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Ein cyf / Our reference

Eich cyf / Your reference

Dyddiad / Date

25 October 1989

Dear Mr Desai *(Please see attached covering letter).*

**RE: HAEMOPHILIACS/HIV LITIGATION - SECRETARY OF STATE FOR WALES**

This letter is intended as our first response to the invitation contained in your letter dated 8 August 1989 for comments upon those parts of the main statement of claim which affect the Welsh Office. Our search for documents is only just beginning and we are clearly not yet in a position to provide anything like a complete picture. We have not as yet seen the D of H instructions or the draft main Defence and draft preliminary issues which Counsel intended circulating in early October.

During September you have accepted service of a number of Writs on behalf of the Secretary of State for Wales and we understand that a number of other Writs have been issued but not yet served. We are aware of at least 20 claims that are being pursued against Welsh Health Authorities as part of this litigation. (These include 16 claims against South Glamorgan HA and 1 claim each against West Glamorgan, East Dyfed, Pembrokeshire and Gwynedd). Originally this Legal Division acted as Solicitor for the Welsh Health Authorities but they have now been advised to arrange separate representation in view of the fear of a possible future conflict between them and the Welsh Office.

While the position of the Welsh Office generally is perceived as being on all fours with that of the Department of Health I will attempt in this letter to comment on the relevant references as they appear in the MSC.

**MSC PAGE 7 B3 CENTRAL DEFENDANTS**

The Secretary of State for Wales has discharged the duties at (a) to (i) (to the extent that they apply) by delegating to the DHAs his functions relating to the Health Service under the provisions contained in SI 82/287 paragraph 7.

**MSC PAGES 7-9, B3: CENTRAL DEFENDANTS**

Apart from this delegation, the Welsh Office:-

- (a) relies on DOfH to take the principal lead in determining national policy on matters relating to HIV/AIDS prevention, but contributes to the formulation of policy through membership of Inter-Departmental bodies and their sub-groups (eg

Inter-Departmental Group on AIDS, the Expert Advisory Group on AIDS and the Committee for AIDS Public Education) and reserves the right to adapt policies to the local circumstances in Wales.

- (b) Has given advice and information by issuing Circulars within Wales corresponding to those issued by Department of Health in England. Examples of such circulars are:-
  - a. "AIDS and How it concerns Blood Donors" (Aug 83)
  - b. "AIDS: Important New Advice for Blood Donors" (Jan/Feb 85)
  - c. "The acquired Immune Deficiency Syndrome and HIV: The AIDS Virus (CMO(86)18).
- (c) has, on its own account issued advice and taken action eg
  - a. The issue of PSM(84)4 (Nov 84) asking doctors to inform CDSC of cases of AIDS or Kaposi's Sarcoma, and to inform NBTC of suspected AIDS cases;
  - b. Formation of the AIDS Steering Group in September 1985: a multi-disciplinary body to monitor the development of AIDS, advise Ministers of the Department's response and to promote adequate action by health care services in Wales;
  - c. The issue of DGML/44 (Dec 85) to commend to all Welsh DHAs the setting up of AIDS Co-ordinating Teams.

#### MSC PAGE 10 D PARAGRAPH 9 REGIONAL HEALTH AUTHORITIES

While the MSC accepts that there is no Regional Health Authority for Wales it refers to the Welsh Office's role as an RHA for Wales and thereby purports to level against the Welsh Office allegations which are made against RHAs in England. The relevant statutory framework is examined in Appendix A.

By Regulation 7 of the NHS Functions (Directions to Authorities and Administration Arrangements) Regulations 1982 SI 82/287.

The Secretary of State for Wales has delegated to the Welsh District Health Authorities functions which in England are delegated to the English Regional Health Authorities. As functions which are delegated to the regions in England are not reserved by the Secretary of State for Wales it would appear that he has no formal Regional Health Authority role. The absence of a regional tier in Wales is recognised by, eg, paying the Chief Administrative Medical Officers of the Welsh DHAs additional allowance and the funding of planning officials in the DHA with its highest concentration of specialist services. In addition, Wales is not defined in the legislation as a regional health authority and the respective regional allegations are therefore answerable by one or more of the Welsh District Health Authorities to whom the statutory functions have been delegated.

The Secretary of State for Wales has overall responsibility for the determination of national policy (in conjunction with the Minister for Health), for the allocation of resources to district health authorities, and for ensuring that objectives are being achieved and standards

maintained. Since 1985 the Director of the NHS in Wales has carried lead responsibility at official level for the discharge of the Secretary of State's responsibilities in respect of the management of the health service. He ensures that the health authorities have in place financial, information, planning, and other management systems to make best use of their delegated operational independence, while at the same time ensuring that their performance is maintained, reviewed and advanced. The Director is supported by the NHS Director, etc and by professional staff who provide expert advice on the level and quality of services.

The Secretary of State is also responsible for determining the capacity and location and providing development funding for certain services which are designated regional services viz those which cannot effectively be provided on a district health authority basis. In these circumstances operational management responsibilities are again fully delegated to the host DHA. The Welsh Office also co-ordinates certain activities eg establishing the AIDS steering group to oversee the efforts of statutory and voluntary bodies in combating AIDS, but it must be emphasised that all these acts reflect the discharge of his statutory responsibilities for the effective provision of health services across Wales.

For the purposes of the present litigation the Welsh Office will deny that it has a Regional Health Authority role which exposes it to any obligations which are additional to those facing the Department of Health. At the same time we recognise that as the functions of the respective Health Authorities are all derived from the duties imposed upon the Secretary of State we are perhaps being unnecessarily nervous.

MSC PAGE 10 PARAGRAPH 10

The allegations under (a) to (h) are said to be pleaded against RHAs along with the Secretary of State and we are accordingly assuming that the reference to an RHA role does not impose any greater obligation upon the Welsh Office. The Secretary of State for Wales has sought to discharge his functions by making the following arrangements:-

- (a) [The management and administration of the Welsh Blood Transfusion Centre was delegated by the Secretary of State for Wales to the South Glamorgan Health Authority under WHC83(20)] a brief chronological history of the Welsh Blood Transfusion Unit is set out in Appendix B.

- (b) and (c)

It is considered that hospital services would include care for haemophiliacs and that these matters were delegated by the S of S for Wales to District Health Authorities generally.

- (d) The Haemophiliac Reference Centre is situated at the University Hospital of Wales Cardiff and is administered by South Glamorgan Health Authority as part of its District Health Authority functions

(e) and (f)

Research and co-operation are primarily matters for the HRC but further enquiries are being made as to whether the Welsh Office has any relevant additional involvement in these matters.

(g) In Wales consultant contracts are held by the District Health Authorities along with those of other medical staff and the Secretary of State can therefore deny any vicarious liability.

(h) The HRC at Cardiff is administered by South Glamorgan Health Authority.

MSC PAGE 108 PARAGRAPH 82 (DUTY OF CARE - CENTRAL DEFENDANTS)

The Welsh Office will rely upon the response of the Department of Health but further research will be necessary to show what action has been taken by the Welsh Office in respect of the items pleaded. At present we have provisionally identified the items referred to at page ... above as being examples of separate Welsh Office activity.

MSC PAGE 131 - PARAGRAPH 91 ONWARDS - BREACHES BY RHAs

This section has been considered in case the Welsh Office's role as RHA is investigated.

The Welsh Blood Transfusion Unit, its mode of administration and the involvement of the Welsh Office are described in Appendix B. The position of the Welsh Office in relation to Items 1, 3, 4, 5 and 6 is as under the preceding section relating to Central Defendants

It is clearly desirable that the Welsh Office should not be left in a more exposed position than the Department of Health and I would therefore hope that a preliminary issue could be raised as to whether the allegations made against RHAs can properly be made against the Welsh Office.

I am now hoping that this letter will reach you before we meet Ognall J on the 23 October.

Yours sincerely

GRO-C