

CD-5.11

PRESENT POSITION ON HIV/HAEMOPHILIA LITIGATION**Court Proceedings**

There have been a number of hearings before Mr Justice Ognall to determine the procedures and timetable for the conduct of the litigation. Another such hearing is likely to take place in late November but no date has been fixed. The main hearing of the issues is scheduled to begin on 4 March 1991 and may last up to six months. In the even of appeal by either side the action may not be finally settled until 1992.

Public Interest Immunity from Disclosure of Documents

The Department claimed immunity from disclosing certain documents relating mainly to policy formulation. Initially the Court ruled in our favour but the Court of Appeal subsequently decided that the balance of public interest was for disclosure.

The hearing provided the opportunity for a preliminary airing of some of the legal arguments. We had some hope that the Courts might give a clear ruling that large parts of the plaintiffs claim were bound to fail. However the Court of Appeal merely conceded that the plaintiffs had an arguable case without pronouncing on the strength of case.

Parliamentary Activity

Over the past year there have been three adjournment debates on the question of compensation for haemophiliacs with HIV. The Hansard account of the most recent debate on 15 October is annexed. In addition, the Haemophilia Society has organised a write-in campaign to increase pressure for an out of court settlement of the litigation.

It is possible that the Opposition will seek to increase the pressure by initiating a Supply debate on the matter shortly after the start of the new Parliamentary Session.

At the end of the last session Harriet Harman introduced a Bill which would provide a system of no fault compensation for medical accidents. It was probably timed as a move to embarrass the Government over the haemophiliac compensation issue. There was no time for a second reading and the Bill was lost. It is possible that the Bill will be picked up as a Private Members Bill in the new Session to maintain pressure on the Government.

Out of Court Settlement

In July 1990 Mr Justice Ognall took the exceptional step of asking the parties to consider a compromise settlement of the litigation. In its formal response, the Department rejected the proposal and said that the moral and compassionate arguments had been recognised by the Governments ex-gratia payments totalling £24m. As a follow-up to Mr Justice Ognall's statement the lead firm of Solicitors for the plaintiffs, Pannone Napier, had suggested a settlement figure of £80 to £90 million plus costs. However in informal discussions with the solicitors for the Health Authorities, Pannone Napier had indicated that a settlement might be reached nearer £30 million. Kenneth Clarke did not wish to initiate any negotiations with the plaintiffs as this might imply some acceptance of liability for negligence. However with the Department's knowledge the Health Authorities encouraged Pannone Napier to explore with the other solicitors for the plaintiffs whether they could agree a realistic settlement figure which could be offered to the Department.

In recent meetings with the Health Authorities' solicitors and the Department's leading Counsel, the plaintiffs have made written proposals for a settlement in the range of £30 to £60 million. They invited the Department to make an offer in the upper end of the range.

Kenneth Clarke met Counsel on 1 November to discuss this. The line was confirmed that there should be no offer from the Department. However, our Counsel would make known to the Plaintiffs that if they were to offer a settlement around £20 to £25 million plus costs this might be considered. Any settlement would have to be acceptable to all plaintiffs and end the litigation. No money has been agreed with Treasury for an out of court settlement, and this could be difficult to obtain as the prospects for successfully defending the action are reasonable.

Counsel's Opinion on Legal Defence

The latest opinion from Counsel given last week is that the Government defendants should be able to defeat the plaintiffs' claims. However they cautioned there are a number of areas of risk and therefore it would be unwise to proceed on the assumption that all the plaintiffs' claims will certainly fail.