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21 MAY 2024**

DOMESTIC AND ECONOMIC AFFAIRS COMMITTEE

INFECTED BLOOD INQUIRY COMPENSATION SCHEME

**PAPER BY THE MINISTER FOR THE CABINET OFFICE AND PAYMASTER
GENERAL**

SUMMARY AND RECOMMENDATION

1. This paper sets out the Government's initial response to the Infected Blood Inquiry's (IBI) final report, published on Monday 20 May 2024, and seeks agreement to announce a compensation scheme for victims today.
2. The Committee is invited to agree:
 - a. the tariff-based compensation scheme for both infected and affected victims, which will operate across the entire United Kingdom (noting the proposed scheme deviates from the IBI's recommendations in a few areas, as set out in paragraph 6);
 - b. to announce the compensation scheme on Tuesday 21 May, as follows:
 - i. The Government will publish a narrative description of the Scheme together with illustrative total awards. The proposed scheme will be subject to further testing and validation with representatives of the infected blood community prior to being established in regulations;
 - ii. The Government will make an additional £210,000 interim compensation payment to living infected people who are registered with an infected blood support scheme. Subject to DA agreement, payments will begin in Summer and be delivered within 90 days;
 - iii. The Government will make an interim compensation payment of £100,000 to the estates of those deceased infected persons registered

with a support scheme before 17 April 2024 whose deaths have not yet been recognised by interim payments; and

- iv. The Government will commit to a full response to the Inquiry's other findings and recommendations in due course, with a debate in the meantime in Parliament on the report, likely to be in w/c 3 June.

BACKGROUND

3. During the 1970s and 1980s, thousands of UK patients contracted HIV, hepatitis viruses, or both, from contaminated blood or blood products administered by the state. The IBI, chaired by Sir Brian Langstaff, began its work in July 2018 examining the circumstances that led to individuals being given contaminated blood and blood products in the UK. The Government made interim payments of £100,000 to those infected and bereaved partners registered on existing schemes in October 2022 in response to the Inquiry's first interim report. Sir Brian published his second interim report, setting out his recommendations on compensation in April 2023, based on the findings of Sir Robert Francis KC's study into a framework of compensation for the victims of infected blood.
4. The Inquiry's final report will be published on Monday 20 May 2024. The Government intends to announce on 21 May a compensation scheme for people infected and affected by contaminated blood or blood products, as recommended by the Inquiry's second interim report.

COMPENSATION SCHEME PROPOSAL

5. The IBI has recommended a tariff-based scheme which I recommend the Government accepts, departing from its other recommendations only where it is in the interests of speed, simplicity and appropriate oversight of public money. In summary, the Government's scheme ('the Scheme') will include the following:
 - a. **Eligibility for the infected:** The Scheme will offer redress to individuals, living or deceased, directly and indirectly infected with human immunodeficiency viruses (HIV) and/or Hepatitis C (acute and chronic infections) and/or Hepatitis B (limited to chronic unless the infection has resulted in a fatality in the acute period) through NHS blood, blood products or tissue.

- b. **Eligibility for the affected:** The Scheme will offer redress in their own right to partners, parents, children, siblings and carers of eligible infected individuals.
- c. **Rights to litigation:** Applicants will not be asked to waive their right to pursue litigation in order to receive compensation through the Scheme.
- d. **Core and supplementary routes for awards:** Awards will be calculated against the categories of loss recommended by the IBI's second Interim report, and will be allocated on a base of set tariff rate or formulaic payments as part of a 'core route'. Applicants who believe their application warrants a compensation payment beyond the core route rates, and can provide evidence to demonstrate this, will have the option of accessing higher awards via a 'supplementary route'. Awards will vary depending on an individual's circumstances. Average proposed core awards to people with chronic infections range from approximately £735,000 to £2,465,000.
- e. **Benefit and tax disregard:** Payments under the scheme to living infected and affected persons will be disregarded from benefits assessments. The disregard will also apply to those receiving payments via an estate who would qualify as an affected person under the Scheme. In line with the previous round of interim payments made in October 2022, further interim payments will be tax exempt under the secondary legislation laid in 2023 and will be automatically disregarded for tax credits purposes. Compensation payments made under the full Scheme will be exempt from income tax, capital gains tax and inheritance tax. This is in line with tax exemptions for the first and second interim payments.
- f. **Lump sum v periodical payment:** Awards to living infected or affected persons will be offered as a lump sum or periodical payments. Where the infected person has died, estate representatives will receive compensation as a single lump sum payment to then distribute to beneficiaries of the estate as appropriate.
- g. **Interim Payments:** Pending award of full compensation under the scheme further interim payments will be made to a) living infected beneficiaries registered with current Infected Blood Support Schemes (IBSS) b) those who register before the final Scheme is established and c) eligible estates, in line with the government amendment to the Victims and Prisoners Bill. We will

announce on 21 May that the further interim payments to the living infected will begin in summer and be delivered within 90 days.

- h. **Existing support schemes:** Existing support payments to those on the Infected Blood Support Schemes will continue until final compensation is paid, so that no-one is left without support. As the Scheme will compensate for both past and future losses suffered as a result of infected blood, the new Scheme will likely therefore eventually replace the IBSS. However this, and transitional arrangements are subject to Devolved Administration agreement.

6. The main deviations from the recommendations of the IBI are:

- a. **Setting tariffs:** The IBI recommended that rates of compensation should be based on the advice of independent clinical and legal panels and set by the chair of the body administering the scheme, rather than the Government. Instead the Government will set the tariff rates in secondary legislation. The proposed tariff rates and formulae have been informed by an Expert Group of clinical and legal experts.
- b. **Independence:** The IBI recommended that the body administering the scheme should report directly to Parliament. It would be constitutionally inappropriate for such a body to be outside of the normal framework of Managing Public Money. Instead it will be an Arms-Length-Body of the Cabinet Office.
- c. **Eligibility:** The Government has accepted all the IBI's recommendations on compensation for the infected, and on the eligibility for compensation in their own right of partners, parents, siblings, children and carers of a person with an eligible chronic infection or acute Hepatitis B where the infection resulted in a fatality in the acute period. However, the IBI also recommended that family and friends of an infected person should be eligible as affected persons. Our expert group were unable to find a workable definition of this group which would not draw eligibility too widely and be vulnerable to fraud. Instead we have linked eligibility to familial relationships or their provision of care to the infected person. This means there is no separate affected eligible category for 'friends and family' in the scheme proposal.
- d. **Awards:** The Government accepts the IBI's recommended categories of award but in the interest of simplicity and speed of payment the Care Award is routed through the infected person or their estate to distribute. A financial

loss award will be available to bereaved affected persons who were dependent on the deceased infected person at their time of death. The IBI recommended that financial loss and care awards should be individually assessed, but this would be likely to be at the cost of speed of payment and simplicity of application. Instead the proposed scheme offers a formula-based approach for most applicants but with the possibility of more tailored assessment via a supplementary route if applicants wish it and can provide additional evidence of higher costs or loss.

7. I propose to say that the proposed Scheme is subject to validation with representatives of the infected blood community, prior to being established in regulations. The validation will test whether the tariff-based framework of compensation proposed takes proper account of the breadth of cases, and will sense check the Government's proposals on matters such as evidential requirements and support for applicants. Under the terms of the Victims and Prisoners Bill, the regulations to set up the Scheme must be laid within three months of the Bill receiving Royal Assent. Accordingly, the scope and duration of the exercise will necessarily be limited.

FINANCIAL IMPLICATIONS

8. Estimates of the total likely cost of the scheme are very uncertain, given the large range in estimates of the numbers in particular of affected claimants who may come forward. The Government will therefore not be publishing estimated costs today (21 May 2024). The aim is that compensation payments will start before the end of the year.
9. The scheme will also be subject to further validation with representatives of the infected blood community prior to being established in regulations. This will be led by the interim chair of the Infected Blood Compensation Authority, Sir Robert Francis, with final Scheme proposals to be made by Ministers and presented to Parliament for approval in secondary legislation.

LEGAL ISSUES

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RISKS

16. There remains a large uncertainty on the number of eligible persons, especially the number of affected, who may claim under the scheme, and therefore its ultimate cost. We have used data from the Inquiry's Statistical Expert Group and ONS population data to inform assumptions about the number of eligible affected persons.
17. There are risks to the successful delivery of the scheme to the timetable applicants will expect. We are mitigating this by designing the scheme to be as simple to run as possible, and by ensuring that the Infected Blood Compensation

Authority is set up in shadow form and will commence preparations ahead of the regulations to establish the scheme.

18. The devolved administrations have not yet been consulted on the proposed announcements, including the proposal to pay further interim payments, for the administration of which they would be responsible in their jurisdictions. Consultation, led by the Cabinet Office, will take place after this meeting.

NEXT STEPS

19. Subject to the agreement of the Committee, I will make an oral statement to the House later today setting out the Scheme. Following that:
- a. I will publish a document setting out the compensation scheme, details on the expert group and the rationale for their work, and a page with information on GOV.UK for interim payments;
 - b. The Cabinet Office will prepare responses to any Inquiry recommendations on compensation and memorialisation, and DHSC those relating to health and blood policies; and
 - c. There should be an opportunity for Parliamentarians to debate the recommendations in the final report once they have had a chance to read and digest the report in full. This should be after the Whitsun recess (in w/c 3 June). I will open that debate, and a DHSC Minister will close.

The Rt Hon John Glen MP

Paymaster General and Minister for the Cabinet Office

21 May 2024