To: PS(PH)

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Date: 1 June 2015

INFECTED BLOOD: POTENTIAL OPTIONS AND ESTIMATES FOR SIGNIFICANT SUPPLEMENTARY SPEND

Issue

1. As requested, this submission sets out options and estimates for using additional money for individuals affected through the historical transmission of HIV and/or hepatitis C (HCV) through treatment with NHS supplied blood or blood products. This would be contingent upon additional money being agreed by HMT.

Recommendation

2. SofS has requested your recommendation on these options.
3. We strongly advise that you consult on the use of any supplementary funding, however we consider that the best approach, setting aside value for money, might be a combination of:
    a. flat rate final payments for all those infected; combined with
    b. tapering down of existing regular payments over a 5-year period, to those who already receive them; and
    c. early access to the new HCV therapies through a privately funded scheme.
4. Additionally, you may wish to recommend a final lump sum payment to surviving bereaved spouses/partners.

Timing

5. Urgent. We understand that SofS may wish to write to the Chancellor shortly with a proposal.

Options/estimates

6. If you are minded to find additional money to resolve the longstanding parliamentary concern about this community and reach an outcome that could satisfy most of those affected[1], there are three main options that are likely to

[1] As you know, no liability has ever been established in relation to the infection of individuals with HIV and/or hepatitis C through treatment with NHS-supplied blood or blood products before 1991. There is therefore no legal obligation underpinning the current schemes, and Ministers could choose to change them without finding additional funds. But redistribution of resources (£22.3m in 15/16) to help the c.3,000 or so infected people who currently receive little or no financial assistance would mean a reduction in financial assistance for many of the c.1,000 who are well-supported, as well as probable loss of assistance for all uninfected family members.

achieve this. As they are not independent of each other, you could choose to implement more than one:

a. Generous one-off payments to various groups of individuals (level to be determined according to whether you wish this to be a 'final' payment);

b. Funding for accelerated private access to new HCV therapies; and

c. Increased funding for ongoing financial assistance.

7. We advise that if one-off payment levels are sufficiently generous, a combination of a) and b) could see the matter resolved. To improve the likelihood of such a resolution, and to mitigate risks of legal challenge on the grounds of legitimate expectation and rationality, we strongly recommend that you consult on the use of any supplementary funding.

8. In terms of one-off final payments, the groups you need to consider are:

a. Living infected individuals;

b. Living bereaved spouses and partners; and

c. Dependent children

9. For each group, you could set a flat rate or variable one-off payment, which could be final or accompany scheme reform. The options are set out in slide format in **Annex A,** together with key pros/cons of each.

Discussion

Infected

10. Options for payments include:

a. Flat rate payment for each individual;

b. Flat rate payment for each individual with tapering off of current regular payments (for those who receive them); and

c. Variable levels of payment depending on current circumstances.

11. The payment level (and resultant total costs) can be scaled up or down depending on perceived acceptability of payment levels and available funds. However, as an indicative example, an average payment of £200k would cost around **£660m** in total.

12. Whilst a flat rate of payment for all infected is easiest to administer, lawyers advise that the risks of legal challenge on discrimination grounds are lower if the payments for infected individuals vary based on an individual's current circumstances. However, a combination of a single level of payment for all, alongside a tapering of current annual payments could be a workable compromise.

13. This is particularly the case in the context of the current litigation where individuals at Stage 1 are seeking back payments to match those made to individuals with HIV. Lawyers advise that, as the legal risk of DH having to pay back payments to stage 1 HCV infectees is less than 50%, we should not

pre-empt the outcome of that prospective litigation by inferring liability and building in an amount to take account of potential back payments into any final settlement.

14. Further to this, in terms of PSED, you will need to consider that stopping regular payments for disabled individuals may not be seen as helping to eliminate discrimination, nor as advancing equality of opportunity. While different levels of payments could fuel feelings of unfairness and therefore are unlikely to foster good relations between disabled and non-disabled individuals, we hope that consistently applied assessments for payments (not grouped by infection) could act to foster better relations within the different groups.

15. Alongside the one-off payments, DH could establish a privately funded scheme for the new HCV therapies for those not yet receiving them on the NHS (**costing up to £185m** depending on the number of patients), although this has risks and PSED considerations, particularly in relation to those disabled with HCV who were not infected through treatment with NHS supplied blood or blood products, by contrast to those not disabled but receiving treatment through the proposed scheme, as such a scheme would not advance equality of opportunity for those disabled with HCV infection through other means, nor would it foster good relations between those groups.

16. There are also various options to consider if you wish to continue with some ongoing support, as summarised in **Annex A**. This could include continuing with the proposed consultation on scheme reform as set out in my submission of 28 May.

Living bereaved spouses and partners

17. Current proposals for scheme reform significantly reduce financial assistance for some bereaved spouses and partners, as it would be very costly to extend current support to all widows. Therefore, you might like to make a "final" payment to all bereaved spouses. We estimate that a one-off final payment of £50k to each living bereaved spouse or partner would cost around £50m-£100m.

18. In terms of PSED, we have not identified any initial considerations that you will need to take into account.

Dependent children

19. Current proposals for scheme reform, with a focus on assistance for those living with ill health, remove financial assistance for dependent children (both bereaved and of living infected). You might like to make a "final" payment to all dependent children; however the total cost will be difficult to estimate as we do not have robust data on the number of dependent children.

Overall package and indicative costs

20. In summary, the outline potential costs of a package, of which you could choose (or amend) some or all elements are:

    d. Flat rate payments of £100k to all infected individuals: c**£330m**

    e. Tapering of current annual payments over 5 years: up to **£65m**

    f. New HCV therapies for all infected who have not yet been treated on the NHS: **Up to £185m**

    g. Payments to bereaved spouses and partners: Up to **£100m**

    h. **Total for the above: £680m**

21. For context, previous high level estimates of lump sum payments that might be broadly equivalent to quantum totalled around £2-2.5bn.

22. In relation to ongoing support, we have budgeted c£22m for the current schemes in 2015/16. Instead of large one-off payments, you could reform the existing schemes and make a more generous scheme. As an example of cost, giving all individuals the same level of payment would cost around £1.5bn over the lifetime of the schemes.

23. However, all of these proposals, possibly with the exception of funding treatment which could save money for the NHS as well as for the payment schemes in the future, are unlikely to meet HMT rules on value for money.

Finance

24. The current schemes are estimated to cost £22.3m in 2015/16, and our current estimate of the (discounted) lifetime cost of the schemes is around £455m. Separately, you have also allocated an additional one-off £25m in 2015/16 for transition to a new payments system and are considering how to use that money.

25. Finance officials advise that officials cannot support any case to HMT that does not meet the rules in Managing Public Money.

Devolved Administrations

26. To date we have maintained a cross-UK approach for support for those affected by infected blood. This policy is devolved, and we would strongly recommend that you write to your counterparts in the Devolved Administrations to advise them of your initial thoughts on this issue. We will provide a draft if you wish.

27. The Scottish Health Minister (Shona Robison) has written requesting a meeting with SoS to discuss the Penrose Inquiry and support for those affected.

Handling

28. If SofS wishes to write to the Chancellor, Finance officials will prepare the ground with HMT.

Next steps

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Conclusion

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