

Morven Smith

From Liz Woodeson

Date 2 April 2009

Cc David Harper

### **Contaminated blood and blood products**

1. This is in response to your email yesterday asking for advice about comments made by Patience Wilson during a briefing meeting with MS(PH) on thalidomide. You report that:

"Patience stated that these trusts and the fund were established because it is very difficult to justify that the Government did not know what was going on and that the Government could have done more to ensure self-sufficiency. MS(PH) asked why she was being asked to state that the Government acted in good faith and was not responsible for the tragedy. Patience then said that it was just the position taken by the Department and that this position had been established 17 or 18 years ago when she had been in post in the blood team when Macfarlane was established. MS(PH) was, understandably, very concerned about this."
2. Firstly, may I say that I can entirely understand why MS(PH) was worried by these comments. I am also very concerned. I have not yet spoken to Patience herself about this as you specifically asked me not to. However I would obviously like to do so. Neither I, nor any members of the current blood policy team, had any responsibility for blood policy at the time these events took place. Indeed most of us (myself included) were not even working in DH at the time. All the advice we are giving MS(PH) is therefore based on the papers available to us rather than on first hand experience.
3. However, I can assure MS(PH) that all the department's paperwork has been trawled through very thoroughly. I have employed staff specifically over the past two years to read every single piece of paper from the relevant files, to catalogue them and to publish them on the DH website. I have recently put up a submission attaching copies of the only papers that we wish to continue to hold back (submission dated 19 March 2009). I don't know if MS(PH) has had time to look at them yet but she will immediately see that they contain nothing of significance.
4. Lord Archer and the patient groups have of course had access to all these papers and will have read them too. None of them have been able to find anything in them which suggests that the Government at the time knew "what was going on" as Patience puts it, which I take to

imply that the Government was hiding something and was negligent in some way. Lord Archer himself, in urging the Government to increase the payments to those affected, specifically states in his report: "We do not recommend that such payments should be construed as an admission of guilt by the Government that previous Governments, or the BTS, were at fault."

5. Lawyers too have crawled through these papers over the years. They have not been able to find anything to suggest that the Government at the time was at fault either. Indeed Counsel for the plaintiffs in the HIV litigation advised them to settle out of court because it would be "very difficult indeed" to show that the Government had acted unreasonably based on the knowledge available at the time. The lengthy document setting out their Counsel's advice is also publicly available on the web.
6. The assertion that the Government at the time – and indeed the medical profession – acted "in good faith" is not new. In a document written at the time of the litigation, the Regional Directors of Public Health advised ministers to settle because of the "moral case" for helping these "unfortunate individuals" because they "were infected with a mortal condition as a direct result of treatment with the NHS". But the Regional Directors believed "that the treatment given was in good faith, and that before this treatment was available the life expectancy of the haemophiliacs was greatly reduced."
7. So in conclusion, I can assure the minister that the department's documentary evidence does not support the statements made by Patience Wilson as reported in your email. Nevertheless I am keen to talk to Patience to ascertain whether she has any additional information or insight and I will do so as soon as you give me the go ahead.

**Liz Woodeson**  
**Director**  
**Health Protection**