From: Dr A Keel
DCMO
3 October 2001

Mrs S Falconer

Copy to: PS/HD Health
CMO
Mrs P Whittle
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Press Health
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REPORT ON HEPATITIS C

1. You were right to emphasise in our initial response to this that we will require time to consider its recommendations! No surprises in the sense that we were expecting the Committee to recommend compensation for those who have contracted Hep C through blood transfusion and fall outside the terms of the Burton Judgement. However, there seems to be a rather curious wrinkle even to this recommendation which includes "all Hepatitis C sufferers who have contracted the virus as a result of blood transfusions provided by the NHS in Scotland, or which involved blood or blood products **produced by the SNBTS** (my emphasis)". I am not sure exactly what this means - does it mean that individuals who received SNBTS products outwith NHSScotland should also receive compensation? From a practical point of view this may not be particularly relevant.

2. The Committee underestimates the difficulty in determining levels of compensation "based on need, with regard to the physical or psychological loss individually suffered". As we know, DH have struggled with this on a number of occasions over the years, and failed to come up with proposals for a manageable system. We also know that Charles Lister has been asked to have another go, and are watching this space with interest!

3. The Committee does not seem to have a clear understanding of the Clinical Standards Board for Scotland's remit. Recommendation 5 suggests that the Board could "oversee an investigation into the adequacy of advice on risks offered by clinicians to individuals receiving blood transfusions or being provided with blood products". The Board's remit is clearly restricted to the development of standards for the accreditation and quality assurance of clinical services.

4. As far as provision of information on risks of blood transfusion is concerned, we are all currently wrestling with how to do this across the piece, particularly in relation to the theoretical risk of vCJD transmission. Any such exercise will have to strike a balance between providing information on risk, and avoiding widespread public alarm, with a probable associated reduction in blood donations.

5. I assume that the recommendation relating to the adoption of a protocol between the Committee and the Executive in the context of internal enquiries will have to be considered Executive-wide?

6. As far as the recommendation relating to establishing an alternative to the current system of negligence and fault-based compensation is concerned, Mrs Whittle is best placed to comment, and clearly the work on mediation being undertaken by the Royal Society of Edinburgh is also relevant here.

7. Finally, on more minor points, the allegation (paragraph 74) that the Departmental report did not consider the non-use of the ALT test is inaccurate and irritating. The report also criticises the narrowness of the enquiry's remit, but fails to acknowledge that this was agreed with the Haemophilia Society, who were fully signed up to its terms before we embarked on it.

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3 October 2001

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