

CD-3.5

COVERING CONFIDENTIAL

Mr Alcock PS/SofS

From: J C Dobson
EHF1

Date: 9 May 1991

Copy: Mr Heppell HSS
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HIV HAEMOPHILIA SETTLEMENT

Summary

In my note of 1 May I promised further advice to the Secretary of State on the Chief Secretary's offer to provide £42m towards the settlement plus £5m costs from the Reserve. We see little option but to accept the offer; but the latest assessment suggests that it may fall short of the actual full costs of the settlement by up to £4-5m.

Payments to Beneficiaries

1. The plaintiffs' solicitors originally estimated, on the basis of their proposed "tariff" of payments and estimates of numbers in the various categories, that payments to litigants and non-litigants would cost £42m. Until very recently we had no reliable means of checking on this estimate, although we always recognised the possibility that the total might rise to over £42m as additional cases come to light.
2. Information now received from the plaintiffs' solicitors (for litigants) and the Macfarlane Trust (for non-litigants) suggests a total of over £46m. However, there appears to be a considerable degree of double counting between litigants and non-litigants judging by the previously known figure of infected haemophiliacs. Moreover, for a considerable number of litigants the evidence to support the category of payment has not yet been received or is not yet considered satisfactory.
3. We estimate that the apparent double counting accounts for over £2m of the excess cost. The remainder is explained by a slight increase in the total number of infected haemophiliacs (£500K), by the higher number of infected intimates (£300K), and by differences in the distribution of haemophiliacs among the various categories for payment (£1m). As mentioned, we are still not fully satisfied that all claims are correctly categorised, especially for those claiming to be married or cohabiting; we will continue to seek adequate validation but it may prove that most, if not all, of the claims are well-founded. The final cost therefore could amount to some £44m or £2m more than originally estimated. Annex A sets out the details.

Legal Costs

4. The Chief Secretary is willing to provide £5m towards legal costs but this is to be shared with the Scottish Office and Northern Ireland and we will need to discuss this with them. In total they have 62 litigants (as against 986 in England and Wales) and the actions have not progressed as far as our own. We would therefore expect to have the lion's share of the £5m.

5. The preliminary estimates from the plaintiffs' solicitors suggest that their legal costs might be of the order of £6m. However, detailed accounts have not yet been submitted and since the preliminary estimates were prepared the Judge has confirmed that a lower rate of costs is payable than the plaintiffs' solicitors had been asking for in legal aid cases. We therefore expect that the final cost will be appreciably lower than the £6m but we cannot quantify this at present. If we cannot agree a figure of costs with all the plaintiffs' solicitors and they go for taxation (assessment by the Courts), it is unlikely that the process will be completed in time for payment in the current financial year.

6. In addition, the Regional Health Authorities have asked for help toward their legal costs on the grounds that they carried out some "generic" activities (eg in the selection of lead cases) which would otherwise have fallen to the central defendants. We have agreed, without commitment, to examine this claim when the RHAs are able to provide details. As a rough estimate, their claim could amount to some £1-£1.5m. As matters stand therefore our total claims for legal costs could be some £7.5m compared with the Chief Secretary's offer of £5m for all Departments. But we would not necessarily advise Secretary of State to accept all of the RHA claims, and we will continue to press for a reduction in the claim from plaintiffs' solicitors.

Discussion

7. In summary, the Chief Secretary's offer could mean that the Department would have to find an extra £2m to cover the cost of the settlement and up to another £2-3m to cover legal costs. However, officials take the view that a request to the Chief Secretary for help over and above his offer is most unlikely to succeed. Most of these costs are unavoidable, though we will do whatever is possible to contain them.

8. We therefore suggest that:

i) Secretary of State should reply briefly accepting the Chief Secretary's offer subject to clarification of one or two detailed points (draft at B);

ii) the Department's solicitors should continue to validate the claims from individual plaintiffs and to scrutinise carefully the fees claimed by the plaintiffs' solicitors;

iii) officials should discuss with SHHD and DHSS (Northern Ireland) an equitable distribution of the £5m for legal costs, bearing in mind this Department's leading role in coordinating the defence, and the claim for legal costs from RHAs;

iv) an allocation of £1 million, to meet the claims of those who could come forward under the 1989 offer of ex gratia payments, should be diverted to help meet the expected excess costs of this settlement as that sum now appears in excess of the likely requirement. We will make a later submission if extra funding does prove to be required as indicated above.

Is the Secretary of State content for us to proceed in this way?

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EH

ANNEX A

1. ESTIMATED NUMBERS OF PAYMENTS BY CATEGORY

Category	Plaintiffs' Original Estimates	Latest (DH) Estimates (double-counting removed)			Total
		E&W Litigants	S&NI Litigants (a)	Non- Litigants (b)	
A. (Children)	175	131	7	37	175
B. (Single Adult)	533	236	19	186	441
C. (Married Childless)	214	213	18	83	314
D. (Married with Children)	293	225	18	57	300
All Haemophiliacs	1,215	805	62	363	1,230
E. (Infected Intimates)	25	27	-	12	39
G. ("Risk of Infection")	150	154	-	-	154
TOTAL	1,390	986	62	375	1,423

Notes

a. Total 62 distributed pro-rata to E&W litigants

b. Figures for distribution of haemophiliacs by category from expressions of interest to Macfarlane Trust; scaled down by factor of 363/487 to reconcile with 1230 total and remove apparent double-counting

c. Current total of infected haemophiliacs known to Macfarlane Trust.

2. ESTIMATED PAYMENTS

Category	Estimated No. (original estimate in brackets)	Payment (£)	Total Cost (£K)
A.	175 (175)	21,500	3,762
B.	441 (533)	23,500	10,364
C.	314 (214)	32,000	10,048
D.	300 (293)	60,500	18,150
E.	39 (25)	23,500	916
G.	154 (150)	2,000	<u>308</u>
			43,584
		(Original estimate:	41,750)

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DRAFT REPLY TO CHIEF SECRETARY

HAEMOPHILIACS WITH HIV

Thank you for your letter of 1 May.

I agree completely with your comment that we should not risk undermining the object of the settlement by protracted argument between ourselves on its funding. I am therefore prepared to accept your proposal that any costs over and above the £47 million for the Reserve should be met out of existing provision. I should however record that, on officials latest estimates of numbers who will be eligible and their category of payment, the total cost of the payments through the Macfarlane Trust will almost certainly exceed the original £42m estimate; and legal costs are also likely to go over the £5m. Officials will do whatever is necessary to verify the claims for payment and to restrain the legal costs without jeopardising the goodwill which the settlement is designed to achieve.

I am content that the £5m included for plaintiffs legal costs should be shared with Peter Brooke and Ian Lang on an equitable basis, bearing in mind that the litigation in England is much further advanced than I understand is the case in Scotland and Northern Ireland. My officials will shortly be in touch with theirs to discuss the details.

As you will be aware, an offer letter went out to all the plaintiffs' solicitors last Thursday and we expect to be making the first payments within a matter of days. Thank you for your help in enabling us to resolve the final difficulties.

I am copying this letter to Peter Brooke and Ian Lang.

WILLIAM WALDEGRAVE