

Hugh Taylor

From: Liz Woodeson

Date: 23 March 2007

Copy: Richard Kelly/CMO
David Harper
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Jonathan Stopes-Roe
Ailsa Wight
William Connon

Lord Archer letter to Sec of State: Public Inquiry on Haemophiliacs Infected with Hep C

Issue

1. Following your meeting with SofS on Monday 19th March we were asked to provide a redrafted letter for MS(PH) to send to Lord Archer. A draft is attached at Annex A. Given that my team have concerns about this inquiry I wanted to run this letter past you before putting it up to ministers.

Timing

2. Urgent. The Inquiry opens on Tuesday the 27th March and the last box for MS(PH) is on the same day.

Background

3. William Connon's email to MS(PH)'s office dated 21 Feb listed a number of concerns regarding this inquiry – and he subsequently discussed them with you. However, Ministers have asked that we reply in a cooperative spirit regarding the inquiry and that “officials should give evidence and papers should be made available”.

4. As you know we have commissioned our own review (carried out over the past six months by a member of staff – a displaced IP4U) of all the documentation available to DH on this topic. We expect this report to be finalised by the end of April and we had always intended to circulate it widely to all interested parties. Lord Warner had already agreed this approach.

5. We were also going to propose to ministers that we should make available all the documents reviewed in the report. These would be released following FOI principles with names redacted and ministerial submissions withheld. Given that there are around 6,400 documents we had estimated that the work to prepare them would take four to five months and cost around £40,000.

6. These plans have obviously now been overtaken by the announcement of this inquiry and ministers' natural wish to be helpful. However there remain a number of questions and concerns amongst the team here regarding departmental involvement in this inquiry, which I would just like to flag up to you. They mainly arise from the suggestion that officials should agree to appear as witnesses:

- There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985). Nevertheless, given the subsequent destruction and loss of a number of files there is considerable scope for embarrassment for the department if officials are asked to appear before the inquiry.
- With official Government Public Inquiries there is a clear legal framework under which to operate. In the absence of such a framework it is unclear exactly what departmental involvement may entail. For example, could officials be required to attend? Would they be allowed to refuse if they don't want to? My team are naturally worried about the vast amount of preparation that would be required to prepare themselves if they were called to give evidence and answer questions about over 6000 documents.
- If it is agreed that officials should give evidence, this may in turn raise the possibility of ministers themselves being asked to give evidence.
- We will inevitably be pressed to release documents without any redaction – and to release submissions. While none of these policy documents gives rise to any real concerns over liability, some are sensitive in respect of potential for criticism or embarrassment of former ministers and senior officials. It may be much harder to maintain the line that we are only prepared to release documents under FOI principles if officials are asked to defend it publicly in front of the inquiry.

Recommendation

7. For all these reasons, we think it preferable not to offer in the reply that officials would be willing to give evidence if requested. Do you think that SofS will be content with the reply as drafted here?

Liz Woodeson
Director of Health Protection Division

ANNEX A

Lord Archer

Thank you for your letter of 16th February.

The Government has great sympathy for those infected with hepatitis C and, as I am sure you are aware, we have considered the need for an official public inquiry very carefully indeed. However, we remain of the view that the Government of the day acted in good faith at the time and there is no evidence of any negligence or wrong doing. We therefore do not feel that an official public inquiry would provide any further benefit to those affected.

Nevertheless we are of course willing to assist you with your inquiry in so far as we can. Work has been underway within the Department, over the past few months to identify and review all the documents held relating to the safety of blood products between 1970 and 1985. This includes a number of documents returned by a firm of solicitors in May last year. A draft report on the analysis of the documentation is currently being compiled, and is expected to be completed shortly. My former colleague, Lord Warner had already agreed to send a copy of this report to Lord Jenkin and I would be very happy to arrange for you to receive a copy as well. Furthermore, we had intended to release the documents which are referenced in this report under the terms of Freedom of Information Act.

I think it would be very helpful if officials from my department were to meet with members of your team at an early opportunity. This would provide an opportunity to discuss the exact terms of your Inquiry in more detail and identify how the department may be able to assist you.

Caroline Flint