

# **ANNUAL REPORT**

**OF THE**

**HEPATITIS C & HIV COMPENSATION  
TRIBUNAL**

**2010**

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## INTRODUCTION

I am very pleased to introduce the Thirteenth Annual Report on the activities of the Hepatitis C and HIV Compensation Tribunal for the calendar year 2010.

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. 104 new claims were submitted in 2010 making a total of 4395 to the end of 2010. While the Tribunal paid awards in 117 cases in 2010, approximately 881 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, to our Secretary Michael Ryan and to the staff attached to the Tribunal office. Two of our members, Ms. Leonie Reynolds and Ms. Patricia McNamara were appointed as Judges of the Circuit and District Court respectively. We wish them well in their new appointments and welcome our new member Ms. Diane Duggan B.L.

May I say a well deserved word of thanks to his Honour Judge Anthony Murphy who retired on grounds of ill-health in October 2010 having served as Chairman of the Tribunal since 2003.

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Karen Fergus S.C.  
Chairperson

## MEMBERSHIP OF THE TRIBUNAL

The membership of the Tribunal is 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.

\* Judge Anthony G. Murphy resigned on health grounds in October 2010.

## **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 IV).

Hearings are held in the offices of the Tribunal at Arran Court, Smithfield, Dublin 7. 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 €32,103,279 in respect of awards during the year 2010. This amount comprises €30,496,254 from 117 new awards of the Tribunal (including adjustments under Section 6.3 of the Act) and €1,607,025 from 14 increases in compensation awarded by the High Court on appeal from the Tribunal. (See Appendix I).

There were 106 awards *made* by the Tribunal during 2010. The total amount awarded was €23,855,308 with the average being €225,050. The awards ranged from €5,000.00 to €1,435,000.00 and may be summarised as follows: -

Interim Awards	2
Provisional Awards	16
Single Lump Sum Awards	88 (including 2 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 2010 six such claims were heard resulting in additional awards of compensation to the Claimants.

## *LEGAL COSTS*

In 2010 the sum of €10,229,280 was paid in costs of which €9,626,685 was in respect of 132 Tribunal awards and €602,595 was in respect of 16 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 2010, €6,286,075 was paid out by the Tribunal from the Fund in respect of 132 Tribunal awards and 16 High Court Appeals.

## *WITHDRAWN / INACTIVE CLAIMS*

Approximately 288 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*

A staff of three currently provides 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.