

'HEPATITIS C FROM BLOOD' EX GRATIA SCHEME – DETAILS OF PROPOSED PARAMETERS AND ADMINISTRATION

PROPOSED SCHEME PARAMETERS

Eligibility date

- No payments will be made in respect of people who died before 29 August 2003.
- Where people die before the scheme is in a position to make payments, and their circumstances and medical condition would have satisfied the eligibility criteria on 29 August 2003, then the awards will be made to their dependants.
- Once the scheme is in a position to make payments, then awards will only be made in situations where a claim has been received from the infected person. If the infected person dies without making a claim then an award will not be made to their dependants.

Eligibility for Basic Award of £20,000

Criteria

- Potential beneficiaries will receive the basic award of £20,000 if they have been infected with Hepatitis C as a result of being provided by the NHS with blood or blood products before September 1991.
- People who have been infected with Hepatitis C as a result of the virus being transmitted from a person who themselves was infected as a result of being provided by the NHS with blood or blood products before September 1991 will be treated identically to those directly infected.
- People who have received payments from the Macfarlane Trust, Eileen Trust or Special Payments Scheme in respect of infection with HIV, and who have also been infected with Hepatitis C, will be treated identically to those who have only been infected with Hepatitis C.

Required supporting evidence

- Claimant received relevant treatment – *statement by clinician*
- Claimant infected with Hepatitis C – *statement by clinician*
- People who have had a liver transplant – *would only need to establish that they had originally been infected with Hepatitis C, not that they are still infected.*
- People who have cleared the virus as a result of treatment – *would only need to establish that they had originally been infected with Hepatitis C, not that they are still infected.*

RESTRICTED POLICY & LITIGATION

- The Hepatitis C infection was caused by the NHS treatment:
 - For people who have received a pooled product – *statement by clinician confirming that the claimant had tested PCR positive would suffice as proof of causation.*
 - For other people – *causation should be corroborated by reference to archived samples where these are available.*
- Where definitive evidence on any of the above is lacking, then such evidence as does exist should be accepted if it establishes the facts “on the balance of probabilities”.
- “Balance of probabilities” should be determined by reference to general rules set down by an appointed independent panel or, where more appropriate, decided by the panel on a ‘case by case’ basis.

Eligibility for additional payment of £25,000

Criteria

Potential beneficiaries who satisfy the basic eligibility criteria will receive the additional award of £25,000 when it is established that they have cirrhosis, liver cancer or have received a liver transplant.

Required supporting evidence

- cirrhosis:
 - liver biopsy results (if already carried out in the course of normal treatment), OR
 - results of non-invasive tests (as specified by hepatologists expert group) that have been carried out in the course of normal treatment.
- liver cancer – statement by clinician
- liver transplant – statement by clinician.
- in the event that doubt still remains about any relevant medical aspect, then an appointed expert medical panel will adjudicate on a ‘case by case’ basis – using the “on the balance of probabilities” principle.
- the medical panel may commission additional non-invasive tests specifically for the purpose of informing their judgement.

Exceptions to the general scheme parameters

- People who have cleared the virus spontaneously will not be eligible for either the £20,000 or the £25,000 award.
- People who have received a liver transplant will receive both the basic and additional awards.

RESTRICTED POLICY & LITIGATION

Variations to awards

- People who have received compensation as the result of a successful legal action against the NHS (or an out of court settlement in relation to a legal action) in respect of a situation satisfying the basic eligibility criteria for this scheme would have that compensation/settlement deducted from the total award made under this scheme.
- People who have received compensation as the result of a successful legal action against a product supplier in respect of a situation satisfying the basic eligibility criteria for this scheme, would have that compensation deducted from the total award made under this scheme.

Conditions attached to awards

- People who receive payments under the scheme would undertake not to institute future legal proceedings against the NHS or Ministers in relation to the situation that formed the basis of those payments.

Lifetime of scheme

6. Given that it may take 20-30 years for Hepatitis C infection to progress to the stage where the additional £25,000 payment would be made, it will be necessary to maintain the capability to make payments under the scheme for at least another 20 years and probably longer – although the number of payments in the latter years will be very small.