



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Victims and Prisoners Bill — Infected Blood
Compensation Scheme: Department of
Health

9 May 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Liz Kimmins (Chairperson)
Mr Danny Donnelly (Deputy Chairperson)
Mr Alan Chambers
Mrs Linda Dillon
Mrs Diane Dodds
Miss Órlaithí Flynn
Miss Nuala McAllister
Mr Colin McGrath
Mr Alan Robinson

Witnesses:

Ms Lesley Heaney Department of Health
Ms Liz Redmond Department of Health

The Chairperson (Ms Kimmins): In attendance from the Department today, we have Lesley Heaney, head of the Infected Blood inquiry team, and Liz Redmond, director of population health. You are both very welcome. Apologies for the delay in starting. We appreciate you waiting; thank you. After you make your opening comments, I will open it up to questions from members.

Ms Liz Redmond (Department of Health): Sure. Thanks very much for asking us to attend today. My colleague Lesley and I are here to brief you on the Victims and Prisoners Bill. It is UK-wide legislation, which is going through Westminster, to establish a UK-wide infected blood compensation scheme. I hope that you have seen the written paper that we provided to the Committee on 30 April.

The Chairperson (Ms Kimmins): Yes.

Ms Redmond: There have been a few developments since then. My intention is to provide you, in these opening remarks, with a little bit of an update and overview of what has happened since then.

Minister Swan wrote to your Committee on 21 March to advise that the UK Government planned to bring forward amendments to the Victims and Prisoners Bill in order to establish a UK-wide compensation scheme for people infected and/or affected by contaminated blood. The Committee was advised that the Bill, in its original form, applied only to England and Wales and that, in order to establish a UK-wide compensation scheme, the relevant amendment would need to be extended to include Northern Ireland and Scotland. Legislative consent would also need to be requested from all the devolved Administrations to ensure that the infected blood compensation scheme that will be set up under this legislation is UK-wide.

The written briefing paper that we sent to your Committee in April set out the rationale for a UK-wide compensation scheme, which can be summarised as follows. The first point is that the chair of the Infected Blood inquiry, Sir Brian Langstaff, recommended in his second interim report that a UK-wide compensation scheme should be set up and that it should have a central organisation concentrating resource and expertise. The second point is that the infected blood tragedies occurred between 1970 and 1971, which was prior to the devolution of legislative and executive powers to Northern Ireland, Scotland or Wales. The third point is that the final submissions to the Infected Blood inquiry from core participants in the infected blood community in Northern Ireland supported a single UK scheme to ensure that all those affected across the UK are treated fairly. There is a fear that, if we were not part of a UK-wide scheme, further political instability here could put those in Northern Ireland who are affected at a disadvantage.

Another point is that a UK-wide scheme would mitigate the risk of further disparities in financial redress across the UK Administrations. Northern Ireland does not have the financial resource to fund a compensation scheme of the order of magnitude recommended by Sir Brian Langstaff. Estimates suggest that the cost of a compensation scheme as proposed would run into billions of pounds. Also, given our small size and population, Northern Ireland simply does not have the clinical or legal expertise to establish the expert panels that are proposed by Sir Brian. That is the rationale that we see for Northern Ireland's inclusion.

The briefing paper also sets out for you the risks of not including Northern Ireland in the Bill. The first risk is the potential cost, administrative and financial, associated with setting up a separate Northern Ireland compensation scheme. There would be a diversion of policy resource in our Department and in the resources of the Assembly and a requirement to add to the legislative timetable here. Also, to legislate for a specific NI scheme could create a risk that funding may have to be found from within the existing Northern Ireland block grant, which could impact on public services, as something would have to be stopped to fund that compensation.

Not taking the opportunity to be part of a Treasury-funded UK scheme would go against the recommendation of Sir Brian Langstaff, which would be considered controversial. Even if the budget and expertise were available to set up a Northern Ireland compensation scheme, that could take longer and risk future divergence, and, as I have said, the preference of Northern Ireland representative groups is for a central UK compensation body to oversee a compensation scheme.

I turn now to the legislative process in Westminster and the legislative consent process here. On 17 April, the UK Government tabled its amendments to Part 3 of the Victims and Prisoners Bill in order to provide the legal framework required to respond to the Infected Blood inquiry recommendations on compensation. The amendment requires the Secretary of State or Minister for the Cabinet Office (MCO) to establish, on the day that the Bill receives Royal Assent, an arm's-length body — to be named the Infected Blood Compensation Authority (IBCA) — to administer an infected blood compensation scheme. Subject to consent from the devolved Administrations, the IBCA will operate on a UK-wide basis to ensure parity and consistency.

The amendment to the Bill places a duty on the UK Government to establish, by way of subsequent regulation, a statutory infected blood compensation scheme for those infected and/or affected by contaminated blood. The amendment enables the Secretary of State or Minister for the Cabinet Office to specify bodies that will have a duty to cooperate with the IBCA. The regulations will not be able to specify a Northern Ireland body or person, however, without the consent of the Northern Ireland Department of Health. The amendment to the Bill also provides the power for the Secretary of State or Minister for the Cabinet Office to make one or more transfer schemes for the purposes of transferring rights and liabilities to the IBCA to carry out its functions. It will not be possible for a transfer scheme to be made in respect of the Department of Health or the Business Services Organisation (BSO) unless the Department consents to that.

The UK Government amendment to Part 5 of the Bill extends the territorial scope of Part 3 of the Bill — the part that relates to infected blood compensation — to the whole of the UK. Therefore, Parts 3 and 5 are both relevant. In addition, the amendment will require the UK Government to make further interim compensation payments of £100,000 to personal representatives — that is, the estates — of qualifying infected deceased persons. I will talk a little bit more about that in a moment.

The Bill was debated in the House of Lords on 30 April, and most of the UK Government's amendments were agreed. The UK Government also accepted a Labour amendment to deliver the regulations to establish the compensation scheme within three months of the Bill receiving Royal Assent. In other words, the regulations to establish the scheme would need to be made within three

months of the Bill becoming law. The Bill, however, was not debated in totality on 30 April: midway through consideration of Part 3, further debate was adjourned until 13 May. Subsequently, only yesterday, we were told that that debate has now been rescheduled for Tuesday 21 May. The amended clause in Part 5 of the Bill, which makes the provision to extend Part 3 to Northern Ireland, has therefore not yet been debated or agreed.

I mentioned that, through the amendment of Part 3, provision is made for further interim compensation payments. That is in respect of the estates of those who died before July 2022 and who did not have a partner, a spouse or estate already recognised through the previous interim payments made in October 2022. That is not exactly in line with recommendation 12 of the inquiry's second interim report, which was that an interim payment of £100,000 should be paid to recognise the deaths of people who have, to date, been unrecognised. Specifically, that recommendation said that payments should be made to bereaved parents, split equally if separated; that payments should be made to a bereaved child or children, including adopted children, split equally; and that, where someone infected has died and there is no bereaved partner, child or parent, payment should be made to a bereaved full sibling or siblings, split equally.

Given the sheer complexity of administering such a scheme as set out in that recommendation, and the length of time that that would take, the UK Government amendment requires instead that the interim compensation payments are made to personal representatives of qualifying infected persons who are deceased. The personal representative would be required to distribute the moneys in accordance with the deceased person's will or under the rules of intestacy where there is no will. The policy for those interim payments would be that only one payment could be made per deceased person. If, following the inquiry's interim report in July 2022, a partner or spouse beneficiary has already received a payment of £100,000, or, subsequently, an estate of someone who passed away after July 2022 received a £100,000 payment, there will be no further interim payment in respect of the deceased person under that interim provision. The interim payments set out in the Bill represent a solution that should see compensation paid relatively quickly to affected relatives who are named in the deceased's will or under intestacy rules. In cases that do not meet the criteria set out in the Bill, a claim can be made to the new infected blood compensation scheme when it has been established and becomes operational.

I turn to the process of seeking legislative consent from the Northern Ireland Assembly. Minister Swann wrote to the Minister for the Cabinet Office, John Glen MP, on 24 April to confirm his intention to seek the consent of the Northern Ireland Assembly for Part 3 of the Bill to extend to Northern Ireland by way of Part 5, as I explained. Under Assembly Standing Order 42A, with which I am sure you are familiar, a legislative consent motion (LCM) should be laid within 10 working days of the day that the Bill completes the Stage in Parliament during which the amendment that affects Northern Ireland is made.

The Scottish Parliament gave its consent to Scotland's inclusion in the Bill on 30 April, following consideration by its Health, Social Care and Sport Committee and its Delegated Powers and Law Reform Committee. The Scottish Parliament has written to the Minister for the Cabinet Office to confirm that already. The matter was also debated in the Welsh Parliament this week on 7 May. Members voted on the motion and agreed to consent to Part 3 of the Bill. Scotland and Wales, therefore, have both now consented.

At the same time as Minister Swann initially wrote to your Committee on 21 March, he also wrote to Executive colleagues to seek their agreement in principle, setting out in detail the rationale for Northern Ireland's inclusion in the Bill. A further Executive paper will be shared for discussion at the Executive meeting on 23 May, which is in two weeks' time. At that point, Minister Swann will write to your Committee again to provide an update. Following that, a legislative consent memorandum will be sent to the Speaker, requesting that a legislative consent motion be debated. The UK Government are working to achieve Royal Assent for the Bill before the summer recess.

I will finish with a few words to cover a point on consultation. The Infected Blood inquiry is a UK inquiry that is sponsored by the Cabinet Office. The UK Government have accepted moral responsibility for the infected blood tragedies and are leading on the work to respond to the inquiry's recommendations for compensation. The decision to use the Bill as a means to establish a compensation scheme came about as a result of an Opposition amendment, in reply to which the UK Government tabled the amendment that we have discussed and that is currently with the House of Lords. Therefore, there has been no formal written consultation process. However, the Minister for the Cabinet Office, John Glen MP, wrote to and, on 3 May, met key stakeholders in Northern Ireland, namely the Haemophilia Society, Haemophilia NI and Friends and Families of Haemophilia NI. Minister Swann also attended

that meeting to offer his direct support. He has met those representative groups a number of times since he first took office in January 2020. Prior to the meeting with the Minister for the Cabinet Office, Minister Swann met groups on 14 March to discuss the Victims and Prisoners Bill and a UK compensation scheme.

The infected and affected community, including the main representative groups in Northern Ireland, provided evidence to the inquiry and were consulted by Sir Robert Francis's compensation framework study, which informed the inquiry's recommendations on financial support. The UK Government amendment is based on recommendations from the Infected Blood inquiry's second interim report.

The inclusion of Northern Ireland in the Victims and Prisoners Bill will ensure that those in the infected and affected community here have the opportunity, along with those in other UK jurisdictions, to apply to a UK-wide compensation scheme, as recommended by the chair of the Infected Blood inquiry. Thank you, again, for inviting us to attend today. We are very happy to take any questions. Of course, we will write to you again within the next couple of weeks.

The Chairperson (Ms Kimmins): Thank you, Liz. You have probably answered every question that I had ahead of the briefing, specifically those about the £100,000 payment: to whom it will be made and how it will be made. I was not sure whether it would be paid to one person, but you have clarified a lot of that.

You talked about consultation. You said that the British Government consulted with some of the groups here in the North. In the interim before the LCM is laid, has there been consultation or engagement with the Department and those groups? We met Nigel Hamilton from Haemophilia NI, and its AGM is coming up.

You outlined a bit of a time frame for the laying of the LCM in the Assembly. Do we have a date for that? You talked about the Executive meeting. It is just to give us an idea.

Ms Redmond: I will take your second question first, and then I will turn to Lesley to answer the first question, as she is very much in touch with the community here.

On the second point, we are taking advice on that, because we are unsure whether we can proceed with legislative consent on the basis of just Part 3 of the Bill — which is the substance, if you like — being agreed or whether we need to wait until Part 5 is also agreed; Part 5 extends to Northern Ireland the territorial scope of Part 3, which relates to the compensation arrangement. We are taking advice on that. However, we need to go back to the Executive. We are timetabled in for 23 May, so it is all likely to happen at about that time. The LCM should progress just after that. That is our current estimation. We have already had a shift in time frames from the House of Lords — we cannot vouch for what is going to happen there. However, we will proceed anyway, without Part 5, if our legal advice is that we can. I am afraid that I cannot be absolute, but we think that it will start about two weeks from now.

The Chairperson (Ms Kimmins): OK, that is grand. Thank you.

Ms Redmond: Lesley, do you want to comment on the consultation?

Ms Lesley Heaney (Department of Health): Liz has already covered most of it. There has been no formal consultation in Northern Ireland because the Infected Blood inquiry is UK-wide, sponsored by the Cabinet Office. The UK Government have accepted moral responsibility for the tragedies. As Liz said, the Minister for the Cabinet Office is leading on engagement with our stakeholders and met them on 3 May, when Minister Swann was in attendance.

Minister Swann met those same groups himself earlier — on 14 March, shortly after coming back into post — to discuss the Victims and Prisoners Bill, the UK compensation scheme and the UK Government's plans for that. It is important to bear in mind that what we call the infected and affected community, including the main groups that were mentioned, provided evidence to the inquiry and were consulted during Sir Robert Francis' compensation framework study. That study informed the inquiry's recommendations, and the UK Government amendment is based on the inquiry's recommendations.

The Chairperson (Ms Kimmins): I am sorry: Liz said that the Minister had met them; I had forgotten that.

Mr Donnelly: Thank you for that. This has been a long-standing campaign in Northern Ireland for many years. Sadly, as has been mentioned, some people have passed away during that time. It is important that these people get the compensation that they are entitled to.

You mentioned the meeting that the Minister had with the community. Can I take it from that that the Minister is aware of the concerns that have been raised by the community, in particular about the deviations from the recommendations, including the removal of timescales? There is a lot of uncertainty around this. Is there any movement in the Minister supporting the concerns that members of the haemophilia and infected blood community have raised about the deviations from the recommendations? Can you give us any clarity on that?

Ms Heaney: The Minister met the groups on 14 March, which was a month before the UK Government amendment was tabled in the House of Lords. At that point, we and the groups would not have been aware of the deviations that you refer to. However, they will have raised those issues with John Glen, the Minister for the Cabinet Office, when they met him on Friday 3 May. From what I understand about the deviations — issues around the appointment of the chair to the compensation authority and things like that — those are matters for the Cabinet Office rather than devolved matters. The groups have not written to Minister Swann to raise them, presumably because the engagement has been with the MCO.

Mr Donnelly: The Minister is certainly aware of the concerns that the community in Northern Ireland have raised about those deviations; is that right?

Ms Heaney: He will be aware because he was at that meeting.

Mr Donnelly: Thank you.

The Chairperson (Ms Kimmins): There are no further questions from anyone. Thank you, both. That has definitely been very useful; it has given us an update on where things are at. Thanks. I am sure that we will see you again soon. All the best.