

IN THE HIGH COURT OF JUSTICE

KB-2026-000384

KING'S BENCH DIVISION

BETWEEN

STUART MCLEAN

Claimant

AND

THE INFECTED BLOOD COMPENSATION AUTHORITY

Defendant

**SUBMISSION ON BEHALF OF THE CHAIR
OF THE INFECTED BLOOD INQUIRY**

1. **Introductory observations** The Chair of the Infected Blood Inquiry (“the Inquiry”) understands that the issue in this claim concerns the correct construction of Level 3 Hepatitis in Schedule 1 to the Infected Blood Compensation Scheme Regulations 2025. This was an issue which was raised by a number of Core Participants to the Inquiry. As the Chair was asked to (and did) give careful consideration to this question and set out in his subsequent report his analysis of the correct approach to the interpretation of Level 3 - a view rooted in an understanding both of the clinical manifestations of hepatitis and of the history and purpose of the compensation scheme to which the Regulations give effect - it is hoped that the short explanation below will be of assistance to the parties (whose common objective must be to reach the right decision) and of course to the Court.
2. The Chair makes no submissions as to the facts of any individual case but should record his understanding – based on his knowledge, built up over the more than eight years he has worked on the Inquiry, of the effects of infection with hepatitis and the circumstances of those infected – that this is an issue likely to have a substantially wider impact than the Claimant’s case.
3. **Submissions:** The Infected Blood Inquiry was established, with Sir Brian Langstaff as its Chair, in 2018. Over the following years it heard a wide range of evidence

(including from people infected and their families, and from politicians, civil servants and clinicians) about the circumstances in which people had been infected with Hepatitis C, Hepatitis B and HIV, and about the terrible impacts of that infection on people's lives. One of the Inquiry's central recommendations was the payment of compensation (see the Inquiry's First Interim Report, published on 29 July 2022, and its Second Interim Report, published on 5 April 2023). The Inquiry's main Report, published on 20 May 2024, mapped out the "*catalogue of failures*"¹ which had caused the infection of thousands of people. Immediately following the publication of that Report the then Prime Minister promised that the Government "*will pay comprehensive compensation to those infected and affected by this scandal ... Whatever it costs to deliver the scheme, we will pay it.*"² The Regulations were (as the Chair understands it) intended to give effect to that promise.

4. In autumn 2024 the Inquiry began to receive increasingly concerned communications from individuals, organisations and legal representatives regarding significant aspects of the compensation scheme, including delays and lack of transparency, anomalies within the scheme and the lack of involvement of people infected and affected in both the design of the scheme by Government and the operation of the scheme by the Infected Blood Compensation Authority ("IBCA"). In April 2025 the Chair announced that there would be further hearings in May 2025 which would examine such issues. IBCA participated in those hearings. On 9 July 2025 an Additional Report on Compensation was published.
5. One issue explored in those hearings and addressed in the Additional Report was the correct interpretation of the description for Level 3 ("*Cirrhosis, characterised by serious scarring (fibrosis) of the liver caused by long-term liver damage caused by infection*"), i.e. the very issue that is the focus of this claim. As explained in the Additional Report (at p115), "*Because of the way in which compensation for Hepatitis infection is determined under the Regulations, the decision as to which level is applicable makes a very substantial difference to the amount of compensation payable to an individual.*" The Additional Report continued:

"The definition of Level 3 is a matter of statutory construction. The words chosen matter. So too does the fact that the person who drafted it could have chosen to give a description referring to recognised clinical scores – as was done in relation to Level 4, where the description includes a Child-Pugh score greater than 7 – but did not.

As a matter of construction, the statutory definition provides that – for these purposes – cirrhosis is synonymous with serious scarring of the liver which is synonymous with fibrosis. This does not necessarily mean fibrosis at a minimal

¹ Infected Blood Inquiry Report, Volume 1, Summary, published on 20 May 2024

² Infected Blood Inquiry Additional Report on Compensation, published on 9 July 2025

level, since if that were so the regulations could simply have said “fibrosis”, and this might arguably deprive the word “serious”, which qualifies “scarring” of some of its effect.

On this construction, Level 3 is met where there is serious scarring or where there is serious fibrosis. The statutory definition does not specify a particular level of fibrosis, so long as it is serious. If a clinical diagnosis of cirrhosis were required, the definition would have said so.”

The Chair confirmed his view that Level 3 as defined by the Regulations includes “serious fibrosis”.

6. As the Chair recognised in his Report (and recognises in these submissions), the Court must ultimately decide what the legislative meaning is and his view could not be considered determinative (see footnote 492 of the Additional Report). Given that the interpretation of Level 3 is likely to impact on many applicants for compensation under the Regulations, it is right and proper that the Court should be asked to provide such a definitive ruling, which will no doubt be of considerable assistance to individuals and IBCA moving forward.
7. It is perhaps worth noting that IBCA’s Chief Executive provided both written and oral evidence to the Inquiry on this issue. It was clear from the evidence available to the Inquiry that IBCA was not as a matter of fact applying a consistent approach to Level 3 (as detailed in the Additional Report at pp116-119). IBCA had ample opportunity to make written submissions to the Inquiry advancing the interpretation for which it now contends but did not do so.
8. The Chair suggests that the following interpretative principles (drawn *from Bennion, Bailey and Norbury on Statutory Interpretation*) may provide some assistance in answering the question posed by this claim:
 - a. First, the primary indication of legislative intention is the legislative text, read in context and having regard to its purpose: *“The legislative intention is the meaning attributed to the legislation in respect of the words used. So the interpreter’s objective, when interpreting an enactment, is to determine the true meaning of the words used by the legislature. This is a simple thought, with profound consequences. The interpreter must focus on the legislative text – that is to say on the words used by the legislature ...”* (Bennion 11.1, underlining added).³
 - b. Second, the text of an enactment must be read in its context (Bennion 11.2).

³ And see Lord Steyn in *R v A (No 2)* “It is a general principle of the interpretation of legal instruments that the text is the primary source of interpretation...”

- c. Third, the meaning of a statutory term can be gathered from its associated words: *“A word or phrase in an enactment must always be construed in the light of the surrounding text”* (Bennion 23.1). Moreover *“the context may indicate that the less usual meaning of a word is to be adopted”* (Bennion, p676).
 - d. Fourth, there is a presumption that every word in an enactment is to be given meaning: *“Given the presumption that the legislature does nothing in vain, the court must endeavour to give significance to every word of an enactment. It is presumed that if a word or phrase appears, it was put there for a purpose and must not be disregarded”* (Bennion, 21.2).
9. Each of these principles, applied to the particular words of the legislative text in question, supports the construction identified and explained in the Additional Report. The Parliamentary drafter here has deliberately and carefully chosen to prescribe what is required for Level 3 in materially broader terms than a clinical diagnosis of cirrhosis. It is the Chair’s view that this Parliamentary intent should be given effect.
10. Further support is derived from the subsequent amendment to Level 3 by the insertion of the word “serious” before “fibrosis” through Regulation 14(10) of the Infected Blood Compensation Scheme (Amendment) Regulations 2025, which the Chair understands was intended by the Government to reflect and give effect to what was said by him in the Additional Report (and must in any event have been made in the knowledge of what was said on this issue in the Additional Report).

JENNI RICHARDS KC
39 Essex Chambers

For and on behalf of Sir Brian Langstaff
Chair of the Infected Blood Inquiry

29 March 2026