

To Hugh Taylor

From: Liz Woodeson

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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 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:

- 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 various papers there is considerable scope for embarrassment for the department.
- 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. Examples are:
 - Internal Minute where the view of MS(H) was cited 'he has strong views on spending money on the blood test for HTLV III. He felt that to spend around £2m was not cost effective when there were so few AIDS cases and that the money could be better spent elsewhere'.
 - Internal minute between officials on cost implications of AIDS 'Of course the maintenance of the life of a haemophiliac is itself expensive, and I am very much afraid that those who are already doomed will generate savings which more than cover the cost of testing blood donations'. (5 March 1985)
 - Minute from Kenneth Clarke to CMO on AIDS testing 'Before we panic further, it is presumably the case that the ending of the collection of blood from homosexuals greatly reduces the risk from blood collected in this country? Also, as only haemophiliacs have died and they may have had Factor VIII from American blood, is it the case that we have not had one AIDS fatality from blood donated in this country yet? Do we need this and heat treatment of the blood?' (22 January 1985).

Given the time which has elapsed, it is not clear exactly what "evidence" officials would be able to provide in person, beyond rehearsing the documents which are already in the public domain.

- 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?

- SofS has asked that officials give evidence, which may in turn raise the possibility of ministers themselves being asked to give evidence.

Recommendation

7. You are asked to clear the draft reply for MS(PH) to send to Lord Archer by 27th March.

Liz Woodeson
Head 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, have considered the need for an official public inquiry very carefully indeed. However, the Government of the day acted in good faith at the time and therefore we really do not feel that an official public inquiry would provide any further benefit to those affected.

The Government understands that patients with haemophilia, infected through NHS treatment, want to know why it could not have been prevented. However, all the information, which is held by the Government, is in the public domain and the Government does not believe that anyone's interest would be best served by a full public inquiry. Since the introduction of the Freedom of Information Act, we have released numerous documents, which are now in the public domain.

Work has been underway within the Department, over the past few months to identify and review all the documents held, and 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, which I will be considering as soon as it has been completed. My former colleague, Lord Warner 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, all the documents, which are referenced in this report, will also be redacted and released 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 detail and identify, and agree on how the department may be able to assist your Inquiry.

Caroline Flint

Minister of State
Department of Health