

The Rt Hon Sir Stephen Timms MP  
Minister for Social Security and Disability  
Department for Work and Pensions  
Caxton House  
Tothill Street  
London, SW1H 9NA

18 September 2024

Dear Sir Stephen,

### **The Social Security (Infected Blood) (Amendment) Regulations 2024**

The Social Security Advisory Committee undertook its statutory scrutiny of the above regulations, which ensure that payments received from the Infected Blood Compensation Scheme are disregarded as income/capital in means-tested benefits, at its meeting on 11 September 2024. Following careful consideration of the draft proposals and accompanying evidence the Committee has decided that, under the powers conferred by Section 173(1)(b) of the Social Security Administration Act 1992, it does not intend to take these regulations on formal reference.

The Committee is keen to avoid delaying this Statutory Instrument to ensure that compensation from the Infected Blood Compensation Scheme can be disregarded for means-tested benefit purposes from day one. We do however set out below a small number of concerns for your early consideration as you take forward these proposals. Your officials gave the Committee strong reassurances around the processes for handling disbursements to affected people who are already in receipt of means-tested benefits. However, the handling of longer-term investments and the procedures for subsequent benefit applications from affected people, perhaps years later, was less well addressed.

#### **Immediate issues for consideration**

##### *Reliance on “estate”*

The Committee acknowledges that a number of options were considered on how payments should be made and who they should be made to, before reaching a final conclusion that it would be better to make payments to the estate rather than to a specific category of person because such an approach was likely to present a

number of complex scenarios. However, we believe there are also flaws and complexity in the proposed approach, for example in certain circumstances where:

- there are a number of beneficiaries to an estate;
- someone has died intestate;
- the proceeds of an estate are contested through the Inheritance (Provision for Family and Dependants) Act 1975;<sup>1</sup> or,
- descendants who may have had significant debts or have been declared bankrupt.

From the perspective of pragmatic disbursement of compensation to those affected people, there are understandable merits of such an approach, especially since there is no requirement to track the payments. However, in order to attach a disregard to (current and future) benefit entitlements, there is a greater need to be able to have certainty around who is an eligible recipient.

***We would welcome confirmation of the treatment of compensation payments in such scenarios; in particular who may be classified as a beneficiary in such circumstances, and for reassurance the legislation delivers the Government's intent. It was also not clear to the Committee how all the (non-benefit-recipient) beneficiaries would be identified in order for the Department to be able to communicate to them (see below) – and whether all such entitled beneficiaries would be aware of their status, especially with respect to future disregard of capital in the benefits system, and urgent clarification of this point is also required.***

*Disregard relating to interest or income from capital*

The Committee notes that any interest or income derived from the compensation payment will be disregarded for the purpose of means-tested benefits. However, we identified a small number of potential scenarios where the position is less clear. For example, in circumstances where:

- there is an aggregation of capital;
- an amount of capital exists before the compensation payment is made;
- where the compensation payment is reinvested in other ventures which may deliver a financial return e.g. in buy to let housing where the return will be in terms of rent and capital growth.

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<sup>1</sup> [Inheritance \(Provision for Family and Dependants\) Act 1975 \(legislation.gov.uk\)](https://legislation.gov.uk)

The Department has advised us that historic evidence from other compensatory payment schemes suggest it is unlikely that the compensation will be put into long-term savings or invested, and we acknowledge that numbers affected are likely to be relatively small. However, to ensure absolute clarity for decision-makers and affected people, we recommend that an amendment is made to the regulations (or amending regulations be brought forward at the earliest opportunity) providing absolute clarity on this point for the avoidance of doubt.

A clear approach to the disaggregation of existing capital and compensation payments as money is spent is needed so that those receiving compensation can be clear about the impact of monies spent for future benefit entitlement. We understand that the Department's internal Decision Maker's Guidance, which is yet to have been drafted, should cover such issues. However, in any event, ***we strongly recommend that you confirm the intent regarding such income in legislation, ensuring certainty and transparency for those who may be affected in order that they may make informed decisions. There are a number of points of principle that need to be addressed around the nature of the disregard, which are more suited to legislation than guidance, and we would welcome your reassurance on this point.***

## **Longer-term strategy**

### *Communications approach*

We understand that a comprehensive communications plan is being put in place to ensure that beneficiaries are made aware of the capital disregard rules and treatment of compensation payments.

However, there may be some beneficiaries who are not currently in receipt of benefit, for example, because they are working and have an income above means-tested benefit entitlement or have savings, but who may become reliant on the benefit system some years down the line following a change of circumstances or reaching pensionable age. We consider there to be a risk that any communications issued at the time the compensation payment was made may have been long forgotten or mislaid, and this might lead to individuals failing to benefit from the disregard either through a lack of awareness or because written confirmation of the compensation payment has not been retained. For example, a young beneficiary now may not realise when they reach pension age that they are entitled to means-tested benefits, and if they make a claim at that point they may struggle to have the disregard applied.

As a result, ***the Committee would welcome an assurance that the Department is alive to the need for a longer-term communication strategy for beneficiaries - alongside a continuing awareness among the Department's decision-makers - to ensure beneficiaries who potentially become entitled to a means-tested benefit in many years' time continue to receive the capital disregard where appropriate.***

In the meantime, we have asked your officials to explore the extent to which factual and impartial advice can be provided to beneficiaries, potentially through the Infected Blood Compensation Authority, emphasising the importance of keeping a formal record of the compensation payments, and the requirement for that evidence to be produced should they claim means-tested social security benefits in order and want to retain eligibility for the capital disregard.

***We strongly encourage the Department to commit to the exploration of whether there could be some record made of the individuals affected – so that the system is aware of their status.***

#### *Benefit treatment of compensation schemes*

In recent years, the Committee has scrutinised several packages of secondary legislation which set out how individual compensation payments (e.g. following specific acts of terrorism, the Grenfell Tower fire, amongst others) will be treated by the benefit system. We think ***there is a persuasive case for a legislative framework to be introduced which could be applied to compensation schemes where there are similar characteristics and the same policy intent. This future-proofing approach would reduce the number of occasions on when secondary legislation would need to be brought forward and ensure a consistent, and tested, approach being taken. The Committee would welcome your commitment to consider this approach.***

#### **Conclusion**

I would be grateful for your commitment to explore the issues raised in this note and, where appropriate, to address the issues in amending regulations at the earliest opportunity. I would be pleased to discuss with you any of the issues raised in this note in more detail if that would be helpful.

Finally, the Committee wishes to commend Lorenzo Peri, Alex Fleming and the extended team comprising both DWP and Cabinet Office officials who presented these regulations to us as well as answered our many and detailed questions. We are particularly grateful for the significant effort they made in ensuring that the Committee was well-prepared for this scrutiny by providing an informal briefing and

keeping us in touch with emerging developments. In addition to ensuring we were well-informed ahead of the scrutiny, this early engagement enabled us to provide early feedback and offer ways in which the regulations could be improved, for example by widening the scope of the disregard to ensure that all beneficiaries of estates would benefit from the proposed disregard and removing any dependency on a precise definition of “*affected persons*”. We regard this as a model approach to preparing for the Committee’s statutory scrutiny process and would encourage that this approach be adopted for other urgent and/or complex legislation.

A copy of this letter goes to the Secretary of State, Baroness Sherlock, the Permanent Secretary, Katie Farrington, James Wolfe, Lorenzo Peri and Alex Fleming.

Yours.

A handwritten signature in black ink, appearing to read 'Stephen Brien', written in a cursive style.

**Dr Stephen Brien**  
**Chair**