

From: Seamus Camplisson  
Health Protection Branch

Date: 17 February 2011

To: 1. Dr Elizabeth Mitchell  
2. Catherine Daly  
3. Michael McGimpsey

## **REVIEW OF FINANCIAL SUPPORT AVAILABLE FOR PEOPLE AFFECTED BY CONTAMINATED BLOOD**

**Issue:** Edwina Hart, Minister for Health and Social Services in Wales, has written to Andrew Lansley CBE MP regarding the outcome of the review into the financial support available for people affected by contaminated blood. It was agreed at a Devolved Administration teleconference between the Health Ministers for Scotland, Wales and Northern Ireland similar correspondence would also issue from Northern Ireland and Scotland.

**Timescale:** Urgent.

**FOI Implications:** This note is fully disclosable.

**Financial implications:** Estimated £309k is needed recurrently and £1.4m for one-off payments for claimants in Northern Ireland to maintain parity with England.

**Presentational Issues:** Media interest likely

**Special Advisor's Comments**

**Recommendation:** It is recommended the Minister notes the briefing and considers the draft letter for issue.

### **Issue**

1. Following a DA teleconference between Edwina Hart, Minister for Health and Social Services in Wales, Nicola Sturgeon, Cabinet Secretary for Health and Well-Being in Scotland and Michael McGimpsey, Minister for DHSSPS, it was

agreed Edwina Hart would write to Andrew Lansley CBE MP regarding the financial measures introduced in England on the new financial support package available for people affected by contaminated blood announced on the 10th January 2011. This letter would act as a template for the other two Devolved Administrations to draft similar letters to send to DH (L).

## **Background**

2. There are currently three ex-gratia payment schemes in operation in the UK: (i) the MacFarlane Trust, (ii) the Eileen Trust and (iii) the Skipton Fund. The MacFarlane Trust and Eileen Trust provide ex-gratia lump sum and discretionary payments to, respectively, haemophiliacs and others who contracted HIV from infected blood and blood products, and their dependants. An annual payment of £12,800 is paid to each infected individual and is administered on a UK basis.
3. The Skipton Fund was announced on 29<sup>th</sup> August 2003 to make payments to people infected with hepatitis C from infected blood and blood products. A first stage payment of £20,000 is available to those who are eligible for payment under the scheme. For successful recipients of the first stage payment whose hepatitis C infection has led to advanced liver disease there is a second stage payment payable of £25,000. In Northern Ireland approximately £3m has been paid out to 120 individuals.
4. Anne Milton, Under-Secretary of State, DH, wrote to Minister on 13 October 2010 about a short internal review of financial support for people affected by contaminated blood. (COR 1145/2010). The findings of the review and England's response to the recommendations were announced by Andrew Lansley on 10 January.
5. The Health Departments in Northern Ireland, Wales and Scotland had sight of the Government response only on the day of the Secretary of State's

announcement. There was no consultation with DA Health Ministers before the announcement, and despite written requests from the devolved administrations, officials were not kept adequately informed or given sight of the report before the announcement.

6. Officials from each of the DAs were informed of the main findings in a teleconference with DH(L) on 22<sup>nd</sup> December and a submission was forwarded to the Minister outlining the main proposals and estimated costs for Northern Ireland (SUB.15.2011).
7. The measures that DH(L) are proposing to implement for England seek to address clear discrepancies between the provision of ex-gratia payments to those infected with hepatitis C and those infected with HIV through NHS-supplied blood transfusions and blood products. There are no annual payments for those infected with hepatitis C and there are no discretionary payments to those infected with hepatitis C or their dependants. Further, payments were not made in respect of individuals infected with hepatitis C who died before 29<sup>th</sup> August 2003.
8. The review paper makes the case for greater similarity between ex-gratia payments for HIV and hepatitis C infection, on grounds that the impact on quality of life of living with chronic hepatitis C is at least as great as that of living with HIV. In addition, those who are living with chronic hepatitis C are now more likely to die prematurely if they develop severe liver disease. Dependents of an infected individual can experience financial hardship, irrespective of whether the individual was infected with HIV or hepatitis C, and whether the infected individual is still alive.
9. Based on the advice of the expert review team, the recommendations England are taking forward can be summarised as follows:

- A recurrent flat rate annual payment of £12,800 to be introduced for each living person who is infected with hepatitis C who has developed serious liver disease. As such, the payment will be provided to Stage 2 recipients only. This will bring the payment made to people with hepatitis C into line with the annual payment made to people with HIV. The payment will be CPI linked and, like the current ex-gratia payments will be disregarded for the purposes of calculating income tax and eligibility for calculating other state benefits.
- A discretionary fund to be established to support infectees and their dependants in greatest need. This will include dependants of infected individuals who have died. These discretionary payments may be made to individuals with chronic hepatitis C infection, as well as those who have developed serious liver disease (stage 1 and stage 2 recipients). It is expected that this fund will be means-tested.
- A payment to be made posthumously in respect of those individuals who died before 29 August 2003. How much will be paid will depend on the levels of payment the person would have been eligible for if they had been alive on 29 August 2003 (i.e. either at Stage 1 or Stage 2). The stage 1 payment will be £20,000 and Stage 2 £50,000. The payment will be made to the individual's estate.
- A further lump sum payment of £25,000 for those with most serious hepatitis C-related illness, increasing the amount they receive at stage 2 from £25,000 to £50,000. This payment will apply to all successful Stage 2 applications – past, current and future, including those who died before 2003.

- To provide funding to selected national charities to provide additional access to counselling for people infected with both hepatitis C and HIV. The Department of Health have provided £100,000 per annum for those charities in England.

10. In his independent report on NHS Supplied Contaminated Blood and Blood Products, Lord Archer of Sandwell identified some specific anomalies between the payment schemes for those with hepatitis C and those with HIV. These have been addressed by the review and England's response.

11. In summary approximately £309k is needed recurrently and £1.4m for one-off payments for claimants in Northern Ireland. DH(L) intend to make as many payments as possible under recommendations 3 and 4 in the 2010-11 financial year. A breakdown of the figures is attached at Annex 1. DHSSPS Finance has advised there is no budget cover in DHSSPS for this financial year to implement these new financial measures. In 2011-12 the total costs to be incurred would need to be funded from the 'residual demand' allocation. Finance has also advised there will be many competing pressures on this budget, and difficult decisions on what can and cannot be funded will need to be taken.

12. DH (L) is setting up a separate agreement with the UK Skipton Fund to administer the payments. DHSSPS sought legal advice on this matter and there are no issues for DHSSPS on DH (L) using this vehicle, and if the three Devolved Administrations agree to keep in parity with England, this agreement can be extended.

13. At a teleconference on 13 January 2011, officials from Scotland and Wales informed DH that they are keen to keep parity with England and are advising their Ministers of this recommendation.
14. Correspondence to the Permanent Secretary and Chief Medical Officer has been received from Mr [GRO-A] who is an influential patient representative in Northern Ireland. Mr [GRO-A] has been Financial Director of the Skipton Fund and was Treasurer of the McFarlane Trust, and Vice President (Programs) of the World Federation of Haemophilia. He has since retired due to his ill-health. Dr Mitchell and Karen Simpson met with Mr [GRO-A] at his request on 2 February to discuss whether these measures will be introduced in Northern Ireland.
15. Scotland and Wales have also met with patient representatives to discuss the review report and its findings.
16. A teleconference between the Health Ministers in Scotland, Wales and Northern Ireland took place on Monday 7<sup>th</sup> February to discuss the review and recommendations. It was agreed that each Minister would write to Andrew Lansley regarding the circumstances of the review, and Edwina Hart would share an initial draft letter with the Health Departments in Scotland and Northern Ireland.
17. To date correspondence relating to compensation for those affected by contaminated blood has been received from Gerry Adams, Peter Robinson, Sammy Wilson, Kieran Deeny, Nigel Dodds, William McCrea and Jonathon Bell. Two Questions from Paul Girvan have also been received.
18. A draft letter between officials has been shared and Ms Hart issued the final letter to Andrew Lansley on the 9 February 2011. This letter is attached at Annex 2. Edwina Hart expresses her disappointment at not being consulted

on the developments of the review and also not having an opportunity to comment on the likely recommendations for additional support and their associated costs. She states that repeated requests were made for sight of the final review, or for an understanding of its likely content and that not receiving this clearly undermines the Memorandum of Understanding between the UK Government and Devolved Administrations. Further to this she seeks assurance that, in these circumstances, in line with the Statement of Funding Policy Principles, DH (L) will meet the additional costs involved for the individuals from Wales.

#### Recommendation

19: A similar draft letter for DHSSPS is attached for the Minister's approval.

Drafted by: Lynsey Stewart  
Health Protection Branch  
Extension: **GRO-C**

Cleared by: Dr Elizabeth Mitchell DCMO

cc Dr McCormick  
CMO  
Clare Baxter  
Seamus Camplisson  
Adrian Murphy  
Lynn Campbell  
Karen Simpson  
Lynsey Stewart

## Draft Letter

Dear Andrew

Further to my correspondence dated 11<sup>th</sup> February 2011 and after speaking to the Health Minister in Wales and Scotland, I am again writing to you about the concerns I have about the circumstances surrounding the publication of the Contaminated Blood Review report (Review of the Support Available to individuals Infected with Hepatitis C and/or HIV by NHS-Supplied Blood Transfusions or Blood Products and Their Dependents) published by the Department of Health and announced by you to the UK Parliament (and advised in letters to the Devolved Administrations) on 10 January 2011.

I have been copied into Edwina Hart's correspondence to you dated 9<sup>th</sup> February and I agree with her reasoning that your Department should meet the additional costs of the financial measures you announced on the 10<sup>th</sup> January for all patients affected by this tragedy, not just those in England. Assurances were given by your colleague Anne Milton in her letter to me about the Review in the autumn, however I was not kept informed with developments of the review nor did I have an opportunity to comment on the likely recommendations for additional support and their associated costs. This is despite recognition in Anne Milton's letter of 13 October 2010 that elements of the Review impacted on devolved interests. In December 2010, similarly to other Devolved Administrations I believe, I did receive a copy of the draft Medical Expert Working Group report which reviewed the natural history of the Hepatitis C infections which in due course became an Annex to the final Report. However, this gave no indication of the likely outcome of the Review overall. Only in December 2010, did your officials share information on the provisional financial implications with my officials. This information also did not give any indication of policy direction you were likely to take. Repeated requests were made for sight of the final review report or for an understanding of its likely content. This situation has



clearly undermined the Memorandum of Understanding between the UK Government and Devolved Administrations.

The support provided to those affected by contaminated blood is currently a UK-wide arrangement which can only be changed by the agreement of all UK Health Departments. Consistency of approach for affected patients across the UK was felt so important at the outset of the Skipton Fund. If this consistency is to continue, either through the current UK Skipton Fund or through an alternative vehicle, the fact that you took the decision unilaterally to implement the recommendations of the Review has put additional and unexpected financial pressures on the Department of Health and Social Service and Public Safety's (DHSSPS) budget without our prior agreement. The Statement of Funding Policy (agreed between HM Treasury and Devolved Administrations) is quite clear where the financial responsibility lies in these circumstances. It states "where decisions taken by UK departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs, the body whose decision lead to the additional cost will meet that cost".

The work undertaken as part of the Review recognises clearly the additional costs resulting from a change to the current support arrangements. However, your Department took decisions which had financial implications without proper or prior consultation and, most importantly, formal agreement with the DHSSPS, on the changes to these arrangements. In these circumstances, I must now seek your assurance, in line with the Statement of Funding Policy principles, that your Department will meet the additional costs involved for the individuals from Northern Ireland who access the Fund which we estimate to be £309k recurrently per annum and £1.4m to meet the one-off payments.

I am copying this letter to Nicola Sturgeon MSP, Edwina Hart, Minister for Health and Social Services in Wales, the Chief Secretary to the Treasury and the Secretary of State for Northern Ireland.

## Annex 1

### Costings for contaminated blood payments, UK and NI, 2011/12

(Estimates for NI are based on proportion of claimants in NI compared to UK.)

<b>Recurrent Funding</b>	<b>UK</b>	<b>NI</b>
Recurrent payments to bring hep C into line with HIV	£12.4m	£256k
Hep C discretionary funding	£2m	£50k
Funding for charities to provide counselling	£0.1m	£2.5k
<b>Total Recurrent Funding</b>	<b>£14.5m</b>	<b>£308.5k</b>
<b>One-off lump payments</b>		
Additional lump sum for hepatitis C stage 2 claimants	£22.5m	£525k
Pre-2003 catch-up programme	£35.7m	£892.5k
<b>Total one-off funding 2011/12</b>	<b>£58.2m</b>	<b>£1.418m</b>
<b>Total Funding 2011-12</b>	<b>£72.7m</b>	<b>£1.726m</b>

Annex 2

**Edwina Hart MBE OStJ AM**  
Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

Our ref:  
Your ref:

Rt Hon Andrew Lansley CBE MP  
Secretary of State for Health  
Department of Health  
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E-Mail: Correspondence.Edwina.Hart@GRC-C

9 February 2011

Dear Andrew

I am writing to you about the concerns I have about the circumstances surrounding the publication of the Contaminated Blood Review report (Review of the Support Available to individuals Infected with Hepatitis C and/or HIV by NHS-Supplied Blood Transfusions or Blood Products and Their Dependents) published by the Department of Health and announced by you to the UK Parliament (and advised in letters to the Devolved Administrations) on 10 January 2011.

Although assurances were given by your colleague Anne Milton when she wrote to me about the Review in the autumn, I was not kept in touch with developments of the review nor did I have an opportunity to comment on the likely recommendations for additional support and their associated costs. This is despite recognition in Anne Milton's letter of 13 October 2010 that elements of the Review impacted on devolved interests. In December 2010, similarly to other Devolved Administrations I believe, I did receive a copy of the draft Medical Expert Working Group report which reviewed the natural history of the Hepatitis C infections which in due course became an Annex to the final Report. However, this gave no indication of the likely outcome of the Review overall. Only in December 2010, did your officials share information on the provisional financial implications with my officials. This information also did not give any indication of policy direction you were likely to take. Repeated requests

were made for sight of the final review report or for an understanding of its likely content. This situation has clearly undermined the Memorandum of Understanding between the UK Government and Devolved Administrations.

The support provided to those affected by contaminated blood is currently a UK-wide arrangement which can only be changed by the agreement of all UK Health Departments. Consistency of approach for affected patients across the UK was felt so important at the outset of the Skipton Fund. If this consistency is to continue, either through the current UK Skipton Fund or through an alternative vehicle, the fact that you took the decision unilaterally to implement the recommendations of the Review has put additional and unexpected financial pressures on the Welsh Assembly Government's budget without our prior agreement. The Statement of Funding Policy (agreed between HM Treasury and Devolved Administrations) is quite clear where the financial responsibility lies in these circumstances. It states "where decisions taken by UK departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs, the body whose decision lead to the additional cost will meet that cost".

The work undertaken as part of the Review recognises clearly the additional costs resulting from a change to the current support arrangements. However, your Department took decisions which had financial implications without proper or prior consultation and, most importantly, formal agreement with the Welsh Assembly Government, on the changes to these arrangements. In these circumstances, I must now seek your assurance, in line with the Statement of Funding Policy principles, that your Department will meet the additional costs involved for the individuals from Wales who access the Fund which we estimate to be £3m for the current financial year and £0.750m recurrently.

I am copying this letter to Michael McGimpsey MLA, Nicola Sturgeon MSP, the Chief Secretary to the Treasury and the Secretary of State for Wales.