

RATIONALE FOR THE APPROACH ADOPTED BY GOVERNMENT IN RESPONDING TO RECOMMENDATION 6 OF LORD ARCHER'S REPORT

1. The Department of Health was under no obligation to co-operate with Lord Archer's independent Inquiry, and neither was it obliged to respond to any recommendations the Inquiry might make.
2. Nevertheless, ministers wished to be helpful (the Secretary of State, Patricia Hewitt, wrote to Lord Archer on 30 March 2007, saying: "the Department is willing to assist you as far as we can; and an early meeting between officials here and yours might be helpful in this respect.")
3. Ministers did not give any undertaking to accept the conclusions of the Inquiry, or any recommendations that it might make, but on several occasions said in answers to parliamentary questions that they would consider Lord Archer's report and respond.
4. The claimant is specifically challenging the Government's rejection of recommendation 6(h) of Lord Archer's report. Paragraph 21 of the grounds submitted by the claimant says: "The Response makes no mention of Recommendation 6(h), nor does it explicitly consider the question of parity with levels of payment made under the Irish scheme. However, by pledging to increase annual payments made from the Macfarlane and Eileen Trusts only to £12,800 per annum, and declining to review payments made out of the Skipton Fund until 2014, the Government has implicitly rejected recommendation 6(h)."
5. We point out that in its response, the Government did not make mention of any of the subsections (a) - (h) of recommendation 6, some of which, also, the Government has decided not to accept.

Government's response to Recommendation 6

6. In its response to recommendation 6 in the round, Government considers it has acted reasonably.

Financial relief for those affected by HIV

7. In coming to its published decision to increase annual payments to those infected with HIV, Government took the view that annual payments continue to be more appropriate for those who have been used to receiving them, rather than making a lump sum payment (as per Lord Archer's Recommendation 6(c)). The Government wished to provide those infected with a reasonable minimum level of annual income, which would not require them to keep returning to the relevant Trusts with requests for additional help, which would then be means-tested (also Recommendation 6(c)).

8. As with all payments made through the Trust mechanisms, the new increased payment will be disregarded for the purposes of calculating other benefits (Recommendation 6(f)). A claimant's right to claim financial assistance through any scheme relating to another infection inadvertently acquired through treatment remains intact (Recommendation 6(g)).
9. The Department remains satisfied with the existing scheme for payment, and considers there is nothing to be gained by making payments through the Department of Work and Pensions. The charitable Trusts have developed good relationships with their registrants and we consider this system should continue rather than disrupting this by setting up a new system. (Recommendation 6(a)).
10. Claimants have never been subject to any distinction dependent upon the reason for treatment with blood or blood products, and this remains the case (Recommendation 6(d)), and the Trusts have discretion over entitlement to payments (Recommendation 6(b)).
11. In summary, in response to Lord Archer's report, we have reviewed the mechanism for making payments to those infected with HIV and increased those payments: we are also making additional funds available for discretionary payments to their dependents. We consider this timely, given the establishment of the MacFarlane and Eileen Trusts in 1988 and 1993 respectively.

Financial relief for those affected by Hepatitis C

12. The Skipton Fund, established in 2004 to make ex-gratia payments to those infected with hepatitis C, was structured on a different basis to the Macfarlane and Eileen Trusts. When the Macfarlane and Eileen Trusts were established, there was no effective antiretroviral drug treatment for HIV to prevent progression to AIDS, and life expectancy was short. When the Skipton Fund was established, there were already NICE-recommended drug treatments available for hepatitis C. These treatments are effective for many patients in preventing progress to cirrhosis and primary liver cancer. Evidence suggests that most people do not develop serious liver disease in the absence of treatment.
13. The Skipton Fund makes a single lump sum payment to those infected through treatment with NHS blood or blood products, and a second larger lump sum payment to the small proportion of individuals who develop severe disease as a result of such infection.
14. We acknowledge a major criticism of the scheme is that it does not make payments to widows of those who died from hepatitis C-related causes before 1 August 2003 (when the scheme was announced). Nevertheless, the scheme achieves what it was set up to do, as announced by the Secretary of State (John Reid) in 2004. "The UK

scheme will award eligible claimants with initial lump sum payments of £20,000 to all those who now have hepatitis C from blood or blood products, with a further £25,000 being awarded when people reach a more advanced stage of illness. We feel these are fair and reasonable payments and hope they will help alleviate some of the problems people who have been affected in this way are experiencing."

15. Given the relatively recent establishment of the Skipton Fund, we consider it reasonable to review it in 2014, ten years after it was set up, and have committed to do so.

Recommendation 6(h)

16. We note that Recommendation 6(h) is not a firm recommendation, but a suggestion: "We suggest that payments should be at least the equivalent of those payable under the Scheme which applies at any time in Ireland."
17. Nevertheless, we do not accept that this suggestion is reasonable, given the different circumstances which pertain in the UK and in Ireland. Consequently, it has been the view of successive Governments that the UK ex-gratia payment schemes should not mirror the Irish compensation scheme.

The information provided below has been agreed by officials in the Republic of Ireland's Department of Health and Children.

Between 1977 and 1994, a large number of women in the Irish Republic were infected with hepatitis C from contaminated Anti-D immunoglobulin produced by the Irish national Blood Transfusion Service Board (BTSB). An expert group set up by the Irish Government found the Blood Service to have been at fault, and the same conclusion was reached by a later judicial inquiry in the 'Report of the Finlay Tribunal of Inquiry into the Blood Transfusion Service Board' published on 6 March 1997, which found that "wrongful acts were committed". Before the Finlay Tribunal ruling, the Hepatitis C Compensation Tribunal was set up to operate on a non-statutory basis to review claims for compensation for the many civil actions pending in the courts as a result of infections through contaminated Anti-D.

Following the findings of the Finlay Tribunal in March 1997, although no legal rulings were made - because no legal prosecutions took place - the Irish Government decided to place the Tribunal on a statutory footing and the Hepatitis C Compensation Tribunal Act 1997, published on 21 May 1997, came into effect on 1 November 1997.

It was also established that around 100 of the infected women were blood donors, recycling hepatitis C infection through the blood supply until screening was introduced in 1991. The Irish Government therefore decided to extend the compensation scheme to all people infected with hepatitis C through blood products and blood transfusion.

On 2 June 1999, both Houses of the Oireachtas passed a Resolution that a further Tribunal of Inquiry should be established to examine and report on matters of urgent public importance relating to the infection with Hepatitis C and HIV of persons with haemophilia. The 'Report of the Tribunal of Inquiry into the Infection with HIV and Hepatitis C of Persons with Haemophilia and Related Matters' was published on 5 September 2002 by Her Honour Judge Alison Lindsay.

Although one of the criticisms of that report was that the Irish Blood Transfusion Service Board should have commenced heat treating its blood product sooner, and once heat treated products became available should have immediately recalled any unheated product from the treating centres, these products only constituted a very small proportion of the products used by treating physicians – the Lindsay report thought it probable that only eight haemophiliacs were infected as a result.

The compensation scheme in the Republic of Ireland was set up in the light of evidence of mistakes by the BTSB, a very specific circumstance and unique to them. The payment schemes in the UK had no such history, and were established purely in recognition of the unfortunate position of those who were infected.