

→ Hep C

2/4/4

Dr Rejman CA OPU2

From: Ruth McEwen
SOLB4

Date: 4 December 1996

c.c Dr Metters DCMO
The Solicitor
Mr Millege SOLC2

RE: HEPATITIS C LITIGATION: GENERIC INVESTIGATION:

**UPDATE: LITIGATION AGAINST DEPARTMENT OF HEALTH, THE
LICENSING AUTHORITY AND THE COMMITTEE OF SAFETY OF
MEDICINES**

IAN CALDWELL -V- DEPARTMENT OF HEALTH AND OTHERS

1. Thank you for your minute of 2 December.
2. I understand that you are strongly of the opinion that haemophiliacs should not be granted legal aid to bring proceedings against DH for their infection with hepatitis C by blood products. I note all the points that you make. It may be that Michael Brook has reached the same conclusion and that the Legal Aid Board will not grant legal aid to fund such litigation. However as I have stated we are not entitled to sight of the opinion and I would advise that we must simply wait until the position is made clearer either by further writs being issued or notices of discontinuance being served in relation to the active writs that we currently have.
3. I appreciate that you would find it very difficult to understand if the Legal Aid Board were prepared to fund haemophiliac patients and not blood transfusion patients. However as I have previously stated the Legal Aid Board will make their decisions on funding according to their set criteria. They will consider whether they are satisfied that an assisted person has reasonable grounds for taking the proceedings. As you indeed mention in paragraph 4 of your minute it was held by the Court of Appeal that the haemophiliacs infected with HIV had made out at least an arguable case for a claim in negligence. It may therefore be that the Legal Aid Board will take the view that there is an arguable case here. While clearly we have a defence to an allegation of negligence, as you point out in your minute, the Legal Aid Board test is not whether the case will succeed at trial but simply whether there are reasonable grounds for bringing it. The threshold that has to be passed by the claimant is therefore much lower than proving success at trial.
4. In relation to your suggestion that judicial review of any legal aid decision to grant funding is sought, I do not believe that this would be possible or appropriate. For judicial

review it would have to be shown that the Legal Aid Board had exceeded their powers acting illegally, irrationally, unreasonably or procedurally unfairly. Further I do not believe that we should, or indeed would have any evidence, to suggest that Michael Brook's opinion is impartial. It would be a very serious allegation to make that a Queen's Counsel had written an impartial opinion in order that he would personally gain by being instructed in further litigation. This allegation would in effect amount to an allegation of dishonesty and a breach of the Bar Code of Conduct under which every barrister must not engage in conduct which is dishonest, discreditable or prejudicial to the administration of justice.

5. I shall of course be in touch as soon as there is any progress.

RUTH McEWEN
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EXT: GRO-C