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Friday, 16th April 2010

Composer wins blood payout challenge

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An award-winning composer from west London, who contracted HIV and Hepatitis C through NHS treatment with contaminated blood products, has won his legal challenge over compensation payments.

Haemophiliac **Andrew March**, 36, of Edith Road, West Kensington, had sought a judicial review quashing the Health Secretary's May 2009 decision not to implement fully the recommendations of the Archer Report on supplies which were not adequately cleaned before use.

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The Government has refused to assess compensation on the same basis as in the Republic of Ireland as it considers that the Irish blood transfusion service was found to be at fault, which was not the case in the UK.

At a hearing last month, Mr March's counsel, Michael Fordham QC, told Mr Justice Holman a judicial review was warranted as the decision was made for manifestly bad reasons.

Supporters of legally aided Mr March - who attended London's High Court for the ruling - applauded as the judge said he was satisfied that the Government's approach "has been, and remains, infected by an error".

Contesting the application, the Government argued that it had funded various schemes which had, at May last year, paid out a total of £142 million to those infected by NHS products. Philippa Whipple QC said there was no misunderstanding, let alone error of fact, by the UK Government.

It accepted that the Irish scheme was not "fault-based" in a legal sense, but there were findings of fault which formed the context in which political decisions were made in Ireland in about 1997 to provide compensatory levels of award.

The judge said he wished to make absolutely clear that the allocation of resources was entirely a matter for the Government. But it had been faced with a specific reasoned recommendation, which it had rejected, of comparability or equivalence with Ireland, where "very much higher" payments were made to sufferers and their dependants.

He said that, when pressed as to why they had rejected comparability, they had not merely repeated that they could not afford it but given a reason which, in his view, contained an error and did not withstand scrutiny - that they continued to regard the Irish system as based on fault rather than on compensation.

The judge refused permission to appeal although leave can be sought directly from the Court of Appeal.

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