

Dr Troop

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Date: 3 March 2000

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**HEPATITIS C LITIGATION: DISCOVERY OF DOCUMENTS  
PREMATURE DESTRUCTION OF REGISTERED FILES**

1. This note is to make you aware of an issue which Marilynne Morgan will be raising in a minute to Chris Kelly on Monday.

2. The HCV litigation against the National Blood Authority is due for trial in October this year (the claimants were infected with HCV through blood transfusion between 1988 and September 1991 when the screening test was introduced). Lawyers acting for the NHSLA and NBA have advised that there is very likely to be a finding of liability in respect of the later cases of transmission if the case goes to trial. The claimants' solicitors (DMS) have therefore been approached with the offer of a partial out of court settlement (ie a full liability settlement on cases in 1991; a partial settlement on cases in 1990; no settlement on cases pre 1990). However, DMS have said that they want to wait until they have received all the relevant documents from the Department before considering the offer.

3. A discovery exercise was undertaken by the Department between 1995 and 1997. These documents have now been indexed and given to DMS. However, some important documents are missing, mostly papers and minutes of the Advisory Committee on Virological Safety of Blood (ACVSB) – MSBT's earlier incarnation. We established a week ago that a number of the Department's registered files containing ACVSB papers were sent for destruction, apparently in 1993 (although the file store tell us that the actual destruction dates were between 1994 and 1998). This should not have happened; and we have not yet got to the bottom of why this decision was taken.

4. SOL Litigation have consulted Counsel today on the best way of handing the situation. Counsel's advice is that:

- we should own up to the situation with DMS. Counsel has suggested some low key wording for SOL to use;
- we should undertake a low key internal investigation to try to establish why the files were destroyed. The aim would be to ensure that procedures are in place within the Department to ensure that files are not destroyed in future where litigation is contemplated and that, when files are destroyed, proper records are kept showing who authorised destruction and why;
- we should attempt to locate the missing documents from other sources, within the Department or externally.

I have already begun work on the latter point and, with the help of Professor Zuckerman and colleagues in the Scottish Executive, have so far obtained a number of the missing ACVSB papers.

5. SOL Litigation will need to inform DMS of the situation next week. This will be embarrassing for the Department, and DMS could, if they were so minded, make a stink about the destruction of documents vital to their clients' case. We think this is unlikely, but Marilynne Morgan will need to appraise the Permanent Secretary of the situation. I understand that Marilynne Morgan's minute will also refer to the destruction of Dr Metters' personal papers on ACVSB, which SOL Litigation understand took place shortly after his retirement. Although these papers were not on registered files, the implication may be that their destruction was ill advised.

6. Happy to discuss.

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