

Diana Johnson MP

Hull North's Voice in Parliament
Labour MP for Hull North

The Rt. Hon. John Bercow MP
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Dear Mr Speaker,

I am writing to apply for an Urgent Question to the Minister for the Cabinet Office:

“to ask the Minister for the Cabinet Office to reconsider the decision to deny funding for legal advice to those affected by the contaminated blood scandal during the consultation on the Terms of Reference for the Infected Blood Inquiry.

As you will recall Dr Sarah Wollaston MP asked the Minister a question during Cabinet Office questions yesterday on this issue but unfortunately his reply has raised far more questions than it answered. In particular, it risks inadvertently presenting a misleading picture by suggesting that the inquiry Chair, and not the Cabinet Office, was responsible for this important and highly controversial decision. The Infected Blood Inquiry's consultation on the Terms of Reference will end very soon on 26th April 2018, and unless this matter is addressed before the House rises for Easter Recess, I fear that this development may be extremely detrimental to people's participation in this consultation process. It is for this crucial reason that I am applying for this Urgent Question.

I will first provide some context on the events leading up to this development. On 7th December 2017, a number of individuals affected by the scandal met with the then- Minister for the Cabinet Office, the Rt. Hon. Damian Green MP, and Cabinet Office officials to discuss the setting-up of the inquiry. I have official Cabinet Office transcripts showing that at the meeting Sue Gray, the then- Director General of the Cabinet Office Proprietary and Ethics Team, suggested that the Government may pay for legal representation during the consultation on the Terms of Reference.

Whilst usually in statutory inquiries legal representation is only Government-funded once the inquiry is formally set-up and after the Terms of Reference are set, Ms

Gray cited the fact that this rule was waived in the very exceptional case of the Grenfell Inquiry. The Prime Minister did this by directing that the Costs Protocol for the Inquiry to be qualified, by issuing the Grenfell Notice of Determination on 22nd August 2017. Sue Gray's comments therefore led campaigners to expect that should an approach be made after the inquiry was set-up, they would receive the requisite funding for legal advice.

On 8th February 2018, the new Cabinet Office Minister, the Rt. Hon. David Lidington CBE MP, appointed The Hon. Mr Justice Langstaff as Chair of the Infected Blood Inquiry. On the week commencing 5th March 2018, the inquiry published details on how people can participate in a consultation on the Terms of Reference, and invited people to participate by the aforementioned date of 26th April 2018. On 5th March and 15th March Collins Law, a legal firm which represents something approaching 1,000 individuals affected by this tragedy and nine contaminated blood campaign organisations, duly wrote to the Minister for the Cabinet Office requesting that funding for legal representation be made during this consultation period. On 23rd March, an official in the Cabinet Office Sponsor Team for the Infected Blood Inquiry responded to decline this request. Both his grounds for the refusal and the wording of his reply have caused considerable dismay amongst those affected by this scandal, and this surprising announcement has been the subject of news coverage in both Sky News and the Daily Mail.

I have four grounds for this application.

Firstly, I feel that when explaining the grounds for this decision in the House of Commons yesterday, the Cabinet Office Minister gave an inadvertently misleading impression of the inquiry Chair and the inquiry team's role in this process. In response to a request from Dr Darah Wollaston MP to revisit the decision to deny legal assistance during the Terms of Reference consultation period, he told the House:

"It is, as in any such inquiry, for the Inquiry to decide the level of financial support including for legal representation for the inquiry proceedings."

This is not correct. The Chair is only responsible for funding matters and designating Core Participants after the formal Setting-Up Date of the inquiry, which comes after the Terms of Reference are agreed by the Minister in consultation with the Chair. As we have not yet reached this stage, this is a matter for the sponsoring Department, as it was with Grenfell. In any event, at all stages of an inquiry the sponsoring Department is responsible for the funding of inquiries and must at all

stages remain in close contact with the inquiry to manage costs – this is made clear in page 11 of the Proprietary and Ethics Team’s official guidance on inquiries. Indeed, the very letter of 23rd March which has caused such uproar is from an official in the “Cabinet Office Sponsor Team” and not the Inquiry Team or, for that matter, the Chair. It came from the Cabinet Office’s address in 70 Whitehall and not from the inquiry’s address, which is presently temporarily the Royal Courts of Justice. Further, its author was responding to a letter from Collins Law which was itself addressed to the Minister for the Cabinet Office, and categorically not the inquiry Chair.

As with Grenfell, funding for legal advice during the Terms of Reference consultation period could only be made by the Minister by directing that the Costs Protocol for the Inquiry be amended. It would therefore be grossly misleading to imply that this announcement has anything to do with the Chair and the Inquiry Team, I am deeply concerned that this lack of clarity on the floor of the House risks unfairly shifting the blame for this decision to those who are not responsible. The Minister has a duty to come to the House and urgently clarify his comments. I make this application so that he is able to do so. He is ultimately responsible this funding decision, and I am appealing to him to put this right and thus to lay the proper financial groundwork for the inquiry going forward.

Secondly, I am satisfied that those affected by this scandal urgently need funding for legal advice: it is essential that they receive support during this crucial consultation period. Unless the inquiry Terms of Reference are properly focussed, the whole inquiry process will be flawed. Critics of the Penrose Inquiry in Scotland argue that it failed to get to the answers because the Terms of Reference were not effectively drafted during this extremely important period. We must assume that during this stage many well-funded organisations which are implicated in the disaster will have access to expert legal teams and detailed legal briefings, and may be making their own representations on what the Terms of Reference should look like. There is a need for those directly affected by this tragedy to counter this by having access to their own funding for legal support. For understandable reasons, they also understandably wish to consult with legal advisors before they disclose relevant information, so they are fully informed of its legal implications – this fact was recognised by Sue Gray during the meeting of 7th December 2017, and indeed it was in response to this point that she suggested funding might be available during the consultation on the Terms of Reference.

A vast number of issues need to be addressed during this important consultation period, and the success of the inquiry hinges on whether these are addressed.

There is unanimous agreement amongst those affected that the Terms of Reference must cover the aftermath of the scandal as well as the run-up – including the allegations of a criminal cover-up; the disposal of crucial documents and the ex gratia support schemes. There are also questions over the range of viruses that will be investigated by this inquiry, and the extent to which it will merely look at HIV and Hepatitis C. These points need to be put to the Chair by campaigners who have sufficient resources and information at their disposal.

Thirdly, campaigners and their families have been devastated by this scandal, and I feel that as with Grenfell an exception can be made in their case. The Cabinet Office's letter of 23rd March has caused a great deal of offence, as it draws contrasts between the infected blood scandal and Grenfell and seems to imply that the latter was in some way more tragic or its victims in some way more deserving of this legal help.

I do not wish to contrast two very different tragedies, but I must underline the very severe impact that the contaminated blood scandal has had on people's lives. Over 2,400 people and counting have lost their lives as a result of this appalling disaster, and over seventy people have died since the inquiry was announced in July last year. Amongst tens of thousands of others, this scandal infected virtually the entire community of people with haemophilia at the time – over 4,600 people – with HIV, Hepatitis C and a vast array of other viruses, and the majority of these people have since lost their lives.

Those that remain, and their families, continue to be affected by these viruses and their impact. Many are sadly too unwell to consistently and independently participate in a consultation on the Terms of Reference, and access to legal advice would prove instrumental in ensuring they can participate. I therefore feel that an exception should be made in their case as it was with Grenfell, and that given the scale of this tragedy – the worst treatment disaster in the history of our health service – this would in no way set a precedent for future inquiries.

Finally and perhaps most importantly, given the wide range of campaigners who have expressed concern about this decision, I feel that this announcement risks undermining their future participation in the inquiry. On Monday 26th March 2018, nine campaign organisations wrote to the Cabinet Office to express their dismay at this decision, and as previously mentioned their appeal received subsequent press coverage in Sky News and the Daily Mail. This risks impacting people's trust in the inquiry process.

I also feel that this trust risks being further undermined by the Cabinet Office Minister's inadvertently misleading suggestion that it is the Inquiry Chair, and not the Minister, who may be responsible for this decision. Unless this matter is clarified urgently and the Minister is able to state unequivocally that this is a matter for the Minister and the Cabinet Office, people affected by this tragedy may feel less willing to participate in the inquiry process and the crucial consultation on the Terms of Reference.

In summary, Mr Speaker, I do not make this application lightly, and I welcome the generous amount of time you have given to debating the scandal in the House. I have also met with The Hon. Mr Justice Langstaff and I have full confidence that he and the team he is appointing will be forensic and unwavering in their search for answers and justice. The APPG is strongly encouraging those affected to participate fully in the consultation he has set up, and we will continue to do so. But if this inquiry is to get to the answers, victims deserve proper legal advice during the vital consultation on the Terms of Reference, and given the short consultation period they require it urgently. The responsibility for providing this rests with the Cabinet Office and with the Cabinet Office Minister, and it is for this reason that I am applying for this Urgent Question.

Thank you for your consideration.

Yours sincerely,

A handwritten signature in blue ink that reads "Diana Johnson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Diana Johnson MP
Labour Member of Parliament for Hull North and Co-Chair of the All-Party
Parliamentary Group on Haemophilia and Contaminated Blood