Item B

CD-28.9

HIV HAEMOPHILIAC LITIGATION : KEY FACTS

Number of haemophiliacs involved

* About 5-6,000 haemophiliacs in UK, many only mildly affected (therefore infrequent users of Factor 8).

* 1,200 haemophiliacs known to be infected with HIV. Could be a few more (? up to 100) who have not yet come forward for ex-gratia payment.

* 770 haemophiliacs and 190 others (spouses etc) have joined in the litigation.

MacFarlane Trust

* Original trust set up in 1987 as a charitable trust to help haemophiliacs and their families on basis of need. Original funding £10m of which £7-8m still left. Current level of spending is some £2m pa, on mixture of regular weekly payments and special grants.

* Secretary of State's statement (November 1989) encouraged Trust to continue help "on more generous scale". Implied commitment to top up as and when needed, but no additional funding yet announced.

* New trust (non-charitable) set up January 1990 with £24m to handle ex-gratia payment of £20,000 per family as announced in same statement. Administered and claims validated through original Macfarlane Trust. Only few claims still to be validated and paid.

Costs of litigation

* Cost of losing litigation assessed at minimum of £80-100k per head (£25-30K for pain and suffering, £50K for loss of earnings) - say £100-250m in total.

* Whatever objective estimate of chances of establishing liability, Pannone Napier (plaintiffs' solicitors) might have difficulty in persuading their clients to accept any settlement involving large 'discount'

* Pannone Napier's 'public' claim is for £80-90m plus costs, but are willing to settle for less.

* Legal costs for all parties if case goes to trial (including legal aid) estimated by RHAs as about £20m. Our Counsel thinks this is on the high side.

* Also diversion of scarce NHS management and clinical effort in preparing NHS side of litigation.

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HIV HAEMOPHILIAC LITIGATION : POSSIBLE REPERCUSSIONS

If DH/NHS liability established or implied

1. Immediate knock-on effects for those infected

   - with HIV through blood transfusion (up to 120 cases including transplants)

   - with hepatitis through blood products and blood transfusion (number not known)

2. Weakens arguments that government does not owe a duty of care to individuals and that policy-making should not be justiciable. Therefore increases risk of losing other litigation in pipeline, eg over listeria infection of foodstuff. (Effect may not be so severe if fault is seen to lie in execution of policy, eg supposed delay in introducing heat treatment for NHS Factor 8, rather than in policy itself, eg conscious decision not to screen blood donors for HIV until screening could be made generally available.)

3. In particular could have serious knock-on effects on litigation involving Committee for Safety of Medicines.

4. Could encourage further actions against government or CSM by others who can argue that they suffered loss because of

   - unreasonable policy/resource decisions

   - delay in execution of policy.

If case settled without admission of liability

1. Direct encouragement to other groups to start action linked to media campaign in any circumstances in which they are harmed as a result of NHS treatment, even if no prima facie evidence of liability.

2. Weakens government's ability to resist pressure for a scheme of no-fault compensation for medical accidents, which would:

   a) either be very costly or ineffective (individuals may still pursue Court action for higher awards);

   b) lead to inequity between those disabled as a result of medical accident and those with (eg) congenital disability.

3. Increases pressure on government to compensate on no-fault basis for other kinds of disaster, eg major traffic accidents, natural disasters etc.

In either case

1. Increases sense of unfaireness to any groups not benefitting.
2. Directs resources from other NHS patient care.