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RESTRICTED - POLICY

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Mr David Hogg
Scottish Home and Health Department
St Andrews House
Regent Road
Edinburgh
EH1 3DE

Dear David,

Direct line GRO-C

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

1 The Haemophilia Society launched its campaign last month for a payments scheme which would provide assistance to those suffering life threatening complications caused by hepatitis C contracted through blood transfusions and blood products. Health Ministers are strongly opposed to such a scheme. However, when previous campaigns were run firstly in support of haemophiliacs who were infected with the HIV virus and then on behalf of those infected by HIV through blood transfusions, the Government eventually did agree to make such payments.

2 Ministers asked for a plan for some sort of scheme to be prepared but without any presumption that such a scheme would be desirable or inevitable. I attach a paper which sets out the key objectives of the Haemophilia Society's campaign; gives the general background to the look back exercise and describes the main features of such a scheme. Since the paper is necessarily complex a summary has also been provided.

No fault compensation

3 Establishing such a scheme would be the exact opposite of the position that the Government generally and Health Ministers in particular have taken to date. The Government opposes no-fault compensation for five reasons;

i) the proof of causation is still needed, and it could be just as difficult to establish that medical treatment had caused injury - and that it was not a foreseeable and reasonable result of treatment - as it would be to prove that someone had been negligent;

ii) there would be unfairness to others, in that those disabled as a result of a medical accident would be compensated but those disabled as a result of disease would not:

iii) it is quite possible that the costs falling on the NHS could increase substantially and this would inevitably reduce the amount available for direct patient care;

iv) negligence in the health care field is not considered to be fundamentally any different from negligence in any other walk of life, where claims for compensation are resolved through the courts; the present system arguably has a deterrent effect on malpractice and no-fault compensation could conceivably make doctors less careful.

v) in those countries which have such a scheme, the amounts payable are very small in comparison to what a case would win in the courts. For example, some of the countries which had schemes had to top up the standard no fault compensation payments in the case of HIV transmission by blood products.

Provision of existing statutory services

4 There are a number of ways in which those infected non-negligently can be helped, including the full range of health, social and security services provided by the government. These provide a "safety net" albeit at a somewhat lower level than might be offered under a no fault compensation scheme. But no distinction is made between those whose condition or injury was caused by heredity, by disease or as a result of NHS treatment. In particular:

i) the NHS provides health care needs;

ii) social needs may be met through the local authorities;

iii) a whole range of social security benefits are provided by DSS (some on a means tested basis and some obtainable by all).

Negligence

5 Ministers have denied that the Department have been in any way negligent and indeed the Haemophilia Society representatives have been at pains to make clear that their campaign is not in any way based on such a charge. Those patients who were infected were given the best treatment available at the time.

HIV settlement as a precedent

6 The HIV settlement is being quoted as a precedent. There were special factors applying to that situation. Both groups shared the tragedy of becoming infected with HIV through medical treatment and were considered to be a special category through:

i) the nature of the HIV infection which was believed to be invariably fatal;

ii) the significant lifestyle implications of HIV, including public hostility etc.;

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iii) in the case of the infected haemophilia patients the problems of HIV which were superimposed on the health, social and financial disadvantages they already suffered as a result of their hereditary haemophilia.

Undertakings to Treasury

7 It was an express condition of that settlement between DH Ministers and the Treasury that it should be ring fenced to include only haemophilia patients infected with HIV. The Treasury were concerned that such a settlement would give rise to claims from other groups. They felt vindicated when the scheme had to be extended to include those infected with HIV through blood transfusions. The same undertakings were given concerning ring fencing. Ministers could not give a guarantee that any new scheme would not lead to further claims. As a minimum the position on CJD would need to be resolved.

Funding

8 The size and overall cost of any of the schemes described in the attached paper are considerable, even accepting that they would be paid over a long period, perhaps extending to 30 years. There is no provision for such payments in existing baselines. At the time of the Haemophilia settlements most of the money was found by an in-year claim on the Reserve in the year when they were first made. Thereafter further payments have been found from PES settlements. In the present public expenditure climate Treasury would strongly resist a claim on the Reserve for hepatitis C and expect the department to find the money from its existing provision. Thus any money spent on a hardship scheme would probably be at the direct expense of direct health care.

Justification for a special scheme

9 Finally, and perhaps most importantly, there would need to be a clear policy justification for establishing a special payments scheme. Inevitably this would need to be argued, initially with the Treasury and probably the cabinet as a whole, as well as be defensible before the PAC if such payments were challenged.

Accuracy of Estimates

10 The definitions and cost estimates contained in this paper are the best available at the present time. Further work will be needed if the proposal is to be taken further.

11 Secretary of State has asked that officials establish the views of the Territorial Health Departments. I should be grateful if you would let me have any comments by 18th May. I have copied this letter to Charles Coombes at the Welsh Office and to Derek Baker at the Northern Ireland Office.

Yours sincerely, GRO-C

R M T Scofield
Head of the Operational Policy Unit
NHS Executive