



INTERNATIONAL
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COMPENSATION
FUND

EXECUTIVE COMMITTEE
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Agenda item 3

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INCIDENTS INVOLVING THE IOPC FUND

BRAER

Note by the Director

1 Introduction

Since document FUND/EXC.36/5 was issued, the following developments have taken place in respect of the BRAER incident.

2 Claims for Compensation

2.1 Sale of Farm

2.1.1 At its 34th session, the Executive Committee was informed by the Director that the owner of the largest farm on Shetland, which had been put up for sale shortly before the BRAER incident, had approached the Director to enquire whether the IOPC Fund would buy the farm. It should be noted that this farm is located on the cliffs below which the BRAER grounded. The Executive Committee endorsed the Director's position that the IOPC Fund could not buy the farm (document FUND/EXC.34/9, paragraph 3.3.15).

2.1.2 This farmer has received several payments in respect of the cost of emergency feed, extra labour and equipment following the contamination of the farmland by wind-blown oil following the incident.

2.1.3 Both the estate agent who was instructed to sell the farm and the farmer have indicated that negotiations are now in progress with a prospective purchaser of the farm. The farmer has maintained that the final selling price may be less than would have been expected had the BRAER incident not occurred.

2.1.4 While a claim has not yet been submitted, the Director is aware that a claim will be presented in the near future when the sale of the property is finalised.

2.1.5 The Director submits for consideration by the Executive Committee whether part of the alleged reduction in the selling price may be considered as "damage caused by contamination".

2.2 Personal Injury Claims

2.2.1 As mentioned in paragraph 3.14 of document FUND/EXC.36/5 claims have been submitted by three individuals who maintain that their health has suffered as a result of the BRAER incident. In view of these claims, the Director has studied the question as to whether and, if so, to what extent the Civil Liability Convention and the Fund Convention apply to personal injury.

2.2.2 The text which formed the basis of the deliberations at the 1969 International Conference which adopted the Civil Liability Convention contained in the draft of Article I.5 the following definition of pollution damage:

"'Pollution damage' means loss or damage outside the ship carrying oil, caused by the escape or discharge of oil, wherever such escape or discharge may occur, and includes the costs of preventive measures."

2.2.3 During the Conference, several proposals were made to amend the text of that definition for various reasons. The question of whether the definition as proposed covered personal injury was discussed. The Japanese delegation stated that it did not think that personal injury and loss of life should be covered, as compensation for that was already provided under the 1957 Convention relating to the limitation of liability of owners of sea-going ships. The proposal made by the Japanese delegation to exclude personal injury from the draft text was, however, rejected (Official Records of the International Legal Conference on Marine Pollution Damage, 1969, pages 663-664).

2.2.4 It should be noted that, at the Conference, the draft text was amended in order to limit the scope of the Convention to damage caused by contamination.

2.2.5 The definition of pollution damage in the Civil Liability Convention (Article I.6) as adopted by the Conference reads:

"'Pollution damage' means loss or damage caused outside the ship carrying oil by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur, and includes the costs of preventive measures and further loss or damage caused by preventive measures."

2.2.6 In light of the discussions at the 1969 Conference, the Director considers that the Civil Liability Convention in principle covers personal injury, provided that such injury is caused by contamination. It would be for the claimant to prove that the alleged damage was actually caused by contamination by the oil escaping from the ship in question and the amount of the loss or damage sustained. Another question is whether, if a claimant fulfils this burden of proof, he would be entitled to compensation only for actual economic loss. The preparatory works do not give any guidance on this point.

2.2.7 As regards the claims for personal injury submitted so far, the three claimants have described the alleged damage as follows:

- (a) sickness, nausea, symptoms of gastritis, nervous distress;
- (b) chest pains; aggravated asthma;
- (c) unspecified health problems due to the inhalation of oil.

2.2.8 In the view of the Director, the claimants have not shown that they have actually suffered personal injury caused by contamination by oil from the BRAER. He has taken the position, therefore, that these claims cannot be accepted.

2.2.9 The Shetland Islands Council has carried out an extensive examination of the health effects on the population following the BRAER incident. It is expected that this report will be published in early 1994. It should be noted, however, that the Council has publicly stated that there was no evidence of any adverse health effects as a result of the incident.

2.3 General Claims from the Fishing Fleet for Depressed Prices

2.3.1 The Shetland Fish Producers' Organisation, which represents all of the Shetland fishing fleet, has also provided statistics which in its view shows a reduction in fish prices as a result of adverse media and marketing reaction. The Organisation has notified the Braer Claims Office that claims will be presented in respect of all vessels, possibly under one claim administered by the Organisation.

2.3.2 The Director, with the assistance of external experts, is at present studying the developments of the price of fish following the BRAER incident.

2.4 Transport Company

2.4.1 A claim for £51 121 has been submitted by a haulage company based on Shetland which makes regular deliveries to and from the Scottish mainland.

2.4.2 The claimant has stated that a significant element of the company's business is the transportation of salmon from three farms located within the exclusion zone from Shetland to Aberdeen. The company has maintained that, following the incident, as a result of the imposition of the exclusion zone and the destruction of the 1991 salmon intake, their vehicles have been less than fully loaded on the outward journey from Shetland. The claimant has emphasised that the company has not benefited from increased deliveries to Shetland following the incident, as these have been handled by a competitor. The company also makes the wooden pallets on which goods are transported. These pallets are used by the company and are also sold to other companies on the island. The company has alleged that it has suffered a loss of income due to a reduction in the quantity of fish shipped and a reduction in the number of pallets required.

2.4.3 The Director submits for consideration by the Executive Committee whether the loss covered by this claim should be considered as damage caused by contamination.

2.5 Shetland Islands Tourism

2.5.1 Shetland Islands Tourism has submitted a proposal for a marketing campaign to counteract the negative effect of the BRAER incident on tourism. It has been stated that over the last ten years, tourism on Shetland has increased by 11% per annum and that this growth is attributed to aggressive marketing on the part of Shetland Islands Tourism. It has been maintained that, while the reduction in the number of tourists to the island during 1993 has been partly offset by the number of business visitors generated by the BRAER incident, the underlying number of tourists has declined. Shetland Islands Tourism has estimated a loss of tourist revenue of approximately £2.1 million for 1993. The claimant has asserted that, due to the declining number of tourists and reduced number of BRAER related visitors, it is expected that the tourist industry will suffer a loss in the region of £3.8 million during 1994. According to the claimant, future losses for the next five years in the event that no marketing is carried out are estimated in the amount of £24.6 million. Shetland Islands Tourism has expressed the view that a £2.5 million marketing campaign over the next five years would have the effect of reducing the estimated damage by £20 million.

2.5.2 On 23 September 1993, Shetland Islands Tourism submitted a marketing project for the period 1994-1998, totalling £3 395 8000, containing the following main elements:

- marketing from a database containing past enquiries and customers;
- establishment of specialist Shetland Islands travel agent network both in the United Kingdom and parts of Scandinavia;
- targeted consumer press/magazine advertising in the United Kingdom, Scandinavia and other north European markets;
- international advertising and public relations using media covering specialist interests, such as angling, archaeology and bird-watching;
- creation of new events or festivals designed to provide more benefits for potential visitors to Shetland;
- increased marketing cost-effectiveness through the appointment of a marketing recovery co-ordinator.

2.5.3 Shetland Islands Tourism has not yet provided any details of the losses allegedly suffered during the 1993 tourist season which has now ended.

2.5.4 Subject to any instructions which the Executive Committee may wish to give him, the Director will examine this claim relating to marketing costs in the light of the criteria set out in paragraph 3.9.9 of document FUND/EXC.36/5.

3 Current Situation in Respect of Claims

As at 27 September 1993, 693 claims had been received. Out of these, 558 had been approved and 135 were being examined. The situation can be summarised as follows:

Type of Claims	Approved	Amounts Approved £
Clean-up	4	5 418.57
Property (houses etc)	290	999 706.23
Farming (advance hardship)	123	1 263 601.83
Farming transport/services	16	155 323.64
Farming emergency feed (200 crofters & farmers)	21	477 382.15
Fishing (advance hardship)	54	807 434.80
Salmon farms (advance hardship & 1991 slaughter payments)	16	9 551 361.54
Fish Farm (services)	3	343 501.52
Fish Processors	17	1 211 548.14
Voluntary Groups	12	134 498.47
Tourism	<u>2</u>	<u>51 442.98</u>
	558	£15 001 219.87

4 Action to be Taken by the Executive Committee

The Executive Committee is invited to:

- (a) take note of the information contained in this document;
 - (b) give the Director such instructions as it may deem appropriate in respect of claims relating to:
 - (i) sale of farm (paragraph 2.1);
 - (ii) personal injury claims (paragraph 2.2);
 - (iii) general claims from the fishing fleet for depressed prices (paragraph 2.3);
 - (iv) transport company (paragraph 2.4); and
 - (v) Shetland Islands Tourism (paragraph 2.5).
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