

In Confidence

Mr Townley - PS/M(PH)

From K Young - SCSB1

Date: 23 May 1997

copy:

Ms Moriarty - PS/SofS

Ms Rogers - PS/MS(L)

Mrs Fraser - PS/MS(H)

Dr Metters - DCMO

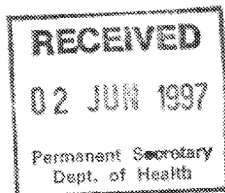
Dr Winyard - HSD-DIR

Dr Adam - HSD

Ms G Fletcher Cooke - SCSB

Mr Dean - HP4B

Ms McEwen - SOL B4



HGH/CJD LITIGATION

Purpose

1. This submission should be associated with Ms Fletcher-Cooke's submission of 16 May and with my minute earlier today. We have today received a number of PQs from Mr Keith Vaz MP on the subject of human growth hormone. Responses are required by 29 May 1997.
2. Mr Vaz has raised the question of no fault compensation in respect of those suffering illness as a result of human growth hormone treatment.

Recommendation

3. That our answer should indicate that the Department should not pay compensation unless negligence has been established.

Discussion

4. Ms Fletcher-Cooke's earlier minute sets out the circumstances surrounding the human growth hormone (hGH) litigation including the events that led to the present position. The families of hGH patients who have contracted CJD, and many of those who were not successful in the High Court action last year are pressing for no fault compensation.

5. Very briefly, the arguments against no fault compensation in respect of medical treatment include:

- where medical treatment has been provided in accordance with the best knowledge available at that time, compensation should not be provided if it is subsequently found that something has gone wrong;

- there would still be a need to establish the basis for any damages - such a scheme would not necessarily solve all the problems;

- if compensation were to be awarded to one group in respect of injury suffered when negligence had not been established, other groups who had also suffered non negligent harm would feel aggrieved;

- there would need to be agreement with the Treasury. Treasury have indicated that they would be unlikely to agree to a scheme in respect of hGH patients due to the precedent this would create for others and the possibly substantial sums that could be involved.

6. Compensation was paid to haemophiliacs who had contracted HIV through blood transfusions because of the very special nature of HIV and the public reaction to that condition at that time. In no other circumstance has the NHS paid compensation unless fault had been established.

7. If M(PH) wishes to discuss, a holding reply could be prepared pending further consideration of this matter at the meeting that Minister has requested with officials.

Conclusion

8. M(PH) is invited to indicate whether she would be content for a reply to be prepared :

- saying that the hGH case has been fully explored in the courts and negligence established for some plaintiffs, for whom compensation will be paid. Compensation is not appropriate where negligence has not been found.

(By E-Mail)

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