

FROM THE MINISTER OF HEALTH



Department of
Health

An Roinn Sláinte

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Dear *Liz*,

WESTMINSTER VICTIMS AND PRISONERS BILL – INFECTED BLOOD COMPENSATION SCHEME CLAUSE – PRINCIPLE OF LEGISLATIVE CONSENT

I have written to the NI Executive to seek agreement in principle to the inclusion of Northern Ireland in the Victims and Prisoners Bill clause on infected blood compensation. In order to keep the Committee fully informed on this matter, this letter sets out the full background to the Infected Blood Inquiry including the two interim reports which have been published, as well as the current position.

Background

From 1970-1991, between 2,400 – 5,000 people in the UK with haemophilia or other bleeding disorders were infected with hepatitis C virus (HCV) from contaminated blood products. During the same period, up to 30,000 people were infected with HCV through blood transfusion. Around 1,250 people in the UK with haemophilia or other bleeding disorders were infected with HIV in the UK between 1970 and 1991; around three-quarters of these have since died, with around half dying of HIV-related causes. Up to 100 people were infected with HIV through blood transfusions in the UK during the same period¹.

¹ IBI Expert Group on Statistics Report: www.infectedbloodinquiry.org.uk/news/inquiry-publishes-report-statistics-expert-group

It is not possible to state accurately the number of people infected in Northern Ireland who contracted HIV or Hepatitis C as a result of receiving NHS contaminated blood or blood products. This is because there may be people who have chosen not to disclose their diagnosis or request any support.

The Infected Blood Payment Scheme for Northern Ireland is a payment scheme to provide ex-gratia financial support for individuals and their families, who have been infected with, or otherwise affected by HIV, Hepatitis C, or both, following treatment with NHS-supplied blood, tissue or blood products. There are currently **105** beneficiaries on the NI Scheme, of whom **80** were infected with hepatitis C, HIV or both. The remaining beneficiaries are the spouses or partners of deceased beneficiaries.

The Infected Blood Inquiry² (IBI) was announced by the then Prime Minister Theresa May in July 2017 and began work in late 2018. It was set up to examine why men, women and children in the UK were given infected blood and/or blood products; the impact on their families; how the authorities (including government) responded; the nature of any support (including financial) provided following infection; questions of consent; and whether there was a cover-up.

Chair of the IBI, Sir Brian Langstaff KC, has taken the unusual step of exercising his powers under section 24(3) of the Inquiries Act 2005 to publish two interim reports, ahead of the final report. His reasoning was that he could not in conscience add to the decades-long delays already experienced by those infected and / or affected by contaminated blood.

IBI First Interim Report

The first interim report³ (July 2022) recommended £100,000 interim compensation payments to be made to all beneficiaries registered on the UK devolved financial support schemes. Payments were made in October 2022 and in 2023, further payments of £100,000 were made to the estates of those who had died after the announcement was made in July 2022.⁴

² Infected Blood Inquiry: www.infectedbloodinquiry.org.uk/

³ [First Interim Report | Infected Blood Inquiry](#)

⁴ Press release: www.health-ni.gov.uk/news/infected-blood-ps100000-interim-compensation-payments#:~:text=Health%20Minister%20Robin%20Swann%20has,contaminated%20blood%20in%20North%20Ireland.

IBI Second Interim Report

The IBI second interim report⁵ (April 2023) recommended that a final compensation scheme be set up without delay and begin work this year (2023) before the final report of the Inquiry. It also recommended further £100,000 interim payments should be made to bereaved children, parents or siblings for deaths which have not yet been recognised. Sir Brian Langstaff stated that the report fully covers his recommendations financial redress and therefore work to set up a final compensation scheme need not await that final report to begin. There were 18 recommendations, including:

- i. **Recommendation 12:** *further £100,000 interim payments to children, parents or siblings for deaths which have not yet been recognised.*
- ii. **Recommendation 14:** *an Arms' Length Body should be set up to administer a compensation scheme, chaired by a High Court Judge, accountable directly to Parliament.*
- iii. **Recommendation 15:** *the compensation scheme should include an advice and advocacy service, financial advice service (including benefits and insurance) and advice and referral to appropriate specialist services.*
- iv. **Recommendation 16:** *a compensation scheme delivered by one central body. The current support schemes should continue to be provided as at present.*
- v. **Recommendation 18:** *a compensation scheme should be set up now and begin work this year (2023) before the final report of the Inquiry.*

The UKG is leading on work to respond to the second interim report and has maintained the position that it will respond only after the final IBI report is published and the full findings are known. In a statement to the House in December 2022⁶, the then Cabinet Office Minister, Jeremy Quinn MP, said in respect of the Government's response to the second interim report: *"Our comprehensive response must await the final report of the infected blood inquiry"*. This position was widely criticised by those in the infected blood community and political representatives and, as a result, the Prime Minister and other Cabinet Ministers were called to give further oral evidence to the IBI in July 2023⁷. In a statement in December 2023⁸, MCO John Glen MP said: *"it would be inappropriate for the Government to prejudge the findings of the final report"*.

⁵ www.infectedbloodinquiry.org.uk/reports/second-interim-report

⁶ <https://hansard.parliament.uk/Commons/2022-12-15/debates/9AC14928-1A37-4DD3-9CA6-8627C94ADD92/InfectedBloodInquiry>

⁷ July 2023 evidence to IBI: [Evidence | Infected Blood Inquiry](#)

⁸ Statement from John Glen MP December 2023: <https://hansard.parliament.uk/commons/2023-12-18/debates/D4B25D77-5B65-4EA0-BB89-D4A717BE4102/InfectedBloodInquiryGovernmentResponse>

IBI Final Report

The final report is due to be published at a press event in Westminster on **Monday, 20th May 2024**. Sir Brian Langstaff KC said the final report will set out and explain the many failings at systemic, collective and individual levels over more than six decades. The Chair's added that his principal recommendation remains that a compensation scheme should be set up with urgency. He said: *"No-one should be in any doubt about the serious nature of the failings over more than six decades that have led to catastrophic loss of life and compounded suffering."* Given the scale of the terms of reference, recommendations are likely to be wide-ranging, with potential implications across several policy areas in DoH, across the HSC and other NI departments.

Victims and Prisoners Bill

The Victims and Prisoners Bill⁹ is a criminal justice Bill, which was introduced to Parliament in March 2023 by the Ministry of Justice under Dominic Raab MP and Alex Chalk MP and in the House of Lords is sponsored by Lord Bellamy. It is not Department of Health and Social Care (DHSC) legislation. Due to increasing frustration at the time being taken by the UKG to respond to the second interim report, Diana Johnston MP (Labour) introduced a new clause to the Victims and Prisoners Bill in December 2023 will require the Secretary of State for Health to establish a body to administer the compensation scheme for victims of the infected blood scandal, within three months of the passing of this Act. The body created under this clause must be chaired by a judge of High Court or Court of Session with status as sole decision maker. The clause is consistent with recommendation 14 in the IBI second interim report.

The clause was passed at the Report Stage in the House of Commons and the Bill is currently at the Committee Stage in the House of Lords. However, the Bill currently **only applies to England and Wales** and an amendment to extend the legislation to Northern Ireland and Scotland needs to be made in order for a UK-wide Scheme to be established under the powers of the Bill.

Along with my ministerial colleagues in Scotland and Wales, I agree with Sir Brian Langstaff that a compensation scheme should be UK-wide, particularly as the contaminated blood tragedies happened prior to devolution during a period of Direct Rule from Westminster. This is also the preference of organisations representing the infected blood community in Northern Ireland. Whilst the matters in question clearly fall within the

⁹ Victims and Prisoners Bill: <https://bills.parliament.uk/bills/3443>

competence of the NI Assembly and we therefore could seek to bring forward our own primary legislation on these matters, I believe there are a number of compelling reasons for NI's inclusion in this Westminster Bill. **The rationale for a UK-wide Scheme is set out in detail at appendix i.**

Four nations engagement

I met with the Minister for the Cabinet Office (MCO) John Glen MP along with my ministerial counterparts in England, Scotland and Wales in February 2024 to discuss the issue of compensation and the Victims and Prisoners Bill. I expressed my concern that the legislation does not currently extend to Northern Ireland. The MCO gave his assurance that the required amendment would be made to propose extension the Bill to Northern Ireland (and Scotland).

In a letter to the MCO, I welcomed the Government's confirmation that the necessary amendments to the Bill would be brought forward as this would enable me to seek the consent of the NI Assembly through a Legislative Consent Motion, subject to Executive agreement and a formal request from the UKG Minister for consent.

Position in the Republic of Ireland and other compensation schemes

The situation in the Republic of Ireland (RoI) is not comparable to that in the UK. In the RoI over 1,000 pregnant women were infected with hepatitis C as a result of treatment with Anti-D (a product which prevents rhesus disease in pregnant women) which had been manufactured and issued from a plasma pool which was infected with hepatitis C. This included infections between 1991 and 1994, after the introduction of heat treatment and screening for the hepatitis C virus. These events led to specific criticisms of the Irish Blood Transfusion Service Board from two judicial inquiries.

A State Tribunal was established in RoI in 1995 and this became a Statutory Body with the enactment of the Hepatitis C Compensation Tribunal Act, 1997. In addition, the Hepatitis C Compensation Tribunal Amendment Act 2002 makes provision to compensate persons infected with HIV as a result of the receipt of a relevant blood product within RoI. The tribunal was established to compensate people infected with hepatitis C as a result of being administered with contaminated Anti-D human immunoglobulin manufactured by the BTSB between 1970 and 1994. In his second report, Sir Brian Langstaff was not in favour of the RoI compensation model due the potential for a more lengthy, complex process for those who have already waited so long for financial redress, recommending instead a tariff-based scheme.

Summary

As the Victims and Prisoners Bill relates to matters that would normally fall within the legislative competence of the NI Assembly, and in the interest of avoiding any unnecessary delay, I have written to the Executive to seek agreement in principle to the Bill being amended to extend the provisions for an infected blood compensation scheme to Northern Ireland, **pending a request for legislative consent from the Minister for the Cabinet Office**.

Timing

The Victims and Prisoners Bill is currently at the Committee Stage in the House of Lords. Cabinet Office officials have advised that the Government will table its amendment at the Report Stage, which will be after Easter recess. A Legislative Consent Motion (LCM) may be tabled under NI Assembly Standing Order 42 (a) within 10 days from when the day the Bill completes the stage in Parliament during which an amendment is made that affects NI and there will of course be full formal consultation with the Health Committee during the LCM process.

Conclusion

On balance I believe that Sir Brian Langstaff's recommendation for a UK-wide compensation scheme is the best approach to ensuring those who have suffered as a result of this terrible tragedy get the justice and support they deserve. Northern Ireland's inclusion in the Victims and Prisoners Bill is necessary to ensure our involvement in a UK-wide scheme without any unnecessary delay. Whilst the matters in question fall within the competence of the NI Assembly, I believe the reasons set out at **appendix i** make a compelling case for our inclusion in the Victims and Prisoners Bill. I will of course, continue to keep you updated on the Executive's decision and on all developments of the Bill. I look forward to working with the Health Committee on this issue.

Yours sincerely



Robin Swann MLA
Minister of Health

Rationale for UK-wide Compensation Scheme

1. I believe that a UK-wide compensation scheme would be in the best interest of victims of contaminated blood in Northern Ireland. There are a number of compelling reasons for Northern Ireland's inclusion in clause 40 of the Victims and Prisoners Bill to set up a UK-wide compensation Scheme, as set out in the following paragraphs.

IBI Recommendation

2. It was a specific recommendation in the second interim report from the Chair of the Infected Blood Inquiry (IBI) Sir Brian Langstaff KC that a compensation scheme should have "*central organisation*" (pg 57)¹. Sir Brian said the Scheme should be delivered by a new arms-length body, independent of Government, chaired by a former High Court judge, advised by panels of legal and medical experts and assisted by an advisory board including beneficiaries of the financial support schemes. Sir Brian said: "*Such a scheme lends itself to administration from one place within the UK rather than being localised.*"
3. Sir Brian said that a compensation scheme should not be administered, either directly or indirectly, by the Department of Health and Social Care (or its equivalent in any of the four UK nations) and **agreed with the proposals** by Sir Robert Francis KC, who was commissioned by the Cabinet Office to carry out an independent study on a framework for compensation.
4. When considering the issue of local or national (central) administration, Sir Brian said the following in his second interim report: "*Although I recognise the desirability in many respects of local delivery within each devolved nation which Sir Robert recommends, I differ from his conclusion.*" He continues by saying: "*It should be for the scheme itself to determine the extent to which it is appropriate to deliver its services locally, in the light of experience. When it starts, however, the emphasis should be on:*
a) speed;
b) concentrating resource and expertise on implementing the scheme; and
c) ensuring that as many applicants as possible are processed efficiently.

¹ Second Interim Report: www.infectedbloodinquiry.org.uk/reports/second-interim-report

Pre-devolution

5. The infected blood tragedies occurred between 1970 – 1991 i.e. prior to the devolution of legislative and executive powers to NI. Northern Ireland was under direct rule from Westminster from 1972 until 1998, during which functions of the Department of Health NI were discharged subject to the direction and control of the Secretary of State in the Northern Ireland Office (NIO), a member of the UK Prime Minister's Cabinet.
6. Direct rule was brought about by the Northern Ireland (Temporary Provisions) Act 1972. Section 1(1)(b) permitted all departmental functions to be discharged by the Secretary of State or by the department on behalf of the Secretary of State and **subject to his direction and control**: *'all functions which belong to a department of the Government of Northern Ireland may be discharged by the Secretary of State or (except in so far as he otherwise directs) may, notwithstanding that there is no head of the department, be discharged by the department on behalf of the Secretary of State and subject to his direction and control. [Section 1(1)(b)].*
7. Therefore, during the time in question, decisions on blood and blood products were taken by DH (London) and it was DH (London) who provided the advice to what was then known as the DHSS NI. It would be unreasonable, therefore, to expect a devolved administration to fund compensation.
8. In December 2022 the then Minister for the Cabinet Office (MCO) Jeremy Quin said: *"I wish to make clear one critical answer to a recommendation posed by Sir Robert. In the first recommendation of his study, Sir Robert sets out that there is in his view a moral case for compensation to be paid. The Government accept that recommendation. There is a moral case for the payment of compensation."* This was repeated by the current MCO John Glen MP, when he updated the House in December 2023, saying: *"The Government have accepted the moral case for compensation, and I am fully committed to ensuring that we bring this matter to its long-awaited conclusion"*.

9. The UKG has not suggested any intention of reserving the matter of compensation to Westminster and has decided that the Victims and Prisoners Bill will be the legislative vehicle for the establishment of a compensation scheme for those who have been infected and or affected by NHS supplied contaminated blood.

Support from infected blood community in NI

10. There is strong support in the infected blood community in NI for a UK wide compensation scheme as recommended by the IBI. This is evidenced by NI core participants in their closing submissions to the Inquiry. Representing Haemophilia NI, the Watkins and Gunn submission stated: *“The UK Government should establish a single scheme by which each of those infected and affected, receive fair, just, and equitable compensation for the harm they have suffered and, in most cases, will continue to suffer for many years into the future. The compensation paid should be the same wherever the recipient lives”*.²
11. Collins (representing Families and Friends of Haemophilia NI) said in its submission: *“There must be only one, single compensation framework across the whole UK. The mechanics of whether it is centrally funded or contributed to from the budgets of the four nations is of no concern to most of our Core Participants. What matters is that there is a scheme which (both in making lump sum awards and in paying annual payments) treats those in all four nations exactly equally and is guaranteed to do for the future”*.³

UK Parity

12. If a compensation Scheme only covered England and Wales, this would not be in the spirit and rationale of the UK parity agreement which Ministers committed to in March 2021⁴. That agreement was intended to ensure no infected or affected

² SUBS0000061 - Submission of Watkins & Gunn - 16/12/2022 | Infected Blood Inquiry (paragraph 9, pgs 3 - 4);

³ SUBS0000063 - Submission of Collins - 16/12/12 | Infected Blood Inquiry (paras 866-869 pgs 240 - 241)

⁴ NI Assembly statement: [www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/department-of-health---infected-blood-interim-compensation-payments/#:~:text=Mr%20Swann%20\(The%20Minister%20of,contaminated%20blood%20in%20North%20Ireland.](http://www.niassembly.gov.uk/assembly-business/official-report/written-ministerial-statements/department-of-health---infected-blood-interim-compensation-payments/#:~:text=Mr%20Swann%20(The%20Minister%20of,contaminated%20blood%20in%20North%20Ireland.)

Statement by UKG: <https://questions-statements.parliament.uk/written-statements/detail/2021-03-25/hcws895>

person in any part of the UK is treated differently to someone in the same circumstances in another jurisdiction. The UK-wide approach to compensation is also supported by the Health Ministers in Scotland and Wales. A UK-wide scheme would concentrate resources and expertise, ensuring prompt, consistent and efficient processing of applications. In addition, having a single UK-wide Scheme would mitigate the risk of future disparities across the UK administrations.

Funding

13. Northern Ireland would not have the financial resource to fund a compensation scheme as recommended by Sir Brian Langstaff. Estimates suggest that a compensation scheme as proposed in the second interim report could run into tens of billions of pounds, with some media reports, quoting a Government source, suggesting up to **£10bn - £20bn UK-wide**, although this figure is disputed by infected blood campaigners. In his statement to the House in December 2023, MCO John Glen MP said: *“It is important that any decisions on compensation funding are taken carefully, and the House should expect the Government to work through the associated costs to the public sector”*.
14. There is no suggestion that NI would be expected to fund compensation and the UKG has publicly accepted that there is a moral case for compensation. However, while previous interim payments were funded by HM Treasury (HMT), there is yet no clear commitment that UKG will fund further compensation. Our inclusion in the Bill to establish a UK-wide compensation scheme would add significant weight to the case for funding to be provided from HMT.
15. If the Department of Health NI were to incur any of the costs outlined in the second interim report, this would significantly increase budget pressures for 2024/25 and beyond. While no budget has yet been agreed for 2024/25, the Department expects to face a significant budget deficit to maintain existing services therefore any costs in relation to the establishment of a compensation

scheme would add to an already extremely difficult future financial position. If additional funding is not secured from central Government consideration would need to be given to stopping other health and social care services to generate funding to cover these costs.

Expertise

16. It is likely that given its small size and population, Northern Ireland simply may not have the clinical or legal expertise to establish the expert panels to advise the Chair and Board an ALB overseeing a compensation scheme, as proposed by Sir Brian Langstaff in his second report, if there was a separate NI compensation scheme.

Risks if not included in Victims and Prisoners Bill

17. Northern Ireland could seek to bring forward its own primary legislation on these matters, however I believe that would pose a number of risks as set out in the following paragraphs.
18. Firstly, if the NI Assembly were to decide not to seek the extension of the Victims and Prisoners Bill clause to NI and instead to legislate for its own compensation scheme, it is possible that HMT would cease to fund the Scheme, given there was an opportunity to be included in a UK-wide scheme. If this decision was taken, that funding may have to be found within the existing NI budget.
19. Furthermore, funding is currently provided by HMT for aspects of the devolved NI Infected Blood Payment Scheme (for HIV and parity payments) and if NI decided to be take forward its own compensation scheme, HMT may decide to end funding for the devolved Scheme, which would then also have to be found from the NI block grant.
20. Choosing not to be part of the UK-wide Scheme would go against the recommendation by Sir Brian Langstaff in his second interim report, which was based on evidence heard by the Inquiry and on the independent study by Sir

Robert Francis on an appropriate framework for compensation. This may be considered controversial.

21. Even if the budget and expertise were available in Northern Ireland to set up a compensation scheme under an Act of Assembly, there would be a significant risk of challenge such as application for judicial review from the infected and affected community in Northern Ireland. Not only could this potentially take longer, but an approach which is different to the other UK jurisdictions could work against the principles of parity and may cause significant anxiety to those impacted. As stated above, NI core participants to the IBI, including Haemophilia NI, said in their statements to the Inquiry in closing sessions that their preference would be for a central UK body to oversee a compensation scheme.
22. A NI compensation scheme set up under an Act of Assembly may not offer the same level of support as a central UK scheme or be delivered at the same pace may also be open to legal challenge. A judicial review could be brought forward on the basis that someone who was infected in Northern Ireland does not have access to the same level of compensation or support as others who have been equally impacted in the other UK jurisdictions simply due to geographical location.

Conclusion

The inclusion of NI in clause 40 via clause 60 (extent) of the Bill will ensure that those in the infected and affected community in NI will be beneficiaries of a UK-wide scheme as recommended by the Chair of the IBI and are treated equally to those in the other UK jurisdictions.