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LONDON SW1A 2AA

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CHIEF SECRETARY	
REC.	21 NOV 1989
ACTION	Mr SANDERS
COPIES TO	Mr. Ansau
	Mr Phillips, MacLennan
	Miss Preece, Mr Gifford
	Mr D. R. Jones, Mr Fife

From the Private Secretary 21/11

20 November 1989

Dear Andy,

A/21

HAEMOPHILIACS

The Prime Minister discussed with your Secretary of State this afternoon his minute of 17 November which proposed an early announcement of a further £20 million allocation to the MacFarlane Trust. The Chief Secretary and the Attorney General were also present.

The Prime Minister asked whether providing a further £20 million funding for the Trust would influence the likely view of the courts on whether or not the NHS had a legal liability to haemophiliacs inflicted with HIV through the use of early commercial blood products. The Attorney General said that, in his view, a further £20 million allocation would have no effect on the legal actions. There might have been some effect if a new Trust was being established at this point, but that was not the proposition. As regards the timetable for legal proceedings, the preliminary issue of whether the NHS has any duty to an individual which, if broken, might give rise to action for damages, would be heard on 13 December. He thought that the court was likely to rule that there was no such duty. If the courts so found, however, those bringing the case would be likely to take it to appeal. Your Secretary of State said he agreed that the Government was on strong grounds in resisting legal liability.

Summing up this part of the discussion, the Prime Minister said it was agreed that the issue of whether or not to proceed with a further allocation to the MacFarlane Trust need not be affected by the position reached in the legal proceedings. The issue therefore fell to be settled on political grounds.

Your Secretary of State said that he proposed a further allocation of £20 million at this stage. This would be an ex-gratia payment and would expressly not be based on any acceptance of legal liability. He proposed to find the £20 million from within his new Departmental budget resulting from the Autumn Statement decisions, and it would be phased in roughly equal instalments over three years. Taking into account the £8 million that the Trust still had in hand from the initial £10 million allocation, this would be sufficient for the Trust to give immediate help of £10,000 to each family unit affected, and would also enable the Trust to continue thereafter to give more generous help than at present to families in particular need. To

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effect this package it would, however, be necessary to adjust the present Trust Deed. £20 million would, undoubtedly fall well below the aspirations of those campaigning for additional help. But he thought it struck the right balance between the conflicting considerations.

In discussion, the following points were raised:

- (i) In presenting such a package, it would be desirable, as well as avoiding any acceptance of legal liability, to avoid conceding any moral obligation. Rather the emphasis should be on the special circumstances of this particular case - although distinguishing the position of the haemophiliacs from other difficult cases like vaccine damage was not easy. It was also reasonable to point out that, without the treatment they were given with the blood products, many of the haemophiliacs would have died; your Secretary of State would consider whether information about their life expectancy was available.
- (ii) If the £20 million was to proceed, careful consideration needed to be given to the timing of an announcement. On the one hand there was something to be said for awaiting the outcome of the preliminary legal case on 13 December. But on the other hand, it was likely that, the longer the delay, the greater the expectations of the campaigners might become. A further factor was the forthcoming meeting the Prime Minister would be having with Robert Key MP and others to discuss this issue on 22 November.

Summing up the discussion, the Prime Minister said it was agreed that your Secretary of State should make a further allocation of £20 million to the MacFarlane Trust on the basis set out in his 17 November minute and described during the meeting. It would be preferable for this to be announced following her meeting on 22 November. It was therefore agreed that an announcement should be made on 23 November. The form of the announcement should, however, be considered further in consultation with the Lord President of the Council.

I am copying this letter to the Private Secretaries to the Lord President, the Chief Secretary and the Attorney General.

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PAUL GRAY

Andy McKeon, Esq.
Department of Health