26 February 2004

Ms. Carol Grayson
Haemophilia Action UK

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DEPARTMENT
OF HEALTH AND
CHILDREN
AN ROINN
SLÁINTE AGUS LEANAÍ

Quality and Fairness
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Dear Ms Grayson.

I wish to refer to our telephone conversation on 12th February and subsequent e/mails regarding compensation for haemophiliacs who contracted Hepatitis C and / or HIV from the administration of clotting factor products. To summarise, the Hepatitis C & HIV Compensation Tribunal is a no-fault compensation scheme for persons who were infected with either Hepatitis C, or HIV, or both, from the administration within the State of infected blood or blood products, including Anti-D Immunoglobulin and the products used to treat persons with haemophilia or other blood clotting disorders. The legislation provides that awards of the Tribunal are calculated on the same basis as the calculation of damages in High Court civil proceedings. The legislation also provides the right of appeal to the High Court in respect of the Tribunal's decisions. The Tribunal's Annual Report is available on their website (http://www.hepccomptrib.com).

The background to payment of compensation of persons with haemophilia is quite complex but I have endeavoured to set out the facts below. From the quotations which you have e/mailed to me it would certainly seem as if there has been confusion in the U.K. between the circumstances behind the Anti-D infection, and the infection of persons with haemophilia. As you rightly point out, compensation for persons with haemophilia was made on compassionate grounds, without legal liability on the part of the State. In a speech to the Dáil on the Report of the Haemophilia Tribunal the Minister acknowledged the regret of the government at the immense tragedy which befell citizens of the State whilst availing themselves of State health services. He also acknowledged the extraordinary suffering endured by persons with haemophilia who were infected, and by their families.

The background behind the establishment of the Compensation Tribunal is as follows. The Tribunal was established on a non-statutory basis in December 1995 in respect of Hepatitis C infection only, and was put on a statutory footing in November 1997 by means of the Hepatitis C Compensation Tribunal Act. An amending Act was passed in 2002 extending the remit of the Tribunal to include HIV. The original Scheme of Compensation announced by the then Government in June 1995 was confined to women who contracted Hepatitis C through the administration of the Anti-D product, and to any infected partners and children of these women. The purpose of the scheme was to provide compensation on an ex-gratia basis, as legal advice to the Government was that the State itself was not

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liable. The same legal advice regarding liability would also pertain to the infection of persons with haemophilia.

Further analysis of issues relating to the Anti-D contamination had revealed that some of the women who were infected with Hepatitis C through the administration of the Anti-D product in 1977/8 went on to become blood donors. As a result, in the years between the contamination of Anti-D in 1977/8 and the introduction of testing for Hepatitis C in 1991, it was recognised that some instances of Hepatitis C acquired through blood transfusions could also be linked back to the Anti-D problem. Factor 9 clotting product for haemophiliacs was also produced from native plasma. Following further consideration and consultation during 1995, it was announced in September of that year that the compensation scheme was to be extended to cover all those who had contracted Hepatitis C from a blood transfusion or blood product administered within the State. The primary reason for this was the perceived difficulty in the public mind in justifying the distinction between different categories of blood product recipient. Also, as the scheme of compensation was a no-fault scheme, there was a perception that any restrictions on access might be interpreted as an implicit admission of liability.

For information on the background to the establishment of the Compensation Tribunal and the contamination of the Anti-D product with Hepatitis C you may wish to refer to the Report of the Tribunal of Inquiry into the Blood Transfusion Service Board (Finlay Report), 1997, which is available on the Department's website (http://www.doh.ie/publications/allpub1997.html).

Following the completion of the Finlay Tribunal, a second Tribunal was held into haemophilia related-issues. The *Report of the Tribunal of Inquiry into the Infection with HIV and Hepatitis C of Persons with Haemophilia and Related Matters* (Lindsay Report) was published in 2002 and also is available on the Department's website (http://www.doh.ie/publications/allpub2002.html).

The Lindsay Report is lengthy, and not easily summarised. However, you may wish to note that the Report concluded that the maximum estimated number of infected persons (either HIV, Hepatitis C, or both) in Ireland is 230, of whom 8 were probably infected with HIV by Blood Transfusion Service products. A Blood Transfusion Service Factor IX product was identified as the probable source of infection with hepatitis C of 4 persons with haemophilia B. The remainder of the infections was attributable to products supplied by the international pharmaceutical companies. Having considered the Report carefully, the Government decided to refer it to the Director of Public Prosecutions. To date the DPP has not concluded his examination of the Report's findings.

I hope this answers your queries. If you have any other questions please do not hesitate to get in touch.

Yours sincerely

GRO-C

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