

LIE 10

CC Mr. Dutton  
Mr. Regman  
(400 minutes only)

To: Mr Alder - MCA (E)

From: R M Gutowski, MCA E

Date: 29th June 1990

Copies: Mr Robertson,

MCA (E)

Mr Bewley, MCA (E)

Mr Love, MCA (E)

Mr Rees, MCA (E)

Ms Bendall, SOL C5

(minute only)

Mr Canavan, EHF1A

HIV LITIGATION.

1. I attach a copy of a minute from Ms Bendall detailing the outcome of the hearing for directions on 26th June.

2. It would appear that the judge appointed by the Lord Chief Justice to hear the litigation - Mr Justice Ognall - has made an unprecedented move from the legal into the political arena. The Judge commenced the proceedings by issuing a statement urging all parties in the litigation to seek a compromise of the proceedings. In the sixth paragraph of his statement he says that "Compromise does not necessarily betoken any admission of blameworthiness". It is this very point however that is at the core of the Licensing Authority and Committee on Safety of Medicines' [CSM] concerns over any out of court settlement.

3. In the early days of this litigation, in the face of a concerted parliamentary and media campaign, Ministers agreed that the plaintiffs' claims should be put to the Courts; this policy has not changed. Since the early 1980's, with the Opren case (still live) the Government in its role as Licensing Authority, and the CSM, have been involved in a number of court actions. The Government defendants have always denied liability and resisted any overtures to be involved in any compromise situation because of the implied admission of liability and the risk that it would encourage further litigation and public pressure for similar settlements out of court. There is already, in addition to Opren and HIV, potential major litigation involving benzodiazepines. It is understood that the Government have not been joined in the current legal action against medical practitioners and the drug manufacturers because of the possibility of success of our no duty of care defence. However if there was a compromise agreed in the HIV case this could spur the benzodiazepine plaintiffs to also join the Government: this could involve thousands of litigants.

4. Whilst there may be unique features in the case of haemophiliacs and whilst it is agreed that they are entirely blameless the same arguments could be put by other groups of sufferers. No compromise solution out of court could be effectively ring fenced so as not to create a problem/precedent. It would be a precedent for other claims and would also be likely to encourage further litigation which would be damaging to the integrity of the Licensing system. It could lead to over-defensive licensing decisions and a reluctance of academics to serve on the Section 4 advisory committees.

5. Because of the seriousness of the Judge's actions, Leading Counsel has called for a conference at which he has asked for the attendance of a "senior civil servant". That meeting has been arranged for Wednesday 4th July at 4.30pm at Grays Inn and you have agreed to attend. In preparation for that meeting I have asked Ms Bendall for Counsel's advice on the issue of compromise and have asked the CSM Secretariat for confirmation of the Committee's unwillingness for any decision to be taken which undermines their integrity. I will also prepare you a background briefing pack.

GRO-C: R M Gutowski

Room 1321

MT

Extn

GRO-C