

**PS(PH)**

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## **Hepatitis C Payment Scheme**

### **Purpose**

1. To seek your agreement to make an amendment to the eligibility criteria of the hepatitis C ex gratia payment scheme and introduce a universal pre-requisite to applications.

### **Recommendation**

2. You are asked to agree to –

- Remove the condition that states that ex gratia payments will be deducted if compensation from another source has previously been received
- Make British citizenship at the time of a person's inadvertent infection a pre-requisite to a successful application
- Amend paragraphs 7 and 10 of the press statement released on 23 January 2004 announcing details of the scheme to reflect these changes
- Officials writing to mailing list registrants to publicise the amendments.

### **Timing**

3. Urgent – the Department of Work and Pensions (DWP) have asked for clarification with regards to deducted compensation as soon as possible to ensure that the necessary social security regulations, to allow for the social security disregard, can be introduced in time for the scheme's planned launch in April.

## **Amending eligibility criteria to remove 'deducted ex gratia payments' condition**

### **Background**

4. One of scheme's eligibility criteria states that "Where people have received compensation from other sources in connection with their infection, this will be deducted from any award they are entitled to under the scheme. The scheme will not reimburse legal costs incurred in obtaining that compensation, in unsuccessfully attempting to obtain compensation or in preparing a claim for payment from the scheme itself". (Paragraph 10, DH press release 2004/0025, 23 January 2004)
5. We are not aware of any successful private litigation so in practice this would only apply to recipients of compensation awarded under the 'Burton Judgement'. This compensation was awarded as a result of class action brought by blood transfusion recipients infected with hepatitis C. Mr Justice Burton found that the blood supplied by the National Blood Authority (NBA) between 1988 (when the Consumer Protection Act was enacted) and September 1991 (when universal donor screening was introduced) did not provide the level of safety that a person was entitled to expect. As a result of this objective liability, the NBA has compensated around 200 people who were infected with hepatitis C as a result of blood transfusions during this period. As of January 2003, the NBA had paid out £10.1m in compensation. Another £7m is earmarked.

### **Rationale**

6. The Department of Work and Pensions (DWP) raised the issue of deducted compensation during its consultation process on the social security disregard regulations. Concern was raised by the Social Security Advisory Committee that any compensation already awarded should be separate to any payments proposed under the DH scheme. These awards would also not have been disregarded for the purposes of means-tested benefits and tax. On this basis, the DWP has asked DH for clarification.
7. We have consulted with the other Health Departments and now agree that this group is distinct from other potential Skipton Fund claimants. The Burton Judgement payments comprise damages and as such are awarded for reasons other than the principle behind the ex gratia scheme i.e. they are not compassionate payments.

In addition, the compensation awards vary considerably, so deducting ex gratia payments would complicate the scheme's administration. As the 'Burton Judgement' payments are ongoing, there is also a likelihood that ex gratia payments may have to be 'clawed back' if received before damages are awarded. An overturn of this criterion would not involve any increased costs. Recipients of compensation as a result of the 'Burton Judgement' were factored in to DH calculations, but because of the difficulty of predicting the size of deducted payments, we costed on the basis of receiving full payments.

### **Conclusion**

8. DH officials and counterparts in Scotland, Wales and Northern Ireland now feel that it is unjustified, inefficient and potentially controversial to deduct ex gratia payments to take account of any compensation. Officials propose that recipients of compensation as a result of the 'Burton Judgement' be fully eligible for the £20,000 and £25,000 Skipton Fund ex gratia payments. Agreement from health ministers is now being sought in Wales and Northern Ireland to amend the eligibility criteria accordingly. Malcolm Chisholm, Minister for Health in Scotland, has already given tacit approval. If you agree to this proposed course of action we will then amend paragraph 10 of the press release accordingly.

### **Universal pre-requisite to applications**

#### **Background**

9. National Blood Authority blood and blood products are known to have been used outside of the UK, most notably by UK armed forces personnel serving abroad. There is also a real chance that foreign nationals may have been recipients of infected blood or blood products whilst receiving NHS treatment in the UK. Paragraph 7 of the press statement of 23 January stated that "General eligibility for payments is defined in terms of having received blood, blood products or tissue from the NHS before September 1991". In the light of the above, officials are keen to tighten up this basic eligibility criterion.

### **Conclusion**

10. So that groups such as armed forces personnel and ex-patriots can be included and foreign nationals excluded, it is suggested that British citizenship at the time of infection be made a pre-requisite to a successful application. It is proposed that paragraph 7 is amended to read "General

eligibility for payments is defined in terms of having received blood, blood products or tissue from the NHS before September 1991. Applicants must have been British citizens at the time of infection”.

11. If you agree to the above proposed courses of action we will write to all those on our current mailing list.

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