

STRICTLY CONFIDENTIAL

A SUMMARY OF CONTENTS and
PERSONAL OBSERVATIONS ON

COUNSEL'S OPINION

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A SUMMARY OF CONTENTS WITH OBSERVATIONS

1. The Chronology is sketchy and incomplete.
2. Counsel repeats the 'dangerous' advice which comes from the Frankfurt Study: ~~top~~the best of our knowledge this does not include any patients with haemophilia - however, it would be wise to investigate this in closer detail. Those statements also serve to hasten the day when it will be necessary for us as a Society to get a responsible and authoratative source to make some form of public statement about the prospects for people with haemophilia. Every indication which I hear, apart from a very few, indicate that the likely progression from HIV ab+ to frank AIDS in haemophilia is likely to be remarkably low. However, we do need an expert to say just that!! - and strongly.
3. In connection with the above it would obviously help to know the current position in the USA: this can easily be checked through the NHF and friend Brownstein.
4. We must decide whether, as a matter of policy, we will be influenced by the likely effect any action in the UK may have on the international fVIII/fIX supplies.
5. Do we feel ~~that~~ ^{Counsel is} in all the circumstances, and bearing in mind the likely effect on the international blood supply, ^{that there} was any justification at all for the blood in return for money practice of the American commercial pharmaceutical companies. Counsel says that if there were 'no reason justifying that course', then he would expect a court to say that the practice was negligent. I do not know that we can agree with the premise that leads to his conclusion!
6. Were appropriate and suitable warnings given to patients about the likelihood of product carrying any health risk at all? We need to be quite clear about this since it constitutes a vital point: this may require some research!
7. Ideally we are looking for a potted history of blood collection in the USA: did the practices of the American companies improve around, say, 1976. Was there any lessening of the incidence of hepatitis around that time? Possibly not!
8. I think we can be reasonably satisfied that, generally speaking anyway, the American companies have behaved with due concern and have shown themselves willing to comply with the suggestions of, especially, the Medical and Scientific Advisory Committee of the National Hemophilia Foundation: they have much more 'clout' with the commercial companies on that level than do we!
9. Counsel is firmly of the opinion that the general duties arising under the NHS Act give rise to no legal remedy, and

although Counsel takes five pages to amplify that, it is still the case!

10. On the matter of defining the defendant as the Health Authority or the Doctor, etc, counsel finds himself in some difficulty since he needs 'live cases' and individual circumstances. However, there is a strong indication that 'negligence' will be hard, if not impossible, to prove.
11. There are various points arising from the section which deals with 'Limitations' but while those are not of immediate concern we should pay attention to Counsel's warning that we ought not to sit back because of the fact that Courts may be generous at the end of the day!

In the foregoing I have attempted to summarise those points on which we will be required to make decisions, whether they be of policy or direct action, in the very near future if we are to continue this course to its conclusion: that of itself is an urgent and important matter of policy which demands the urgent decision of the Executive Committee - maybe even in advance of the March meeting. This should be discussed by the Officers on 4 February 1987.

May we circulate the preliminary opinion to all members of the Executive Committee now?

David G Watters
General Secretary

23 January 1987

dgw/pers