

ANNEX A

Parliamentary

From : J C Dobson EHF1

Date : 15 April 1991

cc : Mr Sands PS(MS(H))
Mr Heppell DS
Mr Powell SOLB3
Dr Rejman MEDISP
Mr Kendall FA2
Mr Gutowski MCA
Mr Canavan EHF1A o/r
Mr Provan D1C
Ms. Christopherson 10
File

HIV HAEMOPHILIA LITIGATION

I attach briefing for No 10 on the Sunday Times article of 14 April alleging that the Government is responsible for delays in payments to haemophiliacs. The briefing has been drawn up in consultation with DSS.

GRO-C

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Bull Points

Certainly no delay by civil servants or Government lawyers.

This is a complex settlement and, understandably, both sides want to be satisfied that it is right before it can be concluded.

Payments made under the Macfarlane Trusts to haemophiliacs and other beneficiaries will be completely disregarded for Social Security purposes. This has always been made very clear.

The plaintiffs' Solicitors have been consulted about further benefit concessions we are proposing in connection with inheritances from haemophiliacs and we are hopeful of an early agreement.

The necessary Social Security regulations will be introduced as soon as possible after the new Trust is established.

The plaintiffs' solicitors have known for some months that they would need to ensure that evidence in support of categorisation of their clients for payment purposes is available. Government lawyers are asking for the bare minimum to ensure that the right payments are made.

The Government wants to see the settlement concluded as soon as possible. With goodwill on both sides, the final details can be sorted out within the next week or two.

Background

On 11 December 1990 the Government agreed in principle to proposals costing £42m put forward by the plaintiffs' lawyers. Since then the detailed terms of the settlement have been under discussion with the plaintiffs' lawyers. The main items have been the legal form of the settlement document, the deed for the new Macfarlane Trust which will make the payments, definitions of categories of plaintiff, the social security disregard, and questions whether allegations of a general nature can be used by the plaintiffs in medical negligence cases.

In the course of the discussions, Departmental lawyers have met members of the plaintiffs' steering committee of solicitors on at least 7 occasions, including appearances in court. There has been much written correspondence and numerous telephone calls. There has been Counsel to Counsel contact almost on a daily basis.

Particular problems arose over the social security disregard. Mr Waldegrave's statement on 11 December said that "payments from the [new] Macfarlane Trust will not affect entitlement to social security benefits". It was not made clear whether this disregard would apply only to the primary beneficiaries - as with payments under the existing Trust - or would extend further to other recipients, eg partners receiving the money by inheritance. In drafting the regulations to give effect to the disregard, DSS solicitors have offered two extensions:

- a complete disregard for money left by haemophiliacs to their partners and children

- a 2 year disregard for money received by parents for haemophiliac children who have died.

We believe this will be acceptable to the plaintiffs' solicitors.

Recently it became clear that plaintiffs solicitors had done little work in categorising their clients for payment purposes and marshalling the supporting evidence. (We are asking for the bare minimum to ensure that the right payments are made, eg to plaintiffs who are claiming to have a dependant partner.) The onus is on the plaintiffs' solicitors to bring this to a satisfactory state and payments can only be made after this work is complete. The plaintiffs' solicitors have known since December that this information would be required.

It is hoped that a Court hearing can be held on 1 May to finalise the settlement. We are cautiously optimistic that all the loose ends can be tied up by then.

Q AND A BRIEFING

Q1. Why has it taken so long to tie up the settlement?

A. This is a complex settlement and, understandably, both sides want to be satisfied that it is right before it can be concluded.

Q2. Have Government lawyers sought to put unnecessary obstacles in the way?

A. No. We have asked for the bare minimum of information and evidence to ensure public accountability.

Q3. If evidence of plaintiffs' status is needed, why didn't the Government ask for it months ago?

A. It was clear from the outset, when the plaintiffs' solicitors put forward a settlement offer, that schedules listing the plaintiffs by payment category would form part of the agreement, and that some evidence in support would be required.

Q4. Have the Government tried to renege on the promised social security disregard?

A. No. We have been consulting the plaintiffs' solicitors about further benefit concessions the Government is proposing in connection with inheritances from haemophiliacs.

Q5. When will the settlement finally be agreed?

A. We want to see a settlement concluded as soon as possible. Approval of the Court will be sought, we hope, at the beginning of May.

Q6. Have arrangements been made to make payments as soon as the settlement is agreed?

A. Yes. Steps have been taken to ensure that the new Trust will be ready to start making payments as soon as possible after the settlement has been agreed, and approved by the Court.

SOCIAL SECURITY DISREGARDS

S of S's original statement on 11 December said that "payments from the [new] Macfarlane Trust will not affect entitlement to social security and other statutory benefits.." This left it unclear whether the promised disregard applied only to the primary beneficiaries of the settlement, ie the haemophiliacs and infected intimates - as with the original Macfarlane Trust and other comparable settlements - or would extend to those who subsequently inherit from the primary beneficiary. In practice, the government has always recognised the need to protect the particular case of the haemophiliac who dies leaving money from the Trust payment to a partner or dependent children.

2. DSS solicitors were instructed in January to draft amending regulations to provide for the appropriate disregards and this work continued in parallel with discussions between DH and the plaintiffs' solicitors over the details of the settlement. In the course of this it became gradually apparent that the plaintiffs' solicitors wanted to obtain further concessions to those already on offer. In particular, they were concerned over the position of parents who receive money for a haemophiliac child who subsequently dies. At a meeting on 25 March agreement in principle was reached that under these circumstances the money inherited should be disregarded for a period of two years. We understand that the plaintiffs' solicitors are likely to recommend this to their clients as an acceptable compromise (although one of the firms, J Keith Park, has since asked for a further meeting).

3. The draft regulations have been amended to reflect the proposed compromise. As soon as the plaintiffs have confirmed that they have accepted it, and the new Trust has been set up, arrangements will be made to bring the regulations into force. This will enable the Trust payments to be made at once without affecting benefits.

REQUEST FOR SUPPORTING EVIDENCE

S of S will recall that it was an integral part of the settlement that different payment rates would apply to individual plaintiffs depending on their circumstances, and it was always envisaged that the names of individual plaintiffs would be set out in schedules by their payment category. The payment categories and amounts are set out below:-

Infant (person under 18 yrs old)	£21,500 each
Single Adult	£23,500 each
Married adult * without dependant children	who is an HIV infected haemophiliac £32,000 each
Haemophiliac with dependant children	£60,500 each

Infected Intimates of HIV infected haemophiliac	£23,500 each
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Category G Plaintiffs (ie those litigants who have sero-converted and/or been infected with HIV to their knowledge, but are at risk of doing so because they are the intimates of haemophiliacs who have sero-converted and/or been infected with HIV or developed AIDS) £2,000 each

* including those with partners in a stable relation

The plaintiffs' solicitors have only recently put their minds to drawing up the schedules, and when we received them the information was quite inadequate. We are not asking for anything very detailed, just the bare minimum to ensure accountability.

This problem is well on the way to resolution; the number of "difficult" cases is fewer than expected and our Counsel is considering how the settlement could be amended so that any such cases unresolved by 1 May need not hold up the settlement for the remainder.