



ANNUAL REPORT
OF THE
HEPATITIS C AND HIV
COMPENSATION TRIBUNAL
2002

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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Introduction

I am very pleased to introduce the fifth Report on the activities of the Hepatitis C and HIV Compensation Tribunal for the calendar year 2002.

The Tribunal has been hearing claims on a continuous basis since March 1996. 126 new claims were submitted in 2002 making a total of 2317 to the end of 2002. This increase is mainly due to the introduction in October 2002 of the Hepatitis C Compensation Tribunal (Amendment) Act, 2002.

The Tribunal continues to be able to assign a hearing date to any claim in which full supporting documentation briefs have been lodged. However, quite often solicitors look for hearing dates and at the last moment decide to adjourn the case. This is a problem, which the Tribunal will have to address.

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.

May I finally say a well-deserved word of thanks to his Honour Judge Seamus Egan who retired at the end of the year.



Anthony G. Murphy
Chairman
July 2003

Membership of the Tribunal

The membership of the Tribunal is as follows:

Mr. Anthony G. Murphy (Chairman)

Ms. Sheila Cooney, Solicitor

Ms. Margaret Nerney S.C.

Ms. Karen Fergus B.L.

Mr. Michael Mulcahy B.L.

Ms. Leonie Reynolds B.L.

Mr. James Devlin B.L.

Ms. Una McGurk B.L.

Ms. Mary Cantrell, Solicitor

Ms. Deirdre Hegarty, Solicitor

Mr. David Martin, Solicitor

Mr. Colm Ó hOisín B.L.

Mr. Joseph Hogan S.C.

Ms. Patricia McNamara, 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 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 that the Hepatitis C Amendment Act 2002 had been enacted, advertisements were placed in national and provincial newspapers in October 2002. 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.hepccmptrib.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.

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 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 €36,303,190.00 during the year 2002. This amount comprises €18,541,096.00 from 62 new awards of the Tribunal (including adjustments under Section 6.3 of the Act) and €17,762,094.00 from 52 increases in compensation awarded by the High Court on appeal from the Tribunal. (See Appendix III).

There were 65 awards *made* by the Tribunal during 2002. The total amount awarded was €20,356,758.67 with the average being €313,180.00. The awards ranged from €650.00 to €1,380,000.00 and may be summarised as follows:—

Interim Awards	4
Provisional Awards	34
Single Lump Sum Awards	27

In addition one Single Lump Sum award was made in respect of HIV infection.

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 2002 one such claim was heard resulting in an additional award of compensation to the Claimant.

Legal Costs

In 2002 the sum of €4,490,412.00 was paid in costs of which €3,024,750.00 was in respect of 45 Tribunal awards and €1,465,663.00 was in respect of 32 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 2002, €7,353,329.00 was paid out by the Tribunal from the Fund in respect of 67 Tribunal awards and 52 High Court Appeals.

Withdrawn/Inactive Claims

95 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 83 claims currently in this category.

Staff

A staff of four 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.

Legal Issues: High Court judgments which had implications for the Tribunal

1. A number of applicants had applied to the Tribunal for interest on their awards because of the delays in issuing payment. The delays arose in Appeal cases where the Tribunal can only arrange payment on receipt of the Perfected Order of the High Court. In some cases these were not received for six months after the hearing.

In his judgment, Mr. Justice Iarlaith O'Neill decreed "applicants should get interest on their awards from a date which is one month after the date of notification to the Tribunal of the High Court Order" (1999/179 CT and 1999/153 CT — dated 15 February 2002).

This is in line with the Tribunal's own legislation (Section 5.12) where it is obliged to make payment within 28 days of receipt of notification.

2. DB v Minister for Health and Children. This case was heard on 21 March 2002. Justice O'Neill gave judgment on 31 July 2002 summarised as follows:—

- (1) That Section 5(9)(a) of the Act of 1997 does not give rise to a statutory time limit of one month on the making of an appeal to this Court.
- (2) That the acceptance of an award of the Tribunal pursuant to Section 5(9) of the Act does not exclude an appeal to this Court under Section 5(15) of the Act.
- (3) That the Tribunal does not have a locus standi to appear on this application or in this appeal.
- (4) That this Court has jurisdiction under Order 122(7) of the Rules of the Superior Courts to extend time for the bringing of this appeal.
- (5) That time for the bringing of this appeal expired under Order 105A Rule 2(1) of the Rules of the Superior Courts on the 22nd day of November 1998.
- (6) That this Court will exercise its discretion in favour of extending the time for the bringing of this appeal to the 23rd day of April 1999.

On 11 September 2002 an Appeal to the Supreme Court was granted on the following points of law:

- (1) Is a claimant who wishes to appeal an award by the Hepatitis C Compensation Tribunal ("the Tribunal") barred from doing so after the time specified in Section 5(9)(a) of the 1997 Act has passed?
- (2) If no, is a claimant who has accepted an award of the Tribunal barred from also appealing the award?
- (3) Does the Tribunal have a locus standi to appear in an application to this Honourable Court or in an appeal?

The Supreme Court did not hear the Appeal until January 2003 and gave their judgments in March 2003, which reversed the High Court judgment.

APPENDICES

APPENDIX I



Number 34 of 1997

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Establishment day.
 3. The Tribunal.
 4. Claims before Tribunal.
 5. Awards of Tribunal.
 6. Dissolution of and claims before non-statutory scheme Tribunal.
 7. Regulations to give effect to Act.
 8. Settlements.
 9. Extension by regulations of persons who may make a claim before Tribunal.
 10. Special account.
 11. Reparation Fund.
 12. Report of Tribunal.
 13. Power to remove difficulties.
 14. Laying of regulations.
 15. Expenses of Minister.
 16. Short title.
-

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

Acts Referred to

Appropriation Act, 1995	1995, No. 34
Civil Liability Act, 1961	1961, No. 41
Civil Liability (Amendment) Act, 1996	1996, No. 42
Medical Practitioners Act, 1978	1978, No. 4
Statutes of Limitation, 1957 and 1991	



Number 34 of 1997

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A TRIBUNAL TO BE KNOWN AS THE HEPATITIS C COMPENSATION TRIBUNAL TO AWARD COMPENSATION TO CERTAIN PERSONS WHO HAVE CONTRACTED HEPATITIS C WITHIN THE STATE FROM ANTI-D IMMUNOGLOBULIN, OTHER BLOOD PRODUCTS OR BLOOD TRANSFUSION AND TO PROVIDE FOR CONNECTED MATTERS. [21st May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“application form” means any form of application determined by the Tribunal under *section 4(5)*;

“award” means an award of compensation;

“claimant” means a person referred to in *section 4(1)* making a claim to the Tribunal in respect of any matter referred to in that subsection or a person referred to in any regulations made under *section 9* in respect of the matters referred to in those regulations;

“dependant” has the meaning assigned to it by section 47(1) (inserted by section 1 of the Civil Liability (Amendment) Act, 1996) of the Civil Liability Act, 1961;

“the establishment day” means the day appointed to be the establishment day for the purposes of this Act by the Minister under *section 2*;

“the Fund” has the meaning assigned to it by *section 11*;

“Hepatitis C” means Hepatitis C antibodies or virus;

“medical practitioner” means a person registered in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act, 1978;

“the Minister” means the Minister for Health;

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.1 “the non-statutory scheme Tribunal” means the Compensation Tribunal for certain persons who have contracted Hepatitis C within the State from Anti-D Immunoglobulin, whole blood or other blood products established by the Minister on the 15th day of December, 1995;

“prescribed” means prescribed by regulations made by the Minister;

“provisional award” has the meaning assigned to it by *section 5(7)*;

“relevant agency” means the Blood Transfusion Service Board or the Irish Medicines Board;

“spouse” in relation to a person, includes a person with whom the person is or was at a material time cohabiting;

“the Tribunal” means the Tribunal established under *section 3*.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended,

(c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended or extended by or under any subsequent enactments including this Act.

Establishment day. **2.**—The Minister shall by order appoint a day to be the establishment day for the purposes of this Act.

The Tribunal. **3.**—(1) On the establishment day there shall stand established a Tribunal to be known as the Hepatitis C Compensation Tribunal to award compensation to claimants referred to in *subsection (1) of section 4* in respect of the matters referred to in that subsection or in any regulations made under *section 9* in respect of matters referred to in those regulations, in accordance with this Act.

(2) The Tribunal may sit in divisions of itself to hear claims before it.

(3) The Tribunal shall consist of a chairman (“the Tribunal chairman”) and such number of ordinary members as may be prescribed.

(4) The members of the Tribunal shall be appointed by the Minister.

(5) The term of office of a member of the Tribunal shall be for such period as is specified by the Minister when appointing such member.

(6) (a) A member of the Tribunal may, by letter addressed to the Minister, resign her or his membership.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(b) A member of the Tribunal may be removed from office S.3
by the Minister.

(7) In the case of a member of the Tribunal filling a vacancy caused by the resignation, removal from office or death of a member before the completion of the term of office of the last-mentioned member, the member filling that vacancy shall hold office for the remainder of the term of office of the person who so resigned, was so removed from office or died.

(8) A member of the Tribunal shall be paid such remuneration (if any) and allowances (if any) as may be determined by the Minister with the consent of the Minister for Finance.

(9) The Minister may, with the consent of the Minister for Finance, appoint such employees of the Tribunal as the Minister considers necessary to assist the Tribunal in the performance of its functions, and such employees shall hold office on such terms and receive such remuneration as the Minister for Finance determines.

(10) (a) The Tribunal may in its own behalf or at the request of a claimant where a person has failed to comply with a requirement of the claimant under *section 4(11)*, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice to give evidence in relation to any matter referred to the Tribunal under this Act or to produce any documents in her or his possession, custody or control which relate to any such matter.

(b) A notice under *paragraph (a)* may be given either by delivering it to the person to whom it relates or by sending it by post in a prepaid registered letter addressed to such person at the address at which she or he ordinarily resides.

(c) A person to whom a notice under *paragraph (a)* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence and shall be liable on summary conviction thereof to a fine not exceeding £500.

(11) Subject to this Act, the Tribunal shall determine its own procedures and, in so doing, shall as far as is practicable adopt procedures which are informal.

(12) The Tribunal shall conduct its hearings otherwise than in public.

(13) The Tribunal may appoint its own counsel who may call such expert witnesses to give evidence as the Tribunal may require.

(14) The Tribunal may appoint medical or other experts to advise it.

(15) In considering and assessing a claim before it, the Tribunal shall rely primarily on written medical or other written reports, and shall make such reports (other than reports submitted by the claimant) available to the claimant concerned at her or his request.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.3

(16) The Tribunal may, in addition to hearing counsel for a claimant, in respect of any matter before it seek the assistance of any or all of the following—

- (a) counsel for any body which represents any class of claimant,
- (b) counsel for any party against whom allegations alleged to warrant the award of aggravated or exemplary damages are made, or
- (c) counsel appointed by the Tribunal in relation to any matter which it regards as necessary.

(17) Nothing in *subsection (16)* permits the cross examination of any claimant.

(18) A claimant and any witness giving evidence on behalf of a claimant may be asked questions by the Tribunal or by counsel for the Tribunal or by both.

Claims before
Tribunal.

4—(1) The following persons may make a claim for compensation to the Tribunal—

- (a) a person who has been diagnosed positive for Hepatitis C resulting from the use of Human Immunoglobulin Anti-D within the State,
- (b) a person who has been diagnosed positive for Hepatitis C as a result of receiving a blood transfusion or blood product within the State,
- (c) children or any spouse, of a person referred to in *paragraph (a)* or a person referred to in *paragraph (b)*, who have been diagnosed positive for Hepatitis C,
- (d) any person who is responsible for the care of a person referred to in *paragraph (a)*, *(b)* or *(c)*, and who has incurred financial loss or expenses as a direct result of providing such care arising from the person being cared for having contracted Hepatitis C,
- (e) where a person referred to in *paragraph (a)*, *(b)* or *(c)* has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death, any dependant of such person, and
- (f) a person referred to in *section 9* in accordance with that section.

(2) Where a person has received an award from any court or a settlement in respect of an action arising out of any circumstances which could give rise to a claim before the Tribunal, the person shall not be entitled to make a claim to, or be heard by, the Tribunal or receive any settlement under *section 8* in respect of those circumstances.

(3) The making of a claim to the Tribunal does not involve the waiver of any other right of action by the claimant.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(4) A claim before the Tribunal may be heard before a sitting of S.4
the Tribunal consisting of a chairman (who may be a person other
than the Tribunal chairman) and at least one other member of the
Tribunal.

(5) An application shall be made to the Tribunal in such form and
manner as the Tribunal may determine.

(6) A claimant shall state in any application form whether she or
he is applying to the Tribunal to have aggravated or exemplary dam-
ages assessed by it or is opting to apply to have an amount paid out
of the Fund.

(7) Subject to *section 5(3)*, a claimant shall not be required to
produce to the Tribunal any evidence of negligence on the part of a
relevant agency or other person in respect of her or his claim.

(8) A claimant shall, as the case may be, establish to the satis-
faction of the Tribunal, on the balance of probabilities, that the
Hepatitis C—

(a) in respect of which the claimant has been diagnosed positive
resulted from the use of Human Immunoglobulin Anti-D
within the State,

(b) in respect of which the claimant has been diagnosed positive
resulted from a blood transfusion or a blood product
received by the claimant within the State,

(c) was transmitted to the claimant from a person referred to in
paragraph (a) or *(b)* following such use, transfusion or
receipt, as the case may be, or

(d) where the claimant is a person referred to in *subsection*
(1)(d) or *(e)*, was contracted in a manner referred to in
this subsection by a person being cared for or who has
died leaving a dependant.

(9) A claimant may appear in person or be represented by counsel
or solicitor before the Tribunal.

(10) Oral evidence may be given to the Tribunal—

(a) by a claimant or her or his medical practitioner or both, or

(b) by any other person with the permission of or at the request
of the Tribunal.

(11) A claimant may require—

(a) the attendance of any person to attend at a hearing of the
Tribunal to give evidence in relation to the claimant's
claim, or

(b) any person to produce to the claimant any document in
relation to the claimant's claim.

(12) A claimant may adduce before the Tribunal written medical
or other relevant written expert evidence on her or his behalf.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.4

(13) In making a claim for aggravated or exemplary damages, a claimant may rely on the facts found in the Report of the Tribunal of Inquiry into the Blood Transfusion Service Board or any other fact which the claimant establishes to the satisfaction of the Tribunal.

(14) Subject to *subsections (15) and (16)*, a claimant referred to in—

(a) *subsection (1)(a), (b) or (c)* may only make an application to the Tribunal within the period of 3 years of the date upon which she or he first became aware of the fact that she or he may have been diagnosed positive for Hepatitis C or the establishment day, whichever is the later,

(b) *subsection (1)(d)* may only make an application to the Tribunal within the period of 3 years of the date upon which she or he first began to incur such financial loss or expenses or the establishment day, whichever is the later,

(c) *subsection (1)(e)* may only make an application to the Tribunal within the period of 3 years of the date of the death of a person referred to in *subsection (1)(a), (b) or (c)* or the establishment day, whichever is the later,

(d) *subsection (1)(f)* may only make an application to the Tribunal within such period as may be prescribed.

(15) The Tribunal may, at its discretion and where it considers there are exceptional circumstances, extend the periods referred to in *subsection (14)*.

(16) The Tribunal shall extend the periods referred to in *subsection (14)* where it is satisfied a claimant was under a legal disability by reason of being a minor or of unsound mind at the time at which such claim should otherwise have been made and who makes an application to it within 3 years of the cessation of that disability.

Awards of Tribunal.

5.—(1) An award of the Tribunal to a claimant shall be made on the same basis as an award of the High Court calculated by reference to the principles which govern the measure of damages in the law of tort and any relevant statutory provisions (including Part IV of the Civil Liability Act, 1961), and including, subject to *section 11*, consideration of an award on the basis which reflects the principles of aggravated or exemplary damages.

(2) Notwithstanding *subsection (1)* of this section and section 2(2) of the Civil Liability (Amendment) Act, 1996, section 49(1)(b) of the Civil Liability Act, 1961 (as amended by section 2(1)(a) of the Civil Liability (Amendment) Act, 1996) shall have effect in respect of a claim made pursuant to *section 4(1)(e)* of this Act.

(3) An award in respect of aggravated or exemplary damages may be made by the Tribunal where a claimant establishes a legal entitlement to such against a relevant agency or the Minister.

(4) Subject to *subsection (8)*, the Tribunal shall decide upon the amount of any award it may make to a claimant.

(5) Where the Tribunal makes an award to a claimant it shall award to the claimant any reasonable costs and expenses the claimant has incurred in taking her or his claim.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(6) The Tribunal shall assess and make any award for general or special damages on the basis of a single lump sum award or a provisional award as chosen by a claimant under *subsection (8)*. S.5

(7) (a) Where the Tribunal is of the view that there is a possibility, but no more than a possibility, that a claimant as a result of having contracted Hepatitis C may suffer particular serious consequences in the future, the Tribunal may make an award ("provisional award") calculated in accordance with *subsection (1)* but assessed on the assumption that such serious consequences will not occur, identifying those consequences and specifying the period within which the claimant may apply in the event of such occurring.

(b) Subject to *paragraph (c)*, where the consequences referred to in this subsection do occur, the claimant may apply for an award of further compensation in accordance with the terms of the provisional award.

(c) Where an application is made under *paragraph (b)*, the Tribunal in awarding any further compensation shall not award any further amount in respect of aggravated or exemplary damages.

(8) A claimant shall choose, on making a claim to the Tribunal, whether she or he is seeking a single lump sum award or a provisional award. A claimant may, at the discretion of the Tribunal, alter her or his choice up to the commencement of the hearing of her or his claim.

(9) (a) Subject to *subsection (13)*, where the Tribunal makes an award to a claimant, the claimant shall have a period of one month or such greater period as may be prescribed from the date of receiving notice of the making of the award during which the claimant may decide in writing either to accept or reject the award or to appeal the award under *subsection (15)*.

(b) If a claimant neither accepts nor rejects an award or appeals the award under *subsection (15)* within the period referred to in *paragraph (a)*, the claimant shall be deemed to have rejected the award.

(10) (a) Where a claimant accepts an award (including a provisional award) of the Tribunal, the claimant must agree in writing to waive any right of action which the claimant may otherwise have had against any party and to discontinue any other proceedings instituted by the claimant arising out of the circumstances of the claimant's claim before the Tribunal.

(b) An award of the Tribunal shall not be paid to a claimant unless she or he complies with this subsection.

(11) Where a claimant does not wish to receive the entire amount of an award made to her or him in a single payment, the Tribunal, having heard the claimant, may in its absolute discretion, direct that the award shall be paid to the claimant in instalments.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

S.5

(12) Where a claimant chooses to accept an award of the Tribunal, the amount of the award shall, subject to this section, be paid to the claimant within 28 days of receipt by the Tribunal of notification of acceptance of the award.

(13) In the case of an award to a claimant who is a minor or in the case of a settlement for a claimant who is a minor, the acceptance of the award shall be subject to the approval of the High Court, which approval shall be sought within one month of the notification of the making of the award, and the claimant shall have one month from the date of such approval within which to accept or reject such approved award. The High Court may direct that where it considers any part of such an award, in respect of aggravated or exemplary damages, is too low, that the claimant shall apply to have a payment made from the Reparation Fund in lieu of such damages.

(14) Where a claimant does not accept an award within the time and in the manner provided in this section, and proceeds with any right of action she or he may have, the Minister or a relevant agency will not in such proceedings to which it is a party rely for the purposes of the Statutes of Limitation, 1957 and 1991, upon the period between the date of the claimant's application to the Tribunal and the date upon which the claimant abandoned her or his claim, was adjudged not entitled to compensation under this Act, or was last entitled to accept any award made by the Tribunal (whichever of such dates is the later) in bar of any right of recovery under such proceedings.

(15) An appeal shall lie to the High Court by a claimant in respect of any decision made by the Tribunal and the Minister may cross-appeal any such appeal.

(16) An appeal shall lie to the High Court by the Minister or a relevant agency in respect of an award of aggravated or exemplary damages.

(17) (a) An appeal under this section shall be heard otherwise than in public at the request of the claimant making the appeal.

(b) Unless the claimant otherwise requests, an appeal by the Minister or relevant agency under *subsection (16)* shall be heard otherwise than in public.

(18) Where a claimant makes an appeal under *subsection (15)*, the claimant must agree in writing to waive any right of action which the claimant may otherwise have had against any party and to discontinue any other proceedings instituted by the claimant arising out of the circumstances of the claimant's claim before the Tribunal.

(19) A decision of the High Court on an appeal under this section shall be final, save that, by leave of the Court, an appeal from the decision shall lie to the Supreme Court on a specified question of law.

Dissolution of and
claims before non-
statutory scheme
Tribunal.

6.—(1) On the establishment day the non-statutory scheme Tribunal shall stand dissolved.

(2) Any claim which, immediately before the establishment day, is pending before the non-statutory scheme Tribunal shall be heard and determined as if it was a claim made under this Act.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(3) A person who has had a claim for compensation determined S.6
by the non-statutory scheme Tribunal may—

- (a) apply to the Tribunal to hear evidence at the discretion of the Tribunal which was not made available to the non-statutory scheme Tribunal in calculating the award made to that person,
- (b) apply to the Tribunal to hear evidence on any statutory or non-statutory benefits which she or he has received or is entitled to receive which were taken into account by the non-statutory scheme Tribunal in assessing an award to that person,
- (c) apply to the Tribunal for an award of aggravated or exemplary damages or an amount to be paid to her or him from the Fund,
- (d) apply to the Tribunal for the adjustment of any award made by the non-statutory scheme Tribunal to an award to which she or he would have been entitled had section 2(1)(a) of the Civil Liability (Amendment) Act, 1996, been in force at the time of the making of the award, or
- (e) appeal an award.

7.—(1) The Minister may make regulations giving effect to this Act and such regulations may, in particular but without prejudice to the generality of the foregoing, provide for all or any of the following matters—

Regulations to give effect to Act.

- (a) vouching of items of special damage,
- (b) matters in relation to costs and expenses,
- (c) an official seal of the Tribunal.

(2) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed or to be prescribed.

8.—(1) The Minister may make arrangements to provide for the settlement of claims in respect of general and special damages by a claimant.

Settlements.

(2) 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.

9.—The Minister may, with the consent of the Minister for Finance, by regulations extend the class or classes of persons who may make a claim for compensation before the Tribunal.

Extension by regulations of persons who may make a claim before Tribunal.

[No. 34.] *Hepatitis C Compensation Tribunal Act, 1997.* [1997.]

Special account.

10.—(1) There shall be set up on the establishment day a special account, to be funded from moneys provided by the Oireachtas, to be used to pay awards made by the Tribunal and the non-statutory scheme Tribunal and to pay the costs of the Tribunal in administering this Act and of the Scheme administered by the non-statutory scheme Tribunal.

(2) Subject to *subsection (3)*, the moneys in the special account may be used at any time but shall only be used for the purposes for which they were voted and shall be issued out of that account only by direction of the Minister for Finance.

(3) Any moneys, including interest (if any), in the special account may be paid into, or disposed of for the benefit of, the Exchequer in accordance with the directions of the Minister for Finance.

(4) On the establishment day the special account set up by section 3 of the Appropriation Act, 1995, shall stand dissolved and all moneys in that account shall be transferred on that day to the special account set up by this section.

(5) Any moneys provided by the Oireachtas for the special account set up by section 3 of the Appropriation Act, 1995, may be paid into the special account set up by this section.

(6) In this section “special account”, unless the context otherwise requires, means an account for the purposes of this Act and the Scheme administered by the non-statutory scheme Tribunal in the joint names of the Minister and the Minister for Finance, which account shall—

(a) be an account with the Paymaster General,

(b) be subject to such terms and conditions as the Minister for Finance in consultation with the Minister, may determine, and

(c) be subject to audit by the Comptroller and Auditor General.

Reparation Fund.

11.—(1) There shall be established on the appointed day a fund to be known as the Reparation Fund (in this Act referred to as “the Fund”) comprising an account, to be funded from moneys provided by the Oireachtas, of such amounts as the Minister may, with the consent of the Minister for Finance, determine to enable payments to be made to claimants in respect of matters referred to in *subsection (4)*.

(2) Subject to *subsection (3)*, the moneys in the Fund may be used at any time but shall only be used for the purposes for which they were voted and shall be issued out of that account only by direction of the Minister for Finance.

(3) Any moneys, including interest (if any), in the Fund may be paid into, or disposed of for the benefit of, the Exchequer in accordance with the directions of the Minister for Finance.

(4) Where a claimant accepts an award from the Tribunal or accepts an offer of a settlement under *section 8*, in respect of general or special damages or both, the claimant may apply to have an amount paid to her or him from the Fund in lieu of the Tribunal assessing and awarding aggravated or exemplary damages.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(5) Where a claimant has had an award of aggravated or exemplary damages made to her or him by the Tribunal, she or he shall not be entitled to apply for payment from the Fund. S.11

(6) The amount paid out of the Fund to a claimant shall amount to 20 per cent. of the total amount of the award or settlement referred to in *subsection (4)*.

(7) The Minister shall manage and control the Fund.

(8) The account of the Fund shall—

(a) be prepared in such form, in such manner and at such times as the Minister for Finance may direct,

(b) be an account with the Paymaster General,

(c) be subject to such terms and conditions as the Minister for Finance in consultation with the Minister, may determine, and

(d) be subject to audit by the Comptroller and Auditor General.

(9) The Minister shall by order appoint a day to be the appointed day for the purposes of this section.

12.—(1) The Tribunal shall submit a report of its activities and particulars of its accounts to the Minister at such time as the Minister directs. Report of Tribunal.

(2) The Minister shall cause copies of such report to be laid before each House of the Oireachtas.

(3) A report of the Tribunal shall not identify any claimant.

13.—(1) If in any respect any difficulty arises in bringing any provision of this Act into operation or in relation to the operation of any such provision, the Minister may by regulations do anything which appears to be necessary or expedient for the purposes of removing that difficulty, for bringing that provision into operation or for securing or facilitating its operation and any such regulations may modify any provision of this Act or any other enactment so far as may appear necessary or expedient for the purposes aforesaid. Power to remove difficulties.

(2) No regulations may be made under this section after the expiration of one year after the establishment day.

14.—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. Laying of regulations.

[No. 34.] *Hepatitis C Compensation Tribunal Act, 1997.* [1997.]

Expenses of
Minister.

15.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided for by the Oireachtas.

Short title.

16.—This Act may be cited as the Hepatitis C Compensation Tribunal Act, 1997.



Number 21 of 2002

**HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) ACT, 2002**

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Name of Tribunal.
 3. Amendment of section 3 of Principal Act.
 4. Amendment of section 4 of Principal Act.
 5. Amendment of section 5 of Principal Act.
 6. Amendment of section 9 of Principal Act.
 7. Amendment of section 10 of Principal Act.
 8. Amendment of section 11 of Principal Act.
 9. Power to remove difficulties.
 10. Saving.
 11. Short title, collective citation, construction and commencement.
-

[No. 34.] *Hepatitis C Compensation Tribunal Act, 1997.* [1997.]

Acts Referred to

Civil Liability Act, 1961

1961, No. 41

Hepatitis C Compensation Tribunal Act, 1997

1997, No. 34



Number 21 of 2002

**HEPATITIS C COMPENSATION TRIBUNAL
(AMENDMENT) ACT, 2002**

AN ACT TO AMEND AND EXTEND THE HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997, TO ENABLE THE TRIBUNAL TO AWARD COMPENSATION TO CERTAIN PERSONS WHO CONTRACTED HIV WITHIN THE STATE FROM CERTAIN BLOOD PRODUCTS AND TO PROVIDE FOR RELATED MATTERS. [29th April, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act, unless the context otherwise requires— Interpretation.

“HIV” means human immunodeficiency virus;

“the Principal Act” means the Hepatitis C Compensation Tribunal Act, 1997;

“relevant product” means a blood product or a blood component used to treat persons with haemophilia or other blood clotting disorders in respect of those conditions;

“the 1991 settlement” means the agreement made in 1991 in settlement of proceedings against the State and other parties relating to the infection with HIV of certain persons as a result of those persons receiving blood or blood products in the State;

“the Tribunal” means the Tribunal established by section 3 of the Principal Act and known, by virtue of *section 2*, as the Hepatitis C and HIV Compensation Tribunal.

(2) In this Act—

(a) a reference to a section is a reference to a section of this Act, unless it is indicated that reference to some other provision is intended,

(b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

- (c) a reference to any enactment is a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Name of Tribunal. **2.**—The Tribunal established by section 3 of the Principal Act shall be known as the Hepatitis C and HIV Compensation Tribunal and references in that Act and any other Act of the Oireachtas and any instrument made under any Act of the Oireachtas to the Hepatitis C Compensation Tribunal shall be construed as references to the Hepatitis C and HIV Compensation Tribunal.

Amendment of section 3 of Principal Act. **3.**—Section 3 of the Principal Act is hereby amended—

- (a) in subsection (10)(b), by the insertion after “resides” of “or carries on any trade, business or profession”, and
- (b) by the insertion of the following subsection after subsection (10):

“(10A) Where a person refuses or fails to comply with or disobeys a requirement of the Tribunal, the High Court may, on application to it in a summary manner in that behalf by the Tribunal, order the person to comply with the requirement and make such other (if any) order as it considers necessary and just to enable the requirement to have full effect.”.

Amendment of section 4 of Principal Act. **4.**—Section 4 of the Principal Act is hereby amended—

- (a) in subsection (1)—
- (i) by the insertion in paragraph (c) after “who have” of “themselves”,
- (ii) by the insertion in paragraph (d) after “who has incurred” of “or will incur”, and
- (iii) by the substitution of the following paragraphs for paragraphs (e) and (f)—

“(e) where a person referred to in paragraph (a), (b) or (c) has died as a result of having contracted Hepatitis C or where Hepatitis C was a significant contributory factor to the cause of death, any dependant of such person,

(f) a person who has been diagnosed positive for HIV as a result of receiving a relevant product within the State,

(g) children or any spouse of a person referred to in paragraph (f) who have themselves been diagnosed positive for HIV,

(h) any person who is married to a person referred to in paragraph (a), (b) or (f), or who has been living with a person referred to in paragraph (a), (b) or (f) for a continuous period of not less than three

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

years, in respect of the loss of consortium of the person, including impairment of sexual relations with the person, arising from the risk of transmission of Hepatitis C or HIV,

- (i) any person who is responsible for the care of a person referred to in paragraph (f) or (g) and who has incurred or will incur financial loss or expenses as a direct result of providing such care arising from the person being cared for having contracted HIV,
- (j) where a person referred to in paragraph (f) or (g) has died as a result of having contracted HIV or where HIV was a significant contributory factor to the cause of death, any dependant of such person, and
- (k) a person referred to in section 9 in accordance with that section.”,

(b) by the insertion of the following subsection after subsection (2):

“(2A) Subsection (2) shall not apply to a person who has received a payment under the 1991 settlement or an award from any court (including an award from a court on an appeal from the Tribunal) or a payment in respect of an action against a party other than the State or a relevant agency arising out of any circumstances which would give rise to a claim before the Tribunal.”,

(c) by the insertion of the following subsection after subsection (6):

“(6A) (a) A claimant shall state in any application to the Tribunal—

- (i) whether he or she has previously made a claim to the Tribunal or, where the claimant is a dependant referred to in subsection (1)(j), whether the person whose death has given rise to the dependant’s claim had previously made a claim to the Tribunal, and
- (ii) whether he or she received a payment under the 1991 settlement or, where the claimant is a dependant referred to in subsection (1)(j), whether the person whose death has given rise to the dependant’s claim received a payment under the 1991 settlement,

and the Tribunal may take such steps as it thinks fit to verify the statements made in the application.

(b) The Minister may, in relation to an application, furnish the Tribunal with particulars of the 1991 settlement relevant to the application.

[No. 34.] *Hepatitis C Compensation Tribunal* [1997.]
Act, 1997.

- (c) Where a person infected with Hepatitis C and HIV who has not made a claim for compensation to the Tribunal before the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, makes a claim in respect of both conditions after such commencement, then, the Tribunal may, if it considers it appropriate to do so, hear and determine both claims together.
- (d) Where a person proposes to make a claim for compensation to the Tribunal after the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, and where that person had previously made a claim to the Tribunal which had not been determined before such commencement, then, the Tribunal may, if it considers it appropriate to do so, hear and determine both claims together.”
- (d) in subsection (8), by the insertion after “A claimant” of “referred to in paragraph (a), (b), (c), (d) or (e) of subsection (1)”
- (e) by the insertion of the following subsection after subsection (8):
- “(8A) A claimant referred to in paragraph (f), (g), (h), (i) or (j) of subsection (1) shall, as the case may be, establish to the satisfaction of the Tribunal, on the balance of probabilities—
- (a) that the HIV in respect of which the claimant has been diagnosed positive resulted from a relevant product received by the claimant within the State,
- (b) that the HIV was transmitted to the claimant from a person referred to in paragraph (a) following such receipt,
- (c) that the HIV was transmitted to the person being cared for following such receipt, or
- (d) that the HIV was transmitted to the person in respect of whom the claimant is a dependant following such receipt.”
- (f) by the insertion in subsection (13) after “Board” of “or in any report of the Tribunal of Inquiry into the infection with HIV and Hepatitis C of Persons with Haemophilia, and related matters”
- (g) by the substitution in subsection (14)(d) of “(k)” for “(f)”
- (h) by the insertion of the following subsection after subsection (14):
- “(14A) Subject to subsections (15) and (16)—
- (a) a claimant referred to in paragraph (f) or (g) of subsection (1) may make an application to the Tribunal only during the period of 3 years

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

from the date upon which he or she first became aware of the fact that he or she may have been diagnosed positive for HIV or from the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later,

- (b) a claimant referred to in subsection (1)(i) may make an application to the Tribunal only during the period of 3 years from the date upon which he or she began to incur such financial loss or expenses or from the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later,
- (c) a claimant referred to in paragraph (e) or (j) of subsection (1) may make an application to the Tribunal only during the period of 3 years from the date of the death of a person referred to in paragraph (a), (b), (c), (f) or (g) of subsection (1) or the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later, and
- (d) a claimant referred to in subsection (1)(h) may make an application to the Tribunal only during the period of 3 years from the date of the loss of consortium of a person referred to in paragraph (a), (b) or (f) of subsection (1), including the impairment of the sexual relations with the person, arising from the risk of transmission of Hepatitis C or HIV or the date of the commencement of the *Hepatitis C Compensation Tribunal (Amendment) Act, 2002*, whichever is the later.”,

(i) in subsection (15), by the insertion after “subsection (14)” of “and in subsection (14A)”, and

(j) in subsection (16), by the insertion after “subsection (14)” of “and in subsection (14A)”.

5.—Section 5 of the Principal Act is hereby amended—

Amendment of
section 5 of
Principal Act.

(a) by the insertion of the following subsection after subsection (2):

“(2A) Notwithstanding subsection (1)—

- (a) section 49 of the Civil Liability Act, 1961, shall apply in relation to the assessment of the amount of the award to a dependant referred to in paragraph (e) or (j) of section 4(1) with the modification that the reference in subsection (1)(a)(i) of the said section 49 to the death shall be construed as a reference to the injury to the deceased and the death of the deceased,

[No. 34.] *Hepatitis C Compensation Tribunal Act, 1997.* [1997.]

(b) the Tribunal may make an award to a dependant referred to in paragraph (e) or (j) of section 4(1) consisting of an amount equal to the amount of the general damages including damages for pain and suffering, personal injury, loss or diminution of expectation of life or happiness which the deceased suffered during his or her lifetime and to which the deceased would have been entitled if he or she had survived and brought a claim for compensation to the Tribunal, and where there is more than one such dependant, the amount aforesaid of the award shall be divided among those dependants in such manner as the Tribunal thinks just, and

(c) the Tribunal may make an award to a dependant referred to in paragraph (e) or (j) of section 4(1) in respect of aggravated or exemplary damages where the dependant establishes that the deceased would have had a legal entitlement to such damages against a relevant agency or the Minister had he or she survived and brought a claim for compensation to the Tribunal, and where there is more than one such dependant, the amount aforesaid of the award shall be divided among those dependants in such manner as the Tribunal thinks just.”,

(b) by the insertion of the following subsections after subsection (3):

“(3A) (a) Where a dependant referred to in paragraph (e) or (j) of section 4(1) is the child, spouse, father or mother of the person who died (‘the deceased’) as a result of having contracted HIV or Hepatitis C, or where HIV or Hepatitis C was a significant contributory factor to the cause of death, the Tribunal may make an award to that dependant in respect of post-traumatic stress disorder or nervous shock if he or she satisfies the Tribunal that he or she has suffered or is suffering from that condition as a result of the death.

(b) In determining whether to make an award under this subsection, the Tribunal shall have regard to any decisions of the High Court or the Supreme Court enunciating principles of law relating to the award of damages for post-traumatic stress disorder or nervous shock, as the case may be.

(3B) (a) The Tribunal may make an award to a person referred to in section 4(1)(h) in respect of the loss of consortium of a person referred to in paragraph (a), (b) or (f) of section 4(1), including the impairment of sexual relations with the person, if the Tribunal is satisfied that there has been such loss or impairment arising from the risk of transmission of Hepatitis C or HIV.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

(b) Where a dependant referred to in paragraph (e) or (j) of section 4(1) is the child, spouse or parent of the person who died ('the deceased') as a result of having contracted Hepatitis C or HIV, or where Hepatitis C or HIV was a significant contributory factor to the cause of death, the Tribunal may make an award to that dependant in respect of loss of society of the deceased including the loss of the care, companionship and affection of the deceased as a result of the death.

(3C) For the purposes of subsections (3A) and (3B) 'spouse' in relation to the deceased, means—

(a) a person who was married to the deceased, or

(b) a person who was not married to the deceased but who, until the date of the deceased's death, had been living with the deceased as husband or wife for a continuous period of not less than three years.

(3D) (a) In considering the claim of a person referred to in paragraph (f), (g) or (j) of section 4(1), the Tribunal may consider any payment made to the person under the 1991 settlement.

(b) In considering the claim of a dependant referred to in section 4(1)(j), the Tribunal may consider any payment made under the 1991 settlement to that dependant or to the person whose death has given rise to the dependant's claim for compensation to the Tribunal.",

(c) by the insertion of the following subsection after subsection (5):

"(5A) For the avoidance of doubt, it is hereby declared that the making of an award to a claimant under this section shall not revive any claims heretofore discharged or waived by the claimant pursuant to the 1991 settlement, and is without prejudice to any indemnity given by the claimant under the 1991 settlement.",

(d) by the insertion of the following subsection after subsection (6):

"(6A) The Tribunal may correct any clerical mistake or omission in a decision made by it within one month of the making of the decision.",

(e) in subsection (7)(a), by the insertion of "or HIV or both" after "Hepatitis C",

(f) in subsection (8), by the substitution of "before the conclusion" for "up to the commencement", and

(g) by the insertion in subsection (13) after "one month" of "or such longer period as may be prescribed" in each place where it occurs.

[No. 34.] *Hepatitis C Compensation Tribunal Act, 1997.* [1997.]

Amendment of section 9 of Principal Act.

6.—Section 9 of the Principal Act is hereby amended by the substitution of “in respect of Hepatitis C or HIV and may by regulations amend or modify this Act for the purpose of enabling this Act to apply appropriately to the class or classes so extended” for “in respect of Hepatitis C and in so doing may by regulations amend or modify this Act to make such incidental or consequential change necessary to give effect to the extension or so that the extension complies with the provisions of this Act” (inserted by the Hepatitis C Compensation Tribunal Act, 1997, (Section 13) (No. 2) Regulations 1998 (S.I. No. 417 of 1998)).

Amendment of section 10 of Principal Act.

7.—(1) Section 10(1) of the Principal Act is hereby amended by the insertion after “to pay awards made by the Tribunal” of “or by the High Court on an appeal from the Tribunal under section 5 or 6”.

(2) The Hepatitis C Compensation Tribunal Act, 1997, (Section 13) Regulations 1998 (S.I. No. 196 of 1998) are hereby revoked.

Amendment of section 11 of Principal Act.

8.—Section 11(4) of the Principal Act is hereby amended—

(a) by the insertion in subsection (4) after “an award from the Tribunal” of “or from the High Court on an appeal from the Tribunal under section 5 or 6”, and

(b) by the insertion of the following subsection after subsection (4):

“(4A) Where a claimant accepts an award of further compensation from the Tribunal under section 5(7) or from the High Court on an appeal from the Tribunal against that award, the claimant may apply to have an amount paid to him or her from the Fund.”.

Power to remove difficulties.

9.—If in any respect any difficulty arises during the period of 12 months from the commencement of a provision of this Act or an amendment of another Act effected by this Act in bringing the provision or amendment into operation, the Minister may by regulations do anything which appears to be necessary or expedient for bringing the provision or amendment into operation and regulations under this section may, in so far only as may appear necessary for carrying the regulations into effect, modify a provision of this Act or such an amendment if the modification is in conformity with the purposes, principles and spirit of this Act.

Saving.

10.—Nothing in this Act or in section 5(10)(a) of the Principal Act shall be construed as preventing a person from instituting or continuing proceedings for damages against a party other than the State and the other parties to the 1991 settlement as a result of having contracted HIV.

[1997.] *Hepatitis C Compensation Tribunal* [No. 34.]
Act, 1997.

11.—(1) This Act may be cited as the Hepatitis C Compensation Tribunal (Amendment) Act, 2002.

Short title,
collective citation,
construction and
commencement.

(2) The Hepatitis C Compensation Tribunal Act, 1997, and this Act may be cited together as the Hepatitis C Compensation Tribunal Acts, 1997 and 2002, and shall be construed together as one.

(3) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions.

S.I. No. 440 of 1997.

REGULATIONS

entitled

Hepatitis C Compensation Tribunal Act Regulations, 1997

Pn. No. 4564

Price - 40p
Postage - 36p

S.I. No. 440 of 1997.

HEPATITIS C COMPENSATION TRIBUNAL REGULATIONS, 1997.

The Minister for Health and Children in exercise of the powers conferred on the Minister by section 7 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Regulations 1997.
2. (1) A claimant shall, not later than 6 weeks before the date fixed by the Tribunal for the hearing of her or his claim, submit in writing medical or other relevant reports, on which a claimant intends to rely. The Tribunal may, at its discretion, accept such reports within a shorter time.

(2) Items of special damage shall be vouched by the claimant to the Tribunal not later than 6 weeks before the date fixed by the Tribunal for the hearing of her or his claim. The Tribunal may, at its discretion, accept such vouching within a shorter time.

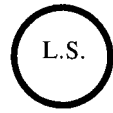
(3) If, in the opinion of the Tribunal, a claimant fails to comply with paragraph (1) or (2) of this Regulation or a claimant's case is presented at excessive length, the Tribunal may reduce the amount in respect of costs or expenses which might otherwise be awarded to such claimant by such amount as the Tribunal, in its sole discretion, may decide.
3. (1) The Tribunal shall as soon as may be after the establishment day provide itself with an official seal.

(2) The seal of the Tribunal shall be authenticated by the signature of the Tribunal chairman or such other member thereof as may be authorised by the Tribunal to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Tribunal and every document purporting to be an instrument made by the Tribunal and carrying the seal of the Tribunal shall be received in evidence and be deemed to be such instrument without further proof unless the contrary is shown.
4. (1) A claimant who has been awarded costs or expenses shall submit her or his bill of costs (or expenses) to the Chief State Solicitor who may agree the quantum of those costs or expenses. In default of agreement, the matter shall be re-entered before the Tribunal to determine the quantum of costs or expenses.

(2) In determining the amount of costs or expenses associated with a claim regard shall be had to:
 - (a) the amount of the award,
 - (b) the amount of work necessarily and properly undertaken by the claimant's lawyers referable to the application for compensation,

- (c) the informal nature of the Tribunal's proceedings,
- (d) the standard of proof required by the Tribunal,
- (e) the matters referred to in Regulation 2(3) of these Regulations,
- (f) any other factor which it considers relevant.



GIVEN under the Official Seal of the Minister for
Health and Children, this 30th day of
October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 441 of 1997.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act (Number of Ordinary Members
of Tribunal) Regulations, 1997**

Pn. No. 4565

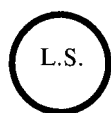
**Price - 40p
Postage - 36p**

S.I. No. 441 of 1997.

HEPATITIS C COMPENSATION TRIBUNAL ACT (NUMBER OF ORDINARY MEMBERS OF TRIBUNAL) REGULATIONS, 1997.

The Minister for Health and Children, in exercise of the powers conferred on the Minister by sections 3(3) and 7(2) of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of the 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of the 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Number of Ordinary Members of Tribunal) Regulations, 1997.
2. It is hereby prescribed that the number of ordinary members of the Tribunal shall be 14.



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 443 of 1997.

ORDER

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Establishment Day)
Order, 1997**

Pn. No. 4569

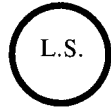
**Price - 40p
Postage - 36p**

S.I. No. 443 of 1997.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (ESTABLISHMENT DAY)
ORDER, 1997.**

The Minister for Health and Children, in exercise of the powers conferred on the Minister by section 2 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby orders as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Establishment Day) Order, 1997.
2. The 1st day of November, 1997, is hereby appointed to be the establishment day for the purposes of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997).



GIVEN under the Official Seal of the Minister for Health and Children, this 30th day of October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 444 of 1997.

ORDER

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Reparation Fund)
(Appointed Day) Order, 1997**

Pn. No. 4570

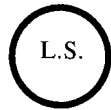
**Price - 40p
Postage - 36p**

S.I. No. 444 of 1997.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (REPARATION FUND)
(APPOINTED DAY) ORDER, 1997.**

The Minister for Health and Children, in exercise of the powers conferred on the Minister by section 11(9) of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby orders as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Reparation Fund) (Appointed Day) Order, 1997.
2. The 1st day of November, 1997, is hereby appointed to be the appointed day for the purposes of section 11 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997).



GIVEN under the Official Seal of the Minister for
Health and Children, this 30th day of
October, 1997.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 195 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 5 (9)(a))
Regulations, 1998**

Pn. No. 5787

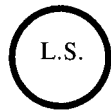
**Price - 40p
Postage - 36p**

S.I. No. 195 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 5 (9)(a))
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by section 5(9)(a) and section 7 of the Hepatitis C Compensation Tribunal Act, 1997 (No 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 5 (9)(a)) Regulations, 1998.
2. It is hereby prescribed that a claimant shall, as well as the period referred to in section 5(9)(a) of the Hepatitis C Compensation Tribunal Act, 1997, have a period of not later than one month from the date of commencement of rules of court in relation to such appeals, during which the claimant may decide in writing either to accept or reject the award of the Tribunal or appeal the award under subsection (15) of that section.



GIVEN under the Official Seal of the Minister
for Health and Children, this 9th day of June,
1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 196 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 13) Regulations,
1998**

Pn. No. 5788

**Price - 40p
Postage - 36p**

S.I. No. 196 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 13)
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by section 13 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 13) Regulations, 1998.
2. In these Regulations
“the Act” means the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997);
“the Court” means the High Court.
3. Any award of general or special damages or both including costs, made by the Court on appeal under section 5(15) or section 6(3)(e) of the Act, may be paid from the special account set up under section 10 of the Act.
4. A person who, on appeal to the Court under section 5(15) or section 6(3)(e) of the Act, is granted an award of general or special damages or both, may apply to have an amount paid to her or him from the Reparation Fund in lieu of the assessment of aggravated or exemplary damages.



GIVEN under the Official Seal of the Minister
for Health and Children, this 9th day of June,
1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 392 of 1998.

**Rules of the Superior Courts (No. 7) (Appeals from the Hepatitis C
Compensation Tribunal), 1998.**

Published by the Stationery Office, Dublin

**To be purchased from the
Government Publications Sale Office,
Sun Alliance House,
Molesworth Street,
Dublin 2**

or through any bookseller

Pn. No. 6296

**Price - £1.00
Postage - 48p**

S.I. No. 392 of 1998.

**RULES OF THE SUPERIOR COURTS (No. 7) (APPEALS FROM THE HEPATITIS C
COMPENSATION TRIBUNAL), 1998.**

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act, 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act, 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act, 1924, section 36, and the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act, 1961, section 48), and the Courts (Supplemental Provisions) Act, 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the annexed Rules of Court.

Dated this 23rd day of July, 1998.

Frederick Morris
Ronan Keane
Kevin Lynch
Richard Johnson
Gordon Holmes
Eamon Marray

I concur in the making of the annexed Rules of Court.

Dated this 14th day of October, 1998.

JOHN O'DONOGHUE,
Aire Dlí agus Cirt
Comhionannais agus Athchóirithe Dlí.

S.I. No. 392 of 1998.

**RULES OF THE SUPERIOR COURTS (No. 7) (APPEALS FROM THE HEPATITIS C
COMPENSATION TRIBUNAL), 1998.**

1. The following shall be inserted as Order 105A of the Rules of the Superior Courts immediately after Order 105 thereof:

ORDER 105A

APPEALS FROM THE HEPATITIS C COMPENSATION TRIBUNAL

1. An appeal to the High Court under section 5 (15) or under section 5 (16) of the Hepatitis C Compensation Tribunal Act, 1997 (“the Act”) shall be brought by way of originating notice of motion.
2. (1) Where an appeal against an award is brought by a claimant, such notice of motion shall be issued within one month from the date of receiving notice of the making of the award or within such greater period as may be prescribed by the Minister.
(2) Where an appeal against a decision of the Tribunal is brought (other than an award) such notice of motion shall be issued within one month from the date of the decision.
(3) Where an appeal is brought by a claimant, the Minister may cross-appeal within one month of the date of service of the notice of motion upon the Minister. Such cross-appeal shall be taken by way of a notice of motion. An appeal by any party shall put the matter appealed against fully in issue and a notice of cross-appeal shall not be required on that issue by any other party.
(4) Where an appeal is brought under section 5 (16) of this Act by the Minister or a relevant agency, such appeal shall be brought within one month of the date of the making of the award of aggravated or exemplary damages.
(5) Any appeal brought by a person pursuant to section 6 (3) (e) of the Act shall be brought by originating notice of motion within six months from the date of the commencement of these rules or within such further period as may be permitted by the Court under Order 122.
3. (1) Any notice of motion appealing any award or other decision or cross-appealing an appeal brought by a claimant shall be served by pre-paid ordinary post.
(2) Where an appeal is brought by a claimant or by a person who is appealing an award under section 6 (3) (e) it shall be served upon the Minister and also upon any relevant agency, where appropriate. The Minister and such relevant agency (if any) shall be the respondent(s) in the appeal.
(3) Where an appeal is brought by the Minister or by a relevant agency it shall be served upon the claimant and upon the Minister if he is not bringing the appeal or upon the relevant agency if it is not bringing the appeal, as appropriate.

- (4) In every appeal the person bringing the appeal shall serve a copy of the appeal on the Tribunal.
4. (1) There must be at least ten days between service of the notice of motion and the date specified therein for the hearing of the motion.
- (2) Every notice of motion bringing an appeal shall be grounded upon the affidavit of the appellant, and on such other affidavit or affidavits as appears appropriate and every cross-appeal by the Minister shall be grounded upon such affidavit or affidavits as may be filed on the Minister's behalf. Any respondent to an appeal may file an affidavit in reply thereto within 28 days of receipt of such notice of appeal or within such further time as the Court may allow.
- (3) In every appeal brought by a claimant or by a person appealing an award under section 6 (3) (e), such affidavit shall:
- (a) exhibit the application made to the Tribunal or to the non-statutory scheme Tribunal, as the case may be;
 - (b) exhibit the written, medical or other relevant written expert evidence adduced;
 - (c) exhibit any other relevant material adduced on behalf of such claimant or person;
 - (d) exhibit such written record (if any) of the proceedings and determination made by the Tribunal or non-statutory scheme Tribunal, as the case may be;
 - (e) exhibit a copy of the relevant award or decision of the Tribunal or the award of the non-statutory scheme Tribunal, as the case may be;
 - (g) exhibit the waiver of any right of action required by section 5 (18) of the Act and or any notice of discontinuance of proceedings already instituted;
 - (h) state concisely the grounds upon which the appeal has been brought;
 - (i) specify where the claimant or person appealing an award under section 6 (3) (e) is requesting that the appeal be heard otherwise than in public.
- (4) Where a cross-appeal is brought by the Minister, it shall be verified by affidavit which shall set out concisely the grounds of any such appeal and shall exhibit the relevant material relating to such cross-appeal. The appellant may file a replying affidavit within 28 days of the receipt of notice of such cross-appeal.
- (5) Where an appeal is brought by the Minister or a relevant agency in respect of an award of aggravated or exemplary damages, such appeal shall be verified by affidavit which shall set out concisely the grounds of appeal and shall exhibit all relevant material relating to such appeal.
- (6) Where such appeal is brought by the Minister or the relevant agency under section 5 (16) of the Act the claimant may, within twenty eight days of the receipt of such appeal, file an affidavit or affidavits in reply thereto and the claimant may, either in any such affidavit or by letter in writing or at the hearing of such appeal request that such appeal be heard in public.

5. An appeal or cross-appeal brought pursuant to the Act shall be heard and determined upon affidavit provided that oral evidence may be given to the Court by a claimant or his or her medical practitioner or expert or both or by any other person with the leave of the Court. In relation to any appeal or appeals concerning a joint award made by the Tribunal to a claimant and to his or her spouse, such appeal shall be heard on a joint basis.
 6. Any person desiring to seek leave of the Court for an appeal pursuant to section 5 (19) of the Act shall, within twenty one days from the date of the decision of the Court, give notice to any other party of the specified question of law in respect of which leave is sought.
 7. The provisions of Order 22 rule 10 (10) shall apply *mutatis mutandis* to an application pursuant to section 5 (13) of the Act for the approval of the Court, which approval shall be sought by lodging all necessary papers within one month of the notification of the making of the award.
 8. The provisions of Rules 1 to 7 shall apply to any Appeals which are in existence at the date of the commencement of these Rules to such extent as the President of the High Court in his discretion may direct.
2. This rule shall come into operation on the 23rd day of October, 1998.
 3. This rule shall be construed together with the Rules of the Superior Courts, 1986 to 1998 and may be cited as the Rules of the Superior Courts (No. 7) (Appeals from the Hepatitis C Compensation Tribunal), 1998.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Rules which come into operation on 23rd October, 1998, prescribe procedures in relation to appeals against decisions (including awards) of the Hepatitis C Compensation Tribunal pursuant to the Hepatitis C Compensation Tribunal Act, 1997.

S.I. No. 417 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Section 13) (No. 2)
Regulations, 1998**

Pn. No. 6349

**Price - 40p
Postage - 36p**

S.I. No. 417 of 1998.

**HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (SECTION 13) (NO. 2)
REGULATIONS, 1998.**

The Minister for Health and Children, in exercise of the powers conferred on him by Section 13 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Section 13) (No. 2) Regulations, 1998.
2. Section 9 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997), is hereby amended by the insertion after "Tribunal" of "in respect of Hepatitis C and in so doing may by regulations amend or modify this Act to make such incidental or consequential change necessary to give effect to the extension or so that the extension complies with the provisions of this Act".



GIVEN under the Official Seal of the Minister for
Health and Children, this 28th day of
October, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 432 of 1998.

REGULATIONS

entitled

**Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of
Claimants Before Tribunal) Regulations, 1998**

Pn. No. 6391

**Price - £1.00
Postage - 36p**

HEPATITIS C COMPENSATION TRIBUNAL ACT, 1997 (EXTENSION OF CLASSES OF CLAIMANTS BEFORE TRIBUNAL) REGULATIONS, 1998.

The Minister for Health and Children, in exercise of the powers conferred on him by Sections 4 (14) (d) and 9 of the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997) (as adapted by the Health (Alteration of Name of Department and Title of Minister) Order, 1997 (S.I. No. 308 of 1997)), with the consent of the Minister for Finance, hereby makes the following regulations:

1. These Regulations may be cited as the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998.

2. In these Regulations—

“the Act” means the Hepatitis C Compensation Tribunal Act, 1997 (No. 34 of 1997);

“diagnosed relative” means a parent, brother or sister, whether of the whole blood, the half blood or by affinity of a person referred to in section 4(1)(a) or (b) of the Act and who has been diagnosed positive for Hepatitis C.

3. It is hereby prescribed that—

(a) a diagnosed relative,

(b) a person who is responsible for the care of a diagnosed relative and who has incurred financial loss or expenses as a direct result of providing such care arising from the diagnosed relative being cared for having contracted Hepatitis C, and

(c) where a diagnosed relative has died as a result of having contracted Hepatitis C or where hepatitis C was a significant contributory factor to the cause of death, any dependant of the diagnosed relative,

may make a claim for compensation before the Tribunal.

4. It is hereby prescribed that—

(a) a diagnosed relative may only make an application to the Tribunal within the period of 3 years of the date upon which she or he first became aware that she or he might have contracted Hepatitis C from a person referred to in paragraph (a) or (b) of section 4(1) of the Act, or the making of these Regulations, whichever is the later,

(b) a person referred to in Regulation 3(b) of these Regulations may only make an application to the Tribunal within the period of 3 years of the date upon which the diagnosed relative in her or his care first became aware that she or he might have contracted Hepatitis C from a person referred to in paragraph (a) or (b) of section 4(1) of the Act, or the making of these Regulations, whichever is the later, and

(c) a person referred to in Regulation 3(c) of these Regulations may only make an application to the Tribunal within the period of 3 years of the date of the death of the diagnosed relative, or the making of these Regulations, whichever is the later.

5. Section 4(8) of the Act is hereby amended by the insertion in paragraph (d) after “subsection (1)(d) or (e)” of “or paragraph (b) or (c) of Regulation 3 of the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998 (S.I. No. 432 of 1998)”.
6. Section 5 of the Act is hereby amended by the insertion in subsection (2) after “of this Act” of “or paragraph (c) of Regulation 3 of the Hepatitis C Compensation Tribunal Act, 1997 (Extension of Classes of Claimants before Tribunal) Regulations, 1998 (S.I. No. 432 of 1998)”.

The Minister for Finance consents to the making of the foregoing Regulations.



GIVEN under the Official Seal of the Minister for Finance, this 31st day of October, 1998.

CHARLIE McCREEVY,
Minister for Finance.



GIVEN under the Official Seal of the Minister for Health and Children, this 28th day of October, 1998.

BRIAN COWEN,
Minister for Health and Children.

S.I. No. 473 of 2002.

ORDER

entitled

**Hepatitis C Compensation Tribunal (Amendment) Act,
(Commencement) Order, 2002.**

Pn. No. 12198

Price - 51c

S.I. No. 473 of 2002.

**HEPATITIS C COMPENSATION TRIBUNAL (AMENDMENT) ACT,
(COMMENCEMENT) ORDER, 2002.**

I, MICHEÁL MARTIN, Minister for Health and Children, in exercise of the powers conferred on me by Section 11 of the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 (No. 21 of 2002) hereby order as follows:

1. This Order may be cited as the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 (Commencement) Order, 2002.
2. The 9th day of October, 2002, is hereby fixed as the day on which the Hepatitis C Compensation Tribunal (Amendment) Act, 2002 (No. 21 of 2002) shall come into operation.



GIVEN under the Official Seal of the Minister for
Health and Children, this 9th day of October,
2002.

MICHEÁL MARTIN,
Minister for Health and Children.

APPENDIX II

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 III

HEPATITIS C AND HIV COMPENSATION TRIBUNAL

ACCOUNT OF RECEIPTS AND PAYMENTS FOR THE YEAR ENDED 31 DECEMBER 2002

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 2002.

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 i.e. where the payable order has been drawn.

Suspense Account at Department of Health and Children

Payments are made by the Department of Health and Children 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 Children 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 31 December 2002</u>		2002		2001	
	Number	€	Number	€	
Payments					
Tribunal Awards					
New Awards	62	18,541,096	71	23,646,314	
High Court Appeals	52	17,762,094	113	24,835,283	
Total Awards		36,303,190		48,481,598	
Reparation Fund payments					
New Awards	67	3,800,910	77	4,889,774	
High Court Appeals	52	3,552,419	115	5,053,485	
Total Reparation Fund Payments		7,353,329		9,943,259	
Legal costs of Tribunal awards					
New Awards	45	3,024,750	89	4,886,950	
High Court Appeals	32	1,465,663	94	3,718,822	
Total Legal Costs		4,490,412		8,605,772	
Administrative costs					
Pay	Note 1	858,359	Note 1	799,835	
Non-Pay	Note 2	391,853	Note 2	389,327	
Total Payments		49,397,143		68,219,790	
Receipts					
Received from Special Account established under Section 10 of the Hepatitis C Compensation Tribunal Act, 1997		37,900,000		79,358,630	
Received from Reparation Fund established under Section 11 of the Hepatitis C Compensation Tribunal Act, 1997		14,700,000		13,332,250	
Total Receipts		52,600,000		92,690,880	
Surplus/(Deficit) for year		3,202,857		24,471,089	
Surplus/(Deficit) brought forward from previous year		(4,117,305)		(28,588,394)	
Surplus/(Deficit) carried forward to following year		(914,448)		(4,117,305)	
Financed by					
Suspense Account at Department of Health and Children					
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 2002</u>				
<u>Notes to the Accounts</u>		2002	2001	
		€	€	
Note 1	Pay			
	Chairman's salary and Fees paid to Tribunal Members	Note 3	679,385	662,394
	Administration		178,974	127,815
	Total Pay		858,359	790,209
Note 2	Non-Pay			
	Advertising		124,900.17	75,212
	Stenography services		79,047.25	55,123
	Phones		9,560.91	25,490
	Postage		1,093.12	1,512
	Computers		19,870.90	14,464
	Photocopying		882.20	7,103
	Office machinery		0	551
	Heat, Power & Light		5,225.05	5,315
	Contract Cleaning		6,623.69	6,194
	Office Supplies		4,912.31	8,279
	Printing		5,528.04	7,385
	Furniture and fittings		7,924.69	60,549
	Travel and Subsistence		5,034.64	23,510
	Courier Services		3,444.85	4,904
	Vending machine and water supplies		2,074.18	2,336
	Confidential waste disposal		899.70	1,067
	Fees to Expert Witnesses		25,547.86	19,992
	Maintenance		8,017.55	9,311
	Room hire		3,667.07	1,905
	Legal fees		70,118.46	45,641
	Training		0	1,397
	Publications		5,440.07	4,654
	Miscellaneous		2,039.88	7,436
	Total Non-Pay		391,853	389,327
Note 3	Income Tax, Pay Related Social Insurance and Professional Services Withholding Tax deductions are included in the relevant suspense accounts at the Department of Health and Children. A total of €4,368.04 was withheld for payment to the Revenue Commissioners at 31/12/2002.			

APPENDIX IV

Summary of Awards, High Court Appeals, Reparation Fund Payments and Legal Costs

Awards of the Tribunal

<u>Year</u>	<u>No. of Awards Paid</u>	<u>Amount Paid</u> €
1996	204	28,627,096
1997	327	56,672,735
1998	535	105,660,817
1999	214	43,221,011
2000	126	31,943,504
2001	71	23,646,314
2002	62	18,541,096
Total	1,539	308,312,573

High Court Appeals

<u>Year</u>	<u>No. of Appeals</u>	<u>Amount Paid</u> €
2000	41	6,053,486
2001	113	24,835,283
2002	52	17,762,094
Total	206	48,650,863

Reparation Fund Payments

<u>Year</u>	<u>No. of Payments</u>	<u>Amount Paid</u> €
1997	340 Awards	11,971,841
1998	686 Awards	25,249,850
1999	220 Awards	8,928,869
2000	136 Awards	6,692,662
2000	39 Appeals	1,124,269
2001	77 Awards	4,889,774
2001	115 Appeals	5,053,485
2002	67 Awards	3,800,910
2002	52 Appeals	3,552,419
Total	1,732	71,264,079

Legal Costs

<u>Year</u>	<u>No. of Claims</u>	<u>Amount Paid</u> €
1996	93	1,737,849
1997	275	7,518,688
1998	512	16,345,926
1999	315	9,984,938
2000	180	8,297,691
2001	183	8,605,772
2002	77	4,490,412
Total	1,635	56,981,276

APPENDIX V

LEGAL COSTS PAID IN 2002

TRIB. REF.	PAYEE	COSTS
		€
471/96	Quinn & Co	20,646.72
2056/00	Ernest J Cantillon & Co	29,628.08
701/96	Niall Quinn & Co	14,807.05
147/96*	Malcomson Law	6,444.17
158/96*	Malcomson Law	6,241.02
169/96	Malcomson Law	10,429.13
249/96*	O'Sullivan & Associates	34,897.48
277/96*	Malcomson Law	6,444.17
351/96*	Malcomson Law	30,749.56
82/96*	Malcomson Law	6,380.69
85/96*	Malcomson Law	7,357.12
612/96 *	Beauchamps	46,338.43
2174/01	Corrigan & Corrigan	15,840.07
40/96*	Corrigan & Corrigan	43,444.66
48/96*	Corrigan & Corrigan	82,549.46
523/96*	Lavelle Coleman	42,221.26
663/96*	Lavelle Coleman	23,227.27
727/96*	Beauchamps	61,923.71
1082/96	Ivor Fitzpatrick & Co	80,999.00
1382/96*	Ivor Fitzpatrick & Co	38,821.62
1868/98	Ivor Fitzpatrick & Co	40,831.65
1898/99	Ivor Fitzpatrick & Co	34,652.49
1920/99	Ivor Fitzpatrick & Co	74,024.21
1929/99	Richard Cooke & Co	13,924.75
1998/00	Ivor Fitzpatrick & Co	40,348.82
958/96	Ivor Fitzpatrick & Co	32,672.06
907/96	Aitken, Clay & Collins	2,032.65
1947/99	Arthur P McLean & Co	57,735.04
2163/01	Arthur P McLean & Co	32,352.96

TRIB. REF.	PAYEE	COSTS
		€
377/96*	Arthur P McLean & Co	63,018.51
428/96	Arthur P McLean & Co	33,589.76
429/96	Arthur P McLean & Co	2,077.29
698/96*	Arthur P McLean & Co	35,795.31
698/96*	Arthur P McLean & Co	38,551.47
88/96	Arthur P McLean & Co	40,099.15
518/96	Oliver O'Sullivan & Co	105,818.94
1732/97	Ernest J Cantillon & Co	76,079.01
710/96*	M W Sherlock & Co	29,334.08
1333/96*	Beauchamps	33,441.74
326/96*	Beauchamps	33,741.79
865/96*	Beauchamps	46,581.32
1935/99	Tynan Murphy Yelverton	57,384.02
536/96	Ernest Cantillon & Co	42,035.51
562/96	Ernest Cantillon & Co	40,829.11
897/96*	Ernest J Cantillon & Co	27,043.65
1492/96*	Beauchamps	58,373.40
1492/96*	Beauchamps	49,406.23
23/96	Ivor Fitzpatrick & Co	68,982.00
264/96*	Brophy Solicitors	61,530.36
398/96*	Lavelle Coleman	68,747.08
41/96	Brophy Solicitors	97,329.59
53/96*	Brophy Solicitors	79,832.01
56/96*	Lavelle Coleman	46,749.75
1550/96*	Ensor O'Connor	32,001.04
1918/99	John J Quinn & Co	25,283.20
30/96*	James P Coghlan & Co	68,750.89
1561/96	Mannion Aird & Co	49,084.35
1561/96	Mannion Aird & Co	38,650.81
246/96*	John Cooke, Solicitors	43,975.82
1501/96*	Beauchamps	11,297.58
1501/96*	Beauchamps	30,406.06
609/96*	Beauchamps	44,533.69

TRIB. REF.	PAYEE	COSTS
		€
611/96*	Beauchamps	18,801.62
768/96*	Beauchamps	32,700.00
1305/96	Delaney Dawson Solicitors	35,094.61
96/96	Clarke & Flynn solicitors	28,666.58
1698/97	Messrs O'Sullivan & Associates	41,936.15
1957/99*	Ivor Fitzpatrick & Co	90,434.50
1866/98*	Ivor Fitzpatrick & Co	43,876.96
781/96 *	Ivor Fitzpatrick & Co	35,140.63
781/96 *	Ivor Fitzpatrick & Co	(35,140.63)
1957/99*	Ivor Fitzpatrick & Co	43,877.18
781/96 *	Sheridan & Co	35,140.63
1524/96	C S Kelly & Co	21,235.80
1866/98*	Ivor Fitzpatrick & Co	54,111.80
1866/98*	Ivor Fitzpatrick & Co	61,187.53
1866/98*	Ivor Fitzpatrick & Co	16,969.49
1985/99	Mannion Aird & Co	60,244.38
2009/00	Ivor Fitzpatrick & Co	36,849.40
2084/00	Ivor Fitzpatrick & Co	35,544.61
1840/98 *	Gerard Scallon & O'Brien	71,637.60
1840/98 *	Gerard Scallon & O'Brien	55,338.69
1881/99	Ivor Fitzpatrick & Co	61,382.08
1973/99	Gerard Scallan & O'Brien	53,756.45
1974/99	Gerard Scallan & O'Brien	39,541.53
2087/00	Ivor Fitzpatrick & Co	53,406.35
2175/01	Gerard Scallan & O'Brien	92,534.38
1006/96	Ivor Fitzpatrick & Co	404,246.78
1713/97	Malcomson Law	38,289.54
339/96	Augustus Cullen & Son	10,450.58
706/96	Brophy Solicitors	281,426.69
2045/00	T Mullan & Co Solicitors	53,999.25
2172/01	Martin Sheehan & Co	21,559.65
1921/99	English Leahy Donovan	25,476.94
2008/00	Thomas J Walsh	52,374.87

