Clearance checklist

*Inclusion of this checklist is **mandatory**. Please complete the whole list and private office will remove before putting submission in the box. A submission without it will be sent back.*

***Note**: Contact names provided must have seen and approved the submission.*

Finance	Does this involve any spending or affect existing budgets?	☐ If yes, named official ☒ No
Legal	Does this include legal risk, a court case or decisions that can be challenged in court?	☒ **Name Redacted** ☐ No
Communications	Could this generate media coverage, or a response from the health sector?	☐ ☒ No
Analysis and fact-checking	Does this include complex data, statistics or analysis?	☐ If yes, named official ☒ No
Devolved Administrations and the Union	Does this promote union wide policies, or will it affect Wales, Scotland or Northern Ireland?	☐ If yes, named official ☒ No
Legislation	Does this include options that may require or impact primary or secondary legislation/regulations? If yes, please discuss with the DHSC Legislation Team.	☐ If yes, named official ☒ No
Parliamentary Handling	Does this require engagement with parliamentarians or a statement in Parliament? If so, please discuss with the Parliamentary Affairs Team, and Intelligence, Insight and Engagement Team.	☐ If yes, named official ☒ No
Fraud	Have you considered fraud risks?	☐ If yes, named official ☒ No
Commercial	Does this include commercial or contractual implications?	☐ If yes, named official ☒ No
Technology, digital & data	Does this rely on or have crossover with a tech/digital/data solution?	☐ If yes, named NHSX official ☒ No
Health Data/Personal data use	Does this involve the use of sensitive health/care data? Discuss with the SIRO team. Could this require the processing of Personal Data (Data Protection Act 2018)? Discuss with the Data Protection Officer team.	☐ If yes, named SIRO/DPO official ☒ No
Strategy and Implementation Unit	Does this relate to cross-cutting or longer-term implications for wider DHSC strategy? Does this relate to one of the Secretary of State priorities or a manifesto commitment?	☐ If yes, named official ☒ No
Duties, Tests and Appraisals	Do the following tests apply and have they been considered; • Secretary of State Statutory Duties including on health inequalities • Public Sector Equality Duty • Family Test • Other (please specify)	☒ PSED, SofS Duties ☐ No

To: SofS
PS(I)

From: NR
Clearance: Adam McMordie, Deputy Director, Patient Access & Flow
Date: 13 August 2021
Copy: Name Redacted
NR
Private Office Submissions Copy List

LONG COVID AS AN OCCUPATIONAL DISEASE

Issue	You asked for initial advice on recognising Long COVID as an occupational disease and the issue of compensation.
Date a response is needed by	Routine – a response is requested by 20 August 2021.
Recommendation	We recommend that you: • note the advice below; and • write to DWP Ministers to seek their views on support for people with Long COVID. A draft letter is attached at Annex B

Discussion

1. Following our introductory policy briefing on Long COVID on 23 September, you asked for initial advice on whether health and care staff with Long COVID should be recognised as having an occupational disease and receive compensation. The Coronavirus APPG and other stakeholders are pressing for this for all key workers, and the regular media coverage on this is unlikely to diminish.

A. Occupational Disease

2. An occupational disease is, generally, any illness or chronic ailment that occurs as a result of work or occupation when it is more prevalent in a given body of workers than in the general population or other worker populations. Designation requires that the attribution of the disease to employment is clear or can be presumed with reasonable certainty, and opens a route to compensation.

3. Usually designation is done by DWP, by way of regulations[1], on advice from the independent Industrial Injuries Advisory Council (IIAC). IIAC reviews can take up to a year, or longer where the evidence is not clear-cut. Where a disease is prescribed, successful claimants receive a weekly income payment via the UK-wide Industrial Injuries Disablement Benefit (IIDB) scheme. Payments vary according to the degree of disablement, costing DWP an estimated £1bn per annum. The IIDB was designed to compensate for permanent work-related disabilities or progressive conditions, not fluctuating conditions like Long COVID.

[1] Social Security (Industrial Injuries) Prescribed Diseases) Regulations 1985, pursuant to s108 of the Social Security Contributions and Benefits Act 1992

4. DWP's position is that any changes to IIDB will only be made when there is strong scientific and epidemiological evidence to support it. There may be other mechanisms available which are better suited to a condition like Long COVID. In the meantime, disability benefits which support people with long-term conditions or disabilities are available to those with Long COVID. These benefits do not include or exclude by condition, but consider the needs arising from the condition.

5. The IIAC[2] have recognised an association between some occupations and increased risk of death from COVID-19 but due to the limited evidence available have not yet recommended prescription. They have begun to examine disabling and irreversible effects of COVID-19. This involves consideration of a complex set of issues, which may be constrained by a lack of evidence and a process not designed for pandemic situations. We are in regular contact to share relevant Long COVID research evidence, but it is already clear that this particular review may take longer than usual. Unions and workforce representatives are flagging concerns that their decision may come too late for those facing financial hardship now.

6. A decision for or against prescribing Long COVID will have no direct impact on NHS services; the NHS will treat those with Long COVID as they would any other patient. It is nonetheless an important decision. If Long COVID were prescribed, the question of compensation would be resolved for those workers in scope but there may be impacts around personal injury claims and employer liabilities; it would not prevent workers from pursuing remedy through the courts. A decision against prescription, or an inconclusive outcome, would increase pressure on DHSC to establish a separate compensation scheme.

7. We recommend that you write to Thérèse Coffey to seek her views on this issue, to jointly consider how best to support the IIAC to reach an early decision on prescription, or if this is not possible to explore whether there are alternative solutions that might be deployed more quickly. It may also be helpful to discuss to whether DWP intend to treat Long COVID in the same way as other long-term conditions, or as a unique condition, requiring bespoke policies or guidance. A draft letter is attached at Annex B.

8. You may also wish to convene a Ministerial roundtable to discuss non-health impacts of Long COVID more broadly, in light of commitments in the National Disability Strategy and the Government response to the *Health is everyone's business* consultation. This may be helpful in shaping the Government response to the Health and Disability Green Paper consultation also.

B. Compensation

9. The APPG, unions and other stakeholders are already calling for a presumptive compensation scheme to be established now, in advance of any IIAC recommendation.

10. We do not yet see a clear case in favour of this. It would demonstrate a clear commitment to supporting health and care workers in these unprecedented times. However, initial scoping shows establishing a new scheme would be

[2] Covid-19 and occupation: position paper 48, March 2021, Industrial Injuries Advisory Council, COVID-19 and occupation: position paper 48 - GOV.UK (www.gov.uk)

operationally complex, pose significant legal risks and could result in implied liabilities for employers, significantly impacting the personal injury landscape.

11. Key issues include:

12. [redacted]

13. Clinical definition: Establishing a compensation scheme could only be done on the basis that there is a clear and definable disease. As yet there is no internationally agreed definition of Long COVID nor indeed universal terminology to describe it, given the differences in patients' experiences.

14. Scale: Not everyone who has had COVID-19 will develop Long COVID (however it is defined), nor will everyone with Long COVID be unable to work. NHS workforce data suggests that over 99% of NHS staff recording COVID-19-related sickness absence through the ESR return to work within 3 months, although this is unvalidated data and may include absences for reasons other than Long COVID. Some of those absent for longer may still return to work, either with/without adjustments, or to a different role. There is no equivalent source of data for primary and social care staff, or other workforce sectors and the ESR is not used universally across all providers and CCGs.

15. Prior Ministerial decisions: I&S I&S I&S DHSC ministers decided against the re-introduction of an injury benefit component within the NHS and Social Care Coronavirus Life Assurance (England) Scheme (CLAS), again I&S I&S

16. Interaction with claims relating to PPE provision: A small number of claims from NHS staff against their employers are being handled by NHS Resolution under the Liabilities to Third Parties scheme. This scheme may cover staff with Long COVID, depending on individual circumstances.

17. Discrimination and fairness: Limiting coverage to certain worker groups will require objective justification in law [redacted] A Long COVID compensation scheme may be considered disadvantageous to employees with other long-term conditions.

18. Precedent: A scheme for health and care workers may increase pressure for similar provision to be made for other key workers (although work with the general public, as opposed to work with people known to be infected, may not be sufficient evidence of occupational causation).

19. Funding: There is no funding available to pursue a compensation scheme, and we anticipate that HMT will be reluctant to open a discussion on this. Potential costs are highly uncertain, but the financial burden could run on for many years.

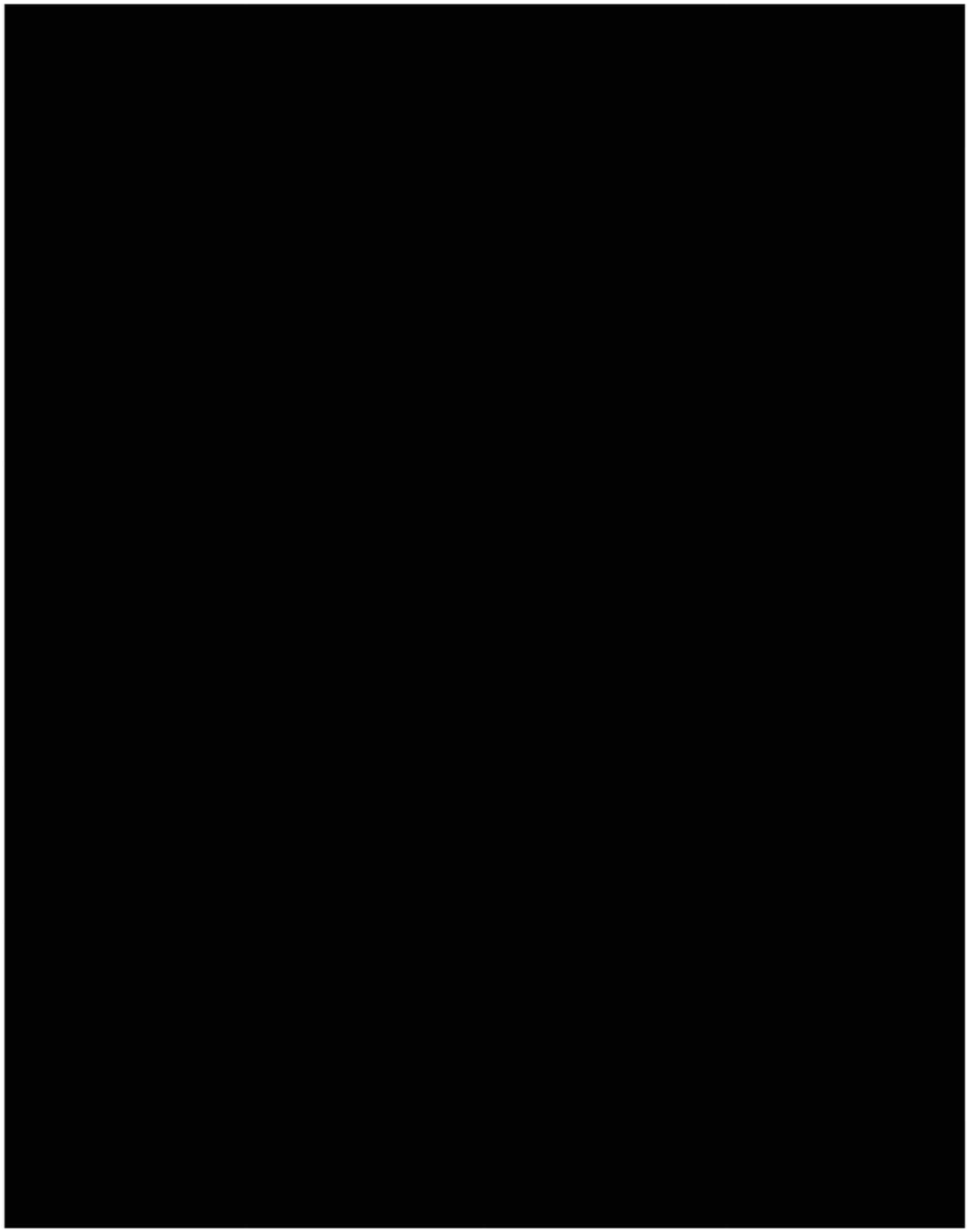
20. Resources: Injury Benefit Schemes are highly complex and technical. A new scheme would require significant development resources and operational

resources would be required to manage claims. Legal resource is currently highly constrained due to Coronavirus legislation and the NHS Bill.

21. If having considered these issues, you wish to explore this further we will provide further advice.

Union

22. We are actively engaging DA officials on both issues. They report receiving less stakeholder pressure and as the IIDB is a UK-wide scheme, they will await the IIAC recommendation before taking a position.



[redacted]

Legal duties

29. You are required to have due regard to the public sector equality duty under section 149(1) Equality Act 2010 in exercising your functions.

30. We have no workforce absence data for primary and adult social care, but analysis of ESR data suggests that NHS staff with COVID-related absence for more than 4 weeks are more likely to be male, in older age groups, and more likely to be from BAME backgrounds. This differs from other prevalence estimates, for example the ONS estimate of higher prevalence in women, those aged 35-69 years, and non-Asian ethnicities. Other long-term illnesses and diseases are more likely to impact on different groups and backgrounds, and so treating Long COVID more favourably by establishing a compensation scheme would adversely impact those other groups of staff.

31. We will develop a more detailed assessment of any equality implications as part of any further policy advice.

Conclusion

32. We do not yet see that there is sufficient evidence to support designating Long COVID an occupational disease, nor a clear case in favour of a compensation scheme. We recommend that you write to DWP Ministers to seek their views. You may wish to consider convening a Ministerial roundtable to discuss the wider socio-economic impacts of Long COVID.

NR

Long COVID Policy, Provider Efficiency & Performance

Irrelevant & Sensitive

Annex B – Draft Letter

The Rt Hon Thérèse Coffey MP
Secretary of State for Work and Pensions
Caxton House
Tothill Street
London
SW1H 9NA

Dear

Long COVID

While we have now moved into Step 4 of the COVID Roadmap and the beginnings of a return to something akin to normal life, it is clear that the effects of the pandemic on individuals and on the UK economy will be felt for some time to come. The shared agenda of work and health will be an increasingly important part of our recovery.

I am therefore extremely pleased that we have published our joint response to the *Health is everyone's business* consultation and that the improvements outlined can now begin to be realised. I welcome too the National Disability Strategy and the Health and Disability Green Paper exploring how the benefits system could better meet the needs of disabled people and people with health conditions. I will be most interested to hear how respondents view the important changes proposed.

I am writing to you today to discuss the support available to those experiencing long-term effects of COVID-19, or Long COVID as patients have named it.

Thanks to the fantastic efforts of our NHS and the wider research community, we have made enormous progress in our understanding of the debilitating long-term effects of COVID-19 and how to address the health needs of those affected. NHS England and Improvement have recently invested £134m to expand care for adults and children with Long COVID and as a Department, we have invested over £50m to fund research to improve the diagnosis and treatment of Long COVID, which will be life-changing for those who are battling long-term symptoms of the virus.

However, Long COVID is not just a health issue; it's effects will be felt in wider society and other public sector services, such as education and of course employment. I would welcome early discussions with you about how DWP are approaching Long COVID, including whether you intend bespoke policies and guidance on this condition or would view it as essentially no different in its impacts than other long-term health conditions.

As you will know, the Coronavirus APPG and other stakeholders including workforce unions have for some time been calling for key workers with Long COVID to be recognised as having an occupational disease. Such recognition is, to them, a route to better employment protections and compensation through the Industrial Injuries Disablement Benefit scheme (IIDB).

I am aware that the Industrial Injuries Advisory Council (IIAC) are considering both COVID-19 and Long COVID as candidates for prescription. I do not underestimate the challenges that they face in order to make a clear recommendation to you on this, if indeed they feel able to do so, given that the IIDB was not designed for novel

infectious diseases or fluctuating conditions such as Long COVID. However, employers and unions are raising concerns that any IIAC recommendation will come too late for those suffering with Long COVID now. I propose that we explore together how we might feasibly support the IIAC in reaching an early decision on prescription, or if this is not possible whether there are alternative mechanisms or approaches that might be deployed to support those suffering on-going financial hardship.

You may be aware that the APPG have called for a bespoke, presumptive compensation scheme to be established in advance of any IIAC recommendation, citing examples of people losing their jobs and experiencing financial hardship once SSP provisions have been exhausted. I would welcome your views on this. In my view, such an approach would present considerable challenges for both our Departments and may have implications for the IIDB and wider benefits system.

Without wishing to pre-empt the outcomes of the Green paper consultation, there may be other measures we can take jointly, for example through more explicit guidance to employers on how to support those with Long COVID in or returning to work, or to improve the understanding of the condition and its impacts on daily activities by those responsible for deciding disability benefit awards.

The wider impacts of Long COVID are of interest to other Departments beyond our own, and it is important that we have a consistent and co-ordinated response. I intend therefore to arrange a Ministerial roundtable after the summer Recess to consider this more fully. I do hope that you will be able to attend and look forward to your initial thoughts on the issues I have raised in advance of that discussion.