

15/6/91
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Mr Dobson EHF1
Mr Kendall FA2
Mr Thompson AIDS Unit
Mr Powell SOLB3
Dr Rejman MEDISD
Mr Canavan EHF1A o/r
Mr Merrett FA2B
Mr Gutowski MCA
Mr Provan D1C
Ms Moseley ID
Mr Scott DHSS NI
Mr Tucker SHHD
Mr R C Williams WO

From : D E Burrage EHF1A

Date : 14 June 1991

cc : File

COURT?
POST

HIV HAEMOPHILIAC SETTLEMENT

1. I attach a note of the court hearing on 10 June. I apologise for the delay, due to my absence from the office since the hearing.
2. I understand that Mr Powell is obtaining the detailed record of what was said by the Plaintiff's Counsel, which will follow as Annex C to the note.

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HIV HAEMOPHILIAC SETTLEMENT - COURT HEARING 10 JUNE 1991

1. The final settlement details of the HIV haemophilia litigation were announced before Mr Justice Ognall at an open court hearing on 10 June.
2. Both sides gave their respective views of the settlement. Counsel for the plaintiffs set out the background to the litigation, explained the circumstances in which the plaintiffs had put forward proposals for settlement of the litigation, how these proposals had been devised, and their essential terms. He stressed that the purpose of the litigation was not to argue about the law of tort but to obtain quick compensation for the plaintiffs. He also accepted that under the terms of settlement some would gain and others would lose, but by categorising the payments a balance was struck between fairness and time that would have been taken in individually assessing each claim. The payment amounts and categories are at Annex A.
3. Counsel for the plaintiffs informed the Judge that the payments are to be made to the 980 litigants and to non litigants alike, and that of the litigants, 847 claims had either been paid or approved for payment (the figure is now 927; we are not aware that any plaintiffs have rejected the offer, and understand the balance outstanding is due to late replies.) The Judge was also informed that regulations had already been laid providing for payments to haemophiliacs from the Macfarlane Trust to be disregarded for social security benefit purposes, and making special provision in relation to inheritances.

4. In their remarks, Plaintiffs' Counsel acknowledged that their case would have been difficult to prove and made clear that they recognised no liability attached to the Committee on Safety of Medicines, or DH in its capacity as Licensing Authority under the Medicines Act. These points were picked up by Counsel for the Department in his observations, at Annex B, which include a statement of the Government's commitment to treatment and care of haemophiliacs.

5. The Judge referred to the unintended publication last summer of remarks made in Chambers when he advocated compromise, and said that both sides were well advised to reach compromise on these settlement terms; he also expressed great personal and professional satisfaction at the outcome. He said he was aware that some claims of medical mismanagement were continuing (against individual health authorities). He referred to the tragic circumstances of those to whom this settlement applied which, he said, had rightly excited widespread concern and sympathy, and expressed the relief which he shared with those who had been spared protracted legal proceedings.

6. In Chambers after the open court hearing, the Judge approved that the settlement include provision for category G children who may subsequently become infected as a result of regular intimate contact [this had not hitherto been provided for in the terms of settlement].

7. The Judge is to deal with some residual matters relating to the settlement (including a draft order to be prepared listing all litigant infants who have accepted, schedules covering dependencies and a case of an infant supposedly infected by its mother, the wife of an infected haemophiliac) at the end of June. The Judge plans to hear matters relating to any remaining clinical management cases in the autumn - of which there might be 15-20 which had not by then been mutually resolved between the plaintiffs solicitors and the Health Authorities.

HIV HAEMOPHILIA SETTLEMENT

Under the terms of the settlement the payments to be made are:-

To each individual who is an infected haemophiliac:

Infant (person under 18 yrs old)	£21,500 each
Single Adult	£23,500 each
Married adult without dependent children	£32,000 each
Haemophiliac with dependent children	£60,500 each

Infected Intimates of HIV infected haemophiliac:

a) adults or married infants	£23,500 each
b) unmarried infants	£21,500 each

Category G Plaintiffs (ie those litigants who have not sero-converted and/or been infected with HIV to their knowledge, but are at risk of doing so because they are the intimates of haemophiliacs who have sero-converted and/or been infected with HIV or developed AIDS).

£ 2,000 each

RE: HIV HAEMOPHILIA LITIGATION

Although very full explanations have been given by the Plaintiffs' counsel, on behalf of the Department of Health, I would ask leave to make a few observations about the settlement of this litigation and the terms of that settlement. I appreciate that that is somewhat unusual, but these are unusual proceedings which have attracted a great deal of public interest and concern. There has also been much publicity, some of which has been somewhat ill informed. It is therefore, we submit, desirable to ensure that there are no misunderstandings about the reasons why the Government has acted as it has and what has been done and will continue to be done to assist the unfortunate victims of this dreadful tragedy.

Once it became aware of the infection of haemophiliacs by blood products, in particular Factor VIII, the Government recognised that theirs was a very special case. On top of the hereditary condition, they had been infected with the HIV virus. It was for this reason that, quite independently of any litigation, the Macfarlane Trust was originally provided with funds amounting to £10M and that in 1990 a further £24M was made available. The tragedy was nobody's fault. The presence of the virus and the danger of infection from the blood products, which provided so great a benefit to the haemophiliacs, were unknown at the material times. It has always been the Government's case that, through the Department, it acted reasonably in the light of what was known or was reasonably ascertainable. The advice given was, and remains, that the Plaintiffs would be unable to prove negligence and would not establish their claims.

Mr Jackson has referred to what he has called the *debate* about discovery last summer. Since the law required that documents which were admittedly the subject of public interest immunity could only be disclosed if the Court was satisfied that it was necessary in the interests of justice to do so, the Court had to decide whether it was arguable that the Plaintiffs had in law a cause of action. Hence the arguments last Summer. The Court decided that it could not rule out the existence of an arguable case and so discovery was ordered. The Court did not decide that the Plaintiffs did have a case on the facts, let alone one that was reasonably likely to succeed.

Despite the advice given, the Government recognised that the case was likely to last for a long time if fought out in court - an estimate of at least 3-4 months was given - and that public funds were involved on both sides, since many of the Plaintiffs were pursuing their claims with the assistance of legal aid. In addition, the outcome of litigation is rarely certain and any litigant is sensible to entertain the possibility that the advice given may turn out to be erroneous. Furthermore, the circumstances of the haemophiliacs were unique and this the Government had already recognised in the ex gratia payments totalling £34M provided through the Macfarlane Trust. It was therefore decided that the offer made by the Plaintiffs' advisers could be accepted in order to bring this litigation and the uncertainty and additional misery facing the haemophiliacs and their dependants, to an end. I emphasise that the amount and terms of the settlement were put forward by the Plaintiffs' advisers, not by the Government. And the Government has played no part in the division of the total among the various categories of Plaintiff. That has been decided upon by the Plaintiffs' advisers.

The tragedy of haemophiliacs infected by blood products is not unique to this country. It is worth noting that the total amount now made available by the Government compares favourably with payments made in other countries. Apart from the cash payments, there are significant additional benefits for the Plaintiffs in that the Government has agreed that payments from the new Macfarlane Trust will not affect the recipients' entitlement to social security benefits and has also agreed special provisions relating to inheritances.

It is right that I should underline the point that the Plaintiffs by this settlement have expressly recognised that no liability attaches to the Committee on Safety of Medicines or the Department of Health in its capacity as Licensing Authority under the Medicines Act 1986. This settlement too is intended to and will benefit all infected haemophiliacs and their families whether or not plaintiffs in these proceedings. It is important to stress that the Government and the Plaintiffs and their advisers recognise the special needs of all the victims of this tragedy, whether or not they have resorted to litigation, and that the payments to the Macfarlane Trust provide equally for all. One of the terms of settlement is that the Department will indemnify all Plaintiffs in respect of their legal costs, whether in receipt of legal aid or not. This ensures that all who are entitled to seek payments from the Macfarlane Trust receive them without incurring any obligation to use them or any part of them for paying legal costs. Thus there is no discrimination between Plaintiffs and non-Plaintiffs: each within a particular category will receive the same sum.

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The Government remains committed to taking all reasonable steps to ensure that appropriate treatment and services are available to haemophiliacs. Substantial sums are spent each year on the cost of medical treatment and care for haemophiliacs and on the provision of Factor VIII. Contributions continue to be made to research to find a vaccine against HIV infection and a cure for AIDS. Funds, this year amounting to nearly £150M, are earmarked by the Department as the Government contribution towards the cost of trying to prevent the further spread of HIV and of providing appropriate diagnosis, treatment, care and support services, including specifically counselling of HIV infected haemophiliacs.

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10th June 1991

AC/HIV