hep099 **RESTRICTED - POLICY**

Ms Roughton From Roger Scofield

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HEPATITIS C - PAYMENTS SCHEME - CONTINGENCY PLANNING

At Perm Sec's meeting 24 November we agreed on certain steps which should be taken to avert a potentially damaging clash over hepatitis C. Since then Ministers have agreed to a package of actions and we have publicly announced a look back exercise to trace, counsel and, where appropriate, treat those exposed to infection. The first meeting of the look back working party was held 20 January and guidance on look back procedures was issued to the Transfusion Directors 2 February.

I have today written to Charles Blake, SolB4, formally launching the process of chronicling the sequence of events and discovering the most important records and papers. This will give us a much clearer view of the strength of our defence against allegations of negligence.

The position may not be clear cut. We may find that whilst we could win in the courts the process might put into the public domain information or decisions which with the benefit of 20/20 hindsight, might appear unwise or ill-judged.

We must also consider what lessons we might learn from the experience with a view to making any adjustments in our policies or procedures.

Ministers have publicly stated that they are against making any payments to those infected but are concerned that the arguments we have given them for defending such a policy are unconvincing.

The Opposition are committed to introducing a no fault compensation scheme for medical injuries and are siding with those who are pressing for payments. Lady Cumberlege was given a fairly hostile reception when she answered a starred question last month and is due to answer another from Lord Ashley next week.

Against this background I have had a first crack at a paper which considers whether, if Ministers wanted a payments scheme, one could be provided; how it might be structured and the likely cost. It is immediately apparent that such a scheme would be much bigger (in terms of numbers eligible and cost) than the HIV scheme and would come at the same time as Ministers consider the way forward on a possible CJD settlement. A hepatitis C scheme could therefore only be considered in the context of a wider policy initiative on compensation payments.

Moreover any compensation package would need to be seen as an important element of a more comprehensive response to such infection (ie. including look back, research, support for self help groups etc.)

There may be a parallel here with the Vaccine Damage Act under which individuals, who are inadvertently injured as a result of a campaign to protect the public at large, may receive some form of compensation. Blood and blood products are given to individuals to meet their personal medical needs, but decisions whether or not to introduce various tests for the safety of the blood supplies are taken largely on public health grounds.

The decision not to introduce the hepatitis C test until it was more specific and until there was a confirmatory test etc. may be justified in terms of health economics etc. but it was also acknowledged that a certain number of people would be infected as a result. It might be argued that the question is not just whether such a decision was negligent but whether the Government has a moral obligation to assist (compensate?) those who were infected as a result of the decision. The look back exercise has been introduced because we believe there is a duty of care.

My preliminary conclusion is that whilst it would be possible to mount a payments scheme along the lines of the HIV settlement it would be very expensive (possibly as much as £360 million) and would represent very poor targeting of resources. A modified version might make payments at predetermined medical milestones (eg. progression to chronic hepatitis or cirrhosis etc). This would not be without problems but would be better targeted. I have gone on to suggest that consideration should be given to setting up a discretionary grant making body, either as a charitable trust or as an arm of government, to make appropriate payments to such people who had been injured, in order to alleviate financial or social hardship resulting from their condition. This might mean lower grant levels but it would provide the best value for money and the flexibility to cope with variations in life expectancy, new treatments, etc.

The paper is a first shot; it contains a lot of detail where that is available and has yawning gaps where I have not had access to information or have not had the time or background to take the arguments further. If you think it is worth pursuing I should be glad to discuss it with medical, legal and finance colleagues.

You will wish to decide what to say to Ministers at TOTO on Wednesday, when hepatitis C is on the agenda, and when to take their minds on what sort of scheme, if any, might be politically acceptable.

Happy to discuss.

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