

Contaminated blood – international compensation schemes

OVERVIEW

- HIV compensation:

Country	Amount (approx.)	Frequency	Payment to dependants?	Source	Fault?
UK*	£12,800 (min) £20,000	Annual One-off	Yes	Government fund	
Ireland	Average £750,000		Yes	Government fund	To some degree
Canada^	£18,600 £13,600	Annual One-off	Yes – and secondary infectees get £148,400 (one-off)	Government fund (but some victims also got compensation from the Red Cross, which was deducted from their Government compensation)	
US^	£84,000	One-off		Out of court settlement with plasma fractionators plus government fund	Yes – litigation/settlements
Australia*	423 ppl received total of approx £12 million (1990 – 2001)	Annual instalments	Yes	Government trust fund	No-fault – not compensation
Germany^	£9,000-£17,900	Annual		Government fund	
France^	£221,000 (plus £570,300 on AIDS diagnosis)	One-off		Government fund	
Switzerland^	£10,300 for AIDS Up to £71,300	Annual One-off		Government, plasma fractionators, Swiss Red Cross Swiss Red Cross	

Country	Amount (approx.)	Frequency	Payment to dependants?	Source	Fault?
Italy*	Variable depending on circumstances		Families of deceased victims	Government	Litigation
Japan	£378,000	One-off		Settlement of £210,000 from industry and the rest from the Japanese government	
Denmark*	£100,800	One-off		Government fund	

^These figures from 'Legal, financial and public health consequences of HIV contamination of blood and blood products in the 1980s and 1990s', P. D. Weinberg et al., *Annals of Internal Medicine*, vol 136, no. 4, 19 February 2002
<http://www.annals.org/content/136/4/312.abstract>

Figures originally expressed in 1998 US dollars. They have been converted to current pounds sterling using:

- 1998 exchange rate of 0.6 GBP to the dollar (see <http://www.oanda.com/currency/#historical>)
- and then using a conversion factor of 1.4 – this is the mean of the retail price index factor and the average earnings index factor from 1998 to 2008 (as 2010 was not available) (see <http://www.measuringworth.com/ukcompare/>)

*These figures from sources and info cited below.

NB: Blanks indicate that information was not found.

• **Hepatitis C compensation:**

Country	Amount (approx.)	Frequency	Payment to dependants?	Source	Fault?
UK	£20,000 £25,000	One-off (stage 1) One-off (stage 2)	No	Government fund	No fault
Ireland	Average £750,000	One-off (usually)	Yes	Government fund	To some degree – it is compensation
Canada	Variable – ranges from under \$10,000 to over \$400,000 depending on illness, age, income loss	One-off for pre-1986/post-1990; mixed for 1986-1990	Yes (secondary infectees and certain dependants)	Government fund (but some victims also got compensation from the Red Cross – deducted from Government compensation)	No fault

Country	Amount (approx.)	Frequency	Payment to dependants?	Source	Fault?
Italy	Variable				Settlements
Australia	No central government agreement. Varies, and limited by tight criteria including restriction to those infected between 1986 and 1990. Details are sparse.			Settlements from states/Red Cross but fund from Government to provide liability cover	Settlements
Japan	Between c. £60,000 and £200,000 each, depending on severity	One-off		Agreement between Government and manufacturer	Agreement followed group case (200 victims) where Government and manufacturers found to be liable

NB: Blanks indicate information not found.

“More than 20 countries allocated compensation funds for HIV-infected persons with haemophilia (mean award ranging from \$37,000 to \$400,000) whereas only* the UK, Canada, and Ireland allocated compensation funds for HCV-infected persons with haemophilia (mean award ranging from \$37,000 to \$50,000).”

From 'Legal, financial, and public health consequences of transfusion-transmitted hepatitis C virus in persons with haemophilia', Vox Sanguinis: International Journal of Transfusion Medicine vol. 93 issue 2 p159-165 (2007)
<http://www3.interscience.wiley.com/journal/118510788/abstract?CRETRY=1&SRETRY=0>

*This is no longer true. As shown in the table above, Japan, for example, passed a law in 2008 enabling hepatitis C victims to claim compensation. (This followed successful lawsuits in which the state and manufacturers were found guilty and ordered to pay compensation to plaintiffs.) (See section on Japan below.)

COUNTRIES

NB: Details on non-English speaking countries are harder to find as most information is likely to be in the native language.

Canada

- **HIV and hepatitis C**

In 1989, the federal government announced a \$150-million package for those who had contracted HIV through the blood system, and who agreed, in exchange, not to sue them. A lump sum of \$120,000 (Canadian dollars) payment (approx £77k at July 10 exchange rates) was offered to 1,250 individuals infected with HIV, but not all eligible people applied. In 1993, this package was expanded. Once approved, individuals were eligible for \$30,000 (CD) a year for life (approx £19.2k at July 10 exchange rates).

An inquiry chaired by Justice Krever reported in 1997. Its first recommendation was that “the provinces and territories devise statutory no-fault schemes for compensating persons who suffer serious, adverse consequences as a result of the administration of blood components or blood products,” implying that all victims of tainted blood, past, present and future be automatically compensated through provincial/territorial schemes. This recommendation has not been implemented. Krever did not recommend a federal compensation package.

In 1998, the federal and provincial governments announced a \$1.2-billion (approx £770m at July 10 exchange rates) compensation package for those who had contracted HCV, but only between 1986 and 1990, as well as those who contracted HIV secondarily from those covered under the earlier package.

Justification for the HCV infection “window” was that prior to 1986 there was no accepted means of screening blood for HCV, and after 1990 the Canadian Red Cross Society had implemented a screening test. Between 1986 and 1990, the Red Cross had not implemented “surrogate testing” for HCV, despite the United States having done so. Such testing would have identified upwards of 90% of contaminated donations. This compensation approach did not embrace Justice Krever’s recommendation of a “no-fault” approach to compensation. As such, calls for extending compensation to all individuals infected with HCV through the blood system, regardless of when, were renewed.

Some provinces subsequently began to offer compensation to people infected with HCV outside the 1986–1990 window: Ontario offered compensation in 1998, Quebec in 1999, Manitoba in 2001 and British Columbia in 2003.

In 2006, the federal government reached an agreement on a settlement for Canadians who contracted hepatitis C from the blood system before 1986 and after 1990, and the agreement was approved by the courts in 2007. The settlement package, worth \$1 billion (approx £640m at July 10 exchange rates), is based on parity with the package for those infected within the 1986–1990 window.

<http://www2.parl.gc.ca/Content/LOP/ResearchPublications/prb0814-e.htm#acompensation>

Payment for Hepatitis C:

For individuals infected with hepatitis C, the amounts range from under \$10,000 to over \$400,000 (Canadian dollars) (approx £6.4k and £256k at July 10 exchange rates). In addition to these amounts, eligible class members can apply for damages for past loss of income and loss of services. There is a deduction of \$7,490 (approx £4.8k at July 10 exchange rates) for those infected with Hepatitis C who received compensation from the Red Cross Settlement. The lowest amount of payment is for those who have essentially cleared hepatitis C from their blood, while the higher amounts are for those suffering from serious health effects.

It is difficult to give an average, because the amounts reflect the current disease state of class members, their age, any lost income, and the level of sickness they are expected to reach.

From <http://www.hc-sc.gc.ca/hc-ps/dc-ma/hepc-2007-questions-eng.php>

See also:

- Canadian Dept of Health: <http://www.hc-sc.gc.ca/hc-ps/dc-ma/hepc-2007-key-principales-eng.php>
- http://www.pre86post90settlement.ca/english/eng_home.htm
- Article from 2006: <http://www.cbc.ca/news/background/taintedblood/>
- Canadian Hemophilia Society: <http://www.hemophilia.ca/en/hcv-hiv/hepatitis-c-compensation/>

France

France's tainted blood scandal...saw a former health minister convicted for failing adequately to screen blood which led to the deaths from Aids of five people, and the contamination of two others during a key period in 1985. Two French ministers were acquitted of manslaughter.

About 4,000 people, many of them haemophiliacs, were given blood infected with the virus. Many of those contaminated have since died. In most cases they received transfusions before the link between HIV, Aids and blood was fully understood. All three politicians were alleged to have delayed the introduction of a US blood-screening test in France until a rival French product was ready to go on the market.

<http://news.bbc.co.uk/1/hi/world/europe/1482021.stm> (9August 2001)

Australia

• HIV

In early 1990 the Mark Fitzpatrick Trust was established as a discretionary trust by the Commonwealth to provide special financial assistance to people with medically acquired HIV infection and AIDS. This special assistance did not represent compensation. Beneficiaries of the Trust were required to meet specified eligibility criteria including that they had medically acquired HIV or were a dependent, parent or guardian of a person who had medically acquired HIV; or were a dependent, parent or guardian of a person who had died from an HIV related illness as a result of medically acquired HIV.

The Commonwealth provided original seed funding of \$13.2 million (approx £7.6m at July 10 exchange rates) with a further grant of \$1 million in 1999 (approx £577k at July 10 exchange rates). The Trust was wound up in May 2001. Beneficiaries of the Trust received annual payments during the

life of the Trust, with a final payment on the death of a beneficiary to assist with funeral and associated expenses. In total 423 beneficiaries received payments of \$20.16 million (approx £11.6m at July 10 exchange rates).

From senate committee report 2004:

http://www.aph.gov.au/senate/committee/clac_ctte/completed_inquiries/2002-04/hepc/report/report.pdf

See also Paul Sendziuk, 'Bad Blood: The Contamination of Australia's Blood Supply and the Emergence of Gay Activism in the Age of AIDS' http://www.api-network.com/main/index.php?apply=scholars&webpage=default&flexedit=&flex_password=&menu_label=&menuID=79&menubox=&scholar=129

- **Hepatitis C:**

The Australian government does not compensate people who contracted Hepatitis C from contaminated blood. A senate committee of inquiry proposed a fund to improve their access to healthcare services but ruled out a compensation scheme.

<http://www.bmj.com/cgi/content/full/328/7455/1518-f>

Individual settlements were made with the Australian Red Cross, however, who admitted that donors who tested positive for hepatitis C continued to give blood for several months in 1990.

<http://www.theage.com.au/articles/2004/04/06/1081222465438.html?from=storyrhs>

United States

- **HIV:**

In the US, affected haemophiliacs sought redress and compensation through litigation against companies that provided blood products.

In 1993, three companies (Baxter International, Rhône-Poulenc and Alpha Therapeutic) made a \$125 million offer (approx £83.4m at July 10 exchange rates) to leaders of the haemophilia community, which was rejected. A subsequent class action lawsuit on behalf of American haemophiliacs failed on appeal in 1995, on the grounds that it might bankrupt the industry.

The clotting producers quietly settled many claims. Individual lawsuits continued to fail because most states had laws shielding blood products from traditional product liability claims. However, damaging documents emerged contending that the companies had collected blood from high-risk donors like homosexuals and prisoners, which intensified informal settlement negotiations.

In 1997, Bayer and the other three makers agreed to pay \$660 million (approx £440m at July 10 exchange rates) to settle cases on behalf of more than 6,000 haemophiliacs infected in United States in the early 1980s, paying an estimated \$100,000 to each infected haemophiliac (approx £66.7k at July 10 exchange rates).

Soon after the settlement, because the New York state statute of limitations required people to file a lawsuit within three years of discovering an illness, New York Governor George Pataki signed a bill allowing people infected by blood products, or their survivors, two years to bring product liability suits against the manufacturers. While those who had settled were excluded, the bill allowed an estimated additional 75 eligible persons to file suits.

The plaintiffs alleged that the companies manufactured and sold blood factor products as beneficial "medicines" that were, in fact, contaminated with HIV and/or HCV and resulted in the mass infection and/or deaths of thousands of haemophiliacs worldwide.

From http://en.wikipedia.org/wiki/Contaminated_haemophilia_blood_products

In the US, 6200 haemophiliacs contracted HIV through contaminated blood and eventually received \$100,000 each (approx £66.7k at July 10 exchange rates).

http://www.crocodyl.org/wiki/bayer_ag

Japan

- **HIV:**

In Japan, the Health Ministry did not ban unheated products until December 1985, despite knowing that they were contaminated. Over 1,400 Japanese haemophiliacs were exposed to HIV, and more than 500 were believed to have died by 2001.

In November 1995, a case involving Japanese haemophiliacs settled, resulting in \$420,000 (approx £280k at July 10 exchange rates) for each victim, with \$235,000 coming from industry (approx £157k at July 10 exchange rates) and the rest from the Japanese government.

In February 2000, three former drug company executives accused of selling blood products tainted with HIV were given prison terms. However, in March 2001, a Tokyo court cleared the former top AIDS expert of professional negligence over the scandal.

http://en.wikipedia.org/wiki/Contaminated_haemophilia_blood_products

- **Hepatitis C:**

Several lawsuits found the government and pharmaceutical companies guilty of not regulating the use of unheated coagulants despite being aware that such products might contain the hepatitis C virus, and ordered them to pay compensation to victims.

<http://search.japantimes.co.jp/cgi-bin/nn20070324a1.html>

Subsequently, in January 2008 a law was passed enabling those who contracted hepatitis C from contaminated blood and blood products to claim compensation of between \$110,000 and \$367,000 each (approx £73.4k and £245k at July 10 exchange rates), depending on the severity of their suffering. A fund was established between the government and the manufacturer.

<http://news.bbc.co.uk/1/hi/world/asia-pacific/7176297.stm>

This website suggests compensation was not available to dependants:

<http://factsanddetails.com/japan.php?itemid=835&catid=23&subcatid=151>

Italy

- **HIV:**

In Italy, a Rome court ordered the Health Ministry in June 2001 to pay damages to 351 people who contracted the HIV virus and hepatitis through blood transfusions. The court said the ministry was too

slow to introduce measures to prevent the virus being spread by donated blood, and did not establish proper checks on plasma. About 100 of the victims - all haemophiliacs - have already died, but the court ruled that their families were entitled to the compensation. The amount was to differ from case to case, depending on the victims' age at the time they contracted the disease, as well as on the disease's effects.

In an earlier ruling, in 1998, a court ordered the government to pay damages to about 400 haemophiliacs. But the appeals court sharply reduced the amount of people entitled to the compensation. Under the previous ruling, the state could only be held responsible from 1978 for hepatitis B. 1985 for Aids, and 1988 for hepatitis C

<http://news.bbc.co.uk/1/hi/world/europe/1396987.stm> (19 June 2001)

<http://news.bbc.co.uk/1/hi/world/europe/1482021.stm> (9 August 2001)

Denmark

• HIV:

In 1992, grants of allowance (“goodwill compensation”) from the Danish government for those who contracted HIV from contaminated blood was raised from 250,000 to 750,000 kroner (approx £27.5k and £82.6k at July 10 exchange rates). In 1995, Parliament made an official statement of regret and created a compensation fund of 20 million kroner (approx £2.2m at July 10 exchange rates).

See 'Blood Safety in the Age of AIDS', Eric A. Feldman and Ronald Bayer

<http://www.bloodbook.com/safety-art.html> (*This article is also an excellent discussion about the issue generally.*)

Several cases were brought to court but it was difficult to prove liability (by proving that those authorities and companies involved had the necessary information and that infection could have been avoided), and those prosecuted were acquitted. Some compensation was achieved through the courts for victims infected after the decision not to allow non-heat-treated blood products.

A controversial aspect of the Danish case is that authorities gave companies 6 years to stop using non-heat-treated product.

Haemophilia Compensation Fund – independent organisation set up by statute in 1995 to provide support to those infected and survivors [widows?]. Board members recommended by Danish Haemophilia Society. Payments can be in a lump sum or in instalments. Payments are for:

- extra costs incurred by the HIV-infected haemophiliac or his cohabiting families in their daily lives as a result of the HIV-infected hemophiliacs or their family's specific needs.
- victim's lost earnings and the “abridged life perspective”, and possibly impaired quality of life that HIV infection causes, and to cover for survivors of a deceased HIV -infected haemophiliac.

GENERAL (FROM CONTAMINATED BLOOD BILL PAGE ON FACEBOOK...)

Republic of Ireland

In the Republic of Ireland, a compensation deal worth €10 million (approx £8.2m at July 10 exchange rates) was agreed in 1991, but the Government later recognised that this was inadequate.

Current payments are case-specific and range from €50,000 to €2.5 million (approx £41k to £2m at July 10 exchange rates). The average payment is approximately €400,000 (approx £328k at July 10 exchange rates). Payments have also been made separately to spouses, carers and family members under a range of headings including loss of consortium, loss of society, solatium and post traumatic stress disorder.

The Government also agreed to assist people living with haemophilia and viruses with life insurance, mortgage protection insurance and travel insurance. Specific legislation was passed into law to provide for this in 2006. Those infected pay the average premium for a healthy person of their age, and the Government pays the additional premium. It is therefore possible to obtain life insurance up to €525,000 (approx £430k at July 10 exchange rates) and mortgage or re-mortgage insurance of €475,000 (approx £389k at July 10 exchange rates).

A specific health Amendment Act card was also introduced in 1996 which gives everyone with haemophilia infected with Hepatitis C or HIV access to all medical services for any medical condition free of charge and on a prioritised basis.