

Published 19 April 2010, doi:10.1136/bmj.c2123
Cite this as: BMJ 2010;340:c2123

News

UK ministers must "reconsider" decision on compensation to haemophiliacs

Clare Dyer

¹ BMJ

A British haemophiliac man who was infected with HIV and hepatitis C through contaminated blood products has won a legal challenge at the **High Court** in London over government compensation payments.

Andrew March, 36, an award winning composer, won a judicial review of the government's decision not to increase ex gratia payments in line with much **higher** payments made by the Republic of Ireland.

Mr Justice Holman quashed UK ministers' decision not to match the "very much **higher**" payments in Ireland, ruling that the government's approach "had been, and remains, infected by an error." The error was the belief that the Irish government decided to pay full compensation only after an independent inquiry found the Irish blood transfusion service to have been at fault.

The ruling obliges the government to reconsider its decision but does not require ministers to pay compensation at Irish levels. It remains open to ministers to say that **higher** payments are unaffordable, and the judge cautioned against "false optimism."

Thousands of people in England and Wales, most of them with haemophilia, were infected with hepatitis C and HIV through imported blood products, in what was described by the medical peer Robert Winston as "the worst treatment disaster in the history of the NHS." Some 2700 are still alive.

After the government refused repeated calls for a statutory inquiry, an independent inquiry was set up under a former solicitor general and peer, Peter Archer, with funding from private donors. It blamed government procrastination in achieving self sufficiency in blood products for "a horrific human tragedy."

The Archer inquiry, which reported in February 2009 (SWJ2009;338:b808, doi:10.1136/bmj.b808), recommended that payments in England and Wales should be at least as **high** as those in the Irish Republic.

After the inquiry, payments to people in England and Wales infected with HIV from the infected blood were increased to £12 800 (€14 600; \$19 700) a year, and the government promised to review lump sum payments to those with hepatitis C in 2014.

UK government ministers stated on several occasions that in Ireland full compensation was paid after a judicial inquiry's findings of fault on the part of the Irish blood transfusion service. But Mr Justice Holman said the evidence showed that the Irish government had received advice that it was not legally liable; that the payments, although compensatory, were stated to be ex gratia; and that the decision to pay them had been taken before the inquiry's findings of fault.

He said that the UK government had given a reason for refusing the Archer inquiry's recommendation that contained an error and did not withstand scrutiny.

He emphasised that he was merely quashing the government's existing decision and was giving no "steer" as to what the future decision would be. Indeed, it would be a "grave abuse" of his role to do so.

"The campaign may now return to the political arena, but no one should leave this courtroom with a false optimism," he concluded. He refused the government permission to appeal, although it can still seek permission from the **Court** of Appeal itself.

Tainted Blood, a campaign group for the haemophiliac people involved, said, "We have effectively removed a major stumbling block in the process of working towards a full and final settlement."

Cite this as: B/WJ2010;340:c2123