

H.I.V Blood and Tissue Transfer Scheme

Cases 072 and 073

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DETERMINATION OF THE PANEL

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1. In this appeal Mr. GRO-A ("the Appellant") claims under the Scheme on his own behalf, having been diagnosed as H.I.V. positive, and on behalf of his deceased wife ("the Deceased") she having died of the Aids virus, both claims having been rejected on the ground that blood transfusions given to the Deceased were not the cause of the infection.
  
2. The Deceased died on GRO-C 1994, just short of her fifty-sixth birthday. She underwent operative treatment at Morriston Hospital, Swansea in 1984. She is said to have received nine units of blood, six in January, three in October, but the notes of which we have had sight disclose only seven units. She had further transfusions in 1988. She was tested positive in November 1993.
  
3. All the donors of the transfused blood have been traced, and tested negative for H.I.V.

4. From an early stage, however, suggestions have been made that in addition to the blood transfusions the Deceased also received, in 1984, a transfusion of fresh frozen plasma. There is no record in the hospital notes of any such transfusion.
5. There are, it seems to us, only four possibilities:
  - (a) There has been a testing error in relation to the traced donors.
  - (b) The Appellant did not acquire the virus from the Deceased, but vice versa.
  - (c) The Deceased acquired the virus other than through a transfusion.
  - (d) The Deceased received a transfusion of unrecorded but infected fresh frozen plasma ("F.F.P").
6. On the face of it, none of these four possibilities is a likely one; indeed, on the available evidence each is unlikely. We must therefore consider the evidence and conclude which of the four is the least unlikely.
7. We regard the possibility of a testing error as extremely unlikely, and would only accept such an eventuality if all others were virtually or actually impossible.

8. We regard the possibility that the deceased acquired the virus from the Appellant as extremely unlikely, and our view is supported by the report of Dr. Cobbold dated 24th October 1996.
9. What is the likelihood of the Deceased having acquired the virus other than by reasons of a transfusion? The medical members of the Panel advise that, in the absence of a transfusion of infected blood or plasma, H.I.V. could only have been acquired by the Deceased through sexual intercourse with an infected male partner or the use of an infected needle, usually during drug abuse. (We ignore here the highly unlikely possibility of iatrogenic infection).
10. We have before us statements from the Appellant himself and his G.P., Dr. Burton Jenkins, in addition to the report of Dr. Cobbold. The Deceased and the Appellant were a respectable middle-aged couple living a sedate suburban life in GRO-A Wales. Quite apart from the somewhat ludicrous postulate that the Deceased was part of the Swansea drug scene, and the less ludicrous but highly unlikely possibility that she was emotionally unfaithful to the Appellant, we read in Dr. Cobbold's report that by reason of her long-standing hip condition sexual intercourse would have been painful and involved bleeding.

11. Clearly sexual intercourse did take place with the Appellant, but he was her long-standing partner to whom she was, according to her G.P, devoted; her condition would certainly have inhibited a sexual relationship outside marriage.
12. Whilst anything is possible, we regard infidelity on the part of the Deceased as unlikely in the extreme.
13. I now turn to the possibility that the Deceased received an unrecorded transfusion of F.F.P in 1984.
14. The Appellant was apparently told that the Deceased had received such a transfusion. This is not hard evidence that she did, but it is of some, if only slight, weight.
15. More interestingly others nearer the time and subsequently have raised this possibility. Dr. Cobbold, a Consultant in G.U. medicine states "it is possible that she could have received fresh frozen plasma which would not necessarily have been recorded in the notes at the time." He clearly does not regard the possibility of an unrecorded transfusion as at all unlikely.
16. On 6th December 1984 Dr. Pat Hewitt, writing to Dr. Rejman at the Department of Health, stated "It appears, however, that Mrs. GRO-A was also given fresh frozen plasma at the time of surgery" (i.e. in 1984). We are not told where she

obtained that information unless, by implication it was from Dr. Al-Ismail, the Consultant Haematologist at Morryston Hospital.

17. This latter suggestion may be supported by a comment by Dr. Rejman in his letter to me dated 27th July 1996 "When I visited the hospital in Swansea I spoke to the local Consultant Haematologist who had first raised the possibility of a transfusion of FFP."
18. It is clear that the possibility of a transfusion of F.F.P is regarded as a serious one, and that Dr. Cobbold at least does not regard such an event as negatived by the absence of a record.
19. Dr. Cobbold's view is supported by the member of the Panel with practical experience of transfusions during the 1980s. He advises that a perfectly realistic scenario is of a Surgeon calling urgently for F.F.P., leaving a note to be made later, and the making of the note being later overlooked.
20. That notes can and were overlooked at Morryston Hospital in 1984 is confirmed - if we have been provided with full hospital notes - by the fact that the medical members of the Panel are only able to find records of seven of the nine transfusions said to have been given in 1984. Furthermore, after Dr. Rejman's visit to Swansea in 1996,

the Department of Haematology there have never provided him with a letter negating the possibility that F.F.P. was provided for one of the two operations in 1984.

21. Balancing the unlikelihoods, we have therefore concluded that the least unlikely, by some margin, is an unrecorded transfusion of infected plasma in 1984. A transfusion in that year would have been more likely, on the time scale, to have produced a positive test in 1993 than a transfusion in 1988. Further, the suggestions of a plasma transfusion relate to 1984 rather than 1988.

22. Our recommendation, therefore, is that the appeals should both be allowed.

GRO-C

BENET HYTNER, QC.  
17th December 1996.

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