

**ANNUAL REPORT**

**OF THE**

**HEPATITIS C & HIV  
COMPENSATION TRIBUNAL**

**2011**

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## INTRODUCTION

I am very pleased to introduce the Fourteenth Annual Report on the activities of the Hepatitis C and HIV Compensation Tribunal for the calendar year 2011.

The Tribunal was established in December 1995 to compensate, inter alia, persons infected with Hepatitis C as a result of the use of Human Immunoglobulin Anti-D, or the receipt of contaminated blood transfusions or blood products within the State. In October 2002 the work of the Tribunal expanded due to the introduction of the Hepatitis C Compensation tribunal (Amendment) Act, 2002. This Act enabled the Tribunal to award compensation to certain persons who contracted HIV within the State from certain blood products and to provide for related matters.

The Tribunal has been hearing claims on a continuous basis since March 1996. 85 new claims were submitted in 2011 making a total of 4480 to the end of 2011. While the Tribunal paid awards in 114 cases in 2011, approximately 800 claims are still awaiting hearing. The Tribunal continues to be able to assign a hearing date without delay to any claim in which full supporting documentation has been lodged.

I wish to take this opportunity to express my appreciation to my fellow members of the Tribunal and to the 3 dedicated and hard working staff attached to the Tribunal office.

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Karen Fergus S.C.  
Chairperson

## **MEMBERSHIP OF THE TRIBUNAL**

The membership of the Tribunal in 2011 was as follows:

Ms. Karen Fergus S.C. (Chairperson)

Mr. James Devlin S.C.

Ms. Una McGurk S.C.

Ms. Mary Cantrell, Solicitor

Ms. Deirdre Hegarty, Solicitor

Mr. David Martin, Solicitor

Ms. Bridget Barry B.L.

Ms. Ann O'Neill, Solicitor

Mr. Dara Hayes B.L.

Mr. Mark O'Connell B.L.

Ms. Rachel Murphy B.L.

Ms. Anne Rowland B.L.

Ms. Diane Duggan B.L.

## **ENTITLEMENT TO MAKE A CLAIM**

The categories of persons entitled to apply for compensation are set out in Section 4 (1) of the Hepatitis C Compensation Tribunal Act, 1997 as amended and in S.I. No. 432 of 1998 (extension of classes of Claimants before Tribunal) Regulations, 1998 and the onus of proof on a Claimant is set out in Section 4 (8) of the Act as amended. The Hepatitis C Compensation Tribunal Act, 1997, the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 and 2006, and associated Statutory Instruments are shown in Appendix I to this Report.

**POTENTIAL CLAIMANTS ARE PARTICULARLY ADVISED TO NOTE THE RELEVANT TIME LIMITS WHICH ARE SET OUT IN SECTION 4 (14) OF THE ACT AS AMENDED.**

## **ADVERTISING**

To ensure public awareness of the Tribunal activities, advertisements are placed in national and provincial newspapers from time to time. The Tribunal is anxious that all those who might be entitled to apply for compensation are aware of its existence and how to apply.

The Tribunal Web site may be visited at: [www.hepccomptrib.com](http://www.hepccomptrib.com). Application forms may be downloaded from the site and general information including a location map and frequently asked questions may be obtained.

## OPERATION OF THE TRIBUNAL

The Tribunal operated as a non-statutory Scheme of compensation from the date of its establishment on 16th December 1995 to 31st October 1997. On 1st November 1997 the Hepatitis C Compensation Tribunal Act, 1997 came into effect. On 9th October 2002, the Hepatitis C Compensation Tribunal (Amendment) Act 2002 became effective. Sections 1 and 2 of the Hepatitis C Compensation Tribunal (Amendment) Act 2006 became effective on 20<sup>th</sup> June 2006.

Claims are dealt with by the Tribunal by way of an *in camera* oral hearing before at least two members of the Tribunal or by way of an offer of settlement. (Settlement arrangements - Appendix II).

Hearings are held in the offices of the Tribunal at Arran Court, Smithfield, Dublin 7. (The Tribunal has relocated to 31-35 Bow Street, Dublin 7, since April 2012). The Tribunal from time to time holds sittings in Áras na Mac Léinn, University College Cork in response to requests from Claimants in the Munster area.

Claimants are entitled to be legally represented at the hearings. In some cases the Tribunal may decide to appoint Counsel to assist it.

### AWARDS

The Tribunal *paid* a total of €17,261,855 in respect of awards during the year 2011. This amount comprises €17,066,854 from 114 new awards of the Tribunal (including adjustments under Section 6.3 of the Act) and €195,001 from 3 increases in compensation awarded by the High Court on appeal from the Tribunal. (See Appendix III).

There were 122 awards *made* by the Tribunal during 2011. The total amount awarded was €17,496,540.93 with the average being €143,414.26. The awards ranged from €1,740.00 to €1,094,740.00 and may be summarised as follows: -

Interim Awards	1
Provisional Awards	8 (including 1 settlement award)
Single Lump Sum Awards	113 (including 14 settlement awards)

Interim Awards are made generally in situations where a Claimant is not in a position to present the claim in full e.g. when he/she is undergoing treatment for the condition of Hepatitis C or HIV and a final prognosis is not immediately available.

In the provisional awards made to date the Tribunal has been of the view that on the evidence before it that there was a possibility, but no more than a possibility that the Claimant, as a result of having contracted Hepatitis C or HIV might suffer a particular serious consequence or consequences in the future. In addition the Tribunal has specified the time period within which the Claimant may apply for further compensation in the event of such consequence or consequences occurring.

## **APPLICATIONS FOR FURTHER COMPENSATION ARISING FROM A PROVISIONAL AWARD**

During the year 2011 eight such claims were heard resulting in additional awards of compensation to the Claimants.

## **LEGAL COSTS**

In 2011 the sum of €10,608,721 was paid in costs of which €5,745,250 was in respect of 81 Tribunal awards and €4,863,471 was in respect of 68 High Court Appeals. (See Appendix V for a complete breakdown of payments).

## **REPARATION FUND**

Section 11 (4) of the 1997 Act established a Reparation Fund whereby a Claimant who had accepted an award from the Tribunal or an offer of settlement would be entitled to apply to have an amount paid to her/him from the Fund in lieu of the Tribunal assessing and awarding aggravated or exemplary damages - with the amount from the fund to be fixed at 20% of the total award or settlement. The Government subsequently made arrangements to allow the legal personal representatives of deceased Claimants to apply for the Fund payment.

In addition, a person who, on appeal to the High Court under Section 5(15) or Section 6(3)(e) of the Act, is granted an award of general or special damages or both, has an amount paid to her or him from the Fund in lieu of the assessment of aggravated or exemplary damages.

In 2011, €3,427,004 was paid out by the Tribunal from the Fund in respect of 112 Tribunal awards and 3 High Court Appeals.

## **WITHDRAWN / INACTIVE CLAIMS**

Approximately 300 claims have been withdrawn to date. Cases where there has been no attempt to pursue the claim for some considerable time have been adjourned generally by the Tribunal, though each Claimant may apply to have his/her claim re-entered. There are 82 claims currently in this category.

## **STAFF**

During 2011 a staff of three provided the administrative/clerical support for the operation of the Tribunal. A firm of stenographers is engaged on a commercial basis for all hearings in the Tribunal and transcripts of proceedings are made available to each Claimant through their Solicitor.