

31 OCTOBER 2023

TO: MINISTER FOR THE CABINET OFFICE
FROM - INFECTED BLOOD RESPONSE TEAM
CLEARED BY - Alex Chisholm, James Quinault

ACTION

**INFECTED BLOOD INQUIRY RESPONSE: EXPERT COMMITTEE RECRUITMENT
ROUTE**

SUMMARY

1. This paper provides a recommendation on the recruitment route and the skills / experience required for the expert committee to help progress the policy development for the infected blood compensation framework. It also provides advice on the sponsorship resource required to support and oversee the work undertaken by the expert committee.

RECOMMENDATION

We recommend that you (MCO):

- a. **Agree to appoint an expert committee via direct ministerial appointments and direct award;**
- b. **Agree that you and the Chancellor should meet Sir Robert Francis soon to discuss potential appointments;**
- c. **Agree we should identify an alternative Chair if Sir Robert will not take the role;**
- d. **Note the Terms of Reference for the Committee at Annex C.**

TIMING

2. A readout is requested by **12pm Friday 3 November** to progress policy development on the Infected Blood compensation framework.

BACKGROUND

3. This advice follows a submission ('Infected Blood Inquiry Response: Expert Committee') on Thursday 19 October, recommending the appointment of an expert committee to support work on the infected blood policy and cost analysis.

DISCUSSION

Expertise & secretariat

4. The experience required for the expert committee is:

- a. Chair: Experience in clinical negligence or personal injury law, as well as an understanding of the infected blood inquiry and infections. Experience in similar roles as a Chair reporting to HMG.
 - b. Clinical experts: Clinical experience in infections / symptoms and stages they progress (HIV, HCV, HBV, HDV).
 - c. Social care experts: Experience in care requirements for the infections in particular in 70s/80s
 - d. Legal experts: Experience in clinical negligence or personal injury law across the UK.
5. A CO secretariat team to support the committee will be required who will need to have expertise in sponsorship duties, governance and knowledge of the infected blood inquiry. We envisage, as per the resourcing plans shared with you recently, that this will include 3 junior officials whose main role will be to provide an administration function, oversight and governance. We will work with HR to fill the secretariat and sponsorship roles urgently.

Direct Ministerial appointments and Direct Award

6. **The preferred route for clinicians and social care experts of the committee is via Direct Ministerial Appointment rather than through competition. For legal experts the preferred route is a Direct Award commercial route, using a Crown Commercial Service Framework.**
7. The Direct Ministerial Appointment route for clinicians / social care experts is recommended due to the specific skill set and experience required. Clinicians / social care experts would need to have experience and knowledge of the infections, degrees of severities and care requirements, stemming back from the 70s/80s. This is likely to generate a limited pool of candidates with the necessary expertise. There is a CCS Framework for general clinical resources provided by agencies. However, this is aimed more towards full-time delivery of frontline services and does not fit well with the requirement in this instance. Further market engagement would be needed for clinical / social care experts due to the specific skill set but this will add additional timescales and impact on overall delivery of the compensation framework. The Direct Ministerial appointment route would typically take between 2-3 months but can be expedited where it is not possible to follow standard process due to time constraints. We would be able to onboard applicants at risk with minimum steps outlined at Annex B.
8. We recommend legal experts being sourced through professional services using the existing Crown Commercial Service (CCS) Framework (Legal Services Panel RM6179) ("LSP"). The LSP has a panel of firms on the framework that have already been through a centrally run procurement process and can be appointed through direct award without open competition of all the firms, if appropriate. Initial discussions with some firms from the panel have taken place and they have confirmed they are unable to deliver what is required. It is therefore appropriate to shortlist firms on the framework who have the relevant expertise (e.g. setting tariffs) and then undertake a mini

competition (e.g. interviewing) to ensure the most suitable one is selected. Appointing via existing frameworks could be done relatively quickly once funding and other approvals have been achieved.

9. For both routes, relevant approvals will be required via submission and business cases, which will also need to set out why direct appointments / direct awards are necessary.
10. We have outlined the justification for not going out to competition for all experts in paragraphs 8 and 9. Additionally, it could take significantly longer and produce minimal results given the specific expertise required. This could impact on the overall delivery timescales of a compensation framework as we are reliant on the advice of these experts to help inform the policy / cost analysis. Given the time constraints we are working under to respond by March 2024, it is crucial that we make these appointments as quickly as possible. **We recommend the direct Ministerial appointment route for clinicians / social care experts and direct awards for legal experts is the most expedient and appropriate way to appoint the expert committee members.**

Status of Direct Appointees and Direct Awards

11. Direct Ministerial appointees are classed as office holders and there is no formal contract of employment. The expectation is that such roles are unpaid (although reasonable expenses can be paid in line with the department's expenses policy). However, in limited circumstances, if the Permanent Secretary/Accounting Officer is content, then reasonable remuneration (in line with current policy on pay levels) may be payable. As they are not civil servants, executive authority may not be delegated to those appointed to these roles, but their advice to civil servants and ministers may of course inform executive decision making. **As responsible Minister, you will take decisions relating to the final design of any compensation scheme, informed by the expert advice received by the committee.**
12. All appointees must follow the Seven Principles of Public Life and are required to adhere to the Code of Conduct for Board Members of Public Bodies. They owe a duty of confidentiality in relation to their work for the government.
13. All appointees under direct Ministerial appointments, will require Terms of Appointment which will be agreed with the Minister prior to the individual taking up appointment.
14. In relation to Direct Awards, a contract will be implemented between CO and the law firm. The Cabinet Office will need to pay the law firm for their work under the terms of the contract. There are some negotiated fees with the panel firms. Details of these costs will be provided when we provide the shortlist. Consultants are not subject to the Civil Service Code but a confidentiality agreement will be in place as part of the CCS Framework. The contract will be agreed with the Minister before it is signed.
15. In addition to the confidentiality obligations outlined above, Terms of Reference (Annex C) will be agreed with the committee (including clinicians, social care, and legal experts) in advance and if needed a further confidentiality agreement can be implemented to safeguard against potential leaks.

16. **Given the expertise required (particularly legal expertise) it is likely that the expert committee and the Chair will require remuneration. We will work with the CO Permanent Secretary and Chief Financial Officer to secure a funding agreement.**

Risks and Issues

17. The expert advisers may still not be considered independent as they would be engaged by HMG but this could be mitigated by having clear Terms of Reference which set out the role of the committee and Chair, which also emphasises their specific expertise in the subject areas. In addition, their views will be politically independent as their advice will be based on their expertise and profession.
18. It could attract a lot of media / public scrutiny. Government could be blamed for not doing this sooner but at the same time could be seen as demonstrating real progress towards a compensation framework and be seen in a positive light.
19. As this is a niche subject matter, we may not be able to source the expertise required or the pool of candidates may be limited. However, we are working across departments (e.g. Chief Medical Officers office, Public appointments team in DHSC/CO, Crown Commercial Services) who are advising on potential routes for sourcing the right experts. This will assist in producing a shortlist of candidates to select from.

Alternate Routes

20. We have set out a long list of recruitment routes in Annex A.
21. The disadvantages of a commercial route (Option B) for clinicians has been set out at para 8 above. However, it is appropriate to use the commercial route for legal experts for reasons set out in para 9 above.
22. The standard recruitment e.g. via civil service jobs (Option C), would not be considered as independent as they would be civil servants and there is also a risk that we may not be able to source the expertise required.

Public sector equalities duties

23. The public sector equality duty under section 149(1) Equality Act 2010 applies to this decision and should be given due regard. The key issues which arise from these proposals in relation to the PSED are that specific groups of people or backgrounds may be excluded or disadvantaged if candidates are cherry picked, for example:
- People from ethnic minorities or poorer social backgrounds, who may not have had the opportunity for similar work experience / qualifications from known or reputable organisations and may be dismissed on that basis, in comparison to those from higher social backgrounds and white counterparts.
 - People with disabilities or single parent families who might be disadvantaged because they may not be considered as available for short notice / fast paced assignments.

24. We recommend pursuing the selection process of direct ministerial appointment whilst noting that it has the potential to negatively impact on persons with protected characteristics as set out above but consider it is justifiable in order to ensure the expert committee is convened at pace in order to deliver its recommendation to HMG. It is also considered appropriate for the reasons cited in paragraphs 8 and 9. In order to mitigate the impacts, the shortlist will present all suitable persons with the necessary skills and experience and ensure those qualified persons with the availability to begin work within the time period required are considered. For the legal experts using the CCS framework, we will shortlist the firms initially as part of the framework and undertake a mini competition exercise between the suppliers to ensure fairness in the process. In addition as part of the selection process for all experts we will ensure the recruiting panel has a diverse representation.

Legal advice

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Next Steps

30. We recommend that you agree for officials to progress the work to identify and appoint an expert committee via direct appointment. This work includes:

- a. Drafting and agreeing a business case to secure funding / approvals;
- b. Identifying a list of individuals to make up the expert committee;
- c. Identifying an alternative Chair of the expert committee if Sir Robert Francis declines;
- d. Undertaking necessary due diligence on all potential candidates.
- e. Submission once the above steps are completed.

Annex A: Recruitment and Hosting routes: Expert Advisers¹

Option	Route	Description	Risks/Issues
A	Direct Ministerial appointment	<ul style="list-style-type: none"> • A Direct Ministerial Appointment is usually a time-limited, senior appointment made by a Minister. These roles are typically Czars, Champions and Ambassadors; Chairs of Taskforces, Reviews and Inquiries; or senior figures asked to lead a specific project or programme of work. It may also include some individuals appointed to support these senior people in their roles. • They are short-term posts (less than 18 months with potential to extend). They fulfil an advisory function directly to Ministers beyond and complimenting advice provided by Civil Servants. • They are considered politically and operationally independent, but established, resourced and supported by a sponsor department. Recruitment using this method would need to be agreed formally by No 10. All necessary due-diligence (background, conflicts of interest and social media checks) and ID verifications are conducted before appointment. Additional approval from HMT is needed if day rates exceed £575 or annual salary equivalent is £150k or more. This route would take between 2-3 months but can be expedited and onboarding can commence at risk if required. 	<ul style="list-style-type: none"> • The advisers may not be considered fully independent as they would be engaged by HMG. This could be mitigated by setting out Clear Terms of Reference and the role of the committee, which emphasises the expertise of the members. • This route could attract a lot of scrutiny if direct ministerial appointment. Any such challenge might only be successful if we cannot demonstrate that direct awards were made in line with PSED and public law principles. • Including detailed scope in job adverts if competing, could attract negative criticism and reveal government's direction of travel for compensation; but may not attract the right calibre of candidates if minimal information on job description is provided. • There may be equality implications if candidates are selected without competition. A further full PSED analysis

¹ This annex has been cleared by DHSC officials.

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			will be conducted before and after any decisions are taken on appointments.
B	Procurement Professional services	<ul style="list-style-type: none"> • Legal experts could be procured through a professional services route either through open market or an existing Crown Commercial Service (CCS) Framework e.g. Legal Services Panel (LSP)' RM6179. The latter option has a panel of firms on the framework that have already been through a centrally run procurement process to get on the panel and can be appointed directly. Appointing via existing frameworks could be done relatively quickly once funding and other approvals have been achieved. • There is also a CCS Framework for general clinical resources provided by agencies rather than specialists in the relevant infected blood infections. However, this is aimed more towards full-time delivery of services and may not fit well with the requirement in this instance, especially if some clinicians are still practising frontline. Should the CCS framework prove unsuitable, further market engagement would be required to determine if another suitable route exists, and if so, a stand-alone procurement process or direct awards would be necessary. However, this could be a lengthy process with minimal results. • Going out to tender via competition for either legal or clinical experts, would require some detail on the scope of requirements in order to attract competitive and quality bids. A procurement 	<ul style="list-style-type: none"> • As with the Direct Ministerial appointments, experts may not be considered independent from HMG if procured under contract. • Contractors / consultants are bound by confidentiality agreements that are in place as part of the CCS Framework. Also, lawyers owe a duty of confidentiality to their clients which would apply to any firm chosen. • Including detailed scope in a tender could attract negative criticism and reveal the Government's direction of travel for compensation. If minimal detail is included this may not attract many quality bids. • Direct awarding or a lack of detail in the procurement process could be open to successful legal challenge if done in a procedurally unfair way or without clear rationale for doing so. A lack of detail in the procurement process may dissuade

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		<p>process through competition could take between 2-3 months minimum in comparison to direct awarding which could take a minimum 4 weeks.</p> <ul style="list-style-type: none"> • Another commercial option could be to subcontract clinical expertise via the proposed legal contract, but we would need to ensure this is feasible under the terms of the framework but this could still not source the clinical expertise required due to the specific skills/ experience needed. • Formal procurement is subject to regulations requiring publication of opportunities, and open, fair and transparent processes – this does not align well with a situation where specific experts are required and / or the Chair wishes to direct the recruitment of individuals. 	<p>bids and increase the likelihood of a challenge being brought and the likelihood of success for that legal challenge if non-compliantly used.</p> <ul style="list-style-type: none"> • Using a procurement route, we would only likely obtain legal experts as clinicians are typically sourced through agencies to provide frontline services. Any sub-contracting or market engagements could risk leaks but this is mitigated by confidentiality agreements that are in place with the firms in the various frameworks.
C	Standard recruitment	<ul style="list-style-type: none"> • This route entails traditional advertising through Civil Service or NHS Jobs offering Secondments, Fixed Term Appointments or Temporary roles. It would either require an external advert, Expressions of Interests within Civil Service / NHS Departments as well as relying on existing networks. The successful applicants would be regarded as head count for the owning department. Office for Health Inequalities and Disparities (OHID) regularly offer short-term secondments and have a wide health network that we could tap into. Standard recruitment could take anywhere between 2-3 months. 	<ul style="list-style-type: none"> • Under this route they would be considered as civil servants, are unlikely to be considered independent from HMG especially if they are recruited from existing civil servants. • We may not be able to source the expertise required through this method. There is a risk therefore that time will be spent attempting to recruit through this method with no result.

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Annex B: Onboarding (At Risk)

An at-risk appointment is one where BPSS checks are not in place on day 1. Home Office legal guidance states that as a minimum right to work checks must be completed for each appointee. **This process should only be used when it is not possible to follow the standard process due to time constraints.**

The following steps must be taken as a minimum in order to onboard at risk:

- **Due Diligence** - Due diligence should be carried out on the appointee – including background checks and searches of social media accounts. The public appointments can provide guidance on this. This should be done before advice to appoint is sent to the relevant ministers.
- **ID checks** - 3 forms of ID should be requested from the appointee and a video/face to face ID check should be completed by the policy lead. The baseline verification form will also need to be completed.
- **Declarations of interest** - The policy lead should request a declaration of interest form is completed by the appointee, once this is returned it should be signed off by the SCS lead. Where relevant, mitigations should be agreed and recorded.
- **Payment** - If the Appointee is to be paid then committee fee forms should be completed at this stage and shared with payrollqueries@dhsc.gov.uk.
- **Letter of Engagement** - A letter of engagement should be shared using the standard template. This should be drafted by the policy team with input from HR and the Public Appointments team where needed. The appointee must sign and return the letter of engagement to the SCS policy lead before starting in post. This should be shared with HR operations and the specialist recruitment team for audit purposes.
- **Risk assessment** - Once the above actions have been completed the policy lead must gain approval from the Permanent Secretary and relevant HR teams to bring the individual in at risk. To do this, policy leads should share the risk assessment form alongside the completed declaration of interest form and any supporting documents e.g verified ID checks and a CV confirming employment history. Once approval is received, policy leads can finalise the appointment with the following actions:
- **IT Kit** - Contact the IT service delivery team to arrange kit for the appointee
- **Announcement** - Announce the appointment. Where needed work with ministerial private offices to co-ordinate when the announcement will take place.

Annex C – Expert Committee Terms of Reference

Infected Blood Expert Committee - Terms of Reference

Background

- In 2017, the UK government launched an independent 'Infected Blood Inquiry' (www.infectedbloodinquiry.org.uk) to "examine the circumstances in which men, women and children treated by National Health Services in the United Kingdom were given infected blood and infected blood products in particular since 1970" under the Inquiries Act 2005. This is the largest public inquiry ever carried out in the UK.
- The inquiry is ongoing and is expected to publish its final report in March 2024. To date, there have been two interim reports published. On 29 July 2022, the Chair of the inquiry, Sir Brian Langstaff, published his first interim report on the subject of interim compensation for victims of infected blood. On 17 August 2022, the Government announced that interim payments of £100,000 would be made to infected and bereaved partner beneficiaries of the current infected blood support schemes. These payments were made by October 2022. The government has also accepted the moral case for compensation.
- On 5 April 2023, Sir Brian Langstaff's second interim report was published outlining the Chairs 'final word' on compensation and recommending that work begin immediately to develop a compensation system.
<https://www.infectedbloodinquiry.org.uk/reports/second-interim-report>
- The Government is currently considering all recommendations made by Sir Brian Langstaff, alongside the 2022 Compensation Framework Study and recommendations made by Sir Robert Francis. [Compensation and redress for the victims of infected blood: recommendations for a framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/compensation-and-redress-for-the-victims-of-infected-blood-recommendations-for-a-framework)
- The Cabinet Office (CO) is the sponsor department for the Infected Blood Inquiry and is leading on the Government's response. The CO has been working with other government departments, including DHSC, HMT, DWP and MOJ, to consider the recommendations and Government's response.

Role and Purpose of the Committee

- The Infected Blood Expert Committee ('the Committee') will provide expert advice (legal, clinical, social care) to the UK Government, working with officials to help develop an infected blood compensation framework. Advice provided by committee members will be based on their area of expertise.
- This includes but is not limited to:
 - Advising and supporting Government to develop a potential tariff-based compensation framework within the principles agreed by Government;
 - 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;

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- Providing advice and support to Government on care requirements based on infection severities, and;
 - Undertaking targeted consultations with specific groups of cohorts to test products (as agreed with CO).
- Members of the Committee are expected to work collaboratively with the Chair, other committee members, CO officials and other cross-government officials and the Minister for the Cabinet Office. The Committee will report directly to the Minister for the Cabinet Office (MCO).
 - In addition, the Committee is expected to respond to any ad-hoc issues that the CO may require expert advice on during the development of the compensation framework, which might be required at short notice.
 - The Committee will consider a variety of evidence available to it to formulate its advice. 'Evidence', includes, but is not limited to:
 - The expertise of each committee member and any evidence provided to the members (e.g. independent research / findings on infection severities and care requirements, case law on Personal Injury damages);
 - Evidence and modelling provided by CO and/or other government departments or agencies;
 - Evidence and feedback gathered from a separate targeted consultation with infected and affected focus groups.
 - For the avoidance of doubt, 'evidence', as listed above, cannot be provided by the committee inviting a person (or group of people) who is not ordinarily a member of the committee to attend a meeting to provide such evidence.

Membership

- The Committee will have UK wide representation from legal, clinical, and social care experts. The full list of expert members can be found as **Annex C1**.
- Members will be remunerated for their time (to be agreed with each member separately) and reasonable travel and subsistence which will be paid in line with the CO expenses policy.

Chair

- The Chair will be directly appointed by the Minister for the Cabinet Office.
- The Chair and committee members will nominate a deputy who would act as the Chair in their absence. The deputy will chair meetings and represent the committee in Government led meetings as required.
- The Chair is required to perform the following functions:
 - Harness the full expertise of the committee;
 - Represent the views of the committee;
 - Act impartially and ensure the independence of the committee;
 - Ensure the committee's advice stays within the scope agreed by Cabinet Office officials;

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- Act as a liaison or 'point person' between the secretariat (**Annex C2**) and the committee;
- Undertake the role of Chair in addition to the role of committee member, working with CO officials and reporting directly to MCO.

Conflict of Interest and confidentiality

- Members will have signed a declaration form to alert the secretariat to potential conflicts of interest or concerns.
- Members will agree to honour confidentiality in terms of all information and advice provided by the MCO, CO and other government departments. The work of the committee is to be treated with the strictest confidence, and the sensitivity of the discussion and individual committee members' views must be respected.
- This confidentiality applies to all discussions, papers and/or evidence provided by the MCO, CO and all other government departments, to the Committee, to facilitate the committee's role. These papers must not be shared with anyone who is not a member of the committee without consent from the committee chair and members and CO.
- Committee members must not discuss or disseminate, in the public domain, any discussion or decision made by the committee, CO officials, MCO and other government departments before, during and after work is completed on the infected blood inquiry.

Governance and secretariat

- The Committee will be sponsored by the CO, who will provide a secretariat function for the Committee. Only the appointed Chair of the Expert Committee, committee members, CO officials, DHSC officials, and Minister of the Cabinet Office can request a meeting of the committee and commission work as appropriate.
- The Chair of the Committee will provide advice to the secretariat and CO / DHSC officials and other government departments as appropriate, who will advise Ministers. However, on occasion the committee may be requested to advise Ministers directly and attend other CO/DHSC led meetings and, in such instances, prior agreement with all committee members will be sought.
- The secretariat will ensure timely meeting notifications and dissemination of meeting papers and minutes.

Timing and Meetings

- The duration of the Committee is expected to be time limited, anticipated 12 months. If the Committee is extended, agreement from each committee member will be sought.
- The Chair and Committee members will meet weekly for two hours or as required to progress work (TBC).
- The committee will meet virtually (e.g. Microsoft Teams / Google meet). However, face to face meetings will be considered and if agreed, these will be held outside of the government estate, paid for by the CO.

- The quorum for a meeting of the committee shall be two-thirds of members present. At least the Chair or deputy Chair must be present before a meeting can commence.

Transparency

- To facilitate transparency in this process, the government will publish on gov.uk:
 - Details of the Panel's Terms of Reference;
 - Membership of the Panel, and;
 - Meeting minutes so far as appropriate to disseminate into the public domain.

Annex C1

List of Infected Blood Expert Committee members

Member	Organisation

Annex C2

CO secretariat contacts

Name & responsibility	Contact details

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