

SPECIAL REPORT

MINER COMPENSATION, THE LEGAL COMPLAINTS SERVICE
AND THE COAL HEALTH COMPENSATION SCHEME

JOHN MANN MP

British Coal (BC) was taken to court in 1996 under two separate group litigations supported by the mining unions. In 1997, BC was found negligent in relation to Vibration White Finger (VWF), and in 1998 for chest diseases. The liabilities of British Coal transferred to the Government on 1 January 1998 and the Government was duly responsible for handling the compensation payment schemes.

Claims Handling Agreements (CHAs) for the two schemes were negotiated with a group of solicitors who were the chosen representatives for the large numbers of firms involved. These complex Agreements defined how the claims were dealt with by claimants' solicitors, the Government's claims handlers, the medical assessors etc. They specified the compensation a claimant would expect to get if they had pursued the claim under common law through the courts and the fees that the solicitors who signed up to the Agreements should expect to be paid.

In February 2005, there was a national outcry when an investigation into the Coal Health Compensation Scheme revealed that law firms across the country had wrongly taken a share of their clients' compensation. It has been estimated that 20% of the 750,000 beneficiaries have been improperly charged by solicitors who made deductions to compensation awards despite a fixed fee agreement with the Government.

When the final claim is settled, solicitors will have been paid in excess of £1.25 billion by the government for handling chest disease and VWF miners compensation claims. Top earners include Thompsons (£156m), Raleys (£96m) and Beresfords (£144m).

Those solicitors who failed to advise their clients that the government were funding all the costs of the scheme enabled them to deduct or charge fees directly from the compensation payments. Greed and the opportunity to make a fast buck became the order of the day with at least 60 solicitors deducting additional sums from miners compensation payments. Miners were told that this money was a success fee, others handed the money over to claims handlers when there was no evidence of them doing any work to assist with or progress the claim.

Four and a half years on, only a fraction of the 150,000 victims have come forward. According to figures of 20th July 2009, the Legal Complaints Service (LCS) has dealt with only 5,410 complaints, 50.4% of which have been upheld. More worrying is the fact that

over 1,000 of these complaints have come from just one constituency – Bassetlaw – where 64.8% of complaints have already been repaid. Both of these percentages are greater than the 10% projection advanced by the Law Society in February 2008. Only two other constituencies, Durham North and Rother Valley have significant numbers of complainants.

A comparison between the number of complaints and the total number of claims in Bassetlaw reveals significant discrepancies. In total, 14,143 victims of chest diseases and VWF have shared a compensation package worth £85.7 million. However, there are five constituencies in England that have received compensation payouts in excess of £90.0 million. An additional thirty-four constituencies, excluding Bassetlaw, have received damage payments of between £23.2 million and £86.7 million. None of these constituencies have complaint rates like Bassetlaw. This leads to serious questions about the ease with which law firms are escaping repayments.

It is estimated that the LCS has assisted in the recovery of more than £1.56 million from solicitors. This equates to an average repayment of £908. For many people this sum has included an additional amount for the distress and inconvenience they have experienced in trying to recover what is rightfully theirs. However, many ex-miners continue to miss out on regaining this money.

With 150,000 miners being entitled to repayments, £100 million is still to be accounted for. If the percentage of complaints upheld by the LCS is indicative of wider legal malpractice, the repayment package, including additional compensation will be in excess of £350 million.

Some miners have successfully negotiated private settlements with their representatives, without consulting the LCS. In Bassetlaw, over a hundred miners have been refunded via this route, but this represents only a fraction of the repayments that have been gained due to the investigations by the LCS. This suggests that non-LCS-related settlements are in a significant minority, and that the paucity of LCS-driven complaints is a consequence of ignorance, not choice.

It is also understood that the LCS are now driving solicitors who have deducted fees towards a voluntary repayments system where they contact their clients who have been wrongly charged and repay them the money directly. The disadvantages of this system is that it ensures that the full scale of the situation remains behind closed doors, is reliant on clients remaining at the same address, a short time scale that they are able to respond in and it removes the opportunity for representation. Strong objections have been lodged by John Mann MP and by Towells Solicitors of Wakefield, who have never deducted any monies.

Unfortunately, four and half years after the initial outcry about deductions to compensation awards, we are no closer to knowing the true cost of additional legal charges or the number of miners unduly penalised by the greed of leading law firms.

To ensure that the biggest personal injury scheme in British legal history remains something to be proud of, it is crucial that this deception is brought to the attention of all 628 constituencies (97%) affected.

The Government has previously promised to write to every claimant. As the Minister responsible for the original 1998 Agreement, it is now incumbent upon Lord Mandelson to write to every claimant this Autumn.

COPD CLAIMS – TOP 15 BY CONSTITUENCY

(SOURCE = <http://bis.ecgroup.net/Publications/EnergyClimateChangeDECC/CoalMining.aspx> (JUNE 2009 FIGURES))

	CONSTITUENCY	LIVE RECEIPTS	DECEASED RECEIPTS	TOTAL	TOTAL SETTLED CLAIMS	DAMAGES PAID
1	Barnsley East and Mexborough Co Const	6010	6889	12899	12596	£58,252,701.75
2	Easington Co Const	5756	6782	12538	12374	£65,259,540.28
3	Bolsover Co Const	6383	5880	12263	12050	£40,911,920.70
4	Hemsworth Co Const	5399	5760	11159	10868	£52,964,225.71
5	Sherwood Co Const	6139	4864	11003	10701	£32,047,955.98
6	Rhondda Co Const	3288	7377	10665	10461	£63,153,594.73
7	Ashfield Co Const	5284	5085	10369	10138	£35,916,899.34
8	Mansfield Co Const	5720	4014	9734	9457	£29,915,569.35
9	Doncaster North Co Const	4127	5518	9645	9419	£41,015,269.28
10	Wansbeck Co Const	3861	5567	9428	9290	£34,906,279.75
11	Ogmore Co Const	3405	5928	9333	9190	£58,387,632.51
12	Barnsley Central Boro Const	4297	4769	9066	8811	£38,078,522.25
13	Merthyr Tydfil and Rhymney Co Const	3326	5698	9024	8797	£58,874,150.40
14	Bassetlaw Co Const	4757	4193	8950	8753	£31,473,815.10
15	Cynon Valley Co Const	3118	5584	8702	8401	£54,453,309.20
TOTAL (628 CONSTITUENCIES)						
		233,554	322,157	555,711	545,258	£2,249,983,606.36

VWF CLAIMS – TOP 15 BY CONSTITUENCY

(SOURCE = <http://bis.ecgroup.net/Publications/EnergyClimateChangeDECC/CoalMining.aspx> (JUNE 2009 FIGURES))

	CONSTITUENCY	LIVE RECEIPTS	DECEASED RECEIPTS	TOTAL	DAMAGES PAID
1	Sherwood Co Const	5,911	1,301	7212	£58,798,981.79
2	Bolsover Co Const	5,388	1,198	6586	£71,285,003.12
3	Mansfield Co Const	5,205	1,030	6235	£56,624,975.90
4	Barnsley East and Mexborough Co Const	4,975	766	5741	£60,968,097.86
5	Ashfield Co Const	4,629	1,102	5731	£46,953,334.71
6	Easington Co Const	4,973	609	5582	£84,039,183.79
7	Bassetlaw Co Const	4,401	792	5193	£54,193,016.33
8	Hemsworth Co Const	4,259	608	4867	£48,011,301.90
9	Doncaster North Co Const	3,284	604	3888	£45,718,029.46
10	Wansbeck Co Const	3,344	477	3821	£37,047,858.96
11	Barnsley Central Boro Const	3,150	463	3613	£37,520,884.55
12	Don Valley Co Const	2,890	589	3479	£38,066,324.36
13	Pontefract and Castleford Co Const	3,112	293	3405	£33,086,059.47
14	Barnsley West and Penistone Co Const	2,653	408	3061	£28,301,017.35
15	Rother Valley Co Const	2,577	318	2895	£28,586,796.65
TOTAL (589 CONSTITUENCIES)					
		141,350	23,828	165,178	£1,667,698,658.35

COPD AND VWF CLAIMS – TOP 15 BY CONSTITUENCY

(SUMMARY OF THE ABOVE)

	CONSTITUENCY	COPD LIVE RECEIPTS	COPD DECEASED RECEIPTS	TOTAL	VWF LIVE RECEIPTS	VWF DECEASED RECEIPTS	TOTAL	TOTAL NUMBER OF RECEIPTS
1	Bolsover Co Const	6383	5880	12263	5,388	1,198	6586	18849
2	Barnsley East and Mexborough Co Const	6010	6889	12899	4,975	766	5741	18640
3	Sherwood Co Const	6139	4864	11003	5,911	1,301	7212	18215
4	Easington Co Const	5756	6782	12538	4,973	609	5582	18120
5	Ashfield Co Const	5284	5085	10369	4,629	1,102	5731	16100
6	Hemsworth Co Const	5399	5760	11159	4,259	608	4867	16026
7	Mansfield Co Const	5720	4014	9734	5,205	1,030	6235	15969
8	Bassetlaw Co Const	4757	4193	8950	4,401	792	5193	14143
9	Doncaster North Co Const	4127	5518	9645	3,284	604	3888	13533
10	Wansbeck Co Const	3861	5567	9428	3,344	477	3821	13249
11	Barnsley Central Boro Const	4297	4769	9066	3,150	463	3613	12679
12	Rhondda Co Const	3288	7377	10665	1,269	218	1487	12152
13	Don Valley Co Const	3697	4408	8105	2,890	589	3479	11584
14	Ogmore Co Const	3405	5928	9333	1,783	327	2110	11443
15	Pontefract and Castleford Co Const	3986	4049	8035	3,112	293	3405	11440
	TOTAL (628 CONSTITUENCIES)	233,554	322,157	555,711	141,350	23,828	165,178	720,889

NUMBER OF BASSETLAW RECEIPTS AS A PERCENTAGE OF THE WHOLE = 14,143 / 770,889 * 100 = 1.96%

COAL HEALTH COMPENSATION SCHEME PAYMENTS – TOP 15 BY CONSTITUENCY

(SUMMARY OF THE ABOVE)

	CONSTITUENCY	VWF DAMAGES	COPD DAMAGES	TOTAL
1	Easington Co Const	£84,039,183.79	£65,259,540.28	£149,298,724.07
2	Barnsley East and Mexborough Co Const	£60,968,097.86	£58,252,701.75	£119,220,799.61
3	Bolsover Co Const	£71,285,003.12	£40,911,920.70	£112,196,923.82
4	Hemsworth Co Const	£48,011,301.90	£52,964,225.71	£100,975,527.61
5	Sherwood Co Const	£58,798,981.79	£32,047,955.98	£90,846,937.77
6	Doncaster North Co Const	£45,718,029.46	£41,015,269.28	£86,733,298.74
7	Mansfield Co Const	£56,624,975.90	£29,915,569.35	£86,540,545.25
8	Bassetlaw Co Const	£54,193,016.33	£31,473,815.10	£85,666,831.43
9	Ashfield Co Const	£46,953,334.71	£35,916,899.34	£82,870,234.05
10	Merthyr Tydfil and Rhymney Co Const	£19,875,085.12	£58,874,150.40	£78,749,235.52
11	Ogmore Co Const	£18,389,649.36	£58,387,632.51	£76,777,281.87
12	Cynon Valley Co Const	£22,004,934.83	£54,453,309.20	£76,458,244.03
13	Rhondda Co Const	£12,926,992.36	£63,153,594.73	£76,080,587.09
14	Barnsley Central Boro Const	£37,520,884.55	£38,078,522.25	£75,599,406.80
15	Don Valley Co Const	£38,066,324.36	£34,099,846.46	£72,166,170.82
	TOTAL (628 CONSTITUENCIES)	£1,667,698,658.35	£2,249,983,606.36	£3,917,682,264.71

COMPENSATION PAYMENTS AWARDED TO BASSETLAW RESIDENTS WITHOUT REFERENCE TO THE LEGAL COMPLAINTS SERVICE

(SOURCE = Bassetlaw Constituency Office, 68a Carlton Road, Worksop, Nottinghamshire, S80 1PH)

<u>SOLICITORS</u>	<u>COMPENSATION</u>
AVALON	£1,177.66
COLEMANS	£746.41
DONNE MILEHAM & HADDOCK	£1,686.36
IRWIN MITCHELL	£289.94
LOPIAN WAGNER	£1,423.04
STUART BELL	£1,076.70
THOMPSONS	£285.00
HOPKINS	£352.50
ASHTON MORTON SLACK	£352.50

THE OUTCOME OF COMPLAINTS REGISTERED WITH THE LEGAL COMPLAINTS SERVICE AS OF 30 JUNE 2009

(SOURCE 1 = HANSARD: HC Deb, 20 July 2009, c271W)

(SOURCE 2 = Legal Complaints Service, Victoria Court, 8 Dormer Place, Leamington Spa, Warwickshire, CV32 5AE)

<u>OUTCOME</u>	<u>NUMBER OF COMPLAINTS</u>	<u>PERCENTAGE OF TOTAL</u>
COMPLAINT CONCILIATED	2,160	39.9%
ONGOING	782	14.5%
COMPLAINT NOT UPHELD	673	12.4%
COMPLAINT UPHELD	565	10.4%
COMPLAINT WITHDRAWN BY CUSTOMER	449	8.3%
COMPLAINT OUTSIDE THE JURISDICTION OF THE LCS	159	2.9%
CLOSED TEMPORARILY	147	2.7%
OTHER	475	8.8%
TOTAL	5,410	100.0%

940 OF THESE COMPLAINTS (17.4%) HAVE BEEN BROUGHT FORWARD BY BASSETLAW CONSTITUENTS.

64.8% OF BASSETLAW COMPLAINTS (609) HAVE ALREADY BEEN UPHELD OR CONCILIATED.

DEDUCTIONS RECLAIMED BY THE LEGAL COMPLAINTS SERVICE

(SOURCE = HANSARD: HC Deb, 20 July 2009, c271W)

BETWEEN 1 JANUARY 2002 AND 31 DECEMBER 2007, THE LEGAL COMPLAINTS SERVICE DID NOT KEEP SPECIFIC DATA ON THE AMOUNT OF INDIVIDUAL AWARDS. DURING THIS PERIOD, A LUMP SUM FIGURE OF **£602,414.03** WAS AWARDED TO COMPLAINANTS.

BETWEEN 1 JANUARY 2008 AND 30 JUNE 2009:

COMPENSATION AMOUNT		NUMBER OF PAYOUTS	AVERAGE PAYOUT *	TOTAL
(X)	(Y)			
£1.00	to £25.00	3	£13.00	£39.00
£25.01	to £50.00	3	£37.51	£112.52
£50.01	to £100.00	22	£75.01	£1,650.11
£100.01	to £200.00	83	£150.01	£12,450.42
£200.01	to £300.00	180	£250.01	£45,000.90
£300.01	to £400.00	219	£350.01	£76,651.10
£400.01	to £500.00	284	£450.01	£127,801.42
£500.01	to £600.00	165	£550.01	£90,750.83
£600.01	to £700.00	105	£650.01	£68,250.53
£700.01	to £800.00	110	£750.01	£82,500.55
£800.01	to £900.00	96	£850.01	£81,600.48
£900.01	to £1,000.00	92	£950.01	£87,400.46
£1,000.01	to £1,500.00	244	£1,250.01	£305,001.22
£1,500.01	to £2,000.00	33	£1,750.01	£57,750.17
£2,000.01	to £3,000.00	24	£2,500.01	£60,000.12
£3,000.01	to £4,000.00	6	£3,500.01	£21,000.03
£4,000.01	to £5,000.00	3	£4,500.01	£13,500.02
£5,000.00	+	2	£6,000**	£12,000.00
				£1,143,459.85

RED TEXT = APPROXIMATE CALCULATIONS

* THE MIDPOINT BETWEEN (X) AND (Y)

** A CONSERVATIVE ESTIMATE NECESSITATED BY THE ABSENCE OF (Y)

COMPENSATION AWARDED BEFORE 1 JANUARY 2008 £602,414.03
COMPENSATION AWARDED BETWEEN 1 JANUARY 2008 AND 30 JUNE 2009 (ESTIMATE) £1,143,459.85
TOTAL £1,745,873.88

NUMBER OF COMPLAINTS UPHELD OR CONCILIATED AS OF 30 JUNE 2009 = **2,725** (50.4%)

AVERAGE AWARD (ESTIMATE) = **£640.69**

NUMBER OF BASSETLAW COMPLAINTS UPHELD OR CONCILIATED AS OF 30 JUNE 2009 = **609**

ESTIMATED REPAYMENT = £640.69 * 609 = **£390,180.21**