

# **Making the case for Government Compensation for those damaged by Vaccines**

**Wm. H Wain BEM**

The purpose of this report is to provide comprehensive information to those who bear the responsibility for the tragic plight of those, who as young babies, suffered severe brain damage as a direct result of the National Immunisation Scheme.

I would like to make it clear that it is generally accepted that Immunisation has played such an important part in protecting the nation against infectious diseases, and therefore by protecting the majority it is only fair and just that the minority who have been sacrificed should receive compassionate consideration and be provided with financial compensation, if only as a gesture of acceptance of the high price which has been paid by the suffering by the children and their families to protect the Nation as a whole.

My son Paul, who is 35 years of age, suffered severe brain damage as a result of the Smallpox and Pertussis Vaccines so naturally the research I have carried out has been in the main confined to those vaccines because I am just as concerned about the other children who suffered as a result of the other vaccines whose parents have carried out similar research.

I intend to provide information from my research over many years as I am aware that the majority of those who will consider the matter of compensation were at infant school at the time or were not even born, it will be in the form of a history lesson.

The Medical Research Council carried out Clinical Trials between 1948 and 1956 in the United Kingdom which were carefully monitored. The Pertussis Vaccine was given as a single entity and not mixed with other vaccines. After each dose, each child was visited by a nurse or doctor investigator to assess the child's health. No mention was made in the report of the Clinical Trials of any serious reactions, it now appears that the only interest was whether or not the child had caught Whooping Cough.

It now transpires that during the Clinical Trials children did in fact suffer severe and irreversible brain damage as a result of the Pertussis Vaccine and accepted as such by Medical Experts appointed by the Department of Health. The following statistics were published in Hansard by the Minister of Health in answer to a Parliamentary Question.

1948	2	1953	9
1949	2	1954	5
1950	5	1955	12
1951	6	1956	10
1952	4		

The Department of health clearly neglected to inform Parliament, the Medical Profession or parents of the potential hazards of the vaccine.

The National Pertussis Vaccination Programme commenced in 1957 when the Department of Health opted for a Plain Vaccine. The statistics of the Department of Health were as follows showing the numbers of children suffering severe brain damage as a result of the vaccine:

1957	10	1963	37
1958	8	1964	30
1959	16	1965	31
1960	28	1966	35
1961	28	1967	22
1962	28	1968	37

Again no mention was ever made by the Department of Health of these hazards.

It was not until 1968 that the Plain Vaccine was replaced by an Absorbed Vaccine which has a mineral adjuvant, Aluminium Hydroxide, added, which was said would provoke a greater immune response, as well as reducing the toxicity of the vaccine and would comply with the World Health Organisation's recommendations which the existing vaccine did not.

In July 1962, the then Minister of Health, Mr Enoch Powell, made a speech at the Annual Lunch of the Royal Society for the Promotion of Health held in London, on his planned programme of immunisation, he dealt with all types of vaccines including Pertussis, at no time did he mention any adverse reactions although his Department was fully aware that the previous month his representatives had attended a Symposium in Prague when toxicity and efficacy of the vaccine was discussed.

The Department of Health clearly failed in its duty of care by knowingly allowing children's brains to be damaged, this must be considered as negligent. No explanation has ever been given to justify this conspiracy of silence.

In June 1962, The World Health Organisation held a Symposium in Prague, which was sponsored by the Permanent Section of Microbiological Standardisation of the International Association of Microbiological Societies. The purpose of the Symposium, which was attended by representatives of British and other governments, was to discuss at length concerns of the previous five years and the need to produce a vaccine which would be more effective and less toxic. The following year a similar Symposium was held in the US for the same reason, after this ended the Lederle Drug Company in the US and the Wellcome Drug Company in the UK signed an agreement for three years during which time each company agreed to exchange their findings.

I was indeed fortunate in obtaining all the details of the Prague Symposium, extensive enquiries in the UK failed to produce any evidence that it ever existed. I was obliged to resort to asking HM Ambassador in Prague for help, and through his good offices I obtained the full report and recommendations.

I am not in a position to know whether or not the information from the Symposium was passed on to the Department of Health but I do know that the over toxic vaccine continued to be used until 1968 when it was replaced by the Absorbed Vaccine, and by this time a further 181 children had been severely brain damaged by this over toxic vaccine.

The question must be asked and answered where the responsibility lies for our children and their families suffering such devastation. Was it the drug companies who failed to inform the Department of Health of the over toxicity of the vaccine to protect commercial interest, or was the Department of Health informed and failed to inform the medical profession and parents to enable them to come to an informed judgement. If it was the drug companies then they should provide compensation, if it was the Government, then it must face up to its responsibilities by doing the decent thing and compensating our children. It is now an established fact that the present figure now stands at over 900 which is an absolute disgrace in a civilised country.

The Vaccine Damaged Payments Act 1979 which provided a payment of £10,000 was introduced following pressure by parents of Vaccine Damaged Children on their Members of Parliament and was supported by all parties. It was said at the time that the payment was not compensation, this of course was accepted, as such an amount could never be considered as compensation. We were told that the whole matter would be investigated, and a fair and proper amount would be given. After the General election of 1979 when the Conservative Government was elected we were told in no uncertain manner by the Secretary of State that we were to get nothing further, and if we wanted compensation we would have to go through the courts, which of course we never wanted to do as we have enough problems in life looking

after our children, who as well as becoming political footballs were then to become objects of judicial minefields.

The Vaccine Damaged Payments Act 1979 was administered by the Vaccine Damage Payments Unit at Blackpool, the parents or guardians of the children they claimed had suffered brain damage by the vaccine mentioned in the Act were invited to claim for the payment. On receipt of the application the Unit would then request the medical records of the applicant and after examination of these records, would make a decision whether or not the records supported the making of a payment.

In the event of a payment not being approved, the applicants were informed they had a right of appeal to a Vaccine Damage Tribunal which consisted of a paediatrician and Neurologist of Consultant status and was chaired by a legally qualified Chairman.

When given notice of the appeal the Vaccine Damaged Payments Unit supplied the applicant with the evidence on which the applicant had been refused, the applicant was then able to examine the evidence and decide whether or not to apply for a hearing before the Tribunal.

There were several reasons given for the refusals, some were deemed to be under 80% disabled as required by the Act, this was always considered by the patents unjust, if the child was 79% it did not qualify but if it was 80% it did. This was no reflection on the Unit who was simply carrying out the law but it showed a complete lack of morality and common sense by the legislators. The main reason given was lack of medical evidence, in many cases the medical records had been "lost" or "destroyed". We had the experience of this ourselves, when we appealed we received the evidence from the Unit only to discover that the first four years of Paul's records were missing from his file. We were fortunate in having a conscientious, competent and obliging family doctor who fortunately had kept all the hospital notes and willingly supplied us with copies of them, which showed that four hours after Paul had been immunised he had a major convulsion which lasted some 45 minutes. He was seen by our family doctor whilst still in the convulsion and on the doctor's advice was taken immediately to the Royal Liverpool Children's Hospital where he was seen and it was recorded in the hospital notes that he had the convulsion as a result of the adverse reaction to the Pertussis element in the vaccine, we honestly thought he was going to die, he lay there inert with a marble-like appearance. That was the first of a lifetime attendances at hospitals, his present condition is that he is severely brain damaged, unable to walk, takes frequent epileptic seizures. He is unable to do anything for himself and has to be washed, shaved, taken to the toilet, fed and is confined to a wheelchair.

That we were obliged to attend the Tribunal was in fact a blessing in disguise as we now have all Paul's medical notes. After reading these notes, examining him and

hearing my wife's evidence the Tribunal unanimously agreed that Paul's condition was due to the vaccine and made the award. How many were refused payment because of "lost" medical files is anyone's guess. Those who were successful in receiving the payment under the Act were issued with a Trust Deed which contained the following paragraphs:

*Whereas the Secretary of State is satisfied that (name of child) is disabled as a result of*

*Vaccination against one of the diseases specified in Section 1(I) of or by the Secretary of State for the purposes of the Vaccine Damaged Payments Act 1979.*

It is quite clear the Secretary of State and indeed Parliament accepted that the children's disablement had been caused by the vaccine.

As I have previously mentioned, parents were informed that the then Government did not intend to provide proper compensation and the only way the parents could proceed was by litigation.

I am aware there were three cases of vaccine damage brought before the courts, the first when compensation was awarded but was lost on appeal, the second resulted in the case being withdrawn for lack of evidence, the third was the Loveday v Renton case. These children were immunised in 1970, 1971 and 1976 respectively.

The case commenced in October 1987 in front of Lord Justice Stuart-Smith at the High Court. I was alarmed to discover that it was the Judge who decided which case he wanted to hear and which witnesses he would allow to be heard and that there would be a moratorium on all other Legal Aid Certificates. Lord Justice Stuart-Smith delivered his judgement on the 30 March 1988 and found that the Plaintiff had failed to show on the balance of probabilities that the vaccine could have caused permanent brain damage in young children. He added that it was possible that it did the contrary could not be proved. His Lordship's decision did not surprise me and others because he had been deprived of hearing vital evidence from the parents of vaccine damaged children, their medical experts, independent medical experts from the Vaccine Damaged Tribunals and reports from the Yellow Card system. Before the case commenced I wrote to the Lord Chancellor and the Master of the Rolls saying that the case had been chosen to fail, they replied saying they could intervene. I also wrote to the Learned Clerk to the Lord Stuart-Smith about the witnesses to be called, he replied saying that this was up to the Counsel in the case.

There is little doubt the Loveday v Renton case left a lot to be desired in the interests of natural justice. When was the Loveday case selected when Miss Loveday had been

refused Payment under the Act and had previously been to the court of appeal on two occasions which had refused her applications. There were hundreds of cases which could have been selected which had been awarded the Payment and where evidence could have been called by medical experts.

Why did the Judge allow the Wellcome Drug Company to conduct the whole defence when it was not the Defendant and provide at the finance for the defence?

There is little doubt that the Legal Aid costs for Vaccine Damaged cases must have run into millions of pounds and in addition taken up an unnecessary amount of court time, the amount of public funds expended in these cases could well have compensated our children. I asked my MP to discover the cost of Legal Aid for Vaccine Damaged cases, he received a short reply saying the figures were not available. This surprised me because the Lord Chancellor had quite properly just carried out an in depth enquiry into the Legal Aid costs and it was obvious that this was a cover up.

I think it is now accepted generally that the majority of our Legal Aid Certificates have been withdrawn and the remainder will be withdrawn in the near future, together with the views of the Lord Chancellor about civil litigation there is no likelihood of any further cases being heard in court. I honestly believe that the "hot lot" cases are non-starters and in any case they are in the minority. It is therefore of vital importance that the parents once again embark on a vigorous campaign through our Members of Parliament and to gain as much publicity as possible to ensure that our voices are heard, our claims from compensation are just, and we must get this over to Parliament to ensure it takes some positive action.

It is heartening for parents to know that for the first time since 1979 the Government is prepared to listen and talk about the plight of our children and the injustice they have suffered and are still suffering.

It must be remembered that the only persons who should be considered are our children who have lived with so much suffering and their families who have devoted their lives to looking after them, it matters not what organisation the parents belong to whether it be the Association of Parents. JABS, Justice for all Vaccine Damaged Children or Vaccine Victims Support Group, all these parents have a common purpose to obtain justice. The main objective is to bombard Parliament with letters.

Richard Burden MP is the modern day Jack Ashley and for some time now has been spearheading our cause in Parliament having recently organised a meeting with the DSS Minister, other MPs and parents. No doubt we are going to be asked what we consider to be a just settlement, the first thing to be done in for the Government to

appoint an independent Actuary to assess the extent of our children's disabilities and come up with a realistic sum of money as compensation.

We must not forget those who have suffered vaccine damage prior to 1948 and were excluded from the Vaccine Damage Payments Act, these people are now in their fifties and their parents in their eighties.

In conclusion I would point out that other countries have compensated their vaccine damaged victims including the United States, Germany and the latest being Japan which was reported in the Asian Evening news of 28<sup>th</sup> July 1993, I am in possession of the details of the Japanese Award which I obtained from the Japanese Ambassador and translated for me by my brother who was a lecturer at a Japanese University.

Wm. H Wain BEM  
Green Oaks  
Church Place  
Freshwater  
Isle of Wight  
2/12/97  
Tel: 01983 754727