

21.1.91

*This copy incorporates amendments
suggested by Counsel on 1/3/91*

LIE 18
LIE 10
HIM 12

Re: HIV HAEMOPHILIA LITIGATION

PROPOSED DETAILED TERMS OF SETTLEMENT

(For the avoidance of doubt the term "haemophiliac" in all cases includes sufferers from Von Willebrand's Disease.)

1. (1) The sum of £42 million to be provided to the MacFarlane Trust is based on the following provisional figures for the U.K. for each category of affected haemophiliac or intimate:

<u>Category</u>	<u>Number</u>
Infant	175
Single man	533
Married but childless	214
Haemophiliac with children	293
Infected intimates	25
Category G Plaintiffs	154

- (2) A separate ^{MacFarlane} Trust will be established ~~with the existing Trustees of the MacFarlane Trust as Trustees of the settlement~~, for the purpose of paying the following sums as soon as reasonably possible to each category of infected haemophiliac, intimate or Category G Plaintiff:

Infant	£21,500 each
Single adult	£23,500 each
Married adult without dependant children	£32,000 each
Haemophiliac with dependant children	£60,500 each
Infected intimates	£23,500 each
Category G Plaintiffs	£ 2,000 each

(3) The definition of each of the categories is as follows:-

1. Infant - a haemophiliac under 18 years old on 13th December 1990 or if deceased by that date then under 18 years at the date of death who has been treated with cryoprecipitate, Factor VIII or Factor IX and has become infected with HIV, whether or not such infant has yet developed AIDS.

2. Single adult - a haemophiliac who on 13th December 1990, or if deceased by that date then at the date of death, was 18 years or over and was unmarried, divorced or widowed with no dependants who has been treated with cryoprecipitate, Factor VIII

or Factor IX and who has been infected with HIV, whether or not such adult has yet developed AIDS.

3. Married, but childless -

without dependant children
a haemophiliac/who on 13th December 1990, or if deceased by that date, then at the date of death, was married, divorced with a dependant former spouse or over 18 years old and in a stable relationship, and ~~who~~ who has been treated with cryoprecipitate, Factor VIII or Factor IX and has become infected with HIV whether or not such adult has yet developed AIDS. A list of all Plaintiffs falling within this Category is set out at Schedule 4 hereto, together with the name of their relevant spouse or former spouse or cohabitee. For the avoidance of doubt, those haemophiliacs whose action numbers are set out in Part 2 of Schedule 4 hereto ^{and no others} shall be deemed to be in stable relationships, *with the cohabitee there listed.*

4. Haemophiliac with children - a haemophiliac who on 13th December

1990, or if deceased by that date then at the date of death, had dependant children, (which expression shall include cases of haemophiliacs with children conceived before 13th December 1990 but born thereafter) who has been treated with cryoprecipitate, Factor VIII or Factor IX and has become infected with HIV whether or not such person has yet developed AIDS. A list of haemophiliacs in this Category, together with the names and dates of birth of dependant children, is set out in Schedule 5 hereto.

5. Infected intimates -

those Plaintiffs who have issued and served Writs prior to 13th December 1990 and who fall within Category (c) and (d) as set out within paragraph 2 of the Re-Amended Main Statement of Claim and/or whose action numbers are set out in Schedule 6 hereto.

6. Category G - Plaintiffs who have issued and served Writs prior to 13th December 1990 and who fall within Category (g) as set out in paragraph 2 of the Re-Amended Main Statement of Claim and ^{or} whose action numbers are set out in Schedule 7 hereto.

(4) For the purpose of this settlement "dependant children" means dependant minors and adult children in full-time education.

(5) Where an infected haemophiliac or intimate has died prior to the date hereof, the appropriate sum as set out in paragraph 1(2) above will be provided to the MacFarlane Trust for the purpose of paying such sum for the benefit of the estates and dependants under The Fatal Accidents Act of such deceased person and the relevant payment shall be made in accordance with the provisions of ~~Part 3~~ of Schedule 8 hereto.

(6) For the avoidance of doubt, except in the case of infected intimates, and Category G Plaintiffs, no person or their estate and/or dependants, shall be entitled to receive sums under more than one of the above categories.

(7) In the event that the numbers of qualifying

persons in Categories 1 to 6 above is greater than the numbers set out at paragraph 1(1) above, the First Central Defendant will pay to the new MacFarlane Trust Fund sufficient ~~additional~~ sums to make similar payments at the rates set out in paragraph 1(2) above to each qualifying person.

(8) The above payments will be made to all Plaintiffs in the existing co-ordinated arrangements and to all haemophiliacs currently registered with the MacFarlane

including those
people listed in
schedules 4 or 5
hereto, being
spouses or cohabitants

Trust and HIV infected spouses of such haemophiliacs. Those haemophiliacs and their spouses who are infected with HIV and who are not presently Plaintiffs (other than in the capacity of Category G Plaintiffs) in these proceedings and who have not yet registered with the MacFarlane Trust shall be entitled to receive payments as set out above provided that they apply to the MacFarlane Trust within a period of three months from the establishment of the new Trust.

(9) The provisions of the MacFarlane Trust will also apply to the following categories of persons who have not as yet been informed that they are HIV positive:-

- (1) any haemophiliac who by 13th December 1990 had not been tested for HIV and who upon first testing is found to be HIV positive and

who would otherwise be eligible under one of the sub-categories set out at sub-paragraphs 1(3) 1 to 1(3) 5 above;

- (2) the spouse of a haemophiliac within sub-paragraph (1) above and any person who on 13th December 1990 was the spouse or widow of a haemophiliac who had already been diagnosed as HIV positive by that date and, ^{part 2 of} any person ^{or schedule 5} listed within Schedule 4 hereto, provided that such person has either not previously been tested for HIV or has been tested and found to be HIV negative, and who after 13th December 1990 is tested and found to be HIV positive and who would otherwise be eligible.

non haemophiliac spouse or cohabitee

- (3) the child of a haemophiliac (who is not presently a plaintiff in these proceedings) who has been born or conceived before 13th December 1990 and who is ~~correctly~~ found to be HIV positive within five years from 13th December 1990 or within five years of birth, whichever is the later;

other than with positive antibodies

- (4) Any person who has been diagnosed as HIV positive, but has not yet been informed of that fact, and who would otherwise be eligible under one of the sub-categories set out in sub-paragraphs 1(3) 1 to 1(3) ^{4 and 1(4) 2} above.

Provided that such persons apply to the MacFarlane Trust within a period of three months from their first becoming aware that they are HIV positive or within five years of 13th December 1990, (or in the case of ~~case of~~ infected spouses and intimates before 31st December 1999) whichever is the earlier, then they shall be entitled to the appropriate payment for the category into which they fall as set out above provided that they satisfy the MacFarlane Trust and the Department of Health that they fall within that category and provided that they sign an undertaking as set out in paragraph 8 below. The First Central Defendant will pay to the new MacFarlane Trust such additional sums as may be necessary to permit the Trust to make such payments to such persons. For the avoidance of doubt, references ~~to~~ to those who "upon first testing are found to be HIV positive" ^{means} ~~refers to~~ those who are correctly so found, disregarding false positive and false negative tests.

2. The sum of £42 million will be paid not later than 30th April 1991. A first tranche of up to £12 million will be made available prior to 1st April 1991 for immediate distribution.

3A. The Secretary of State for Health will procure that there are laid before Parliament regulations providing that sums received from the MacFarlane Trust will be

ignored in assessing entitlement to social security benefits of the beneficiaries of the Trust, so as to implement the assurance given by the Secretary of State for Health in Parliament on 11th December 1990 that payments from the MacFarlane Trust will not affect entitlement to social security and other statutory benefits. The Secretary of State for Health will use

having been laid

his best endeavours to ensure that such regulations are approved and brought into being. [This is the version currently proposed by the Department of Health]

3B

(Plaintiffs' preferred version)

Sums received from the MacFarlane Trust will continue to be ignored in computing both income and capital resources for the purpose of assessing entitlement to Social Security Benefits of affected haemophiliacs. In the case of sums received by infected intimates and dependants of infected haemophiliacs, whether such sums are received directly or by inheritance, they will be disregarded in computing both income and capital resources for the purpose of assessing entitlement to State benefits to the following extent:-

- (1) In the case of infected haemophiliacs and spouses or persons in stable relationships with infected haemophiliacs or the ^{dependent} parents of deceased haemophiliacs, such disregard will continue throughout the lives of such persons.

Delete
the whole
of 3B,
Counsel's
advice
that this
should
be in a
letter to
the
plaintiffs

of haemophiliacs or their infected spouses or intimates as herein defined

(2) in the case of ^{dependant} children, such disregard shall continue during their infancy and for such time as they remain in full-time adult education but (subject to sub-paragraph (3) below) thereafter shall be taken into account in the usual way;

of haemophiliacs, or their infected spouses or infected intimates or

(3) in the case of other dependants ~~and~~ children when they cease to fall within sub-paragraph (2) above, such disregard shall apply only to substantially disabled dependants and to dependants over the age of retirement;

? redundant { (4) in the case of ^{any other} infected intimates ^{as listed in Schedule 6} such disregard will continue throughout their lives;

For the avoidance of doubt sums of money from this settlement (and any income derived from such sums) in the hands of any of the above persons and to the extent here set out shall not affect the entitlement to Social Security benefits of any other person whatsoever.

4. (1) These payments are made on behalf of the First Central Defendants and not on behalf of any other Defendant and are made without any admission of negligence, breach of statutory duty or other liability. The First Central Defendant maintains its denial of any legal liability whatever.

delete
the whole
of 3.3,
Counsel's
advice that
this should
go in a
letter to
the plaintiffs

(2) For the avoidance of doubt the Second and Third Central Defendants are not contributing to this settlement and firmly deny any duty of care owed to individual plaintiffs and any breach of any duty whatsoever.

5. The Plaintiffs will discontinue their actions against all Defendants and will undertake not to bring fresh proceedings against any Defendant or against any other Government Department, Health Authority or treating doctor, save that those Plaintiffs who have already made allegations as to medical negligence or who are given leave by the Court to do so pursuant to an application made prior to ... January 1991 shall be entitled to pursue that element only of these claims against the relevant Health Authority provided that they comply with the procedure laid down in Schedule 2 hereto. For the purpose of this settlement allegations as to medical negligence shall be those parts of Sections 7 and 8 of paragraph 92 of the Re-Amended Main Statement of Claim which involve specific allegations of medical negligence in individual cases, as further defined in Schedule 1 hereto. A list of all cases in which the Plaintiffs propose to pursue claims as to medical negligence shall be provided to the Solicitor to the Department of Health and to the Health Authority Defendants' Solicitors by 25th January 1991 and shall be annexed hereto as Schedule 3.

6. In the event that any Plaintiff pursues claims against Health Authorities for medical negligence, the entirety of such sums as that Plaintiff may receive under the terms of this settlement through the MacFarlane Trust shall be brought into account in assessing what damages if any such Plaintiff is entitled to receive from the appropriate Health Authority in respect of the allegations of medical negligence made against such Health Authority, but only insofar as such damages are awarded in respect of infection of the Plaintiff with HIV or the increased risk of such infection. For the avoidance of doubt, the fact that a Plaintiff pursues claims against Health Authorities for medical negligence shall not disentitle such Plaintiff from receiving all sums due to it under this agreement save insofar as set out above.

7. The First Central Defendants will use its best endeavours to secure that sums received under this settlement shall not be taken into account in assessing entitlement to legal aid ^{or any contribution thereto} in respect of the pursuance of such claims against Health Authorities for medical negligence.

8. Any qualifying non-plaintiff shall be entitled to receive benefits from the MacFarlane Trust corresponding to their circumstances upon signing an undertaking not to bring proceedings against any

Defendant or against any other Government body.

9. The First Central Defendants will indemnify the Plaintiffs against any claim for costs by any other party (other than costs {Plaintiffs want to add:- after the date hereof} relating to issues of medical negligence which are pursued notwithstanding this settlement) and will pay to the Plaintiffs their costs of these proceedings against all Defendants on the following basis:

(1) there shall be a legal aid taxation of all the Plaintiffs' generic costs and all such costs shall be paid by the Legal Aid Fund on the usual basis. The First Central Defendants will give the Legal Aid Fund a complete indemnity in respect of such costs. (For the avoidance of doubt, generic costs shall include all work incurred in the co-ordination of the HIV litigation group ~~{Plaintiffs want to add "the pursuit of the generic litigation before 29th June 1989"}~~) and all costs reserved from time to time by the Court and shall include the selection and preparation of lead cases;

(2) there shall be a legal aid taxation of the individual non-generic costs of legally aided Plaintiffs and the First Central Defendants will give the Legal Aid Fund a complete indemnity in

respect of such costs;

- (3) the individual non-generic costs of the non-legally aided Plaintiffs will be taxed on an indemnity basis and will be paid by the First Central Defendants.

{The Plaintiffs want to replace everything but the first five lines by the following:- "Of these proceedings both individual and generic, to be taxed upon an indemnity basis if not agreed, the Plaintiffs' Solicitors undertaking to waive their entitlement to solicitor and own client costs over and above costs recovered by the Plaintiffs from the First Central Defendants. For the avoidance of doubt, generic costs shall include all work incurred in the co-ordination of the HIV litigation group or the pursuit of the generic litigation before 29th June 1989 and all costs reserved from time to time by the Court and shall include the selection and preparation of lead cases. Any legal aid taxation of costs in this litigation, whether of generic or individual costs, shall be upon an indemnity basis."}

10. The settlement will be announced in Open Court and Counsel for the Plaintiffs and all Defendants will have an opportunity in appropriate cases to explain why it should be approved.

11. Deleted.

12. The First Central Defendants' liability for costs will extend up to but not beyond costs incurred prior to 13th December 1990 save that the First Central Defendants will pay on the above basis the costs of conveying the proposed Terms of Settlement to the Plaintiffs, their reasonable costs of being advised of conveying the proposed terms of settlement to their clients, their reasonable costs of advising as to the proposed settlement and the costs of concluding the approval of this settlement. For the avoidance of doubt this will include the reasonable costs of advice in relation to issues of medical negligence in the case of those Plaintiffs who subsequently discontinue all proceedings/including the consideration of the reasons for rejection of such claims by the health authorities but shall not extend to any costs incurred after 13th December 1990 in relation to medical negligence issues of those who pursue claims against the Health Authorities for medical negligence notwithstanding this settlement and any initial rejection of such claims by Messrs. Davies Arnold & Cooper on behalf of the Health Authorities.

13. The provisions of these terms of settlement will not apply to any person who has already brought proceedings in Scotland or Northern Ireland in respect of the infection of a haemophiliac with HIV through blood products or the consequences thereof.

14. All copies of all documents disclosed on discovery by any Defendant shall be returned to such Defendant's Solicitors or destroyed:-

(1) in the case of documents held by Solicitors for individual Plaintiffs within 28 days of the completion of taxation or agreement of costs on behalf of such Plaintiff;

(2) in the case of documents held by Solicitors on the Steering Committee, within 28 days of the completion of the taxation or agreement of the generic costs of ^{the} Plaintiffs represented by them or as otherwise directed by the Court pursuant to an application made by any party to the settlement;

(3) in the event of one or more Plaintiffs selecting not to enter into this Settlement but to continue with this litigation (other than where the continuation is limited to claims for medical negligence) the obligations imposed by subparagraphs (1) and (2) above will be discharged by delivering up such documents to such solicitor or other person as the Court may direct upon application made by any party hereto,

save that Plaintiffs pursuing claims for ^{Medical} ~~clinical~~

~~Negligence~~
~~management~~ against Health Authorities shall be at liberty to retain documents disclosed by such Health Authorities {Plaintiffs wish to add: "and documents disclosed by the Central Defendants which are relevant to the issues of medical negligence still to be litigated"} until the conclusion of ^{and taxation of costs of} such litigation. All solicitors to whom documents have been disclosed by any Defendant shall provide such Defendant within the time stated above with a certificate confirming that all copies of all such documents have been returned or destroyed.

15. For the avoidance of doubt all parties undertake that they will ^{not without agreement or leave of the court} make no further use of any information acquired from documents disclosed on discovery in this litigation save for the proper purpose of pursuing such claims for medical negligence against Health Authorities as may be permitted hereunder.

SCHEDULE 1

1. 'Allegations as to ^{Medical Negligence} ~~clinical management~~' means only allegations of negligence which fall under one or more of the sub-paragraphs under Heads 7 and 8 of the Particulars of Negligence under paragraph 92 of the Re-Amended Statement of Claim, save that the allegations lettered (AS), (AT), (BF) and (BG) and that part of sub-paragraph (BP) which refers to such sub-paragraphs shall be struck out. {Plaintiffs want references to sub-paragraphs (at) and (bg) deleted}

2. For the avoidance of doubt, it is the intention of the parties that a Plaintiff shall not be entitled to raise, complain of or otherwise call into question, under the guise, or in the course, of pursuing any allegation as to ^{Medical Negligence} ~~clinical management~~, any matter of general policy or other acts or omissions of general application, and in particular any complaint raised against any Defendant in any other part of the Re-Amended Statement of Claim. Allegations as to ^{Medical Negligence} ~~clinical management~~ shall thus be construed so as to refer only to allegations of negligence by the treating doctor or other Authority staff in relation to the treatment, ^{Medical Negligence} ~~clinical management~~ and/or counselling of a particular plaintiff or the haemophiliac in respect of whose treatment a 'derivative' plaintiff sues.

3. Thus, by way of example only, any Plaintiff who pursues an allegation ^{of medical negligence} ~~as to clinical management~~ against any Health Authority

will not seek to argue in those proceedings :

- (1) that self-sufficiency in blood products should have been achieved at any date prior to the date of his or her sero-conversion;
- (2) that donor warnings were inadequate;
- (3) that heat-treated blood products should have been made available {Plaintiffs want to add "other than by Health Authorities (except the BPL Authorities)"} for use by Health Authorities by any earlier date than in fact was the case;
- (4) that blood products screened for HIV should have been made available for use by Health Authorities by any date earlier than in fact was the case.
- (5) that Health Authorities should have taken steps to increase the supply of blood products made from non-commercial plasma, whether by arranging for fractionation of such plasma otherwise than by the BPL or by increasing supplies of plasma by investment in plasmapheresis or by having plasma fractionated in Scotland or otherwise.

SCHEDULE 2

STEPS TO BE TAKEN BY PLAINTIFFS WISHING TO PURSUE CLAIMS FOR MEDICAL NEGLIGENCE AGAINST HEALTH AUTHORITIES

1. Solicitors acting for Plaintiffs wishing to pursue claims for medical negligence must serve notice thereof on the Solicitor for the Health Authorities and the Solicitor for the Department of Health by 25th January 1991.

2. In those cases where the individual Statement of Claim does not at present include a claim for medical negligence, a Summons to amend to add such a claim must be taken out by 1st February 1991.

3. Each such Plaintiff must, on or before Friday, 15th February 1991, serve on the Solicitor for the Health Authorities and the Solicitor for the Department of Health an amended individual Statement of Claim in which paragraphs 12 and 14 are amended to plead precisely and with full particularity:-

(1) the breach or breaches of duty complained of; and

(2) the damage alleged to have been caused thereby.

4. In the event of a Request for Further and Better Particulars of such amended individual Statement of Claim being served by either or both of the Department of Health and the Health

Authorities within ten days of service of such amended individual Statement of Claim, the particulars requested shall be provided within ten days thereafter.

5. The Health Authorities and the Department of Health and each of them shall be at liberty, within fourteen days after service of the amended Statement of Claim or seven days after the service of any particulars requested of such amended Statement of Claim, whichever is the later, ~~be at liberty~~ to apply to the Court for the amendments or any part of them to be struck out and/or for that part of the Plaintiff's claim relating to medical negligence to be struck out.

6. It is hereby agreed that at the hearing of any such application to strike out, the Judge shall be invited by all parties to strike out any allegations which are not both sufficiently particularised and consistent with the terms of Schedule 1 hereto.

7. In the case of those actions where no application is made to strike out the amended individual Statement of Claim and in those actions where allegations ^{of Medical Negligence} ~~of clinical management~~ are ordered to stand notwithstanding any application to strike out, application may be made on behalf of any party to restore all such actions before the Judge for further directions as to the hearing of issues of medical negligence.

SCHEDULE 3

[List of cases in which it is proposed to pursue claims as to
~~clinical management~~ ^{medical negligence} [this list, together with details of the
particular allegations to be pursued, is to be prepared by the
Plaintiffs and subject to scrutiny by the First Central
Defendants and the Health Authority Defendants]

SCHEDULE 4

MARRIED BUT CHILDLESS HAEMOPHILIACS

[This list should be prepared by the Plaintiffs in two parts:-

- (1) a list of married haemophiliacs (or widows) including the name of the relevant spouse;
- (2) the action numbers of haemophiliacs in stable relationships at 13th December 1990 or at their death if earlier, together with the name of the relevant partner.

SCHEDULE 5

MARRIED HAEMOPHILIACS WITH CHILDREN

[This again should be prepared by the Plaintiffs in ^{two} ~~three~~ parts - one part living haemophiliacs who have children at the date hereof and should include names and date of birth of those children for the purpose of the Social Security Benefits. The second part should give details of deceased haemophiliacs with children and again should provide names and date of birth of those children. // ^{Schedule 8} ~~The third part~~ where a person in one of the categories listed in paragraph 1(3) of the Terms of Settlement has died by the date of payment, payment will be made to the estate of such a deceased person, except that in any case where a haemophiliac coming within Categories 3 or 4 or an infected intimate coming within Category 5 (all as defined in paragraph 1(3) of the Terms of Settlement) has died by the date of payment from the MacFarlane Trust, then (subject to the overriding discretion of the Trustees of the Trust) ~~that or~~ the monies to be paid shall be apportioned as between the estate of the deceased and his or her dependants and between any such dependants as the Court may direct.

SCHEDULE 6

INFECTED INTIMATES

[Plaintiffs to prepare this Schedule setting out the action number and the name of the relevant intimate and haemophiliac to whom that action relates].

SCHEDULE 7

CATEGORY G PLAINTIFFS

[Plaintiffs to provide a full list of these]

Schedule 8

PROVISIONS FOR PAYMENT WHERE AN
INFECTED HEMOPHILIC OR INTIMATE HAS DIED

(see page 25)