explained about continuous employment and relevant breaks under the scheme rules and that the men were only compensated for their last period of continuous work. Although all fishermen had breaks between voyages, not many were relevant breaks and thus did not break the continuous period of employment and did not affect the amount of compensation to which the man was entitled. The official explained the twelve week rule and that a break over twelve weeks in which paid work other than as an Icelandic water trawlerman was done would break continuity of employment. They had a number of claimants with breaks of more than twelve weeks but had no information about whether or not they took any paid employment during that break. Accordingly, they did not know whether or not there was a break in continuity for the calculation of compensation. That was why they sought information about National Insurance contributions. She hoped the information she had provided was sufficient to allow the Revenue to identify the information they held that would be useful to DTI. She said the problem that DTI officials had was that they did not know what details the Revenue held and how difficult it might be to provide DTI with particular details. DTI knew the name, National Insurance number and the precise period for which they sought information and they required detailed records of any National Insurance contribution made or credited during those periods. In some cases even summary annual information might help. The DTI official then provided a theoretical example as to how she and her colleagues planned to make use of the information. She confirmed that there might be around 500 claimants for which they sought information.

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14/01/02 The Chairman of the Hull BFA wrote to the Minister of State. He said the purpose of his letter was to express the great concern of the former trawlermen of Hull who were experiencing real difficulty in the processing of their claims. One of the main reasons for this difficulty related to the lengths of break in service which took them over a twelve week period. The result was that many men were only receiving a fraction of the money genuinely due to them. From the first meeting on 8 September 2000 that the Hull BFA attended with policy officials and representatives from RPS, the issue had remained unresolved ever since. A policy official had confirmed that breaks of up to twelve weeks would be disregarded. That official was advised by the Chairman that there would inevitably be cases of more than twelve weeks. His response was that each case would be looked at sympathetically. At no point, in the opinion of the Chairman, did he confirm that breaks in service over twelve weeks would automatically be discounted or would lead to a reduction in the compensation due to men. He argued that it was reasonable to consider that a man who returned to shore for a period in excess of twelve weeks after working on trawlers may have had valid reasons for doing so. If that were the case then the breaks should be counted as continuous service. The Chairman recalled that after the 'Cod Wars', with the trawler fleet in rapid decline, there were more men than trawlers and hence longer onshore breaks where the men were effectively unable to work but still registered as distant water trawlermen as their records showed. He asked the Minister to reconsider the then current view held by RPS on the question of breaks in service.

28/01/02 The Revenue replied to DTI's letter of 20 December 2001 concerning information about National Insurance contributions. The Revenue official explained that when he had met representatives from RPS in March 2001 he had been told that they felt the overwhelming majority of claims that would be lodged had by then been received. He had explained then, and a number of times since, that there was no statutory gateway between the Revenue and DTI for the purpose that DTI sought. The only way the Revenue could supply the information required was with the informed written consent of each of the individuals concerned. He asked how DTI proposed to obtain that consent. It would need to be in place and available for Revenue inspection before any transfer of information could take place. One point DTI had not covered in its letter was the years for which it sought data. The Revenue did not usually hold tax information beyond the normal statutory six year period for assessing and collecting tax which was of no use to DTI. The only source of information that might help would be individuals' National Insurance records. As he understood it, the information DTI sought would normally relate to years prior to 1975 which was the year the computerisation of National Insurance records was introduced. Prior to that the records were kept and still were in manual form. Each record showed the total number of weeks in each tax year for which National Insurance contributions were paid and the number of weeks for which unemployment or sickness credits were awarded. But it did not hold details of employers during the year unless the employer was part of the Graduated Pensions Scheme and even then only back as far as 1961. Therefore without actually digging out and going through the pre-1975 manual National Insurance record in each case it was impossible to say how the records maintained met DTI's requirements. The more options the Revenue introduced into any review of the records, the longer the process would take, the greater the resource need would be, and as he did not then know whether the Revenue

resource could be provided and, flowing from that, the greater the cost of the work. Since the Revenue were not resourced to carry out work on behalf of other departments DTI would be expected to meet the costs in full and would need to confirm that in writing in advance. The Revenue already had a considerable amount of work in hand and if DTI decided to take its request further it would have to go before the Revenue's Approvals Board and take its chance with all the other prospective new work.

27/02/02 A policy official emailed the legal section concerning a letter from the Member for Hull West and Hessle. They had to determine whether 'fitting out' a vessel was a relevant break or not. The policy official could see two scenarios. First, a former trawlerman could have been working on shore 'fitting out' or painting any old boat maybe because he was suspended or because there was no fishing work available. Secondly, a former trawlerman could have been 'fitting out' an Icelandic water vessel, as had been described in the claim in question, to prepare for its next voyage and that he would have actually sailed on it when it was ready. Up until then they had considered the first scenario a relevant break because the former trawlerman did not have anything to do with Icelandic water vessels. However, in the second, it did seem rather unfair to penalise a person who was actually working on an Icelandic water vessel preparing it for its next fishing trip. That could be taken as part and parcel of working in the Icelandic water industry whereas the first scenario could not. The policy official required advice. The legal section replied the same day. They said they thought it boiled down to whether work on Icelandic water vessels had to be work on such vessels at sea or whether shore work on such vessels could count as qualifying service. They understood the policy to be that no shore work counted. Paragraph 2.2 of the scheme rules defined a former Icelandic water trawlerman as a person who worked **at sea** on vessels. Paragraph 2.7 said that shore-based workers were not former Icelandic water trawlermen. Paragraph 3.2 defined a continuous period of work as work as an Icelandic water trawlerman (i.e. work **at sea** on vessels). A relevant break was one **between voyages** of at least twelve weeks during which work other than work as an Icelandic water trawlerman was done (i.e. work other than work **at sea** on vessels). The guidance notes were less clear, in that they talked about work on Icelandic water trawlers, without specifying that it must be at sea. They did say that shore-based workers were not eligible to claim but they did not refer to breaks being breaks 'between voyages'. Given the terms of the scheme rules and the fact that compensation was calculated by reference to voyage dates (paragraph 3.3), the legal section thought the effect of the rules was that the claimant's service on shore meant that his break was a relevant break. They agreed that it seemed unfair but then a great many hard cases had been created by the lines drawn in the scheme. They asked for confirmation that their understanding of the policy on shore work was correct.

01/03/02 A policy official had endorsed legal section's understanding of the policy on shore-based work, but another policy official expressed the view in an email that fitting out a vessel for sea fishing should count as Icelandic water fishing work which counted towards compensation. He understood what the legal section had said about the rules but they should also apply basic rules of fairness where they were able to do so. His understanding was that if, for example, a boat had new engines it might take more than twelve weeks to test them out. The boat's chief engineer might well do that prior to taking the boat on its next trip to Icelandic waters. To regard that as a relevant break was just asking for trouble. A relevant factor, to his mind,

was that a decision to regard such work as not breaking continuity was quite defensible - in fact he did not think they would ever need to defend it. In addition, he imagined there would not be large numbers of claimants in that position. If they tried to hold fast to the position that such work constituted a break, sooner or later they would be forced to reverse the ruling.

11/03/02 In discussing in an email a problem that had arisen as to whether the reference in the scheme to 200 miles meant nautical or imperial miles, a policy official recognised that, legally, the scheme rules could mean something other than what they intended them to mean. The rules had been put together in some haste and they were concerned at the time that they should be as straightforward as possible for operational staff to work with.

12/03/02 The legal section commented upon the 200 mile problem. They made the point that if there had been a conscious policy decision that the scheme refer to imperial rather than nautical miles then the legal section should have been instructed in those terms. If policy officials were not aware at the time of the distinction between nautical and imperial miles, then the reality was that the scheme had been devised on a mistaken assumption - perhaps because of an insufficient knowledge of the fishing industry or not consulting the appropriate people.

20/03/02 Policy officials issued a revised 'Eligibility criteria and procedure for making claims' that superseded the version issued on 2 October 2000 (see Annex A). It described a continuous period of Icelandic water trawling work as one during which there was no 'relevant break' of more than twelve weeks. A 'relevant break' meant a break during which other work - i.e. work other than on vessels that trawled in Icelandic waters - was done, regardless of whether that other work was done for all of the break or just part of it.

A policy official provided some 'lines to take' for the Secretary of State for a meeting with the Member for Aberdeen Central scheduled for 13 May 2002. The Member was likely to raise the point that trawlermen in Aberdeen worked the 'pool system' which meant that they frequently moved between vessels and had less opportunity to build up continuous service on Icelandic water vessels. The lines to take were that that type of system was not unique to Aberdeen. Trawlermen in Grimsby and Fleetwood had similar working patterns. The reason why those in Aberdeen had more broken service in the Icelandic water industry was that there were fewer Icelandic water vessels. The Member was also likely to raise the point that trawlermen should not be penalised for having worked on non-Icelandic water vessels when, had they been in prison, their service would have been counted as continuous. The line to take was that if a trawlerman left the Icelandic water industry for a period of longer than twelve weeks and during that period he did other work, he cannot be considered to have remained dependent on the industry for his livelihood during that period. If he subsequently returned to the industry for a continuous period of two years or longer then clearly he became dependent upon it again and was entitled to compensation based on that latter period. 'Other work' had to include work on vessels that never went to Icelandic waters. Otherwise a claimant could receive compensation for long periods of inshore or other fishing work unrelated to the Icelandic water industry. If a trawlerman had a break between voyages on Icelandic water vessels but did no other work, then he was considered to have remained reliant on the industry throughout regardless how long the break was and regardless what he did during it. That allowed for the fact that there were many bona fide reasons why trawlermen had long breaks between voyages

including unemployment, injury, illness, 'walkabout', training etc. That generous provision did mean that periods in prison could count toward continuity - but only if the individual worked in the Icelandic water industry before his sentence and returned to it immediately afterwards having done no other work in between. The Member was likely to say that periods of service on Icelandic water vessels should be aggregated and breaks disregarded. The line to take was that the Government could not agree to that. It would constitute a major change in the scheme rules and would add unacceptably to its cost.

13/05/02 A policy official sent a briefing note to the Secretary of State for her meeting with the Member for Aberdeen Central that evening. The official recommended that the Secretary of State resisted any pressure from the Member for Aberdeen Central to make further changes to the scheme rules. He said that the Member was likely to raise concerns about the way in which the scheme rules impacted on Aberdeen-based trawlermen and would argue that those rules should be changed or interpreted 'more flexibly' to reflect their 'special circumstances'. In each of the four main ports involved in Icelandic water trawling - Hull, Grimsby, Fleetwood and Aberdeen - the industry had certain distinctive features. However, the scheme rules were designed to be as fair as possible to all former trawlermen affected by the settlement of the 'Cod Wars' in the 1970s irrespective of the port out of which they fished. It would have been neither practical nor desirable to have had different rules for different ports. The net effect of the changes to the scheme rules the previous autumn had been to increase the estimated total expenditure on the scheme from £25 million to £35 million. Actual expenditure on the scheme to date, with only a relatively small number of claims remaining to complete processing, was £37 million. Any further rule changes to make the qualifying criteria more generous would clearly increase expenditure still further. He therefore recommended that the Secretary of State stand by her earlier view that the changes made the previous autumn should represent a final settlement.

15/05/02 A policy official emailed colleagues concerning a telephone conversation she had had that morning with the adjudicator, who informed her about a meeting he had had with the Member for Aberdeen Central. The Member had told him that he was not asking the Secretary of State to change the rules but to reinterpret them. The adjudicator told him that the way in which he wanted to reinterpret the rules was not possible. The Member replied that he was more or less aware of that but he had to try. The adjudicator had also warned that the port MPs were considering an application for judicial review over the scheme because it was flawed. Part of the case would be that DTI had not taken the 'pool system' into account. The policy official stated that as her colleagues knew, they were perfectly aware of the 'pool system' when they did the ex gratia arrangements and so were fully aware of it for the scheme. She had thanked the adjudicator for the warning and told him they had been warned about the possibility of judicial review previously and had sought legal advice on the matter. The purpose of her email was to advise that the matter had raised its head again. She said *'I have not copied it to legal at this stage in case they start worrying about it'*. On 16 May 2002 she emailed the office of the Secretary of State to ascertain whether there had been any feedback from the meeting between the Member for Aberdeen Central and the Secretary of State.

21/05/02 The Member for Hull West and Hessle wrote to the adjudicator and acknowledged that the adjudicator would have to

reject the appeal of a constituent for reasons he understood. He did not want to bog down a scheduled meeting with the Minister in respect of that issue as there were far more important issues to argue. In particular, the distant water trawlermen from Hull who were losing vast amounts of money because they were sent to fish in middle waters for sometimes very short periods during the course of a long career.

23/05/02 The office of the Secretary of State emailed a reply to the policy official. They said the Member for Aberdeen Central had raised the case of one of his constituents who had been paid for all of his service because an eight year spell in prison had not counted as a break in service. Another constituent had been obliged by his employer to work in a non-Icelandic water vessel for a period of time and that had been counted as a break in service. Unsurprisingly, the Member thought that situation somewhat unfair. The Secretary of State explained that she thought there was very little they could do in that situation as that was the way the rules were drafted. In discussing the response to the Member's constituent the Secretary of State wanted a 'soothing' reply and the draft run past the Member before it was sent.

10/06/02 An official sent a briefing to the Minister of State in preparation for the meeting the Minister was to have later that day with the port MPs. The briefing explained that the MPs would raise the issue of breaks in service and explained the meaning of 'relevant break' under the scheme rules. The briefing said that in effect that had meant that a small number of former trawlermen who had many years' unbroken service on Icelandic water vessels ended up receiving a very small payment as their continuity was broken by fishing on invalid vessels. That same day the Minister of State met the port MPs together with policy officials and RPS representatives. The Member for Cleethorpes explained that some former trawlermen had many years' service on Icelandic water vessels but their continuity had been broken towards the end of their career by some short trips on non-valid vessels. That meant that they only received payment for a couple of years. That situation had been made worse by the fact that a number of former trawlermen had been paid who never went to Iceland at all. The Minister explained that there were no 'fishing passports' and that was why the scheme had had to rely on the vessels on which people had sailed. In addition, Treasury costings were done on the assumptions that breaks of over twelve weeks would break continuity. The Member for Hull West and Hessle replied that former trawlermen were sent to such places as Lowestoft to fish by the then Employment Department otherwise they would have lost their unemployment benefit. He emphasised that that would not require any rule changes, which the MPs realised would be difficult, but an extension of the list that already existed of allowable reasons for a break in continuity. The Member for Aberdeen Central said that paragraph 3.2 of the scheme rules made things difficult. He confirmed that trawlermen had no control over where they went to fish and unemployment benefit would have been lost if they had not complied. As a lawyer, he was concerned with equity - payments had been made to people who had had long breaks away from the industry (such as prison) and that was unfair. He considered that the rules should be subject to a judicial review as they had not been brought in by way of Statutory Instrument. However, he considered that an addition could be made to the 'exemptions' in the rules whereby people with many years' service on Icelandic water vessels could have their invalid service counted. A policy official explained there were no such exemptions in the rules. The only thing that broke continuity was 'work other than Icelandic water trawlermen' and that that

included fishing on non-Icelandic water vessels. The Minister confirmed that to discount invalid service in the way suggested would need a change in the rules and the Secretary of State had made clear she was not prepared to make any more changes. The Member for Aberdeen Central replied that he did not think that it was possible to stop legal action as the scheme was not being targeted at those who were meant to receive payments and that the scheme would be open to ridicule if that ever got into the papers. The Member for Hull West and Hessle did not want to open the floodgates; they just wanted those few cases to be looked at again.

21/06/02 On 21 June 2002 officials from the Minister of State's office emailed policy officials concerning a letter from the referring Member to the Minister that related to Mrs A and required a reply. He had sent the Minister a copy of his letter to the scheme's adjudicator of 17 June concerning the decision to reject Mrs A's appeal against the award made to her. He pointed out in that letter that the Icelandic water vessel on which Mr A had sailed in 1972 required a refit that lasted more than twelve weeks and Mr A had never ceased or had any intention to cease his employment as an Icelandic water trawlerman. He had had no choice but to accept whatever vessel was offered to him during the period of his own ship's refit and thus remained an Icelandic water trawlerman during that period. His service as an Icelandic water trawlerman was not breached by the fact of the vessel's refit and the benefit regulations at that time meant that he must take whatever vessel he was given during the period of the refit. The referring Member therefore viewed it as incorrect to interpret the period of the refit of Mr A's ship as a break in service under the regulations, as well as being manifestly unjust.

26/06/02 The adjudicator replied to the referring Member concerning Mrs A's appeal. He said that while he understood that Mr A had taken the break from Icelandic water work in 1972 *'for perfectly understandable reasons'*, that break constituted a 'relevant break' under the rules of the scheme. He was in no doubt whatsoever that DTI's decision in the case was correct in accordance with the rules of the scheme.

10/07/02 The Minister of State replied to the referring Member. He said he had noted the content of the letter to the adjudicator but it was up to the adjudicator to make a final decision on the claim having considered all the information at his disposal.

22/08/02 A policy official emailed a colleague in Scotland and said that they had discussed the fact that the Aberdeen trawlermen and their representatives had been lobbying Scottish Ministers about the Aberdeen 'pool system' and the fact that fewer former Icelandic water trawlermen from Aberdeen had qualified for payments. By way of background, the official sent excerpts from letters sent by the then Minister of State to a number of Scottish MPs. She advised that the Member for Aberdeen Central had always attended the meetings with Ministers in London to discuss the progress of the scheme and represented the trawlermen of Aberdeen and they were always aware of the 'pool system' when the scheme rules were first drawn up. One excerpt from one of the Minister's letter said the following. *'You may be assured that I am fully aware of the nature of the Aberdeen "pool system". This type of system was not unique to Aberdeen. A similar system operated in Grimsby and, to a lesser degree, in Hull. The fact that fewer vessels went to Icelandic waters from Aberdeen means that it is more of a problem for former Aberdeen trawlermen. However, by the same token, they were also less directly affected by the closure of Icelandic waters as a result of the settlement of the "Cod Wars".'*

30/10/02 A policy official emailed colleagues and said that he had that afternoon met the Member for Hull West and Hessle on a matter unconnected with the scheme. They had nevertheless discussed the scheme for a few minutes. The Member had said that the only outstanding problem in his mind was that of deep sea trawlermen who, when unable to find a deep sea vessel, were told that they must seek work outside the deep sea industry or lose their employment benefit. He had asked about any views that the independent adjudicator might have on the issue. As they were meeting the following day to discuss a number points about the scheme he wondered if they might touch on that topic, perhaps in an informal pre-meeting. He had not really considered the question one way or the other but as the Member had raised it he thought they should respond.

31/10/02 A policy colleague responded. He said they were aware of the difficulty the Member had raised when the scheme was set up and, as long as the work on other vessels was not for a period of twelve weeks or more, it was ignored. However, under the scheme rules they could not just ignore it. Although the adjudicator had made his position clear previously, he was happy to discuss it with him.

27/11/02 The legal section emailed policy officials, copied to RPS. They said that at a recent meeting with policy officials the legal section had agreed to revisit the issue of voyages from non-UK ports in the light of the adjudicator's comments and the concerns of policy officials. At their meeting policy officials had given a useful explanation of the way the scheme had been implemented as a result of which the legal section had a better understanding of the issues that made it difficult to argue that trawlermen must only have fished out of UK ports. On a strict textual interpretation of the scheme they considered it possible to argue that work on a vessel that did not start and end its trawling voyage at a port in the UK was a 'relevant break' as defined at paragraph 3.2 of the scheme. That was because for periods where the vessel did not operate out of a UK port, the trawlerman was not working as an Icelandic water trawlerman because he was not working on a vessel which was fishing out of UK ports. That was because, on a strict textual interpretation, the qualification 'not necessarily exclusively' could be argued to apply to 'made voyages' but not to 'fished out of UK ports'. As work done on vessels that did not fish out of UK ports was 'work other than work as an Icelandic water trawlerman', it would therefore count as a relevant break. However, it was also possible to interpret the language of the scheme so that that qualification applied to both 'made voyages' and 'fished out of UK ports'. The scheme had been implemented according to a list of approved vessels. If a strict interpretation of the wording was taken and it was concluded that a vessel must only have fished out of UK ports, that would mean that vessels that had made voyages that did start and finish in UK ports so as to satisfy the scheme criteria could become ineligible from time to time. That would obviously have unintended and undesirable consequences. If they agreed that a vessel need not have started and ended every voyage in a UK port, then once a vessel had qualified to be on the list it remained there, and all voyages made on that vessel counted towards a 'continuous period of work' under the scheme. As far as they could see the scheme did not envisage that a vessel could 'fall off' the list. Such an interpretation appeared to be in accordance with the purpose of the scheme, which was 'to compensate former UK-based Icelandic water trawlerman for the loss of their industry due to the settlement of the 'Cod Wars' of the mid 1970s', and not lead to claims other than ones which were comprehended by that purpose being accepted. The legal section's view was that it

would be difficult to persuade a court that the adjudicator's view on the issue was wrong, particularly as DTI would wish to argue for a purposive interpretation with regard to the 200 mile limit point. They therefore considered that they should concede that a voyage which did not start and end in the UK need not count as 'other work' as it then did.

02/12/02 The Minister of State met with the port MPs together with policy officials and representatives from RPS. The MPs raised the question of the inclusion of vessels on the list and also breaks in service. The referring Member suggested that policy officials could take into account the reason for taking work outside the industry (such as if his wife was seriously ill). Officials suggested that that would be open to challenge for not using discretion in other cases that people considered to be just as valid and it would be very difficult to 'hold the line'. They had to apply the rules of the scheme strictly and fairly. The Minister agreed to write to the Member for Aberdeen Central and explain how breaks in service were calculated and what circumstances broke continuity of service.

11/12/02 The Minister of State wrote to the Member for Aberdeen Central. He said that a policy official had explained at the meeting that they had never produced a definitive list of exemptions to breaks in service of more than twelve weeks in which other work was done. Rather, they considered each case on its merits as it was **only** work other than on Icelandic water vessels that broke continuity of service. His officials looked at the specific details of what each trawlerman was doing during a break of more than twelve weeks away from fishing on Icelandic water vessels and decided whether that fell into the category of 'other work'. Naturally, the majority of the cases involved periods of unemployment, sickness or 'walkabout' - all of which were common to the industry. None of those broke continuity. A number of different causes for breaks had emerged throughout the scheme, such as studying at Nautical College, work in the Merchant Navy, working on vessels in the dry dock and also time in prison. In each case a judgment had been made in accordance with the criteria laid down in the scheme rules. He said they could not, as the Member had suggested, take into account the reason for the break away from the industry as that would involve officials in trying to decide cases where there would be no documentary evidence after so much time had passed to back up any statements made. He also explained that, where a former trawlerman was ill but also took work outside the Icelandic water trawling industry during a break of more than twelve weeks, then that period of work would still break continuity. That was because he would have ceased to rely on the Icelandic water trawling industry for his livelihood. The Member had specifically raised the interpretation of paragraph 7.9 of the scheme rules. That, in fact, related to the way in which such breaks were handled and what sort of proof his officials would need to help verify a trawlerman's assertion that he was not working outside the industry during a break. Examples were given of the type of evidence they required. The examples in paragraph 7.9 were never intended to be a list of exemptions. He had copied the letter to the other port MPs.

2003

24/01/03 The referring Member wrote to the Minister of State. He said that the break in service rule was being unreasonably interpreted as not only a break from fishing (apart from being sent to prison) but also as work in the North Sea. Such breaks were more common on the Grimsby side of the Humber because that port had more alternative forms of fishing which men were required to pursue (by the dock office, and the eligibility rules for unemployment benefit, as well

as by the owners' own rules) if no Icelandic trips were available, but also for qualifications such as Mate's and Skipper's tickets since some owners, such as Ross, required that those taking tickets should work for a specified time in the North Sea to gain experience before being put back into Icelandic fishing. In Hull, with no alternatives, if someone left fishing that was a clean break and they therefore qualified for compensation. In Grimsby, particularly as the industry ran down, there were alternatives and those were then being wrongly interpreted as breaks in service. Hence compensation payments to Grimsby trawlermen were often less, particularly if they qualified for two years between 1972 and 1979 but were cut off because of a break from long previous service. The result was a perceived injustice which had caused a lot of bad feeling south of the Humber and needed to be put right. The Minister had indicated he would bear the Grimsby complaints in mind in his closing decisions on the scheme and the referring Member thought that he must do so. That meant not treating North Sea work as a break in service.

06/02/03 A policy official emailed a colleague a copy of the referring Member's letter of 24 January 2003 for information only. The colleague replied that with regard to the Member's point about breaks in continuity because of fishing in other waters, his letter almost answered his own point. He had stated that in Hull, if a man could not get a distant water trip, he was out of the industry whereas in Grimsby there were several varieties of fishing so if a man could not get work on a distant water vessel he could find other fishing work. He asked was that not exactly what the scheme was designed to do. That is, to compensate men who were forced out of the industry by Iceland's 200 mile limit but not to compensate (or to compensate to a lesser extent) those who's work in the industry also included fishing different, if less remunerative, areas. If that was correct, it might more or less explain the difference between the total amounts paid out to Hull and Grimsby trawlermen.

November 03 DTI decided that they would again revise the rules of the scheme so that it was clear that from 26 March 2004 time spent in prison did not count as continuous service with respect to a claim under the compensation scheme.

Annex C

Other complaints received concerning 'relevant breaks' in the Trawlermen's Compensation Scheme

Complainant W: On 21 May 2002 the scheme's independent adjudicator told Mr W that before 23 August 1975 his last voyage on a vessel valid under the scheme was 7 February 1975. That was a break of more than twelve weeks before he returned to a valid vessel during which time he did other work (a 'relevant break'), even though he had not chosen to do so.

Complainant X: On 16 November 2002 the scheme's independent adjudicator told Mr X that before 18 April 1973 his last voyage on a vessel valid under the scheme was 27 November 1972. That was a break of more than twelve weeks before he returned to a valid vessel during which time, as he was an engineer, he performed other work 'in the yard' supervising the decommissioning of a valid vessel as instructed by his employers (a 'relevant break').

Complainant Y: On 12 July 2002 the scheme's independent adjudicator told Mr Y, who worked as a radio operator, that before 10 June 1971 his last voyage on a vessel valid under the scheme had been more than twelve weeks previous to that date. In that period his employers permitted him to be ashore for compassionate reasons because of his seriously disabled son and his wife's illness during which he worked on a temporary basis at a communications centre, solely for the purpose of further training in order to keep up to date with the latest technology, as directed by his employers (a 'relevant break').

Complainant Z: On 4 January 2005 the scheme's independent adjudicator told Mr Z, who worked as a captain, that before 29 March 1963 his last voyage on a vessel valid under the scheme had been more than twelve weeks previous to that date. In that period, Mr Z maintained he had performed other work on North Sea vessels as directed by his employers (a 'relevant break') who prevented him from continuing work on an Icelandic vessel by retaining Mr Z's certificate of insurance without which he could not go to sea thereby forcing him to do North Sea work.

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office
ID5521985 02/07 360730 19585

Millbank Tower
Millbank
London SW1P 4QP

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Published by TSO
(The Stationery Office)
and available from:

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