

**SCHEME OF PAYMENTS FOR THOSE INFECTED WITH HIV THROUGH
BLOOD OR TISSUE TRANSFER**

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**SCHEME OF PAYMENTS FOR THOSE INFECTED WITH HIV THROUGH NHS BLOOD
OR TISSUE TRANSFER**

Purpose of Scheme

The purpose of this Scheme is to extend the payments already provided for HIV infected haemophiliacs to non-haemophiliacs who acquired HIV in the course of receiving treatment by blood or tissue transfer or blood products.

Scope

This Scheme applies to those who have received treatment by blood or tissue or blood products in England, Wales and Northern Ireland. A similar Scheme operates in Scotland.

INTERPRETATION

In this Scheme and the Annexes to this Scheme words importing the masculine include the feminine, words in the singular include the plural, words in the plural include the singular and the following expressions have the following meanings unless the context otherwise requires:-

"AIDS" means Acquired Immune Deficiency Syndrome;

"blood product" includes fractionated and non-fractionated blood products;

"dependent children" means children under the age of 18 and adult children in full-time education, and;

- (a) includes for the purpose of a payment under this Scheme a child conceived at a date by reference to which entitlement to a payment is determined and subsequently born alive;
- (b) includes an adult child whose full-time education has been interrupted for a period or periods of not more than one year; and
- (c) does not include an adult child whose full-time education is provided by his employer as part of the terms and conditions of his employment or an adult child who during his full-time education receives payments from a person or body with whom he has undertaken to work on completion of his education;

"dependent former spouse" means a former spouse in respect of whom a qualifying person has an obligation to make a periodical payment;

"Health Authority" means a District Health Authority, a Regional Health Authority, Special Health Authority or a National Health Service Trust or in Northern Ireland, a Health Service Board;

"HIV" means the Human Immuno Deficiency virus;

"haemophiliac" includes a person who has Von Willebrand's Disease;

"infected intimate" has the meaning ascribed to it in Annex A;

"partner" means a person who lives as the husband or wife of a qualifying person in the same household and for the purposes of the Scheme that partner was living with the qualifying person at the date which is relevant to the qualifying person's categorisation;

"passive antibody" means an antibody transmitted to a child in utero which causes the first HIV test on the child to be positive but a second or subsequent test taken when the child is 18 months old or later proves to be HIV negative;

"qualifying person" has the meaning ascribed to it in paragraphs 1 and 6 below;

"The Secretary of State" means the Secretary of State for Health;

"tissue" includes heart, lungs, liver, spleen, pancreas, Islet of Langerhans, corneas, skin, dura mater, heart valves, trachea, tendons, blood vessels, bone marrow, bone chips, ossicles, fibroblast cultures, fallopian tube, amnion, ova, embryos, semen, foetal serum, tissues and cultures, thymus, liver, pituitary, brain, kidneys;

Any reference to a person who upon first testing is found to be HIV positive means a person who is correctly so found, false positive and false negative tests being disregarded.

PRINCIPLES OF THE SCHEME

1. Who is eligible

1.1 The Scheme covers those infected with HIV through:-

- (a) blood transfusion, that is transfusion of whole blood, red cells, platelets or plasma;
- (b) tissue transfer;
- (c) infection through treatment with blood products of any person other than a haemophiliac.

1.2 Subject to paragraph 6 below, qualifying persons shall be:-

- (a) those treated in a Health Authority or private hospital with blood or tissue supplied by the National Health Service;
- (b) those non-haemophiliacs treated with blood products;
- (c) infected intimates.

1.3 In order to be a qualifying person, a person will have to show that he became HIV positive, received blood or tissue or blood products and it is reasonable to assume that the blood transfusion or tissue transfer or treatment with blood products was the source of infection or that he is the infected intimate of such a person.

2. Rates of Payments

2.1 Payments made under the Scheme shall be:-

<u>Infected Blood/Tissue Recipients</u>	<u>£</u>
- Infant	41,500 each
- Single Adult	43,500 each
- Married Adult without dependent children	52,000 each
- Infected person with dependent children	80,500 each

Infected Intimate of the above

Adult spouse/partner	23,500 each
Child who is married	23,500 each
Other child	21,500 each

2.2 The category into which a person falls shall be determined either as at the date of the announcement of the Scheme, 17 February 1992, or if a person has died before 17 February 1992, the date of death, or where a person becomes HIV positive after 17 February 1992, the date the result of the HIV test is made known to him (or if he is a child made known to his parent or guardian).

2.3 No person shall qualify for a payment in more than one category.

2.4 In addition, the Secretary of State may make payments of the sums specified in paragraph 2.1 above in respect of such other persons infected with HIV as are in the opinion of the

Secretary of State consistent with the general purport of this Scheme.

3. Definitions of Categories

3.1 The definition of each category of payment set out in paragraph 2 above is contained in Annex A.

4. Special Needs Fund

4.1 A special needs fund shall be set up by the Secretary of State for the benefit of qualifying persons under the Scheme.

5. Social Security Disregard

5.1 Sums derived from the Scheme shall be disregarded in assessing entitlement for income related Social Security payments, Community Charge Benefits and Housing Benefits as well as for the purposes of recovery of sums equal to benefit.

6. Medical Criteria for Entitlement where a person has died

6.1 For a person who has died to become a qualifying person it will be necessary to show that:-

(a) there had been a positive HIV test before his death;
or

(b) a stored blood sample of his is found to be HIV positive; or

(c) there had been clinical evidence of HIV infection before the person's death and no other condition could account for the immune deficiency.

7. Standard of Proof Required

7.1 The Secretary of State shall wherever possible use existing records and stored blood samples to determine whether blood or tissue donation can be positively identified or eliminated as the source of HIV infection.

7.2 Where the status of the donation cannot firmly be established the application will be considered on the balance of probabilities.

8. Processing Applications

8.1 Where there is clear evidence of entitlement, applications shall be approved by the Secretary of State.

8.2 The Secretary of State shall reject applications where a person clearly falls outside the scope of the Scheme.

8.3 The Secretary of State has set up a panel to which individual cases may be referred.

8.4 The procedural rules governing the panel are in Annex B.

8.5 The Secretary of State shall refer applications to the panel:-

(a) where there is doubt about causation or the category into which a person falls;

(b) where the applicant is dissatisfied with the Secretary of State's decision to reject his application under the Scheme;

and the Secretary of State shall agree in advance to be bound by the decision of the panel.

8.6 The Secretary of State or the panel shall decide applications from infected intimates after the decision is made in respect of the infected blood or tissue recipient.

9. Conditions Attaching to Payments

- 9.1 A qualifying person or the personal representative of a deceased qualifying person shall be entitled to receive payment corresponding to the appropriate category, provided that qualifying person or personal representative signs an undertaking. The terms of the undertakings are set out in Annex C.
- 9.2 Subject to paragraph 9.1 above a qualifying person or personal representative shall be free to pursue allegations of medical negligence concerning individual treatments against the relevant Health Authority.
- 9.3 Any payment made under the Scheme shall be brought into account against any award made in an action for medical negligence.
- 9.4 Payments under this Scheme are made on behalf of the Secretary of State for Health, the Secretary of State for Wales and the Secretary of State for Northern Ireland and not on behalf of any other person or body.
- 9.5 The payments are made without any admission of negligence, breach of statutory duty or any other liability on the part of the Secretaries of State.

PROCEDURES

10. Identifying Potential Beneficiaries

10.1 The Secretary of State shall seek potential qualifying persons in the following ways:-

- (a) seeking Communicable Diseases Surveillance Centre and National Blood Transfusion Service records;
- (b) circularising National Health Service Consultants and general practitioners;
- (c) contacting solicitors acting in HIV litigation in respect of blood transfusion and tissue transfer;
- (d) making a press release explaining how an application may be made.

11. Making Application

11.1 Applications shall be made on the form set out in Annex D. It must be returned to the Department of Health either directly by the applicant or through his medical practitioner. An applicant will have to consent to the release of medical records.

12. Time Limits for Applications

12.1 Applications shall be made :-

(a) by 17 February 1993; or

(b) within 12 months from the date a person first learned that he had been found to be HIV positive

whichever is the later, unless the applicant can show to the satisfaction of the Secretary of State that he has a reasonable cause for delaying his application.

12.2 An infected intimate shall apply on or before 31 December 1999, or within 12 months of learning that he is HIV positive, whichever is the sooner.

13. Payments Machinery

13.1 The Secretary of State shall make payments to the qualifying person or where the qualifying person is dead to his personal representative.

GENERAL

14. Legal Costs

14.1 The Secretary of State shall reimburse reasonable legal costs in respect of:-

(a) pre-litigation costs in preparation for litigation other than medical negligence upto and including 10

March 1992 (and for the avoidance of doubt including those costs incurred where individuals decided in the light of legal advice not to pursue any action);

- (b) litigation costs incurred in pursuing legal action other than medical negligence against the Government or Health Authorities up to and including 10 March 1992 together with costs of advising clients whether to accept payment under the Scheme and discontinue legal action or costs incurred in relation to minors' settlements;
- (c) generic costs up to and including 10 March 1992;
- (d) costs in respect of medical negligence cases pursued against Health Authorities or private health care organisations upto and including 10 March 1992 or if those actions are discontinued within 28 days of the date of this Scheme upto and including that day of discontinuance;
- (e) costs of appearing before the panel where the panel consider it appropriate.

15. Legal Aid - Statutory Charge

15.1 The Secretary of State shall use his best endeavours to ensure that any payments from this Scheme are disregarded for the purpose of the statutory charge for legal aid in

cases of medical negligence pursued against Health Authorities.

16. Return of Documents

16.1 All copies of all documents held by any body other than the panel shall be returned to the Secretary of State:-

- (a) in the case of documents held by a qualifying person within 28 days of the acceptance in writing of payment under the Scheme;
- (b) in the case of documents held by solicitors pursuant to the Order dated 11 December 1991 of Mr Justice Ognall within 28 days of the completion of the costs or agreement to pay the generic costs of the plaintiffs represented by them or otherwise as directed by the Court.

Signed on behalf of the Secretary of State by

GRO-C

Assistant Secretary

Dated the 24th day of April 1992.