

## GUIDANCE NOTE

### FOR PARTICULAR EMOTIONAL HARDSHIP CLAIMS

This Guidance Note sets out the requirements of the Trust Deed, and the principles and procedures adopted by the Trustees in relation to claims for particular emotional hardship.

#### Eligibility (Clause 4.3) - summary of requirements

The eligibility requirements for making a claim for compensation for particular emotional hardship are as follows:

- ❖ The Claimant must be a Qualifier as defined under the Scheme, which broadly means they must be a relative.
- ❖ The Claimant must have suffered an identifiable psychiatric condition falling within the definitions contained in ICD-10 or DSM-IV (or their equivalents).
- ❖ The psychiatric condition must have;
  - lasted longer than a calendar month, and
  - have been caused or materially aggravated by the fact that the victim has contracted vCJD, and
  - have caused **particular** emotional hardship.

Importantly, you will note that the particular emotional hardship must be attributable to the psychiatric condition, not simply to the illness and death of the victim. The estimated date of onset of the psychiatric condition is therefore important.

#### Meaning of particular emotional hardship

The Trustees have identified from the sample cases that an important consideration is the extent to which the Claimant is unable to function, as a result of the psychiatric condition, as he/she did before, in work or in social and personal life, including within family relationships. This will involve a comparison between the Claimant's functioning before and after suffering the psychiatric condition.

Relevant considerations will include:

- ❖ Duration
- ❖ Functioning
- ❖ Prognosis

## Compensation

There will be a single non-graduated payment of £15,000 paid from the Discretionary Fund.

### Evidence and Procedure for submitting a claim

#### Evidence

It is for Claimants and their solicitors to decide what claims can be properly submitted under the terms of the Trust Deed and what evidence should be lodged in support. The Trustees will consider all applications and will not decline to do so because, for example, a Claimant has declined to be examined by an expert psychiatrist or has chosen to be examined by a psychiatrist who is not on the panel approved by the Trustees. However the Trustees can only exercise their discretion to make payments under the terms of the Trust Deed insofar as they can be satisfied that the relevant criteria have been met. They will therefore rely upon the Claimants and their solicitors to submit the best possible evidence, in the appropriate format, and taking account of the matters which the Trustees will be considering as highlighted in this Guidance Note.

#### Procedure

All Discretionary Fund claims on behalf of a victim's family should be submitted at the same time, together with confirmation of any such claims that are not being pursued. The claims that are payable from the Discretionary Fund are:

- (i) Purchased and gratuitous care, and related expenditure provided before the earlier of a Care Package being implemented or 31 March 2001.
- (ii) Victim's loss of earnings that causes **particular** hardship to the Victim or his/her dependants.
- (iii) Carers' loss of earnings that causes **particular** hardship to them.
- (iv) Payment to a qualifier for a psychiatric condition giving rise to **particular** financial or emotional hardship.
- (v) Payment to a Dependant of the Victim based on the Victim's projected earnings that causes **particular** hardship.
- (vi) Payment to a Dependant where dependency would have continued beyond that person's 21<sup>st</sup> birthday (e.g. because of the Dependant's disability).
- (vii) Payment to a dependant who is unable to obtain life insurance or mortgage protection without having to pay a higher premium, which causes **particular** hardship.

The Trustees recognise that almost all claims under point (i) have already been dealt with and that claims under point (vii) may only materialise at a later date.

It is suggested that, in order to avoid the stress of undergoing further psychiatric examination and preparing evidence unnecessarily, potential claimants consider carefully whether their claim does

amount to particular emotional hardship. This is an issue upon which independent advice will be of great value and can be provided either by a solicitor or Charles Russell.

**For those proceeding, please at the first stage only provide a summary on no more than two sides of A4 setting out the grounds of the claim, supported (if one is available), by an opinion from an expert psychiatrist.** The Trustees may then request further information.

### **Costs of making an application**

The Trustees have a discretion under the terms of the Trust Deed to reimburse Claimants for the costs of their solicitors in submitting such claims. They will however only be willing to do so in relation to work reasonably undertaken and in relation to a beneficiary under the Scheme, and may therefore decline to make payment for claims submitted which clearly do not meet the criteria set out in this Guidance Note. This is because of their duty to control costs being paid out of the Trust Fund. The Trustees also have a discretion to pay the psychiatrist's fees for examining the Claimant and preparing a Report, provided that these are appropriate and reasonable.

### **Conclusion**

The Trustees are anxious to deal with these claims against the Discretionary Fund in a sympathetic and expeditious manner. They have had to adopt principles and procedures which comply with the Trust Deed, whilst at the same time trying to cut down on the distress suffered by families, reduce the amount of work involved and control the legal costs to be paid out of the Trust Fund. They certainly do not wish to discourage claims but hope that families will recognise that the principles and procedures summarised above have been adopted to enable the Trustees to decide claims in a fair and consistent manner and in accordance with the provisions of the Trust Deed.