

1. PS(PH)

From: William Connon

2. SofS

Date: 8 December 2005

Cc: Dani Lee Pr Off  
Ruth Cuthbert Pr Off  
Catherine Pearson Pr Off  
Sarndrah Horsfall GBT  
Paul Corrigan No 10  
Paul Richards SpAd  
Liz Kendall SpAd  
Matthew Swindells SpAd  
David Harper GHP  
Gareth Jones GHP  
Gerard Hetherington GHP  
Ailsa Wight GHP  
Zubeda Seedat GHP  
Hugh Nicholas GHP

**SKIPTON FUND – LETTERS FROM ANDY KERR (40009) AND BRIAN GIBBONS (40288)**

**Issue**

1. SofS is being asked by Andy Kerr (Minister of Health and Community Care, Scottish Parliament) if she will make changes, in England, to the provisions of the Skipton Fund (the making of ex-gratia payments to patients infected with hepatitis C as a result of the transfusion of blood or blood products) in line with a recent amendment in the Smoking, Health and Social Care (Scotland) Act 2005.

**Recommendation**

2. SofS should agree to such a change and issue the attached letters.

**Timing**

3. Routine

**Background**

4. PS(PH) and SofS will be aware of the amendment in the Smoking, Health and Social Care (Scotland) Act 2005 which extended the time that claims can be made to the Skipton Fund on behalf of deceased patients by relatives or dependents, to beyond 5 July 2004 (the date that the Skipton Fund became operational). Under the new law, Scottish claims can now be made at any time, provided that the patient was alive on 29 August 2003 (the date that the ex-gratia payment scheme was first announced).

5. Andy Kerr wrote to SofS and the other Devolved Administrations earlier this year asking if we would be prepared to adopt a similar position with regard to payments for relatives or dependents of deceased patients, so as to maintain the integrity of a

UK-wide scheme by the four administrations. In her response of 21 October to this letter, SofS indicated that she was minded to accept such a change to the scheme, but sought further assurances from the Scottish Executive as to the exact interpretation of the Scottish law with regard to nature of any payments made to relatives and dependents, and how the amendment would be implemented in Scotland.

6. In his recent letter of 9 November, Andy Kerr has indicated that where successful claims are made on behalf of deceased patients, a single payment (of either £20,000 or £45,000 depending upon the extent of the liver disease due to the hepatitis C virus at the time of the patient's death) should be made to the deceased's estate. Mr Kerr acknowledged "it is possible that, depending on the financial situation of the deceased, the payments may or may not be made to their relatives or dependants".

### **Financial implications**

7. Scotland have been unable to give accurate figures for the numbers involved, but estimate that this change is likely to give rise to a very small number of additional claimants. In England, the estimated costs of the ex-gratia payment scheme were based upon estimates of the numbers of infected patients thought to be alive when the scheme was announced in August 2003, and no deductions were made for those who subsequently died but did not claim. As the intention is for a single payment only in respect of deceased patients, any such payments would have been included in the original estimates, and should not result in additional costs, though, of course, the monies will still have to be found.

### **Discussion**

8. Given that:-

- the Scottish intention is for single payments on behalf of deceased patients,
- the number of additional claimants is likely to be small,
- in England the cost of any such payments would have been included in the original estimates for the overall cost of the scheme,
- there would be presentational difficulties in operating different schemes in the different parts of the UK, and
- Brian Gibbons has already indicated that the Welsh Assembly Government would be in agreement with the removal of the 5 July 2004 date as a cut off point for applications from relatives and dependents on behalf of those who died since the announcement of the scheme, subject to the agreement of all four health administrations for it to be adopted across the UK, and that Northern Ireland has taken a similar position;

**Officials consider that SofS should accept the change introduced by the Scottish amendment.** The attached draft replies state this .

9. There remains the issue of how this change should be expressed in the Agency Agreement, to instruct the Skipton Fund how to deal with this matter. The current text may not be appropriate, but this should be resolved at officials level, with legal advice where appropriate.

### **Appeals Panel.**

10. Both Andy Kerr and Brian Gibbons have asked about progress in setting up the Appeals Panel, and the reply contains a paragraph on this.

William G Connon

## **Draft response to Andy Kerr**

Thank you for your letter of 9 November in response to mine of 21 October seeking further clarification about the interpretation of that section of the Smoking, Health and Social Care (Scotland) Act 2005 which refers to claims on behalf of infected persons who died after 5 July 2004.

I was reassured to learn that there will only be one payment per deceased patient, and note that monies following a successful claim will be paid into the estate of the deceased. With this assurance, I am prepared to agree to a similar extension of the scheme for England. I think it important that we try to maintain a uniform approach across the whole of the UK in this matter.

I am advised that the other Devolved Administrations take a similar view, which I am advised is probable we will need to reflect this change in the Agency Agreement between the four administrations and the Skipton Fund. My officials advise me that the current text in Schedule 2 of the draft Agency Agreement may not be appropriate in this respect, and would prefer something that included reference to a single payment made to the estate of the deceased, to enable the Skipton Fund to process any such claims. Also, depending upon the wishes of the deceased, in certain circumstances monies paid to the estate may not go to relatives or dependents. It may therefore be prudent to exclude the current definition, which I understand is not included in the Scottish Act. I will ask my officials to liaise with their counterparts in the Scottish Executive, and if necessary take legal advice, to agree a suitable form of words.

With regard to the Appeals Panel, you are correct that the procedure has been agreed at official level between the four administrations. Having established the procedures for hearing appeals, officials now need to start the process of appointing panel members. As members of the Appeals Panel will be made by public appointment, it is likely to take a few more months before appears can be heard. I am also eager that this should be done as expeditiously as possible.

Yours

Secretary of State

Draft letter to Brian Gibbons PO 40288

Dear

Thank you for your letter dated 28 November regarding the Skipton Fund.

As you may be aware I have been in correspondence with Andy Kerr MSP about this issue and have just written to him with details of progress to date. I think therefore that the most helpful way forward is to simply to enclose a copy of my letter to Andy.

I entirely share your view that we need to resolve these matters as soon as possible and I very much hope that once officials have agreed a form of words defining precisely who will receive the payments in question we will then be able to finalise the Agreement .

Secretary of State.