

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 February 2022

Public Authority: Department of Health and Social Care

Address: 39 Victoria Street
London
SW1H 0EU

Decision (including any steps ordered)

1. The complainant has requested information about payments made to individuals who had received infected blood. The Department of Health and Social Care (DHSC) has advised that it does not hold any of the information the complainant has requested.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities, DHSC does not hold the requested information and has complied with section 1(1)(a) of FOIA.
3. The Commissioner does not require DHSC to take any corrective steps.

Background

4. People with haemophilia and other bleeding disorders were given blood infected with HIV and hepatitis viruses, during the 1970s and 1980s.
5. No government, healthcare or pharmaceutical entity in the UK has admitted any liability in the scandal, and no damages or compensation have been paid to those infected or affected.
6. In 2017 the then Prime Minister Theresa May announced a full UK-wide public inquiry into the infected blood scandal. And from 2017, four

infected blood support schemes were introduced across the UK, covering Wales, England, Scotland and Northern Ireland.

7. Infected Blood Inquiry hearings began in 2019. DHSC has advised the Commissioner that in April 2019, following discussions with beneficiaries and the Infected Blood Inquiry, the Government announced an increase of funding to the England Infected Blood Support Scheme (EIBSS) in order to implement a major uplift in financial support to beneficiaries. The main areas of uplift were:

- increase of annual payments
- raise of upper level of household income of bereaved spouses and partners, in relation to means-tested benefits; and
- increase in income top-up for bereaved spouses and partners.

Request and response

8. On 15 March 2021 the complainant wrote to DHSC and requested information in the following terms:

"1. How was the figure of £28,000 P.A reached? Please provide copies of the evidence on how this decision was reached.

2. What medical evidence was used to determined this was an appropriate figure? & by who or Department? Please provide copies of the evidence.

3. What medical evidence was used to determine that co-infection requires less than a doubling of the £28,000? Please provide copies of the evidence.

4. The reasonable expectation would be to recieve [sic] £56,000 in this category? What medical evidence was used to determine this was not an appropriate sum in this category? Who or what department made the decision? Please provide copies of the evidence.

5. What medical reasoning is there for this disparity? Please provide the medical evidence.

6. Is it Legal under the Equalities Act 2010? What legal advice was sort? Please provide a copy of legal advice obtained.

7. Was an impact study completed prior to the 2019 uplift? If so by, please provide a copy of the study.

8. Has the disparity issue been discussed in any minted meeting between EIBSS, DHSC or The Infected Blood Policy Team? Please provide the minutes from the meeting(s) in which this took place.”
9. DHSC responded on 13 April 2021. Regarding questions 1-5 and 7-8 DHSC advised that no formal impact assessments were produced at the time due to the rapid implementation of the policy concerned. Regarding question 6 DHSC said that no legal advice was sought. It stated that it therefore does not hold information within scope of the complainant's request.
10. Following an internal review DHSC wrote to the complainant on 13 August 2021. It advised that the policy team in question had been consulted and, from a review of related meetings and documents, it was clear that that DHSC did not discuss the issues about which the complainant has requested information. DHSC confirmed that it therefore does not hold the requested information.

Scope of the case

11. The complainant first contacted the Commissioner on 20 April 2021 to complain about the way his request for information had been handled. He confirmed he remained dissatisfied once he had received DHSC's internal review.
12. The Commissioner's investigation has focussed on whether, on the balance of probabilities, DHSC holds any information within scope of the complainant's request.

Reasons for decision

13. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
14. The complainant's request concerns an uplift in support to those receiving financial support through EIBSS. He is seeking:
- 1) Evidence that supports the decision to increase a certain payment to a figure of £28,000

- 2) – 5) Associated medical evidence used to determine that that figure was appropriate and that supported a decision not to increase that payment to £56,000
 - 6) Any legal advice associated with compliance with the Equalities Act 2010
 - 7) Any associated impact study and
 - 8) Minutes of meetings involving EIBSS, DHSC and/or the Infected Blood Policy team where the matter of what the complainant considers is a disparity in the uplift was discussed.
15. With regard to evidence on how the decision to provide support payments of £28,000 per year was reached, in its submission to the Commissioner DHSC said it asked its Analytical team because it provided “a submission related to the 2019 uplift in financial support to beneficiaries”. That submission covered the plans for an uplift of regular non-discretionary payments with an increase in the amount of support available through means-tested top-up. It stated that £28k will be the figure for these payments. However, DHSC said the 2019 submission does not provide the methodology used to reach this amount and that it conducted further searches but did not locate any relevant information.
 16. With regard to medical evidence used to determine that £28k was an appropriate figure and to determine that co-infection requires less than a doubling of the £28k, DHSC confirmed that no information related to medical evidence was located by the Analytical team. Further searches were conducted to identify any medical records relevant to the request but did not identify anything relevant.
 17. On the matter of legal advice in relation to co-infected rates, DHSC said that no legal advice was sought prior to the 2019 uplift. The 2019 submission identifies that:

“We are further considering the equality implications of these proposals and will draw any PSED [Public Sector Equality Duty] implications to your attention in the next submission on this issue.”
 18. And on any associated impact study, DHSC also confirmed that no formal impact assessments were completed prior to the 2019 uplift.
 19. Finally, regarding related discussions in meetings between EIBSS specifically, DHSC and the Infected Blood Policy team, DHSC said it has reviewed all meeting minutes between DHSC and EIBSS and was not able to locate any information relevant to co-infected annual payments, or the disparity in payments.

20. DHSC also provided more general information about the searches it undertook. It first said it searched its internal document management system: Information Workspace (IWS), which was updated and transferred to SharePoint. And as above, its Analytical team was also approached and relevant policy personnel.
21. Regarding its document management system, DHSC provided more detail about IWS, Share Point and Preservica. It explained that IWS and Share Point are web-based collaborative platforms used by government officials as a document management and storage system. As of June 2021, the former has been replaced by the latter. Preservica is a digital preservation and access software that enables government officials to record documents and correspondence related to key policy decisions so that they can be made available upon request.
22. DHSC said it searched its document management system according to the search terms set out below and confirmed that it has not identified any information within scope of the complainant's request:
- "28,000" AND "Medical records"
 - "Impact study"
 - "Payment Uplift"
 - "Infected Blood"
 - "Co-infected"
 - "Parity"
 - "Disparity"
 - "April 2019"
 - "30 April 2019"
 - "EIBSS"
 - "Funding" OR "Funding Increase"
23. The Commissioner asked DHSC for more information on the background and context of the infected blood payments 'uplift', the 2019 submission referred to paragraph 15 and DHSC's role in the 'uplift' decision.
24. In correspondence to the Commissioner on 21 December 2021, DHSC advised that the matter of the 'uplift' is discussed in more detail in the second¹ and third² witness statement of William Vineall, Director of NHS

¹ William Vineall Second Witness Statement -

<https://www.infectedbloodinquiry.org.uk/evidence/second-written-statement-william-vineall>

² William Vineall Third Witness Statement -

<https://www.infectedbloodinquiry.org.uk/sites/default/files/documents/WITN4688055%20Third%20Written%20Statement%20of%20William%20Vineall.pdf>

Quality, Safety and Investigations branch in DHSC, published on the Infected Blood Inquiry website.

25. DHSC went on to explain that the March 2019 ministerial submission concerns a proposal of changes to the EIBSS in order to increase the level of financial support to beneficiaries. The submission was sent to the Secretary of State for Health and Social Care at the time, Matt Hancock.
 26. The 2019 submission stipulated that all infected beneficiaries are awarded an uplift in their regular non-discretionary payments, and an increase in the amount of support available through means-tested discretionary top-up payments for the bereaved. This meant that support to all beneficiaries would increase, especially those with Hepatitis C Stage 1 (to £18,458) and Hepatitis C Stage 1 and Special Category Mechanism and Hepatitis C Stage 2 (to £28,000).
 27. DHSC confirmed to the Commissioner that the 2019 submission does not provide any information on the methodology or calculation behind the proposed £28,000 figure. In DHSC's view, it therefore does not fall within scope of the complainant's request.
 28. Having considered DHSC's written submissions, the Commissioner discussed the matter further with members of DHSC's relevant policy team on 17 February 2022.
 29. Regarding parts 1 -5 of the request, DHSC explained that prior to 2017, those affected by the infected blood scandal received financial support through a range of different organisations. In 2017 these were replaced by the four infected blood support schemes covering Wales, England, Scotland and Northern Ireland.
 30. In 2019, because of the disparity between the financial support the four schemes were offering, a decision was made to level the amount across the four schemes. In relation to the England scheme, this included increasing to £28,000 the payment that is the complainant's focus. This was approximately the amount being offered through the Scotland scheme.
 31. DHSC told the Commissioner that, given the high profile of the Infected Blood Inquiry, the 'uplift' decision was made quickly. In addition, as an 'ex-gratia' payment (in effect, a payment the government 'chose' to make) a lengthy period of consultation and deliberation was not
-

necessary. DHSC confirmed to the Commissioner that it has searched relevant files and notes and has not been able to identify any information that falls within scope of parts 1-5 of the request.

32. Regarding part 3 of the request, DHSC had advised the complainant that the relevant policy team had reviewed related “meetings” (by which the Commissioner understands DHSC to mean minutes) and documents and that the matter that is the focus of the complainant’s request was not discussed. In its discussion with the Commissioner DHSC confirmed this; that it had reviewed relevant meeting minutes and no information relevant to part 3 is held.
33. DHSC also confirmed on 17 February 2022 that, given the pace of the decision-making, it did not seek any legal advice with regard to the ‘uplift’ decision, nor did it undertake any formal impact assessments. As such, DHSC does not hold recorded information within scope of parts 6 and 7 of the request and this partially explains why it does not hold information within scope of the remaining parts of the request.

Conclusion

34. It is not the Commissioner’s role to consider whether a public authority **should** hold information that has been requested but whether, on the balance of probabilities, it does or does not hold it. The Commissioner has taken account of the explanations DHSC gave the complainant and which it has given to the Commissioner through its submissions and in conversation. The Commissioner has also taken account of the circumstances around the £28,000 uplift decision and notes that there was a rationale behind that decision. The Commissioner considers that the searches DHSC has undertaken for relevant information were adequate and appropriate. He also considers that relevant individuals in DHSC have been approached about the request. Having considered all these factors, the Commissioner has decided, on the balance of probability, that DHSC does not hold the information the complainant has requested and complied with section 1(1)(a) of FOIA.

Right of appeal

35. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

36. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
37. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF