

HEPATITIS C AND HIV

COMPENSATION TRIBUNAL

ANNUAL REPORT 2018

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ANNUAL REPORT
OF THE
HEPATITIS C & HIV
COMPENSATION TRIBUNAL
2018

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Introduction

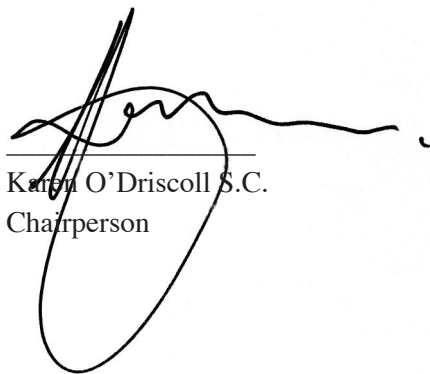
I am very pleased to introduce the Twenty-first Annual Report on the activities of the Hepatitis C and HIV Compensation Tribunal for the calendar year 2018.

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. There were 48 new claims submitted in 2018 making a total of 4939 to the end of 2018. While the Tribunal paid awards in 52 cases in 2018, approximately 417 initial claims are still awaiting hearing. The Tribunal continues to be able to assign a hearing date without delay to any claim for which full supporting documentation has been lodged.

It should be noted that some prior year figures for 2017 were restated due to a genuine administrative error that was discovered after publication of the 2017 Annual Report. Please see the Annual Accounts in Appendix I and Appendix II.

I wish to take this opportunity to thank the members of the Tribunal and the staff attached to the Tribunal office



Karen O'Driscoll S.C.
Chairperson

Membership of the Tribunal

The membership of the Tribunal is as follows:

Ms. Karen O'Driscoll SC (Chairperson)

Mr. Stephen Boggs BL

Ms. Adrienne Cawley BL

Mr. John Healy SC

Mr. Michael MacNamee BL

Mr. Joseph O'Sullivan BL

Ms Romaine Scally Solicitor

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 can be viewed on the Tribunal website: www.hepccomptrib.com.

The Tribunal is anxious that all those who might be entitled to apply for compensation are aware of its existence and how to apply.

Application forms may be downloaded from the site and general information including a location map and frequently asked questions may be obtained.

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

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 20th 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 III).

Hearings are held in the offices of the Tribunal and since April 2012 the Tribunal is located at 31-35 Bow Street, 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. A firm of stenographers is engaged for all hearings in the Tribunal and transcripts of proceedings are made available to each Claimant through their Solicitor.

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 €10,754,172 in respect of 52 awards during 2018. There were no payments in respect of High Court Appeals (see Appendix I).

There were 36 awards made by the Tribunal during 2018. The total amount awarded was €9,822,560.51 with the average being €272,848.90. The awards ranged from €35,000.00 to €1,163,131.00 and may be summarised as follows:-

Provisional Awards	7
Single Lump Sum Awards	29

Interim payments 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. There were 7 interim payments during the year 2018 totaling €760,900.00.

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

Included in the total number of awards made during 2018, one claim for Further Compensation was heard resulting in an additional award of compensation to the Claimant.

Legal Costs

In 2018 the sum of €4,859,695.00 was paid in costs in respect of 48 Tribunal awards. (see appendix IV 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 2018, €2,068,654.00 was paid out by the Tribunal from the Fund in respect of 45 Tribunal awards.

Withdrawn/Inactive Claims

503 claims have been withdrawn to the end of 2018. Currently the Tribunal is actively engaged in getting all primary claims brought on for hearing. In addition, approximately 309 cases have been adjourned generally with liberty to re-enter as at the end of 2018.

Staff

During 2018 a staff of two (one full-time and one part-time) provided the administrative/clerical support for the operation of the Tribunal.

APPENDICES

APPENDIX I

Summary of Awards, Appeals, Reparation Fund Payments and Legal Costs to date

Awards of the Tribunal

<u>Year</u>	<u>No. of Awards</u>	<u>Amount Paid</u> €
1996	204	€28,627,096.00
1997	327	€56,672,735.00
1998	535	€105,660,817.00
1999	214	€43,221,011.00
2000	126	€31,943,504.00
2001	71	€23,646,314.00
2002	62	€18,541,096.00
2003	108	€27,964,437.00
2004	243	€39,384,189.00
2005	287	€42,186,950.00
2006	290	€46,543,469.00
2007	193	€57,782,743.00
2008	143	€39,349,934.00
2009	158	€32,244,590.00
2010	117	€30,496,254.00
2011	114	€17,066,854.00
2012	79	€15,091,916.00
2013	77	€16,298,493.00
2014	75	€16,370,641.00
2015	59	€15,700,074.00
2016	28	€14,892,384.00
*2017	62	€13,114,428.00
2018	52	€10,754,172.00
Total	3624	€743,554,101.00

* In the 2017 Hepatitis C and HIV Compensation Tribunal Annual Report, the 2017 figures were originally incorrectly stated as 59 awards for a value of €14,516,928.00.

High Court Appeals

<u>Year</u>	<u>No. of Appeals</u>	<u>Amount Paid</u> €
2000	41	€6,053,486.00
2001	113	€24,835,283.00
2002	52	€17,762,094.00
2003	29	€7,372,875.00
2004	43	€7,954,150.00
2005	23	€2,260,174.00
2006	26	€5,249,856.00
2007	15	€3,242,913.00
2008	10	€4,670,878.00
2009	12	€1,638,493.00
2010	14	€1,670,025.00
2011	3	€195,001.00
2012	7	€1,385,476.00
2013	1	€40,000.00
2014	2	€150,000.00
2015	3	€220,000.00
2016	2	€135,000.00
*2017	6	€1,506,500.00
2018	0	€0.00
Total	402	€86,342,204.00

* In the 2017 Hepatitis C and HIV Compensation Tribunal Annual Report, the 2017 figures were originally incorrectly stated as 1 appeal for a value of €111,500.00.

Reparation Fund Payments

<u>Year</u>	<u>No. of Payments</u>	<u>Award or Appeal</u>	<u>Amount Paid</u> €
1997	340	Awards	€11,971,841.00
1998	686	Awards	€25,249,850.00
1999	220	Awards	€8,928,869.00
2000	136	Awards	€6,692,662.00
2000	39	Appeals	€1,124,269.00
2001	77	Awards	€4,889,774.00
2001	115	Appeals	€5,053,485.00
2002	67	Awards	€3,800,910.00
2002	52	Appeals	€3,552,419.00
2003	92	Awards	€4,789,220.00
2003	29	Appeals	€1,474,575.00
2004	240	Awards	€7,723,198.00
2004	43	Appeals	€1,590,830.00
2005	285	Awards	€8,355,730.00
2005	23	Appeals	€452,035.00
2006	288	Awards	€9,296,865.00
2006	25	Appeals	€1,028,715.00
2007	170	Awards	€11,146,133.00
2007	15	Appeals	€648,583.00
2008	138	Awards	€7,597,215.00
2008	10	Appeals	€934,176.00
2009	152	Awards	€6,234,917.00
2009	12	Appeals	€327,699.00
2010	112	Awards	€5,964,670.00
2010	14	Appeals	€321,405.00
2011	112	Awards	€3,388,004.00
2011	3	Appeals	€39,000.00
2012	76	Awards	€3,127,929.00
2012	6	Appeals	€263,295.00
2013	70	Awards	€2,985,965.00
2014	75	Awards	€2,965,048.00
2014	2	Appeals	€30,000.00
2015	54	Awards	€2,988,111.00
2015	3	Appeals	€44,000.00
2016	25	Awards	€3,040,174.00
2016	2	Appeals	€27,000.00
*2017	58	Awards	€2,711,089.00
*2017	6	Appeals	€289,000.00
2018	45	Awards	€2,068,654.00
2018	0	Appeals	€0.00
Total	3917		€163,117,314.00

* In the 2017 Hepatitis C and HIV Compensation Tribunal Annual Report, the 2017 figures were originally incorrectly stated as 56 awards for a value of €2,991,600 and 1 appeal for a value of €10,000.

Legal Costs

<u>Year</u>	<u>No. of Claims</u>	<u>Amount Paid</u> €
1996	93	€1,737,849.00
1997	275	€7,518,688.00
1998	512	€16,345,926.00
1999	315	€9,984,938.00
2000	180	€8,297,691.00
2001	183	€8,605,772.00
2002	77	€4,490,412.00
2003	131	€6,859,157.00
2004	197	€7,094,735.00
2005	307	€13,180,987.00
2006	344	€11,371,437.00
2007	187	€7,825,866.00
2008	129	€8,986,744.00
2009	155	€13,027,173.00
2010	148	€10,229,280.00
2011	149	€10,608,721.00
2012	96	€7,948,739.00
2013	65	€4,571,765.00
2014	78	€6,689,814.00
2015	40	€2,101,000.00
2016	30	€2,388,221.00
*2017	48	€3,750,966.00
2018	48	€4,859,695.00
Total	3787	€178,475,576.00

* In the 2017 Hepatitis C and HIV Compensation Tribunal Annual Report, the 2017 figures were originally incorrectly stated as 48 claims for a value of €3,751,354.

APPENDIX II

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

ACCOUNT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31 DECEMBER 2018

ACCOUNTING POLICIES

Basis of Accounts

The accounts are a cash-based record of the Receipts and Payments in the period.

Reporting Period

The reporting period is the year ending 31 December 2018.

Receipts

Receipts for the period represent those monies claimed and received from the Special Account and the Reparation Fund established under Sections 10 and 11 of the Hepatitis C Compensation Tribunal Act, 1997 and amended under Sections 7 and 8 of the Hepatitis C Compensation Tribunal (Amendment) Act 2002.

Payments

Payments consist of those sums which have been discharged during the period.

Suspense Account at Department of Health

Payments are made by the Department of Health on behalf of the Hepatitis C and HIV Compensation Tribunal at the direction of either, the Hepatitis C and HIV Compensation Tribunal or, in respect of legal costs only, the Office of the Chief State Solicitor. These payments are made from a suspense account, which forms part of the Appropriation Account of the Department of Health and is subject to audit by the Comptroller and Auditor General.

Prior Year Figures Restated

Some prior year figures for 2017 were restated due to a genuine administrative error that was discovered after publication of the 2017 Annual Report.

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

<u>Accounts of Receipts and Payments for the year ended</u> <u>31 December 2018</u>		2018		2017
	Number	€	Number	€
Payments				
Tribunal Awards				
Including New Awards	52	10,754,172	*62	13,114,428
High Court Appeals	0	0	* 6	1,506,500
Total Awards	52	10,754,172	* 68	14,620,928
Reparation Fund payments				
Including New Awards	45	2,068,654	*58	2,711,089
High Court Appeals	0	0	*6	289,000
Total Reparation Fund Payments	45	2,068,654	*64	3,000,089
Legal costs of Tribunal Awards				
Including New Awards	48	4,859,695	*47	3,687,503
High Court Appeals	0	0	1	63,463
Total Legal costs	48	4,859,695	*48	3,750,966
<u>Administrative costs</u>				
Pay	Note 1	290,177	*Note 1	340,712
Non-Pay	Note 2	78,765	*Note 2	126,684
Total Payments		18,051,463		21,839,379
<u>Receipts</u>				
Received from the Special Account established under Section 10 of the Hepatitis C Compensation Tribunal Act 1997.		7,629,000		26,532,000
Received from the Reparation Fund established under Section 11 of the Hepatitis C Compensation Tribunal Act 1997.		1,123,000		4,546,000
Total Receipts		8,752,000		31,078,000
Surplus / (Deficit) for year		(9,299,463)	*	9,238,621
Surplus / (Deficit) brought forward from previous year		(8,762,790)		(18,001,411)
Surplus / (Deficit) carried forward to following year		(18,062,253)	*	(8,762,790)
<u>Financed by</u>				
Suspense Account at Department of Health				
This sum represents the amount to be drawn from the relevant accounts established under Sections 10 and 11 of the Hepatitis C Compensation Tribunal Act, 1997 and amended under Sections 7 and 8 of the Hepatitis C Compensation Tribunal (Amendment) Act, 2002.				

* This indicates the figure has been restated from the 2017 Annual Report. For Tribunal Awards and Reparation Fund payments both the number of awards and value of the awards have been amended. See Appendix I for further details.

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

<u>Accounts for the year ended 31 December 2018</u>				
<u>Notes to the Accounts</u>		2018		2017
		€		€
<u>Pay</u>				
Note 1	Fees paid to Tribunal Members and Chairman	163,366	*1	257,847
	Administration	126,811		82,865
	Total Pay	290,177		340,712
<u>Non-Pay</u>				
Note 2	Confidential waste disposal	355		583
	Contract Cleaning	2,625		2,707
	Courier Services	970		1,137
	Fees for Expert Witnesses	0		7,445
	Heat, Power and Light	5,016		4,420
	ICT	1,913		3,108
	Legal Services	19,454		39,407
	Maintenance and Fixtures	2,173		1,319
	Miscellaneous	2,560		528
	Office Supplies	2,411		2,851
	Phones	2,589		2,408
	Postage	746		1,053
	Printing	450		495
	Room hire	0		2,805
	Stenography services	30,794		45,216
	Travel and Subsistence	6,563	*2	10,953
	Vending machine and water supplies	146		249
	Total Non-Pay	78,765		126,684

*1 This was originally stated as €242,221 in the 2017 Annual Report.

*2 This was originally stated as €8,966 in the 2017 Annual Report.

APPENDIX III

Settlement Arrangements made by the Minister for Health and Children under Section 8 of the Hepatitis C Compensation Tribunal Act 1997

Introduction

The settlement arrangements provide for the settlement of claims in respect of general and special damages only. The arrangements will operate as informally as possible and in a manner which ensures settlement offers are made as early as possible.

Supporting Documentation

Where a claimant advises the Secretary to the Tribunal that she or he wishes to settle, the claimant will be required to furnish to the Secretary a full brief of the documentation on which the claim is based including complete documentation in support of claims for general and special damages. A claimant may opt for a single lump sum award or a provisional award by way of settlement.

Causation

The claim together with all supporting documentation will be referred to a member of the Tribunal. The claimant will be required to establish to the satisfaction of the Tribunal member, that she or he meets the criteria set out in Section 4 of the Act.

Where the Tribunal member is not satisfied that the claimant meets the criteria set out in Section 4 of the Act, the claim will be referred to the Tribunal for a decision on causation and, if the claimant so wishes, for an award by the Tribunal, where appropriate. Where the claimant so wishes, a claim may be returned for settlement following a determination by the Tribunal on causation.

Where the Tribunal decides that the claimant is not entitled to compensation under the Act, the claimant may appeal that decision to the High Court.

Settlement Offer

Settlement offers will be based on the same criteria applied by the Tribunal under section 5 of the Act in relation to the level of awards. The Secretary to the Tribunal will advise the claimant of her/his legal representative in writing of the settlement offer.

Acceptance of Settlement Offer

The claimant will be requested to indicate, in writing, acceptance or rejection of the settlement within 28 days of the date of the offer.

Where the claimant accepts the offer, she or he will sign the necessary waivers in respect of any right of action which the claimant might otherwise have had.

The Secretary to the Tribunal will note that the offer has been accepted and will arrange for the Tribunal to make an award on consent of the settlement amount.

In the case of a claimant who is a minor, the acceptance of an award shall be subject to the approval of the High Court.

Rejection of settlement

Where the claimant does not advise the Secretary within 28 days of the date of the settlement offer it will be taken that the claimant has rejected the offer and is seeking a Tribunal hearing.

Where a claimant rejects an offer, or is deemed to have rejected an offer, the claim will be referred by the Secretary to the Tribunal for a hearing unless he is instructed otherwise by the claimant.

Where a claimant rejects a settlement or is deemed to have rejected a settlement, the claimant will be deemed to have exhausted the arrangements for settlement under Section 8.

Reparation Fund

A claimant who accepts a settlement offer may apply to the Secretary to have an amount of 20% of the settlement offer paid out of the Reparation Fund established under section 11 of the Act. Alternatively, the claimant may apply to have a claim for aggravated or exemplary damages decided by the Tribunal under section 5.

Representative Claim

The Secretary to the Tribunal may accept a claim representative of a class or group of claimants where the circumstances which have given rise to their claims are broadly similar. Similar arrangements to those set out above will apply in such cases. The rights of each individual claimant to accept or reject a settlement and the rights of each claimant under any other provision of the Act are preserved.

Costs

Where a Tribunal makes an award based on a settlement offer, costs will be awarded on the same basis and using the same procedures as if it had heard the claim under the Act. Similarly, the Tribunal will take into account costs incurred in opting for settlement where a claimant has rejected a settlement offer.

Confidentiality

In cases where the offer is not accepted by the claimant and the case is referred for a full hearing by the Tribunal, the Tribunal member who was involved in the settlement arrangements will not be a member of the division of the Tribunal hearing the claim. The Tribunal will not be made aware that the claimant applied for a settlement or that she/he rejected a settlement.

The confidentiality of the case is guaranteed under Section 8(2) of the Act which provides as follows:

“Any documents or papers submitted to the Tribunal in respect of a claim where a settlement is being negotiated under this section may be seen by persons involved in the settlement who shall not disclose the information contained in such documents or papers other than to any person involved in the settlement.”

This means that the Tribunal member who is involved in a settlement is not permitted to give any information (including details of any offer which was made to the claimant) to anyone who is not involved in the settlement, or to discuss the case with the other Tribunal members.

APPENDIX IV

LEGAL COSTS PAID IN 2018

TRIBUNAL REFERENCE		PAYEE
	€	
4115/08	384,822.42	Malcomson Law
4414/11	201,153.66	Malcomson Law
4761/15	118,310.23	Ernest J Cantillon and Co
4859/17	12,179.50	Fiona Ryan Solicitors
1785/98	37,912.00	F H O'Reilly and Co
1201/96	40,568.04	Ivor Fitzpatrick And Company
1113/96	62,262.67	Ivor Fitzpatrick And Company
4841/17	14,319.26	Ivor Fitzpatrick And Company
4860/17	14,375.87	Ivor Fitzpatrick And Company
4853/17	14,687.97	Ivor Fitzpatrick And Company
4854/17	16,845.27	Ivor Fitzpatrick And Company
4840/17	17,572.60	Ivor Fitzpatrick And Company
4855/17	28,122.35	Ivor Fitzpatrick And Company
4852/17	35,577.75	Ivor Fitzpatrick And Company
4840/17	10,626.97	Ivor Fitzpatrick And Company
1376/01.2,3,7	832,601.09	Malcomson Law
1331/96	399,198.61	Malcomson Law
1018/96	84,041.05	Ivor Fitzpatrick And Company
1203/96	60,639.38	Ivor Fitzpatrick And Company
4763/15	22,029.02	Ernest J Cantillon and Co
4355/10	29,347.78	Dominic Creedon
4748/15, 4749/15, 4810/16	92,930.69	Ernest J Cantillon and Co
4708/14,	16,192.75	Ivor Fitzpatrick And Company
4706/14,	16,285.44	Ivor Fitzpatrick And Company
4704/14,	34,612.09	Ivor Fitzpatrick And Company
4705/14	16,197.39	Ivor Fitzpatrick And Company
4098/07	26,847.32	Fiona Ryan Solicitors
4824/16	31,617.50	Fiona Ryan Solicitors
2384/03	9,737.07	W R Joyce and Co
206/96	291,018.01	Malcomson Law

TRIBUNAL REFERENCE		PAYEE
	€	
0138/96	224,781.16	Malcomson Law
3562/05- 3745/05	206,298.71	Malcomson Law
152/96	185,926.14	Malcomson Law
3927/05, 3185/05, 4790/15	224,111.13	Malcomson Law
4872/17	43,521.50	Fiona Ryan Solicitors
0275/96	132,195.18	Ivor Fitzpatrick And Company
4214/08	24,400.52	Ivor Fitzpatrick And Company
4216/08	32,223.00	Ivor Fitzpatrick And Company
4879/17	35,128.20	Ivor Fitzpatrick And Company
1924/99	47,054.50	Arthur P McLean and Co
4790/15	5,988.08	Malcomson Law
4847/17	112,166.99	Ivor Fitzpatrick And Company
4603/13	140,113.79	Beauchamps Solicitors
2248/02	49,083.72	Ivor Fitzpatrick And Company
2028/00	10,766.50	Fiona Ryan Solicitors
4033/07	167,393.61	Malcomson Law
2116/00	83,340.88	Malcomson Law
4592/13	153,926.18	Malcomson Law
752/96	8,643.79	Malcomson Law
Total	4,859,695.33	

Hepatitis C and HIV
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