

OFFICIAL - SENSITIVE

To: PS(PH) via Sophie Roscoe

From:

Rachel Devlin, ID&EH

Secretary of State via Alexandra

Burns

Permanent Secretary via Rebecca

Thomas

**Clearance: Ailsa Wight, Deputy
Director, ID&EH**

Date: 09 November 2015

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ANNEX B: HMT
Business Case
ANNEX C: PSED
analysis summary**

INFECTED BLOOD – ONE-OFF EX-GRATIA PAYMENTS

Purpose of submission/ Issue

1. Following correspondence from Shona Robison MSP proposing an increase to winter payments for beneficiaries of the infected blood payment schemes, you agreed to consider ex-gratia one-off payments to all individuals affected by contaminated blood in England. As an ex-gratia payment, this would require HMT approval.
2. We have discussed the pros and cons with you. This submission briefly rehearses those arguments in the light of your meeting with APPG representatives on 05 November 2015, and provides a draft business case seeking HMT clearance should you decide to go ahead.

Recommendation

3. We recommend that you:
 - take note of the presentational, legal risks and Public Sector Equality Duty considerations
 - you may wish to seek No.10's views on using up to £2.5m of the £25m transitional fund for this purpose
4. If you decide to proceed we attach a draft business case for HMT clearance (**Annex B**)

Timing

5. Routine, although a response to Shona Robison is outstanding

Discussion

6. Shona Robison wrote to you in September, and again more recently. The Scottish Government issued a press release on 13 September 2015 urging the UK Government to consider increasing winter payments to £1,000 for Caxton Foundation beneficiaries (those infected with hepatitis C, and bereaved spouses/partners).
7. When we met you on 3 November, we discussed the pros and cons of increasing winter payments, or instead making a one-off payment of £500 to all scheme beneficiaries in recognition of the delay in scheme reform. Your preference was for the latter approach because:
 - We have no evidence that all of Caxton's beneficiaries have financial need because Caxton does not means-test its winter payments
 - It would foster good relations between scheme beneficiaries because it means that anyone who is affected by the delay in scheme reform will be treated in the same way
 - By separating this payment from the winter payments made by the charities, it would avoid raising expectations of future similar payments
8. You raised Shona Robison's proposal when you met with some members of the APPG on 5 November. None of the APPG members in attendance voiced strong views in relation to this matter, including the SNP MP.
9. There is a risk that making these payments as a good will gesture will not find favour with MPs or campaigners, and may actually aggravate them given the low sum being offered. However, Scottish officials are confident that, based on feedback from their patient and family reference group meetings around financial need, the payment would be appreciated by the infected and affected community in Scotland.
10. There is also a presentational risk if the Devolved Administrations (DAs) do not make equivalent payments to those infected, or bereaved, in their territory. We do not know yet if the DAs have the appropriate powers to make such payments, or whether, if the powers exist, they have the inclination or the means. We have requested advice from DA lawyers and policy officials.
11. There are also some legal risks associated with making these payments that you should be aware of:
 - To avoid establishing a legitimate expectation of similar future financial payments, it is important to make clear this is a one-off ex-gratia payment and is not being made on the basis of financial need, as was proposed by Scotland
 - The power to make these payments comes from section 2 of the National Health Service Act 2006. This provision is the foundation for running and reforming the current schemes but it has never been tested. Making these payments may draw attention to the issue of vires, particularly if the DAs act differently and those individuals in their territory challenge the payments. The risk of someone taking a claim may be quite low.
 - Given Scotland has not confirmed whether they have the powers to make the winter payment they proposed, there is a risk they cannot

make the payment. If they can, given their different rationale – financial need – for making the payment, there is a risk that they make the payment to a different cohort of people affected by contaminated blood.

Costs

12. We estimate that making payments of £500 to all scheme beneficiaries would cost up to £2.5m. With no other means of funding this payment, we recommend seeking the agreement of No.10 and HMT to use up to £2.5m of the £25m transition fund to make these payments.

Finance

13. We have discussed with DH Finance (Andrew Baigent). He advises that as this is an ex-gratia payment it will require specific Perm Sec approval, and we will need to present a good case as to why they payment is justified along with any value for money this secures. In order to secure HMT approval, No 10 will need to be clearly supportive of the proposal.

Statutory duties

14. In considering this matter, Ministers must comply with the Public Sector Equality Duty (PSED). See **Annex C**.

Announcement

15. Subject to HMT approval, an announcement on these transitional payments could be incorporated into an announcement launching the pre-consultation engagement survey. This could be made by the end of November 2015

Conclusion

16. If you are content to proceed, we recommend you approve the attached business case to be sent to HMT for their clearance.

RACHEL DEVLIN

**Policy Manager, Infectious Diseases and Blood Policy
Public and International Health Directorate**

ANNEX A: Copy List

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|---|--|------------------------------------|--|
| <u>Private Office Submissions Copy List,</u> comprising: | Title of recipient | Named individual or mailbox | |
| | Principal Private Secretary to the Secretary of State | Alex Thomas | |
| | Principal Private Secretary to the Permanent Secretary | Ed Moses | |
| | Senior Private Secretaries to all Ministers | Clare McAvinchey | MS(CS) |
| | | Alex Wallace | PS(CQ) |
| | | Ilaria Regondi | PS(P) |
| | | Kirsty Bell | PS(PH) |
| | | Rebecca Molyneux | PS(LS) |
| | Special Advisors | Ed Jones | SofS (via <u>specialadvisors@GRO-C</u>) |
| | | Paul Harrison | |
| | Chief Medical Officer | Sally Davies | |
| Directors General | Will Cavendish Tamara Finkelstein Felicity Harvey Charlie Massey Jon Rouse David Williams | | |
| PS(P) | <u>lords@dh.gsi.gov.uk</u> | | |
| Officials | Private Secretary to PS(PH) | Sophie Roscoe | |
| | Private Secretary to SoS | Alexandra Burns | |
| | Private Secretary to Permanent Secretary | Rebecca Thomas | |
| | Private Secretary to DG PIHD | Heulwen Philpot | |
| | Director, HP&ER | Helen Shirley-Quirk | |
| | Deputy Director, HP&ER | Ailsa Wight | |
| | Director, Group Financial Management | Andrew Baigent | |
| | DH finance | John Reidy | |
| | | Rosie Francis | |
| | Infectious diseases and blood policy team | Rowena Jecock | |
| | | Kypros Menicou | |
| | | Naomi Balabanoff | |
| | | Donna Mcinnes | |
| | DH legal | Jo Musgrove | |
| | | Andrew Foreman | |
| | DH analysts | Siobhain McKeigue | |
| | | Chris Collinson | |

ANNEX C: PSED analysis summary

The issues which need to be considered in particular in relation to this matter are:

- By making the same payment to scheme beneficiaries, you would not be making an distinction between individuals based on their age, disability, gender reassignment, pregnancy/maternity, race, religion or belief, sex, sexual orientation, marriage or civil partnership therefore there would be no issue of direct discrimination.
- Given the high proportion of infected individuals who are disabled, special consideration should be given to PSED in relation to disability. There is no evidence to suggest that those scheme beneficiaries who are disabled have suffered more frustration as a result of delays to scheme reform than those who are not disabled, therefore there is nothing to suggest a need to treat those with a disability differently to meet their needs.

