



ANNUAL REPORT
OF THE
HEPATITIS C & HIV
COMPENSATION TRIBUNAL
2020

Contents

	<i>Page</i>
1. Introduction	5
2. Membership of the Tribunal	7
3. Entitlement to make a claim	9
4. The operation of the Tribunal	11
 Appendices	
I Summary of Awards, Appeals, Reparation Fund Payments and Legal Costs to date	15
II Accounts 2020	19
III Settlement Arrangements	23
IV Breakdown of Legal Costs	27

Introduction

I am very pleased to introduce the Twenty-Third Annual Report on the activities of the Hepatitis C and HIV Compensation Tribunal for the calendar year 2020.

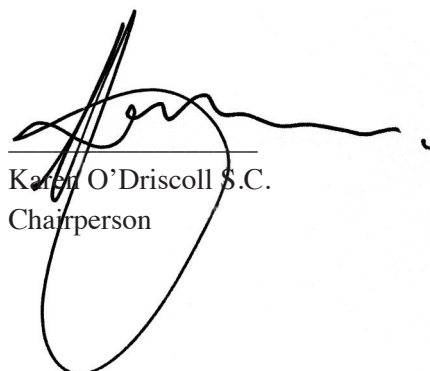
This year was the first for our newly appointed Secretary to the Tribunal, Ms Sheena Lally and marked considerable changes in the manner in which the Tribunal performed its functions.

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. The Hepatitis C Compensation Act 1997 was commenced on the 1st day of November 1997. In October 2002 the work of the Tribunal expanded due to the introduction of the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 enabling 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 powers of the Tribunal were further modified in 2006 under the Hepatitis C Compensation (Amendment) Act 2006.

In 2020, due to the necessary restrictions placed on society to cope with the COVID- 19 pandemic, the Tribunal applied to the Minister for Health for designation to conduct remote hearings and this designation was provided for under Section 31 of the Civil Law and Criminal Law (Miscellaneous) Provisions Act 2020 and commenced by S.I. No. 428/2020 - Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020 (Sections 29 and 31) (Hepatitis C and HIV Compensation Tribunal) (Designation) Order 2020.

The Tribunal has been hearing claims on a continuous basis since March 1996. There were 6 new claims submitted in 2020 making a total of 4977 to the end of 2020. While the Tribunal paid awards in 38 cases in 2020, approximately 377 initial claims are still awaiting hearing. The Tribunal is actively engaged in encouraging claimants to bring on their claims before it and the Tribunal continues to be able to assign a hearing date without delay to any claim for which full supporting documentation has been lodged.

I wish to take this opportunity to thank the members of the Tribunal and the Secretary Ms. Lally and Assistant Secretary Ms. Bernie McGowan for their unwavering commitment to the operation of the Tribunal especially through the challenges presented by the pandemic.



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.hepccomtrib.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 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.

The Tribunal has also since the 13th October 2020 been designated by the Minister for Health pursuant to Sections 29 and 31 of the Civil Law and Criminal Law (Amendment) Act 2020 as a state body with an entitlement to conduct its hearings remotely and the Tribunal has introduced a facility for such hearings to enable it to continue to function during the Covid-19 Pandemic.

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 €5,828,690 in respect of 38 awards during 2020. There were 4 payments totalling €1,765,480 in respect of High Court Appeals (see Appendix I).

There were 35 awards *made* by the Tribunal during 2020. The total amount awarded was €6,479,207 with the average being €185,120. The awards ranged from €44,443 to €781,782 and may be summarised as follows:-

Provisional Awards	5
Single Lump Sum Awards	30

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 3 interim payments during the year 2020 totaling €260,000.

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 2020, 4 claims for Further Compensation were heard resulting in additional awards of compensation to the Claimants in the sum of €847,000.

Legal Costs

In 2020 the sum of €2,702,948 was paid in costs in respect of 37 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 2020, €1,581,834 was paid out by the Tribunal from the Fund in respect of 35 Tribunal awards and 4 High Court Appeals.

Withdrawn/Inactive Claims

512 claims have been withdrawn to the end of 2020. Currently the Tribunal is actively engaged in getting all primary claims brought on for hearing. In addition, approximately 323 cases have been adjourned generally with liberty to re-enter as at the end of 2020.

Staff

During 2020 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
2019	28	€8,045,988.00
2020	38	€5,828,690.00
Total	3690	€757,428,779.00

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
2019	3	€1,070,642.00
2020	4	€1,765,480.00
Total	409	€89,178,326.00

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
2019	25	Awards	€1,540,214.00
2019	2	Appeals	€164,128.00
2020	35	Awards	€1,128,738.00
2020	4	Appeals	€453,096.00
Total	3983		€166,403,490.00

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
2019	45	€5,418,090.00
2020	37	€2,702,948.00
Total	3869	€186,596,614.00

APPENDIX II

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

ACCOUNT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31 DECEMBER 2020

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 2020.

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.

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

<u>Accounts of Receipts and Payments for the year ended</u> <u>31 December 2020</u>	Number	2020 €	Number	2019 €
Payments				
Tribunal Awards				
Including New Awards	38	5,828,690	28	8,045,988
High Court Appeals	4	1,765,480	3	1,070,642
Total Awards	42	7,594,170	31	9,116,630
Reparation Fund payments				
Including New Awards	35	1,128,738	25	1,540,214
High Court Appeals	4	453,096	2	164,128
Total Reparation Fund Payments	39	1,581,834	27	1,704,342
Legal costs of Tribunal Awards				
Including New Awards	37	2,702,948	45	5,418,090
High Court Appeals	0	0.00	0	0
Total Legal costs	37	2,702,948	45	5,418,090
<u>Administrative costs</u>				
Pay	Note 1	389,649	Note 1	317,055
Non-Pay	Note 2	86,974	Note 2	69,263
Total Payments		12,355,573		16,625,380
Receipts				
Received from the Special Account established under Section 10 of the Hepatitis C Compensation Tribunal Act 1997.		0.00		29,895,000
Received from the Reparation Fund established under Section 11 of the Hepatitis C Compensation Tribunal Act 1997.		0.00		3,587,000
Total Receipts		0		33,482,000
Surplus / (Deficit) for year		(12,355,573)		16,856,620
Surplus / (Deficit) brought forward from previous year		(1,205,633)		(18,062,253)
Surplus / (Deficit) carried forward to following year		(13,561,206)		(1,205,633)
<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.				

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

<u>Accounts for the year ended 31 December 2020</u>			
<u>Notes to the Accounts</u>		2020	2019
		€	€
Pay			
Note 1	Fees paid to Tribunal Members and Chairman	190,719	192,305
	Administration	198,930	*
	Total Pay	389,649	317,055
Non-Pay			
Note 2	Confidential waste disposal	535	757
	Contract Cleaning	4,153	2,573
	Courier Services	1,731	841
	Fees for Expert Witnesses	1,035	0
	Heat, Power and Light	4,189	3,544
	ICT	28,594	1,138
	Legal Services	-	12,560
	Maintenance and Fixtures	9,462	883
	Miscellaneous	898	2,444
	Office Supplies	2,837	2,659
	Phones	2,478	2,330
	Postage	949	1,114
	Printing	1,597	560
	Room hire	0	1,706
	Stenography services	24,325	25,141
	Travel and Subsistence	4,144	10,833
	Vending machine and water supplies	47	180
	Total Non-Pay	86,974	69,263

* This sum includes a once-off payment of arrears to a former member of the Tribunal Staff.

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 2020

TRIBUNAL REFERENCE	€	PAYEE
2596/03	49,540.03	Malcomson Law
279/96	111,145.25	Malcomson Law
3983/06	62,245.15	Malcomson Law
1604/96	20,481.90	Malcomson Law
4120/08	89,121.51	Ivor Fitzpatrick And Company
2294/02	63,338.95	Arthur P McLean and Co
4603/13	6,359.40	MB Solicitors
4891/17	98,838.45	Dermot McNamara and Co Sols
4862/17	4,735.50	Fiona Ryan Solicitors
1362/96	88,118.57	Dobbyn McCoy, Solicitors
4703/14	163,783.84	Ivor Fitzpatrick And Company
4843/17 4844/17	11,070.29	Ivor Fitzpatrick And Company
4385/10	45,020.18	Patrick J Durcan & Co
4750/15	53,183.42	John M Quirke and Co
2688/03	18,456.02	Fiona Ryan Solicitors
4898/17	44,670.10	Fiona Ryan Solicitors
4858/17	4,735.50	Fiona Ryan Solicitors
4863/17	11,193.00	Fiona Ryan Solicitors
2028/00	6,575.00	Fiona Ryan Solicitors
4746/16	7,731.00	Fiona Ryan Solicitors
0906/96	22,325.75	Hughes Murphy and Co
1685/97	270,224.32	Ivor Fitzpatrick And Company
4556/12	32,427.76	Ivor Fitzpatrick And Company
4325/10 2017/7	143,527.74	Ivor Fitzpatrick And Company
4960/19	162,026.44	Ivor Fitzpatrick And Company
4226/09	50,652.42	Malcomson Law
3984/06	24,867.72	Malcomson Law
1653/97	100,226.02	Fiona Ryan Solicitors
4764/15	124,327.64	Boyle Solicitors
4911/18	39,672.98	Ivor Fitzpatrick And Company
3206/05	23,255.22	Malcomson Law
3496/05	84,843.33	Malcomson Law

TRIBUNAL REFERENCE	€	PAYEE
4224/09 2018/8CT	170,032.46	Malcomson Law
1362/96	42,402.64	Newell Gillen and Cunningham
4838/17	25,898.25	Boyle Solicitors
92/96	228,225.95	Malcomson Law
4225/09	197,667.84	Malcomson Law
Total	2,702,947.54	