

## HIV INFECTED BLOOD TRANSFUSION RECIPIENTS

### BACKGROUND NOTE

The previous two awards to haemophiliacs, in 1987 and 1989, have been followed by campaigns to give similar financial help to those who had contracted HIV/AIDS as a result of blood transfusions. Compensation for blood transfusion recipients was the subject of an adjournment debate on 6 March 1990. More recently, Robin Cook, who is known to have at least one constituent who has contracted HIV from blood transfusion has taken up the matter in correspondence with the Secretary of State. A firm of solicitors in Scotland representing some of those infected prompted a recent article in the Sunday Observer. Questions have been asked in the House by Sam Galbraith and Jack Ashley.

### Scottish position

12 people in Scotland are reported as being HIV antibody positive as a result of blood/blood product transfusions. 4 of these have commenced court proceedings seeking compensation. All 4 are represented by Mr Brian Donald of Messrs J & A Hastie Solicitors, Edinburgh who have also written to Mr Waldegrave seeking comparable compensation to that offered to haemophiliacs with HIV. On 21 April the Observer newspaper carried an article announcing the launch of a national campaign orchestrated by Mr Donald and one of his clients. There have been no direct approaches to Scottish Ministers.

### Numbers

The latest available figures for HIV infected blood transfusion recipients by place of transfusion (as at December 1990) are shown below:

Place of transfusion:	Infected with HIV	Contracted AIDS
UK	49	28
Abroad	49	37
Unknown	37	-
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	135	65

It is not known exactly how much double counting there is between the two sets of figures, but at least half of the reported AIDS cases transfused in the UK are also included as cases of HIV infection. The total number of independent cases is thus in the range 135 to 186 of which at least 49 were infected in the UK.

### Costs of extending payments to blood transfusion cases

On the basis that half of the unknowns have been transfused in the UK and that half of all reported AIDS cases are included in the reports of HIV infection, the total number of HIV infected and AIDS cases would be 168 of whom 82 would have been infected in the UK.

The payments for haemophiliacs range from £21,500 for an infant to £60,500 for a haemophiliac with children. The cost for blood transfusion recipients would therefore be in the range:

	£	£
UK transfused cases	1.8m	5.0m
All transfused	3.6m	10.2m

The cost is likely to be nearer the top end of the range as the blood transfusion recipient population is likely to include more people qualifying for the higher rate of payment.

#### Arguments against compensation

1. The real difficulty over granting a concession would be to re-establish a credible "ring fence" to prevent any further movement towards a general system of no-fault compensation. The government has always justified its special provision for HIV-infected haemophiliacs on the grounds that they are a uniquely unfortunate group - in particular, because the tragedy of infection with the HIV virus was superimposed on a severe hereditary disability.

2. Those campaigning on behalf of the HIV infected blood transfusion recipients suggest that those people should be compensated for NHS treatment which has gone wrong. However a significant number of blood transfusion cases were transfused abroad or the place of transfusion is not known. There is no basis for people to seek Government compensation for a misfortune arising from treatment outside this country. The payments for haemophiliacs are restricted to those infected with HIV as the result of treatment in the UK.

3. The validation of claims by those transfused would not be as straightforward as for haemophiliacs whose medical history is well known. If they have ever taken part in high-risk activities there must be a real element of doubt over the cause of infection.



### Distinguishing features of Haemophiliac cases

For those transfused in the UK a distinction can be drawn between them and haemophiliacs on the grounds that :-

- haemophiliacs were doubly disadvantaged by the pre-existing haemophilia, which affected their employment, mortgage and insurance prospects, and by their HIV infection.

- the hereditary nature of haemophilia can mean that more than one member of the family might be affected.

A similar combination of factors would not generally apply to blood transfusion cases. (Those suffering from thalassaemia or sickle cell anaemia who require blood transfusion may claim to be doubly disadvantaged but they would be few in number).

### No Fault Compensation

No fault compensation was recently debated in Parliament and rejected. Opening the door to blood transfusion recipients would repercuss in more claims from other groups, and once the ring fence is moved it will become increasingly more difficult to reestablish. The worst of all possible worlds would be to slide into no-fault compensation through a series of reluctant concessions to well-orchestrated campaigns.

It has not so far proved possible to devise a no fault compensation scheme which is simple to run, straightforward in operation, fair in outcome or acceptable in cost. Some serious problems would remain:

- claimants, although relieved of having to prove negligence, would still have to establish causation which

could be just as difficult and contentious.

- the scheme would be seen as unfair to those suffering equal disabilities but who would still fall outside its provisions eg. the congenitally disabled, those suffering as a result of a progressive illness.

- A new bureaucracy would be created and many more claims would be raised. This would lead to an increase in the amount of time spent investigating cases with skills and resources being diverted from patient care.

#### Effect on the UK Blood Transfusion Services

Another argument, which could not be voiced in public, is the effect on the UK Blood Transfusion Services if any such payments were given; many blood transfusion recipients would rush to be tested, which would put testing and counselling services under severe strain and would have major financial implications.

#### Compensation Abroad

Some countries have made provision for infected blood transfusion recipients as well as haemophiliacs, some for haemophiliacs only, while others have done nothing at all (in some cases because numbers are small). Please see the attached list.