

07 NOVEMBER 2023

TO: MINISTER FOR THE CABINET OFFICE  
FROM - INFECTED BLOOD INQUIRY RESPONSE AND HEALTH POLICY TEAM  
CLEARED BY - MARIA NYBERG

**NOTE: APPOINTMENT OF EXPERT COMMITTEE - INQUIRY RECOMMENDATIONS**

**SUMMARY**

You have requested that officials provide a note identifying where the appointment of an expert committee, via direct appointment and reporting to Ministers, differs from the recommendations of the Infected Blood Inquiry's second interim report.

**SECOND INTERIM REPORT RECOMMENDATIONS**

The appointment of an expert committee which will be utilised to inform tariff-setting, will reject the principle of independent decision making, central to the Inquiry's recommended compensation framework. It supports full or partial rejection of the following recommendations:

**Inquiry Recommendation 5:** I recommend that infections eligible for compensation should be classified in the following manner:

- a. there should be defined categories for each type of eligible infection, and the stages through which it progresses, and for each category defined degrees of severity to which a range of possible awards for the impact of the disease can be applied;
- b. the stages and degrees of severity for each disease **should be defined by an independent clinical expert advisory panel**, by reference to clinical professional consensus;
- c. the range of potential awards for the impact should be **determined by an independent advisory panel of legal experts**, taking account of but not limited by current practice in courts and tribunals across the UK.

**Inquiry Recommendation 8:** I recommend that the Government should approve a scheme setting out a framework of tariff based compensation for eligible infected and affected persons, at rates which broadly take account of but are not limited by current practice in courts and tribunals across the UK and sums payable in other UK compensation schemes, and allowing an assessed basis for defined financial losses. **The rates of compensation should be based on the advice of the independent clinical and legal panels and set by the scheme.**

**Inquiry Recommendation 14:** I recommend that an Arms Length Body (ALB) should be set up to administer the compensation scheme, with guaranteed independence of judgement, chaired by a judge of High Court or Court of Session status as **sole decision maker**, transparent in its procedures so far as the law permits and accountable directly to Parliament for the expenditure of public funds and the fulfilment of its terms of reference. Appeals should be to a bespoke independent appeal body with a legal chair which will

reconsider the decision of the scheme in any case appealed to it. The scheme should have procedures in accordance with the principles set out in this report and in particular which:

- a. have regard to the need of applicants for speed of provision, simplicity of process, accessibility, involvement, proactive support, fairness and efficiency;
- b. **involve potentially eligible persons and their representatives amongst those in a small advisory board**, and in the review and improvement of the scheme; and
- c. permit the hearing of applicants in person.
- d. should have access to the records held by or on behalf of any previous publicly funded support scheme (subject to any necessary consents by the data subjects), and take into account the reasoning of any appeal from the decisions it takes.

**Inquiry Recommendation 18:** I recommend that **a compensation scheme should be set up now and it should begin work this year.**

## CONCLUSION

The appointment of an expert committee directly relates to 3 recommendations (5, 8 and 14) and the overall delivery timeline, impacted by the appointment of an expert committee, relates to the final recommendation (18).

Sir Brian Langstaff, recommends setting up a panel as part of the ALB, who will help define the rates of compensation to be paid, for the Chair to either accept or not. Our proposal, given the length of time for legislation to pass before an ALB can be established, is to set up an expert committee now, who will support officials in defining the awards/tariffs, but who will work within the fiscal boundaries set by the government. This will allow officials to progress work on the compensation framework. The appointment of an expert committee provides the Government with the clinical and legal expertise required (identified in the Inquiry recommendations), whilst retaining Government oversight of the compensation scheme design. **This approach will accept the recommendations in part e.g. that the compensation awards are defined by clinical and legal panels (via the expert committee), but will reject the remainder of the recommendations e.g. The chair to be the sole decision maker or the panels are part of the ALB.** The role of the expert committee and how it interacts with the ALB panel once the ALB is established, will need to be considered later. We will provide advice on this at a future meeting.

In relation to recommendation 14, setting up a new ALB, separate advice will follow. However, you have already accepted that the recommendation, that the Chair of the ALB will be the "sole decision maker" is unlikely to be deliverable given the expected magnitude of compensation awards and the need for public spending accountability, in particular that any ALB is ultimately accountable to the Government and works within the financial parameters set by the Government.

**We recommend that the direct appointment of an expert committee provides an expedient route to informing decisions on compensation scheme design.**