

## GUIDANCE NOTE

### FOR PARTICULAR FINANCIAL 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** financial hardship.

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

The eligibility requirements for making a claim for compensation for **particular** financial 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 of the Claimant 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** financial hardship.

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

**PLEASE NOTE:** 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.

## 2. Meaning of particular financial hardship

The Trustees have considered several sample cases and have identified the principles that will be applied to claims for **particular** financial hardship. To ensure the Trustees comply with the requirements of the Trust Deed, they have adopted a three-stage approach:

- 2.1 Has the claimant suffered financial loss?
- 2.2 Is the financial loss attributable to a psychiatric condition caused or materially aggravated by the fact that the victim has contracted vCJD?
- 2.3 Has the financial loss caused **particular** financial hardship? In this respect, the Trustees will need to assess the extent of the financial loss and the claimant's ability to bear the loss. Relevant considerations will include:
  - The Claimant's loss of past and future net income, for example loss of employment, career, and pension.
  - The net incomes or other financial contributions of other members of the household.
  - Borrowing.
  - Any financial consequences, such as bankruptcy, or home repossession.
  - Impact on standard of living.
  - Whether the financial loss has been alleviated by any gratuitous financial support and/or previous payments from the Trust.
  - Where appropriate, account will be taken of state benefits.

## 3. Compensation

There will be a single payment of either £10,000, £25,000 or £40,000 from the Discretionary Fund depending on the severity of the **particular** financial hardship.

The Trustees are mindful that all members of a particular household may have suffered if a member of that household suffered **particular** financial hardship. To reflect this, a

single payment of compensation may be made per household to be shared between the household members.

#### **4. Evidence and Procedure for submitting a claim**

##### **4.1 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.

A precedent is attached to this Guidance Note and should be completed by Claimants or their legal advisors. This will ensure that the Trustees are provided with the information they require.

##### **4.2 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 set out in the attached document.

It is suggested that, in order to avoid the stress of undergoing psychiatric examination and preparing evidence unnecessarily, potential claimants consider carefully whether their claim does amount to **particular** financial hardship. This is an issue upon which independent advice will be of great value and can be provided either by your solicitor or Charles Russell.

**For those proceeding, please submit a claim in accordance with the attached document, not amounting to more than 3 sides of A4 and (if one is available) an opinion from an expert psychiatrist.** The Trustees may then request further information.

#### **5. 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 appropriately incurred and reasonable.

## **6. 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 in accordance with the provisions of the Trust Deed and as to whether they rank as "particular".