

Ex gratia payments to patients who were infected with Hepatitis C as a result of NHS treatment with blood or blood products

Notes of a meeting held on 31 July 2003

Present - Mary Trefgarne (DH Solicitors Office)
Joanna Nicholson (DH Solicitors Office)
Richard Gutowski (DH Blood Policy)
David Reay (DH Blood Policy)

Issues for discussion

SOL were asked to consider three issues relating to the proposed scheme of ex gratia payments.

- To confirm whether or not the payment scheme would be a devolved issue in Wales and Northern Ireland
- To advise on the legal aspects of constituting a new Trust
- To investigate how Trusts payments might be made accountable by Govt/Parliament

Devolution

SofS has asked that Wales and NI are not included in discussions of the payment scheme at this stage. However, DH may be under certain obligations to share information if the scheme is determined not to be a devolved issue (which is thought most likely). In addition, no matter what the outcome of the devolution decision, DH runs the risk of antagonising the Administrations if it presents them with a *fait accompli* scheme. Discussions on the progress made by the Scottish Executive would also be required.

SOL agreed to –

1. Confirm that this is not a devolution issue
2. Clarify if DH is legally or honour bound to share information with the two Administrations
3. Assess the possible impact should the issue be deemed to be a devolved and Wales and/or NI refuse to join a scheme (complaints of discrimination etc)

Pending clarification on points 1 and 2 above, RG agreed to –

4. Ask Ministers for a steer as to when to involve the Wales and NI Administrations.
5. In addition, DR agreed to forward SOL's contact details to the Scottish Executive lawyers to open dialogue

Constituting a New Trust

The favoured mechanism for disbursing funds is via an arms-length organisation, ideally a Trust fund. This would either be developed from scratch, or administered under the umbrella of the Macfarlane Trust (which makes similar payments to haemophiliacs infected with HIV). However, the new Trust would differ from the Macfarlane Trust in that funding would come separately from the four provinces. Appeals against the Trust's decisions would also need to be considered, although a formal appeals process is not thought necessary.

SOL agreed to –

1. Look into the possibility of drawing up deeds and constituting the Trust in-house, instead of using private solicitors
2. Ensure that one deed would cover all four provinces
3. Consider what provision will need to be made for appeals, and to ensure that any recommendation will comply with the ECHR

DR agreed to –

4. Supply details of how DH went about setting-up the Macfarlane and Eileen Trust (including consideration of their appeals processes)

Accountability

Payments made by the Trust would need to be made accountable to bodies such as the Public Accounts Committee.

SOL agreed to –

1. Determine how this might be done in line with Chapter 2.2 of the Government Accounting manual