

vCJD

Guidance Note for Assessment of Hardship

1. General Principles

- 1.1 1.Particular Emotional or Financial Hardship must be attributable to a psychiatric condition, not simply to the illness and death of the Victim.
- 1.2 Financial hardship is qualified by the adjective 'particular', and must therefore be more than is normal or usual. It is clear from the phraseology used in the Trust Deed that there will be financial hardship in many if not most of the cases in which a claimant is suffering or has suffered from a psychiatric disorder, but that additional compensation will only be payable where the hardship is of a different magnitude, that is to say beyond that suffered by most families.
- 1.3 Claims for particular emotional and financial hardship will be treated as separate categories of claim.
- 1.4 A psychiatric expert report will normally be required, whether claims are for emotional and/or financial hardship.

2. Particular Financial Hardship

- 2.1 It is clear that there will be financial hardship in many if not most of the cases in which a Claimant is suffering or has suffered from a psychiatric disorder, but that additional compensation will only be payable where the hardship is particular.
- 2.2 The test is financial hardship, not financial loss. Although the nature and scale of financial loss will be material considerations, it does not follow that financial loss, whatever its scale, has resulted in particular financial hardship. Thus a comparable level of financial loss may result in particular financial hardship in one case, but not in another. All will depend on the circumstances of the individual case.
- 2.3 Factors that could, depending on the circumstances of the case, give rise to particular financial hardship include:
 - Fall in living standard.
 - Borrowing
 - Selling possessions

- Use of savings
- Result of debt default
- Loss of job benefits in kind.
- Loss of earnings.
- Loss of pension.
- The costs of moving house.

2.4 Factors which will also be taken into account include whether:

- The date of onset of the psychiatric disorder and the financial hardship claimed are causally connected.
- Financial hardship has been alleviated by payments of Basic Sum or dependency. Where appropriate, account will be taken of state benefits.
- Losses can be made good from such payments.
- There are prospects of re-employment.

However, other payments, including life insurance payments or inheritances from the estate of the victim (other than the Basic Sum), will not usually be taken into account.

2.5 Some claims have been submitted for financial hardship where it is difficult to establish that it was the psychiatric condition which caused the financial loss because, for example, the loss of employment occurred much later. In these circumstances, it may be simpler to establish a claim for particular emotional hardship.

2.6 It may be easier for families of earlier victims to make claims successfully for particular emotional or financial hardship because of the lack of understanding and support which was available to them, and because payments of compensation which would relieve financial hardship were not available until later.

2.7 When making a claim for **particular** financial hardship, careful consideration must be given to whether a potential claim for Carer's Loss of Earnings exists. Claims for hardship due to caring for a Victim and hardship caused by a psychiatric condition will be considered separately. However only one cause of hardship can be compensated for each defined period of time.

Therefore Claimants may wish to bring a claim for Carer's Loss of Earnings **first** before submitting a claim for **particular** financial hardship. Alternatively, Claimants should outline carefully what *type* of hardship was suffered during clearly defined periods of time. For example, hardship due to care 2008 – 2009, hardship due to psychiatric condition 2009-2012. Failure to do so may mean that a Claimant is unable to pursue a claim for Carer's Loss of Earnings at a later date.

3. Compensation

3.1 The Trustees would like to be able to compensate in full the actual and financial losses sustained by those who have suffered particular financial hardship. They therefore propose to ask the Secretary of State to increase the size of the Discretionary Fund, but recognise that given the budgetary restraints imposed by the Discretionary Fund when the Scheme was negotiated it is unlikely to be increased to such an extent as to enable full reimbursement of such losses. They therefore propose to compensate for particular financial hardship by reference to two categories, particular financial hardship and secondly, cases where the particular hardship has been extreme.

3.2 This assessment will be in their discretion and will take account of the factors referred to above. The two levels of payment will be for "particular hardship" and "extreme particular hardship", and may have to be limited to £20,000 and £40,000 respectively because of the limited amount which may be available in the Discretionary Fund. Whether these figures will be higher or lower will depend upon projections for the number of claims against the Discretionary Fund and upon the Secretary of State's response to the Trustees' request for a larger amount to be made available.

4. Carers' Loss of Earnings Causing Particular Hardship

4.1 The definition of hardship is narrower under clause 5.4 as it is a pre-condition that the carer should have suffered loss of earnings. The particular hardship does not have to have been caused by a psychiatric disorder. However factors will include those set out for particular financial hardship in paragraph 7 above.

5. Compensation

5.1 The Trustees will exercise their discretion in deciding an appropriate sum for the particular hardship and will deduct any other payments made to the carer under clause 5.3. The loss of earnings has to have been caused by the provision of care, and therefore the duration of the claims will be from the time the Claimant started to provide care to the Victim until the death of the Victim. See Carers' Loss of Earnings - Guidance Note.

6. Evidence to be Submitted

6.1 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, under the terms of the Trust Deed, the Trustees can only exercise their discretion to make payments insofar as they can be satisfied on the evidence submitted to them. They will therefore rely upon the Claimants and their solicitors to submit the best possible evidence, taking account of the matters which the Trustees will be considering as highlighted in this Guidance Note.

6.2 All Discretionary Fund claims on behalf of a Victim's family must be submitted at the same time, with confirmation of any such claims which are not being made. Possible claims are as follows:

- (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.
- (vi) Payment to a dependant for a period beyond the age of 21.
- (vii) Payment to a dependant who is unable to obtain life insurance or mortgage protection without having to pay a higher premium.

The Trustees recognise that claims under point (vii) may only materialise, and be submitted, at later date.

See also Carers' Loss of Earnings – Guidance Note.