

1. CMO	From: Strachan Heppell, PG
2. Mr Sands, PS/MS(H)	Date: 24 July 1990
3. Mrs Shirley-Quirk, PS/SofS	Copies: Mrs Baldock PS to PS(L) Mr Waterhouse, PS Perm Sec Dr Metters, MED Miss Pease, EHF Mr Wilson, PHS Dr Jones, MCA Dr Pickles, MEDISD Dr Rejman, MEDISD Dr Rotblott, MCA Mr Powell, SOL Miss Bendall, SOL Mr Dobson, EHF1 Mr Stopes-Roe, PHS4 Mr Kendall, FA1 Mr Hagger, MCA Mr Gutowski, MCA Mr Canavan, EHF1

HAEMOPHILIACS: AIDS LITIGATION

Mr Dobson has prepared the attached note following wide consultation with colleagues in the Department. It sets out how Ministers might now respond to the current aids litigation in the light of a statement from the judge, Mr Justice Ognall, advice from counsel and a submission from Regional Directors of Public Health.

2. Mr Dobson rightly lays out a range of possible choices. My own view is that the choices boil down to two:

First, we continue to resist firmly the present action against the Government whilst being ready to consider further help through the MacFarlane Trust; or

Second, seek a settlement out of Court, in one form or another.

3. Ministers are very well aware of the background against which the court case is being heard. Very understandably there is wide public sympathy for the plight of the families concerned, recognising the difficulties they already face as haemophiliacs and the prospect of infection being passed from one member of the family to another. There is, moreover, the continuing difficulty in the relationship between the families concerned and their medical advisers while the case is unresolved. And there is the cost of the case and the pressure which it brings to bear on all concerned.

4. Notwithstanding this background, the reasons why the Government has been reluctant to concede the case or settle out of court remain valid. Indeed, the note by Mr Justice Ognall at Annex A of Mr Dobson's paper strengthens rather than weakens this view. In the sixth paragraph on page 1 it appears to contemplate a higher duty of care for the NHS provision of medical services than that applying to any other provider and also a readiness to accept responsibility outside normal legal liability. This tends to underline the fact that any settlement, however presented, would be a precedent - if not legal, then political - for NHS liability for any harm caused by medical treatment even though that treatment was given on the basis of the best available knowledge and skills at the time.

5. Ministers will wish to read carefully through Mr Dobson's note and the proposals in it. But my recommendation is against going down the route mapped out by Mr Justice Ognall. At the same time, in recognition of the very special circumstances of the haemophiliac families, further payments under the MacFarlane Trust would be very welcome and help to make the Government's position look less hard-nosed and unyielding. Finding the money to do this would not, of course, be easy.

GRO-C

STRACHAN HEPPELL