

Affidavit on behalf of
The Central Defendants
Affidavit of Jayant Desai
Sworn on 24~~th~~ July 1990
Affidavit: No. 1

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

RE HIV LITIGATION

AFFIDAVIT

I, Jayant Desai of Treasury Solicitor's Office, Queen Anne's Chambers,
28 Broadway, London SW1 MAKE OATH and say as follows:

1. I am a Barrister and am authorised to and do make this Affidavit on behalf of the Central Defendants who are represented in this litigation by the Treasury Solicitor. I make this Affidavit in support of the claim for public interest immunity put forward by the Central Defendants and in opposition to the application by the Plaintiffs for production of those documents, notwithstanding the public interest in protecting them from disclosure.

2. There is now produced to me and marked "J.D.1" a list of the documents for which the Central Defendants consider that a claim for public interest immunity must be made, as set out in the Certificate

(1)

of the Permanent Secretary a true copy of which is now produced and shown to me marked "J.D.2".

3. It will be seen from that list that a very large proportion of the documents fall within Category 1(a), that is to say, documents which concern the formulation of important policy on important issues, such as the allocation of resources. The documents within Category 2 also largely relate to matters preparatory to or incidental to the formulation of elements of such policy.

4. The principal and usually the sole reason why these documents have been included on the Central Defendant's list as relevant to the issues in this litigation, is because they are or may be relevant to the allegation that the Department of Health should have allocated greater resources in the 1970s to the redevelopment of the Blood Products Laboratory, to research into safer blood products and to make the United Kingdom and in particular England & Wales self-sufficient in blood products.

5. It would appear that one of the principal arguments of the Plaintiffs will be that this alleged failure to allocate greater resources gives rise to a claim for damages in civil proceedings on the basis either that such a course was negligent or that it was unreasonable in a "Wednesbury" sense.

6. Such allegations go to the very heart of the decision-making process by which Ministers, with the help and advice of Civil Servants, allocate scarce resources between competing demands. I am advised and verily believe that these allegations involve propositions of law which would extend the frontiers of the law of negligence and of administrative law. I do not seek in this Affidavit to canvass matters of fact which may be in dispute or questions of law which are better left to argument, but I would respectfully suggest that the Court should not give weight to any public interest in the disclosure of documents relating to these issues unless satisfied that these are matters which are justiciable and which have some genuine prospect of success as a matter of law, irrespective of the facts.

7. I should make clear that similar considerations apply to the rest of the allegations in the rest of this action, to which the other categories of documents relate, although perhaps less strikingly. It will be seen from the Defences that the Central Defendants challenge the proposition that as a matter of law the Central Defendants or any of them owed a duty of care to individual Plaintiffs in fulfilling their statutory functions of licensing medicinal products and of providing a health service. In the circumstances, I would respectfully

suggest that the Court should approach the balancing exercise more cautiously than might be the case if there was an acknowledged duty of care.

SWORN by JAYANT DESAI)

at 3 Dean Farman)
(Street in the City)
of Washington)
on 24th day of July 1990)

GRO-C

Before me

GRO-C: Helen J Kemp

Solicitor

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AFFIDAVIT OF
JAYANT DESAI

Treasury Solicitor
Solicitor for the Central Defendants

L89/3211/JND
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