102/4.

Ref: HIVCOMP

Dr Lewis (PS/CMO)

From: Dr H Pickles SEB/B

Date: 20th July 1988

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COMPENSATION FOR BLOOD TRANSFUSION AND ORGAN RECIPIENTS INFECTED WITH HIV

1. I understand that Secretary of State is intending to push ahead with plans to extend the Macfarlane scheme to those who received HIV infection through blood or organ donation. There are many difficulties as was explained in the submission from Mr Harris dated 27th June. The purpose of this minute is to explain my concerns to CMO as I am sure Ministers will want to discuss this with him. I have discussed the problem briefly with Dr Harris and he suggested I should write in this way.

2. There are logical inconsistencies in any extension of the scheme. Ministers took care when the haemophiliacs scheme was announced to say this was not compensation for damage caused by NHS treatment, but a recognition of the special hardship of haemophilia which were compounded by HIV infection. Many other HIV patients have the same expenses as transfusion recipients. Yet restricting eligibility to those infected by blood received in the UK (with perhaps serving UK officials overseas) looks very much like compensation for damage caused - raising the issues of compensation for other blood-acquired infections (like the much commoner hepatitis) or complications more generally. Any restriction to AIDS cases only, whilst avoiding some of the problems of identifying those who might be eligible, would be inconsistent with the response to haemophiliacs and ignores the significant non-AIDS HIV morbidity and mortality.Experience with infected haemophiliacs suggests ex gratia payments of this sort do not appear to lessen the chance of litigation. It is reasonable also to ask who is next? Why should infected health care workers be excluded, the babies of infected mothers, the faithful wives of bisexuals and all the other "innocent victims".

3. I believe an extended scheme would be damaging to the transfusion service as well as having serious practical problems.

a. Confidence in the safety of the blood supply would be undermined.Patients will be reminded that even now the blood supply is not free of infection. Over 3 million transfusion recipients would start worrying about infection - many will seek advice and testing. We could estimate more false than real positives would be detected in this group,causing yet more problems.

b. Increased worries about HIV and blood would adversely affect blood donors, at a time when we need more to meet the demands of Elstree.

c. There is no established route for contacting genuine claimants. Hospitals are said to keep poor records of which blood products were given to which patients. General publicity to reach anyone who might be eligible would be necessary but damaging to the NBTS. Who would be asked to be in the front-line, counselling and testing all the transfusion recipients: the NBTS, the GUM clinics, the GPs? None of these are capable of responding with present resources.

d. Validating claims would be difficult and would absorb scarce resources and it is not clear who would have responsibility for this. American experience suggests there could be many false claims. Our records are unlikely to be always good enough to allow the linking of recipients with specific donors.

e. Numbers infected through blood in the UK are small but still increasing. Estimating the amount of money that has to be set aside, even assuming the ringfence could be successfully redrawn, would be very difficult.

4. I believe a general HIV compensation scheme would be totally opposed by the transfusion service.They have enough difficulties already.

5. When in the AIDS Unit I argued against any move that might be taken as treating "innocent victims" differently from the rest.

6. These arguments were sufficient to persuade H(A) to restrict compensation to haemophiliacs when this was discussed last year.I remember the then chairman had particularly strong views and without him the decision might well be different.Whatever decision Secretary of State comes to, he will have to consult with colleagues.The legal and financial obstacles may prove decisive.

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