

SCOTTISH INQUIRY INTO HEPATITIS C TRANSMISSION FROM NHS TREATMENT WITH BLOOD AND BLOOD PRODUCTS

SG HEALTH & WELLBEING DIRECTORATES MEETING WITH DEPARTMENT OF HEALTH AND WELSH GOVERNMENT ASSEMBLY OFFICIALS

EDINBURGH, FRIDAY 14 MARCH 2008

In attendance:

Scottish Government Health

Dr Aileen Keel (DCMO)
Andrew Macleod
Sylvia Shearer
John Brunton

Gillian Russell (SG legal rep.)
Joanna Keating (SG legal rep.)

Department of Health and Welsh Government Assembly

William Connon (DH)
Patrick Hennessy (DH)
Shibani Rahulan (DH legal rep.)

Caroline Lewis (WGA)
Neil Buffin (WGA legal rep.)

Introductions

1. Dr Keel opened proceedings by thanking the English and Welsh contingents for travelling to Edinburgh for the meeting and introductions were made. It was explained that NI had a small team and that they were not in a position to attend the meeting.

Background

2. Mr Macleod then gave a resume of the current position. Scottish Ministers had announced that they would hold a public inquiry into why people became infected with Hepatitis C last summer and since then he and Dr Keel had met with Lord Archer in February. However, Lord Mackay's Opinion, issued on 11 February 2008, would shape the nature of the inquiry and a decision had been taken that the inquiry would be held under the Inquiries Act 2005. As part of the process under the Act, the Cabinet Secretary for Health & Wellbeing would make a Statement to the Scottish Parliament on 23 April. Scottish Ministers were currently looking at options for the inquiry chair, who would be appointed shortly. Following that appointment, officials would have a discussion with the chair around the remit of the inquiry, the evidence it would take and rules of procedure. While Ministers would give directions to the chair, it would then be for him/her to control and influence the inquiry. Mr Macleod said that the Inquiries Act provided a good framework to take matters forward and the Stockline inquiry (into a Glasgow factory explosion) was a good source of learning.

Lord Mackay's Opinion

3. [text redacted].

4. Paragraph 125 of Lord Mackay's Opinion states that *any practical and effective investigations of the facts, of the nature required by Article 2, must be capable of addressing when each Mrs. [GRO-A] and Mr. [GRO-A] became infected with the Hepatitis C virus and whether any steps could have been taken by the SNBTS or by other individuals and public authorities involved in the NHS in Scotland that might have prevented such infection occurring. To restrict any investigations so as to exclude such lines of enquiry would, in my opinion, be incompatible with the provisions of Article 2, whether the requirement for an establish a framework of legal protection or a separate procedural obligation to investigate any death in respect of which Article 2 has been engaged.*

5. [text redacted].

Inquiries Act 2005

6. [text redacted]. SG officials stated that they hoped that the UK administrations would co-operate voluntarily notwithstanding the terms of the Act and noted that the chair could ask for evidence to be given voluntarily.

Scottish Inquiry

7. [text redacted].

8. Mr Connon asked what the statement to Parliament entailed and Mr Macleod explained that it was a 15 minute oral statement followed by a 30 minute debate. Mr Connon also asked whether, by looking at the two specific deaths, the inquiry would address the cases of others who had died through Hepatitis C transmission. It was noted that this was a possibility, [text redacted].

9. [text redacted]. It was also confirmed that the inquiry would look at both Hepatitis C and HIV and would only look at transmission from blood transfusion or blood products. Mr Buffin asked whether FAIs took the place of English Inquests and this was confirmed - [text redacted].

10. Mr Macleod advised that SG Health would consult patient groups on 18 March and that the terms of reference were constrained by the legal judgement. They would have two strands: to look at the cause of the two hepatitis C deaths in compliance with Article 2 (paragraph 125 of Lord Mackay's Opinion) and a broader look at Hepatitis C and HIV transmission by NHS treatment with blood and blood products. Dr Keel added that SG officials would do as much preparatory work as possible for the inquiry before the Cabinet Secretary made her statement on 23 April. Ms Rahulan asked whether we envisaged a judge and a chair for the inquiry and Mr Macleod advised that at present we were only looking at appointing a senior judge who would act as chair.

11. Dr Keel then raised the question of appointing a medical adviser and thought that it would prove difficult to find someone with the level of expertise required, that had not been around during the 1970s/1980s. Mr Macleod agreed and thought that we might have to look outside the UK. Mr Connon added that experts could be brought in as required. He then asked about costs and it was confirmed by Dr Keel that £1 million had been set aside for 2008/09 and £2 million for 2009/10. Mr Buffin made the point that it would be difficult to keep to that budget and Dr Keel asked him whether patients and families participating in the

Welsh E-coli inquiry all had legal representatives. He advised that, while this was not the case, NHS Trusts and Local Authorities had legal teams. [text redacted]. Mr Connon made the point that more patients' families demanding an inquiry under Article 2 would drive up the costs.

Position of Other UK Administrations

12. Ms Rahulan asked whether the Scottish inquiry would look at Hepatitis C and HIV and Dr Keel confirmed that this was the case, and that the circumstances between the late 1970s and the early 1980s were similar for both viruses.

13. Ms Rahulan believed that Westminster was compliant with Article 2 and had already had an effective investigation such as to satisfy Article 2 including the look back exercise between 1995 and 1997, the report which covered the period from 1983 to 1991 and the Hepatitis C Report of 1997. Three months of evidence had also been taken on the role of the blood authorities in the case of A and others v National Blood Authority in which judgement was given in 2001 by Mr Justice Burton. Ms Rahulan said that England's position was that there was no legal obligation to hold a public inquiry.

14. [text redacted].

15. Mr Connon then advised that DH Ministers were considering the issues and had been asked to be kept informed of developments in Scotland. The case in England not to hold an inquiry appears stronger than in Scotland for the reason outlined above. In any event, the UK Government had released all the relevant information to the Archer Inquiry. English Ministers would wait for Archer's determination, although their position remains that there had been no wrongdoing or negligence. Moreover, DH would not participate in a joint inquiry unless new factors were evident. He mentioned that DH had also released HIV related documents. Dr Keel then made the point that inquiry aside, Scotland had also released relevant Hepatitis C documents and participated in the Burton Review. Mr Hennessy mentioned that to include HIV in the Scottish Inquiry could require the investigation of around ten times as many official documents, and several times the scientific evidence, as considering Hepatitis C alone.

16. Ms Lewis explained that she was in a slightly different position and that no details or legal/policy advice had been put to her Minister who was relatively new. Following the meeting she would put more detailed advice to her Minister. Mr Buffin added that blood supplies in Wales are slightly complicated and that a separate Welsh inquiry would be a very difficult proposition. It was, therefore, likely that Wales would adopt the DH Stance. Ms Lewis would put a submission to her Minister in the next 14 days.

17. Ms Shearer then asked Mr Connon if DH would participate voluntarily in the Scottish inquiry. He said that as they had not yet been asked, they would wait to see the terms of reference, although it was unlikely that they would give evidence. In the light of the fact that they had already issued all available documentation it was difficult to see what else could be contributed by DH officials.

18. DH would put another submission to Ministers following this meeting. However, the DH position was that the Department has fully cooperated with the Archer Inquiry and issued all relevant official information. DH would continue to direct any inquiry to the

documentation which is already in the public domain and would adopt the stance that they would assist the Scottish Inquiry as far as is reasonably possible. Mr Hennessy added that the relevant available evidence was now in the public domain and that the documents were now 20-30 years old.

19. Mr Connon's submission would mention that the Scottish inquiry would look at Hepatitis C and HIV transmission and Dr Keel suggested that it could also helpfully refer to the provisions in the Act to join the Scottish inquiry at a later date. She suggested that it might be better for DH to participate in the inquiry in some way, rather than for the Scottish inquiry to raise an issue that they had to react to at a later date. Dr Keel confirmed that SG Health would share the terms of reference with DH.

20. Mr Macleod then said that the issues to be addressed by the Scottish inquiry included licensing of blood and blood products and the decision making process around blood standards. The Scottish National Blood Transfusion Service would hold a lot of the documents, although the handling process still had to be thought through. [text redacted]. Mr Connon wondered whether the inquiry could make recommendations that would apply equally to England and Ms Rahulan said that the terms of reference could not include making recommendations which were not wholly or primarily connected with Scottish matters.

21. The point was again raised by Mr Hennessy that all relevant DH papers, apart from a very small amount withheld under FOI exemptions, had been released and Mr Macleod added that as a lot of the papers were 25 to 30 years old, they would soon be released under the 30 year rule anyway. Dr Keel said that one of the benefits of the inquiry would be that the papers would now be read by people from outside the UK administrations.

22. Ms Lewis wondered whether, following her telephone discussion with Ms Shearer, the Scottish Cabinet Secretary for Health & Wellbeing intended to write to UK Health Ministers. However, it was agreed by those present that there was little advantage in doing so, at this time. Ms Shearer advised that NI had put a submission to their Ministers although she had not seen a response.

23. Dr Keel summarised the action points from the meeting as follows:

- **DH would now go back to Ministers with a further submission.**
- **WGS would now go to Ministers with a submission setting out the issues and options in the next 14 days.**
- **SG Health would keep in close contact with the other 3 administrations, including NI, particularly in respect of the terms of reference and the appointment of the Chair.**
- **Dr Keel confirmed that SG Health would share the terms of reference with the other health Departments.**
- **SG Health would share NI's view with the other administrations as soon as this was received.**