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Diana Johnson MP  
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19 March 2018

*Dear Diana,*

Thank you for the useful meeting on 21<sup>st</sup> February during which I promised to write, confirming our discussion.

We discussed your proposal to passport those affected by contaminated blood from Disability Living Allowance (DLA) to Personal Independence Payment (PIP). I explained that the Government has no plans to legislate and introduce such a change. I stressed that we must keep the benefit system fair for all and current regulations require all existing DLA recipients to make a claim for PIP and undergo an assessment. I added that PIP is a different benefit to DLA, in that it is based on an individual's functional ability rather than the condition(s) itself; this reflects that health conditions and disabilities affect people in different ways, leading to varying levels of need and on-going costs.

You suggested that contaminated blood be added to the ESA Severe Conditions Criteria. I clarified that the criteria (introduced from 29 September 2017) are based on identifying claimants with lifelong, often progressive and incurable conditions, whose level of function would always meet the Support Group or Universal Credit equivalent element, and who are unlikely to ever be able to move into work. The criteria does include several examples of conditions that people who may meet the criteria may suffer from, however it is the functional impacts of their medical condition, rather than the medical condition(s) itself which we would consider during our assessment. The DWP Working Group with individuals affected by contaminated blood are currently reviewing the guidance used by Healthcare Professionals, which includes the criteria, and will feed back any thoughts at the next meeting.

We also discussed the guidance and training that PIP and ESA Healthcare Professionals receive to ensure they have sufficient knowledge to assess those affected by contaminated blood. I assured you that this is something Officials are reviewing as a result of engaging with the Working Group.

Finally, we discussed data sharing with the NHS BSA that now administers the ex-gratia payments. I informed you that DWP Officials with medical expertise have reviewed the data collected by the NHS BSA to see if a paper based PIP or ESA assessment could be made using this information. It was determined that not enough information is supplied in order to make a decision for benefit, and therefore data sharing in this case would not be useful.

I would like to take this opportunity to also respond to some of the issues raised in your letter of 22<sup>nd</sup> November 2017 regarding the Social Security (Infected Blood and Thalidomide) Regulations 2017 (the Regulations)<sup>1</sup>.

Firstly, you asked whether the income and capital disregards in the Regulations are broad enough to cover payments received by the wider families of those infected with contaminated blood for the purposes of calculating eligibility for income-related benefits such as Employment and Support Allowance, Jobseeker's Allowance, Housing Benefit and Income Support.

As you know, our policy intention is to fully disregard all payments made to individuals via both former<sup>2</sup> and new infected blood ex-gratia support schemes for the purposes of calculating eligibility for certain income-related benefits (and for recovery of benefit purposes).

It may be helpful if I first explain that the Regulations ensure that payments from the new ex-gratia schemes which became operational from 1<sup>st</sup> November 2017 in England, Wales and Northern Ireland are fully disregarded in the same way that payments from the former schemes and the Scottish Infected Blood Support Scheme (operational from 1<sup>st</sup> April 2017) are disregarded for benefit entitlement and recovery of benefit purposes. They replicate the existing disregards and do not narrow their scope in any way. Please the attached annex for the category of claimants that the income and capital disregards in the Regulations apply for.

Your letter also queried the fact that these Regulations refer to the ex-gratia support as "compensation. We strive to be as helpful as possible to the reader when drafting the Explanatory Memoranda that accompany Statutory

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<sup>1</sup> SI 2017/870.

<sup>2</sup> The Eileen Trust, The Macfarlane Trust, MFET Ltd, The Skipton Fund and The Caxton Foundation.

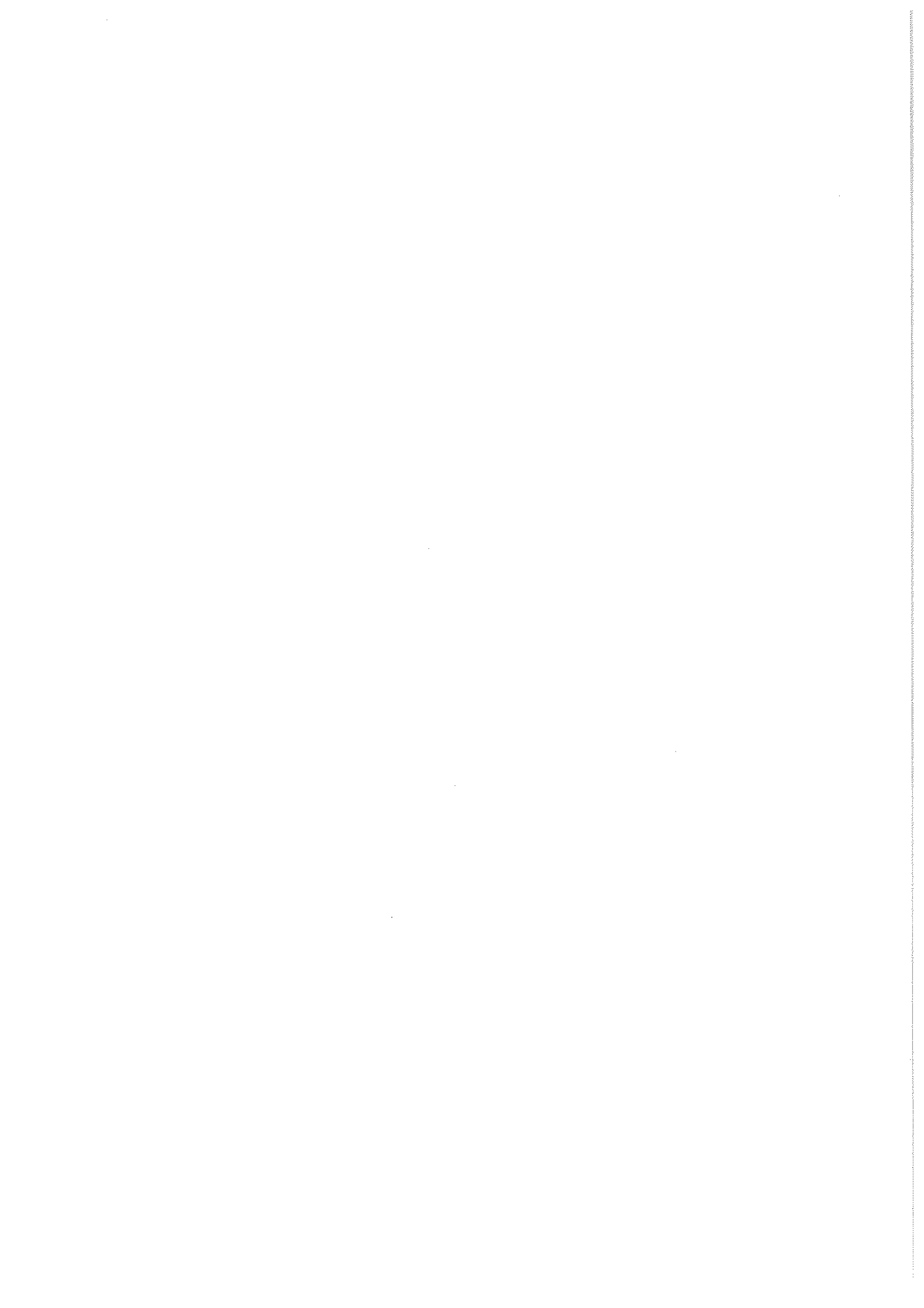
Instruments (SI) and therefore, in respect of this SI, we opted to use the word 'compensation' as a simpler way to describe the support provided by these schemes. In this context, 'compensation' is meant in a broad sense and is not intended to solely cover payments made where liability has been accepted, but also payments, such as those from the former and new ex-gratia support schemes, which provide financial support to infected people and their relatives.

The Department will continue to engage with the Working Group as we are keen and committed to looking at what improvements can be made to make claiming PIP and ESA easier for those affected. I hope you find this letter useful, and if I can be of any further assistance please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Newton', with a long horizontal flourish extending to the right.

**Sarah Newton MP**  
Minister for Disabled People, Health and Work



## Annex

The income and capital disregards in the Regulations apply for the benefit of the following categories of claimant:

- i. A person who receives a payment of income or capital directly from an infected blood scheme.
- ii. An infected person's partner or former partner who receives a payment made by or on behalf of an infected person which derives from an infected blood scheme. If the claimant is a former partner, at the time of the infected person's death they must not have been estranged, divorced or had a dissolved civil partnership.
- iii. A claimant who is a family member of a child or young person who receives a payment made by or on behalf of an infected person, their partner or former partner (from whom they were not estranged, etc). The payment must have derived from an infected blood scheme. The child or young person must be aged less than 16 years and must also be a family member of the infected person.

A person is a 'family member' of a child or young person if they are part of the same household and are either responsible for the child or young person or their partner (who is also part of the household) is responsible.

The child or young person does not therefore need to be the child of the infected person. For example, provided the above conditions are satisfied, a niece or nephew of the infected person may count as a child or young person.

Where the person who receives the payment is a child, it will be disregarded as the child's income or capital insofar as it may be relevant to a claimant's benefit entitlement.

- iv. In certain circumstances, an infected person's parent, step-parent, or their guardian who receives a payment by an infected person (or their estate) deriving from an infected blood scheme.

If the infected person has or had no children, partner, or former partner from whom they were not estranged etc, they can make a payment to their parent or step-parent. Where the infected person is or was, at the date of payment, a child, young person or student in full time education who had no parent or step-parent, they could make the payment to a guardian.

These disregards apply:

- if the infected person is alive at time of payment, from time of payment until the end of 2 years after the infected person dies;
- if payment is made by the infected person's estate, until two years from the date of the infected person's death.

