

Mrs Weatherseed PS/PS(H)

From: Mr Guinness CA OPU1-2  
Date: 29 July 1996  
Copies: Mr Holden PS/SofS  
Ms Horwood PA/SpAdv  
Dr Gray PS/Perm Sec  
Mr Griffiths PS/CE  
Dr Metters DCMO  
Mr Staniforth CAD  
Ms Fletcher-Cooke  
HCD SCS(B)  
Dr Rejman CA OPU2  
Ms Wakeman Parly  
Mr Brown ID  
Mr Billinge ID  
Miss Towner CA OPU2

### HAEMOPHILIACS INFECTED WITH HEPATITIS C

1. You asked whether there was anything in today's judgement in relation to CJD and human growth hormone that might affect the terms of the reply to the Haemophilia Society's claim for no-fault compensation (Mr Pudlo's submission of 17 July refers). Clearly, I have only seen Mr Roberts' summary, and our expert on the history of the hepatitis C issue is (and will be next week) on annual leave, but my judgement is that, in a narrow sense, there are no problems. The cases are very different in one way, in that, with hepatitis, it was known by all (including the patients) that infection was being transmitted, though it was not necessarily thought to have long-term consequences - the problem was that there was no reliable test available to screen the blood. But in another way they are similar, in that there was a point at which blood products began to be heat treated and a point at which blood started to be tested - i.e. time is relevant. It is good to see that the judge does not appear to have "backdated knowledge" and has distinguished between different categories of recipient of human growth hormone..

2. In a broader sense, though, I do wonder about the wisdom of writing to the Haemophilia Society until media interest in the CJD case has died down. Although the fact that we have been found negligent in one case does not mean that we should suddenly change our policy and decide to pay compensation where no negligence has been demonstrated (nor, indeed, alleged by the Haemophilia Society itself, as distinct from a number of potential individual litigants who are currently seeking Counsel's opinion), a clear statement to the Haemophilia Society at this stage that we are not prepared to pay financial compensation might be presented as the Government having forced one set of unfortunate people to endure the uncertainties of legal action now doing the same again. Indeed, the fact that the letter simply restates a long-held position might lead observers to conclude that the letter was almost a defiant throwing down of the gauntlet in the face of defeat over CJD.

3. I have considered whether, if PS(H) feels, nonetheless, that he must write early next week, the letter should be amended to include some reference to the CJD case. On balance, I would not recommend it, but something like "Last week's judgement in relation to CJD and human growth hormone was based on allegations of negligence,

Which the judge found in to be justified in the case of some patients, and is not relevant to the issue of compensation on the basis of non-negligent harm" could be included in the fourth paragraph if PS(H) wished to do so.

**K J GUINNESS**

**EH 303**

**ext** GRO-C

Blood, FFP, Platelets + cryo not products

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- excluded specifically by EC Directive ~~89~~ 89/381/EEC.

→ For H<sub>2</sub>C Litigation ←