



Recommendations for delivery of the Infected Blood compensation scheme - a statement from Sir Robert Francis KC

Today I have shared with you my recommendations to Government for how the proposed infected blood compensation scheme might be improved, based on the feedback I have received from many in the community of those infected and affected by this issue.

Last May the previous Government published its proposals for a compensation scheme. This was built on the recommendations of Sir Brian Langstaff in his Infected Blood inquiry reports, in particular his second interim report, which in turn was founded on my own framework study published over two years ago.

I have provided these recommendations to Government on their proposals, alongside the advice of the expert advisory group led by Professor Montgomery. The government will shortly publish its response to these recommendations before laying the required regulations in Parliament by 24 August. I have been assured by the Minister for the Cabinet Office, Nick Thomas-Symonds, that the Government is giving serious consideration to all of those recommendations and that they will announce their conclusions very soon.

Community views and feedback

Shortly after I was appointed interim Chair, I made a statement setting out the values I intended to adopt; these include candour, transparency and compassion. I recognise that the new Authority must earn the trust of those to whom we are to deliver compensation; it is imperative that we listen to, and act, on their views.

Infected Blood Compensation Authority



Let me be candid now. The hard-working officials and their advisory group put together the proposals accepted by the previous Government in good faith. They sought to design a scheme to implement the recommendations made in the Inquiry's second interim report. However, they did so without the full benefit of the input of the community - those who have been infected or affected by blood or blood products.

As this community has since made clear, that was not the best way to gain trust in the proposals. When I was appointed interim Chair, I was asked by the previous Government to undertake an engagement exercise. Regretfully, this was somewhat limited in time and scope because of the deadline set for the laying of the scheme's regulations in Parliament (put in place to ensure quicker payments), and because the engagement coincided with the pre-election period. But the engagement sessions undertaken have still been invaluable.

My report owes much to the feedback, so generously provided, by groups representing those who have lived with infections and the effects of contaminated blood and blood products, as well as those who took the trouble to write to us. Your voices have informed my recommendations, as was the case with my framework report over two years ago.

Your suffering, and that of your families and carers, has been - and continues to be - terrible. As the Infected Blood Inquiry's report confirms, the awful consequences of being treated with infected blood products have been compounded by decades of misinformation, lack of candour, ineffective support, and delay in redress. This scandal has blighted the lives of not only those who received harmful treatment, but also of your families and those close to you.

I must express my deepest gratitude to those whom I have met and those who have written to us. Many of you have shouldered the burden and the personal cost of repeatedly recounting your experiences. You have done so not just for yourselves, but for your fellow community members. Many did so at incredibly short notice, and without as full an account of the proposed scheme as would have been ideal. Despite an understandable scepticism as to how much attention would be paid to your views, everyone has made incredibly helpful submissions, with impressive objectivity and dignity.

Short though the time was for me to prepare this report, I believe that my discussions with representative groups and the written submissions we have received have provided a fair picture of what changes to the proposals this community, as a whole, believe would provide greater reassurance.

Conclusions

I have made 74 recommendations, some of them technical, but I have summarised the broad themes below.

Alignment with Inquiry recommendations

Firstly, I believe that the proposed scheme does reflect, broadly, the recommendations that I, and Sir Brian, have made previously. While no amount of money can ever truly reflect the terrible suffering caused by this scandal, taken as a whole the figures and methods of calculating compensation generally fall within the range of what would be awarded in comparable legal cases. As a result, many will receive very substantial awards capable of making a real difference to their lives.

Indeed, some proposed categories of award, particularly for people affected by their closeness to someone who was infected, allow for compensation for matters which might not even be recognised by the courts. As such, some awards may even be in excess of what could be recovered in litigation.

I sympathise with those who feel that their particular circumstances are not fully recognised. However, a compensation scheme is about achieving broad justice at the same time as having a scheme that is as simple as possible to deliver for a majority of victims, as rapidly as possible.

That is why a tariff-based approach has been agreed by the Government, the inquiry and me. The difference in individual cases has been accommodated in two ways. Firstly, the scheme will provide for injury awards which vary according to defined differences in severity. And secondly, it will allow supplementary claims for those whose care costs, or loss of earnings, are out of the ordinary.

Clarity

It is one thing for me to say the proposals are broadly fair. It is quite another for the community and the public to understand and assess the proposals as fair for themselves. It is essential that a far more detailed description is published, by the Government, of the eligibility criteria, the severity criteria, and how the tariffs were devised. Those explanations should be detailed and in clear understandable language, to enable potentially eligible people, and their advisers, to understand.

Support payments

The strongest and most universal message I received was that those in receipt of regular support payments from existing support schemes want those payments to continue. They want compensation to be paid separately from their existing payments.

Fears that the new scheme would result in them being worse off than they are with current support payments, have generated significant anxiety for some members of the community. Some of these fears have been caused by insufficient explanation of the proposals.

I recognise that, for the scheme to have the confidence of the community, those who already receive regular support payments should continue to receive them or equivalent payments in a format they recognise - separately from compensation payments. Cumulatively, this money can provide an appropriate and fair recognition of their injury and loss. I have recommended that, until the support schemes can be merged into the compensation scheme in a way that is trusted by the community, they should continue as they are now.

Relationship between continuing support payments and compensation

If support payments are to be continued, it should be clear how payments relate to the assessment of any future compensation awards. If no regard were given to the support payments made through existing schemes, some recipients of compensation would be paid twice for the same loss: once through an existing support payment intended to meet their needs, and again by a compensation award designed to do the same thing. Such a benefit would not be received by those not already enrolled in support schemes; they would only receive a compensation award for their assumed, or assessed, future care needs and financial losses. That would be unfair.

So, for those who have already enrolled and who would continue to receive periodical support payments, guaranteed for the rest of their lives, those payments after 1 April 2025 should be credited towards any compensation due under the scheme for their future care needs and future financial losses.

However, support payments before 1 April 2025 should be ignored altogether in calculating compensation. These support payments were paid “ex gratia” with no acknowledgement of liability or any wrong. Likewise, support payments to be paid in the future after 1 April 2025 should be ignored in the calculation of injury impact, social impact, or autonomy awards whether concerning past or future suffering or in relation to care awards or financial loss awards for past needs and losses. To deduct the value of support payments from those elements of the award would not be comparing like with like.

A choice of periodical payments or lump sums

It is important that recipients of compensation can be confident that it will reflect their actual life expectancy. This is particularly important for recipients who choose to receive a lump sum which may end up over- or under-estimating how long they will live. As such, I consider that recipients should be able to choose to receive the element of their award reflecting the future, including the support payment, by way of periodical payments, annually uprated for inflation for as long as they live - if they believe that better suits their personal circumstances. Of course, they should be free to choose to receive their entire award as a lump sum and make their own investment arrangements to protect them for the rest of their lives if they want that degree of independence.

Severity bands

I received much feedback about the proposed severity bands. In particular, I noted the concerns about whether sufficient recognition had been given to the factors which led to the creation of the 'Special Category Mechanism' for support payments, and also with regard to psychiatric injury. Among the recommendations I have made, I have asked that the Government's advisory group consider further how these factors can be fairly taken into account. I have also, again, advised that a detailed explanation of the clinical and other factors which distinguish between severity bands be set out in greater detail.

Social impact award

The social impact award is the part of the award which recognises the stigma and other adverse social experiences suffered by people who suffered infections and those who were affected by this. I have suggested that the differential between the two groups was too marked and that it would be appropriate to increase the proposed tariff figure for the affected group.

Autonomy award

The autonomy award will be tariff-based compensation for the interference with people's rights to control what treatment is administered to them, and to be given full and honest information about the risks. Inevitably the amount awarded will be a symbolic recognition of a wrong, rather than based on an assessment of the impact on each individual. In one respect, however, I think the proposal falls short. The Inquiry has found that some people who were infected through blood or blood products were used as research subjects without their knowledge or consent, a particularly egregious case being that of the boys at the Treloar School. I have recommended that the advisory group consider an enhanced award for those who were included in one of the research projects identified in the Inquiry's report.

Care award

I have made several recommendations to clarify the factors taken into account in the tariff-based care award, and for allowing supplementary assessments where reasonable care costs have been paid in excess of the costs represented by the tariff.

Financial loss award

Similarly, I have recommended several technical adjustments to the proposals for the financial loss awards and, as with other categories, a more detailed explanation of the assumptions used to develop the notional period of loss or earnings over the lifetime of people who have suffered infections. I have also recommended reconsideration of the assumption that treatment would have allowed all those infected to return to work.

Awards to estates

Sadly much of the compensation will be awarded in respect of people who have already died because of their infection. I was told that there has been considerable anxiety about the difficulties arising out of making awards to their estates. Much of this anxiety could be removed by providing a clearer explanation of how awards for estates would be assessed, and how such awards are independent of the awards made to persons who had been affected by the deceased's life as an infected person.

I should note, however, that it would not be appropriate for the Authority to intervene in the distribution of the estate's award. To do so would be to change the normal rules of inheritance and intestacy, and would deny deceased victims their freedom of choice of beneficiaries of their estates. However, the only significant asset in many of these estates will indeed be the compensation award, and but for the infection and its consequences, there would have been no estate to administer. I have therefore recommended that a standard sum might be awarded to reflect the additional administration costs, that funding for legal support should be available to assist with the making of the application for compensation, and that consideration be given to making a mediation service available to help with the resolution of family disputes arising out of the compensation.

Legal and other support

Finally, I have recommended that funding should be provided for legal support to assist eligible people with their applications. I also recommend that there should also be a legal advice service for those without legal representatives to assist with the compensation process. There is also a need for the scheme to offer or direct award recipients to a source of financial advice to assist them in the management of the award.

Sir Robert Francis KC



Interim Chair of the Infected Blood Compensation Authority