

PAM
pl. ask Paul for
GRO-C

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To: Mr R M T Scofield
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DHMTA014
Department of Health

Subject: HEPATITIS C

RESTRICTED - POLICY

Mr Scofield

From : Paul Pudlo CA-OPU2

Date : 7 June 1995

HEPATITIS C - MEETING OF MINISTERS 7 JUNE 1995

1. This a bried note of the above meeting in advance of the official version.
2. As well as M(H), PS(H), Dr Metters and Perm Sec, Carolyn Fairbairn, Mike Brownlee, Charles Blake, Peter Thompson attended. After a thorough review of both HCV and CJD, M(H) concluded that before the question of ex-gratia payments on HCV could be decided further work was needed on legal vulnerability. To an extent this conclusion had been prompted by the Solicitor's suggestion that the Consumer Protection Act may be relevant. It was accepted that we were more vulnerable on CJD but that the econmics contained in the submission were suspect and needed revision.
3. The legal argument was that although the Crown was relatively safe in tremns of a common law case on the basis of negligence since 1988 Consumer Protection legislation could be applied on the basis of a defective product. In which case a defence that relied on earlier tests producing too many false positives and negatives could be insufficient since the burden of proof shifts to the Department. It was also recognised that to lose in respect of any one group would make it extremely difficult to resist payments in respect of another - eg confining it to the 1990-1991 cases would be problematic.
4. Dr Metters raised the point that a number of tests had been resisted on the grounds that they would not be cost-effective. In this respect he later showed me a paper he has prepared for the Public Health Board, which I will copy seperately if you haven't seen it. *
5. I am not convinced that blood could ever be caught under the CPAct since it is not a product. Blood products are a different matter but we are more secure against challenge in that respect. The nub of the meeting's conclusion is that we and Dr Rejman will have to liaise with SOL on what information they need to provide a solid legal view - reference to Council seems inevitable. No doubt you will wish to discuss on your return.