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Rt Hon Nick Thomas-Symonds MP
UK Paymaster General and
Minister for the Cabinet Office
(Minister for the Constitution and
European Relations)
Cabinet Office
70 Whitehall
London
SW1A 2AS

8th July 2024

Dear Minister,

Infected Blood Compensation Scheme

May we start by congratulating you on your appointment following success in the general election.

We write to you as a matter of extreme urgency about the Infected Blood Compensation Scheme. As you will be aware the former government provided its response to the Infected Blood Inquiry's recommendations on compensation on 21st May 2024 in an address to Parliament by the then Minister for the Cabinet Office, Rt Hon John Glen MP.

To give effect to the Infected Blood Compensation Scheme, provisions in part 3 of the Victims and Prisoners Act 2024 were rapidly approved by Parliament under the wash-up arrangements prior to its dissolution. One unintended consequence of this was that provisions in the Act relating to the Compensation Scheme have to be made to come into effect before 24th August 2024. With the election and forthcoming Summer recess there has not been, nor will there be, opportunity for effective Parliamentary scrutiny of the Compensation Scheme before it becomes law. Engagement with the infected blood community has been frankly woefully inadequate, rushed and not benefitted from Ministerial oversight during the election period.

We do not know what recommendations will be placed before you for approval, but we have identified very serious shortcomings in the proposed Compensation Scheme as presented to us through the limited engagement that has occurred. Detailed analysis of the scheme has shown that it falls considerably short of the recommendations of the IBI and recommendations of Sir Robert Francis in his report, also commissioned by the last government. The proposed scheme is complex and is flawed in many respects. The



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attachment gives some examples of areas of concern, but this is not an exhaustive list. The degree of uncertainty revealed through the published proposals is most worrying.

As mentioned, engagement with the infected blood community has been inadequate and does not by any stretch of the imagination meet the standard set by the Infected Blood Inquiry at page 19 of its Second Interim Report that “decisions about those who should receive compensation are not made without them”. We were not asked for our views on the work of the Government’s Expert Panel (which met behind closed doors) and we have received inadequate background information on the basis of compensation payment calculations. Our members are in the dark about what they may expect from the compensation scheme. Some estimates have been provided, but we cannot reconcile these either because vital information is missing or because the basis of calculation has no logic.

While we welcome Sir Robert Francis’ attempt to allow us a brief voice on the former government proposals, that opportunity was too constrained in the time available and we feel strongly that officials have failed to reflect the full truth of what was said by charities and campaign groups in response during the short, structured meetings that were held, including their deep and extensive criticisms of the proposed compensation arrangements. The summary response document marked ‘official-sensitive’¹ simply does not reflect the concerns and failures set out during the meetings that took place. It should be marked “insensitive” from the way in which officials simply reiterated what policy documents had said, and not listening to the concerns of those infected and affected.

We thank the new Prime Minister for his comments on 6th July that the government will honour their obligations to pay compensation under the Infected Blood Compensation Scheme. Those payments must be just and equitable. We urge the new government to pause and reflect on the many comments made to Sir Robert Francis as Interim Chair of the Infected Blood Compensation Authority and not to be constrained by Section 49 (1) of the Victims and Prisoners Act 2024². Whilst speed is of the essence, it is far more important to implement a workable and fair scheme than to meet a deadline which was designed to ensure progress over a period when there would have been greater opportunity for Parliamentary scrutiny.

That said we feel for those amongst us who have not yet received any interim compensation payments or who have received no information on the process for registering their claim. This includes those infected with Hepatitis B and affected family members across the three infection routes, including partners, parents, children, siblings and carers. It is really important that the Compensation Authority acknowledge these groups and provide guidance to them as soon as practicable on registering their interest.

¹ Issued from the Cabinet Office on 2nd July.

² This Section requires the Secretary of State or Minister for the Cabinet Office to make Regulations to establish the Infected Blood Compensation Scheme by 24th August.

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In view of the deeply damaging impact the proposed infected blood compensation arrangements are having upon the infected and affected community we urge you to suspend any further consideration on secondary legislation and compensation details until you have had the opportunity to consult directly with relevant campaign and charity bodies on more positive and engaging way which reflects the level of consideration we have received through the work of Sir Brian Langstaff and the Infected Blood Inquiry.

The Rt Hon John Glen MP, as Minister for the Cabinet Office, when he came to Scotland on 10th May to meet us in person about compensation, promised us that he looked forward to further such meetings with him. We trust that you will approach this matter similarly, but most importantly will set as a personal priority the establishment of a compensation scheme which is open and transparent, developed in conjunction with the infected and affected and is simple to understand.

We look forward to hearing from you.

Yours sincerely.



Bill Wright
Co-Chair
Haemophilia Scotland



John Dearden
Co-Chair
Haemophilia Scotland

cc. Ian Murray MP, Secretary of State for Scotland
Jenni Minto MSP, Minister for Public Health and Women's Health
Sir Robert Francis, Interim Chair Infected Blood Compensation Authority
Haemophilia Society, Haemophilia NI, Haemophilia Wales



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Major Failings in the Conservative Government's response to the Infected Blood Inquiry³ Recommendations on Compensation and the Sir Robert Francis' Compensation Study Report⁴

These are our major concerns.

1. The Scheme covers those infected and those affected. It confirms compensation for those infected with HIV, Hepatitis B and C and for those affected by infection. That is appropriate. The devil is very much in the detail of the scheme.
2. The summary response issued by the Cabinet Office following four short engagement meetings called at short notice with charitable and interest groups, does not reflect the level of concern expressed by the infected blood community on the detail of the compensation scheme. Fundamental concerns were reflected as points noted or questions asked when in reality we made plain the deficiencies in the published proposals, as did our legal representatives.
3. A clear recommendation⁵ on the future of support schemes has been ignored. A proposal to top up compensation to cover cases where compensation payments are less than the sum paid under support schemes will have no practical effect as the government's proposals intended to take into account any compensation for past loss in their calculations. This is totally alien to the approach taken by the Courts. The scheme gives with one hand and takes away with the other.
4. The compensation scheme bases the level of payments on what are called severity bandings. For those with Hepatitis C infection in particular, the bandings proposed are based purely on the condition of an individual's liver. They do not take into account psychological factors, socio psychological factors or the side effects of treatment or the length of treatment. For those treated with Interferon the side effects of treatment were extreme in many cases and long-lasting. It is our view that these aspects must be taken into account.
5. On compensation for financial loss, the Expert Panel appointed by Government (who met and debated in secret without any engagement with the community) recommended that this be based on a percentage of median national earnings + 5% based at current prices. For claims by a deceased estate, only for the last 4 years of a person's life would accrue the full amount. For many years following infection they would receive only 20% of that value⁶. This is fundamentally wrong.

³ Report by Sir Brian Langstaff published 20th May 2024.

⁴ Compensation and redress for the victims of infected blood recommendations for a framework 7th June 2022.

⁵ Recommendation 13(b) which states the current annual payments under the support schemes should be continued (or merged with the compensation scheme) and guaranteed for life, by legislation or secure government undertaking.

⁶ This is taken from a worked example in the Government's proposed Scheme.

6. Alongside this the IBI recommended⁷ that interest be paid on past financial loss from the date of infection to the date of the award. The former government proposals make no reference to this. One can only assume they were seeking to avoid payment of interest.

7. It is not entirely clear how the financial loss calculations will apply for living individuals who have been infected. There are various ways in which this could be calculated, but the draft scheme does not make it clear which will be applied. It is essential that there is clarity on how each aspect of the scheme is applied.

8. Care costs form an important element of the compensation scheme, but the Expert Panel has determined that the first 9 years following infection will not be eligible. There is no clear rationale for this approach. It appears as a figure plucked out of the air.

9. As we have said in the covering letter we have concerns over the lack of progress in making interim payments of £100,000 to recognise the deaths of people to date unrecognised as recommended in the IBI Second Interim report of April 2023. Equally many have received no information on the process for registering their claim. This includes those infected with Hepatitis B and affected family members across the three infection routes, including partners, parents, children, siblings and carers. It is really important that the Compensation Authority acknowledge these groups and provide guidance to them as soon as practicable on registering their interest.

10. The position of widows under the current support schemes is appropriate and without any dubiety. In the first year after their partner's death they receive 100% of the deceased entitlement to support payments. Thereafter they receive 75% of the deceased entitlement for the rest of their lives.

There is no equivalent provision under the compensation scheme. Indeed the compensation scheme acknowledges that additional support may be required because compensation will not match support scheme payments, and then, based only on an assumed life expectancy of the widow, not the actual date of death. How can this be appropriate? The state is failing to recognise the position of those who have cared for a partner whose life has almost certainly been cut short by infected blood.

11. The scheme is based on a tariff based system as recommended by the IBI⁸. This brings simplicity to the calculation process and would be appropriate if the criterion for the severity bandings (which identify the severity impact of infection) were appropriate. As we have identified in point 4 above they are not. Because the severity bandings are inappropriate, the tariff calculation will also be inappropriate. The tariff is based on assumed periods of good or ill health. We do not see these as representative of the majority of those infected and this then also has a secondary impact on the value of the tariff.

12. There is provision in the scheme for a detailed individual assessment of loss referred to as the "supplementary process". It has been suggested that this would not be an automatic right, but would have to be justified. The counter view that should prevail is that anyone

⁷ Recommendation 11.

⁸ See Recommendation 9.

should have the right to pursue the supplementary route as of right without the need to justify their request. The scheme also provides that awards under the supplementary route would have a limit on the highest level of award the scheme can offer⁹. There seems no logic to this, the assessed level of loss is what it is. There should be no reason to artificially reduce this, other than to deprive claimants of the compensation they are due.

13. There are other concerns we could address, but the above should make one reflect on proceeding with the scheme as currently drafted,

⁹ See page 5 of Infected Blood Compensation Scheme Summary as published by Rt Hon John Glen on 21st May 2024.