



Redress schemes

Models and Experiences from around the World

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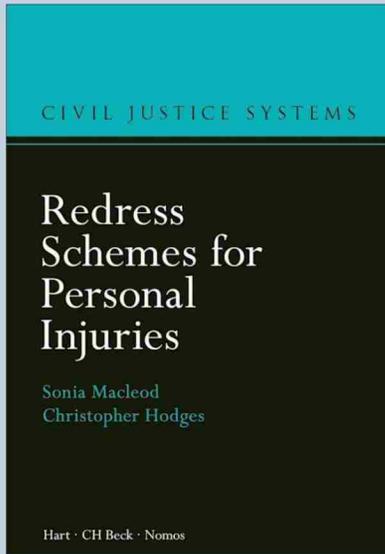
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Redress schemes



- 2017 book - looked at 40+ schemes worldwide
- Two part talk today
 - Describe a few relevant worldwide schemes
 - Consider implications for the infected blood compensation



Personal Injury Compensation Schemes

- New Zealand Accident Compensation Scheme
- Swedish Road Traffic Injuries Commission
- Swedish Patient Compensation
- Swedish Drug Insurance
- Danish Industrial Injuries Board
- Danish Road Traffic Injuries Commission
- Danish Patient Compensation
- Danish Drug Compensation
- Finnish Workers Compensation
- Finnish Motor Vehicle Insurance Commission
- Finnish Patient Insurance
- Finnish Drug Insurance
- Norwegian Patient & Drug Compensation
- *L' Office National d'Indemnisation des Accidents Médicaux, des affections iathrogènes et des infections nosocomiaux* (ONIAM)
- Polish No-Fault Medical Liability Scheme
- German Pharmapool
- German medical Schlichtungsstellen
- Irish Personal Injuries Assessment Board
- Japanese Pharmaceutical Injury Compensation Scheme
- U.S. no fault motor vehicle injuries schemes: Florida, North Dakota, Colorado
- The Industrial Injuries Disablement Benefit (IIDB)
- The Armed Forces and Reserve Forces Compensation Scheme
- The Criminal Injuries Compensation Scheme
- The Mesothelioma Compulsory Insurance Fund and Compensation Scheme
- The Coal Workers Pneumoconiosis Scheme 1974
- The Coal Health Compensation Schemes
- **The Thalidomide Trust**
- **The Skipton Fund, etc for Hepatitis C and HIV**
- **The vCJD Trusts**
- **The ABPI Guidelines for Compensation in Clinical Trials and Healthy Volunteers**
- **The ABHI Clinical Investigation Compensation Guidelines**
- The General Dental Council's dental Complaints Service
- **ICI Eraldin**
- **Dow Corning breast implant scheme**
- **Trilucent breast implant scheme**
- **J&J ASR hip reimbursement programme**
- **Vaccine Injury Compensation Schemes: eg UK, USA, Ebola,**



Ones in red are healthcare product schemes, RHS are UK ones.

Schemes

Event/Product/Activity + Outcome

- 9/11,
- Thalidomide, eraldin, etc
- Vaccines, Birth injuries,
- miners compensation

▪ Geographical coverage + Outcome

- vCJD

▪ Temporal coverage + Outcome

- vCJD, Thalidomide

▪ ongoing issues v post hoc

- NZ, Nordics, US Birth Injury schemes
- Thalidomide, infected blood



9/11 clear

Thalidomide, variety of evidence of exposure accepted combined with diagnosis

Vaccines and birth injuries clear exposure - no doubt

Contributions - Miners compensation, COPD - smokers awards reduced using formula,

But sometimes just outcome, vCJD trust 2 requirements, have vCJD and resident in UK for 5 years between 1982-1996

Need a way to know who your beneficiaries are/will be. Thalidomide trust still accepts new beneficiaries. There will need to be a mechanism to accept new infected blood cases - deceased patients???

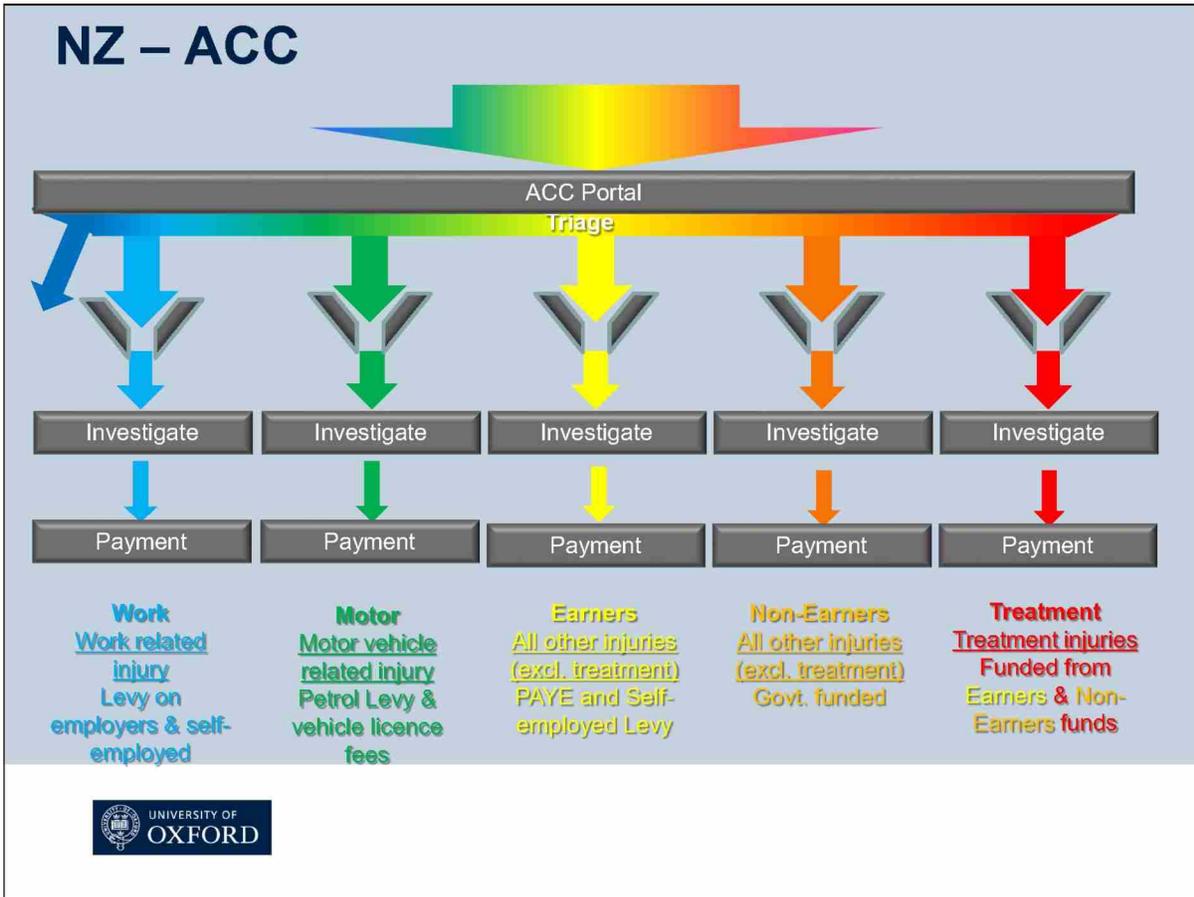
Infected blood compensation

Eligibility criteria			
	HIV/HVC status	Haemophiliac status	Claimants
Skipton Fund Ltd	HVC+	Haemophiliacs and non-haemophiliacs	1° infectees, specified 2° infectees
MEET Ltd	HIV+	Haemophiliacs and non-haemophiliacs	1° infectees, specified 2° infectees
Caxton Foundation	HIV+/HVC-	Haemophiliacs, non-haemophiliacs & their families	1° & 2° infectees* and some uninfected 2° beneficiaries
McFarlane Trust	HIV+/HVC+ or HIV+/HVC-	Haemophiliacs & their families	1° & 2° infectees and some uninfected 2° beneficiaries
Eileen Trust	HIV+/HVC+ or HIV+/HVC-	Non-haemophiliacs & their families	1° & 2° infectees and some uninfected 2° beneficiaries



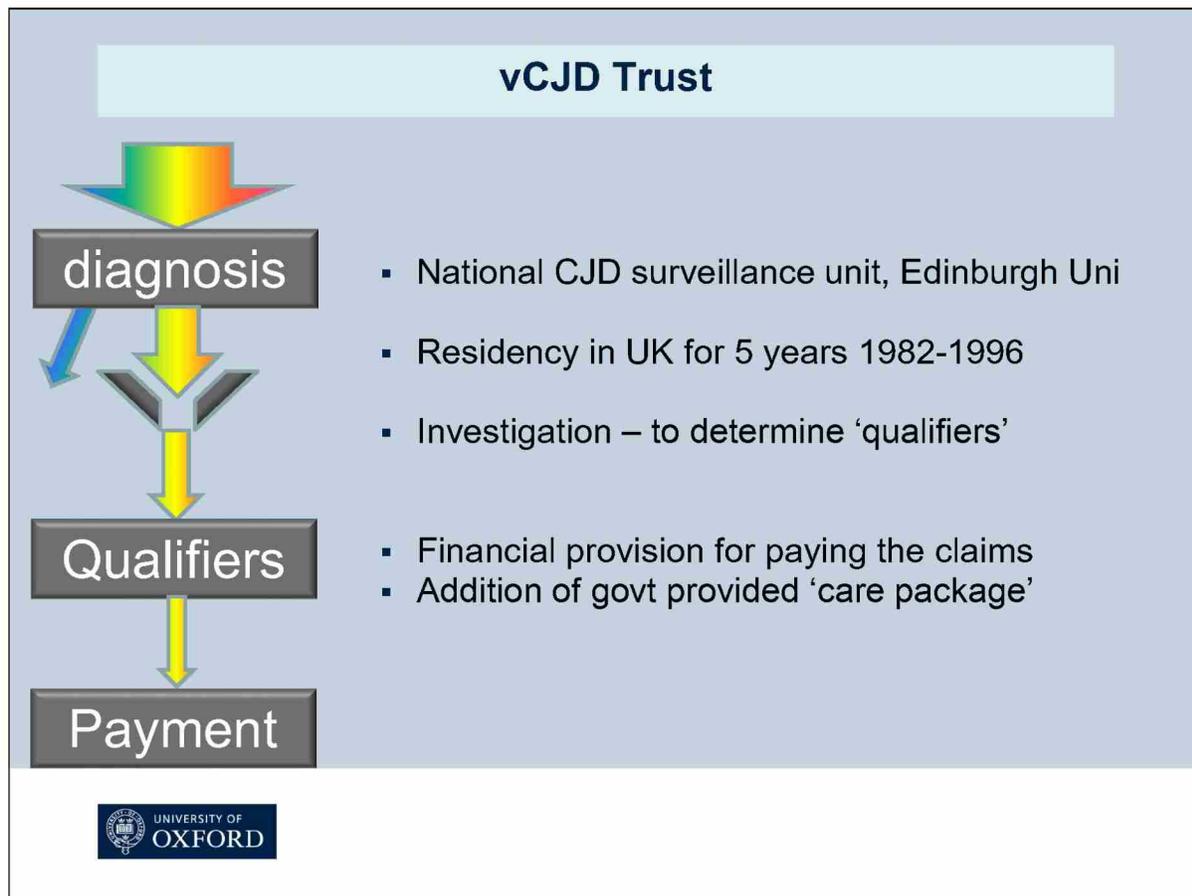
* Infectees must first be registered with the Skipton Fund Ltd

3 companies, 2 charities - begging
Complex nightmare for potential claimants.



Contrast with ACC – one single portal, simple for claimants

Incredibly streamlined, process for treatment injuries is more complex, others done by algorithm then approved, no algorithm for treatment injury or other complex claims

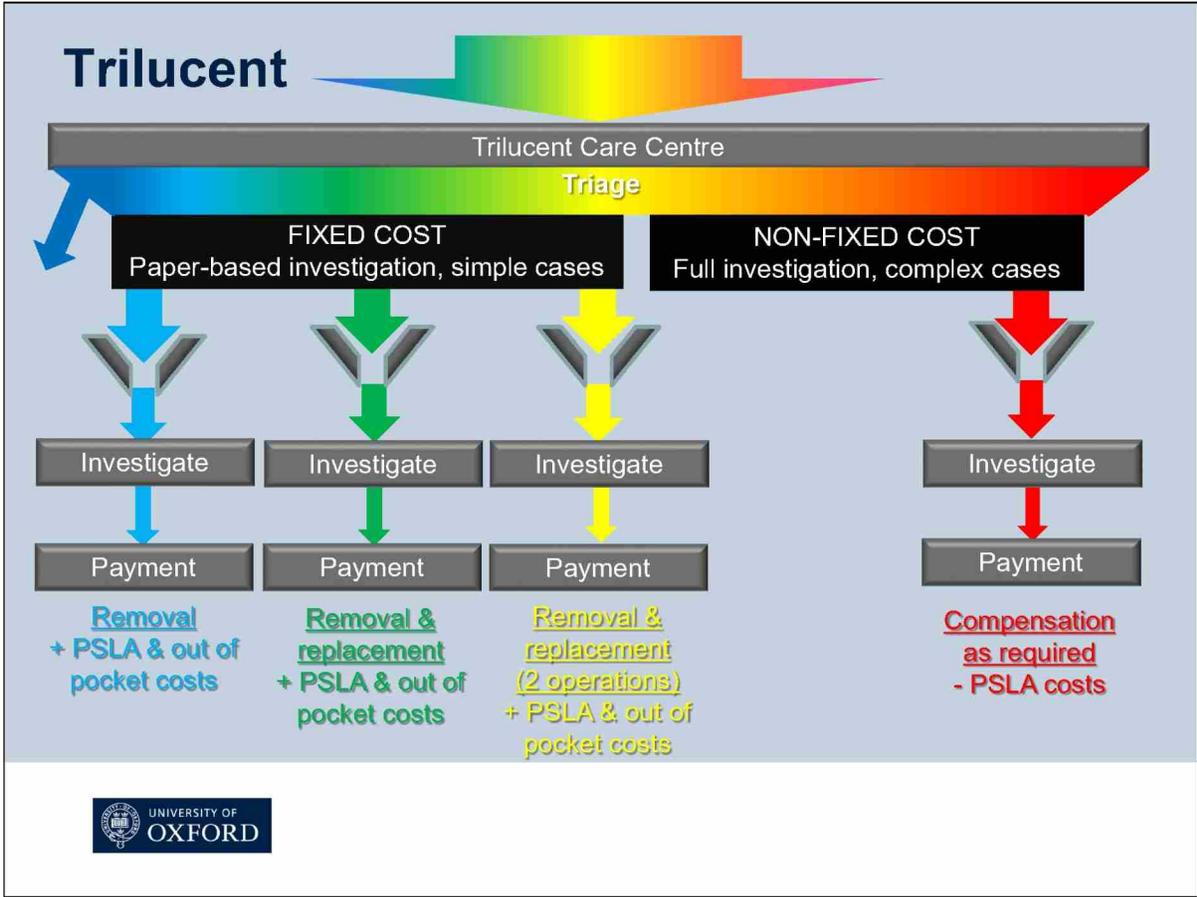


Eligibility by specialist input

Qualifiers much wider than common law- included ‘secondary victims’ psychiatric injury, schemes can be more ambitious. This was retracted in a 2010 rearrangement.

There have been difficulties in establishing who is a beneficiary – lump sums are to be shared by eligible people, necessitating tracing these eligible people – complex.

There have been complaints about the complexity of the scheme and the administration costs, which run at 35% of the compensation awarded – expensive in scheme terms, not compared to litigation.



Trilucent breast implants – marketed in EU 1995-1999 lipid filled breast implant filled with lipid that went rancid. Hazard notice to remove them issued by MDA in 2000.

Awards – various options, fixed costs tariff based, and individualised payments, can co-exist in one scheme

Trilucent breast implants has a radiotransponder, so could be easily identified even without patient records.

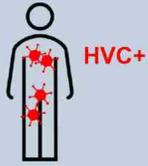
Most people took the fixed costs options – there were some complaints that the sums offered were not sufficient.

Most claims processed very quickly and without hassle. Within a year of the hazard notice and the formation of the scheme c.90% of UK patients explanted.

The non-fixed cost option was much slower – the most complex case involving psychiatric injury took a 15 or so years to complete

ROI Scheme – statutory tribunal

Primary

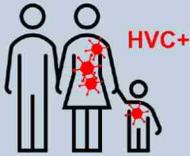


As a **result of**;

**human Anti-D use
blood product
blood transfusion
within ROI**

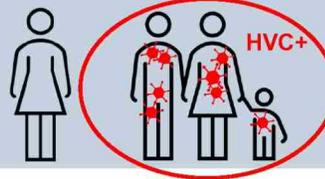
Secondary – direct infectees

Spouse/child



Secondary - other

Carer for/Dependant of if died



Time limit – 3 years



Eligibility – infection causally linked to treatment with certain products in a geographically defined region

Basis of schemes?

- **Statutory**
 - NZ, Sweden (since 1997), US No-fault Auto, 9/11, Vaccine Schemes, US Birth Injury Schemes, Armed Forces,
 - Fixed, scheme rules may or may not have flexibility, often requires secondary legislation to amend
- **Voluntary**
 - vCJD, Trilucent, Swedish patient injury pre-1997(changed due to EU competition laws)
 - Flexible/more adaptive, less stagnation and/or fund deficits
- **Hybrid**
 - Thalidomide Trust
 - Trust from an Out of Court settlement with changes in tax rules



Advantages and disadvantages of each model. Hybrid may be the most appropriate here

Administrator

Public:

- The Norwegian Patient Compensation System (NPE),
- ACC in New Zealand
- PMDA in Japan

Private:

- The Swedish, Finnish & Danish Patient and pharmaceutical compensation schemes
- Thalidomide Trust

Publicly funded scheme, private administrator:

- vCJD Trust
- Previous infected blood schemes
- Coal workers' pneumoconiosis scheme 1974

- **Charity**



The administrator is not important to success of a scheme, but may be key to acceptance with beneficiaries. There is one exception to this – CHARITY begging rather than entitlement

Types of Scheme

Quasi litigation:

- ROI infected blood tribunal
- US Vaccine compensation – vaccine courts

Trust fund:

- Thalidomide Trust
- vCJD Trust

Inquisitorial ombudsman style investigation:

- Scandinavian schemes
- Previous infected blood schemes
- **Coal Health COPD Scheme**



Quasi litigation – more traditional – legal representation

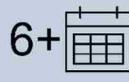
US Vaccine compensation



&



&



or



or



Court of Claims

File petition against HSS/VICP:

- \$400 filing fee



Response by HSS/VICP:

- HSS doctor reviews and Respondent's report is sent to the Court

Hearing

- Special Master determines
 - Department of Justice attorney represents VCIP
 - Causation – use vaccine injury table (rebuttable presumption) or tort
 - Right of appeal to Federal Circuit Court of Appeals then US Supreme Court



Quasi litigation – more traditional – legal representation

Eligibility – US citizen – Vaccinated in US/US territories – injury lasted at least 6 months OR caused hospitalisation & surgery OR death

Judicial process – uses strict liability – adversarial

Takes 2-3 years, can take 10+

Legal fees paid – success rate is c, 1/3 compared to less than 10% under UK (not legally represented) scheme

Thalidomide (1)

- 1973 Out of Court Settlement
 - Three lists,
 - List X – 300 children accepted as thalidomide induced damage
 - List Y – 80 children damage not confirmed as thalidomide
 - List Z – 4 children claims against solicitors
 - Residence requirements
- Reviews of Y & Z children to see if they meet the X list criteria
- Individual awards for X list
 - £5,000 for parents (£10,000 for twins)
 - Children - 40% of what a court would have awarded if the claim had succeeded, plus a 33% uplift for inflation



Residence

Born in UK, maternal ingestion of thalidomide in UK, resident in other specified countries.

Individual awards did not go into court of protection – majority of parents good with them, but some children got to adulthood and there was nothing from the individual awards.

There was also a collective award

Thalidomide (2)

- Collective awards – the Thalidomide Trust
 - £14M from Distillers
 - 1996 Guinness
 - 2000 & 2008 Diageo
- Taxation –
 - 1975 £5M UK govern
 - grant in 1996
 - 2002 removed income tax payments on monies from the Trust
- New beneficiaries
 1. screening form
 2. damage to claimant and maternal ingestion
 3. Trust Claims Committee
 - on BoP are the injuries attributable to thalidomide
 4. Final decision by Trustees
- Quantification – tiered



Initial £14M was intended to be once and for all settlement
It wasn't – added to – but on goodwill basis – no mechanism to compel

Taxation – UK govt did not want to profit from Thalidomide
Various mechanisms to ensure this did not happen
Did need to be some persuasion by campaigning –

Trust still accepts new beneficiaries – Call the midwife sparked a number of applications
Stages 1&2 by Trust Staff
Screening form – simple 1 pager to rule out ineligible – wrong dates, wrong type of damage, etc
Stage 2 more detailed, questionnaires, photos + medical examination & medical records,
- maternal prescription, statements, etc. flex about this as long time ago

Quantification = known amount per year to beneficiaries
Each beneficiary ranked according to injury severity – payments are tiered based on injury severity

LÖF Sweden patient injury

- **Swedish Patient Association - LÖF**
- 1975 as a voluntary scheme
- 1997 – statutory scheme under Patient Injury Act (1966:799) **Non-economic** PSLA, disability and disfigurement
- LÖF is a mutual insurer owned by Swedish regions – funded by premiums paid by regions
- Concern raised with them
 - Patient alone or with advocate/HCP
- They collect the information, Investigate on an inquisitorial basis **then make a decision**
 - avoidable harm
 - BoP
 - Non-adversarial
- Then pay
 - Tariff and losses



Quantum – same as litigation

Some tariff based

PSLA, disability and disfigurement

Loss of earnings – 80% of average wage

Some actual losses, economic losses, Other direct costs of the injury

- Death benefits

Funeral costs, loss of support, psychological distress

LÖF awards fit into a wider context - they are secondary to those made under social insurance – top up payments

Social insurance covers live-in carers, house modifications, etc

LÖF covers economic losses, non-economic losses and death benefits

Capped at a maximum of 1,000x the base amount (\approx £4,000) under the National Insurance Act 1962:381 and 200x this for each individual injury (this excludes interest & litigation costs)

Coal Health COPD

- Test case – British Coal
 - 1998 DTI took on liabilities
 - 1999 COPD claims handling agreement
 - Negotiated by claimant solicitors and DTI
- c. 592,000 claims
- Open to live claimants & estate claims
 - Employment records
 - Spirometer reading (live) or Medical records (deceased)
 - Medical assessment process



Coal Health COPD

- 4 pathways
 - Main Scheme
 - Individualised
 - Medical assessment
 - Expedited scheme
 - Choice – opt in (faster)
 - Individualised (lower)
 - No medical – just spirometry
- Cost
 - Scheme was very lucrative for some solicitors
- Optional Risk Offer Scheme
 - Automatic opt in
 - Non-individualised (lower)
 - No medical – just spirometry
- Entry of Judgment/Unaccepted offer scheme
 - Imposed - Stalling claims / uncontactable claimants



Costs – 70% of claimants received less in compensation than the cost of administering the claim

50p claim with solicitors costs of £1,974

DTI entered into the claim handling agreement without any actuarial advice, British Coal figures did not include estates claims – 40% of the claims!

Agreement had a flat fee per case regardless of value of claim –

- scheme was generous – had assessment by senior cost judge been used £295M saved

- each claim valued in isolation – economies of scale not taken into account.

variation between awards from different solicitor firms, substantial variation –

Think very carefully – worry about agreements fixed in stone – take actuarial advice!!!

Points for discussion

1. **Accessibility for claimants**
2. **Clear eligibility criteria**
 - What
 - Where
 - When
 - Who
3. **Redress**
 - quantum – tariff, individualised, hybrid
 - Additional care – care packages, tax, etc
 - Non-financial remedies – apology
4. **Administration of the scheme**
 - What should this look like



single portal regardless of HIV status, HVC status, bleeding disorder

Acknowledgments

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Any questions?

