

**NOTE FROM COUNSEL TO THE INQUIRY ON THE SCOPE OF
THE 7-8 MAY 2025 HEARINGS**

1. The purpose of this Note is to provide some guidance as to the likely scope of the hearings on 7-8 May 2025 and as to the issues most likely to be explored with witnesses in the course of the hearings.¹ What is set out below by way of background and chronology is not intended to be exhaustive: a more detailed chronology will be provided to core participants and published in advance of the hearings.

Background

2. On 5 April 2023 the Inquiry published its Second Interim Report.² As the Chair explained at that time, it was:

“an unusual step to publish recommendations about redress in advance of detailed findings but I could not in conscience add to the decades-long delays many of you have already experienced due to failures to recognise the depth of your losses. Those delays have themselves been harmful.”³

3. The Second Interim Report explained that:

“Once it is accepted, as it has been, that compensation should be paid, then it should plainly be paid as soon as possible. Many who should benefit from compensation are now on borrowed time. They know too many who have already died. They know that Government Ministers have promised there will be more recompense to come but they do not yet know the nature of the body who will determine it, how that body will assess and deal with their claims, and the boundaries of eligibility.”

4. Building on Sir Robert Francis KC’s Compensation Study,⁴ published in June 2022, the Second Interim Report contained detailed recommendations as to compensation. It emphasised that “Time without redress is harmful. No time must be wasted in delivering

¹ The timetable for the hearings has been published on the Inquiry’s website.

² INQ0000453.

³ Statement of Sir Brian Langstaff, 5 April 2023, <https://www.infectedbloodinquiry.org.uk/reports/second-interim-report>.

⁴ Infected Blood Compensation Study RLIT0001129.

that redress”, and recommended that the structure of the scheme should be set up “as soon as possible, and before the final report of the Inquiry”:

“Delay must be avoided: it is particularly harmful to infected and affected people. Thus:

- (1) a scheme must be set up with the minimum of delay; and
- (2) the scheme must work with the minimum of delay.”

5. In order to achieve independence from Government and the confidence of those involved, the Second Interim Report recommended that:

“(1) there must be a sufficient guarantee of independence; (2) the processes of the scheme need to be as transparent as legally possible; (3) those set to benefit from the scheme (people infected and affected) must have a central influence on its decision-making and operation; (4) there needs to be a clear, set, basis for establishing the scope within which any discretion held by the body can be exercised; and (5) its decisions should be underpinned by a proper system of appeal, which should be to a body which can take a fresh decision for itself.”⁵

6. The Second Interim Report envisaged and recommended that the principal decision maker under the scheme should be the chair of the compensation body, assisted by an advisory board which should include beneficiaries, and advised by two panels – one of medical experts, one of lawyers - whose role would be to advise on the scheme of banding and appropriate levels of award. The panels “should be expected to talk to, engage with, and consult widely with beneficiaries.”

7. The question of compensation was not new in 2023. It was not new in 2020, when the (then) Paymaster General, Penny Mordaunt, wrote to the (then) Chancellor of the Exchequer, Rishi Sunak, that “I believe we should begin preparing for this now”.⁶ Indeed, as the Inquiry’s May 2024 Report found, the “awareness that compensation might be recommended” was “a central factor in the unwillingness of successive governments to establish a public inquiry earlier than 2017.”⁷

8. A detailed analysis of the Government’s response to calls for compensation between 2020 and 2024 is set out in chapter 7.8 of the Inquiry’s May 2024 Report. As was

⁵ The Second Interim Report recommended that the appeal should be to a bespoke panel set up for that purpose.

⁶ Letter from Penny Mordaunt to Rishi Sunak, 13 July 2020, EIBS0000706.

⁷ See Volume 7 of the Infected Blood Inquiry Report, page 265.

apparent from the hearings held in July 2023, when the then Prime Minister, Rishi Sunak, Chancellor, Jeremy Hunt, and Paymaster General, Jeremy Quin, all gave oral evidence,⁸ the previous Government “insisted upon waiting” for the Inquiry Report, despite knowing that the Second Interim Report contained the full recommendations on compensation.

9. The May 2024 Report found that there had been “ample opportunities – and invitations – for the Government to explain what it has doing” but the Government had “chosen not to give detail.”⁹ As the Chair wrote:

“It **may** be that a huge amount of work has been undertaken. It **may** be that the Government has decided to accept the recommendations. It **may** be that justice and redress are just around the corner – for those who are still alive. But at the time of writing this Report I have no way of knowing if this is the case. Nor, more importantly, do those infected and affected. That is a serious failing which replicates the wrongs of the past. People whose lives were torn apart by the wrongs done at individual, collective and systemic levels, and by the way in which successive Governments responded to what happened, still have no idea as to the shape, extent or form of any compensation scheme, and no idea, beyond the acceptance of the moral case for compensation and assurances that there will be more to come, of the Government’s response either to the Compensation Framework Study or the Second Interim Report.

In 2017 Andy Burnham told Parliament that “*victims now feel that they have been led up to the top of the hill only to be let down once again*” and that the lack of substantial action “*has left people feeling in the wilderness all over again.*” Andy Burnham’s call for compensation was seven years ago.

People infected and affected continue to die.

From an early stage of the hearings before the Inquiry it became obvious to an objective onlooker that compensation was likely to be recommended. That was why it was decided to commission Sir Robert to report on what it might cover, and how. The Inquiry said all it had to say by way of recommendation concerning compensation before Easter 2023.

This chapter has been one of the very last I have written, because I had hoped to be able to discuss the Government’s response to the Inquiry recommendations concerning compensation, and to be able to report that it had done right by those to whom the recommendations relate. The Government has said it “*accept[s] the will of Parliament that arrangements should be put in place to ensure, as far as reasonably practicable, that the victims receive justice as quickly and efficiently as possible.*” I urge the Government to put these words into action.”

⁸ Transcripts of July 2023 hearings: INQY1000279, INQY1000280, INQY1000281 and INQY1000282.

⁹ See Volume 7 of the Infected Blood Inquiry Report, page 287.

10. The recommendations of the Inquiry, which have since been accepted by the Government, either as written or in principle, included “Giving patients a voice”.¹⁰ To enable and empower this patient voice, one proposed measure was that: *“the following charities receive funding specifically for patient advocacy: the UK Haemophilia Society, the Hepatitis C Trust, Haemophilia Scotland, the Scottish Infected Blood Forum, Haemophilia Wales, Haemophilia Northern Ireland, and the UK Thalassaemia Society”*¹¹; and the following measure was: *“that favourable consideration be given to other charities and organisations supporting people infected and affected that were granted core participant status (as listed on the Inquiry website) to continue to provide support for at least the next 18 months.”*¹²

Following the publication of the Inquiry’s Report

11. On 20 May 2024, in his address to the House of Commons following the publication of the Report, the (then) Prime Minister acknowledged that *“justice also demands action and accountability”* and made *“two solemn promises”*, of which one was that *“we will pay comprehensive compensation to those infected and those affected by this scandal, accepting the principles recommended by the inquiry, which builds on the work of Sir Robert Francis. Whatever it costs to deliver the scheme, we will pay it.”*¹³

12. A broad outline of the proposed compensation scheme was provided in the statement to the House of Commons by the (then) Paymaster General, John Glen, on 21 May 2024.¹⁴ He explained that compensation awards would be made in the categories recommended by the Inquiry (injury impact, social impact, autonomy, care and financial loss), with *“two small refinements, informed by the work of the expert group and designed for simplicity and speed”* relating to the care and financial loss awards, and that the scheme would be tariff-based. It was announced that Sir Robert Francis would seek views from the infected blood community on the proposed scheme before its terms were set in regulations, *“to make sure the scheme will best serve those who it is intended for”*. In

¹⁰ Recommendation 10.

¹¹ Recommendation 10(ii).

¹² Recommendation 10(iii).

¹³ RLIT0002476.

¹⁴ RLIT0002477.

reply, the then shadow minister, and current Paymaster General, Nick Thomas-Symonds, who will be giving evidence to the Inquiry on 7 May 2025, observed that “*Sir Robert Francis is saying already that he is seeking the views of the infected blood community, and that is welcome, but does the Minister agree that continuing to hear that voice of victims is crucial?*” He asked the Paymaster General to confirm that “*there will be no undue delay in those final payments reaching victims*”, time being “*of the essence*”. Some further information about the Government’s proposals was published online on 21 May 2024,¹⁵ with more details being set out in June 2024 in an unpublished “Engagement Explainer” authored by the Cabinet Office.¹⁶

13. The “*expert group*” referred to by the Paymaster General was a reference to a small group of clinicians, chaired by Professor Sir Jonathan Montgomery (a professor of healthcare law), and appointed by John Glen in January 2024. This Expert Group was tasked with “*Reviewing existing work undertaken by officials on policy and cost analysis*”, “*Advising and supporting Government in defining eligible infections and severities*”, “*Providing advice and support to Government on potential compensation tariffs for the eligible infected and affected beneficiaries based on infection severities, within the principles agreed by Government*”, and “*Advising and supporting Government to develop a potential compensation framework within the principles agreed by Government.*”¹⁷ An interim report from the Expert Group, published on 21 May 2024, noted the recommendation of Sir Brian Langstaff that the development of the compensation scheme should involve the infected community but, whilst expressing support for that principle, recorded that “*our terms of reference have precluded public engagement in our work*”.¹⁸

14. On 22 May 2024 the general election was announced and a new Government elected on 4 July.

15. Various engagement meetings were held with the infected and affected community and Sir Robert Francis in the course of June 2024.¹⁹ Following the conclusion of that engagement process, Sir Robert set out recommendations in a report dated 12 July

¹⁵ RLIT0002486.

¹⁶ WITN7752004.

¹⁷ Infected Blood Inquiry Response Expert Group Terms of Reference RLIT0002487.

¹⁸ RLIT0002478.

¹⁹ See the Statement of Intent from Sir Robert Francis dated 29 May 2024 WITN7757009.

2024.²⁰ Sir Robert’s report, an updated summary of the scheme from the Government²¹ and the Final Report of the Expert Group²² were published on 16 August 2024.

16. On 23 August 2024 the Infected Blood Compensation Scheme Regulations 2024 (“the 2024 Regulations”) were laid before Parliament.²³ These provided for compensation to be paid to infected individuals under the “core route”. In a statement to the House of Commons on 2 September 2024, the Paymaster General, Nick Thomas-Symonds, explained that a second set of regulations would provide for other elements of the compensation scheme, namely claims under the “supplementary route” and payments to affected individuals.²⁴

17. On 17 October 2024 the Infected Blood Compensation Authority (“IBCA”) confirmed that the first 20 applications to claim had been invited.²⁵ In a Parliamentary debate on 23 October 2024, the Paymaster General explained that IBCA “*is taking a test-and-learn approach that will ensure that it can take feedback on board and improve the service before it opens its full compensation service.*” He added that “*I will do everything in my power to ensure that all those who are entitled to compensation receive it as soon as possible.*”²⁶ In a subsequent debate on 19 November 2024, in which an update was provided to Parliament on the action being undertaken across the other key findings of the Inquiry’s 20 May 2024 Report, the Paymaster General referred to work underway to “*strengthen responsibilities relating to candour and transparency for public servants*” (including the introduction of the Hillsborough law). On the question of compensation, he stated that IBCA “*is working in a way that will allow it to scale up as quickly as it possibly can*”, recognising that “[*t*]he need for speed in delivering compensation payments is paramount.”²⁷

18. On 8 January 2025 IBCA published an update: the first compensation offers had been made to 10 people and IBCA had invited a further 25 people to claim.²⁸

²⁰ RLIT0002466.

²¹ WITN7760006.

²² RLIT0002474.

²³ RLIT0002479.

²⁴ RLIT0002464.

²⁵ WITN7759001, paragraph 35.

²⁶ RLIT0002470.

²⁷ RLIT0002475.

²⁸ WITN7757002.

19. On 19 March 2025 IBCA released its latest compensation figures, showing that 255 people have been asked to begin their compensation claim and 63 offers of compensation have been made.²⁹
20. The second set of regulations – the Infected Blood Compensation Scheme Regulations 2025 (“the 2025 Regulations”) – were laid before the House of Commons on 12 February 2025, were the subject of a short debate in the Delegated Legislation Committee on 24 March 2025,³⁰ and came into force on 31 March 2025. They replace the 2024 Regulations, provide for a supplementary route in addition to the core route,³¹ and make provision for compensation for people who are affected. An addendum report of the Expert Group was also published on 12 February. This addendum report offered advice on three specific issues (supplementary Severe Health Condition awards; additional autonomy awards for those subjected to unethical research practices; and Exceptional Loss awards for financial loss and/or care costs).³²

Expression of concerns to the Inquiry regarding the compensation scheme

21. From late 2024 the Inquiry has been receiving increasingly concerned communications from individuals, organisations and legal representatives, containing expressions of distrust, distress and frustration.³³ By way of example, a joint letter dated 29 November 2024 was sent to the Inquiry from the Haemophilia Society, the Hepatitis C Trust, Haemophilia Scotland, Haemophilia Northern Ireland, Tainted Blood and BTMK Solicitors, expressing the “*collective view that the government is in danger of failing this community completely*”, adding that “*We and our members are becoming*

²⁹ WITN7757010, paragraph 12.

³⁰ WITN7760004.

³¹ The core route is described in a Cabinet Office publication – Infected Blood Compensation Scheme Summary February 2025 – as “the main route through which all applicants are initially processed when entered onto the Scheme. It uses a tariff-based approach to calculate the amount of compensation payable to those eligible and has five categories of award in total. Eligibility for these categories will depend on whether an applicant is an infected or affected person” RLIT0002481. The same document describes the supplementary route as “An additional route for exceptional cases where applicants must demonstrate that their circumstances necessitate a higher compensation payment than that provided through the core route for autonomy, care and/or financial loss.”

³² WITN7762015.

³³ The Inquiry has not published each and every such letter or email, most of which were written as private communications, but the nature of these concerns will be set out in a written presentation that is being prepared by Counsel to the Inquiry. The presentation will be published prior to the hearings on 7 and 8 May and will be drawn on during the hearings.

frustrated and angry at the government's misguided belief that it knows best, and we can see the results of this lack of engagement in flawed, ill-informed decision-making."³⁴ Similar concerns were raised in a letter of 4 December 2024 from five of the recognised legal representatives who had represented many core participants throughout the Inquiry.³⁵ On 5 December Haemophilia Wales wrote to the Inquiry to the effect that "*many of the behaviours that brought about the need for a Public Inquiry remain ingrained in the Government's responses.*"³⁶

22. Faced with multiple expressions of concern about the way compensation is being implemented and the time it is taking, the Inquiry decided to exercise its powers under Rule 9 of the Inquiry Rules to gather further evidence as to what is happening. On 13 March 2025 the Inquiry published witness statements from 27 organisations, groups and individuals, as well as statements from Nick Thomas-Symonds (the Paymaster General), James Quinault (the director general responsible for work within the Cabinet Office on infected blood compensation) and David Foley (Interim Chief Executive of IBCA). Further evidence was published on 9 April 2025, including witness statements from recognised legal representatives who have had significant involvement with compensation issues.³⁷

The hearings on 7-8 May 2025

23. The nature, adequacy and timeliness of the Government's response forms part of the Inquiry's Terms of Reference. As explained in the Inquiry's 20 May 2024 Report³⁸ the Inquiry has a function to consider the appropriateness and timeliness of the response to the recommendations it makes. On announcing the hearings, the Chair explained that "*The decision to hold hearings has not been taken lightly. It reflects the gravity of the concerns expressed consistently, and repeatedly, to the Inquiry. These merit exploration in public. People infected and affected do not have time on their side. Our goal is to be constructive and to identify what actions can be taken by the Government and*

³⁴ HSOC0029916.

³⁵ Letter from Collins, Leigh Day, Milners, Thompsons and Watkins & Gunn WITN7761003. See also the letter of 5 December 2024 from Andrew Evans of Tainted Blood ANDE0000001.

³⁶ LKEL0000010.

³⁷ The themes and issues identified in the statements from individuals, groups and organisations will be described in the written presentation referred to in footnote 33 above.

³⁸ See Volume 1 of the Infected Blood Inquiry Report, pages 280-281.

Infected Blood Compensation Authority to address the concerns, and help them gain the trust of those who have had to wait many decades for recognition and compensation.”³⁹

24. The Inquiry recognises that Parliament has enacted Part 3 of the Victims and Prisoners Act 2024. This provides for the establishment of the Infected Blood Compensation Authority,⁴⁰ and the establishment, by regulations, of a scheme for making payments to eligible persons.⁴¹ It provides that the amount of a payment under the scheme is to be determined in accordance with regulations,⁴² and that regulations may deal with the procedure for the making and deciding of applications.⁴³ The Act requires regulations to confer a right of appeal to the First-tier Tribunal against a decision taken under the scheme.⁴⁴ The Act also empowers the Secretary of State or Minister for the Cabinet Office to make “such arrangements as they consider appropriate for the provision of support and assistance to applicants (or potential applicants) for compensation under the infected blood compensation scheme”.⁴⁵ These provisions having been enacted in primary legislation by Parliament, it is not the Inquiry’s intention to seek to revisit them or to explore alternative legislative measures that could have been enacted by Parliament but were not. The Inquiry also recognises that a fundamental revision of the scheme, effectively going back to square one, would, at this stage, be likely only to cause further, very substantial delay to the receipt of compensation. Accordingly, the Inquiry’s primary focus will be to consider whether there are actions which could now be taken, within the broad architecture of the scheme as enacted, to address the principal concerns that have been raised. That said, in order to place those concerns in context, it will be necessary to spend some time during the hearing seeking to understand how and why the current lack of trust and sense of despair expressed by so many has arisen.

³⁹ <https://www.infectedbloodinquiry.org.uk/news/inquiry-hold-hearings-may>

⁴⁰ See section 48 and schedule 1.

⁴¹ See section 49.

⁴² See section 50.

⁴³ See section 51.

⁴⁴ See section 52.

⁴⁵ See section 55. The Act also required the making of arrangements for interim payments for the personal representatives of deceased people who were registered with one of the support schemes: section 56.

25. Drawing on the statements and other expressions of concern that have been received by the Inquiry, the following issues are likely to be explored during the hearing:⁴⁶

- i. how many individuals have thus far been invited to make claims and how many have received offers of compensation?
- ii. the reasons why, so far, very few people have received compensation;⁴⁷
- iii. the time that (on current estimates/rates of progress) it is likely to take to pay compensation;
- iv. what action could be taken/changes implemented to speed the process up;
- v. the impact (both in terms of time and in terms of distress and uncertainty) of a system whereby individuals must wait for an invitation and where most currently have no idea as to when they might receive an invitation to submit a claim;
- vi. the system used to determine who to invite when; whether the criteria used are transparent, rational and clear; whether a system of prioritisation should be adopted (and if so what);
- vii. the Cabinet Office's/IBCA's approach to the provision of legal support/the involvement of legal representatives on behalf of people infected and affected;⁴⁸

⁴⁶ These are the issues which the Inquiry currently intends to focus on. It is not intended as an exhaustive list. In accordance with the Inquiry's usual procedures, core participants (through their recognised legal representatives where they are represented) can suggest questions for Counsel to the Inquiry to consider. Such questions should be provided to the Inquiry/Counsel to the Inquiry by 30 April 2025.

⁴⁷ Which will involve consideration also of the time taken to establish the scheme in the first place.

⁴⁸ See for example the witness statement of Michael Imperato WITN7761001.

- viii. the systems for assurance about accuracy of decision-making and avoidance of errors;⁴⁹
- ix. the involvement (or lack of it) of people infected and affected in decision-making regarding the design and operation of the scheme;
- x. the transparency (or lack of it) of decision-making regarding the design and operation of the scheme;⁵⁰
- xi. the steps that could be taken to achieve better engagement and involvement of people infected and affected;
- xii. the implications of delay in receiving compensation and whether there are measures that could be introduced to ameliorate the adverse effects of delay;
- xiii. the nature and quality of communications from the Cabinet Office/IBCA regarding the scheme, and the impact of those communications on people waiting to receive compensation;⁵¹
- xiv. the extent to which all impacts of infection with hepatitis have been fully recognised within the scheme (in particular, issues relating to the special category mechanism and equivalents/the severe health condition award);
- xv. the approach to the calculation of past financial loss in regulation 7 of the 2025 Regulations;⁵²

⁴⁹ See the witness statement of Danielle Holliday WITN7763001.

⁵⁰ Amongst other concerns regarding transparency and the involvement of people infected and affected, it is clear from the witness statements received by the Inquiry that the role and involvement of the Expert Group has been a matter of considerable concern; these concerns are likely to be explored during the hearing.

⁵¹ See for example the witness statement of Patrick McGuire WITN7760001.

⁵² See the witness statement of Ben Harrison WITN7759001 and the witness statement of Gene Matthews WITN7762001.

- xvi. the deeming provisions about the severity of infection in regulation 20(7) of the 2025 Regulations and whether they may lead to under-compensation;⁵³
- xvii. the standard and burden of proof and its implications for the determination of claims;
- xviii. the parameters of the award reflecting unethical research;
- xix. the inter-relationship between the Cabinet Office and IBCA, their respective roles and responsibilities, and what is meant by being an Arms-Length Body;
- xx. financial support for charities and organisations supporting people infected and affected, not least given both the burdens described in the statements provided on behalf of such organisations to the Inquiry, and the measures proposed to enable and empower the patient voice as set out in the Inquiry’s Recommendation 10, in particular at (ii) and (iii).⁵⁴

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16 April 2025

⁵³ See the witness statement of Ben Harrison WITN7759001.

⁵⁴ These recommendations of the Inquiry were amongst those accepted in principle by the Government, which wrote on 17 December 2024 that in relation to 10a) ii-iii, “*work is underway in DHSC to review the support being offered to relevant charities to the infected and affected community in England. Similar work has been scoped by the Devolved Governments (Scotland and Wales), whilst stakeholder engagement has been initiated in Northern Ireland and will seek to draw a clearer local picture. By Spring 2025, we will have a clearer picture of activity in this space across the UK and options to provide further support.*” RLIT0002471.