NHS Resolution

8th Floor,
10 South Colonnade
Canary Wharf
London
E14 4PU
Telephone: 020 7811 2700

October 2023
FOI_6167

The following information was requested on 7 September 2023:

Please provide copies of all correspondence relating to Infected Blood Compensation sent to or by the below persons (including any attachments) during the period 5th April 2023 - 5th September 2023.

1) Joanne Evans (Director of Finance and Corporate Planning)
2) Dr Denise Chaffer (Director of Safety and Learning)

For the avoidance of doubt, the scope of this request does not include information about individual patient cases.

Our Response

Please note that Joanne Evans and Dr Denise Chaffer did not send any correspondence relating to Infected Blood Compensation during the period specified.

The only information that we hold that falls within the scope of this request is the attached briefing note which summarises publicly available information about the evidence provided by the Government at the Infected Blood Inquiry hearings.

This briefing note was sent to a group mailbox called SMT (Senior Management Team) and as members of the SMT group, Joanne Evans and Dr Denise Chaffer will have received it in their individual inbox.

We have redacted junior staff names from the briefing note as we do not believe that staff at this level would expect their personal information to be used in this way. Please refer to our Personal Data refusal notice below for a further explanation and our refusal notice.

Section 40 – Personal Data Exemption
We have redacted the names of junior staff as we believe that disclosure of this information is exempt under Section 40(2) by virtue of section 40(3A)(a) of the FOI Act, where disclosure to a member of the public would contravene one or more of the data protection principles. The data protection principles are set out in Article 5 of the General Data Protection Regulation. We take the view that it would not be fair or lawful to disclose such information, and any disclosure would therefore contravene the first data protection principle.

The individuals have not consented to their personal information being used in this way and we do not believe they would have a reasonable expectation that their personal data would be released in this way. Whilst we acknowledge these individuals will have been involved or copied in a working capacity, we believe that the senior managers have overall responsibility for the work, and they would have a reasonable expectation of more scrutiny.

As a disclosure under the FOI Act is essentially a disclosure to the world, we believe that junior staff would not expect their names to be processed in this way.

NHS Resolution believes it has a responsibility to protect those individuals' identities, as disclosure could potentially cause damage and/or distress to those involved.

This concludes our response to your request.

If you are not satisfied with the service that you have received in response to your information request, it is open to you to make a complaint and request a formal review of our decisions. If you choose to do this, you should write to Tinku Mitra, Deputy Director of Corporate and Information Governance, Data Protection Officer for NHS Resolution, within 28 days of your receipt of this reply. Reviews of decisions made in relation to information requests are carried out by a person who was not involved in the original decision-making about the request.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner for a review of the decision. Generally, the Information Commissioner will not make a decision unless you have exhausted the local complaints procedure. The address of the Information Commissioner's Office is:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

https://ico.org.uk/

[redacted]

From: [redacted]
Sent: Tuesday, August 1, 2023 5:17 PM
To: CHESHIRE, Sally (NHS RESOLUTION) <sally.cheshire@nhs.net>; SMT <nhsr.smt@nhs.net>
Cc: YOUNG, Disa (NHS RESOLUTION) [redacted]; [redacted] (NHS RESOLUTION) [redacted]; [redacted]
Subject: For noting - Readout of July 2023 Infected Blood Inquiry hearings: response from Government on the use of infected blood and blood products and the question of compensation

Dear All,

Please find below a readout which focuses on the key points in the Chancellor's evidence to a hearing on the Government's response on the use of infected blood and blood products and the question of compensation. It also includes a summary of the evidence given by other government officials throughout the week. Questions posed to all those who gave evidence pertained to the perceived delay in the Government's response on issues of compensation for those infected and affected. This readout is for noting, and is being shared with you at Helen's request.

You will note that NHS Resolution was mentioned twice, once in the Chancellors evidence and once in Penny Mordaunt's evidence, as highlighted below in yellow.

Hearing schedule

- 24 July,10am: Penny Mordaunt (Paymaster General 2020-2021)
- 25 July, 10am: Jeremy Quinn (Paymaster General 2021-present)
- 25 July, 2pm: Shona Dunn (Second Permanent Secretary, Department of Health and Social Care 2021-present)
- 26 July, 2pm: Rishi Sunak (Prime Minister)
- 28 July, 2pm: Jeremy Hunt (Chancellor of the Exchequer 2022-present, Secretary of State for Health and Social Care 2018, Secretary of State for Health 2012-2018)

The Infected Blood Inquiry's homepage can be found here.

Summary of evidence given by Jeremy Hunt pertaining to compensation

You can watch the evidence session on the Inquiry's YouTube channel here.

Jeremy Hunt was questioned at length on why the Government had yet to publish a decision on compensation, given the Inquiry had already published its full recommendations on compensation in April 2023. Throughout the Chancellors evidence he maintained that the Government's delay in publishing its decision on compensation was based on the "*complexity of the decisions being worked through*" as well as officials needing to consider the *"full context*" of the final recommendations of the Inquiry once published. The Chancellor reiterated that the Government's decision would follow the Inquiry's final publication but did not commit to a more specific timetable. The Chancellor's response to specific issues are included below.

The Treasury's position on compensation for IBI, progress made and timescales for delivery

The Inquiry asked for assurance that compensation was not something the Treasury opposed, given the fiscal implications of the policy options being considered. Jeremy Hunt noted the Government's *"collective position"* was that delivering justice was the right thing to do, but considerable work still needed to be done before a decision could be made. He said:

"I am going to have to give you an answer which I may have to give you more than once this afternoon, but we are genuinely in a situation where no decisions have been made about the level of compensation or how it will be funded. We are in very active and detailed discussions at the moment."

When asked if he was confident that the work being done was at pace, the Chancellor noted that:

"The way Government works might seem frustratingly slow… but I am content the Government is working at pace".

"Given the scale of what we are potentially talking about, I think good progress has been made. There is more work to do, but the purpose of making this progress is because we want to be in a position to avoid any unnecessary delay when your final report is published because we recognise the urgency."

The Chancellor was also asked to speak about evidence he previously gave to the Inquiry. He said:

"As a former Health Secretary when I came before the Inquiry last name, I spoke very freely about the difference between my view and the Department of Health and the Treasury's view and Number 10's view, and we discussed lots of documents that showed the differences in those views".

However, he stated that due to his current position he was now to *"follow collective responsibility"* speaking "*on behalf of the whole Government"* and reiterated that the moral case for compensation had been accepted and that this should provide some assurance that it would be delivered.

Establishing an independent Arm's Length Body to deliver compensation

Jeremy Hunt maintained that establishing an Arm's Length Body to deliver compensation, as described in Sir Robert Francis QC's compensation framework, would be "novel" and have "considerable constitutional implications", but again reiterated that

no decision had been taken on this so far. In considering how compensation would be delivered he stated:

"There are constitutional implications of a novel Arm's Length Body being set up and able to make decisions wholly independently of Ministers and Government, there are economic implications because the kind of sums are potentially very large, the fiscal implications, that is to say the implications for taxpayers, again because the sums of money are potentially very large."

Delivering compensation in the wider economic and fiscal context

Jeremy Hunt was questioned about successive Government's delays in delivering compensation. Counsel noted that had these delays not occurred, compensation would not be being delivered in the current financial climate and would have cost the Government substantially less. Jeremy Hunt said:

"The first decision you have to make is do you believe justice should be done… and the Government has decided it should. The small ministerial group has not made any decisions yet, but when it does the Chancellor then has to make a judgement about what is affordable in the current context and how to do justice in the context of the economic and fiscal situation."

"I can't ignore the economic and fiscal context. In the end the country only has the money that it has. In the end I can't ignore it, but everyone here should take some comfort from the fact that the Government has decided that there is a moral case for compensation."

The cost of clinical harm

For the purpose of providing context on the annual provision of compensation to those clinically harmed in the NHS, Counsel referenced the **NHS Resolution's** Annual Report and Accounts (2021/22). Jeremy Hunt was asked to consider a passage in the Chair's welcome which references the cost of harm (copied below). In responding, Jeremy Hunt said:

"There is a difference between liability and how much is actually paid, and I think it is around two and half billion pounds and personally I think that is criminally high. The reason I think why it's so high is because we don't learn enough from mistakes."

"If you look at, for example maternity, which is the bulk of …62% of hospital clinical claims, we spend more on maternity claims than on the cost of every obstetrician and maternity nurse in the NHS every year, so it is an appalling waste that we do this and we need to be much better at learning from mistakes".

"This not just an NHS issue, and this is the case in healthcare systems around the world, that they have these sums of money which we would not have to spend if we were better at learning from mistakes and had more open and transparent systems".

Jeremy Hunt also highlighted that the incentive of claimants was often not financial, but to prevent harm in future.

Passage read from NHSR ARA page 8:

Irrespective of all the above achievements, the cost to the public purse of responding to clinical negligence continued to rise over the last year with damages payments under

secondary care clinical schemes increasing by 10.3% to £1.775 billion and claimant and NHS legal costs also rising, the latter at a slower rate than the former. The biggest single influence on our provision remains the long-term discount rates set by HM Treasury to place a value in today's prices on payments against claims that we expect to make many years into the future. The 2021 discount rate reductions have increased the forward provision by £42.6 billion to £128.6 billion. This is an accounting provision that will further change with future rate changes. Another important figure to focus on is the provision for CNST for claims arising from incidents in 2021/22, which is £13.3 billion, a figure we have referred to previously as the "annual cost of harm". Removing the effect of the HM Treasury discount rate change translates this figure to £8.7 billion which is comparable to previous years, while remaining a very significant sum.

Summary of evidence given across the week pertaining to compensation

All those who gave evidence were questioned on the progress made towards the Government's decision on compensation for those infected and affected, and the speed at which work was being done. Questions were placed in the context of the Government having accepted the moral case for compensation, the Inquiry having published its full recommendations on compensation in April 2023, and the publication of Sir Robert Francis QC's compensation study in June 2022. All attendees maintained that work was underway at pace, but that no decision had been made on what a final scheme might look like, both in terms of who would be compensated (beyond those already eligible for the interim payments) and the framework or method for its administration.

NHS Resolution was mentioned briefly during Penny Mordaunt's evidence when she was asked to clarify whether in a letter encouraging Government to act on delivering compensation, the reference to existing Arm's Length Bodies meant NHS Resolution, to which she responded that her comment was not that specific.

Best Wishes,

[redacted] | Policy, Strategy Team
NHS Resolution, 8th Floor, 10 South Colonnade, Canary Wharf, London, E14 4PU

Advise / Resolve / Learn
resolution.nhs.uk