

Chapter 12

Department of Agriculture and Food

12.1 Damages for Storage of BSE Tallow

Background

I reported in 2001 on a review I had carried out of the Bovine Spongiform Encephalopathy (BSE) eradication programme. Among the main control measures adopted by the Department as part of this programme were procedures for dealing with Specific Risk Material (SRM). SRM is defined in EU legislation as certain parts of the bovine carcass, mainly the brain and spinal column. The measures adopted involved the isolation, staining and direct removal of this material to approved plants for rendering and eventual destruction by incineration.

The control of the collection and rendering of SRM and the storage and destruction of the resultant meat and bone meal (MBM) and tallow was, from an early stage, recognised by the Department as a key anti-BSE measure. The preferred approach was to designate a specific rendering plant to exclusively process all of the SRM generated throughout the State. Having considered a number of applications, the Department approved a rendering plant (the renderer) for this purpose in February 1997. The intention was that this designation would enable the renderer to process the SRM on a commercial basis for the slaughtering sector, without financial assistance from the Exchequer. The receipt of SRM raw material, its processing, and the storage of the resulting MBM and tallow was overseen by the Veterinary Inspectorate of the Department. Its main role was to verify the quantities of SRM received and MBM and tallow dispatched. Ownership of the MBM and tallow remained with the renderer.

In May 1997

- The local Department inspector responsible for the renderer's premises notified the Department that the renderer had filled all its tallow storage tanks and was looking for additional storage. In the absence of storage facilities being found for this tallow, the renderer would have had to cease rendering all SRM.
- The renderer had identified two possible storage premises.
- One of these premises was recommended by the Veterinary Inspectorate.
- The Department issued an approval notice to the renderer in respect of the selected premises (the store).

However, due to the absence at the time of key staff, a licence was not issued to the store owners. At this time, the Department's policy was to inspect and license storage premises in regard to suitability for receipt and holding of MBM and tallow.

An agent on behalf of the renderer negotiated the contract for storage of the SRM tallow. The Department was not a contract party to the storage of tallow at the store in 1997.

The store was used from May 1997 onwards by the renderer under the supervision of the Veterinary Inspectorate. In the following three years over 5,000 tonnes of SRM tallow was sent there. In July 1998 it became necessary for the Department to make a financial contribution for the disposal of the MBM and tallow because of difficulties experienced by the renderer in securing adequate payment from the meat sector for the rendering of the SRM and subsequent disposal of MBM and tallow. As part of an overall agreement reached with the renderer for the disposal of SRM derived MBM and tallow, the Department

took over responsibility for 2,511 tonnes of SRM tallow held in the store. Prior to this the tallow was owned by the renderer.

Legal Case

In February 1999 a dispute arose between the renderer and the store owners that resulted in the initiation of High Court proceedings. The action was taken against the Department and two co-defendants, (the renderer and its agent) by the owners of the store. The plaintiff claimed, at that time, that it had only then been made aware that the material stored was, in fact, derived from SRM.

A High Court case commenced in June 2004. The plaintiff's claim at that time was for €6.5 million in damages — €4 million for destruction of business based on damage to its storage tanks and €2.5m claimed as arrears of storage fees. The rent initially charged for use of the store was €1.27 per week per tonne of tallow stored. However, the store owners sought to increase this rent to €3.17 per week per tonne with effect from 1 March 2000. The Department, on legal advice, paid the increased rate. However, when the plaintiff created legal difficulties with regard to the removal and disposal of the tallow the Department ceased payment of all storage fees in February 2002. These circumstances led to arrears of rent forming part of the Department's ultimate settlement of the case.

The key issue in the case was whether or not the plaintiff had been informed from the outset that the tallow was derived from SRM. The position of the Department was that:

- While it had approved the renderer as the designated SRM processor, it was not a party to the original storage contract concluded by the renderer's agent with the store.
- It was not directly involved in what the store was told by the renderer or its agent.
- It had no control over the description of the material on the delivery dockets which accompanied the tallow being sent for storage.

I have been informed by the Accounting Officer that the Department and its legal team based and built its defence on one critical understanding. This was the understanding given to the Department by the co-defendants, prior to and throughout the duration of the case, that both could clearly and unequivocally establish, to the satisfaction of the court, that the plaintiff was on full notice and absolutely aware, from the first load going into storage, that the tallow was SRM tallow. The co-defendants had no written evidence to establish this fact, so this was a case where ultimately oral evidence was primary and the court would have to weigh up the bona fides and veracity of what was said and by whom.

The fact that the Department had issued formal documented approval of the premises for the storage of SRM was only discovered after the commencement of Court hearings.

Settlement

On day 46 of the case on the conclusion of cross-examination of co-defendants' witnesses, but prior to the commencement of cross-examination of Department witnesses, legal advice from the Department's Senior Counsel recommended that the Department urgently explore the possibility of a settlement of the case. Counsel and the Department were of the clear opinion that their co-defendants had not established sufficient primary knowledge on the part of the plaintiff, to the required degree, that the secondary evidence of the Department's witnesses would copperfasten a successful outcome to the case.

The Department immediately sought and received Department of Finance sanction for a settlement. In December 2004 a settlement in the sum of €3.75 million was signed between the parties and recorded in the High Court. In addition the agreement provided that the Minister would pay the plaintiff's costs. The agreement also provided that the Minister would make an additional payment (€22,000) for the removal of tallow. A separate agreement was recorded in the High Court whereby one of the co-defendants contributed a sum of €1 million to the Minister as its contribution towards the settlement.

In December 2004 this payment was received and the Department paid the agreed settlement sum of €3.75 million.

I have been informed by the Accounting Officer that the plaintiff's costs, to be paid by the Department, have not as yet, been assessed for payment as they had only recently been furnished to the Chief State Solicitors Office. The Department has not yet seen them. The assessment of the plaintiff's costs should be completed shortly. He felt that it would be inappropriate to indicate what the likely fees might be, due to the fact that the matter is currently *sub-judice*. However the Attorney General's Office had paid out a sum of approximately €925,000 to the State's legal team in fees.

Outcome

The outcome of these events, from the Exchequer viewpoint, is that allowing for the contribution of the renderer, net expenditure of approximately €2.75 million was incurred in settling the overall claim, including storage. In addition expenditure of approximately €1 million in respect of State legal costs has been paid and an as yet undetermined amount, remains to be paid in respect of the Plaintiff's legal costs.

12.2 National Beef Assurance Scheme

Background

Following the BSE crisis of 1996, measures were adopted to improve the production and processing conditions of cattle and beef in Ireland and to provide assurances to consumers as to the safety of Irish beef. In order to allay consumer concerns and to safeguard beef markets at home and abroad, the National Beef Assurance Act, 2000, providing for the implementation of a National Beef Assurance Scheme was enacted. The purpose of the scheme is to provide guarantees about the safety of Irish cattle and beef by:

- The development of common high standards of production and processing
- The enforcement of these high standards through a process of registration, inspection and approval
- The enhancement of the animal identification and tracing system.

During 1997, work began on the development of the computerised Cattle Movement Monitoring System (CMMS). The system records all movements of cattle on a central database, i.e. movements through livestock marts, from farmer to farmer, through cattle dealers, to slaughter plants and for live exports. The system is supplemented by the information supplied through calf birth registrations and the issuance of bovine passports. The CMMS was phased in from September 1998 and captures all data on births, movements, deaths and disposals since 1 January 2000.

As well as providing details of the origin, identity and life history of cattle before they enter the human food chain, the database is also being used to provide data to validate payments under livestock premia schemes. In 2004 payments totalling €789 million were made on foot of applications which were subject to verification and validation checks using CMMS data.

Scope of Audit

My examination of expenditure under the National Beef Assurance Scheme included a review of the contractual arrangements between the Department and a private operator for the processing of calf birth registrations and the issue of bovine passports, animal movement permits and on-farm death notifications. It also included a review of procurement procedures for the new Animal Health Computer System.

Calf Birth Registrations and Bovine Passport Issue

The contract for the registration of calf births and the issue of bovine passports has been held by the same service provider since the inception of the CMMS. The service provider successfully re-tendered for the current contract in December 2003.

Invoice Verification

The Department is invoiced monthly by the contractor for the number of calf births registered in the previous month. These registrations are input by the contractor onto its computerised system on foot of notifications received from farmers and herd owners. The data is then downloaded nightly onto the Department's system.

When the contractor's invoice is received staff cross-check the number of registrations claimed with those registered on the CMMS. These should automatically agree as the CMMS reflects what was downloaded from the contractor's system. An amount of €4.4 million was paid to the contractor in 2004 for the registration of calf births and bovine passport issues.

My audit noted that the absence of an independent verification of calf registrations was raised as a serious finding by the Department's Internal Audit Unit in a report in March 2004. The management response at the time was that, until such time as calf birth registration is fully on line as part of the new Animal Identification Movement System, which is intended to succeed the CMMS, there is probably no truly independent mechanism available to verify all invoices in full.

I enquired how the Department satisfies itself that the invoices being submitted by the contractor for payment are accurate. In reply the Accounting Officer stated that the Department is satisfied that there are sufficient validation and control mechanisms in place in regard to the CMMS database.

He stated that calf birth registrations are not accepted onto the CMMS unless the herd number of the applicant is valid, has an active status and has been supplied with a herd identifier. Nor are registrations accepted unless the tag number applied on is valid, the dam is alive in the herd of birth at the time of birth, is over 18 months of age, has not had a calf in the previous 300 days and has matching breed details. Moreover, the CMMS database is an integrated database. All exits, disposals and other movements are validated by reference to the initial calf registration data and act as further verification of the existence of animals. With the exception of brass tagged animals that are not covered by the calf birth registration contract, registered animals may not be removed from the CMMS database unless recorded as slaughtered, exported or dead on farm. Analysis of the database provides no evidence of any anomaly or any imbalance between entries and exits.

In addition, over the past number of years, the Department has supplied herd profiles on a regular basis to all farmers both for Extensification Scheme entitlements and herd reconciliation purposes. The production of these profiles acts as a barometer of the accuracy of the database. In feedback and other notifications from farmers, the question of incorrect registrations has never arisen as an issue.

The Department is therefore satisfied as to the accuracy of payments made to the contractor despite the fact that invoices are raised and calf registration numbers are generated from the same source.

Monitoring of Administrative Controls

The contract for calf registrations and animal passport issue specifies the level of supervisory checks to be carried out by the contractor. It states that supervisory checks should be carried out regularly on the work of all staff and the computer system and these checks shall be documented. The minimum level of checks to be carried out is 15% of all transactions. As no documentary evidence was available I enquired as to what checks, if any, are carried out by the Department to ensure that the administrative controls, set out in the contract, are operating satisfactorily.

In reply the Accounting Officer stated that a Department official visits the contractor's premises on a regular basis to ensure compliance with the agreed procedures and processes and with the administrative provisions set out in the contract. The checks conducted vary and can incorporate a walk through of the relevant business processes (e.g. data-input, printing, packaging, posting, call centre, archiving, retrieval, etc.), an examination of the manual and electronic records of data input by each staff member as well as discussions with senior management and an examination of error listings.

The Accounting Officer acknowledged that the checks conducted by the Department to ensure compliance have not been documented in a systematic fashion. This issue has now been addressed and a checklist has been devised to evidence ongoing checks. In addition, for the future, the control documents used by the company to evidence checks conducted will be endorsed by the Department upon verification. The Accounting Officer also stated that the Department is satisfied from the checks that have been conducted that the administrative controls in question are operating in a satisfactory manner.

Cattle Movements

The same service provider successfully retained the CMMS contract for the handling, processing and verification of farm to farm bovine movement permits and on-farm death notifications for the year to December 2004.

Movements of cattle, whether for single or multiple animals, can only be made on foot of a movement certificate or permit issued by the contractor on behalf of the Department. The Department is invoiced monthly for the number of certificates/permits of cattle movements - certificates can be for a maximum of 10 animals - issued in the previous month.

However, as the CMMS database records the movement of each individual animal, it is impossible to reconcile the number of movements recorded against certificates issued and invoiced. A reasonableness test is carried out to verify the number of certificates invoiced by confirming that the total cattle movements per the CMMS in the month significantly exceeds the number of certificates invoiced.

The amount paid in 2004 for the issue of cattle movement certificates and the recording of on-farm death notifications was €995,000.

I enquired how the Department verifies that the amount of permits being claimed for is correct. In reply the Accounting Officer stated that the introduction of new technology under the new Animal Identification Movement System in 2005 will allow the Department access a report generating figures for the number of permits issued and this will be used, with effect from July 2005, to verify invoices received from the contractor. The Department will also use the new facility to conduct a retrospective check in respect of invoices paid to date under this contract.

Cattle Numbers — CMMS v Central Statistics Office

The Central Statistics Office (CSO) publishes a livestock survey every six months that estimates livestock numbers in the State. It was noted that the surveys for June 2004 and December 2004 included notes on a comparison of numbers with those on the Department's CMMS. The June 2004 survey indicated that total cattle numbers were some 6% higher on the CMMS than the CSO estimate at that date. At December 2004 it showed them to be some 5% higher. Both surveys noted that the CSO was continuing to compare the CMMS and CSO survey figures at farm level to provide a more detailed analysis and explanation of the reasons for the differences between the two data sources.

I asked what measures the Department had taken to establish the reasons why the CSO livestock survey figures for bovines are significantly lower than those of the CMMS, if a reconciliation has been carried out between the CMMS and CSO figures and, if so, what was the result. In reply the Accounting Officer stated that the CSO livestock survey figures for bovines are estimates based on sample surveys linked to the *June 2000 Census of Agriculture* whereas the CMMS statistics are based on a count on a specific day of individual animal tag numbers whose animal events (births, movements, calvings and exits) have been

notified variously by farmers, marts, exporters and factories. CMMS is a dynamic database and the total figures for the live animal population will vary from day to day in line with the addition of new notifications. It is the Department's view that the important issue is the level of accuracy, reliability and credibility of the CMMS database. The Department has taken a number of measures to ensure the accuracy of the database and is satisfied that it has an accuracy level in excess of 99% at this point.

In regard to the issue of a reconciliation being carried out between the CMMS and CSO figures the Accounting Officer stated that since 2000 there has been regular and ongoing contact between the Department and the CSO to compare the results of livestock surveys conducted by the CSO with data from the CMMS database. Initial feedback from the CSO showed that the highest level of discrepancy arose in respect of female animals in dairy herds and were caused by retagging issues, past inaccuracies in the CMMS database and delays in notifications. It is understood that the draft report of the CSO Statistical Potential of Administrative Records project envisages the eventual use of CMMS as a definitive source of control totals for the survey estimates of cattle data.

Animal Health Computer System

The new Animal Health Computer System is a fully networked computer system with dial-up internet access for veterinary practitioners and is designed so that animal health data for individual animals can be integrated with individual animal movement monitoring data recorded on the existing CMMS.

It was noted that the sum contracted for the system in 2001 was €5.8 million and that payments to 31 December 2004 amounted to approximately €8.7 million. The final payment of €304,000 was made in April 2004. I enquired as to the reasons for the cost overrun of €2.9 million, representing 50% of the original contract sum.

In reply the Accounting Officer stated that a number of factors led to delays and increased costs over and above the original contract price. The lapse of time between the design of the system, which was completed in August 2000 and its development, which ran from April 2001 to October 2003, advances in technology, changes in the Department's IT infrastructure and additional business needs resulted in the need for adaptations and additions to the original systems design. The original contract provided for single development, system test and user acceptance test phases with a pilot run due in September 2002. However, because of the number of adaptations and additions to the original systems design, including the need to respond to urgent business requirements arising during the development phase itself, a series of additional development, system test and user acceptance test phases were required followed by a pilot run in November 2003 and system roll-out which took until February 2005 to complete. In addition, progress on the project was significantly delayed in 2001 when key resources were diverted to deal with the Foot and Mouth Disease crisis.

Conclusion

On balance I was generally satisfied with the results of my examination of those aspects of the National Beef Assurance Scheme which were reviewed in the course of the audit and with the explanations provided by the Accounting Officer. There is always scope for improvement and the Department is aware of certain weaknesses but it is actively working to address them.