



The Scottish Parliament
Pàrlamaid na h-Alba

Alex Chalk MP
Lord Chancellor and Secretary of
State for Justice

Via email only

Health, Social Care and Sport Committee
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1 May 2024

Dear Secretary of State,

Victims and Prisoners Bill

1. I am writing to you in my capacity as Convener of the Scottish Parliament's Health, Social Care and Sport Committee.
2. On 17 April 2024, during the Report Stage in the House of Lords, the UK Government lodged amendments to replace the previous Part 3 provision that was included in the Victims and Prisoners Bill in the House of Commons. The provisions in these amendments triggered the requirement for a legislative consent memorandum (LCM) under Rule 9B.3.1(c) of the Scottish Parliament's Standing Orders.
3. The Health, Social Care and Sport Committee's scrutiny of the LCM was therefore expedited. The Committee considered an LCM from the Scottish Government in relation to the Bill at its meeting on 30 April 2024.
4. As part of our pre-emptive scrutiny of the anticipated lodging of an LCM, we wrote to Scottish stakeholders about the content of the amendments lodged on 17 April. Haemophilia Scotland and the Scottish Infected Blood Forum submitted evidence to the Committee expressing significant concerns.
5. The committee concluded its scrutiny by recommending that the Scottish Parliament agree to the LCM. However, we also committed to write to you to further highlight Scottish stakeholder concerns.

Stakeholder concerns

6. The submission from Haemophilia Scotland states that it has "serious concerns over some of the proposed changes which deviate from the recommendations" of the Infected Blood Inquiry's [Second Interim Report](#). When asked for further detail of these concerns, the organisation provided further information of some of the areas of deviation in its submission. These include:
 - 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.
 - 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.
 - No provision for the representation of members of the community on the IBCA.
7. Other points raised in the responses include:
 - That the IBCA should be accountable to Parliament rather than to a Minister or Department.
 - That 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.
 - 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.
 - That the Chair should be responsible for all governance, management, structural, operational and organisational development.
 - That the existing support scheme in Scotland (SIBSS) should be kept separate from the compensation scheme and guaranteed for life.
 - That support payments and compensation payments should be 'segregated legislatively'.
 - That Hepatitis B victims should be included in the interim compensation arrangements.
 - 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.
8. The responses from stakeholders also raised concerns about the 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. Sir Jonathan Montgomery has been appointed as the chair of the group but the responses state concerns that he has previous links to Bayer Pharmaceuticals and the NHS. They are also concerned that the other members of the group are anonymous.
9. I have included a full copy of stakeholder submissions at annexe A.
10. I would be grateful if you could respond to the Committee by Monday 13 May 2024 in relation to the concerns outlined in this letter, setting out any further action the UK Government intends to take to address these.

Yours sincerely

A handwritten signature in black ink that reads "CHaughey". The signature is written in a cursive style with a large, looped 'H' and a long, sweeping tail on the 'y'.

Clare Haughey MSP
Convener, Health, Social Care and Sport Committee

Annexe A: Written submissions

Haemophilia Scotland submission, received 23 April 2024

Thank you for your letter dated 18th April 2024 inviting our organisation to express its views on the recently published amendments from the UK Government to the Victims and Prisoners Bill.

We regret the short notice to respond in this matter, as our comments and recommendations are provided prior to the House of Lords sitting to debate the new amendments in the current Report Stage. Additionally, these views are expressed before our scheduled meeting with the Minister for the Cabinet Office, which is set for the 10th of May.

We have serious concerns over some of the proposed changes which deviate from the recommendations set out by Sir Robert Francis in his Compensation Framework Study and later refined by Inquiry Chair Sir Brian Langstaff in his Second Interim Report.

However, we need to get this legislation into place so that swifter progress can be made to establish a compensation scheme for infected and affected individuals. Several of these matters might be addressed through further amendments in either the House of Lords on the same day the Committee meets or otherwise.

On balance, therefore, we recommend the Scottish Parliament passes the Legislative Consent Motion (LCM) for the relevant sections of the V&P Bill including the proposed UK Government amendments.

There is however another related matter that we seek the Scottish Parliament's support for. The anonymous make-up of the UK Government's Infected Blood Inquiry Response Expert Group to determine the framework and tariffs for the new compensation scheme is deeply troubling. Without knowledge of the names, size and composition of this Expert Group, apart from Chair Professor Sir Jonathan Montgomery, we are uncertain about the level of specialism and experience the group possesses in this field, and specifically any expertise in Scots Law.

It is a critical body that will be the platform and structural base of the system for setting the levels and making compensation payments to those infected and affected.

This appears to be contrary to the Nolan principles for public life and we know of no such similar precedent set by the Scottish Parliament or Scottish Government. We urge the Parliament to raise this with the Scottish Government and support them in challenging the UK Government to remove the shroud of secrecy on this vital matter.

Should the Committee wish, I would be happy to offer oral evidence on the 30th of April in support of the above. However, given my own medical condition, I would prefer to do so by video link if needed.

Follow-up submission from Haemophilia Scotland, received 25 April 2024

Addendum to Victims and Prisoners Bill Legislative Consent Memorandum Letter

In addition to our letter dated 23rd April 2024 wherein we expressed our views on the UK Government's amendments to the Victims and Prisoners Bill, this addendum aims to provide more detail on our concerns regarding the deviations to the recommendations initially proposed by the Infected Blood Inquiry in its Second Interim Report.

The concerns outlined below are not prioritized in terms of severity. Since the publication of the amendments, Haemophilia Scotland has been actively advocating along with other organisations involved in the contaminated blood scandal for additional amendments to be tabled. These amendments would seek to address and mitigate the highlighted concerns.

1. Removal of three-month timescale to establish the Compensation Arm's Length Body.

The new Government amendments would remove the timescales included in Clause 40 (1) of the Victims and Prisoners Bill of a commitment to set up the new body promptly once the Act was passed. There is a need for greater transparency and a clearer indication of timescales from the UK Government after so many months of uncertainty that compensation would ever be paid. Removing this deadline would only compound this and allow the potential for further delays.

2. Removal of recommendation for the new body to be Chaired by a Judge of the High Court or Court of Session.

The elimination of the proposal outlined in Inquiry Recommendation 14 is deeply concerning. Its intent was to ensure the appointment of an independent chair possessing the necessary expertise and judgment to lead a compensation scheme of this size and nature. We fail to see any justification for deviating from these criteria for such a pivotal role.

3. Proposed Changes to Hearings and Support to Applicants.

New amendment OPC300 suggests that the right of appeal would differ from the format suggested by Inquiry Recommendation 14 with the implication that hearings would no longer have the option to be in person. This would remove the ability for an applicant to stand before a panel and justify their position clearly and more effectively than the alternatives, should they wish to do so. Additionally, amendment OPC349 suggests the removal of independent legal representation and support for applicants who wish to appeal a decision. Appeals would also be to the new compensation body itself and not to a bespoke independent appeal body as the Inquiry recommended. This is understandably troubling if the entire appeal process is contained within the new body and any support is also provided from the same source.

4. Compensation Payments.

Amendment OPC298 addresses the payments to be paid by the Infected Blood Compensation Scheme. While several details relate to regulations yet to be established, two areas of concern are notable: the mention of payments being held in trust and the possibility of repayments to the IBCA under specified circumstances. The absence of further details regarding the circumstances these would come into effect is cause for alarm. There is great concern that existing support scheme payments through the Scottish

Infected Blood Support Scheme or any previous disbursements could be jeopardised by these forthcoming regulations.

5. Community and National Involvement in Infected Blood Compensation Body (IBCA).

There is no provision for representation in the IBCA Membership from the community itself or from the devolved nations. This is once again in contrast to Inquiry Recommendation 14 b) which recommends the inclusion of eligible persons and their representatives within an advisory board to assist in the review and improvement of the scheme. Representation from the community is vital to ensure accountability and trust of the newly established scheme.

I hope that the information provided above is beneficial to the Committee. We are of course happy to provide any further assistance as needed.

Submission from the Scottish Infected Blood Forum, received 24 April 2024

Victims and Prisoners Bill Legislative Consent Memorandum

Thank you for your letter dated 18th April 2024 inviting our charity to express its views on the recently published amendments from the UK Government to the Victims and Prisoners Bill in anticipation of the legislative consent memorandum (LCM) being lodged and referred to your Committee.

We, like others, have very serious concerns over some of the proposed changes which deviate from the recommendations set out by Sir Robert Francis in his Compensation Framework Study and subsequently refined by the Infected Blood Inquiry Chair Sir Brian Langstaff in his Second Interim Report.

In our opinion the recommendations in Sir Brian's report should be accepted in full. Legislatively there should be no fundamental deviations from those recommendations under the pretext or guise of technical, practical, timeframe or other "operationalisation" reasons.

We are very conscious of the balance between getting legislation into place so that swifter progress can be made to establish a compensation scheme for infected and affected individuals, and moving 'at pace' and then getting it wrong with little possibility of retrospective changes being enacted once views and actions have been solidified.

We are also conscious that several of these matters might be addressed through further amendments in either the House of Lords on the same day the Committee meets or otherwise. But there is no guarantee that this will happen. Indeed, there should not be a presumption that this will happen given the UK Government's track record of delay, obfuscation and prevarication.

However, and for the avoidance of doubt, our views extend to the following areas:

a) Accountability: To truly be an arms-length body, the Infected Blood Compensation Authority ("IBCA" or "the scheme") must be accountable to Parliament, not a Minister or Department.

- b) Chair: A High Court judge (or equivalent) must be appointed as the Chair of the IBCA.
- c) Support schemes: The four nations' financial support schemes must be kept separate from IBCA, retaining all their respective devolution features (e.g. self-declaration/assessment in the Scottish scheme) and must be guaranteed "for life".
- d) Conflation: following on from above, support payments must not be conflated with compensation payments and must be explicitly segregated legislatively in the proposed bill.
- e) Participation: Infected and affected people must be immediately involved in all stages of establishing the new compensation body.
- f) Hepatitis B: chronic HBV victims must be immediately included for interim compensation.
- g) Responsibility: All governance, management, structural, operational, organisational development is to be led by the Chair, who must not be hamstrung by pre-set arrangements put in place by Government.
- h) Timelines: There must be a clear, tight, and agreed timetable to get to the point of operational delivery of the scheme.
- i) Appointments: The infected and affected community must have an input and veto option on key appointments to IBCA.
- j) Transparency: There must be full disclosure of the Government's responses to and deliberations concerning the Sir Robert Francis KC compensation framework study and the Inquiry's second interim report covering the periods from their publication.

Additionally, there is another related matter that we seek the Scottish Parliament's support for. The anonymous make-up of the UK Government's Expert Group whose decisions will be critical to the foundation of the system for framework and tariffs for the new compensation scheme. The lack of transparency on this is profoundly concerning. Indeed there are calls within the Forum membership for the group to be disbanded. Specifically, with respect to Professor Sir Jonathan Montgomery, his CV includes working for Bayer Pharmaceuticals and Chairing the Oxford NHS Trust, both of which are significantly implicated as culpable in the evidence presented to the Infected Blood Inquiry. This appointment in particular is seen as fundamentally wrong in the eyes of the infected and affected.

Without knowledge of the membership of the Expert Group, apart from Chair Professor Sir Jonathan Montgomery, we are uncertain about the level of specialism and experience the group possesses in this field, including any expertise in Scots Law. From recent meetings with Scottish Government Officials, we know that Scottish Government have still to be advised of the Scottish firm of solicitors assisting the Expert Group on matters relating to Scots Law.

Furthermore, we have serious concerns about the outputs and outcomes arising from this group and its work being at odds with, or watering down, the recommendations of the UK

Government's own advisor Sir Robert Francis, and the Government's own independent Inquiry.

We urge the Committee to raise these points with the Scottish Government and support them in challenging the UK Government to remove the shroud of secrecy on this vital matter and question the validity of this group which we consider to be unnecessary and unwelcome.

We finally urge the Health Committee to look at all the specific issues and inclusions outlined above to aid the Scottish Parliament in passing the Legislative Consent Motion (LCM) for the relevant sections of the V&P Bill while opposing those which are not in the best interests of Scottish citizens or devolution.