Infected blood policy team
7 July 2017

Infected blood payment scheme: options on additional funding and inquiry

Request background

1. The infected blood policy team submitted a note on 23 June 2017 seeking your approval to publish a consultation response and associated documents. At a subsequent meeting, you asked the team to:
    A. Consider the available options if the payment scheme funding envelope was increased so that no beneficiaries would receive less money in the reformed scheme. **See Annex A** for details.
    B. Provide some information on inquiries and what the beneficiaries would like addressed in an infected blood inquiry. See **Annex B** for details.

Purpose

2. Section A of this note reviews options to address concerns that some beneficiaries could receive reduced payments in the new scheme. Section B provides information on holding an inquiry which could address wider concerns about the infected blood tragedy.

Recommendation

3. It is recommended that you make a decision on whether:
    - You would like to pursue any of the options for the payment scheme if the funding envelope can be increased. This decision is time critical as it will enable publication of the consultation response which outlines the Special Category Mechanism (SCM) payment. The SCM is a key part of the defence for the Judicial Review in November 2017. The new payment scheme also needs to be operational for October 2017.
    - To hold a public inquiry. You are aware that the leaders of Opposition Parties sent a letter to the PM on Sunday calling for a public inquiry.

4. The two decisions can be considered together, however, they are not interdependent.

A. Increased payment scheme funding options

5. Since 1988, successive governments have voluntarily provided support for people infected with Human Immunodeficiency Virus (HIV) and/or hepatitis C through treatment with National Health Service (NHS) supplied blood or blood products. To date, over £450 million has been paid out to infected persons and their family members.

6. However, the system has attracted criticism from those it is intended to help. In July 2016 the government issued its response to the January 2016 consultation: *Infected blood: Reform of financial and other support*, making £125 million of additional funding available until 2021 to support scheme beneficiaries.

7. The Department of Health since developed the proposed special appeals mechanism, now called the Special Category Mechanism (SCM). Responding to beneficiaries' call for more clarity about this new process DH launched a consultation on the detail of the SCM, with proposals for ensuring the scheme remains within budget, on 6 March 2017. The consultation closed on 17 April 2017 and DH intends to publish a response shortly.

8. The SCM proposal will increase the number of beneficiaries who will be able to receive stage 1 payments at the higher rate of £15k per annum, (compared to the baseline of £3.5k). However, in order to remain within the agreed budget, we proposed to cancel the previously planned increase in payments for HIV, Hepatitis C stage 1 and 2 beneficiaries in 2018 and to reduce the level of funding available to the discretionary scheme (open both to those infected and to the bereaved).

9. You have asked us to identify options to remedy these proposed reductions. Four options for any additional identified funding have been reviewed:
   - Option A:
     - Annual payment uplift reinstated
     - To reinstate the higher amount of discretionary funding that will be available to infected individual and bereaved partners/spouses
     - Not to introduce any new regular payments for bereaved partners
   - Option B:
     - Annual payment uplift reinstated
     - No increase to the level of discretionary funding that will be available to infected individual and bereaved partners/spouses
     - To introduce new payments for bereaved partners/spouses (at 75% of the level of annual payment their partner had received)
   - Option C:
     - Annual payment uplift reinstated
     - To introduce new payments for bereaved partners/spouses (at 75% of the level of annual payment their partner had received)
     - To reinstate the higher amount of discretionary funding that will be available to infected individual and bereaved partners/spouses
   - Option D:
     - To introduce new payments for bereaved partners/spouses (at 75% of the level of annual payment their partner had received)
     - To reinstate the higher amount of discretionary funding that will be available to infected individual and bereaved partners/spouses
     - Annual payment uplift not reinstated

10. Details are set out in Annex A. Of the four options reviewed, if funding were available, we recommend option A at an additional estimated cost of £8,908,900 per year[1]. This would reinstate the proposals as announced by the then Prime Minister in July 2016, without introducing a completely new element for the first time (ie regular payments to the bereaved).

[1] This assumes the same number of stage 1 beneficiaries as have already come forward and are receiving annual payments. There are an additional 400 stage 1 beneficiaries who have not come forward and are not currently receiving annual payments. It is unlikely that they would all be able to claim the additional SCM payment; however, the attached spreadsheet sets out this scenario so that the maximum potential cost is also estimated.

Finance

11. Following the government's response to the January 2016 consultation on infected blood, HM Treasury committed £125m of additional funding until 2021 to support beneficiaries. HMT have confirmed that any commitment from the Department to additional spend on Contaminated Blood must be funded within the Department's existing allocation.

B. Inquiry

12. To date the Department of Health's position has been that another inquiry would not be in the best interests of sufferers and their families as it would be costly, delay action to address their concerns, and would curtail plans to reform the existing support schemes. The Department has published all relevant information that it holds on blood safety, in line with the Freedom of Information Act 2000. There have also been two previous inquiries, the Archer inquiry and the Penrose inquiry in Scotland.

13. However, victims remain of the view that there has been a cover-up and are not satisfied by the previous inquiries. Recent events including the announced inquiry into the Grenfell Tower fire and recent media articles on infected blood have increased the pressure to hold a 'public inquiry':

- The (now) Mayor of Greater Manchester, Andy Burnham, wants a public "Hillsborough-style inquiry". He raised this at an adjournment debate in May in which he called for a public inquiry.
- The Haemophilia Society want an inquiry that will "compel witnesses under oath, release all documents for public scrutiny and have a remit to consider failures in government policy and negligence by public bodies." Although this largely fits the description of a **statutory public inquiry** such an inquiry may not rule on or determine any person's civil or criminal liability.
- On 9 July 2017 the Sunday Times published a letter to the Prime Minister signed by the leaders of all opposition parties in the House of Commons. This calls for a public inquiry, through a process managed by the victims and able to compel all parties to participate fully in the disclosure process.

14. Were you to decide to set up an inquiry, we would still need to continue to implement the reforms to the current payment schemes. The reforms are seeking to address inequalities in the way different groups of patients are being treated under the previous arrangements and to make best use of the additional funding made available this Parliament; this is separate from the root causes that an inquiry would consider.

Type of inquiry, costs and practicalities

15. It is important to establish any inquiry in a way that commands public confidence. The Hillsborough inquiry was seen as being open and forensic in nature. A non-statutory inquiry has greater flexibility than a statutory one and would enable a less formal and adversarial approach, but it would not have the power to compel witnesses to give evidence. The Penrose inquiry was a statutory inquiry but

because it was established in Scotland, officials and others from England were not obliged to give evidence and the Department of Health only provided written evidence.

16. Given the criticism of this, and the concern of beneficiaries that there has been a cover-up, a non-statutory inquiry is unlikely to prove acceptable to beneficiaries. Therefore, following consultation with Cabinet Office, **we recommend a statutory inquiry** broadly based on the Hillsborough model.

17. The Inquiries Act 2005 sets out the process for announcing a statutory inquiry. The inquiry must be announced by means of a statement in both Houses of Parliament (either oral or written) announcing the name of the Chair, whether there is to be a Panel to support the Chair and the Terms of Reference. The Terms of Reference can subsequently be amended following consultation led by the appointed chair.

18. It is possible to announce the intention to hold an inquiry and to follow up subsequently with the formal announcement, as the Prime Minister did for Grenfell, but the Ministerial statement must be made as soon as practical. A press notice will need to be prepared to coincide with the statement. The wording of the announcement must not to impinge on a Chair's independence or ability to interpret and fulfil the terms of reference.

19. We propose that the scope of the inquiry should focus on the circumstances in which patients, including haemophiliacs and non-haemophiliacs, treated by the NHS in the UK became infected with hepatitis C, HIV, or both, through the use of blood or blood products in the course of their treatment. The Inquiry should consult with those infected by HIV and/or hep C through NHS-supplied blood or blood products and their families to ensure that the views of those most affected by the tragedy are taken into account. The Inquiry will need to have a UK-wide remit and so we will need to engage with the DAs on this. We are drafting some outline Terms of Reference.

20. The Inquiry will need legal, medical and independent lay perspectives. We are considering suggestions for the chair and recommend that he/she should be supported by a Panel to provide the complementary skill set. The Chair, not officials, should undertake any consultation with victims and others on the Terms of Reference, so that their concerns can be directly addressed.

21. It is difficult to estimate the potential costs of an inquiry as variables such as duration, legal costs and the size of the support team make a considerable difference. To give an estimate, Penrose took 5 years and cost £12 million. The Leveson Inquiry took 16 months and cost £5.4m. The costs would need to be funded from DH admin budgets.

22. We have been asked to provide advice to the PM by close Tuesday 11 July. We recommend that the Government should announce its intention to establish an inquiry in advance of recess and to engage further on the scope and candidates for the Chair and Panel before the formal announcement required under the Inquiries Act (2005). **Do you agree?**

Legal

23. The Judicial Review (JR) brought by Leigh Day is due to be heard in November 2017. The timetable, agreed with Leigh Day, for preparing for the hearing requires DH to publish the consultation response with details of the SCM before summer recess. The SCM is a key element of our defence in the JR.

24. An announcement that incorporates one of the options for increased spending on the infected blood payment scheme and an announcement on an inquiry is likely to be received positively. However, an early announcement on additional spend options in relation to the consultation response would still be well received and leave time for a further announcement on an inquiry post Summer Recess.

Conclusion

25. You are asked for a decision on whether to pursue an option for an increased payment scheme funding envelope, which would allow publication of the consultation response to go ahead. You are also asked for a decision on whether to hold an inquiry on infected blood. We will provide further advice on handling, including alerting the Devolved Administrations, shortly.