

# MEETING WITH PHILIP DOLAN, CHAIR OF THE SCOTTISH HAEMOPHILIA FORUM AND COLLEAGUES

TUESDAY 15 APRIL 2008

**Present:**

## **The Scottish Government**

Andrew Macleod  
Sylvia Shearer  
John Brunton

Gillian Russell (SG solicitors)  
Joanna Keating (SG solicitors)

## **Haemophilia Representatives**

Philip Dolan  
GRO-A  
Chris James  
GRO-A

Frank Maguire (legal rep.)

## **Note of the Meeting of 18 March 2008**

1. Mr Macleod welcomed Mr Dolan and his colleagues to the meeting, referred to the full note that had been circulated following the previous meeting on 18 March, and asked if this was an accurate record of that meeting. A few minor errors in names had been identified and the list of matters that the inquiry should look at (page 4) needed some further words around blood products/whole products, the history of heat treatment, and the screening of donors. Other than that, it was agreed that the note was a fair record of the discussions on 18 March.

2. Mr Dolan asked for some guidance around the confidentiality of the meetings. He said that while the note of the meeting of 18 March and Mr Brunton's covering letter had made it clear that the discussions should be kept confidential, he was concerned that MSPs were already aware that an announcement was imminent. Mr James said that while he had shared the information discussed with a small constituent group on a confidential basis, he had not shared the note with them. He also made the point that the Haemophilia Society had to prepare for the announcement. However, Mr Macleod believed that as the Cabinet Secretary's Statement would reflect a lot of the information that was already in the public domain, it should not prove too difficult to make preparations and draft a press release. Mr Maguire added that as he had a large number of clients, it would be beneficial to everyone involved if the arrangements were announced at an agreed time in an organised manner.

3. Mr Macleod emphasized that there was a need for absolute confidentiality and that the Cabinet Secretary, while aware that these discussions were taking place, was extremely concerned that the Scottish Parliament should learn about the public inquiry proposals first hand, which was only right and proper.

A commitment was given by everybody present that the discussions would not be shared outside the meeting until **after** Ms Sturgeon had made her statement on Wednesday 23 April.

### **The Archer Inquiry**

4. Mr James mentioned that the Archer Inquiry intended to hold two further hearings and hoped to report towards the end of May.

### **Statement on Wednesday 23 April 2008**

5. Mr Macleod then explained that the Statement on Wednesday 23 April would include

- Confirmation that the inquiry would take place.
- The main elements of the Terms of Reference.
- That the Inquiry would look at HIV transmission as well as Hepatitis C.
- That the inquiry would be compliant with Section 2 of the Convention of Human Rights in addressing Lord Mackay's judgement.
- The Legal Framework.
- Details of the Chair.

6. Ms Shearer confirmed that the Scottish Government would issue a press release embargoed until 2.30 pm on 23 April. Mr James then made the point that a number of constituent groups would have media contacts and wondered if there would be a Scottish media embargo. The Scottish Government officials present would discuss the protocol with Communications Health and Wellbeing and would ensure that those present representing the haemophilia community would receive a copy of the press release and statement as soon as possible after the Cabinet Secretary addressed the Parliament. Mr Maguire undertook to pass on his e-mail address to Mr Brunton.

7. Mr Dolan wondered what form the Statement would take and Mr Macleod explained that it would be a substantive 15 minute speech, followed by a Q&A session. Mr GRO-A mentioned that it would be listed in the Scottish Parliament's Business Bulletin.

### **Article 2 Compliance**

8. Mr Maguire then asked if further consideration had been given to his concerns that the inquiry may not be compatible with Article 2 of the Convention, given that the other administrations could not be compelled to give evidence. Mr Macleod responded that it was too early to say if this would be an issue, and the stance that the other administrations would take in giving evidence was not known definitively at this time.

Ms Russell added that while she had taken Mr Maguire's point, the remit would be set by Section 28 of the Inquiries Act 2005 and that as the Inquiry progressed, the terms of reference could be modified if that was necessary.

At this time she was not in a position to second guess the evidence that may be required. Mr Maguire, however, believed that the evidence would lead to the Department of Health and therefore, the inquiry had to have powers to compel the UK Government to give evidence.

9. Mr Macleod then said that the Inquiry, probably in its early stages, would have to determine how key decisions were taken. There were a lot of documents already published and the particular issues/questions that required oral evidence would have to be considered. Mr Macleod said that the Scottish Government believed that the Inquiries Act 2005 could deliver an appropriate Inquiry, which looked at Scottish issues and that he was not in a position to know how UK Ministers would react. The point was made by Mr Maguire that if the Inquiry was not seen as covering the issues sufficiently, there was the possibility of seeking further judicial review. Mr James added that he shared Mr Maguire's concerns and that the UK Government's engagement with Archer had not been strong.

### **Terms of Reference**

10. Mr Maguire then raised the matter of funding and said that he needed to put in place the necessary arrangements and parameters to take forward investigations and represent witnesses. The Haemophilia Society had yet to take a decision although his clients could discuss matters with Mr James, who confirmed this was an ongoing process. Mr Macleod explained that the Inquiry's remit would be agreed by Scottish Ministers and the Chair following the Statement on 23 April, and that it could be adjusted, as necessary, as the Inquiry moved forward.

11. Mr Dolan then asked how long the Inquiry might last and Mr Macleod advised that there was no fixed timescale, given that this would be a major exercise that would involve an intensive process in considering a great deal of evidence. It would be for the Chair to determine how long the Inquiry would take and when it had run its course. Mr Dolan then said that there was a lot of interest from the haemophilia community and asked whether people who had lived in Scotland in the 1980s, but who now lived in other parts of the UK could be called to give evidence. Ms Keating confirmed that they could and Ms Russell added that the Inquiry would focus on the treatment that people in Scotland received from the NHS in Scotland.

12. At this stage in the proceedings there was a discussion around legal representation and Mr James left the meeting at the request of his colleagues.

### **Funding**

13. Mr Maguire made the point that he represented a large client group and that the provision of legal representation, not just for a Fatal Accident Inquiry, would require considerable resources. He said that the funding had to be proper and adequate to provide appropriate representation and cited the Stockline arrangements as not being viable.

14. Mr Macleod confirmed that it would be for Scottish Ministers and the Chair to issue a determination of the costs that could be incurred. It would be for the Scottish Government and the Chair to look at the matter of funding; the starting point would be to seek to achieve an effective Inquiry, at an appropriate cost that demonstrated value for money.

15. Mr Maguire then made reference to the Northern Ireland Inquiry that had difficulties over two years and came in at £17.5 million. The point was made by Mr Macleod that the NI example was precisely why it was so important to clear with the Chair the process that would be put in place as early as possible. He agreed that it was important to establish how evidence would be led and the legal representation that would be necessary. Mr Maguire then reiterated that if the funding arrangements were the same as those as Stockline, this would not allow adequate legal representation.

16. Ms Russell then said that the Inquiry would be inquisitorial and therefore she thought that only the core participants would require legal representation. However, Mr Maguire believed that the evidence he held would assist the inquiry - information of material interest. He asked when the funding parameters would be set and Mr Macleod advised that not until there had been discussions with the Chair and the key matters had been worked through with officials, the Chair and Ministers. Mr Maguire then asked how he might engage further and Mr Macleod said that he would be happy to engage on funding arrangements once further figures were available, although a better understanding of how the inquiry would operate was also required. Mr Maguire would contact Mr Macleod to discuss funding arrangements further and would engage with officials before parameters were set. Mr Macleod then said that what was needed was a genuine independent inquiry that gave patients the opportunity to be heard and that the inquiry itself should not become another issue. He was happy to have further discussions, although the Chair would be the key in driving the Inquiry following the Cabinet Secretary's Statement.

#### **Lord Mackay Hearing, Tuesday 6 May**

17. Mr Maguire suggested that the Hearing with Lord Mackay, scheduled for Tuesday 6 May, be put back to the autumn, as his senior counsel was not available on that date. Ms Russell and Ms Keating would discuss this proposal with Shona Bathgate.