2. The slaughter and compensation scheme

Introduction

2.1 In June 1988, the Bovine Spongiform Encephalopathy Order 1988 introduced the compulsory notification of BSE and the ruminant feed ban.\(^1\) In respect of notification, the Order required farmers or their vets to notify the local Divisional Veterinary Officer (DVO) as soon as possible, if they suspected that an animal was affected by BSE. MAFF would send one of its own vets to investigate, and in the meantime the farmer was required to keep possession of the animal.\(^2\)

2.2 On 8 August 1988, two further Orders came into effect: The Bovine Spongiform Encephalopathy (Amendment) Order 1988\(^3\) and The Bovine Spongiform Encephalopathy Compensation Order 1988.\(^4\) These Orders set out what was to be done with those animals detained on suspicion of being infected with BSE. They introduced a policy of compulsory slaughter of BSE-infected animals and payment of compensation to the owner of the slaughtered animal (referred to as the slaughter and compensation scheme). The events which led to the introduction of the Orders are described in vol. 3: The Early Years 1986–88. Their later counterpart Orders in Northern Ireland are described in vol. 9: Wales, Scotland and Northern Ireland.

2.3 This chapter examines the operation of the slaughter and compensation scheme. It begins with a description of the procedure by which animals showing clinical signs of BSE were notified, inspected, valued and, where necessary, slaughtered. The scheme applied to animals under suspicion of having the disease, by virtue of their showing clinical signs, and was a significant public health measure removing these animals from the human food chain. In Chapter 3 we look at the public health measure introduced in November 1989 to remove from the human food chain certain high-risk tissues from subclinical animals, ie, those incubating the disease but not yet showing clinical signs.

2.4 Following the commencement of the slaughter and compensation scheme, a number of practical difficulties with its operation became apparent. In response, measures were introduced such as the *ex gratia* compensation policy and the adoption of random ante-mortem inspection of cattle in domestic slaughterhouses in England and Wales. We outline why such measures were considered necessary and the form that they took.

2.5 The major problem identified in the early days of the slaughter and compensation scheme was the level of compensation payable to owners of BSE suspects. Critics of this aspect of the scheme argued that even though compensation was fixed at 50 per cent of the animal’s *sound* market value (ie, 50 per cent of its

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1. The introduction and operation of the ruminant feed ban is described in vol. 5: Animal Health, 1989–96
2. Bovine Spongiform Encephalopathy Order 1988, article 4 (L2 tab 1)
3. L2 tab 1A
4. L2 tab 1B
value if it had not been ill), there was an incentive for less scrupulous farmers not to notify suspected BSE cases. Following lobbying by industry and consumer groups, the Government increased the compensation to 100 per cent in February 1990. This chapter charts the move towards this change in policy. It also deals with a further change in the calculation of compensation in 1994.

2.6 While the perceived low level of compensation was one possible reason for farmers not to notify their BSE suspects, the growing importance of having a herd with BSE-free status meant there was another pressure. The chapter examines BSE-free herd status in this context. The general level of compliance with the slaughter and compensation scheme is also addressed. Although there was considerable speculation about farmers avoiding their obligation to notify BSE suspects, concrete evidence of cattle owners deliberately doing so remained scarce.

2.7 Annex 1 of this chapter summarises the terms of the relevant Orders on slaughter and compensation and the subsequent amendments to the Orders up to 20 March 1996.

Introduction of the slaughter and compensation scheme

2.8 A full account of the introduction of the scheme is given in vol. 3: The Early Years, 1986–88. In the following paragraphs, we recap the main parts of that story.

2.9 MAFF officials originally recommended a slaughter and compensation scheme in February 1988. The advice of Sir Donald Acheson, the Chief Medical Officer (CMO), was sought in March 1988, and on his recommendation the Southwood Working Party was set up in May 1988 to consider the implications of BSE. Meanwhile MAFF officials explored the possibility of persuading the industries affected to fund a compensation scheme. On 21 June 1988, the Southwood Working Party communicated its first interim recommendations to Mr (later Sir) Derek Andrews (MAFF Permanent Secretary) and to the CMO.

2.10 It was the Working Party’s ‘considered opinion’ that arrangements should be made to ensure that the carcasses of ‘infective animals’ were condemned and destroyed by incineration or a comparable method. Mr Keith Meldrum, MAFF Chief Veterinary Officer (CVO), recalled in his statement to us that this recommendation was significant in the context of the discussions MAFF was having with industry about who should pay for any slaughter and compensation scheme.

2.11 In a minute dated 22 June 1988, Mr Alistair Cruickshank, MAFF Under Secretary responsible for the Animal Health Group, noted that once the industry became aware of the Working Party’s recommendation in respect of slaughter, it

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5 Compensation was also subject to a ceiling set by reference to average market prices of sound animals, as described later in this chapter.
6 October 1983–September 1991
7 The Southwood Working Party was established in May 1988 to examine the implications of BSE on animal and possible human health implications, and to advise the Government on any necessary measures
8 October 1987–February 1993
9 YB88/6.21/S.1–5.2
10 YB88/6.21/S.2
11 Mr Meldrum was CVO from June 1988 to April 1997
12 S184 Meldrum para. 86
13 December 1986–December 1989
would have grounds to argue that the Government had no alternative but to require affected animals to be slaughtered. Accordingly, under the Animal Health Act 1981, compensation would have to be paid.  

2.12 On 23 June 1988, Mr Cruickshank provided Mr Andrews with a submission for Mr John MacGregor, the Minister of Agriculture. Mr Andrews put forward the submission to Mr MacGregor on 24 June 1988. It explained the advice received from Sir Richard Southwood and recommended the introduction of a slaughter and compensation policy with the rate of compensation set at 50 per cent of market value. This rate was compatible with precedents for other compensation schemes for animal diseases. In the minute covering the submission, Mr Andrews commented that MAFF was still pressing industry to meet half the costs of the scheme but he considered that ‘the chances of them paying up at the end of the day are small’. As it seemed that such a scheme would have to be financed by the Government, the submission attached a draft letter for the Minister to send to Mr John Major, Chief Secretary to the Treasury.

2.13 Mr Cruickshank’s submission reported that there had been a suggestion from the Chairman of the National Farmers’ Union (NFU) Animal Health Committee, Mr Ralph Baker, that he (on a personal basis) ‘would be content with a relatively low rate of compensation provided the Ministry agreed to pay 100 per cent in cases’ where BSE was not confirmed after slaughter. Mr Cruickshank noted that this was unlikely to present a difficulty as the number of unconfirmed cases was expected to be small.

2.14 Deborah Evans, Assistant Private Secretary to Mr Donald Thompson, the Parliamentary Secretary at MAFF, minuted Mr Andrews on 27 June 1998:

The Parliamentary Secretary has seen the submission from Mr Cruickshank and the Permanent Secretary’s minute of 24 June and has said that he is not convinced of the compensation issue and feels that the Industry should be asked what they want without committing ourselves.

2.15 On 28 June, Mr Andrews, Mr Cruickshank, Mr James Coe (MAFF Head of Information) and Mr Richard Gueterbock (MAFF Special Adviser) met Mr MacGregor. The minute of the meeting addressed to Mr Cruickshank noted:

You pointed out that under the Animal Health Act 1981 compensation had to be paid when the Ministers required the slaughter of animals for public or animal health reasons. The problem in this case was that since the recommendation from Southwood was for the action to be taken for public health reasons there was no incentive for the industry to agree to pay the money themselves. The Minister was very concerned about the read-across to action we had taken in the case of other diseases and he felt the letter to
the Treasury had to make it clear that the proposed action was for public health reasons and why we felt Government funding was inevitable.

It was agreed that when you met the NFU and the cattle breeders later today you should take the line that we were considering whether it was prudent to have a slaughter policy to maintain public confidence etc. You should also explore with the industry the possibilities for a slaughter and compensation scheme based on the Government rate of compensation of 50 per cent maximum.25

2.16 Later that day, Mr Meldrum, Mr Cruickshank, Mr Kevin Taylor, Veterinary Head of Notifiable Diseases Section of MAFF,26 Mr John Wilesmith, Head of CVL Epidemiology Department,27 and Mr Alan Lawrence, MAFF Animal Health Division,28 and others, met representatives of the cattle industry.29

2.17 Mr Cruickshank reported to Mr Andrews after the meeting that the industry was reluctant to give any commitment about funding of compensation arrangements. They were also reluctant to commit themselves to accepting a rate of compensation lower than 100 per cent, although:

broad hints were however dropped that a lower rate would probably be acceptable – though with the qualification that 100% should be paid in cases where post mortem examination failed to confirm that BSE was present.30

2.18 On 29 June 1988, Mr MacGregor wrote to Mr Major, the Chief Secretary to the Treasury, setting out the background information on BSE and the Southwood Working Party’s recommendation and noting that he expected that press concern in relation to the human health risk from BSE would grow. The letter said:

The Animal Health Act 1981, which enables us to require the slaughter of affected animals, provides that in these circumstances compensation must be paid. I am extremely reluctant to introduce new Government-funded disease control schemes wherever they can be avoided. In recent years we did introduce schemes to deal with Aujeszky’s disease in pigs and Newcastle disease in poultry. In both these cases we proceeded only because the industry were prepared to provide the funding for the compensation. BSE does however raise very different considerations in that public health may be involved, which was not the case with Aujeszky’s diseases or Newcastle disease. While I shall press the industry to contribute financially to both the compensation arrangements and the R&D which is required, it will be difficult to set up arrangements under which this can be achieved. Moreover this will inevitably take some time to resolve. In the meantime it is in my view essential that we implement Sir Richard Southwood’s advice. We should be open to serious criticism if we do not take immediately the precautionary measures recommended in relation to public health.

21 YB88/6.28/7.1
24 1986–91, then Assistant Chief Veterinary Officer 1992–97
25 1986 onwards
Animal Health Division (BSE and Related Issues) January 1989–October 1992, Meat Hygiene Service Project Team,
October 1992–February 1995
28 YB88/6.28/1.1–1.7
30 YB88/6.28/8.1
I think that compensation at 50% of the market values would be appropriate, and would leave the industry also meeting considerable costs in relation to an issue which we are having to act upon for public health reasons. On the basis of about 60 cases a month this would cost something in the order of £200–250,000 in a full financial year. The actual costs might be expected to be in the order of £300–350,000.31

2.19 Mr Major approved the introduction of the slaughter and compensation scheme in a letter dated 6 July 1988. He said:

My agreement to this course is due to the need to protect human health from the risk of this disease, not animal health. This must be made clear in your discussions with the industry and in any public statements about the introduction of compulsory slaughter and compensation. It is also very important that you should, as you propose, press the industry for a substantial contribution towards the costs of compensation and research.32

2.20 The decision to introduce the scheme was announced in the form of a written answer to an arranged Parliamentary Question to the Minister by Mr Robin Maxwell-Hyslop MP (Tiverton) on 7 July 198833 and by a news release on the same day.34

2.21 The NFU issued a press release on 8 July welcoming the decision to introduce a compulsory slaughter and carcass destruction scheme. Since BSE had been made a notifiable disease, this further step was thought to be appropriate. NFU Deputy President David Naish was quoted as saying:

We accept that in view of the uncertainty surrounding this disease it is necessary that carcasses of infected animals should be destroyed, the cost of which will be met by the Government. The overriding concern of farmers must be to ensure that not even the slightest suspicion should attach to anything going into the food chain.35

2.22 On 22 July 1988, a submission was put forward to Ministers seeking agreement to the two orders.36 On the topic of staff and resource implications, the submission said:

Although it is too early to draw any firm conclusions there is some evidence that since BSE was made notifiable the number of cases being reported has risen. This, added to the fact that more than one visit will be necessary in each case, suggests that there will be increased pressures on staff resources. This will be absorbed from within the SVS [State Veterinary Service] budget by putting a lower priority on other work. The cost of compensation and disposal will depend on the number of confirmed cases and the disposal method . . . On the present evidence costs might be in the order of £300,000–£350,000 in the first year.37
2.23 On 28 July, the Bovine Spongiform Encephalopathy (Amendment) Order 1988 and the Bovine Spongiform Encephalopathy Compensation Order 1988 were made. On the same day, MAFF announced in a news release that the Orders had been made, and that they would come into force on 8 August.

2.24 Expenditure on the slaughter and compensation scheme from 1988 to 1996 is shown at Annex 2 of this chapter.

The operation of the slaughter and compensation scheme

2.25 It is useful to understand exactly what the Bovine Spongiform Encephalopathy (Amendment) Order 1988 and the Bovine Spongiform Encephalopathy Compensation Order 1988 required. Farmers, or any other person in charge or with knowledge of a BSE suspect, were already required to report suspicion of BSE to the Ministry. Dr Danny Matthews (Senior Veterinary Officer (SVO), MAFF) told us that this was often done by the farmer’s veterinary practitioner in the early stages, ‘although over the years more and more farmers reported direct to the Ministry as they became more familiar with the clinical signs of BSE’.

Restriction notices for BSE suspects (Form A)

2.26 Under the provisions of the Bovine Spongiform Encephalopathy Order 1988, whereby BSE was made notifiable, following the notification of a suspect case of BSE to a DVO, a Veterinary Officer (VO) was to carry out a clinical inspection of the suspect. If the VO inspected an animal and did not suspect BSE, no restrictions would be placed upon it. However, if the VO suspected that an animal was suffering from BSE, a notice (Form A) would be served on the owner or person in charge of the animal. The VO had to be satisfied that an animal was affected before serving a Form A.

2.27 MAFF’s internal instructions to VOs provided further advice on serving Form A notices. In particular, if a cattle owner had experienced confirmed cases of BSE in the past, and was convinced that a suspect animal being presented to a VO for inspection was showing signs of BSE, even though the animal presented no symptoms of the disease at the time of the VO’s visit, VOs were still instructed to serve a Form A notice.

2.28 ‘Form A’ is the name traditionally given to a restrictive statutory notice that prohibits the movement of an animal, or animals, on suspicion of the presence of a notifiable disease. In the case of BSE, Form A applied to a single animal and prohibited its movement off the farm. It also introduced requirements to deal with...
pregnant suspect cattle, and cattle that had died or been destroyed while the Form A was in force.\textsuperscript{47}

2.29 Initially, following the introduction of the first BSE Order in 1988, Form A restrictions could continue indefinitely without review by the Veterinary Inspector. However, the situation changed with the introduction of the slaughter and compensation scheme, which required the Veterinary Inspector to review and renew the Form A notice every 28 days.\textsuperscript{48}

Slaughter notices (Form C)

2.30 Between 21 June 1988 and 7 August 1988, MAFF VO\textregistered s had no power to slaughter BSE suspects. Slaughter of these animals was not compulsory and owners received no compensation. Farmers did, however, have to notify the local DVO if an animal suffering from BSE died or was destroyed, and the animal’s head would be submitted to the nearest Veterinary Investigation Centre (VIC) for diagnosis.\textsuperscript{49}

2.31 The procedure changed following the introduction of the slaughter and compensation scheme on 8 August 1988. The Bovine Spongiform Encephalopathy (Amendment) Order 1988 gave power under the Animal Health Act 1981 to Ministers to cause the slaughter of those animals affected, or suspected to be affected, with BSE.\textsuperscript{50} Form C is a ‘notice of intention to slaughter’. If a suspect was showing signs typical of BSE, then the VO inspecting the animal could serve Form C on its owner, requiring the slaughter of the animal and entitling its owner to compensation.

2.32 MAFF issued instructions to the Veterinary Field Service (VFS) explaining how to implement the Order in the field. It was not contemplated that Form C would be served immediately and the instructions stated that repeat visits would be necessary:

\begin{itemize}
  \item until such time as
  \item i. a clinical picture typical of BSE develops; or
  \item ii. the animal recovers or dies; or
  \item iii. an alternative diagnosis is reached.\textsuperscript{51}
\end{itemize}

2.33 VO\textregistered s were instructed to investigate immediately if suspect BSE cases were reported at markets or at slaughterhouses. Animals served with Form A at markets and slaughterhouses were to be returned to the premises of origin if they were fit to travel. Otherwise, they were to be slaughtered at the market or at the slaughterhouse (away from the main slaughter hall).\textsuperscript{52} MAFF’s advice to the VFS noted that some farmers with previous experience of BSE ‘may be tempted to submit animals exhibiting early signs of the disease for slaughter rather than risk valuation and compensation at 50% market value’.\textsuperscript{53}
The service of Form C: ‘not an issue to be treated lightly’

2.34 Dr Danny Matthews explained to us the circumstances in which Form C would be served:

VOs also had to slaughter those suspects that they firmly believed were suffering from BSE. Although the difference between suspicion and belief is subtle, the aim was that the slightest suspicion of disease warranted service of restrictions. Belief that the animal was suffering from BSE, which initiated compulsory slaughter procedures, demanded expression of a greater range of the clinical signs normally associated with BSE. Compulsory slaughter triggered automatic payment of compensation after slaughter, without awaiting confirmation, and was therefore not an issue to be treated lightly.54

2.35 Considerable judgement had to be exercised by VOs in deciding whether or not to serve Form C. Confirmation rates suggested that they were generally correct in their diagnosis and most suspects served with Form C were confirmed by subsequent diagnosis. Nevertheless, in late 1988 Mr MacGregor urged close monitoring of confirmation rates. On 11 November, the Minister’s Principal Private Secretary, Mrs Stagg, minuted Mr Meldrum, saying:

He [the Minister] fully understands why BSE is not confirmed in all cases; nonetheless, he is concerned that we should keep a very close watch on this so that we are able to refute allegations of abuse. This is something which he will want to be kept informed of. I should be grateful if you would take whatever steps are necessary to ensure that we continue to operate a very tightly controlled system.55

2.36 On 12 December 1988, Mr Meldrum replied, noting that before BSE was made notifiable on 21 June the presumptive diagnosis was confirmed in 85 per cent of cases. Between 21 June 1988 and 7 August 1988, when slaughter was not compulsory but farmers could choose to send suspected animals for slaughter, 88.3 per cent of animals slaughtered on suspicion of BSE were subsequently confirmed.56 Confirmation rates increased after slaughter became compulsory when VOs were made responsible for determining which BSE suspects should be slaughtered. Figures supplied to the Minister during December 1988 and January 1989 indicated that confirmation rates remained above 90 per cent throughout the period.57 On 12 May 1989, in a written answer to a Parliamentary Question, Mr Thompson provided figures that suggested that the confirmation rate for BSE suspects slaughtered during the period between 8 August 1988 and 5 May 1989 was approximately 91 per cent.58

2.37 The confirmation rates for animals detected at markets and slaughterhouses were generally lower. For instance, on 30 December 1988, Mr K Taylor minuted Mr Meldrum, setting out the number of BSE cases reported at both markets and slaughterhouses. The confirmation rate of BSE in these suspects was comparatively

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54 S94 Matthews para. 64
55 YB88/11.11/6.1
56 YB88/12.01/6.1
57 YB88/12.01/6.1; YB89/1.12/1.1
58 YB88/5.12/2.1; Hansard 12 May 1989, Written Answers, p. 568
low: 64 per cent at slaughterhouses and 80 per cent at markets. Although it was acknowledged that these figures were of ‘questionable value’ because of the small number of animals involved and some outstanding results, this was still noticeably lower than the overall confirmation rate, at that time, of 93 per cent. Mr Meldrum told the Inquiry that this level of confirmation did not surprise him unduly for the reasons explained by Mr K Taylor, who suggested that it presumably reflected the difficulty of making a clinical diagnosis in market and slaughterhouse situations when animals were bound to be under stress.

2.38 Nonetheless, some mistakes were inevitable. The misdiagnosis of an animal infected with BSE in North Wales in late 1988 provides an illustration of some of the potential difficulties with diagnosis of BSE. On 10 March 1989, a letter was sent by Mrs R Mary James (Assistant Secretary of the Farmers’ Union of Wales (FUW)) to Mr Malcolm Thomas (Principal in the Commodities Division, Welsh Office Agricultural Department (WOAD)). The letter described an incident in North Wales where the failure by a Ministry VO to identify BSE in a cow resulted in the animal entering the pet food chain. A farmer had called his local veterinarian who, suspecting that the animal was a casualty of BSE, notified the Ministry. The Ministry’s VO, inspecting the animal the following day, felt unable to confirm BSE as the cause of its condition and the cow was destroyed and removed by a knacker. However, the head was retained and subsequent tests confirmed that the animal was infected with BSE.

2.39 The correspondence generated by the incident addressed the potential for erroneous diagnosis. On 3 April 1989, Mr Roger Bollington, Head of Division Two of WOAD, sent a minute about the case through Mr John Davies (WOAD Under-Secretary) to Mr Peter Walker, the Secretary of State for Wales, saying:

To put the case in perspective, it is not practicable to guarantee that animals going for slaughter do not have BSE – the only sure way would be to remove all cattle from the food chain. It is only when the symptoms appear that the possibility of isolating particular animals arises.

Nevertheless the question arises whether more can be done to reduce or remove the risk of mistaken diagnosis which has occurred in this case. The only possibility would seem to be to require that any animal suspected by a local veterinary practitioner should be put under restriction until either it recovers or dies. This would however deny the SVS the right to make their own clinical judgment and they have more expertise in BSE than local practitioners. It is probably also neither practicable nor financially justifiable to tie up SVS resources in keeping watch over cases where on the basis of the symptoms and the disease history of the animal and the farm they can reasonably conclude that BSE is not the cause. In GB as a whole some 5% of cases are not put under restriction since it is considered the cattle are suffering from some other condition . . .

Statistics suggest that the SVS are already erring on the side of caution. An analysis undertaken in December 1988 showed that just over 6% of heads...
referred for laboratory examination on suspicion of BSE were either negative or inconclusive. Nevertheless, in view of this case (and of another suspected mistake which is still to be confirmed as BSE) the Veterinary Adviser took the opportunity of a meeting with his DVOs at the end of last week to raise the issue and remind them how important it was presentationally to keep affected animals out of the food chain.

If the Secretary of State is content, officials will reply to the FUW as in the draft letter at document 3.  

2.40 Accordingly, on 11 April 1989, Mr Davies replied to Mrs James saying that an investigation of the matter had confirmed that the Veterinary Officer was firmly of the opinion at the time of the examination that the animal did not have BSE:

Unfortunately it would seem that the diagnosis was incorrect. Obviously there is always a risk of this happening given the practical problems of making the diagnosis on clinical grounds . . .

I can assure you that the Veterinary Service are making every effort to prevent affected animals entering the food chain. We believe that considerable cooperation between the SVS and the farming community has to a very great extent achieved that objective, and will continue to do so.  

2.41 Nonetheless, concerns about the reluctance of VOs to serve Form C continued. For instance, on 15 January 1990, Mr Gueterbock met a group of farmers from Dorset who highlighted this reluctance as an ongoing difficulty. He sent a note of the points raised at the meeting to MAFF Ministers, Mr Meldrum and others:

It was also suggested that responsible farmers had problems in getting affected stock identified by vets. One farmer told me of an incident where his stockman, having had two cases, identified a third cow which he felt was also showing signs of BSE. It took over two months and several visits before the vet would agree the diagnosis. In this time many farmers would have dispatched the suspect cow to market.  

2.42 However, a manuscript note by Mr Meldrum on the front of Mr Gueterbock’s minute, said that the farmer could not have sent the cow to be slaughtered as it would have already been placed under a movement restriction order as a BSE suspect cow. For a discussion of the situation where a cow died before Form C was served see paragraphs 2.61–2.77.

Slaughter of cattle

2.43 Where required, euthanasia of the animals was usually carried out by barbiturate overdose. Dr Matthews suggested in his evidence that in the first few months of the slaughter and compensation policy many suspects were destroyed by captive bolt stunning followed by barbiturate injection. However, by April 1989 most were slaughtered by primary injection of intravenous barbiturate, which
proved less stressful for owners and ‘minimised damage to brain tissue in order to secure a diagnosis’. 67

2.44 Disposal of the carcasses of slaughtered BSE suspects did present difficulties. According to Dr Matthews, in the absence of sufficient incineration capacity in the early stages of the scheme, ‘it would have been normal to decapitate the suspect on farm, with the head transported by the veterinary officer direct to the nearest VIC for brain removal’. 68 Waste disposal is considered in a separate chapter of this volume (see Chapter 10), but Dr Matthews has described for the Inquiry the general destination of the carcasses of BSE suspects:

As incineration capacity became available, it became the norm for carcasses to be transported intact from farm to either an incinerator or collection centre. Decapitation would take place at this point, for onward transportation of the head to the nearest VIC. The carcasses would either remain at the incinerator for disposal or would be chilled or frozen prior to further transportation to an incinerator. 69

The process of obtaining compensation

2.45 Section 32(3) of the Animal Health Act 1981 states that:

The Minister shall pay for animals slaughtered under this section compensation of such amount as may be determined in accordance with scales prescribed by order of the Minister made with the Treasury’s approval. 70

2.46 Therefore, owners of animals slaughtered for disease control purposes were entitled to such compensation as was determined by the Minister and agreed by the Treasury. Accordingly, the requirement that BSE-infected animals be slaughtered gave the owners of slaughtered animals an entitlement to some level of compensation.

2.47 The Bovine Spongiform Encephalopathy Compensation Order 1988 prescribed the amount of compensation payable. Owners of slaughtered animals were entitled to an amount equal to 50 per cent of the lesser amount of either:

i. the market value of the animal; or

ii. 125 per cent of the average price (as determined for the month two months prior to the month in which the animal was valued). 71

2.48 However, where subsequent tests on the slaughtered animal did not confirm that it was affected with BSE, 100 per cent compensation was payable either at the animal’s market value or 125 per cent of the average price, whichever was less. 72

The Schedule of the Order set out the method of calculating the average price:

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67 S94 Matthews para. 66
68 S94 Matthews para. 68
69 S94 Matthews para. 69
70 L1 tab 1B
71 L2 tab 1B The Bovine Spongiform Encephalopathy Compensation Order 1988, article 3(1)
72 BSE Compensation Order 1988, article 3(2)
2.–

(1) Subject to sub-paragraph (2) below, the average price in respect of a month shall be the amount obtained by dividing the total of the sale prices shown in the returns by the total number of animals shown in those returns to have been sold.

(2) Where in respect of any month, returns in respect of all markets specified in paragraph 1 above have not been furnished to the Minister by the fifteenth day of the following month –

a. where returns have been so furnished in respect of five or more of the specified markets the average price in respect of that month shall be the amount obtained by dividing the total of the sale prices shown in the returns by the total number of animals shown in those returns to have been sold;

b. in any other case the average price in respect of that month shall be the most recent average price calculated in accordance with this paragraph.73

2.49 Valuation was generally performed by the VO who had served the owner with Form A. Instructions to the VFS included the following:

Valuation should, however, be carried out at the time that the Form A is first served, and every effort should be made to value the animal by agreement at that first visit, or as soon as possible thereafter if agreement cannot be reached. This is primarily to allay the owner’s concern that the animal will be decreasing in value while remaining on the farm.74

2.50 As Dr Matthews has noted, the introduction of the scheme ‘presented veterinary officers with additional responsibilities in that they had to value suspects that were placed under restriction’.

Valuation by VOs of single animals or small groups of animals is normally permitted for BSE and other diseases as the cost of using professional valuers in such instances usually outweighs any potential saving that might be achieved by their greater precision in estimating value. VOs do have knowledge of market prices through their local market contacts and reading of farming journals.75

‘Market value’

2.51 The concept of the market value of the animal appears to have been a source of some confusion. ‘Market value’ was defined in the Order as ‘the price that might reasonably have been obtainable for it at the time of valuation from a purchaser in the open market if the animal were not an affected or suspected animal’.76 The definition of market value remained the same in the 1990 and 1994 Orders.

73 BSE Compensation Order 1988, article 2, Schedule 1
74 M29 tab 2 ‘Inset 25: BSE (Slaughter & Compensation Version) – To be used from 08/08/1988 – Instructions for the VFS’, p. 45
75 S94 Matthews para. 63
76 The Bovine Spongiform Encephalopathy Compensation Order 1988, L2 tab 1B, article 3(4)
However, in some instances the condition of an animal would have deteriorated by virtue of BSE. Some found the Order unclear as to whether or not account could be taken of this loss of condition.

Mr Kevin Taylor said in his evidence that the valuation of animals proceeded on the basis that ‘the suspect had a breeding and production potential, and any loss of condition which might have been caused by BSE was disregarded’. This was confirmed by the Minister, Mr MacGregor, who explained during a Parliamentary debate that the scheme provided compensation at 50 per cent of the ‘original market value’. Nonetheless, it appears that not all farmers were aware that market value was determined on this basis. John Hoskin, a farmer from Dorset, told us in oral evidence:

Some [farmers] were not aware that it was 50 per cent of market – of replacement value. A lot thought it was 50 per cent of the value as the animal stood at that time, which was its cull value.

Concern was raised about this issue in a letter dated 23 January 1989 from Mrs James of the Farmers’ Union of Wales to Mr Bollington of WOAD. Mrs James sought clarification of when an animal’s market value was to be determined. She suggested that ‘the debilitating nature of the disease is such that market value will decline rapidly if there is any delay in assessment’. However, the February 1989 Inset instructions for the VFS on the slaughter and compensation scheme clarified how VOs were to undertake the valuation:

The ‘market value’ is the price which might reasonably have been obtained for the animal at the time of valuation from a purchase in the open market if the animal were not an affected or suspected animal. In other words, any deterioration in condition attributed to BSE should be ignored. Deterioration attributed to other causes must be taken into account. Where reported at an abattoir or a slaughter market, market value should be interpreted as slaughter or carcasses value.

Nevertheless disputes sometimes arose over the valuation of individual animals. Article 3(3) of the 1988 Compensation Order provided for the appointment of a valuer if there was a dispute as to the cow’s market value. For instance, in August 1988, Mr Jim Harrison, a farmer from West Sussex, wrote to Mr MacGregor pointing out that he had recently had three BSE suspects valued and was ‘quite satisfied with the outcome, being I felt on the generous side of fair, for good dairy like animals’. However, by July 1989, Mr Harrison was writing to MAFF airing his grievances arising out of a dispute over what he considered an unfair valuation of BSE-infected animals.
2.56 The other basis upon which compensation was determined was by taking 125 per cent of the average price in respect of the month which occurred two months prior to the calculation of the market price.

2.57 Calculation of the average price gave rise to some difficulties as it was both two months out of date, and based on all cows, not only cows of the breed concerned. Further, the amount of compensation paid was based on the lesser of the average price or the market price.\textsuperscript{86} For instance, there was a sharp increase in values in the summer of 1989, but the figures used for calculating the level of compensation were from two months previously as this was the lesser value. This resulted in some farmers changing their opinion on the fairness of the compensation scheme, as ‘unrealistic’ ceilings were placed on cattle valuations.\textsuperscript{87} However, it appears that in less volatile market conditions the ceiling was not a major factor, and that most disagreements over valuing occurred because farmers were motivated to get as much compensation as possible.\textsuperscript{88} For a discussion of changes to the compensation scheme in 1990, see paragraphs 2.117–2.207. For a discussion of the further changes made in the compensation scheme in 1994 and the change to an indicative market price calculation, see paragraphs 2.208–2.225.

Advisory notes to farmers on the slaughter and compensation scheme

2.58 MAFF issued advisory notes to keep farmers informed about BSE. They included information on the slaughter and compensation scheme among other things. Initially, information for farmers with suspected BSE cases was included in the inset instructions to the VFS. The February 1989 update of Inset 25 stated that once Form A had been served, the advisory notes at Appendix 19 were to be given to farmers. This appendix explained the symptoms of BSE and outlined how the slaughter and compensation scheme worked in practice.\textsuperscript{89}

2.59 The appendix was then issued as a leaflet to Animal Health Offices to be distributed to farmers once BSE had been reported. However, DVOs indicated a need for a more general leaflet to all cattle owners and Dr Matthews redrafted this leaflet in October 1989.\textsuperscript{90} This advisory leaflet was eventually issued to all cattle owners in June 1990.\textsuperscript{91} It was entitled ‘Bovine Spongiform Encephalopathy (BSE): Advisory notes for farmers’. As well as outlining the background to the disease, the note described the procedure for reporting suspected cases of BSE in accordance with the legislation.

Practical difficulties with the scheme

2.60 Following the commencement of the slaughter and compensation scheme, a number of practical difficulties with its operation became apparent. In this section we look at a number of measures that were introduced in response to various

\textsuperscript{86} L2 tab 1B The Bovine Spongiform Encephalopathy Compensation Order 1988 article 3
\textsuperscript{87} S133 Harrison para. 15
\textsuperscript{88} T57 pp. 49–50
\textsuperscript{89} M29 tab 3 pp. 150–2
\textsuperscript{90} YB89/10.4/10.1
\textsuperscript{91} YB90/6.00/4.1–4.2
problems identified with the scheme: *ex gratia* payments, ante-mortem inspection in domestic slaughterhouses and the NFU’s insurance scheme for BSE. In addition to these practical difficulties, many queried the adequacy of the level of compensation available to owners of BSE suspects slaughtered under the scheme. Concerns that the compensation was insufficient ultimately led to its increase in February 1990, and the events leading to this change are described later in this chapter.

**Ex gratia payment scheme**

2.61 As we have explained earlier in this chapter, in order to receive compensation for the slaughter of BSE-affected animals farmers had to be served with Form C. However, as not all BSE cases notified to MAFF survived until Form C could be served, farmers in these case were unable to claim compensation. Instructions issued to the VFS on 8 August 1988 contemplated the possibility of a cow dying before Form C was served, and stated that ‘the question of compensation in such circumstances is still being considered.’

2.62 During a meeting of Regional Veterinary Officers (RVOs) on 6 October 1988, the idea of a dual compensation scheme was floated, whereby it was proposed that:

... ‘downer’ cows could be valued as healthy and as found. If histopathology confirmed disease, a proportion of the ‘healthy’ valuation would be paid; if not confirmed, ‘as found’ valuation would be paid. This would discourage farmers from inventing spurious BSE histories for downer cows to obtain compensation.

2.63 This was discussed on the following day at a meeting of senior MAFF officials chaired by Mr Meldrum. The note of the meeting records:

5% of incidents involved ‘downer cows’. VOs were being pressurised to make a clinical diagnosis at the first visit so that farmers could get a 100% compensation. At the RVO meetings on the two preceding days the case had been argued for moving to a dual valuation system. Mr Taylor said that the existing system could deal with the problem provided that notice of intention to slaughter was not served. This allows MAFF to refuse to pay compensation if BSE is not confirmed. To change to a dual valuation system would mean revisiting the 600 odd animals still alive and provisionally valued. After some discussion over the advantages and disadvantages of the dual valuation system the CVO said the present system would be retained with ex gratia payments if BSE were subsequently confirmed. The situation should be kept under review.

2.64 On 12 October 1988, Mr Kevin Taylor circulated a letter to all DVOs in England, Scotland and Wales. He asked for it to be distributed by the DVOs to all Regional Veterinary Officers (RVOs), and he copied it to senior officials within MAFF. In the letter, Mr Taylor said:

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92 M29 tab 2 p. 46
93 YB88/10.7/1.2
94 YB88/10.7/1.2
Form C ‘Notice of intention to slaughter’ should not be served unless you believe, on the basis of all the information available to you, that an animal is affected with BSE . . .

Welfare considerations may require the slaughter of a downer cow, but notice of intended slaughter in accordance with the Bovine Spongiform Encephalopathy Order 1988 (as amended) (Form C) must be served only if you genuinely believe the animal to be affected by BSE . . .

Compensation is not payable unless Form C has been served. However, an ex gratia payment may be considered where appropriate when the results of histopathological investigations are available. When BSE has been confirmed in these circumstances the DVO should prepare a manuscript report describing the case and giving details of the valuation which had been agreed. This should be submitted to the RVO who, if he agrees should endorse the recommendation for payment and submit the report to Tolworth for consideration. Although recommendations for ex gratia payment can be submitted in other circumstances they are unlikely to be approved if BSE has not been confirmed histopathologically.95

2.65 A further issue arose for those cows that died before Form A could be served. Mr Taylor wrote to Mr Meldrum on 13 December 1988:

I recommend that when the following circumstances apply:–

The owner had reported suspected BSE in accordance with the requirements of the Order, and

A veterinary officer had examined the suspect animal, decided it was not affected with BSE and had not served Form A, and

The animal had subsequently died or been slaughtered, the brain examined and BSE confirmed by one of the diagnostic Veterinary Investigation Centres

then payment should be recommended and authorised. I believe that to do otherwise would cause strong criticism of the field service which it would be impossible to refute.

2.66 Mr Meldrum told the Inquiry that his recollection was that, once he had agreed Mr K Taylor’s recommendation in December 1988, Mr Taylor sought and obtained departmental agreement for the ex gratia compensation policy to be implemented.96

2.67 By February 1989, the latest version of Inset 25 contained a basic policy for those animals that were slaughtered or died before Form C could be served. It stated:

This category, which may include animals which die while under restriction, as well as those which have to be slaughtered on welfare grounds before a veterinary officer is certain that BSE exists, does not automatically qualify

95 YB88/10.12/7.1–7.2
96 S184 Meldrum para. 146
for the payment of compensation. Ex-gratia payments will, however, be considered in suitable circumstances.97

**MAFF reviews arrangements for ex gratia payments**

2.68 As the scheme continued, it became apparent that some ‘opportunistic’ farmers were reporting animals that were actually in advanced stages of suffering from some other condition in the hope of obtaining compensation for their slaughter on the basis that they were infected with BSE. Permitting *ex gratia* payments allowed VOs some security in declining to diagnose such animals with BSE. On 4 August 1989, Mr K Taylor minuted Mr Meldrum, Mr Lowson and others in MAFF presenting several recommendations about the arrangements for paying *ex gratia* compensation. By way of introduction he said:

> The ex-gratia compensation system was introduced to avoid abuse of the formal compensation procedures by farmers reporting the late clinical cases, frequently downers, in the hope of obtaining 100% payment for histopathologically negative animals. Such procedures are usually implemented in situations where animals:–

a) are presented late in development of disease

b) are not presenting a full range of pathognomonic symptoms

c) have to be slaughtered urgently on welfare grounds, thus preventing long term observation while in isolation.

In other words, the veterinary officer is given little opportunity to examine the animal for clinical signs that are characteristic of BSE.

While on the whole the system appears to have worked fairly well, and to have dissuaded too many opportunists from submitting welfare cases for disposal, there is now a need to rationalise procedures and to deal with one or two specific problems that have arisen.98

2.69 In relation to the procedures at that time for dealing with *ex gratia* payments on farm, Mr Taylor commented:

> Despite general concern amongst farmers about compensation levels, this system does appear to have been grudgingly accepted. Some, however, have complained that, by serving form A and slaughtering without form C, they have been deprived of potential income via casualty slaughter.99

2.70 Mr Taylor went on to recommend:

> Where the animal is slaughtered on farm without form C having been served, given that the farmer is deprived of any income for the carcasses of an unconfirmed case, a nominal ‘knacker value’ payment, say £40–50, should...
be made for those cases which cannot subsequently be confirmed by histopathology.\textsuperscript{100}

\textbf{2.71} Mr Taylor told us that this recommendation was implemented:

One practical problem was not foreseen and was addressed administratively. Some owners were determined to have suspect cases slaughtered before the veterinary officer was convinced that the animal was affected with BSE: some animals died unexpectedly whilst under Form A restrictions, and some – particularly those notified when already recumbent – had to be destroyed to protect their welfare without Form C being served. All these animals were handled by MAFF as if compulsorily slaughtered – carcasses were destroyed and brains examined – but because Form C had not been served there was no statutory obligation to pay compensation. A system of ex-gratia payments was therefore developed: where BSE was confirmed the payment was the same as if the animal had been compulsorily slaughtered, but when it was not the sum of £50 was paid – rather more than might have been received at the time from a knacker. Payment at this level has continued, even though knackers now charge to collect carcasses. These arrangements ensure that compensation is paid for all confirmed cases of BSE which are still alive when notified.\textsuperscript{101}

\textbf{2.72} Dr Matthews also explained to the Inquiry the circumstances in which payment of \textit{ex gratia} compensation might arise:

. . . the welfare of the suspect was paramount, and if necessary slaughter could be arranged without requiring compulsory slaughter. In other words Form C was not served, and slaughter was on the understanding that the owner would still receive full compensation if BSE was confirmed, and a maximum of £50 if it wasn’t. The payment was not automatic at the time of slaughter in such circumstances, being triggered only when the result was received. The purpose of the ex-gratia procedures was to encourage farmers to report cases sooner rather than later, rather than to leave them until they were effectively downer cows. At that point a full clinical inspection to identify the typical clinical signs of BSE was not possible and it was essential that the presentation of casualty animals as BSE suspects did not become an easy option for disposal of cattle while also cashing in on the epidemic. The diagnostic rate for such animals, slaughtered without the service of Form C (notice of compulsory slaughter) has always been lower than for animals that could be subjected to full clinical inspection.\textsuperscript{102}

\textbf{2.73} Mr Taylor’s minute of 4 August to Mr Meldrum and others in MAFF also discussed the situation where BSE suspects were slaughtered at slaughterhouses. In that situation compensation had not generally been paid. However, he recommended that \textit{ex gratia} compensation should be considered in such cases. Often the owner of the slaughterhouse had bought the animal in good faith only to have it deteriorate rapidly on transfer to the slaughterhouse. If the animal was slaughtered as a BSE suspect but without the service of Form C, the slaughterhouse would receive no income from it. By not providing compensation, there was the possibility that slaughterhouse owners would be less likely to report BSE suspects.

\textsuperscript{100} YB89/8.4/3.2 
\textsuperscript{101} S92 Taylor para. 31 
\textsuperscript{102} S94 Matthews para. 65
in the future. Mr K Taylor recommended that in these circumstances 100 per cent of the carcass value of the animal should be paid.\textsuperscript{103}

\subsection*{2.74} Mr Taylor said in his statement to the Inquiry that this recommendation was implemented:

Different compensation arrangements applied to suspects identified in slaughter markets or in slaughterhouses. In these cases compensation was paid for the meat value of the carcass, ensuring that slaughterhouse operators suffered no financial loss by reporting suspected cases.\textsuperscript{104}

\subsection*{2.75} The system of \textit{ex gratia} payments operated relatively informally and outside the terms of the Orders that introduced the slaughter and compensation scheme. This was a feature that caused Mr Lowson concern. On 24 August, he responded to Mr Taylor’s minute of 4 August agreeing with the recommendations, but remarking:

I am slightly nervous about continuing on an ex-gratia basis. It is clearly desirable for expenditure to be made on the basis of clear rules, ideally laid down by the Order, wherever possible. On the other hand I can see that an ex-gratia system provides the flexibility to deal with borderline cases. Could Mr Maslin please consider in the light of past discussion with the lawyers and Finance Dept whether we have adequate clearance to operate in this way. If not, we ought to seek their clearance now.\textsuperscript{105}

\section*{Advice to farmers and instructions to the VFS on \textit{ex gratia} payments}

\subsection*{2.76} In the advisory note issued to farmers in June 1990,\textsuperscript{106} MAFF stated in relation to \textit{ex gratia} payments:

When an animal is slaughtered without Form C being served, there is no automatic right to compensation and the matter should be discussed with the DVO. No compensation will be paid until laboratory results are known. Full compensation (ie the animal’s value up to the AMP) may be paid if infection is confirmed. But if it is not, compensation will be limited to £50, so it is in the farmer’s interest to report suspicion of the disease early. Different arrangements apply to suspects identified at slaughterhouses. Details are available from the DVO.\textsuperscript{107}

\subsection*{2.77} The instructions issued to the VFS on 11 June 1992 contained a comprehensive statement of policy in relation to \textit{ex gratia} payments. This was as follows:

The amount of compensation payable where Form C is not served (ex-gratia) will be subject to the following guidelines. With the exception of paragraph b) the payments may be subject to revision following an assessment of the circumstances surrounding each case.

\textsuperscript{103} YB89/8.4/3.1–3.3  
\textsuperscript{104} S92 Taylor para. 32  
\textsuperscript{105} YB90/8.24/3.1  
\textsuperscript{106} By this time compensation for confirmed cases of BSE had been increased to 100 per cent – see para 2.198  
\textsuperscript{107} YB90/6.00/4.1–4.4
for animals slaughtered on farm in which BSE is confirmed – 100% of its
market value, subject to the upper limit for confirmed cases (AMP)
published by telex each month.\textsuperscript{108}

for animals slaughtered on farm in which BSE is NOT CONFIRMED
– £50 in lieu of ‘knacker value’.

for animals slaughtered at markets or abattoirs in which BSE is confirmed
– 100% of its market value, subject to the upper limit for confirmed cases
(AMP) published by telex each month.

for animals slaughtered at slaughter markets or abattoirs in which BSE is
NOT CONFIRMED – 100% of its market value subject to the upper limit for
unconfirmed cases published by telex each month.\textsuperscript{109}

\section*{Ante-mortem inspection in domestic slaughterhouses}

\section*{Ante-mortem inspection as a means of tightening compliance with the
slaughter and compensation scheme}

\textbf{2.78} The policy of slaughter and compensation sought to minimise as far as
practicable the entry of any BSE-affected animal into the human food chain.
However, concerns continued to be expressed that owners were not notifying BSE
suspects and that, as a result, cattle infected with BSE were being sent to be
slaughtered and entering the human food chain. The presence of veterinarians at
slaughterhouses to inspect animals prior to slaughter was considered one means of
restricting the number of BSE-infected animals that were ‘slipping through’ in this
way.

\textbf{2.79} Although DVOs had been asked to ensure that slaughterhouse operators were
aware of BSE and its clinical signs, MAFF was essentially relying on the honesty
of those dealing with the cattle in the slaughterhouse to report suspect BSE-affected
cattle. Ante-mortem inspection was required for all slaughtered animals in EC
export-approved slaughterhouses (under the supervision of Official Veterinary
Surgeons (OVSs)). In addition ante-mortem inspection was required in domestic
slaughterhouses in Scotland (by a meat inspector or a veterinary surgeon).\textsuperscript{110} There
was no requirement or system of ante-mortem inspection in domestic
slaughterhouses in England and Wales.\textsuperscript{111} This was perceived by some as a serious
shortcoming.\textsuperscript{112}

\textbf{2.80} At meetings in February and May 1989, the Public Health Committee of the
British Veterinary Association (BVA), concerned at the possibility of BSE cases
entering slaughterhouses undetected, called for ante-mortem inspection by a
veterinarian at domestic slaughterhouses.\textsuperscript{113} Mr Robert Young (a former OVS and
President of the BVA) described the absence of ante-mortem inspection in domestic
slaughterhouses as a ‘grave concern to our association’. He told us:

\textsuperscript{108} By this time compensation for confirmed cases of BSE had been increased to 100 per cent – see para 2.198
\textsuperscript{109} M29 tab 4 pp. 179–81. Also included in the Inset are further details in relation to the valuation of animals in slaughterhouses
\textsuperscript{110} YB89/2.2/7.1–7.2
\textsuperscript{111} See vol. 9: Wales, Scotland and Northern Ireland for the position in the Territories
\textsuperscript{112} For a discussion of domestic slaughterhouses and export slaughterhouses and the changes introduced with the start-up of
the Meat Hygiene Service see Chapter 5 of this volume
\textsuperscript{113} YB89/3.3/2.2; YB89/6.16/3.2
It would require a veterinary surgeon carrying out ante-mortem inspection to diagnose these conditions in very many cases. It was not a job for lay inspectors. In fact in most abattoirs, domestic abattoirs, there was no ante-mortem inspection by anybody, veterinary surgeon or otherwise.\textsuperscript{114}

\textbf{2.81} On 1 June 1989, Mr Lambert, Private Secretary to Mr MacGregor, summarised the position in a note to the Minister on the enforcement of BSE legislation:

A perhaps more serious loophole in the system is that there is no system for inspecting cattle at slaughterhouses ante-mortem – except in Scotland and in export approved slaughterhouses. This means that, for animals going to slaughterhouses producing for domestic consumption, there are no checks being done to determine BSE infection and we are relying entirely on the honesty of those dealing with the cattle to report infection.\textsuperscript{115}

\textbf{2.82} The value of ante-mortem inspection in detecting BSE cases was confirmed by Mr Iain Crawford (Director of VFS):

At ante-mortem, if the animal is suffering from BSE, the chances are that it will be evident to a veterinary surgeon because of the stress of the journey to the abattoir, the upset of the animal, which tends to trigger off symptoms. On the farm, it can be very difficult in the early stages. A stockman might notice it because he is dealing with the animal every day. A veterinary surgeon called in, looking at the animal for the first time, might decide it is not BSE. But certainly the upset of going to a market and then an abattoir does tend to trigger the symptoms.\textsuperscript{116}

\textbf{2.83} Mr Crawford also confirmed that it might prove difficult for slaughterhouse staff correctly to identify BSE at the ante-mortem stage without the assistance of a veterinarian:

The slaughterhouse staff, the lairage operators, might consider that the animal is not normal, an abnormal animal, and call for a veterinary decision, but they may well have missed an early stage animal. It depends how closely they are looking at the animals.\textsuperscript{117}

\textbf{Pressure for ante-mortem inspection}

\textbf{2.84} In evidence to the Inquiry, Mr Meldrum explained the beginning of the momentum for a change of policy in this area:

In May 1989 concern was being expressed in various quarters about the possibility that there was under-reporting of BSE and that some clinically affected cattle might enter the human food chain. Although there was no evidence that this was happening informal discussions took place as to what could be done to allay these concerns and the value of ante-mortem inspection of cattle was mentioned in this respect.\textsuperscript{118}
2.85 On 6 June 1989, Mr Meldrum, Mr Cruickshank, Mr Lawrence and Mr Gueterbock met Mr MacGregor. The issue of introducing ante-mortem inspections of cattle at slaughterhouses was raised. Mr Meldrum expressed the view that the Government was ‘vulnerable’ because no ante-mortem inspections were carried out in domestic slaughterhouses. He stated that there was a ‘strong case’ for having some ante-mortem inspection and estimated that the introduction of such inspections would cost around £200,000 a year. It was agreed that this point would be dealt with as part of a package of measures, including a ban on the use of bovine offal for human consumption. Mr Meldrum undertook to submit fuller advice, including the resource implications, within the next two days.119

2.86 Action after that meeting appears to have been swift. On 7 June 1989, Mr Lawrence circulated a minute to officials within MAFF in relation to ante-mortem inspection at non-EC-approved slaughterhouses in England and Wales. He stated that he considered it ‘appropriate to undertake some random ante-mortem inspection’ in all slaughterhouses, focusing particularly on those which processed the bulk of the carcasses. The minute raised the legal and resource implications of introducing such a scheme, and asked officials to respond if they could foresee any ‘insurmountable difficulties’ with his proposals.120

2.87 Response to Mr Lawrence’s minute was not wholly sympathetic. Mr Duncan Fry (Meat Hygiene Division, MAFF) argued that ante-mortem inspection in non-export slaughterhouses seemed ‘anomalous’. This was because only about half of the cattle in export slaughterhouses received an export stamp and were therefore subject to veterinary ante-mortem inspection. Furthermore, he stressed the particular difficulties and the expense involved in introducing veterinary ante-mortem inspection as recommended by Mr Lawrence.121

2.88 Mr Crawford addressed the points raised by Mr Fry in a further minute circulated within MAFF on 12 June 1989. He confirmed that MAFF ‘need not necessarily try to achieve full cover’ in respect of ante-mortem inspections, suggesting that the knowledge that a veterinary surgeon could be present might deter farmers who would otherwise be tempted to send a suspect BSE case to slaughter:

Our field staff will be able to advise on those abattoirs which receive appreciable number of cows (for example, more than 10 per day) and will know the pattern of presentation – ie whether they arrive in the lairage at one particular time or throughout the day. It would be our intention to require a LVI [Local Veterinary Inspector] to be present when there is the opportunity to see an appreciable proportion of the intake. The knowledge that a veterinary surgeon could possibly be present in the lairage would have a deterrent effect on those farmers likely to be tempted to slaughter a suspect case of BSE.122

119 YB89/6.7/7.2
120 YB89/6.7/3.1
121 YB89/6.8/2.1–2.2
122 YB89/6.12/2.1
Mr Meldrum recommends ante-mortem inspection in domestic slaughterhouses

2.89 On 11 July 1989, Mr Meldrum put a submission to Mr MacGregor about ante-mortem inspection at non-EC-approved slaughterhouses. He said:

This note is to seek the Minister’s agreement to entering into discussions with Local Authorities with a view to veterinarians carrying out random ante-mortem inspection at those abattoirs where currently no such inspection takes place.\(^{123}\)

2.90 Mr Meldrum outlined the background to such a proposal:

One of the criticisms levelled against the Ministry had been that some clinically affected animals were entering the food chain because (a) farmers are not satisfied with 50% compensation rate and (b) there is no ante-mortem inspection at non-EC approved slaughterhouses. Although the new measures to ensure that certain bovine offals are not available for human consumption should reassure the public and minimise any possible human health hazard, the Minister has asked that consideration be given to the setting up of a system of random inspections in non-EC approved slaughterhouses. This would act as a deterrent to any would be offender and would also provide a check on whether the allegations about evasion have any foundation.\(^{124}\)

2.91 Mr Meldrum contemplated that, to avoid delay, Ministry VOs could carry out the work initially and, in the longer term, arrangements would be made for Local Veterinary Inspectors (LVIs) to conduct the random inspections:

The random inspection would focus on domestic abattoirs where cows are slaughtered. Just over 500,000 were slaughtered last year. In practice about 65% are handled at EC approved slaughterhouses where there is ante-mortem inspection. Of the remainder a large proportion are dealt with in relatively small number of domestic abattoirs, i.e. 70 plants handle 92% of the throughput at non-EC approved plants. Thus resources could be concentrated on those plants, with occasional visits to other plants.\(^{125}\)

2.92 A handwritten note on the bottom of the minute stated:

The Minister wonders how necessary this action is now that we are banning offals from all cattle. It would be helpful to see the arguments on both sides in a little more detail.\(^{126}\)

2.93 Mr Meldrum asked Mr Lawrence to draft a suitable response to the Minister for his signature, advising that the measure was needed to prevent evasion.\(^{127}\)

2.94 On 24 July 1989, Mr John Gummer succeeded Mr MacGregor as Minister of Agriculture, Fisheries and Food.
Mr Meldrum persuades the new Minister that ante-mortem inspection is necessary

2.95 On 25 July 1989, Mr Lowson prepared a briefing paper on animal health for incoming Ministers. Designed to provide background on relevant issues, it said the following about ante-mortem inspection:

There has been some suggestion that because there is no ante-mortem inspection by a veterinarian at domestic slaughterhouses (as opposed to the position which applies at EC approved slaughterhouses) animals showing clinical signs are slipping through the net. We do not consider that this is the case since we believe that staff working at domestic slaughterhouses will recognise the signs. However, we have taken steps to make doubly sure that they are alert to clinical signs of BSE and consideration is currently being given to introducing random inspections [by] MAFF vets and LVIs. 128

2.96 On 1 August, Mr Lawrence circulated for comment the draft submission he had prepared for Mr Meldrum’s signature. 129 Mr Crawford was generally supportive. 130 However, Mr K Taylor took a very different view. He favoured an increase in compensation rather than the institution of ante-mortem inspection at domestic slaughterhouses. In a minute which he sent to Mr Meldrum on 4 August he said:

The proposal . . . however, is an expensive way of looking for needles in a very large haystack, at considerable cost and little likely benefit.

. . .

I believe there are more effective ways of spending £200,000 of public money. The argument presented has been that 50% of compensation for confirmed cases is inadequate because the slaughter value of a suspect is greater than the maximum compensation – and that this imbalance encourages the unscrupulous owner to cheat. It is true that in recent months changes in published prices for cull and milking animals lend credence to this argument.

In my opinion £200,000 would be better spent by increasing the % payment for confirmed cases. If 6,000 cases are confirmed in a year, at an average compensation of £300/animal (at 50% level), the additional sum would enable compensation at 55% of valuation to be paid . . .

The increase in compensation levels which I have advocated would:

destroy the argument that, by paying inadequate compensation, the Ministry is encouraging farmers to evade the rules

enable a new Minister to claim some kudos from the industry for his willingness to take a fresh look at a problem. 131

128 YB89/7.25/6.1–5.5
129 YB89/8.1/1.1
130 YB89/8.5/1.1–1.2
131 YB89/8.4/4.1–4.2
2.97 On 15 August 1989, Mr Meldrum sent Mr Gummer a copy of his 11 July submission with a covering minute explaining Mr MacGregor’s request for further consideration. Mr Meldrum commented:

Even with a ban on bovine offals there will still be some tissues in the carcass that could contain the agent of BSE. Examples would be the peripheral nerves and lymph glands. Spot checks in the lairage before slaughter would thus go even further in maintaining public confidence as long as it was presented purely as a measure to ensure that clinical cases do not enter the food chain rather than raising the potential problem of additional parts of the carcass which may contain the causal agent.

There is another reason for suggesting this action. The Minister will have seen my note of 26 July informing him that cattle to cattle transmission has taken place under experimental conditions. One aspect to emerge from this study is that the stockman can detect very early signs of BSE, i.e. before the more overt clinical signs appear. Since these early signs may be recognised by those who have seen previous cases of BSE, there might be a temptation to send suspect animals for slaughter when the first clinical signs appear and before they would be evident to the outside observer. Clearly this would circumvent the notification procedures in our BSE Order.132

2.98 Mr Meldrum remained convinced that the proposal was necessary:

In all the circumstances my advice is that we should proceed with this exercise to determine whether clinically affected cattle are slipping through the net. It would reduce the possibility of evading, deliberately or otherwise, the legal requirements under the BSE control procedures. If, in spite of this additional measure, attempts were made to break the law, we would be in a better position to prosecute offenders which, if successfully concluded, would undoubtedly have a deterrent effect. If, on the other hand, the random inspections confirm that there is little or no evasion we would be better placed to refute allegations that under-reporting is occurring.133

2.99 Mr Gummer agreed with the proposal.134 A draft animal-health circular was produced by Mr K Taylor on ante-mortem inspection, on which Mr Meldrum commented.135 This was eventually published on 23 November 1989 and is discussed at paragraph 2.105 below.

2.100 On 18 October 1989, Mr Lawrence and other officials met representatives from the Institute of Environmental Health Officers to discuss the measure. The note of the meeting records Mr Lawrence as saying:

Whereas most BSE cases were found on farm, 52 in the first 6 months of this year had been found at abattoirs in Great Britain. While the stress of transport was believed to exacerbate the clinical symptoms of the disease, it was suggested that to obtain the full market value, unreported cases were being presented at domestic abattoirs where unlike EC approved abattoirs there was no ante-mortem inspection by veterinarians. To overcome this

132 YB89/8.15/5.1
133 YB89/8.15/5.1
134 YB89/8.15/3.2
135 YB89/9.4/1.1
MAFF intended to introduce shortly random inspection by veterinarians at domestic slaughterhouses to identify possible cases of BSE.\textsuperscript{136}

\textbf{2.101} MAFF stressed the need to act quickly to implement the scheme ‘for reasons of public reassurance and Parliamentary pressure, notably from the Opposition’.\textsuperscript{137}

\textbf{2.102} On 27 October 1989, Mr Lawrence wrote to the Association of District Councils, the Association of London Authorities and the Association of Metropolitan Authorities explaining the decision to introduce random ante-mortem inspection at domestic slaughterhouses:

But because there is no ante mortem inspection by veterinarians at these [domestic] abattoirs we have concluded that it would be wise to introduce random inspections by veterinarians in order to identify cases of BSE that might otherwise not be reported. Initially these will be conducted by State Veterinary Service staff but, in the longer term, arrangements will be made for Local Veterinary Inspectors to take on this task. Inspections will focus on domestic abattoirs but will, on occasions, include export-approved slaughterhouses. I want to emphasise that in no way do we wish to interfere with the duties of EHOs [Environmental Health Officers], who we hope will continue to keep a watchful eye for signs of the disease. In any case if, in the event, we find no evidence of evasion it may not be necessary to continue with these random inspections.\textsuperscript{138}

\textbf{2.103} Mr Lawrence also noted the following:

There have been suggestions that some farmers are submitting cases for slaughter rather than reporting them to MAFF. We believe that most, if not all, suspect cases identified at the abattoir are, in fact, a result of the distress of transportation which exacerbates clinical symptoms of the disease not previously apparent. Nevertheless, we need to establish the true position so that we can assess whether we need to review the present arrangement.\textsuperscript{139}

\textbf{2.104} On 6 November 1989, Mr Lawrence reported to Mr Gummer that following discussions with the BVA and local authorities, MAFF was now ready to proceed and selective inspections would commence within the next two weeks.\textsuperscript{140}

\textbf{2.105} On 23 November 1989, MAFF issued Animal Health Circular No. 89/53 to DVOs and veterinary staff in England and Wales. It stated that some ante-mortem inspection of cattle would now be required in domestic slaughterhouses to ensure that cattle suspected of being infected with BSE ‘do not go unreported due to the lack of veterinary input’. It stated that arrangements should be made immediately to implement these inspections. In domestic slaughterhouses slaughtering 70 or more adult cattle per week, two inspections per week were required. The DVOs were instructed to identify domestic abattoirs processing a significant number of cattle over 3 years of age, as these were the most likely to be exhibiting symptoms of BSE. Once the relevant plants were identified, the DVOs were to inform plant
management and the relevant local authority that random inspections would take place. As for the inspections themselves, the circular stated:

Ante-mortem inspection of cattle 3 years of age or older should be arranged as follows:—

a. At plants slaughtering 70 or more adults per week, there should be two inspections per week. Such inspections should last no more than one hour unless a suspect is identified which requires further observation or other action. Visits should be timed so that as many ‘target’ animals as possible are likely to be present, but avoiding predictability where possible.

b. At plants slaughtering fewer than 70 adults per week, random spot checks should be made. It is essential that plant management are not given advance notification of when random checks are to be made. Inspections should last no more than half an hour unless suspects are identified.

2.106 The circular also required DVOs to submit a monthly return detailing the number of inspections made, the number of animals inspected and the number of BSE suspects identified.141

Changes to the ante-mortem inspection programme

2.107 On 17 January 1990, MAFF issued Animal Health Circular 90/6 to DVOs and veterinary staff in England and Wales. The Circular advised that from 5 February 1990 responsibility for ante-mortem inspections in domestic slaughterhouses was to be transferred to LVIs. DVOs were to nominate and brief suitable LVIs and to inform local authorities of the new arrangement. If LVIs identified suspect BSE cases, they were to inform DVOs in the normal fashion. In addition the DVO was required to continue to submit monthly returns about the results of the inspections to Tolworth.142

2.108 In February 1990, a minute by Mr Rennie in the Department of Agriculture and Fisheries for Scotland (DAFS) to Lord Sanderson, Minister of State at the Scottish Office, recommended retaining the existing ‘well-proven Scottish system’. He commented that the system which had been operating since 1961 required the inspection of all animals prior to slaughter whether for the domestic or export market, rather than the random checks proposed in England and Wales. The possible downside in Scotland was the use of meat inspectors rather than vets. He provided the following description of the changes in England and Wales:

Since November 1989 ad hoc arrangements have been operating at around 70 domestic abattoirs in England and Wales killing adult cattle (in which clinical signs of BSE are more likely). Veterinary officers of the State Veterinary Service have undertaken random ante-mortem inspections. These were regarded as interim arrangements while the Ministry consulted the British Veterinary Association (BVA) and organisations representing local authorities (who are responsible for meat inspection and hygiene in

141 YB89/11.23/2.1–2.2
142 YB90/1.17/1.1
domestic abattoirs) with a view to LVIs (ie. veterinary surgeons employed on a contract basis by MAFF to undertake various functions) taking over this BSE surveillance work. Discussions between the interested parties have now been concluded and responsibility for carrying out ante-mortem inspections at non-EC approved abattoirs was transferred to LVIs from 5 February 1990.143

2.109 Nearly one year later on 1 January 1991, the Meat Inspection (Amendment) Regulations 1990 came into force, making ante-mortem inspection of all livestock a requirement in domestic slaughterhouses in England and Wales. This regulation implemented EC Directive 88/409 which required Member States to inspect all fresh meat intended for the domestic market. This inspection was not performed by a veterinary surgeon but by Authorised Meat Inspectors (AMIs). However, when AMIs identified an ailing animal, they were required to have a veterinary surgeon provide a second opinion as to its fitness for slaughter.144 The arrangements in Scotland remained unchanged since they already had a comparable system in place.

2.110 On 16 July 1991, Mr K Taylor forwarded to Mr Meldrum a paper from Dr Matthews in which the latter proposed that LVI ante-mortem surveillance should be discontinued. In his covering minute Mr Taylor said:

Dr Matthews has prepared the attached minute suggesting that the surveillance for unreported cases of BSE currently being undertaken in abattoirs by LVIs is no longer justified by the results and should be abandoned. The argument is not really about money: nevertheless a saving on LVI fees in excess of £120,000 could be expected.

The big change in abattoir practice since the survey was started is the introduction of statutory ante-mortem inspection in domestic abattoirs at the beginning of the year. It is for this reason that I support the proposal by Dr Matthews, and recommend that the LVI ante-mortem surveillance should now be terminated.145

2.111 Dr Matthews’ paper was based on statistics for 1990 and the first quarter of 1991. He commented that ‘introduction of the surveillance in 1989 was rather patchy, hence the statistics for that period are less reliable.’ He summarised the results as follows:

In summary, LVIs made 3,323 visits in 1990 to inspect 31,256 animals. In doing so they identified 29 suspects, of which only 14 were confirmed. On the other hand, meat inspectors, and abattoir owners and managers reported another 60 suspects, of which 34 were positive.

For the first quarter of 1991, LVIs made 909 visits, and inspected 9,615 animals. Only 12 suspects were identified, of which 6 were positive. Other reports from domestic abattoirs identified 32 suspects, of which 18 were positive.

143 YB90/2.02/7.1–7.3
144 The Meat Inspection (Amendment) Regulations 1990 added a new regulation 6A and Schedule 4 to the Meat Inspection Regulations 1987 to implement ante-mortem inspection. See L17 tab 5 and L17 tab 17 for the original and amending Regulations respectively
145 YB91/7.16/3.1
Since 1st January 1991 ante-mortem inspection of all animals slaughtered as domestic animals has been a statutory requirement. Although this is not necessarily carried out by a veterinary surgeon I understand that once an animal is thought to be unfit for slaughter a veterinary opinion is sought.

I believe that the vast majority of suspects reported to us as a result of LVI surveillance would, under the circumstances which now pertain, have been reported by other personnel anyway. While I appreciate that we need to be seen to monitor slaughter cattle, it is difficult to justify 909 visits to identify 12 suspects, when the remaining 32 would have involved only a single veterinary visit by the VO receiving the report . . .

There would also be a financial saving if LVI surveillance were to be discontinued . . . the payment to LVIs for the 1990 visits was in the region of £106,00 to £130,000.

I therefore recommend that we consider abandoning BSE surveillance by LVIs at domestic abattoirs, relying on the new lay ante-mortem inspections to identify suspects.146

2.112 Mr Meldrum replied to Mr K Taylor on 19 July 1991, seeking more detailed information for the first six months of 1991, and noting that he was more interested ‘in identifying as many BSE suspects as possible and not with the financial consequences of the LVI surveillance system’.147

2.113 On 22 July, Mr K Taylor minuted Mr Meldrum noting their discussions on this since 19 July and their agreement that ‘the possible adverse consequences of discontinuing LVI surveillance now are more important than the potential saving of LVI fees and that the survey should therefore continue unchanged’. Mr Taylor also noted that the question ‘might be reconsidered when full veterinary ante-mortem inspection is introduced in all slaughterhouses’.148

2.114 The requirement for full veterinary ante-mortem inspection was introduced by the Fresh Meat (Hygiene and Inspection) Regulations 1992, which required OVSs to supervise ante-mortem inspection in all slaughterhouses by 1 January 1993 as part of the European Single Market harmonisation.149 Animal Health Circular 92/166 was issued on 31 December 1992, explaining the new requirements and stating that LVI surveillance was to be discontinued unless local authorities had yet to appoint an OVS, in which case the instructions were to remain unchanged until a veterinary surgeon had been appointed.150

Insuring against BSE

2.115 Within weeks of the introduction of the scheme in August 1988, the NFU Mutual offered farmers an insurance policy to protect against the risk of loss from the operation of the scheme.151 The policy made up the difference between Ministry compensation and market value of slaughtered cattle plus, where required, an

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146 YB91/7.16/3.2
147 YB91/7.19/1.1
148 YB91/7.19/1.2
149 L11 tab 1
150 YB92/12.31/1.1
151 See YB88/9.00/1.1 for a newspaper article about this insurance
amount to cover consequential losses. The fact that farmers had the option of obtaining insurance to ‘meet the difference between the compensation paid and the market value’ was referred to in a response by the Government to a call for an increase in the level of compensation payable.\textsuperscript{152}

2.116 The availability of this insurance cover suggests that not all farmers were content with compensation fixed at 50 per cent. It also demonstrates that farmers could recoup any losses they made because of BSE and the slaughter and compensation policy. Some farmers may have found it simpler and less precarious to insure against the risk. The Inquiry heard evidence that the policy later became unavailable as BSE cases became more widespread.\textsuperscript{153}

The increase in the level of compensation under the slaughter and compensation scheme

Initial reactions to the level of compensation

2.117 From the early days of the slaughter and compensation scheme there had been complaints from various quarters about the level of compensation payable. The NFU’s press release of 8 July 1988 had welcomed the scheme but expressed disappointment at the level of compensation, believing that 100 per cent should have been payable for all slaughtered cattle.\textsuperscript{154} At a meeting on 19 July 1988 of MAFF officials with the NFU and the National Cattle Breeders Association (NCBA), the NFU said that ‘if farmers did not think 50 per cent compensation was sufficient, they might not report suspect cases, but sell them on’.\textsuperscript{155}

2.118 Nor did the BVA believe that the level of compensation was adequate. Mr Young, a former president of the BVA, told the Inquiry:

\begin{quote}
\ldots certainly we were not happy about low compensation, and it seemed to us logical that like any other or most other notifiable diseases 75 per cent compensation was paid and why should BSE not be like any other disease? Why should it be differential? It was illogical and silly.\textsuperscript{156}
\end{quote}

2.119 Mrs Barbara Smith of the Women’s Farming Union (WFU)\textsuperscript{157} told the Inquiry that her organisation was unimpressed with the level of compensation:

\begin{quote}
It was plain daft, quite honestly. Plain daft. They offered 50 per cent compensation rate of the animals confirmed BSE and 100 per cent if it was not confirmed as BSE and the 100 per cent was not paid until after the postmortem examination \ldots The psychological effect of offering a half rate compensation, it was just daft and the Womens Farming Union were very proactive in trying to get that compensation raised, because BSE was not the fault of the farmers. So, you know, it was to protect human health that we
\end{quote}

\textsuperscript{152} YB88/10.6/3.1
\textsuperscript{153} T57 p. 131 (Mrs Barbara Smith, Women’s Farming Union)
\textsuperscript{154} YB88/7/8/1.1
\textsuperscript{155} YB88/8/5/1.2
\textsuperscript{156} T62 p. 85
\textsuperscript{157} Mrs Smith chaired the Dairy Committee for the Women’s Farming Union, 1989–92 and was a Central Executive Council member 1988–97
were taking these steps and for animal welfare reasons, so it should have been 100 per cent to start with.\(^{158}\)

2.120 MAFF officials did not agree that the level of compensation was inadequate. Mr Crawford told the Inquiry that he was not concerned that it might encourage farmers not to declare suspect cattle:

There may have been some attraction to the farmer to try to spot an animal very early in the disease, to get slaughter compensation. I do not think it was going to be a major problem. But I think that the 50 per cent [compensation rate] was based on the fact that these were not clinically healthy animals, they were diseased animals that were going to die. It was judged that 50 per cent was the appropriate level of valuation for these animals.\(^{159}\)

2.121 Mr Peter Hewson of MAFF’s Meat Hygiene Veterinary Section also emphasised the fairness of the level of compensation:

I think you must remember when valuing dairy cattle – most of these were dairy cattle – that their valuation as they stand as a dairy animal is a great deal more than their valuation as a carcass. So even though the owner may only have been getting 50 per cent, he may have actually been getting more than he would have done if he had sent it for slaughter.\(^{160}\)

2.122 Those farmers who gave evidence to the Inquiry were not dissatisfied with the fairness of the 50 per cent arrangement. This was on the understanding that BSE-affected cows ‘were on a one way track towards death’.\(^{161}\) The Inquiry heard that humanely slaughtering an affected animal was often a welcome relief, and receiving 50 per cent compensation for it was considered ‘a hell of a lot better than nothing’.\(^{162}\) Some farmers went further, stating that 50 per cent ‘was quite adequate’.\(^{163}\)

**Continuing dissatisfaction with the level of compensation**

2.123 The NFU vigorously lobbied MAFF to increase the amount payable to farmers. Broadly, there were two limbs to its argument for increased compensation:

i. The farmer had suffered the loss of an animal through no fault on his part.

ii. There should be no temptation placed in the way of the farmer not to report a suspect case – paying 100 per cent on slaughter would ensure that there was absolutely no incentive to take chances with a suspect animal.\(^{164}\)

2.124 On 2 September 1988, Mr Gordon Gresty, Country Trading Standards Officer at the North Yorkshire County Council, wrote to Mr MacGregor on behalf of the County Council’s Public Protection Committee. Mr Gresty conveyed the Committee’s broad support for the action taken by the Government in making BSE notifiable and imposing a compulsory slaughter policy. However, the Committee

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\(^{158}\) T57 pp. 125–6  
\(^{159}\) T34 p. 117  
\(^{160}\) T34 p. 118  
\(^{161}\) T57 p. 44  
\(^{162}\) T57 p. 42  
\(^{163}\) T57 pp. 40–1  
\(^{164}\) S47 Gill paras 19–20
was concerned that the compensation payable to farmers was only 50 per cent of the market value. It felt that this might deter some farmers from bringing animals suspected of having BSE to the attention of the Ministry, and sought consideration of an increase in the level of compensation payable.165

2.125 On 26 September 1988, Mr Lawrence replied to Mr Gresty. Mr Lawrence’s letter was typical of what became MAFF’s standard response to those who sought review of the level of compensation:

We firmly believe that compensation at 50% of the market value is fair, given the nature of the disease, particularly the fact that the animals are suffering from a terminal illness. It should also be borne in mind that the cattle concerned are valued, for the purposes of compensation, not as terminally ill but as if they are unaffected with disease.

The number of cases which have been reported since the Government introduced these new measures on 8 August does not provide any indication that farmers are attempting to evade the law. Rather the reverse in that there has been a high degree of cooperation between farmers and the State Veterinary Service in tackling this new disease problem. However, we have been trying to get the message home that if farmers do attempt to break the law they will face prosecution. We certainly advocate firm action against anyone who tries to undermine these important animal health measures.166

2.126 Meanwhile, on 6 September 1988, MAFF officials held one of their regular meetings with representatives of the NFU and the NCBA. The minutes record that MAFF updated the meeting on the current position on BSE cases, and commented that, on the basis of the number of suspect cases being reported, there did not seem to be any evidence of under-reporting. Most suspect BSE cases had been reported at farms, but ‘a few had turned up at markets and slaughterhouses’. The minutes record the response of the NCBA and the NFU:

The NCBA were somewhat sceptical about the level of reporting, bearing in mind that compensation was only 50% of market value. On the other hand the NFU felt that despite this, farmers would want to know the answer if they suspected BSE in their herd.167

2.127 On 27 September 1988, the Milk and Dairy Produce Committee of the NFU met and discussed, among other matters, BSE. The minutes of the meeting noted that the Committee had expressed concern over the level of compensation for slaughtered suspect cases and stressed that it should be at 100 per cent of market value. It was agreed to raise this as part of the NFU’s submission on the Annual Price Review.168

2.128 On 8 November 1988, Mr Thompson, Mr Meldrum and Mr Cruickshank met representatives of the NFU:

The NFU stressed their worry that if a similar situation arose again there was a danger with compensation only set at 50%, of people taking the law into
their own hands. The Parliamentary Secretary replied that the Ministry was aware of this concern but felt that farmers had acted and would continue to act responsibly.\textsuperscript{169}

**MAFF faces further concerns about the level of compensation**

2.129 On 16 December 1988, a veterinary practitioner wrote to Mr Meldrum about his concern about the possibility that farmers were sending their suspect BSE cases either to market or to slaughterhouses rather than reporting them.\textsuperscript{170} He said:

I am totally in sympathy with the efforts being made by MAFF to deal with the disease, and I hope that it will not attract the sort of public hysteria that has been generated by hormones, BST and latterly eggs. However, I do feel concerned at the evidence that I have at first hand, that the rather unique compensation scheme designed for BSE, may in fact be encouraging farmers to submit cases for slaughter or sale, rather than notify them to MAFF. While I appreciate that it seems that the risk of transmission to humans by this route is unlikely to be any greater that that posed by eating scrapie infected sheep, which we have been doing for 200 years, I am even more sure that the chances of convincing the public of this are nil.\textsuperscript{171}

2.130 In response to this, Mr Meldrum recalls that he asked Mr K Taylor to provide him with information on the number of BSE cases reported at markets.\textsuperscript{172}

2.131 Mr Taylor’s reply on 30 December 1988 set out the number of BSE cases reported at both markets and slaughterhouses and a breakdown of what subsequent action was taken for each case. Disregarding those reported cases that were attributed by the examining Veterinary Officer to causes other than BSE, action had been taken at markets and slaughterhouses in relation to 54 animals. According to Mr Taylor, this represented only 2.5 per cent of all animals that had restrictions imposed on them on suspicion of BSE during the period between 21 June 1988 and 31 December 1988. Mr K Taylor concluded that these statistics could be regarded as evidence of ‘attempted evasion’ or, alternatively, as ‘efficient monitoring and prevention of abuse’. As discussed above, the confirmation rate of BSE in these animals was relatively low, a factor attributed to the difficulty of making a clinical diagnosis in an environment where animals were bound to be under stress.\textsuperscript{173}

2.132 On 5 January 1989, Mr Meldrum replied to the veterinary practitioner. He acknowledged his concerns and advised him of the number of BSE cases identified at markets, based on Mr K Taylor’s statistics. Mr Meldrum confirmed that MAFF had no evidence ‘that farmers are wilfully failing to report the presence of BSE’, but that if such cases arose MAFF would have no hesitation in arranging for the person responsible to be prosecuted.

We take the view that, notwithstanding the notifications from both markets and slaughterhouses, we are getting an extremely good response from farmers who are reporting cases to us as soon as they become suspicious.

\textsuperscript{169} YB88/11.177/2  
\textsuperscript{170} YB88/12.10/1.1–1.2  
\textsuperscript{171} YB88/12.16/1–6.2  
\textsuperscript{172} S184 Meldrum para. 148  
\textsuperscript{173} YB88/12.30/1.1
Only time will tell whether farmers are wilfully evading the notification procedures but I doubt whether this is a real problem at all . . .

I see no possibility of increasing the compensation rates for animals that are suffering from a terminal illness unless there is clear evidence of evasion of the notification procedures in the Order. 174

2.133 In Mrs James’s letter of 23 January 1989 to Mr Bollington, WOAD, she drew attention to the FUW’s complete dissatisfaction with the BSE compensation arrangements. The letter stated: ‘the low level of compensation may encourage a few less than scrupulous farmers, who have stock showing early signs of BSE infection, to dispose of them on the open market and this is obviously of very great concern to us’. 175

2.134 On 9 February 1989, there was a meeting of the Public Health Committee of the BVA. It was noted at the meeting that some BSE cases could be going through the abattoir undetected. It was agreed that if compensation to farmers was raised to 75 per cent this would discourage the possibility of early cases being sent for slaughter. It was agreed that the Committee would write to MAFF in support of an increase from 50 per cent to 75 per cent in the compensation to farmers with BSE cows. 176

2.135 On 17 February 1989, Mr Thompson replied to a Parliamentary Question from the Opposition spokesman on agriculture, Mr Ron Davies, about the level of compensation under the slaughter and compensation scheme and whether MAFF intended to raise it to 100 per cent. He responded:

I believe that 50% compensation is reasonable, given that the animals are suffering from a terminal illness but are valued as if free from BSE. There is no evidence to suggest that owners are deliberately evading their legal obligation to notify the Ministry of cattle suspected of having BSE. Indeed, the number of cases that have been reported suggest a high level of cooperation from farmers in tackling the disease problem. 177

This was the first of a number of similar Parliamentary Questions and replies in the following months. 178

2.136 The Report of the Southwood Working Party was published in February 1989. It made no recommendation regarding the appropriate level of compensation for slaughtered BSE cattle. However, it did include the following passage:

It has been suggested that because compensation is set at 50% some farmers are evading the law and that as a result the carcasses of affected animals are reaching the human food chain. However the evidence does not support this view. The number of suspect cases being reported has gone up since the compulsory slaughter programme was introduced. It also seems likely that should a farmer try to sell an animal for slaughter, rather than report suspected BSE, the transportation to a market and abattoir will exacerbate

174 YB89/1.05/1.1–1.2
175 YB89/1.23/2.1
176 YB89/3.03/12.1–12.2
177 YB89/2.17/6.1
178 For example, YB89/4.27/5.1 and YB89/5.8/6.1
the clinical signs of the disease. In these circumstances the animal will probably be reported at the market or the slaughterhouse through surveillance. In fact from 21 June 1988 to the end of the year BSE was confirmed in only 40 out of a total of 63 suspect cases reported from markets and slaughterhouses. None of these cases was from herds in which BSE had previously been recognised: so there was no evidence that early signs had been suspected and that evasion was deliberate.\(^{179}\)

2.137 In his evidence to the Inquiry, Mr MacGregor commented on his thoughts in relation to compensation at this time:

There were rumours of animals slipping through the net and not being identified and it was essential to act on all such rumours reported and to make thorough checks to ensure that this was not happening. Mr Meldrum confirmed that this was being done. I had in mind that if there was such slippage due to deliberate under-reporting the compensation payable on slaughtered animals may have to be reconsidered but we would need firm evidence before taking any such step.\(^{180}\)

The Welsh Office presses for a review of compensation levels

2.138 On 2 May 1989, Mr Bollington, WOAD, minuted Mr Peter Walker, Secretary of State for Wales, regarding the rates of compensation for slaughtered BSE-infected cattle:

1. At the meeting between the Secretary of State and the Agriculture Advisory Panel last week concern was expressed about the level of compensation paid to farmers following the compulsory slaughter of cattle affected by BSE. Compensation payment at 50% of market value was thought to be too low and might lead to evasion with some farmers tempted to send animals for slaughter at the first hint of the disease thus resulting in infected carcasses entering the food chain.

2. The Government’s view so far has been that compensation at 50% of market value is fair given the terminal nature of the disease. Also it should be borne in mind that the market value is assessed as if the cattle were unaffected and not valueless for all practical purposes. There is no evidence that 50% compensation is in any way influencing farmers not to report the presence of disease. Nevertheless both the farming unions in Wales see this as a possibility and are pressing for full compensation. Panel Members share this concern and would like to remove the risk of non reporting altogether by paying compensation at full market value for affected animals as with non affected animals. The cost of doing so would be relatively small in disease control terms but not insignificant and MAFF would need to take up with the Treasury the need for additional funding. Expenditure on compensation in 1989/90 at the current level is expected to be £2,040,000.
3. The Secretary of State may wish to write to Mr MacGregor proposing a review of the compensation arrangements.\textsuperscript{181}

\textbf{2.139} The minute attached a draft letter for Mr Walker to send to Mr MacGregor. The draft letter noted that a number of farming interests in Wales had been expressing concern about the level of compensation. It stated that setting the level at only half market value was thought to be too low and ‘might lead to evasion of reporting with farmers tempted to send animals to slaughter at the first hint of the disease’. The letter conceded that there was a lack of hard evidence of this occurring. However, it sought review of the situation.\textsuperscript{182} On 5 May 1989, Mr Walker wrote to Mr MacGregor in these terms, adding one additional passage:

\begin{quote}
I realise that full compensation might be hard to justify and would obviously cost more. But presented in terms of our determination to protect the food chain, however remote the risk, it might bring some political advantages.\textsuperscript{183}
\end{quote}

\textbf{2.140} Mr MacGregor replied on 15 May 1989:

\begin{quote}
It is of course only to be expected that farmers will use whatever arguments they can to justify a higher rate of compensation. I have been responding that the rate of compensation is reasonable given that the animals are affected with a terminal disease whereas the compensation payment is assessed on their value in a healthy condition. If there were any evidence that the rate of compensation were such as to discourage farmers who felt that they had an animal that was suffering from the disease from reporting it, then I would be concerned and I would be looking for ways of dealing with the problem. But so far no such evidence has been put to me.

If it were to become apparent that the rate of compensation currently available was prejudicing our efforts to deal with the disease, then we would have to consider what action we needed to take. This could include proposing a higher rate of compensation. But under present conditions I see no justification for increasing the rate of compensation, nor do I see the remotest possibility of getting the Treasury to agree to such an increase.\textsuperscript{184}
\end{quote}

**Discussions within Government**

\textbf{2.141} On 25 May 1989, an article appeared in the *Guardian* reporting the Government’s intentions to introduce a ban on the inclusion of certain types of bovine offal in human food. It noted growing concern ‘that farmers, who have been offered only 50 per cent compensation, are sending suspect animals for slaughter’.\textsuperscript{185}

\textbf{2.142} On 1 June 1989, the President of the NFU wrote to Mr MacGregor about BSE:

\begin{quote}
We are becoming increasingly concerned at the level of incidence of BSE amongst dairy cattle and the very high profile which the disease is now
\end{quote}
getting in the media. We feel strongly that everything possible must be done to eradicate the disease and to maintain the highest possible level of public confidence in beef and lamb . . .

I must reiterate our concern at the level of compensation which is neither justified nor prudent. However much one may deplore it, one hears persistent unconfirmed reports of producers taking the risk of disposing of animals through normal outlets; animals which they may themselves suspect have early symptoms of BSE.\(^{186}\)

2.143 Allegations of infected cattle ‘slipping through’ were causing concern within the Government. On 6 June 1989, Mr Cruickshank minuted Mr MacGregor, copied to various MAFF officials, about the possibility of BSE-infected cattle being passed through slaughterhouses:

We have heard many allegations that farmers are sending BSE cases for slaughter instead of reporting them as required. Regional Veterinary Officers have been asked to follow up these reports wherever possible, but there has never been proof to support the allegations. It might well prove difficult to mount a case in practice, bearing in mind Southwood’s advice that the clinical symptoms, which might not have been apparent beforehand, are likely to become apparent when an animal is subjected to the stress of being moved to a market or abattoir.

If, however, we did find a case where there was adequate evidence of an intention to evade the notification requirement, we would certainly try to mount a prosecution. There could well be merit in putting our intentions on the record, and I attach a draft arranged [Parliamentary Question] for this purpose.\(^{187}\)

2.144 The draft Parliamentary Question asked what action would be taken against anyone who deliberately attempted to evade the law by selling cattle showing clinical signs of BSE instead of notifying suspicion of the disease. The draft reply was in the following terms:

I would consider any such attempt to evade the law to be a very serious matter indeed. Deliberate failure to notify suspect BSE is likely to lead to a prosecution under the Animal Health Act 1981. The maximum penalty for such an offence is £2,000.\(^{188}\)

2.145 The possibility of some BSE cases not being notified or detected was discussed by Mr MacGregor and Sir Richard Southwood at a meeting on 7 June 1989 to discuss the proposed Specified Bovine Offal (SBO) ban. The minutes describing the meeting recorded Sir Richard as saying that he ‘was not persuaded that many animals showing clinical symptoms were slipping through the net’.\(^{189}\)

2.146 On 9 June 1989, Mr MacGregor wrote to Mr Kenneth Clarke, Secretary of State for Health, proposing a ban on certain types of bovine offal in human food. In support of this proposal he made the following observation:

\(^{186}\) YB89/6.1/3.1
\(^{187}\) YB89/6.6/3.1
\(^{188}\) YB89/6.6/3.2
\(^{189}\) YB89/6.8/4.1
We cannot be sure that all diseased animals are prevented from entering the food chain. There is much talk that some animals are not being offered for slaughter but are being slipped through and I have strong suspicions that this is right. It is also possible that some are simply not being detected. The action I propose below would deal with that. It would also enable us to respond to much industry and media pressure to increase the rate of compensation for slaughter in order to prevent the temptation to producers to avoid identifying their animals as being suspected of BSE.\textsuperscript{190}

**Industry and consumer groups press for increased compensation**

\textbf{2.147} On 14 June 1989, the National Consumer Council wrote to Mr MacGregor congratulating him on MAFF’s decision to ban the use of certain bovine offals in human food. However, the letter went on make the following comments:

As farmers only receive fifty per cent compensation for infected animals, there is every incentive for farmers to send a cow for slaughter at the earliest sign of disease. The situation is hardly likely to ensure that the meat of affected cows does not enter the food chain. The compensation arrangements must be reviewed.\textsuperscript{191}

\textbf{2.148} On the same day, Mr MacGregor met representatives of the NFU. The Deputy President of the NFU, Mr David Naish, handed the Minister a letter about BSE and is recorded as saying that the NFU would ‘not back down from their view that compensation should be at 100%’.\textsuperscript{192} The letter included the following:

The first line of defence must remain the slaughter and destruction of all cattle suspected of having BSE. To make this as effective as possible, I feel I must ask you again to review the level of compensation. In our view it should be 100 per cent.\textsuperscript{193}

\textbf{2.149} At the meeting, Mr MacGregor, ‘speaking very privately’, defended MAFF’s position by pointing to the ‘political problems on compensation’:

We were now proposing to exclude any remotely dangerous material from the food chain. Moreover, people could point to the fact that the carcasses on which we were paying 50% compensation were in fact worth very little. To go any higher would therefore risk a very serious backlash and this was not in the NFU interests.\textsuperscript{194}

\textbf{2.150} An article in *Farmers Weekly* on 14 June 1989 reported the Government’s announcement of its intention to ban certain bovine offal in human food. It also noted calls by Mr Ron Davies for compensation levels for slaughtered cattle to be raised to meet full market value:

At present compensation is limited to 50% of what a healthy animal would have fetched at market. Mr MacGregor described this as ‘reasonably

\textsuperscript{190} YB89/6.9/1.1–1.5 (emphasis in the original)
\textsuperscript{191} YB89/6.14/4.1
\textsuperscript{192} YB89/6.14/6.1
\textsuperscript{193} YB89/6.14/7.1
\textsuperscript{194} YB89/6.14/6.1
generous’ and disputed suggestions that infected cattle were being slaughtered and sold for human consumption, as alleged by Mr Davies. ‘We check hearsay and we have no real evidence that it is taking place,’ he told FARMERS WEEKLY.

2.151 On 29 June 1989, Dr David Clark, Opposition Spokesperson on agriculture, asked Mr MacGregor during oral questions in the House of Commons whether the Government would offer farmers 100 per cent compensation for slaughtered BSE-infected animals to ‘ensure that there is no temptation for farmers to send dubious animals to market’. Mr MacGregor replied:

It appears that there is still a great deal of misunderstanding about the compensation that we are offering. Such animals are not worth very much in the market, but the compensation is 50 per cent of the original market value, which is well above what they would now be worth. The other important point is that the action that I have recently announced – to deal with susceptible offals and ensure that they do not enter the food chain – deals with this problem.\(^{195}\)

**Ministerial changes**

2.152 The ministerial changes in July 1989 appear to have brought a change in attitude about compensation levels. One of the new MAFF Parliamentary Secretaries, Mr David Curry, entered the debate shortly after his appointment. On 6 September 1989, he sent a minute to Mr Gummer suggesting that MAFF should be ‘well-prepared should we find the BSE situation deteriorating’. He expressed his dissatisfaction with the current level of compensation under the slaughter and compensation scheme:

Compensation at 50% is inadequate. The possibility of a farmer slipping an animal into the food chain cannot be absolutely denied and there is beginning to be an incentive because the 50% compensation is now well below the cull cow price. 50% is also the lowest compensation we pay anywhere (ie 75% brucellosis and TB, 100% for FMD; 60% salmonella).

I have asked officials for a note on the compensation trends and the cost/benefit of a 60% compensation.

I recognise the problems posed financially but they pale into insignificance against the problems of a real ‘scare’ about BSE meat getting into the food chain.\(^{196}\)

2.153 On 12 September 1989, Mr Andrews responded to Mr Curry’s request for advice about compensation arrangements:

We have, of course, held the line on the 50% rate of compensation. I was concerned to see the reference in an article in The Times last Friday reporting concern among Ministers about the level of compensation. The pressures have been there all along from the agricultural industry for a higher

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\(^{195}\) YB89/6.29/3.1

\(^{196}\) YB89/9.06/1.1–1.2. The minute was also copied to other MAFF officials including Mr Meldrum, Mr K Taylor, Mr Lowson, Mr Cruickshank, Mr Hilton, Mr Dickinson and Dr Watson
But if we were to conclude that the present level was not sufficient to ensure that suspect cattle were being sent for slaughter, a move to 60% would not deal with the problem or persuade anyone. I am sure that we would have to go at least to 75%...

I am not, of course, arguing that if the present rate of compensation is seen to be too low, then we cannot justify the public health risks of leaving it unchanged. But if we do have to concede an increase, there will be inevitable costs as a result of cutbacks in other areas of our work. These will not show up in any cost benefit study relating to policy on BSE alone.197

2.154 On 19 October 1989, Mr Lowson also responded to Mr Curry’s minute. He treated the issue slightly differently:

If BSE is diagnosed and the animal slaughtered, compensation is based on the value of the animal if it had been healthy; 50% of this value is paid if the diagnosis is confirmed, or 100% if not, up to a ceiling. The maximum amount of compensation payable currently amounts to about 75% of the cull cow price. Compensation is paid to provide fair recompense to farmers who have animals slaughtered at our behest. Although not directly intended as an encouragement for farmers to report suspected disease, as that is a legal obligation, that aspect must be a consideration. There are continuing suggestions that 50% compensation is insufficient to prevent unscrupulous farmers acting illegally by sending suspect cases to abattoirs in the hope of obtaining a greater payment for the animal or of avoiding the inconvenience, loss of possible export business or stigma of having infection confirmed. There remains no firm evidence to confirm that this happens but intuitively it is likely that some farmers are evading the requirement to notify. The questions are therefore: does 50% provide fair recompense, and do we need to increase compensation to reduce the likelihood of suspects reaching the abattoir?

As far as fairness is concerned, it needs to be borne in mind that BSE is inevitably fatal and causes symptoms that will markedly reduce an affected animal’s value – loss of condition, loss of productivity, difficulty in handling. In many cases, 50% of the value of a healthy milking animal will be more than the animal is worth at slaughter. On the other hand an animal which is showing only early signs of the disease might fetch more at slaughter than the compensation payable – although at present the gap between cull cow values and the maximum compensation payable is narrower than when compulsory slaughter was introduced. Overall there is little reason to question existing rates of compensation on grounds of equity – and in practice not many farmers are doing so.

The question of the incentive to bypass slaughter is of course linked to the equity factor. The concern over suspect animals being sent to abattoirs, deliberately or not, is that infected materials might enter the food chain. The number of suspect cases found at abattoirs is very low (52 in first 6 months of this year compared to 3,738 cases on the farm) and by no means all of these will indicate deliberate deception. We intend to strengthen surveillance at domestic slaughterhouses by introducing random ante-mortem...
inspections by veterinarians, so that at least a proportion of any unreported cases will be picked up, with a consequent deterrent effect on those who seek to evade their obligations. However, even if cases do slip the net and are slaughtered the ban on the use of specified offals for human consumption will still act as a safeguard against the risk of potentially infected tissues reaching the food chain. Overall therefore the risk of potentially vulnerable material reaching the food chain is very slight. And it must be questionable whether a limited increase would make more than a marginal difference. Compensating at the rate of 75% of the value of a healthy animal would increase forecast costs for 1990/91 by some £1.8 million. Overall therefore officials recommend against pursuing the idea of increasing the level of compensation. 198

2.155 In conclusion, he asked Mr Curry to ‘agree that there [were] no grounds for seeking to increase the level of compensation for BSE cases’ 199

2.156 In his response Mr Curry did not agree with the conclusion but considered that there was ‘little chance of changing this position in the light of financial constraints’. He felt that MAFF could not be certain that farmers were not putting suspect cattle into the feed chain and felt that the incentive of more than 50 per cent compensation was required to prevent this. 200

2.157 On 27 October 1989, the National Animal Health Panel met MAFF. The note of the meeting records that the ‘question of the 50 per cent compensation level was raised’. It was noted that it appeared that MAFF was ‘unlikely to move on this issue’. 201

2.158 On 6 November 1989, Mr Lawrence minuted Mr Gummer stating that the allegations of under-reporting of BSE suspects were not supported by MAFF’s evidence. He noted that in the first nine months of 1989, 73 suspect cases were reported at slaughterhouses compared with 5,898 on farms. Two-thirds of the slaughterhouse suspects were subsequently confirmed as BSE cases and it was noted that ‘of those it may have been the movement from the farm that precipitated the clinical symptoms’. 202

2.159 On 10 November 1989, Mr Andrews minuted Mr Curry inviting him to confirm whether:

...the present policy, which includes the rate of compensation, should be maintained. Unless you tell me otherwise, I have to take it that you are in agreement with the present policy including the compensation arrangements. 203

2.160 Mr Curry responded that, following the announcement of the random ante-mortem inspections in slaughterhouses, he was now ‘content with the present policy including the compensation arrangements’. However, had this measure not been introduced, Mr Curry ‘would have continued to argue that there was a considerable
loophole and that higher rates of compensation were necessary to reduce the temptation of farmers to put suspect animals into the food chain.’

**MAFF continues to resist pressure for an increase in compensation**

2.161 On 4 December 1989, Mr R Cooper, a director of J Sainsbury plc, wrote to Mr Maclean, Parliamentary Secretary at MAFF, setting out the views he had expressed to Mr Meldrum at a meeting that day. He said that his company still felt:

most strongly that full compensation should be given to farmers for any BSE infected cattle rather than 50%. Every encouragement should be given to the farming community to isolate diseased cattle. The cost to the government is small whilst it would be seen by both farmers and consumers as a sensible and balanced initiative.

2.162 Mr Maclean replied on 21 December 1989, saying that there was ‘little incentive for farmers to send animals exhibiting clinical signs to slaughter intentionally’, and further:

Compensation is calculated on the basis of the value of the animal if it had been healthy – that is, taking no account of the fact it is suffering from a terminal disease and has lost condition and value as a result. This means that in many cases the owner of a suspect animal gets more compensation than the price that would actually be received for the animal if it were sold. Also if the animal proves not to be infected the owner will get compensation based on full value.

2.163 On 21 December 1989, Mr Maclean wrote to retailers in response to their requests for information on BSE ‘in the form that you can draw on in answering any queries from your customers or your store managers’. The letter confirmed MAFF’s stance on the level of compensation payable under the slaughter and compensation scheme.

**Media interest in the issue intensifies**

2.164 On 5 January 1990, Mr Gresty wrote to Mr Maclean notifying him that the North Yorkshire County Council’s Public Protection Committee had resolved to ask MAFF to consider a number of BSE-related questions, including:

Why, in view of the fact that BSE infected cattle are being entered at cattle markets, the amount of compensation for farmers is not being increased to 100% value of the animal?

2.165 A press release issued by the County Council ensured that its concerns also received attention in the media. In particular, the press reported that animal health
The slaughter and compensation scheme

Officers in North Yorkshire had found seven infected animals in cattle markets. Mr Gresty’s view that the rate of compensation for slaughtered animals was insufficient and discouraged farmers from notifying suspect cases was also reported.\textsuperscript{211} In an interview with ‘Farming Today’ on 5 January 1990, Mr Meldrum was questioned about the reports from North Yorkshire. He said that MAFF did not believe that ‘any deliberate evasion of the reporting procedures’ was occurring. He offered an alternative explanation for the cases that had been identified:

\[ \ldots \text{what we believe may happen is that the cattle on the farm are clinically normal, but the stress of moving them from the farm to the market will exacerbate the condition and then early clinical symptoms will be found either in the market or in the slaughterhouse.}\textsuperscript{212} \]

\textbf{2.166} Media coverage of the issue around this time focused on compensation being 50 per cent. The \textit{Independent} reported that the North Yorkshire Council ‘wants to know why compensation for farmers reporting BSE in their herds runs at 50 per cent of the value of animals slaughtered as a precaution’.\textsuperscript{213} \textit{The Times} reported that ‘Farmers are attempting to pass off diseased cattle as healthy because the Ministry of Agriculture will only compensate them for 50 per cent of the value of an infected beast once it is destroyed’.\textsuperscript{214} Mr Harrison, a farmer who gave evidence to the Inquiry, noted that the compensation policy gave the media, particularly the agricultural media, an opportunity to ‘do a bit of Ministry bashing’:

\[ \text{There was a campaign, without a shadow of doubt, to try and get more compensation because within the farming press that would be something that would endear them to farmers. That would be my opinion.}\textsuperscript{215} \]

\textbf{2.167} On 10 January 1990, the Meat and Livestock Commission’s (MLC)\textsuperscript{216} Consumers’ Committee considered the recent press reports of BSE-infected animals entering the human food chain through livestock markets. The minutes of the meeting record that:

\[ \text{[The Chairman] asked members for their views on the argument that Government should increase compensation for affected animals to 100\% in an attempt to prevent this happening. Mr Pratt said he supported the move for increased compensation, but it would be difficult to pass an infected animal through an auction market as the stress would exacerbate the symptoms and it would be obvious the animal was suffering from BSE. All members were very concerned and considered it was important for consumers to be kept informed of developments. They suggested that both increased compensation and slaughter of calves from affected cows should be adopted by the Government.}\textsuperscript{217} \]

\textbf{2.168} On 15 January, the Chairman of the Consumers’ Committee wrote to Mr Hylton Oberst, the MLC Director-General, expressing these concerns and conveying:

\textsuperscript{211} YB90/1.8/3.7
\textsuperscript{212} YB90/1.5/13.1
\textsuperscript{213} YB90/1.4/6.1
\textsuperscript{214} YB90/1.4/5.1
\textsuperscript{215} T57 pp. 44-5
\textsuperscript{216} The MLC is a non-departmental public body established under the Agriculture Act 1967. Its members appointed by the Minister of Agriculture. One of its roles is to assist farmers in livestock marketing. Further details of the MLC’s roles and responsibilities are given in vol.14: Responsibilities for Human and Animal Health and in vol.12: Livestock Farming
\textsuperscript{217} YB90/1.10/5.1
[the Committee’s] strong feeling that the Government should be encouraged to take any further action which would be seen to be limiting a further spread of BSE and thus help to build consumer confidence in the measures taken by Government.218

2.169 On 11 January 1990, Mr Antony Steen (Conservative MP) asked Mr Maclean, during oral questions in the House of Commons, whether he would review the level of compensation for BSE-affected cattle. Mr Maclean replied that the Government would not review the level of compensation, since 50 per cent was ‘fair compensation for an animal which is terminally ill and therefore worthless’. On the same occasion, Mr Matthew Taylor (Liberal Democrat MP) expressed concern that Mr Maclean’s comments would not reassure ‘either producers or consumers that BSE is being prevented from getting into the human food chain’. In response, Mr Maclean said that it was wrong to ‘pretend that 50 per cent compensation is somehow leading to infected animals entering the food chain’.219

2.170 On 15 January 1990, Mr Gueterbock met a group of Dorset farmers. He later provided Mr Gummer and MAFF officials with a note of what had been discussed about the slaughter and compensation scheme:

General concern was expressed about the level of compensation for affected cows. It was suggested that since the Ministry had been instrumental in fixing the regulations governing the rendering of animal protein, then there was an element of culpability and therefore responsibility for the predicament we were in. This was one of a number of reasons advanced for better compensation.

It was also said that the failure to pay full compensation was providing the wrong message to consumers. Genuine concern was expressed that this could knock on to meat consumption unless full compensation was paid to farmers. A distinction was made between the more aware farmers who would not contemplate passing an infected cow off as fit and the less responsible producer who could not afford to miss the extra £200 available if he sold the affected animal . . .

If we are not going to increase the compensation, and I gave the accepted justification for our position, then we do need to consider if we are getting our message over to producers. I do believe that we under-estimate the ability of farmers to turn this into a real consumer issue unless we can deal with the implication that insufficient compensation is allowing meat and milk from affected cows into the food chain. This issue is likely to be raised at all NFU AGMs in dairying areas and possibly at the national one.220

2.171 The General Purposes Committee of the NFU also discussed the level of BSE compensation at a meeting on 17 January 1990, concluding that the ‘rate of compensation should be brought into line with brucellosis and TB’.221 During 1990, the compensation rate payable for brucellosis and TB reactors was:

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218 YB90/1.15/4.1
219 YB90/1.11/4.1
220 YB90/1.15/5.2
221 YB90/1.17/4.1
...75 per cent of their market value subject to an upper limit which is adjusted monthly. This limit varied during the year from £567 to £672. Full market value is payable for dangerous contacts.\textsuperscript{222}

\textbf{2.172} On 19 January 1990, an article by Mr Maclean, the MAFF Parliamentary Secretary, appeared in \textit{Today} defending the Government’s handling of BSE. In relation to the slaughter and compensation policy, he gave the following response to the suggestion that the Government should pay more compensation to farmers to avoid encouraging them to send infected animals to market:

True, there have been a few cases found at slaughterhouses and markets – our vets believe that the stress of the journey can bring on the signs of the disease. We have stepped up our surveillance to catch such cases. The compensation farmers get is half of what the animal would have been worth in its healthy state – this is not bad for animals which in practice are not worth anything.

And just in case an infected animal \textit{does} get slaughtered, we have banned the organs likely to contain the BSE agent from human food: the meat itself is totally safe.\textsuperscript{223}

\textbf{2.173} On 23 January 1990, Mr Peter Jinman, a veterinarian from Hereford, wrote to Mr Gueterbock suggesting that the level of compensation payment to farmers with BSE-affected cattle was too low. In his view, the early signs of BSE were so insignificant that only the farmer would notice them. Outside observers looking at stressed animals at markets or slaughterhouses would attribute their behaviour to the stress of the situation rather than the disease, but many farmers who really knew their cows and had BSE cases in their herd could diagnose BSE at an early stage. Mr Jinman argued that the Government should increase the compensation for farmers:

100\% payment will encourage people to report suspect cases; even then some farmers will not be happy as they will still incur the costs of buying and settling a new cow into the herd, i.e. 100\% compensation is not the true cost of changing from one cow to a new one... Unlike Foot and Mouth and sheep scab, there is nothing obvious to see in/on the carcass. The government should therefore encourage the farmer to declare the problem.\textsuperscript{224}

\textbf{2.174} On 24 January 1990, Mr Maclean replied to Mr Gresty’s letter of 5 January:

The number of animals suspected of being infected with BSE that are known to reach markets is very small – 56 between 21 June 1988 and 30 September 1989. There is no evidence that these cases were the result of deliberate evasion. Compensation for animals suspected of suffering from the disease at the slaughterhouse is likely to be lower than those detected at the farm, which would reduce any incentive to evasion. But the key point is that the tissues most susceptible to carrying the BSE agent must be removed from human consumption. So even if infected animals do escape detection on the farm the consumer is safeguarded.\textsuperscript{225}
The Minister decides to act

2.175 On 25 January 1990, Sir Simon Gourlay, President of the NFU,\textsuperscript{226} wrote to Mr Gummer noting the ‘rising public concern about the risks from BSE affected animals’:

Since consumer perception of risk is such a significant factor, I would ask you to look again at the question of compensation. Raising the compensation to a more realistic level would be the most effective way of reassuring the public that there is no temptation for any farmer deliberately to send to market an animal with incipient BSE. I would be most grateful for your consideration of this request for higher compensation as a matter of increasing priority.\textsuperscript{227}

2.176 The sustained pressure on the Government, including increasing media coverage of the issue, was beginning to have an effect. The perceived need to ‘reassure the public’ began to influence policy. On 25 January 1990, Mr Lebrecht, Principal Private Secretary to Mr Gummer, minuted Mrs Elizabeth Attridge,\textsuperscript{228} Mr Capstick, Mr Meldrum, Mr Lowson and others in MAFF, reporting, among other things, on a recent discussion between Mr Gummer, Baroness Trumpington (the MAFF Minister of State), and Mr Maclean:

The Minister of State also pointed out that if ever there was an appropriate moment for seeking an increase in the compensation payable for BSE-affected cattle, it was in the context of the additional burdens now being placed on the industry (export ban etc). The Minister agreed that if we were to seek and obtain an increase (and this was not decided) it would have to be part of a package of measures. He asked the Parliamentary Secretary to explore with officials the costs of various options for increasing compensation and the ways in which a brief for an increase might be presented.\textsuperscript{229}

2.177 On 29 January 1990, the Minister’s Principal Private Secretary sent a briefing note on BSE to Downing Street in preparation for the Prime Minister’s\textsuperscript{230} meeting the next day with Mr Gummer. The note listed four areas ‘where it may be felt we are vulnerable’. Slaughter and compensation was one of these:

We currently compensate farmers whose animals are infected by BSE at the rate of 50% of the animal’s value as if it were healthy, up to a ceiling of 62.5% of the market value for cull cows. This has been considered fair on the grounds that the symptoms of the disease would in any event reduce the animal’s value well below that which it would otherwise have obtained. This approach however has led to criticism that some farmers might be tempted to try to market their animals rather than declare them infected, thereby putting the public at risk.\textsuperscript{231}

\begin{itemize}
\item Sir Simon Gourlay was President of the NFU 1986–91
\item YB90/1.25/1.1
\item Who had succeeded Mr Cruickshank as Animal Health Group Under Secretary in December 1989
\item YB90/1.25/2.1–2.4
\item Mrs Margaret Thatcher was Prime Minister 1979–90
\item YB90/1.29/7.1–7.6
\end{itemize}
2.178 The same day Mr Meldrum minuted MAFF colleagues saying that he had requested Mr K Taylor to examine files on compensation paid to farmers and then relate this to the ceiling applicable at the time:

We believe that the compensation paid is very close to the ceiling and therefore to the cull cow price in which case it is hardly true to say that farmers are only getting 50% compensation and it would be more true to say that farmers are being paid the cull cow price for the animals that we slaughter.\(^{232}\)

2.179 These two statements were in contradiction. Under the BSE Compensation Order 1989 the ‘ceiling’ was based on the market value of bovine animals and not cull cows.

2.180 On 29 January 1990, Mr Curry hosted a dinner for agricultural industry representatives from south-west England. The discussion over dinner turned to BSE:

. . . the Parliamentary Secretary was pressed to justify the 50% compensation rate for BSE animals, when higher rates were paid for other notifiable diseases, eg tuberculosis, brucellosis. The industry representatives felt strongly that this rate discouraged farmers from reporting disease symptoms and claimed to have evidence from auctioneers of the numbers of sick animals being sold. The Parliamentary Secretary responded that a 50% compensation rate was felt to be reasonable recompense for a sick animal, though recognised that there were other options available.\(^{233}\)

2.181 Mr Gummer described his meeting the following day with Mrs Thatcher as the ‘nodal moment’ when he sought to present the case to the Prime Minister for an increase in compensation.\(^{234}\) At the time, such an increase lacked support from MAFF officials. Mr Gummer reflected on this fact when explaining why he recommended a change to the policy:

In deciding to take the initiative and recommend this change to the Prime Minister I had of course taken the CVO's views into account, but I had decided that his argument was too complex a response to those who took the simple view that farmers had a financial incentive to cheat. Although we had no evidence to support that view, it was clear that while the risk was remote it was not perceived as such by the public. I felt it was therefore better to remove any doubts. The action taken did not go beyond the scientific advice, which was that we should remove diseased animals from the food chain. Instead it provided an additional support to the belt and braces approach that we had instituted. There was also the further change in farming circumstances that was the reverse side of the CVO's argument. The industry had been increasingly badly hit by the BSE crisis and the growing number of cases meant that some individual farmers were particularly badly hit. Increasing the level of compensation was a way of helping them and the industry more generally.\(^{235}\)
2.182 Mr Andrew Turnbull, the Prime Minister’s Principal Private Secretary,236 recorded Mr Gummer’s discussion with the Prime Minister:

Mr Gummer did, however, feel that there was a case for increasing the rate of compensation for BSE cattle compulsorily slaughtered. Paying only 50 per cent compared with 100 per cent for foot and mouth disease could be justified on the basis that the loss was confined to infected beasts and did not involve the slaughter of a whole herd. Present losses, while increasing, were still small in relation to a national herd of around 10 million. Mr Gummer thought, however, that a higher level of compensation could be justified on two grounds. First, the losses were increasing and had been made worse by the restrictions on trade imposed by Germany. Secondly, it was argued that unscrupulous farmers had an incentive to pack off to market any cow that was looking a bit off-colour. By going for full compensation the Government would be able to disarm the critics by demonstrating that it was doing everything possible to keep BSE infected cattle out of the food chain. Such a move would, however, need to be handled carefully as it could be misinterpreted as either an admission that the Government had underestimated the risks in the past or had received some new information pointing to greater risks.

The Prime Minister felt the latter provided a better case as it could be presented as a move to reduce an already remote risk even further. The former was open to the criticism that the Government was prepared to step in to help farmers whenever their incomes were threatened in a way which it would never do in other sectors of the economy.

Summing up the discussion, the Prime Minister agreed that Mr Gummer should work up a proposal for an increased rate of compensation in consultation with the Treasury. This should then be put to colleagues.237

2.183 On 31 January 1990, Mr Gummer reported the outcome of his meeting with the Prime Minister to MAFF officials:

... The Prime Minister had however considered that it was worthwhile exploring the possibility of paying 100% compensation on BSE-infected animals and he had agreed to prepare a paper assing how this might be achieved. He had made clear that the cost of this could not be found from within current MAFF resources.

As a first step, the Minister called for an internal paper setting out the basis on which we could best move to 100% compensation. The paper should look at how to present such a change in order to make the best possible impact but should also analyse any disadvantages which the change in policy would involve.238

2.184 On 5 February 1990, Mr Lowson circulated a detailed paper to Mr Gummer and senior officials within MAFF concerning the ‘proposal for enhanced compensation’ for cattle slaughtered on suspicion of BSE infection. The covering note mentioned that the Minister wanted to announce the changes at the annual
The general meeting of the NFU. This would mean that an Order would have to come into force the following day to avoid problems with *ex gratia* payments of compensation. The paper identified three options for the payment of compensation. These were:

i. Payment of compensation for the slaughter of all animals, not just negative cases, at their market value up to the existing ceiling of 125 per cent of the average market price.

ii. Payment of compensation at 100 per cent of the average market price.

iii. Payment of compensation at 100 per cent of the cull cow value.  

**2.185** Presentation of the change was considered in some detail:

Attempts to present any change as a technical measure, or as a response to changed circumstances, represent the best way of justifying a change publicly without calling the effectiveness of previous measures into question or leading to farmers demanding retrospective payments. But such a presentation could easily be presented as a transparent attempt to fudge the issue, and it would not be possible to guarantee that the credibility of the Government’s whole approach to dealing with BSE would not be harmed.

. . . With hindsight, it might have made more sense in public relations terms to have offered a higher rate of compensation from the outset. But there are bound to be real doubts about whether changing the arrangements now will yield any overall benefit . . .

**2.186** The paper also described the early results of the initial ante-mortem inspections:

We have received the first, incomplete, results of the checks being undertaken by veterinary staff on suspect cases being found in slaughterhouses. During December and January, in nearly 300 visits to over 180 slaughterhouses, 1,663 animals were inspected and one suspect case was identified. This supports the contention that present arrangements are adequate.

**2.187** On 6 February 1990, a lengthy discussion spread over two sessions, took place between Mr Gummer, Mr Maclean, Mr Curry and MAFF officials. One of the main topics was the level of compensation and, in particular, which of the three options identified by Mr Lowson in his minute dated 5 February 1990 was preferable.

**2.188** Mr Lowson noted that paying 100 per cent of the cull cow price should be ‘enough to reassure the public, though it would not be universally welcome to farmers’. Mr Gummer said that he would prefer paying the average market price on the basis that ‘many farmers would be tempted to send infected cows to market in order to avoid the stigma of infection, if there were no positive additional incentive

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239 YB90/2.5/2.1–2.12
240 YB90/2.5/2.5–2.6
241 YB90/2.5/2.1– For a further discussion of ante-mortem inspection see paras 2.78–2.114
242 These included Mr Andrews, Mr Charles Capstick (MAFF Deputy Secretary), Mr Meldrum, Mrs Attridge, Mr Cruickshank, Mr Lowson, Mr Gusterbock, Mr Stephen Wentworth (MAFF Under Secretary, Meat/Livestock Group, 1986–91) and Mr Simon Dugdale (MAFF, Chief Press Officer and then Chief Information Officer, 1989–95)
to declare the animal to the authorities’. Some concern was raised that payment at average market price might be seen as too generous to farmers and could prove counter-productive if it ‘gave rise to public fears that our real motive for the change of policy was lack of confidence in our existing safeguards’. Mr Gummer, however, expressed doubts that the press and public would readily distinguish between the cull cow price and the average market value, provided MAFF ‘made it clear that what we were paying represented 100 per cent’. He said that payment of the lower cull cow value would lead to MAFF being seen as ‘mean’ and the ‘accusations that infected animals were still being sent to market would persist’. 243

2.189 Mr Gummer told the meeting that policy in this area was affected by ‘two streams’:

... first, reality as supported by scientific evidence, and secondly the effect on this ‘reality’ of what farmers, the press and public were saying. If the public felt strongly that there was a need for policy changes, this must be taken into account even if the scientific evidence suggested that no change was necessary. 244

2.190 In discussion of the issues Mr Gummer said that if he had been responsible for the policy upon its introduction he would ‘undoubtedly have gone for 100 per cent compensation so as to prevent it being in the farmer’s interest to market infected animals’. He said that it was necessary to raise the level of compensation now and that this should be able to be achieved ‘without undermining confidence in our existing measures’. Mr Gummer added that, if the Government did not act now, public opinion could force it into taking the same action at some later time. 245

2.191 The prospect of pressure for retrospective payment of the increased level of compensation was raised. Mr Gummer said that he was ‘relaxed’ about this issue and would wholeheartedly oppose it. He indicated that his real concern was ‘to be satisfied that announcing an increase could be achieved without it having a deleterious effect on public confidence in our existing policies’. He stated that the essential point to convey was that the Government was ‘doing the decent thing’ by being fair to farmers unfortunate enough to be hit by the disease and that the policy change had ‘nothing to do with the protection of public health’. On this basis, Mr Gummer proposed to write to the Treasury proposing to increase compensation for animals declared infected by BSE to 100 per cent of the average market price and, subject to Treasury agreement, to announce this measure at the annual general meeting of the NFU. Although Mr Lowson remained convinced that it would be better to continue to meet MAFF’s critics ‘on the basis of present policies’, others at the meeting were persuaded by Mr Gummer’s arguments. In particular, Mr Andrews said that ‘the arguments had persuaded him that the present level of compensation was not defensible. He believed that it would be possible to change without opening Pandora’s box.’ 246

2.192 On 7 February 1990, Mr Gummer wrote to Mr Norman Lamont, Chief Secretary to the Treasury, outlining the proposal for an increase in compensation payable to farmers of cattle slaughtered on suspicion of being infected with BSE. He stated that, although the Government had defended the level of compensation

243 YB90/2.12/4.2–4.3
244 YB90/2.12/4.3
245 YB90/2.12/4.3
246 YB90/2.12/4.4–4.5
since its introduction, ‘developments in the progress of the disease, in the reaction of consumers and in the [European] Community’ now made it necessary to reassess the situation.\textsuperscript{247} The letter identified the ‘key factors’ for change:

- Widespread concern that farmers were sending animals for slaughter which they suspect to be suffering from BSE. Mr Gummer noted that he ‘did not believe that this [was] happening to any great extent’, but that it was ‘impossible to mount a wholly convincing case.’ He noted that failure to react to public concern in this area could turn consumers against cattle products. He also stated that it was ‘hard to defend an arrangement as fair under which a farmer can receive less compensation if he reports early suspicion of infection than if he sends an animal to slaughter’.

- The pattern of infection was becoming clearer and many more cases were emerging than was originally forecast. Mr Gummer noted that the ‘burden on industry is therefore mounting steadily’.

- The wider economic consequences of BSE were becoming more marked. Mr Gummer stated that the burden on industry was growing and the ‘possibility that farmers might try to pass off suspect animals for slaughter in order to maximise their returns must be growing too’.\textsuperscript{248}

\textbf{2.193} On the basis of the factors listed above, Mr Gummer concluded that the level of compensation should be increased:

Had we known how much public concern would be generated by the disease, and how many cases would emerge, it would have been right to set it at a higher level from the start. This would be a clear demonstration that the Government is willing to do everything necessary to meet public concern that any risk to human health, however slight, is completely eliminated. On the other hand while we can certainly take credit for this aspect we should not rely on it as the sole justification, because this would lead to suggestions that our past measures have been inadequate. I will therefore want to stress as much as possible the changing situation which the industry faces. If I am unable to act quickly, pressure could mount for more radical and damaging changes in the future.\textsuperscript{249}

\textbf{2.194} Mr Gummer’s proposal received prompt support from other parts of the Government. On 9 February 1990, the Secretary of State for Scotland, Mr Malcolm Rifkind, wrote to Mr Lamont commending Mr Gummer’s proposal. He noted that there was ‘distinct concern within the agriculture industry that farmers are not bringing forward potential cases for fear that the rates of compensation being offered by the Government are not adequate to encourage them do so’.\textsuperscript{250} The Secretary of State for Wales, Mr Walker, who had sought a review of the level of compensation the previous May, offered similar support for the measure.\textsuperscript{251}

\textsuperscript{247} The European Union (EU) came into existence on 1 November 1993 as a result of the Maastricht Treaty. It incorporated but did not replace the European Community. Throughout the volumes of this Report the term EU is generally used for consistency’s sake (even if sometimes chronologically incorrect), except where specific reference is made to the functions conferred by the European Community Treaty or to its legal effect.

\textsuperscript{248} YB90/2.7/2.1–2.2

\textsuperscript{249} YB90/2.7/2.2

\textsuperscript{250} YB90/2.9/12.1

\textsuperscript{251} YB90/2.12/7.1
Mr Clarke, Secretary of State for Health, wrote to Mr Gummer in similar terms on 12 February 1990, acknowledging the pressures he had been under and offering support for the move.\(^{252}\)

2.195 In his letter to Mr Lamont, Mr Gummer outlined his preferred method of increasing the level of compensation and estimated that this would increase spending in 1990/91 by £1.8 million and by £0.36 million in the current year (1989/90). He sought agreement to make a call on the Reserve for the whole of the additional sums required.\(^{253}\) A submission on this proposal to Mr Lamont from a Treasury official, Janet Barber:

... reluctantly recommends that you accept Mr Gummer’s proposal, but make it clear to him that he must do more than he has offered to meet the cost.\(^{254}\)

2.196 The submission commented that the costs of the increased compensation rate were more likely to be £2.4 million on the basis of the latest figures of 200 cases per week. Further, by increasing the BSE compensation rate to 100 per cent, there would be increasing pressure for Government to increase all slaughter and compensation schemes, especially salmonella. This would mean the ‘potential cost of increasing the BSE rate is more like £4.2m rather than the £1.8m quoted by Mr Gummer’. The submission concluded:

There is no genuine public health reason for the proposed increase in the BSE compensation rate. Nor is the burden of BSE on the industry any reason for more generous compensation. The only possible advantage is that, by removing the disincentive for farmers to report all suspect cases, public confidence in food safety and public health will be restored. This is essentially a political matter, and on this basis you may wish to agree. The Prime Minister is thought to be sympathetic to Mr Gummer.\(^{255}\)

2.197 On the basis of this assessment, Mr Lamont wrote to Mr Gummer on 9 February 1990 ‘reluctantly’ agreeing to his proposal. He noted that this agreement was on the understanding that:

- Mr Gummer would do his best to absorb the cost in all years, if necessary by making transfers from MAFF’s cash limited votes;
- Mr Gummer was certain that there was no legal case for making the increase retrospective and would resist industry pressure to make it retrospective;
- Mr Gummer would not cite the increase as a reason for increasing rates of compensation for any other slaughter and compensation schemes; and
- if research demonstrated that BSE could not be transmitted to humans, the slaughter and compensation scheme would be reassessed with a view to transferring costs to industry.\(^{256}\)

2.198 Once the decision to change the level of compensation had been made, the necessary legislative changes were arranged quickly. The desire to introduce the
change as soon as possible was such that MAFF’s Legal Department had to advise officials that the necessary Order could not be made and brought into force on the same day as that would amount to applying it retrospectively. The speed with which the Ministry sought to implement the decision meant that further calls for urgent review of the level of compensation, such as a letter from the Livestock Auctioneers’ Market Committee for England and Wales dated 9 February 1990, and a press release from the WFU dated 12 February 1990, were overtaken by events.

2.199 The details of how the scheme was to operate remained to be settled. On 9 February 1990, MAFF officials, including Mr Meldrum, Mrs Attridge and Mr Lowson, met Mr Curry to ‘discuss what sort of scheme to recommend to the Minister to accompany the increase in the rate of compensation for BSE to 100 per cent’. Mr Meldrum noted that a ‘flat rate of compensation for cases in which BSE was confirmed’ would lead to ‘many occasions when compensation paid would be greater than the value of the cow’. On this basis, he proposed that compensation should be ‘based on the real value of the cow’ and be paid ‘up to the average market price’.

2.200 The meeting also addressed the question of compensation for farmers whose animals were slaughtered but then found not to have BSE and, in particular, whether it should be set at a higher rate than for those that tested positive:

On the one hand, animals which were proved to be tested negative were probably suffering from other ailments that reduced their value. On the other, farmers might note that the maximum rate of compensation had been brought down from 125 to 100 per cent of the average market value.

2.201 Mr Curry noted that Mr Gummer would prefer a system ‘in which those farmers whose animals proved negative did not do better than those whose animals were proved positive’. It was finally agreed that farmers with animals confirmed as having BSE would receive 100 per cent of their value up to a ceiling of the average market value and those whose cattle turned out not to have the disease would receive up to 125 per cent of the average market value.

2.202 On 13 February 1990, Mr Gummer spoke at the annual general meeting of the NFU. As planned, he took the opportunity to announce the Government’s change in policy on compensation for BSE-infected animals:

. . . it is clearly right to ask whether our compensation arrangements continue to be right when even without new infection the number of cases of cattle affected by BSE will continue to rise and cannot be expected to decline until after 1993. The 50% compensation did not seem unreasonable when most farmers were faced with a very limited number of cases. It seemed right that they should bear at least some of the cost of the outbreak. However now the effect of the disease on the farming industry is becoming greater. There are cases in an increasing number of herds and an increasing proportion of these herds have lost more than one animal.

257 YB90/2.9/5.1
258 YB90/2.9/6.2
259 YB90/2.12/6.1
260 YB90/2.13/2.1
262 YB90/2.13/2.1–2.3
Having taken these changed factors into account, I have decided that compensation for an animal in which infection is confirmed will from tomorrow be equal to 100% of the value of the animal, up to a ceiling of the average market price. I am announcing the details in Parliament today . . . 

2.203 The announcement was confirmed on the same day in a written reply by Mr Gummer to a Parliamentary Question and in a MAFF press release:

Compensation will be 100% of the market value of the animal or the average market price, whichever is the less. There will be no change in the basis of compensation for animals in which the disease is not confirmed.

2.204 On 16 February 1990, the Department of Agriculture for Northern Ireland (DANI) announced increased levels of compensation for cattle compulsorily slaughtered on or after 14 February 1990 in line with the changes introduced by MAFF.

2.205 The Bovine Spongiform Encephalopathy Compensation Order 1990 came into force on 14 February 1990 in England, Scotland and Wales. It raised compensation for confirmed BSE cases to either 100 per cent of the animal’s market value, or the average price, whichever was less. If BSE was not confirmed, compensation was equal to the market value or 125 per cent of the average price, whichever was less. The average price was calculated on the basis of returns for sales of commercial grade Friesian cows and heifers in milk and in calf, rather than bovine animals generally.

2.206 The change in the level of compensation was warmly welcomed. The Daily Mail reported in an article entitled, ‘Gummer doubles “mad cow payout”’, that ‘the deal removes any incentive for unscrupulous farmers to slip infected cattle into the food chain’. Mrs James of the FUW wrote to Mr Podmore of WOAD stating that the FUW ‘very much welcomes the announcement’.

Further changes in the slaughter and compensation scheme

Growing concerns about the cost of the compensation scheme

2.207 During the 1990s, government Departments, including MAFF, were under increasing pressure from the Treasury to reduce their running costs. In the 1993 Public Expenditure Survey, MAFF was required to find savings of 2½–5 per cent in its domestic agriculture expenditure. MAFF estimated that its expenditure on BSE compensation under the slaughter and compensation scheme would rise in the
1994/95 financial year by £18.7 million. Mr Portillo, Chief Secretary to the Treasury, pressed Mr Gummer to come up with options for cuts, in consultation with the other Agriculture Ministers. MAFF reached the view that some changes were required in the BSE scheme in order to limit costs.

2.208 One idea suggested by Sir Hector Monro, Parliamentary Under-Secretary at the Scottish Office, was to freeze the average market price for a year. However, this was not guaranteed to generate savings, and could potentially be more expensive, as economists had indicated that the price of cattle was likely to fall rather than rise over the period.

2.209 The Treasury suggested that the compensation rate could be cut from 100 per cent to 90 per cent. However, MAFF officials were concerned about the presentational impact of such a reduction. In a minute to Mr Packer and other MAFF colleagues, enclosing a draft submission to Mrs Gillian Shephard the new MAFF Minister, Mr Thomas Eddy commented on the Treasury’s proposal:

The trouble with this option is not so much the reaction from farmers who might have some difficulty arguing that 90% of the value of a terminally ill animal was an unreasonable level of compensation (it would certainly be more generous than that for TB) but from Professor Lacey and the media. Anything which suggested that we were not paying farmers the full price for their animals would be used to condemn the Ministry for reneging on its responsibilities to protect the consumer in order to save money and claim that farmers would be out of pocket unless they hid BSE cases and send them off for slaughter. The expected decline in cases would simply be used to confirm that this was indeed happening. In presentational terms we would be into a damage limitation exercise in an area where there is high media interest and a strong propensity to think the worst.

2.210 Mr Eddy went on to suggest amending the way the value of an animal was calculated:

... although we currently pay whichever is the less of the average market price or the actual valuation of the animal, the market price calculation is based only on the value of animals in calf or in milk and takes no account of the lower prices paid for cows at the end of their milking life ‘barrener cows’. If our epidemiologists are right, an increasing proportion of BSE suspects in future years will be amongst these older cows and it is therefore not unreasonable to reflect this in the prices paid.

... there are really two types of approach. A sophisticated one, based on separate prices for the 2 categories of cow, which looks good on paper but is difficult to apply in practice and a simpler one, based on a single lower price, which would serve out rough justice to those with young cows but would be easy to apply on the ground.
On 9 September 1993, Mr Packer forwarded Mr Eddy’s submission to Mrs Shephard informing her of the options for savings on BSE expenditure in the 1993 public expenditure survey (PES) bid. In his covering minute, Mr Packer said:

The proposal which it is suggested we pursue, namely including within our compensation arrangements an element to account for the number of barren cows slaughtered, seems a sensible one which could generate useful savings. For the reasons given, the alternatives of separately identifying and compensating for barren cows, and Sir Hector Munro’s suggestion put forward at the bilateral with the Chief Secretary both seem unattractive.

I have instructed the Division to proceed urgently with the further work with Economics and Finance Groups. I suggest that there is no need for you to write to the Chief Secretary at this stage.

Unless you see matters differently, therefore, the attached papers are put forward for information at this stage. We can consider later when to float the idea with the Treasury. 276

In her statement to the Inquiry, Mrs Gillian Shephard explained her response to the proposal:

Mr Packer commented that he believed the proposal it was suggested we pursue, namely adjusting the compensation arrangements to take account of the number of barren cows slaughtered, seemed a sensible one which could generate useful savings. I was concerned that the compensation arrangements had become over generous in that barren cows, which did not fetch a high price at market, should have been included in the average price and were not. As the feed ban was reducing the number of new cases of BSE in cattle born after the ban, the proportion of barren cows (which were generally older cows) in the total number of BSE cases was increasing. I thought the compensation arrangements should be changed but was concerned that there should be no disincentive to declare suspect BSE cases. Further consideration was given to the matter. 277

A further submission reflecting the choice of the ‘barrener cow’ approach, was put forward to the Minister on 16 November 1993 under cover of a minute from Mr Packer. It recommended that the change to the compensation arrangements should be introduced on 1 April 1994. It would affect the way the average market price would be calculated. The price would be calculated from 36 markets in England and Wales and would include heifers in milk and calf, Friesian/Holstein cows, and barrenerers. The calculation would reflect proportionally both cows aged 7 years and over and younger cattle on the basis of BSE suspects slaughtered. 278 The Minister agreed to the recommendation in principle. 279

The covering minute from Mr Packer warned that there would be unsubstantiated claims made that the changes would encourage farmers to dispose of animals into the human food chain. 280 In the submission, however, Mr Eddy

276 YB93/9.9/1.1–1.2 and YB93/9.9/2.1–2.4
277 S325 Shephard para. 21
278 YB93/11.15/1.4
279 YB93/11.16/1.1
280 YB93/11.16.1.1
noted that the average market price would still be above the cull cow price, so that there would not be an incentive for farmers to hide BSE carcasses and sell them off for meat. 281

2.215 On 17 January 1994, Mr Eddy put forward a submission to Mr Nicholas Soames, the Parliamentary Secretary responsible for food safety issues, seeking his agreement to the arrangements for the announcement of the proposed changes to the compensation provisions. 282 This was given and the proposed changes to the compensation arrangements were announced on 21 January 1994 in a written Parliamentary Answer. 283

Presentation to the public

2.216 On the same day, MAFF issued a press release which said that the reason for the change was to:

reflect the older age range of cows currently being slaughtered as BSE suspects which have little value for further breeding. 284

2.217 It quoted the written answer which had concluded:

The new method of calculation would still result in a compensation price higher than the price the farmer would get for a dairy cow sold for meat so that farmers would not be discouraged from reporting all suspect BSE cases. 285

2.218 As a part of the proposed change to the Compensation Order, MAFF undertook a consultation exercise. On 21 January 1994, a letter was sent out to interested parties in England, including farmers’ organisations, veterinarians, meat industry bodies, local authorities, renderers, livestock auctioneers and marketing boards. 286 It explained:

The purpose of this change would be to reflect more realistic prices for BSE suspect cattle in the knowledge that an increasing proportion of cows being slaughtered as BSE suspects are older cows with little value for further breeding. 287

2.219 The letter also stated that:

The new method of calculation would still result in a compensation price higher than the price which the farmer would get for a dairy cow sold for meat, the ‘barrener price’, because it would be an average of that price and the higher price paid for milking cows. 288

2.220 The responses received by MAFF to the consultation exercise were summarised briefly in Mr Eddy’s submission of 22 February 1994 to

281 YB93/11.15/1.4
282 YB94/1.17/5.1–5.32
283 YB94/1.21/1.1–1.2
284 YB94/1.21/1.1
285 YB94/1.21/1.2
286 Separate consultation exercises were conducted in Wales, Scotland and Northern Ireland
287 YB94/1.21/2.1
288 YB94/1.21/2.2
Mrs Shephard.\textsuperscript{289} This indicated that responses to the consultation letter reflected ‘muted criticism of the proposals’ as farmers never welcomed cuts in compensation. MAFF had considered the ideas put forward by the farming unions and the auctioneers, but recommended that the proposals, as announced on 21 January, should be implemented as soon as possible.

\textbf{2.221} DANI officials suggested to Baroness Denton, the Parliamentary Under-Secretary of State for Northern Ireland, that they should consult with interested parties on the basis that the proposed changes would not come into effect in Northern Ireland until 1 September 1994. Although there was clear evidence of an improvement in the BSE position in Great Britain, it was less marked in Northern Ireland and therefore a reduction in compensation levels was likely to be less popular with industry.\textsuperscript{290} Baroness Denton agreed to this proposed basis for the consultation with interested parties.\textsuperscript{291}

\textbf{The Bovine Spongiform Encephalopathy Compensation Order 1994}

\textbf{2.222} The Bovine Spongiform Encephalopathy Compensation Order 1994 came into force in Great Britain on 1 April 1994.\textsuperscript{292} MAFF estimated that, as a result of these changes, there would be a reduction in the amount of BSE compensation paid in 1994/95 from an estimated £31.0 million to £26.3 million.\textsuperscript{293}

\textbf{2.223} Compensation was calculated in line with the proposal discussed above (see paragraph 2.212–2.213). The compensation payable was either the market value of the animal or the indicative market price, whichever was the lower. The indicative market price was determined by calculating a weighted average of prices for cows in milk and barrener cows, as set out in Annex 1 to this chapter. These prices were based on the statistics for the month occurring two months previous to the month in which the indicative market price would apply.\textsuperscript{294} Animal Health Circular 94/23 was issued by MAFF to VOs informing them of the changes to the calculation of the payment.\textsuperscript{295}

\textbf{2.224} In Northern Ireland similar regulations implementing this change to the method of calculation came into force in August 1995 in the form of the Diseases of Animals (Modification No. 2) Order (Northern Ireland) 1995.\textsuperscript{296}

\textbf{Discussion}

\textbf{Was the initial level of compensation adequate?}

\textbf{2.225} This question can be considered from two viewpoints:

\textbf{i. Was the level of compensation fair?}
ii. Was the level of compensation adequate to ensure compliance with the duty of notification?

**Fair compensation**

2.226 Section 32(3) of the Animal Health Act 1981 provided that compensation should be paid on a scale to be determined by the Minister with the Treasury’s approval. It seems to us at least arguable, giving compensation its natural meaning, that the statute intended that those deprived of their cattle by an Order of compulsory slaughter should receive financial compensation that bore a reasonable relationship to their loss. The loss in question was not, however, the loss consequent upon having a cow affected, or suspected of being affected with BSE. The loss was that experienced as a result of the deprivation of such a cow.

2.227 Viewed in this light it seems to us that the level of compensation initially provided for by the Order was fair. An animal showing symptoms of BSE was arguably worthless. At best its value was that of a cull cow. Payment of 50 per cent of the market value of a healthy cow could not be said to be unreasonable. For a cow suspected of having BSE, but which did not have the disease, 100 per cent of the market value was paid provided this did not exceed the limits set out in the Order. This does not seem unreasonable. The fact that some farmers took insurance out against the compulsory slaughter does not demonstrate the level of compensation was inadequate. In effect the risk they were insuring against was that of the loss of value of the cow consequent upon it contracting BSE.

2.228 When an owner declared to MAFF that an animal was suspected of having BSE, but the animal died or was put down before a MAFF veterinarian confirmed that it appeared to have the disease, no compensation fell to be paid under the Order. On the recommendation of Mr K Taylor and Mr Meldrum, it was agreed that normal compensation would be paid on an *ex gratia* basis in those circumstances, provided that the animal was shown to have been suffering from BSE. When the animal did not have BSE, £50 was paid. This arrangement seems to us fair and we commend it.

**Compensation adequate to ensure compliance with the duty of notification**

2.229 Whether the compensation was adequate to ensure compliance with the duty of notification is, perhaps, a pragmatic test of whether it was fair. If farmers could obtain a significantly better return by sending a suspect cow to slaughter rather than notifying its condition and receiving compensation, this would suggest that the compensation was not fair.

2.230 In a paper prepared by Mr Lowson in July 1989, he observed:

> At the practical level, the operation of a compulsory slaughter policy relies in large part on the cooperation of producers. Farmers need an incentive to notify disease outbreaks. The lower the rate of compensation, the greater will be the incentive on an unscrupulous farmer to dispose of a suspect animal without reporting it; and, probably more important, the greater would be the incentive on any normally cautious farmer to wait and see if symptoms developed further before doing so. Although it is inherently difficult to
prove, this factor lies behind the widespread belief within the industry that farmers are failing to report suspected cases of BSE because the rate of compensation is too low. The threat of prosecution will often not be an effective incentive because of the difficulty of mounting a satisfactory case.297

2.231 What evidence was there to support the ‘widespread belief’ that farmers were evading the obligation to give notification of cattle suspected of being affected with BSE?

Evidence of failure to notify

2.232 Witnesses to the Inquiry from different sectors gave little support to the suggestion that there was widespread evasion of the notification requirement.

2.233 Leaders within the farming industry expressed firm belief that non-reporting of suspect cattle did not occur or did not occur to anything more than a negligible extent.298 Farmers who gave evidence to the Inquiry generally confirmed this:

In my view [under-reporting of the disease] did not occur because these animals were on a one-way track towards death. That was so inevitable that one was glad to interrupt that process and get her humanely destroyed before she actually died. So I do not believe that [compensation set at 50 per cent] led in any way to under-reporting of BSE.299

2.234 Veterinarians also said that they believed that under-reporting was unlikely. Mr Roger Eddy, a veterinary surgeon, said he had never experienced under-reporting of BSE suspects, labelling the coverage of this issue as ‘pure press speculation’. Even prior to the increase in compensation, he believed that the reporting was ‘virtually 100 per cent’.300 The evidence of other veterinary surgeons also suggested that, in general, farmers were diligent and honest in meeting their responsibilities:

[Evasion of the scheme] was a conversation that cropped up very, very frequently amongst my farming clients. I am not the best lie detector on earth, but I would be very surprised if any of them had tried to bypass that 50 per cent. They grumbled about the 50 per cent, but I do not think it resulted in any cows going into the human food chain that should not have done.301

... I am absolutely convinced that it did not happen in our area. We were promoting this new disease. We wanted to know about it. We did not know what we know now, of course, of the potential disasters that it was going to cause. Most of my clients, I am sure, were keen to let us know when they had one. I finished up with virtually every herd of mine with dairy cows which had a case, at least one case. I am certain it did not happen in our particular area.302

297 YB89/7.18/3.9
298 S47 Gill paras 21–2
299 T57 p. 44 (Mr Boot, farmer)
300 S160 Eddy paras 20–1
301 T2 p. 43 (Mr Bee, veterinary surgeon)
302 T2 pp. 63–4 (Mr Whitaker, veterinary surgeon)
But I am pretty sure that in those days farmers were just keen to get them identified and off the farm. I do not think the issue of compensation actually influenced them at that time.\textsuperscript{303}

2.235 Few witnesses could provide firsthand knowledge of evasion:

Certainly there was a lot of anecdotal evidence to suggest on the grapevine, if you like. I know of no actual cases. I certainly have no personal knowledge of cases. In our area, certainly there was a lot of anecdotal evidence that this was happening.\textsuperscript{304}

2.236 The recurrent theme was that any non-notification occurred in quite limited instances:

I do believe that in general most farmers were responsible about reporting what they saw as prospective BSE cases and I do not think most farmers would be moved to knowingly or willingly not report. However, in any barrel you will get rotten apples, plus there was a sort of social stigma. There was a great deal of fear about having a case of BSE and so for some people I think that could have inhibited them and if they thought there was a way of just disposing of this animal there could be a temptation.\textsuperscript{305}

2.237 The identification of BSE suspects at markets and slaughterhouses did not demonstrate that these animals had been sent to market by their owners in the knowledge that they might be suffering from BSE. The NFU explained this in a press release dated 4 January 1990:

There is no evidence that farmers are deliberately selling BSE-infected animals through markets. We have recommended that the Government should remove any apparent temptation to do so by compensating farmers at full market value for slaughtered animals. However, it is not always possible to identify infected animals on the farm. The disease has an incubation period of up to six years. The stress of loading, transporting and unloading an unsuspected infected animal is sometimes enough to bring on easily detectable signs of the disease in an animal in which it was previously not detectable.\textsuperscript{306}

2.238 If the 50 per cent level of compensation had been leading to evasion of the notification requirement, we would have expected a surge in the number of cases notified when the compensation was increased to 100 per cent. The House of Commons Select Committee on Agriculture considered this possibility in the report it published in 1990. While considering ‘it might have been prudent, for reasons of public reassurance’, to have introduced full compensation earlier, it found that full compensation ‘produced no very dramatic increase in the number of cases being reported’.\textsuperscript{307}

2.239 This finding was largely based on the evidence given to the Committee by the Meat and Livestock Commission and the NFU. Sir Simon Gourlay, the

\textsuperscript{303} T62 p. 87 (Mr Anthony, BVA, BCVA)
\textsuperscript{304} T2 p. 63 (Mr Whitaker, veterinary surgeon)
\textsuperscript{305} T57 pp. 127–8 (Mrs Berry, Women’s Farming Union)
\textsuperscript{306} YB90/1:04/4:1
\textsuperscript{307} IBD1 tab 7 p. xv
President of the NFU, and the Chairman of the MLC, Mr Geoffrey John, both confirmed to the Committee that they were convinced that there was ‘no change in the farmers’ reaction as a result of the increase to 100 per cent’. In support of its assertion, the MLC supplied the Agriculture Committee with weekly numbers of the suspect cases reported before and after the increase in compensation. They contended that these figures showed that, following the increase on 14 February 1990, the ‘apparent rise in reporting of suspects was not real’:

It was part of a general rise which started in late January and the apparent increase fell back again progressively from 9 March. Reference back to the earlier stages of the outbreak in 1988 shows that a similar blip occurred between August and December when the cases reported monthly rose from 190 in May to 330 in September and back to 190 in December. We believe that such variations are a normal part of the pattern of the disease and in no way imply any change in practice by farmers when compensation was increased.

2.240 Mr Meldrum agreed with this conclusion:

Comment has been made about the effect of increasing the compensation in February 1990 . . . Of course the increase would not occur until six or eight weeks later because of the delay in confirming diseased cases. But nevertheless, there does appear to be a pattern year upon year upon year. I could not see in here nor could the experts at Weybridge see any evidence of a significant increase. That was of course reassuring at the time, indicating that our steps were working to remove suspect cases either from farms or from markets, or from the slaughterhouse if they got that far.

2.241 Mr John Wilesmith, the Head of the Epidemiology Department, initially considered that the increase in the level of compensation had an impact upon the number of suspect BSE cases being reported weekly. In a paper submitted to SEAC he noted that 50 to 60 additional cases per week had been subjected to Form A restrictions. However, he told us that with the benefit of hindsight he was less convinced that the rise in reported suspects could be solely attributed to the increase in compensation:

I think it is a very difficult thing once you have the full series of data, to determine whether or not there has been some change . . . So one is not quite sure whether it is the compensation being paid or that we actually have a better knowledge of the disease and its clinical appearance by herdsmen and herd owners.

2.242 We would commend Mr Meldrum for his initiative in pressing for ante-mortem inspection at slaughterhouses. This must have acted as a disincentive to any farmer tempted to attempt to pass off an animal showing symptoms of BSE as a healthy animal. These inspections became the responsibility of the Local Veterinary Inspectors (LVIs) at about the time that compensation increased to 100 per cent.

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308 Mr John was Chairman of the MLC from 1987–93
309 IBD1 tab 7 p. 98
310 IBD1 tab 7 p. 253
311 T68 pp. 28-9; Mr Meldrum was talking to a slide while giving this evidence
312 Mr Wilesmith has been the Head of the Epidemiology Department since 1986
313 SEAC1 tab 3 p. 2
314 T92 p. 129
2.243 The results of the ante-mortem inspection programme introduced at domestic slaughterhouses suggest that if there was non-reporting it was not widespread. By the end of December 1990, 3,323 visits had been made to 743 slaughterhouses and a total of 31,256 animals had been inspected. Of these, 29 suspected BSE cases were identified. Fourteen of the suspect cases were confirmed as infected with BSE. During the same period, meat inspectors and slaughterhouse staff reported another 60 suspects in domestic slaughterhouses, 34 of which were positive.

2.244 This trend continued. In January, February and March 1991, 909 visits to domestic slaughterhouses were made by veterinarians under the ante-mortem inspection scheme and 9,615 animals were inspected. Only 12 suspect cases were identified and 6 of these were subsequently confirmed at the laboratory to have BSE. During the same period, a total of 32 suspect cases were identified at domestic slaughterhouses by meat inspectors and slaughterhouse managers and owners. Of the 32 suspected animals, 18 were subsequently confirmed as having BSE.

Conclusion

2.245 A farmer who succeeded in passing off at the slaughterhouse a cow with symptoms of BSE as a healthy animal would have, on occasion, profited financially by doing so rather than accepting 50 per cent of the value of a healthy animal as compensation. The evidence strongly indicates, however, that this was not a common occurrence.

2.246 Our conclusion is that the formula for calculating compensation was fair. If one considers the financial position of farmers by reference only to the individual animal that was sick, it provided adequate incentive for farmers to comply with the notification requirement. We have no criticism of those who resisted paying more. In fixing the level of compensation MAFF officials and Ministers had very properly had regard to the interests of the taxpayer.

2.247 Mr Gummer’s decision to raise the level of compensation was motivated in part by a desire to have extra reassurance and in part by a recognition that some farmers with multiple cases of BSE were suffering financial hardship. We consider that these reasons justified his decision. Mr Gummer’s decision to raise the level of compensation was motivated in part by a desire to have extra reassurance and in part by a recognition that some farmers with multiple cases of BSE were suffering financial hardship. We consider these reasons justified his decision. Equally, we have no criticism to make of the downward adjustment in the level of compensation that was made in 1994. The adjustment was made to reflect the fact that a large proportion of the cows developing BSE were at the end of their working life, and was motivated by a desire to save money. We consider this adjustment to have been reasonable in the circumstances.

Preserving BSE-free status

2.248 There was another reason why a farmer might not wish to give notification in relation to an animal suspected of showing symptoms of BSE, which was not related to the level of compensation. In June 1988, Northern Ireland stopped...
accepting, for breeding and production purposes, animals from Great Britain that had 'moved through any herd subject at any time to BSE problems'. Later that summer Dutch veterinary authorities sought and obtained an assurance that Great Britain would only export calves born in herds where no cases of BSE had been confirmed. By July 1989, MAFF had ‘agreed bilateral arrangements with Germany, the Netherlands, Denmark and Ireland which precluded exports of cattle from herds where BSE had occurred’. The Inquiry also heard evidence that major supermarkets, such as Safeway, also endeavoured to source their beef purchases from BSE-free herds.

2.249 In June 1990, in its evidence to the House of Commons Select Agriculture Committee, the MLC acknowledged that if a ‘significant price differential’ did emerge between beef from BSE-free herds and beef from other herds, there would inevitably be a temptation for some farmers to avoid the system of notification. However, well before this time there were reports, albeit unconfirmed, of both a ‘price differential’ and of farmers responding by evading the scheme in order to protect the status of their herd.

2.250 On 12 October 1988, Mr K Taylor received a minute from Mr A T Turnbull, DVO in Bristol, regarding the export of calves to the Netherlands. Mr Turnbull reported that he had been approached by a representative of the NFU who ‘already’ had evidence that BSE was no longer being reported and that suspects were ‘being slaughtered or buried on farm’. This was said to be due to the differential in the price of calves in the Devon markets: ‘between £30 and £100’ depending on whether they were accompanied by a declaration as to their BSE-free herd status. Mr Turnbull also stated that there was evidence that calves from BSE premises were being ear-tagged with tags from neighbouring farms and sold as coming from the neighbour’s property. Mr K Taylor forwarded this correspondence to MAFF officials, including Mr Meldrum, adding that the ‘evidence’ it referred to constituted ‘hearsay’.

2.251 We had evidence which indicated that some farmers made a business of purchasing BSE suspects at cut price in order to treat them as their own and claim compensation. The clear inference was that those who sold to them in such circumstances were doing so in order to preserve the reputation of having BSE-free herds. The object of practices such as these was not to sell the cattle in question for human consumption, but to cover up their origin when they were notified to the Government for slaughter. In such circumstances breach of the Regulations in relation to ear-tagging and record-keeping must have taken place. It follows that practices such as these did not result in BSE suspects entering the human food chain.

2.252 Nor did the alternative practice of on-farm burial of suspect BSE cattle that farmers had not notified to the State Veterinary Service result in BSE suspects entering the human food chain. The result may have been that other cattle from the seller’s herd could continue to be marketed to customers who believed they were purchasing meat from BSE-free herds. This would probably be a fraud on the customer if it were done deliberately. But did it entail a health risk to consumers? The epidemiology did not suggest that any significance attached to whether or not

318 YB88/6.24/11.1
319 YB88/1/9.1; YB88/10.12/4.1
320 YB89/7.27/4.1–4.2
321 S165 Robertson paras 4–6
322 IBD1 tab 7 p. 98
323 YB88/10.12/5.1
a cow came from a BSE-free herd. We conclude that it was reasonable at the time to think that purchasing meat from BSE-free herds offered no significant protection to consumers additional to that provided by the Specified Bovine Offal ban.

2.253 Therefore, while the BSE-free status of a herd gave farmers and producers of food a useful marketing tool and thus a competitive business advantage, it was reasonable to think that misrepresentations of BSE-free status did not pose a significant danger to human health. We do not condone them, and nor did MAFF, but they were not frauds which any increase in compensation could prevent.

2.254 After June 1990, BSE-free herd status became more important as a result of Commission Decision EC90/261.\(^{324}\) This required that bone-in beef for export to EU countries carried certification that it came from herds free of BSE in the previous two years. A minute prepared in June 1990 by Mr Lowson highlighted potential difficulties that the certification requirement could cause:

> The owners of the 7,500 herds in which BSE has been confirmed may find themselves at a disadvantage. None of the meat can be exported in carcass form to the [European] Community and will only be available (in this form) for home consumption. This may put a stigma on them as being ‘at greater risk’ . . .

> One worry we do have – depending on how the market develops – is non-reporting if herds with cases are put at an economic disadvantage. The number of suspect cases reported will be a good indicator as to whether or not this is happening; if it does become clear from the figures the opposition will of course exploit it although the offals ban provides the necessary public health protection.\(^{325}\)

2.255 Speculation that farmers were evading the scheme began within weeks of the introduction of the requirement. A minute from Dr Matthews dated 22 June 1990 noted that there are ‘already rumours of farmers arranging for their stock to be taken to market by neighbours, supposedly as their property, and therefore certified as coming from herds free of BSE’.\(^{326}\)

2.256 Evidence indicated that to preserve their BSE-free status farmers sold their BSE suspects to other farmers or dealers for less than the compensation the latter would receive. Dr Stephen Dealler, a consultant microbiologist at the Burnley General Hospital, told the Inquiry about one farmer who he had heard engaged in this practice.\(^{327}\)

2.257 Mr Brian Etheridge of the Association of District Councils explained to the Inquiry that:

> The suggestion made to us by local authorities at the time was that the compensation and the stigma which may be attached to declaring a BSE infected herd may have led farmers to seek other disposal routes.\(^{328}\)
2.258 The suggestion that BSE suspects were buried to avoid notification was not considered ‘credible’ by Mr Ben Gill of the NFU. He stated that the NFU had not heard of this practice occurring in England or Wales. However, farmers who had made false declarations about their herd’s BSE-free status were successfully prosecuted in both Devon and Scotland.

2.259 From July 1994, EC Decision 94/474 extended the requirement so that bone-in beef had to be certified as coming from a provenance which had been free of BSE for the previous six years.

2.260 Any farmers who evaded the slaughter and compensation scheme in order to preserve the BSE-free status of their herd were driven by different considerations as opposed to farmers who avoided notification in order to obtain the full market value of a BSE suspect. This was reflected in the different practices they employed. The burial of BSE suspects and the selling or transferring of them to other premises were means of evading the scheme that would not have been contemplated by an owner intent on full compensation. However, for farmers intent on preserving the BSE-free status of their herd, obtaining full market value for suspects was a minor consideration. Mr Young of the British Veterinary Association told the Inquiry of the priority for such owners:

I think actually that if he was only trying to protect the status of this herd and reputation of his herd, whether in fact compensation was paid was neither here nor there. He was not looking for value of a single animal, he would have been trying to protect the value of his entire herd. I do not think any compensation level would have got over that problem.

2.261 The relative unimportance of receiving compensation for the animal meant that such farmers were less likely to attempt to ‘slip’ a BSE suspect through a slaughterhouse. Successfully disposing of an animal in this way required that it go undetected at the slaughterhouse, an increasingly unlikely prospect as veterinary ante-mortem inspection and general awareness of the disease became more widespread. The alternative methods of evasion to preserve BSE-freedom – on-farm trial or transfer to other premises – offered more realistic prospects of success. Significantly, these methods did not raise the same human health concerns. A BSE suspect buried on a farm did not reach a slaughterhouse or a butcher’s shop window. A suspect animal transferred to, and notified by, a neighbouring farm was still being notified to the Ministry and upon diagnosis would be destroyed in accordance with the scheme. Nonetheless, these practices did subvert the purpose of the certification scheme with the result that cattle from what purported to be BSE-free herds sometimes came from farms that had successfully hidden their BSE cases. Such practices also distorted epidemiological results, making it difficult to identify the source of the disease.

Unanticipated burdens on the Veterinary Investigation Service

2.262 Finally, we would like to record our commendation of the Veterinary Investigation Service for the efficiency with which it undertook the task of diagnosing whether or not suspects were infected with BSE. When the slaughter and...
compensation scheme was introduced it was anticipated that it would apply to about 60 cattle a month. At the height of the epidemic that figure reached 8,000 cases. This placed an enormous and unanticipated burden upon the VIS.
Annex 1 to Chapter 2: Schedule of BSE Compensation Orders (Suspected and Affected Animals)
Part A: Orders in Great Britain

The terms of the relevant orders are summarised below. They are not transcribed.

<table>
<thead>
<tr>
<th>Order</th>
<th>SI Number</th>
<th>Order made</th>
<th>Before Parl</th>
<th>Came into force</th>
<th>Notes</th>
</tr>
</thead>
</table>
| BSE Compensation Order-1988                | SI 1988-1346  | 28.7.88    | 1.8.88      | 8.8.88          | 1) For an animal affected with BSE, compensation will be paid at an amount equal to 50% of either:
                                                                                                                      (a) the market value of the animal, being the price which might reasonably have been obtained for it at the time of valuation from a purchaser in the open market if the animal were neither affected with BSE nor suspected of this; or
                                                                                                                      (b) 125 per cent of the average price in respect of the month which occurred two months prior to the month in which the market value of the animal was determined in accordance with (3) below rounded down to nearest £2; whichever is the less
                                                                                                                      2) For an animal not affected, the compensation shall be the full value of (a) or (b) above; whichever is the less
                                                                                                                      3) The amount in each case shall be determined:
                                                                                                                      i. by agreement between Minister and owner
                                                                                                                      ii. by one valuer appointed jointly by Minister and owner
                                                                                                                      iii. failing agreement valuer nominated by RICS
                                                                                                                      The calculation of average price is set out in the Schedule to the order. It is based on the average price of a bovine animal across a selection of national markets. Amends the above as follows:
                                                                                                                      1) For an affected animal, **100 per cent** (rather than 50 per cent) of:
                                                                                                                      (a) An amount **equal to** (rather than half) of the market value; or
                                                                                                                      (b) The **average price** (rather than 125 per cent) in respect of the month . . . to nearest £1 (as opposed to £2 previously) whichever is the less |
| BSE Compensation Order 1990                 | SI 1990-222   | 13.2.90    | 13.2.90     | 14.2.90         | L2, tab 1B                                                             |

L2, tab 1B
2) For an unaffected animal:
(a) The market value
(b) 125 per cent . . . rounded to nearest £1

3) The average price is based on the returns for sales of commercial grade Friesian cows and heifers in milk and in calf (rather than on returns for bovine animals generally).

(Note: apart from the changed definition of ‘average price’, the only change for unaffected animals is that the ‘ceiling’ is rounded down to the nearest £1. There remains an inequality in compensation between affected and unaffected animals. The ceiling is 100 per cent of average price for the former, and 125 per cent for the latter.)

BSE Compensation Order 1994

<table>
<thead>
<tr>
<th>Order</th>
<th>SI Number</th>
<th>Order made</th>
<th>Before Parl</th>
<th>Came into force</th>
</tr>
</thead>
<tbody>
<tr>
<td>BSE Compensation Order 1994</td>
<td>SI 1994-673</td>
<td>8.3.94</td>
<td>11.3.94</td>
<td>1.4.94</td>
</tr>
</tbody>
</table>

Amends the above as follows:

1) For an affected animal:
(a) the market value; or
(b) the indicative market price (see (3) below) for the month in which the market value of the animal was determined;

whichever is the less

2) For an unaffected animal:
(a) the market value; or
(b) 125 per cent of the indicative market price for the month in which the market value of the animal was determined;

whichever is the less

3) The indicative market price (IMP) is calculated using data in Great Britain relating to the month occurring two months before the date on which the market value was determined. The data are used to derive:
(i.) the average price for Friesian and Holstein cows in milk and in calf, first calving cows in milk and down calving heifers, in each case of first and second quality; and
(ii.) the average price for first and second quality barrener cattle of dairy breeds.

The IMP is a weighted average of these two figures, (i) being weighted by reference to the number of cattle aged less than 7 years when valued which were slaughtered as BSE suspects, and (ii) being weighted by reference to the number of cattle aged 7 years or more when valued which were slaughtered as BSE suspects.

L2, tab 9a

Order SI Number Order made Before Parl Came into force Notes Bundle reference

made Parl force

Notes Bundle reference
## Annex 1 to Chapter 2: Schedule of BSE Compensation Orders (Suspected and Affected Animals)

### Part B: Orders in Northern Ireland

<table>
<thead>
<tr>
<th>Order</th>
<th>SR NI Number</th>
<th>Order made</th>
<th>Came into force</th>
<th>Notes</th>
<th>Bundle reference</th>
</tr>
</thead>
</table>
| **Diseases of Animals (Modification) (No.2) Order (Northern Ireland) 1988** | SR NI 1988- 421 | 28.11.88 | 29.11.88 | (a) Where the animal slaughtered was an animal infected with BSE the compensation shall be 50 per cent of either:  
  i. the market value of the animal, being the price which might reasonably have been obtained for it at the time of valuation from a purchaser in the open market if the animal were not an affected or suspected animal; or  
  ii. 125 per cent of the average price in respect of the month which occurred two months prior to the month in which the animal was slaughtered rounded down to the nearest multiple of £2;  
  whichever is the less;  
(b) Where examination of tissues taken from the animal slaughtered does not confirm that it was an affected animal the compensation shall be the full value of (i) or (ii) above, whichever is the less;  
(c) The amount in each case shall be determined by the Department.  
The calculation of average price is set out in subparagraphs (3)(c), (d) and (e) of the Order. It is based on the average price for sales of commercial grade cows and in-calf heifers, both of which are intended for use in the production of milk (rather than on returns for bovine animals generally) across a selection of markets in Northern Ireland. | L8A tab 1 |
| **Diseases of Animals (Modification) Order (Northern Ireland) 1990** | SR NI 1990-135 | 29.3.90 | 1.5.90 | The material amendments to the above were as follows:  
(a) For an affected animal, **100 per cent** (rather than 50 per cent) of:  
  i. the market value; or  
  ii. the **average price** (rather than 125 per cent) in respect of the month . . . to nearest £1 (as opposed to £2 previously)  
  whichever is the less  
(b) For an unaffected animal:  
  i. The market value  
  ii. 125 per cent . . . rounded to nearest £1  
Note: the only change for unaffected animals is that the ‘ceiling’ is rounded down to the nearest £1. There remains an inequality in compensation between affected and unaffected animals. The ceiling is 100 per cent of average price for the former, and 125 per cent for the latter. | L8A tab 7 |
<table>
<thead>
<tr>
<th>Order</th>
<th>SR NI Number</th>
<th>Order made</th>
<th>Came into force</th>
<th>Notes</th>
<th>Bundle reference</th>
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<tbody>
<tr>
<td>Diseases of Animals (Modification No.2) Order (Northern Ireland) 1995</td>
<td>SR NI 1995-273</td>
<td>3.7.95</td>
<td>1.8.95</td>
<td>Amends the above as follows: (a) For an affected animal: i. the market value; or ii. the indicative market price (see (c) below) for the month in which the market value of the animal was determined; whichever is the less (b) For an unaffected animal: i. The market value; or ii. 125 per cent of the indicative market price for the month in which the market value of the animal was determined; whichever is the less (c) The indicative market price (IMP) is calculated using data in Northern Ireland relating to the month occurring two months before the date on which the market value was determined. The data are used to derive: i. the average price for commercial grade cows and in-calf heifers, both of which are intended for use in the production of milk; and ii. the average price for cull cows. The IMP is a weighted average of these two figures, (i) being weighted by reference to the number of cattle aged less than 7 years when valued which were slaughtered in Northern Ireland as BSE suspects, and (ii) being weighted by reference to the number of cattle aged 7 years or more when valued which were slaughtered as BSE suspects.</td>
<td>L8A tab 18</td>
</tr>
</tbody>
</table>
Annex 2 to Chapter 2: Cattle slaughtered and compensation paid 1988–96

Cattle slaughtered and compensation paid 1988-1996

<table>
<thead>
<tr>
<th>Year</th>
<th>No.</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988(^2)</td>
<td>1,953</td>
<td>528,442.00</td>
</tr>
<tr>
<td>1989</td>
<td>8,102</td>
<td>2,841,233.00</td>
</tr>
<tr>
<td>1990(^3)</td>
<td>16,771</td>
<td>9,102,349.00</td>
</tr>
<tr>
<td>1991</td>
<td>29,231</td>
<td>15,863,336.00</td>
</tr>
<tr>
<td>1992</td>
<td>43,549</td>
<td>28,460,395.00</td>
</tr>
<tr>
<td>1993</td>
<td>41,670</td>
<td>36,743,422.00</td>
</tr>
<tr>
<td>1994</td>
<td>29,167</td>
<td>24,116,170.00</td>
</tr>
<tr>
<td>1995</td>
<td>17,378</td>
<td>10,451,356.00</td>
</tr>
<tr>
<td>1996</td>
<td>10,278</td>
<td>6,629,812.00</td>
</tr>
<tr>
<td><strong>Cumulative Total</strong></td>
<td><strong>198,099</strong></td>
<td><strong>134,736,515.00</strong></td>
</tr>
</tbody>
</table>

\(^1\) Based on information supplied by the MAFF Liaison Unit and DANI
\(^2\) Compulsory slaughter with compensation commenced 8 August 1988 under the Bovine Spongiform Encephalopathy Compensation Order 1988 (50 per cent)
\(^3\) Compensation level raised to 100 per cent on 14 February 1990

The table above includes cattle that were slaughtered but not confirmed with BSE, although this was a minority. Annex 1 to this chapter shows how compensation differed according to whether cattle slaughtered were in due course confirmed to have had BSE.