

Clare Haughey MSP
Health, Social Care and Sport Committee
The Scottish Parliament
Edinburgh
EH99 1SP

MoJ ref: ADR114594

13 May 2024

Dear Clare,

VICTIMS AND PRISONERS BILL

Thank you for your letter of 1st May 2024. The Cabinet Office leads on policy relating to infected blood however I am replying as the MoJ owns the Victims and Prisoners Bill.

On 30th April, Government amendments were added to the Victims and Prisoners Bill which imposed a duty on the Government to establish an Infected Blood Compensation Scheme. The amendments also establish a new arms-length body, named the Infected Blood Compensation Authority, to deliver the compensation scheme. The Authority will operate on a UK-wide basis. I am grateful to you for confirming your recommendation that the Scottish Parliament agree to the LCM. This is vital in ensuring parity and consistency for victims across the UK.

I am also grateful to you for sharing the concerns of your stakeholders. I firmly believe that engagement with and involvement of the community in the Government's response is essential to making sure we get it right. The Minister for the Cabinet Office is currently meeting with infected and affected people across the United Kingdom, ahead of the publication of the Infected Blood Inquiry final report on 20 May. You raised a number of concerns, the majority of which were debated at Report stage of the Victims and Prisoners Bill in the House of Lords on 30 April. I hope my responses below provide some additional reassurance that the Government amendments provide an appropriate and workable legal framework to establish an arms-length body and pay compensation without undue delays.

- 1. Removal of the requirement for the Chair of the Infected Blood Compensation Authority (IBCA) to be chaired by a Judge of the High Court or Court of Session.*

The Government has not currently mandated in legislation that this should be a High Court Judge. I understand the diversion from Sir Brian's recommendation has caused some concern, however we want to ensure that the most suitable candidates have the opportunity to apply to the role and time to transition from any prior commitments. We are entirely open to the idea that the person appointed should be a High Court Judge, but it is essential that the right candidate is selected. We do want to give proper consideration to the input we receive from those who will access the scheme. It is therefore the Government's intention to involve the Infected Blood community in this appointment process for the Chair.

2. *Appeal hearings would no longer have the option to be in person and would be to the new body rather than an independent appeal body. The amendments would also appear to remove independent legal representation and support during an appeal.*

The Government amendments do not limit the procedure for applications. The Government recognises that the operation of the scheme must be both efficient and user-friendly. However, we must also recognise that in person hearings could extend the timeline for payments for individuals and will need to be carefully considered alongside the delivery of the scheme as a whole. For that reason, we have not stipulated the process for application in the primary legislation. We do intend that applicants are supported through this process, and as part of this are considering the provision of legal support.

3. *No provision for the representation of members of the community on the IBCA.*

The Government amendment provides for the Infected Blood Compensation Authority to establish committees and subcommittees, and we anticipate representation of the Infected Blood community in such groups. Our priority is getting money into the hands of as many victims as possible as quickly as possible, so we have refrained from operational mandates on the new Authority in legislation. We hope that the Minister for the Cabinet Office's engagement programme will be a beneficial opportunity to understand how we can move forward collaboratively with the Infected Blood community to reach the right outcome.

4. *That the IBCA should be accountable to Parliament rather than to a Minister or Department.*

The establishment of an arms-length body ensures functional and operational independence (in line with Inquiry recommendations). However, this must be compatible with financial oversight by the arms-length body's parent department and with accountability for the use of public resources. Our framework for the new ALB reflects this, in accordance with the guidance set out in Managing Public Money. The Government amendment (Schedule 1 Part 1, para 11) imposes a duty on the Government to lay an annual report before Parliament on the exercise of the Infected Blood Compensation Authority's duties.

5. *There should be a clear, tight, and agreed timetable to get to the point of operational delivery of the scheme, whereas the amendments propose to remove a 3-month timescale from the provisions of the Bill.*

The Government recognises there is need for clarity on when the measures to establish the compensation scheme will be in place. For this reason, at Report stage, the Government supported the amendment to deliver the regulations to establish the Infected Blood Compensation Scheme within 3 months of Royal Assent, and we are committed to doing so.

6. *There is a lack of detail on amendments relating to compensation payments, specifically, the circumstances in which payments would be held in trust and the possibility for repayments.*

The precise details of the scope and operation of the compensation scheme are being informed by the work of an Expert Group appointed in January 2024 and subject to HMG approvals processes. The Expert Group is looking closely at the Inquiry interim report and the Terms of Reference have been published.¹ As such, this detail will be set out through secondary legislation and will be scrutinised by Parliament in due course.

¹ <https://www.gov.uk/government/publications/infected-blood-inquiry-response-expert-group-terms-of-reference/infected-blood-inquiry-response-expert-group-terms-of-reference-html>

7. *That the Chair should be responsible for all governance, management, structural, operational and organisational development.*

The Government amendment allows for the Infected Blood Compensation Authority to determine its own procedure and the procedure of any of its committees or subcommittees. The Government is clear that the Chair will be pivotal to the running of the new body and the operation of the scheme, but must operate within the parameters that are set, and considered deliverable. The Chair will hold an important role in the delivery of the scheme, ensuring that those who access the scheme are provided with the support required.

8. *That the existing support scheme in Scotland (SIBSS) should be kept separate from the compensation scheme and guaranteed for life and support payments and compensation payments should be 'segregated legislatively'.*

The Government amendment provides for a final compensation scheme and this is distinct from existing support payments. Any changes in how current beneficiaries financial support is paid will be clearly communicated to them in advance. It is worth also noting that the Bill now contains powers to transfer data from the existing support schemes; this provides the ALB with options to make the best use of vital knowledge, expertise and experience the support schemes have gained over the years in order to meet the beneficiaries unique needs and requirements. We are committed to ensuring the scheme is as efficient, effective and fair as possible, and will ensure that we work closely with the existing Infected Blood Support Schemes to do this.

9. *That Hepatitis B victims should be included in the interim compensation arrangements.*

The Government has paid over £400 million to infected people or bereaved partners registered with existing support schemes. The Government amendment (now part of the Victims and Prisoners Bill) makes provision to make £100,000 payments to the estates of deceased infected people registered with existing support schemes or their predecessor schemes. Payments where individuals have not previously been registered will be most expeditiously made through the new Infected Blood Compensation Authority. The specific cohorts eligible for compensation will be made clear in the Government's response to the Infected Blood Inquiry's final report due to be delivered on 20 May.

10. *That those infected and affected by contaminated blood should be involved in the establishment of the IBCA and should have input and a power of veto in relation to key appointments.*

We are committed to working collaboratively with the Infected Blood community on this issue. It is the Government's intention to involve the Infected Blood community in this appointment process for the Chair, and to ensure there is representation on appropriate committees or subcommittees.

11. *Transparency of membership of an expert group that has been established to advise the Government on some of the legal and technical aspects of delivering compensation.*

It is correct (as mentioned above) that the Government is working with the assistance of the Expert Group to devise a fair and costed tariff-based compensation scheme. We have already published the terms of reference and the identity of the Chair of the Expert Group, Sir Jonathan Montgomery. In terms of the other experts, we are conscious of the need to safeguard their privacy, particularly as many work in frontline clinical roles. However, we have now committed to publish the names of the remaining members of the Group, to give the community reassurance about the expertise informing the final compensation scheme.

OFFICIAL

I hope the above goes some way to address the stakeholder concerns you shared. The Government is determined to do this right, and do it quickly, to ensure victims get the justice and compensation they deserve.

Yours sincerely,

A handwritten signature in blue ink that reads "Alex Chalk".

RT HON ALEX CHALK KC MP

LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE