

INFECTED BLOOD INQUIRY
HEARINGS ON TIMELINESS AND ADEQUACY OF GOVERNMENT
RESPONSE TO COMPENSATION
SUBMISSIONS ON BEHALF OF WATKINS & GUNN CPs

List of the recommendations that our clients would like the Chair to consider making, with a short explanation as to why

1. The regulations should be amended to include not only those Haemophilia Centres which the CO accepts carried out unethical research, but to give IBCA a discretion to make the unethical research award where there is evidence in an individual case.
2. The list of Haemophilia Centres that carried out unethical research should be expanded to include Belfast, Swansea, Carmarthen and Alder Hey. In relation to Belfast and research, see the Inquiry's presentation on Belfast (March 2021) at §§ 180 – 183. Dr Mayne was a RCD and the Inquiry's findings on unethical research in Vol 4 p266ff would cover her. Dr Mayne was one of the first to use imported concentrate and set up a home treatment programme using concentrate in the mid-1970s; Vol 4 p152. In relation to Swansea, Dr Al-Ismael confirmed that they adopted the policies of Professor Bloom at Cardiff – see the transcript of his evidence (17 November 2020 at pp 46, 50-51, 53, 62 and 70). In relation to Alder Hey, the appalling treatment practices in relation to children are described at Vol 4 pp314ff and justify a like award.
3. Estate claims should be given sufficient prioritisation. The family of the deceased person have paid the ultimate price, and have lost dependency on that person.
4. The regulations should be amended so that where an affected partner was still alive as at 31 March 2025, their claim will pass to their estate. This draws a

reasonable line between the Inquiry's conclusion that including the estates of the affected drew the circle too wide, and the unfairness caused by the delay in the processing of claims. The requirement that an affected person must have accepted an award before they die in order for the compensation to be payable to their estate results in conspicuous unfairness arising from (i) the delay to date in the establishment of the compensation scheme, and (ii) the indication that the 'bulk' of affected persons will receive compensation by 2029.

5. The regulations should be amended to allow affected persons registered under the current IBSS and/or registered with IBCA to receive an interim payment. This would ameliorate to some extent the unfairness brought about by the delay being caused and the risk of affected persons dying before their claim has been accepted.
6. The CO cut-off of 1 January 1982 for HIV claims is indefensible; (i) it is irrational to design part of the scheme based on the CO view on legal liability, when the compensation scheme has been brought about because of the acceptance of the recommendations of the Inquiry and Sir Robert Francis; and (ii) it is a disproportionate restriction, given the number of claims excluded is likely to be small; (iii) in any event the view on liability lacks merit given that the risk of transmitting viruses by blood and blood products was well known in the 1970s and the **real risk** of AIDS being transmitted by blood or blood products was known or ought to have been known earlier than January 1982 and at the latest by the end of 1981 (see the Report Vol 3 p75) and it was not reasonable to neglect that risk given the potential consequences; *Hughes v Lord Advocate* [1963] AC 837 and *Wagon Mound (No2)* [1967] 1 AC 617 at 642E – 644D.
7. The regulations should be amended to reinstate the SCM mechanism. Nick Thomas-Symonds MP and James Quinault both explained that the severe health impact is covered by the core award (save the narrow category of additional claim provided for in the regulations). As the Inquiry established

through questioning, that cannot be correct. The expert group recommended the adoption of the SCM and the bandings for the core award on 16 August 2024 [RLIT0002474_0035]. Notwithstanding the SCM did not find its way into the regulations, the level of core award recommended in August 2024 is reflected in regulation 16. So the level of the core award did not change to incorporate the SCM within the core award – it was just dropped as an additional claim (save to the extent provided for). It should be borne in mind that WIBSS does not use the SCM and instead has an enhanced stage 1 award for psychological impact which will be lost if a person accepts the core offer. This decision has resulted in an unjustifiable difference in treatment of those who (i) want to choose the core offer rather than the adjusted offer, and (ii) those who were not registered with any IBSS (in particular those infected with HBV who have historically been unjustifiably discriminated against).

8. All eligible persons should be able to register for the scheme, and instruct their lawyers to provide information already available. It is not accepted that this should disadvantage those who did not participate in the Inquiry, as the case managers will continue to work with those registrants at the same time. In any event, why should persons who have already been through the process of examining their records not be able to use that information to speed up their application? The fact that others will take longer is not a convincing justification for unnecessarily delaying applications where RLRs can provide an information pack. Michael Imperato describes his experience of the CICA process at §43 of his w/s. The wait for the invitation, “the golden ticket”, is distressing and demeaning, and foreseeably so. It must end. It is a breach of procedural fairness and of natural justice. It may be that prioritisation of consideration is justified in certain cases, but the system of being invited to apply is just not right. As Michael Imperato states in his w/s at §§ 69 – 71:

“Thus, I know from first-hand experience, how important it is for a dying person to know that their claim is up and running, and progressing, and that it is going to provide for their loved ones.

One would quite obviously expect that there is no deliberate agenda to delay cases so that victims die out. However, the fact that such a view is so prominent amongst clients who contact me, is testament to the IBCA's failure to adequately communicate with the infected and affected community, the lack of pace in claims entering the scheme and the lack of trust.

The issue as to the order of priority is a particular concern amongst my 'affected' clients who feel that they are right at the back of the queue. Many of them are elderly and poorly. They are afraid that they will never see justice in the form of compensation. They are mindful that if they pass away, their compensation claim dies with them. It cannot be passed on. What perplexes clients in this situation is that many of the claims of affected persons should be relatively modest and straightforward to calculate."

9. Eligible persons should be informed of their right to independent legal advice upon first contact. Michael Imperato explains in his w/s at §47 of his experience of meeting with applicants after they have signed the declaration provided to them by IBCA. This is an important document and those who want legal advice should have the opportunity of doing so before they are asked to sign this document.
10. Applications should be dealt with as a family at the same time in order to speed up the processing of applications.
11. The appeal process should be reviewed. Judges of the FTT (social entitlement chamber) will not develop expertise in dealing with these claims, and will be liable to make the same mistakes as the case managers are currently making – see §§ 59 – 63 of the w/s of Michael Imperato.
12. The Inquiry's recommendation 10 should be fully implemented equally and consistently – all the representative bodies should be properly funded to provide advocacy on behalf of the infected and affected. This advocacy has already been demonstrated to be crucial as the Inquiry's recommendations are implemented.

13. Those mono-infected with HBV should be given the option of either accepting the core offer or regular payments. It is unjustifiable unfair treatment to exclude them from the option of regular payments.
14. Medical assessments and all information which is taken into consideration by IBCA must be shared with the applicant concerned. Reasons for decisions must be provided. This is a minimum requirement of procedural fairness.
15. Payments to infected persons who then die after receipt of the payment should not be subject to inheritance tax when the estate receives the money. Estate claims do not attract inheritance tax. Whether or not inheritance tax is paid by an estate of an infected person should not turn on whether than infected person died before or after the payment was made.
16. IBCA should publicly commit to an acceptance that written accounts by applicants are evidence, especially in the absence of supporting medical records. Where credible accounts of infection are provided, it is for IBCA to disprove them.

Central factual findings we submit should be made about the way in which the Cabinet Office ('CO') or IBCA has gone about things

1. The CO, in the establishment of the expert group and the design of the scheme, acted with a lack of transparency which has served to exacerbate the mistrust between the infected / affected and the Government. It was entirely foreseeable that this would be the result of their actions. There should have been co-production and there should be co-production now to remedy some of the flaws in the design of the scheme.
2. The Government delayed the announcement on the compensation scheme so that it could control the narrative following the Inquiry's findings. This is

entirely consistent with the procurement of a PR form to develop “defensive lines” and to change the narrative – see w/s Lynne Kelly at §§ 65 – 72, and Nigel Hamilton at §§ 58 – 59.

3. The CO decided which Haemophilia Centres carried out unethical research without any consultation with the infected and affected, and wrote their decision into the regulations in a way which means that it is not open to individuals to present evidence to IBCA that they were the subject of unethical research.
4. The wait for the invitation, “the golden ticket”, is distressing and demeaning, and foreseeably so. It must end. It is a breach of procedural fairness and of natural justice. It may be that prioritisation of consideration is justified in certain cases, but the system of being invited to apply is just not right. As Michael Imperato states in his w/s at §§ 69 – 71:

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5. We adopt the submissions of Milners Law on the future of the Inquiry.

