

12/62



# THE SCOTTISH OFFICE

National Health Service in Scotland  
Management Executive

St. Andrew's House  
Edinburgh EH1 3DG

Telephone 031-244  
Fax 031-244 2683

GRO-C

## RESTRICTED - POLICY

Kevin Guinness Esq  
Operational Policy Unit  
NHS Executive  
Department of Health  
Eileen House  
80-94 Newington Causeway  
LONDON  
SE1 6EF

*m Pablo come ✓ P.S.  
Draft reply please. (I would also be  
grateful for a copy of a Schofield's 9 May letter  
and anything we have from the Welsh office - I  
have the NI letter 5 October 1995  
of 18/5 and 2 Snedden's  
letter of 25/5)*

*David Kevin*

GRO-C

## PAYMENTS FOR THOSE INFECTED WITH HEPATITIS C THROUGH BLOOD TRANSFUSION/BLOOD PRODUCTS

1. Roger Schofield wrote to me on 9 May about the proposals being developed by officials for a possible payments scheme for those infected with the Hepatitis C virus through blood and blood products. I replied on 25 May to advise you that I would be seeking the views of Ministers on this matter. This has now been done and my Minister of State, Lord James Douglas-Hamilton, has agreed the terms of this response.
2. My Minister of State is aware of the public and political pressure for the Government to establish some form of no-fault compensation scheme for those infected with HCV. He has some sympathy with this view and believes that the Government would generate considerable goodwill with the public if it were to introduce a compensation scheme. Furthermore, experience prior to the HIV settlement also suggests that this is an issue which will not simply fade away and one which risks causing damage to public confidence in the safety of the blood supply. Clearly these points must be taken into account in considering the policy objectives and the situation must be kept under close review particularly once the outcome of the cases currently before the Courts is known.
3. Lord James accepts, however, that the costs of any compensation scheme would be considerable and that the value of any wider benefits accruing to the Government from the introduction of a compensation scheme must be weighed against the cost to public funds and the potential detriment to other NHS services. Whilst supporting the general principle of

## RESTRICTED - POLICY

compensating patients infected with HCV as a result of NHS treatment, my Minister of State is concerned that any arrangements introduced need to be fair, affordable and workable.

4. Accordingly we have carefully considered the proposals contained in Annex B to your letter and I would have to say that we have serious reservations about the feasibility of linking payments to social need or clinical condition. Our main reservations can be summarised as follows:

- (a) linking payments to the degree of illness or hardship suffered would involve complex legal and medical judgements, particularly in view of the lengthy period during which the disease may (or may not) develop and the uncertainty as to its eventual effect.
- (b) A sliding scale of compensation would make such a scheme both difficult and costly to administer and would be unlikely to be acceptable to potential claimants, especially haemophiliacs who might prefer to pursue the matter through the Courts in the hope of a higher settlement.
- (c) No fault compensation infers compensation or damages for loss sustained and for future loss and does not proceed on a means tested basis. The proposals amount to the introduction of a means-tested benefit for a certain group of individuals only.
- (d) Despite the arguments set out in the proposals, the initial discretionary scheme to make payments to those infected with HIV on the basis of financial and social need did not prove entirely successful, this is why a flat rate compensation scheme was subsequently established. There is no reason to suppose that HCV would be different.
- (e) The assumption that those who only suffer stress and anxiety as a result of the infection are entitled to little or no compensation does not reflect recent settlements paid for such damages.

5. I am aware that Peter Davenport at the Welsh Office has voiced similar concerns. I endorse these and in particular acknowledge the argument that the HIV settlement does constitute a significant precedent in this case. My Minister of State takes the view that if a compensation scheme were to be established there would be no option but to make payments on comparable terms to all those who have acquired HCV through blood transfusion or blood components. However, in view of the unpredictable nature of HCV and the fact that it may not invariably be fatal, it might be possible to arrive at a smaller settlement figure than that offered for the HIV settlement. For those individuals, mainly haemophiliacs, co-infected with HIV and HCV who have a worse prognosis, compensation might need to be at the upper end of any sliding scale.

6. Regardless of how any compensation scheme might eventually proceed the question of funding is a major cause for concern. Whilst it would be possible to establish relatively quickly the number of haemophiliacs infected with HCV, the current look-back exercise is still some way from establishing with any certainty the potential numbers infected through fresh blood components. Treasury are unlikely to support the idea of a compensation scheme at all and an inability to quantify the potential cost is likely to make the case even less



## RESTRICTED - POLICY

convincing. The best estimate of the numbers and costs we have in Scotland is 300 haemophiliacs and 350 non-haemophiliacs and even if settlement could be limited to these groups, the costs of compensation (ranging anywhere from £20,000 to £60,000 per claimant) amounts to £13m - £39 million in Scotland. When the numbers in England and Wales are taken into account the costs to the NHS would increase even more dramatically. There is no provision for this in PES and if it could not be met from the Reserve would have a serious impact on other health spending.

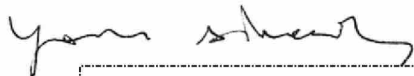
7. We must also remember that the legal position of those seeking compensation has still to be established. It is, of course, the case that the treatment given conformed to the best medical and scientific knowledge at the time and this defence will be tested in a number of legal actions, arising out of various cases, which are currently pending in both England and Scotland. It is not yet clear, however, if the argument will be sufficiently robust for the Courts, particularly in view of the payments already made in respect of HIV infection and the settlement which we understand Baxter Ltd has recently offered to patients infected with HCV by "Gammaguard". I will ensure that you are informed of the outcome of any legal actions in Scotland and I would be grateful to be kept in touch with developments in England.

8. There is also the risk that any settlement would weaken the general argument put forward against no-fault compensation and lead to future claims from other groups of patients claiming damages for the unforeseen consequences of NHS treatment.

9. In summary, my Minister of State whilst acknowledging the merits of some form of compensation scheme, recognises that the costs involved are considerable and would impact heavily on other health spending. In view of the likely numbers involved and continuing pressure on public expenditure, a compensation scheme based on the £60,000 offered under the HIV scheme would not be feasible. However it might be useful to consider whether there is a level of compensation which might be enough to satisfy those claimants already taking legal action and which would be affordable within resources currently available. Finally, the general principle of any compensation scheme for HCV claimants is a matter for collective consideration by the Government.

10. In the meantime we will continue to hold the line in correspondence from MPs etc that in the absence of proven negligence on the part of the NHS there is no case for using funds for compensation which would otherwise go towards the treatment and care of other NHS patients.

11. I am copying this letter for information to John Breen, Northern Ireland and Peter Davenport, Welsh Office.



GRO-C

I A SNEDDEN