

Information Requested

From: [redacted]@gov.scot>

Sent: 20 October 2021 15:44

To: Minister for Public Health, Women's Health & Sport <MinisterPHWHS@gov.scot>

Cc: Director of Population Health <Directorofpopulationhealth@gov.scot>; DG Health & Social Care <DGHSC@gov.scot>; SGLD Heads of Public Health Branch <SGLDHoPHealthBranch@gov.scot>;

[redacted]@gov.scot>; Swanson J (Joanna) <Joanna.Swanson@gov.scot>; [redacted]@gov.scot>;

[redacted]@gov.scot>; [redacted]@gov.scot>

Subject: FW: Infected Blood - compensation framework study consultation

Hi [redacted]

Further to [redacted]'s previous email about the final terms of reference for the compensation framework study, Ms Todd may wish to see the attached reply from Sir Robert Francis to her in response to her comments on the draft terms of reference. It acknowledges the points made in her letter.

I don't think there's any need to respond at this stage so this is just for awareness.

Best wishes,

[redacted]

[redacted]

Blood Donation and Abortion Policy

Scottish Government

3E, St Andrew's House, Edinburgh

Tel: [redacted]

From: [redacted]@cabinetoffice.gov.uk On Behalf Of IBcompframeworkstudy Mailbox

Sent: 19 October 2021 16:04

To: [redacted]@gov.scot>; Scottish Ministers <Scottish_Ministers@gov.scot>

Cc: [redacted]@gov.scot>

Subject: Re: Infected Blood - compensation framework study consultation

[redacted],

Please find attached a response from Sir Robert to the Minister's letter which contributed to the terms of reference consultation process. Apologies for the delay - as Sir Robert explains in his letter, he wanted to wait to respond once the revised terms of reference had been agreed with the Paymaster General.

As also outlined in his letter, we hope to be in touch shortly to talk to SG about how the Study's work might affect the infected and affected community in Scotland - I

would, therefore, be grateful if you could pass on to those colleagues who may have an interest in those discussions.

Many thanks.

[redacted]
**Secretary to the
Infected Blood Compensation Study**

On Tue, 20 Jul 2021 at 15:31, <[redacted][@gov.scot](mailto:[redacted]@gov.scot)> wrote:

Please see attached a response to this consultation from Maree Todd MSP, Minister for Public Health, Women's Health and Sport.

Best wishes,

[redacted]

[redacted]
Blood Donation and Abortion Policy
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [redacted]

Infected Blood Compensation Study

c/o Room 408, 70 Whitehall,
London, SW1A 2AS

ibcompframeworkstudy@cabinetoffice.gov.uk

Chair: **Sir Robert Francis QC**

Maree Todd MSP
Minister for Public Health, Women's Health and Sport
St Andrew's House
Regent Road
Edinburgh EH1 3DG

By email only: scottish.ministers@gov.scot

19 October, 2021

Dear Ms Todd,

Thank you for your letter of 20 July 2021, responding to the public consultation on the terms of reference for the Infected Blood Compensation Study and welcoming my review on behalf of the Scottish Government. I apologise for the long delay in formally responding to your letter, as I wanted to wait for the conclusion of the consultation exercise and the agreement of the final terms of condition before responding.

As I am sure you will be aware, the new Paymaster General on behalf of the UK Government has now accepted my revised Terms of Reference for the Study, and published them along with my summary report detailing the outcome of the consultation exercise (which can be found [here](#) and [here](#), and I enclose a copy of the new ToRs for ease of reference). As you will see from the correspondence, I was very pleased by the very positive response to the consultation received from the infected and affected community (**447** formal responses, along with over **150** further representations). The summary report shows that the community engaged wholeheartedly with the issues raised in the consultation and their responses will give me much food for thought as I progress my review.

Now that the consultation exercise has been concluded, I am looking forward to the more detailed conversations and analysis that will be required to delve into the detail of the issues raised (to which end, I also recently published details of how the next stages of the Study will proceed, which can also be found at the links above, and am pleased that the existing support schemes, including SIBSS, agreed to assist in distributing that information to their beneficiaries so that they may continue to contribute).

You will have noted that the revised Terms of Reference explicitly require me to take account of the differences between the schemes in each of the devolved nations. I am required to:

“Give independent advice to the Government regarding the design of a workable and fair framework for compensation for individuals infected and affected across the UK

to achieve parity between those eligible for compensation regardless of where in the UK the relevant treatment occurred or place of residence. While the Study is to take into account differences in current practice and/or law in the devolved nations, it is not asked to consider whether delivery of that framework should be managed centrally or individually by the devolved administrations”.

Part of that ongoing conversation process will, of course, be to talk to those within the devolved administrations with responsibility for infected blood policy, and to those who administer the separate national support schemes on their behalf. As you pointed out in your letter, it is important that my review takes into account the potentially different priorities of the infected and affected communities in the devolved nations. Reconciling my final recommendations with the different national legal systems with regards to compensation is one of the many complex issues I will need to ponder. The Study will, therefore, be looking to contact both the Scottish Government and SIBSS in the near future to arrange those conversations.

Many thanks again for taking an interest in the direction and outcomes of my review on behalf of the Scottish Government.

Yours sincerely,

Sir Robert Francis QC
Chair to the
Infected Blood Compensation Study

Infected Blood Compensation Study

Terms of Reference

RATIONALE FOR COMPENSATION

- To consider the rationale for compensation as a matter of general principle and in relation to any particular classes of compensation, recognising that it is not for the Study to pre-empt the determination by the Infected Blood Inquiry as to what, if any, rationale is supported by the evidence it has received;

INDEPENDENT ADVICE TO GOVERNMENT

- Give independent advice to the Government regarding the design of a workable and fair framework for compensation for individuals infected and affected across the UK to achieve parity between those eligible for compensation regardless of where in the UK the relevant treatment occurred or place of residence. While the Study is to take into account differences in current practice and/or law in the devolved nations, it is not asked to consider whether delivery of that framework should be managed centrally or individually by the devolved administrations;

SCOPE OF COMPENSATION

- To consider the scope of eligibility for such compensation (including the appropriateness or otherwise of any conditions such as 'cut-off' dates), and whether it should be extended beyond infected individuals and their partners, to include for example affected parents and children, the wider affected family (e.g. siblings), and significant non-family carers and others affected, either because of the impact of caring responsibilities or the effects of bereavement or some other impact; to include consideration of former and new partnerships/marriages; and whether the estate of any individual who has died should be eligible for compensation;

CATEGORIES OF INJURY AND LOSS

- To consider the injuries, loss and detriments that compensation should address, in relation to the past, present and future, including:
 - (a) the physical impact and consequences of infection/s (including the effect of any treatment, and potential future adverse effects);
 - (b) infections that cleared naturally; and the risk of any significant or long-term side effects of treatment (such as liver damage, increased risk of cancer) even if they are yet to materialise
 - (c) the mental health, social and financial impacts (including access to financial services) - both actual and in terms of loss of opportunities - suffered by both the infected and affected; and
 - (d) other types of loss if appropriate;

TYPES OF AWARD AND METHOD OF ASSESSMENT

- To consider:
 - (a) the extent to which any framework should offer compensation on the basis of an individualised assessment and/or fixed sums or a combination of these (including consideration of the position of an individual who was both infected, and affected by another individual's infection);
 - (b) whether awards should be by way of final lump sums, periodical payments or both
 - (c) whether an individual should be required to prove matters (if so what types of matters, by what means, and to what standard);
 - (d) whether there should be any limitation by way of time or other bar on entitlement or claim, and whether any existing time bars should be maintained;
 - (e) the extent to which compensation should be limited to matters currently recognised by the law (taking into account any differences in the law across the UK) on damages and evidence as recoverable for the purposes of compensation, or, if not, the basis on which broader matters should be taken into account;

MEASURES FOR COMPENSATION

- To consider the measures for compensation, looking at other national schemes (for example, the compensation tribunal established in the Republic of Ireland) to examine their merits or otherwise, and experiences, both as to form (i.e. administration/process) and the substance of compensation;

RELATIONSHIP WITH CURRENT SCHEMES

- To consider the relationship between a compensation framework and other receipts and payments by individuals, including: (a) the pre-existing financial support schemes; (b) legal claims; (c) welfare benefits and tax;

OPTIONS FOR ADMINISTERING THE SCHEME

- To consider options for administering the scheme (including but not limited to what bodies, organisations or tribunals might need to be established to facilitate such administration); what principles, aims or criteria etc might underpin the development of an appropriate scheme; and any ancillary matters which should be considered such as interim payments, publicity of the scheme, outreach to potential claimants, and support;

OTHER ISSUES

- To consider other issues that, in the course of his investigations, Sir Robert considers relevant; and

REPORTING TO GOVERNMENT BY FEBRUARY 2022

- To Submit to the Government its report and recommendations as quickly as possible and no later than the end of February 2022, to provide the Government with advice on potential options for compensation framework design.

From: [redacted]@gov.scot> **On Behalf Of** Minister for Public Health, Women's Health & Sport
Sent: 01 January 2022 12:41
To: [redacted]@gov.scot>; Minister for Public Health, Women's Health & Sport <MinisterPHWHS@gov.scot>
Cc: Cabinet Secretary for Health and Social Care <CabSecHSC@gov.scot>; DG Health & Social Care <DGHSC@gov.scot>; Director of Population Health <Directorofpopulationhealth@gov.scot>; Swanson J (Joanna) <Joanna.Swanson@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; SGLD Heads of Public Health Branch <SGLDHoPHealthBranch@gov.scot>; Paterson J (John) <John.Paterson@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; Hutchison D (David) (Special Adviser) <David.Hutchison@gov.scot>; Communications Health & Social Care <CommunicationsHealth&SocialCare@gov.scot>
Subject: RE: Infected Blood Compensation Framework review - findings from the Scottish consultation process

Hi [redacted],

Miss Todd has noted, thanks.

Kind regards,

[redacted]

[redacted] - Deputy Private Secretary to Cabinet Secretary for Health and Social Care – Humza Yousaf MSP
Scottish Government | St Andrews's House, Regent Road, Edinburgh, EH1 3DG |
Email: cabsechsc@gov.scot | Tel: [redacted]

From: [redacted]@gov.scot>
Sent: 21 December 2021 16:34
To: Minister for Public Health, Women's Health & Sport <MinisterPHWHS@gov.scot>
Cc: Cabinet Secretary for Health and Social Care <CabSecHSC@gov.scot>; DG Health & Social Care <DGHSC@gov.scot>; Director of Population Health <Directorofpopulationhealth@gov.scot>; Swanson J (Joanna) <Joanna.Swanson@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; SGLD Heads of Public Health Branch <SGLDHoPHealthBranch@gov.scot>; Paterson J (John) <John.Paterson@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; [redacted]@gov.scot>; Hutchison D (David) (Special Adviser) <David.Hutchison@gov.scot>; Communications Health & Social Care <CommunicationsHealth&SocialCare@gov.scot>
Subject: Infected Blood Compensation Framework review - findings from the Scottish consultation process

Hi **[redacted]**

Please see attached a routine minute for Ms Todd to provide an update on this.
Please let me know if the Minister has any queries or wishes to discuss it further.

Best wishes,

[redacted]

[redacted]

Organ and Blood Donation, Infected Blood and Abortion Policy
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: **[redacted]**

Minister for Public Health, Women's Health and Sport,

INFECTED BLOOD COMPENSATION FRAMEWORK REVIEW – FINDINGS FROM SCOTTISH CONSULTATION PROCESS

Purpose

1. To update you on the findings of the recent Scottish survey of and focus groups with those infected and affected by infected NHS blood and blood products.

Priority

2. Routine. For information only at this stage.

Background

In your meeting with the Scottish Infected Blood Forum (SIBF) and Haemophilia Scotland (HS) in September, they proposed that there should be a consultation with those infected and affected in Scotland about compensation. This was to allow for their views to be properly fed into the compensation framework review, which Sir Robert Francis is currently carrying out for the Cabinet Office. Following that, the charities submitted a request for a relatively small amount of SG funding for [redacted] of SIBF to carry out the consultation (£[redacted]). The Cabinet Secretary confirmed on 16 October that he was content with the funding being provided for this.

3. The mini consultation included the following:

- An online survey, which the Scottish Infected Blood Support Scheme (SIBSS) was asked to email/send to all its beneficiaries;
- A dedicated phone number for those individuals who feel less able to put their thoughts in writing/did not have internet access, but preferred to speak on a one to one basis;
- Four 1.5 hour focus group-type online meetings to discuss options in more detail.

4. 256 people reportedly completed the survey in November, which is approx. 47% of SIBSS members. In addition, 35 people attended one of the focus groups. The report is very detailed, but a copy of the Executive Summary is at **Annex A** and the list of questions asked is at **Annex B**.

5. The key messages from the report are:

- People want compensation, but still want their existing regular SIBSS payments to continue. The majority did not think any of the money they had received from SIBSS or previous UK-wide schemes should be taken into account and deducted from any compensation calculation.

- The majority don't want to have to undergo detailed personal assessments or were unsure ([redacted]).
- Many wanted an interim compensation payment asap next year and they want to receive their final compensation payments rapidly (with the majority seeming to prefer a single lump sum to regular ongoing payments).
- They wanted family members, such as parents and adult children of those who have died also to be entitled to compensation.

[redacted]

Next Steps

10. SIBF are sending their report to Sir Robert Francis. We and SIBSS staff expect to be invited to meet Sir Robert and his team in the new year to discuss how SIBSS operates. [redacted] We will keep you updated once we get more information on Sir Robert's recommendations.

Recommendations

11. You are invited to note this update.

[redacted]

Health Protection Division

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Health and Social Care			X		

DG Health and Social Care Director of Population Health Jo Swanson [redacted] [redacted] [redacted] [redacted] [redacted], SGLD [redacted], SGLD [redacted] [redacted] [redacted] Davie Hutchison Communications Health and Social Care
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INFECTED BLOOD COMPENSATION FRAMEWORK REVIEW – FINDINGS FROM SCOTTISH CONSULTATION PROCESS

EXECUTIVE SUMMARY FROM THE REPORT

Purpose

This Scottish Consultation was devised and designed to inform the UK wide Compensation Framework consultation being undertaken by Sir Robert Francis QC at the request of the UK Government.

While the UK Government has funded the work of Sir Robert Francis, the Scottish Government has funded the work on this consultation. This consultation remains independent of Scottish Government influence.

Background

The “worst treatment disaster in the history of the NHS” has, through the concerted and sustained efforts of infected, affected people, their advocates and supporting charities, over decades, led to a point where the largest ever UK-wide Inquiry (‘the Infected Blood Inquiry’) has been established. The UK Government has initiated a UK wide Compensation Framework Consultation. Scottish Charities, the Scottish Infected Blood Forum and Haemophilia Scotland, initiated this Scottish based consultation in response to this. The primary vehicles of this consultation are an on-line questionnaire, augmented by Focus Group participation.

Community Engagement & Stakeholder Input

The questionnaire was widely circulated to maximise the potential response rate. Infected and affected members of both Scottish Charities SIBF and Haemophilia Scotland were invited to respond.

Further the scheme manager at SIBSS (Scottish Infected Blood Support Scheme) agreed to distribute the consultation survey to all beneficiaries registered on the support scheme.

The Scottish Infected Blood Support Scheme (SIBSS) has 547 beneficiary members at the time of writing (November/December 2021):

- Around two thirds relate to transfusion cases, and
- Around two thirds are chronically infected with HCV, previously known as ‘stage 1’ infected
- Of these 51% self-assessed as severely affected, 27.5% as moderately affected and 21.6% as negligibly affected.

The broad make-up of SIBSS beneficiaries are further illustrated in the charts in Appendix D.

At 31 March 2021 there were reported to be 3101 beneficiaries of the EIBSS. The SIBSS membership is disproportionately higher than EIBSS membership given relative population sizes. At the time of writing this report, the constituent make-up of the EIBSS is unknown. The Scottish make-up may, or may not be representative of the overall make-up of the other UK schemes.

Results & Commentary

There were 258 responses during the three weeks of the consultation, from 1st to 21st November. This represents 47% of the SIBSS beneficiary numbers as at November 2021 and exceeded the target response rate. Further, 35 infected and affected people attended the 'Zoom' Focus Group sessions which were run in tandem with the consultation survey.

In summary, most people in Scotland who responded...

- Are SIBSS members (96.8%)
- Don't want detailed personal assessments (by a factor of 2.7 times more than those that did)
- Want rapid compensation payments (76%), as lump sums (79%), administered in Scotland (67.1%)
- Many wanted an interim compensation payment asap after mid-March (when Sir Robert Francis reports to Cabinet Office)
- As well as SIBSS continuing in existence & making monthly payments (93%)
- Current and past support and ex-gratia payments must not be conflated with, or treated as, part/'payment on account' compensation (94.5%)
- Want Compensation expanded to other family members and carers (77.5%)

Other responses were also received where most:

- Felt split over whether they should/shouldn't take part in a meeting with Sir Robert Francis, expressing age-related mobility issues, lack of trust and lack of transparency issues dealing with UK Government
- Of those who did, most wanted face-to-face plus 'Zoom' type call-ins

The strong sentiments expressed from the Focus Groups included the above but also:

- The support schemes (SIBSS et al) should remain and continue to make the planned monthly support payments to infected and affected beneficiaries.
- Lump sum Compensation payments should be from the date of infection(s) and recompense for the past (and likely future) harms of the infection(s) and the past toxic treatments which exacerbated the physical harms.

- These ongoing payments are critical to the financial, physical, emotional and psychological well-being of the infected and affected.
- Compensation payments should be funded centrally by the UK Treasury, and
- Compensation payments should not be conflated with past ex-gratia and ongoing support scheme payments.
- To do otherwise would only seek to limit the Government's financial obligations due to people and limit Government's moral obligation to substantially compensate victims.
- An interim lump-sum compensation payment should be recommended by Sir Robert Francis in his report to Government, payable as soon as possible after submission of the report.
- As people and families experience the loss of loved ones and the consequences of decades of "grinding poverty" to delay any payments would be to delay justice.

Appendices

A number of useful appendices are included either for information (in the spirit of the commitment to full disclosure), and in particular to achieve the desire to hear people's voices individually and collectively, whilst preserving the fully justified desire for anonymity.

INFECTED BLOOD COMPENSATION FRAMEWORK REVIEW – FINDINGS FROM SCOTTISH CONSULTATION PROCESS

SIBF/Haemophilia Scotland - Compensation - Scottish Survey Questions

1. Are you registered with any of the UK Infected Blood support schemes?

Yes, SIBSS
Yes, EIBSS
Yes, WIBSS
Yes, NIIBPS
My application is in progress
Application refused

2. To access any compensation payment, please indicate your willingness to undergo a detailed personal assessment based on what has happened to you, even if you have previously undergone an assessment for any other reason.

Detailed personal assessments must not be taken.
I am unsure.
Detailed assessments must be required.

3. How important is it that you receive compensation payments rapidly?

Not important at all.
I am unsure.
It's absolutely critical.

4. Indicate your degree of willingness for new categories of payment to be established beyond those in the present support schemes.

I don't want to see new categories at all.
I am unsure.
It is a must, the existing categories are too limited.

5. Please indicate your willingness for payments to be extended to new categories of people who should be eligible for compensation, for example families and others affected (sons/daughters, mothers/fathers, carers etc.) even if they have not been able to access any financial support schemes previously.

No, payments should not be extended to these people.
Unsure.
Yes, payments must be extended to these people too.

6. How important to you is the maintaining of monthly payments under the present support schemes?

Not important at all.

Unsure.

It is critical these monthly support payments be maintained.

7. Please indicate your preference for compensation payments to be processed through a UK Government based agency (i.e. from London) or Scottish Government based agency (i.e. from Edinburgh).

UK Government based agency.

Scottish Government based agency.

No preference/don't know.

8. If you are already in receipt of payments from support schemes, would you prefer any compensation to be added on a monthly basis to your existing monthly support payments, or would you prefer a one-off capital sum.

Apportioned monthly and added to the monthly support payments.

Be paid as one-off capital sum.

9. What other services would you regard as compensation other than financial payments e.g. personal care, an apology, memorials etc.
{open ended question – text box for response}

10. Would you be willing to take part in a meeting with Sir Robert Francis in person?

Yes

No

11. Regardless of whether you can personally attend or not, do you think Sir Robert Francis must meet in person with the infected and affected community with regard to this compensation scheme consultation, or do you think a zoom or virtual meeting over the internet is sufficient?

- He must offer to meet people face-to-face at selected venues.

- Only online/virtual meetings via Zoom or other platforms would be appropriate.

- Physical meetings must take place with Sir Robert explaining issues face to face and being able to take questions from the audience, AND these meetings should be able to be attended virtually via zoom etc. for those who cannot or are unable to attend personally accepting.

12. Some observers of the process believe there may be a possibility of previous payments received by infected and affected people being considered as compensation, or part-compensation. This might mean they could be treated as 'payments on account' and deducted from any newly designated compensation amount (Sir Robert Francis now calls it "Credit for past payments").

Should any payments you have received already, whether from the support schemes or

Skipton/Caxton/MacFarlane for example, be treated as payments 'on account' of compensation or be deducted from any eventual compensation award?

Yes

No

13. If you have any further comments to add, please do so in the comment box below.

Thank you.

{open ended question – text box for response}