

SMALL MINISTERIAL GROUP on INFECTED BLOOD INQUIRY (3)

Wednesday 03 May 2023

Location: Large Ministerial Conference Room, House of Commons

Present

[Chair] - The Rt. Hon Jeremy Quin MP
Minister for the Cabinet Office

The Rt. Hon John Glen MP
Chief Secretary to the Treasury

The Rt. Hon Edward Argar MP
Minister of State at the Ministry of
Justice

Maria Caulfield MP
Parliamentary Under Secretary of State
at the Department for Health and Social
Care

Alex Chisholm
Permanent Secretary at the Cabinet
Office

Cat Little
Second Permanent Secretary at His
Majesty's Treasury

Shona Dunn
Second Permanent Secretary at the
Department for Health and Social Care

Robin Healey
Deputy Director of the Infected Blood
Policy Response Team

GRO-D

Senior Economic Advisor at the
Department for Health and Social Care

Fergus Cameron-Watt
Special Advisor to the Minister for the
Cabinet Office

AGENDA

1. Introductions and purpose
2. Outline of key recommendations including timing, compensation proposals and second interim payment
3. Update from DHSC on legal advice
4. Discuss DHSC analysis on compensation
5. Discuss departmental ownership of a compensation scheme
6. Update from DHSC on their progress regarding psychological support following Sir Brian's recommendations
7. AOB

ACTIONS

1. **ALL** to consider the DHSC Legal Advice once circulated.
2. **DEPARTMENT FOR HEALTH AND SOCIAL CARE** to submit a compensation analysis paper to **CABINET OFFICE** setting out the following:
 - a. A fully considered version of the Langstaff analysis.
 - b. A fully considered version of the Common Law option, including an analysis on whether this could provide quicker and clearer financial recompense to victims compared to the Langstaff recommendations (*this option recognises that a “premium” could be paid on any Common Law outcome in recognition of the unique circumstances*).
 - c. Iterations of partial Langstaff acceptance based on the above two analyses which should include a cap for individual compensation under each model.
3. **MINISTRY OF JUSTICE** to work with **DEPARTMENT FOR HEALTH AND SOCIAL CARE** to produce a fully considered version of the counterfactual/“do nothing option”. This should feed into Action 2 above.
4. **CABINET OFFICE** to produce further advice on the two remaining options for departmental ownership to be tabled at the next SMG for final consideration: sole DHSC ownership; and hybrid CO and DHSC ownership. Each should define responsibilities as precisely as possible.
5. **DEPARTMENT FOR HEALTH AND SOCIAL CARE** to determine if NHS England is able to deliver a bespoke psychological service before the original deadline of April 2024.
6. **CABINET OFFICE** to work with **ALL** to schedule further and more regular SMGs. The next SMG to be scheduled for w/c 22 May.

MINUTE

ITEMS 1 & 2

THE MINISTER FOR THE CABINET OFFICE thanked everyone for attending and said that he was grateful for all the work being undertaken across departments. This issue was pressing and it was important that we work collectively in order to respond to the inquiry's recommendations.

Continuing, THE MINISTER FOR THE CABINET OFFICE outlined that Sir Brian Langstaff, in his second interim report, had drawn on Sir Robert's study, but there were important differences. Sir Brian Langstaff gave a clear impetus in his second report that he had now said his final word on compensation and the Government should now act and have a compensation scheme running by the end of the year. In addition Sir Brian recommended that a second interim payment should be made for those affected.

ITEM 3

THE DEPARTMENT FOR HEALTH AND SOCIAL CARE SECOND PERMANENT SECRETARY explained that the

GRO-D

GRO-D

The likelihood of Sir Brian Langstaff's recommendations being considered by judges when adjudicating on an infected blood compensation case was discussed.

a.

GRO-D

b.

GRO-D

ACTION 1 - ALL to consider the DHSC Legal Advice once circulated.

ITEM 4

THE DHSC PARLIAMENTARY UNDER SECRETARY OF STATE outlined the four options as outlined in the policy appraisal of the various illustrative packages and individual capped options.

The four options were discussed:

- a. The range of outcomes, especially the numbers of potential claimants, was still very significant and the Treasury had hoped to have a greater level of certainty around the numbers before making any decision.
- b. The parameters within each option were still very wide. It was explained that the estimates of the number of affected ranged from 25,000 to 50,000 and that the number of the cohort was the biggest variant in understanding the cost of compensation.
- c. To enable the Government to make a considered decision there needed to be a fully-considered version of the Langstaff analysis in order to stay with certainty whether or not the Government could afford to follow all the recommendations.
- d. Victims might also feel let down by the 'common law approach', as the Government had asked them to be patient and wait for the Inquiry to conclude, but after waiting they would in this scenario only receive what they could have got years ago in the courts.
- e. A 'common law +50%' needed to be worked up.
- f. The fact that Langstaff is using novel ideas where there is little case law needed to be considered.
- g. There was a possibility that victims will get a quicker and more effective recourse to compensation through more established channels - and this needed to be incorporated into the analysis of options.
- h. The Ministry of Justice had not yet inputted into the costs for the counterfactual situation of doing nothing. It was important to include this to fully appraise the options available.

ACTION 2 - DEPARTMENT FOR HEALTH AND SOCIAL CARE to submit a compensation analysis paper to CABINET OFFICE setting out the following:

- a. A fully considered version of the Langstaff analysis.
- b. A fully considered version of the Common Law option, including an analysis on whether this could provide quicker and clearer financial recompense to victims compared to the Langstaff recommendations (*this option recognises that a "premium" could be paid on any Common Law outcome in recognition of the unique circumstances*).
- c. Iterations of partial Langstaff acceptance based on the above two analyses which should include a cap for individual compensation under each model.

ACTION 3 - MINISTRY OF JUSTICE to work with **DEPARTMENT FOR HEALTH AND SOCIAL CARE** to produce a fully considered version of the counterfactual/“do nothing option”. This should feed into Action 2 above.

The following points were made with regard to the Capped Model

- a. A more granular analysis of Langstaff would be needed in order to understand if capping would make sense.
- b. DHSC had had push back on the caps on the Vaccine Damage compensation scheme, and this should be taken into account.
- c. The cap needed to be large enough in order to avoid risks of legal action.
- d. Although Sir Brian Langstaff did recommend compensation being made upon the basis of tariffs, there is a need to have a cost-control method and one way would be to set a maximum amount per person.
- e. It wasn't possible to know the amount of people who would come forward for compensation, therefore even if we did cap individual compensation there would still be a large range of potential cost. To get any more detail on the total amount of people eligible for compensation will be very hard as we know so little about the affected cohort.

Interim payments were discussed

- a. If the Government were to decide to make payments in July, we wouldn't be able to make the interim payments by the end of the year given the e limited data on this cohort.
- b. It was decided that the Government could not discount making a second set of interim payments at this stage.

All members agreed that there is an imperative need to move at pace and minimise the risk of courts getting involved in the process.

ITEM 5

THE DEPUTY DIRECTOR OF THE INFECTED BLOOD POLICY RESPONSE TEAM outlined the five options in the Departmental Ownership Paper and that a decision on which department would take forward the compensation scheme would be helpful in preparations.

Departmental ownership was discussed.

- a. There was concern that an Arms Length Body reporting directly to Parliament, with no Ministerial oversight, would be an open-ended amount of money. This would not allow the Government to ensure fiscal responsibility.
- b. If it were not for Sir Brian's recommendations and the poor relationship between the victims and the department, then it would make sense that the ALB should sit within DHSC.

- c. The responsible Accounting Officer had to have a level of confidence that the scheme would be operationally sound and that victims' low level of confidence may have a significant impact on this.
- d. If DHSC were to take this forward the Accounting Officer would have control over funds but would need set boundaries and therefore have little discretion.
- e. The Cabinet Office had no expertise in this area and had no capacity to administer such a scheme.

ACTION 4 - CABINET OFFICE to produce further advice on the two remaining options for departmental ownership to be tabled at the next SMG for final consideration: sole DHSC ownership; and hybrid CO and DHSC ownership. Each should define responsibilities as precisely as possible.

ITEM 6

Bespoke Psychological Support was discussed.

- a. NHS England are currently costing up a bespoke psychological service for those affected by infected blood. Currently it is expected to go live by April 2024, however they could be able to deliver this sooner.
- b. Sir Brian Langstaff's comments pertaining to this issue in the latest report were highlighted.
- c. The scale of NHS England was highlighted. The number of patients was larger than in the NHS in Scotland, Wales and Northern Ireland and therefore it faced many more difficulties.

ACTION 5 - DEPARTMENT FOR HEALTH AND SOCIAL CARE to determine if NHS England is able to deliver a bespoke psychological service before the original deadline of April 2024.

ITEM 7

THE MINISTER FOR THE CABINET OFFICE thanks all the members for their time and stated that it was very important for this group to meet regularly.

ACTION 6 - CABINET OFFICE to work with **ALL** to schedule further and more regular SMGs.

OFFICIAL SENSITIVE