

RESTRICTED - POLICY

To: Ms Woodeson PS/PS(L)

From: Dr Susan Turnbull

Date: 2 February 1995

Copies: Ms Moriarty PS/SoS
Mr Hollebon PS/PS(H)
Mr Larner PS/PS(C)
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Mr Hart
Mr Mouatt CDO
Mr Backer-HolstPS/CNO
Dr Metters
Dr Winyard
Mr Langlands
Ms Christopherson ID
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Mr Podger
Dr Mann
Miss Mithani
Mr Thompson P Div
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Dr Madden SOHHD
Dr George WO
Dr Mitchell NI

Appeal: Manchester High Court Judgment

1. This updates my minute of yesterday's date and advises that our legal advisers view is that there is an urgent need for Departmental intervention, following the judgment at Manchester High Court on 31 January. For contacting patients of an HIV infected doctor by letter rather than in person, 2 Health Authorities were found liable for damages (if the plaintiffs can prove damage on an individual basis) and in which the Department appears to have been implicated in "steering" the defendants in the wrong direction.
2. The official transcript of the judgment is not yet available, but a detailed handwritten note, which appears likely to be accurate, was made by the Director

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of Public Health for Trafford/Tameside.

3. From this the judgment, in exonerating the defendants from blame, appears to criticise DH for wrongly directing the Districts to send letters as follows:

"Despite the finding I have made which is adverse to the defendants I should like to make clear that the defendants were not to blame in this. They were steered in this direction by the Department of Health...."
 4. The DPH's note also describes the judge's decision not to permit the defendants to respond to the evidence of one of the expert witnesses on behalf of the plaintiffs, by offering their own evidence why communication other than by letter would have been impractical.
 5. If this judgment is allowed to stand without (or despite) challenge, legal precedent will have been made whereby contact by letter of patients about any "bad news" constitutes a breach of duty of care which may allow successful claims for damages depending on circumstances. In the event of successful claims for damages by the Manchester plaintiffs, other related and unrelated claims would surely follow, such as those notified in all previous lookbacks (HIV and hepatitis B) and from any other instance when potentially worrying information is imparted by letter.
 6. Sol are concerned not only by the outcome but also by the handling of this case by the Region's lawyers. It is considered extremely important that any legal challenge is made with the benefit of the most able legal representation. The North Western Regional Director has indicated willingness for the Department's lawyers to advise on, or to become involved in further action towards an appeal. Advice from Sol on legal options at this stage is expected in the near future.
- Action**
7. PS(L) support is sought for the need for urgent action, and for DH to become involved following this judgment, because of its wide reaching implications for the Health Service. Advice from the Department's lawyers on the best course forward will soon be available detailing the legal options available.

Susan Turnbull

GRO-C