

For - This letter + Blood Policy

To: MS(PH), MS(Q)

From: Liz Woodeson

Date: 20 April 2007

Copy: See below

**CONTAMINATED BLOOD PRODUCTS AND NON-A, NON-B HEPATITIS  
(HEPATITIS C): REVIEW OF PAPERS 1970-1985**

**Issue**

1. As you know, we have commissioned our own internal review of all officially held papers on this policy between 1970 and 1985. The review is now complete and the report is attached. The report concludes that the documents provide no new information that challenges the Department's position. The papers reviewed support the view in the 1970s and early 1980s that NANBH (hepatitis C) was a mild disease, a view widely shared at the time. CMO has commended the report's rigorous analysis and agreed its conclusions.

**Recommendation**

2. We recommend that you:
  - agree to the release of this report to interested parties and
  - agree that we should prepare the papers reviewed for release in line with FOI (this will cost around £40,000 and take four to five months)

**Timing**

3. The timing is urgent in view of the non-governmental independent public inquiry currently underway set up by Lord Archer.

**Background**

4. Following pressure from the Haemophilia Society and others for an official government backed inquiry a submission to Ministers on the 26 June 2006 identified the need to examine thoroughly all documents and to assess the DH approach to the emerging evidence in relation to NANBH and blood products during the period between 1970 and 1985. In 1985 heat-treated product for treatment of haemophilia was introduced, reducing the risk of NANBH.
5. This was agreed and a member of DH staff was allocated to the task and has spent the last nine months identifying, reading, cataloguing and filing all the relevant papers. The sources of all papers reviewed are at Annex A. During the review process a large group of documents previously considered mislaid were located. It is therefore presumed that the documents reviewed comprise the majority of the documents from 1970 to 1985. However, we can see from

references in the documents we do have that there remain a number of documents which we cannot account for and we need to acknowledge this fact.

6. The Haemophilia Society and others continue to press for an official government backed public inquiry. The submission to SofS dated 24 July 2006 sets out the background in relation to a public inquiry and the alternative option of appointing independent counsel. SofS responded that she did not want a public inquiry, but that if Ministers really believed an independent review by a QC was worthwhile - and affordable - then she would accept it. However she felt that it would fuel, not deflect, calls for a public inquiry.
7. On the 19<sup>th</sup> February 2007, a non-governmental independent public inquiry into the supply of contaminated NHS blood and blood products was announced. The inquiry was launched by Lords Archer, Morris and Turnberg and opened on Tuesday 27<sup>th</sup> March. The terms of reference are "To investigate the circumstances surrounding the supply to patients of contaminated NHS blood and blood products, its consequences for the haemophilia community and others affected; and further steps to address both their problems and needs and those of bereaved families". Lord Archer is chairing the inquiry, Lord Morris is the President of the Haemophilia Society. There is little information on the exact nature of this inquiry. However, SofS has written to Lord Archer suggesting that DH officials meet with his team to explore areas where the department could assist the inquiry without becoming directly involved. She also agreed that a copy of the attached report be provided to Lord Archer.

### **The way forward**

8. We recommend that the attached report should now be released to Lords Archer, Morris, Turnberg and Jenkin, the Haemophilia society and all other interested parties.
9. In addition we recommend that we should release the documents reviewed in line with FOI principles. Overall, there are around 4,500 of these documents so this will be a major task. It is estimated that the preparation and processing of the documents will take approximately four to five months. To achieve this timescale will require a member of staff to be dedicated to the task with some administrative support. The cost is estimated to be at least £40,000. Nevertheless, we recommend this approach, as release of the documents may go a considerable way to support our line that a public inquiry is not required as all the information is in the public domain. This includes fifty-eight previously unpublished documents specifically referenced in the current report, which we would treat as a priority.
10. Based on previous experience we expect that approximately 12% of documents overall would be withheld, the majority under section 35 of the FOI Act as they relate to Ministerial submissions or formulation of government policy. However clearly the more we can release the better, so we would take further advice from solicitors about this and report back to you during the preparation of the documents. Some of the documents also cover BPL and Aids, as well as self-

sufficiency, so there may be concerns about releasing them – again, we will come back to you during the preparation of the documents if we think this might be a problem.

11. Given that this inquiry is going ahead, we assume that you will not want to pursue the option of commissioning an independent review by a QC for the time being. (We did not recommend this in our earlier submissions because we estimate that such a review would cost in the region of £200,000. We do not have funds available for this. And we doubt that it would satisfy external parties anyway as an independent review by a QC would not be able to compel witnesses to give evidence.)

### **Recommendations**

12. Lord Warner previously agreed to release the attached report to Lord Jenkin of Roding and SofS has agreed to provide it to Lord Archer. Do you agree that the report should now be released to all interested parties? If so, we will provide letters for you or Lord Hunt to send out to peers attaching the report.
13. Do you also agree that we should begin work on processing the documents reviewed in order to release them in line with FOI principles, at a cost of around £40,000?

**Liz Woodeson**  
**Director of Health Protection**

Copy to:

Jacky Buchan	Linda Page
Rebecca Lloyd	Lindsey Davies
Dani Lee	Ailsa Wight
Liz Kendall	Brenda Irons-Roberts
Matthew Swindells	Bradley Smythe
Paul Corrigan	William Connon
Richard Kelly	Gerry Robb
Gregory Hartwell	Zubeda Seedat
David Harper	Hugh Nicholas
Mike de Silva	Anne Mihailovic
Steve Wells	Howard Roberts
	Jill Moorcroft

### Source of Papers Reviewed

- Wellington House. These have always been in the possession of the Department and were located at Wellington House in 47 lever arch files.
- The unpublished references to the report 'Self-Sufficiency in Blood Products A Chronology from 1973 – 1991'. These were in Wellington House in two lever arch files.
- The documents 'returned by solicitors'. These files were returned to the Department following press articles on documents destroyed in error, and were in 11 lever arch files.
- Files scanned at DRO Nelson. A scan of files at DRO Nelson identified four documents relating to NANBH.
- Documents released by the Scottish Executive; 351 documents held on CD.
- All documents are now in registered files (127 files)