

Richard Gutowski MDA-ERA1

From: Mary Trefgarne SolC4

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HEPATITIS C SCHEME - LAW OFFICERS' OPINION

1. The Secretary of State has asked for our view on the Law Officers' opinion on this issue.
2. There is not much to say. It was always recognised that the arguments for the scheme falling within the social security reservation were not overwhelmingly good. It was, therefore, decided to seek the Law Officers' opinion in order to resolve the uncertainty in the knowledge that this would in effect bind the Government. We now have that opinion which is convincingly reasoned and not one which leaves any legal issues open to question.
3. I appreciate that if Scotland go ahead with their scheme it may create political difficulties but that is one of the risks of devolution and no doubt something of which the Law Officers were only too well aware.

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The Benefit Position - Two options:

1. Do nothing

- Payments would be treated in the same way as other personal injury payments (including Vaccine Damage payments).
- For income-related benefits* lump sum payments would be taken into account as capital unless placed in a trust fund. Capital of £20,000/£45,000 would remove all entitlement.
- If placed in a trust fund the payment would be fully disregarded while held in the fund - so benefit would not cease immediately. Benefit could be affected as income or capital was drawn from the fund but it would be easy for people to manage their affairs so that this did not happen (e.g. by drawing no more than £20 a week for ordinary living expenses; using the money only for expenses not covered by income-related benefits).

* *Income –related benefits means Income Support, income-based JSA, Housing Benefit and Council Tax Benefit. In Pension Credit personal injury payments are ignored whether or not placed in trust*

Pros:

- Reasonable and consistent to treat the payments in the same way as other personal injury payments
- Provides scope for people to receive payments and keep their benefits – provided they follow the rules

Cons:

- Unable to provide a categorical assurance that payments will not affect benefits
- Trust funds would need to be set up for each individual - could be viewed as a bureaucratic hurdle
- Need to justify why payments are being treated less generously than other schemes which are arguably similar – Macfarlane Trust, Eileen Trust, vCJD – depends on how far DoH arguments that these are special cases and that Hep C is a very different condition.
- The Department does not vet the management of individual trust funds and relies on the customer's honesty.

2. Amend the regulations to provide for a complete disregard

- The regulations could be amended so that the payments were disregarded whether or not placed in trust. They would then have no effect on income-related benefits.
- This would create parity with other schemes which have been treated more generously than under the normal rules – Macfarlane Trust, Eileen Trust, new variant CJD.

Pros:

- Meets SE and other pressure for the payments to be disregarded
- Avoids need to justify less generous treatment for Hepatitis C than HIV, vCJD

Cons:

- Undermines benefit policy - no reason in principle to disregard large sums of capital in assessing means-related benefits. It begs the question why these payments are being disregarded and not others, e.g. Vaccine Damage payments.
- Requires an amendment to the regulations – commencement of any scheme would need to be coordinated with timing of DWP legislation