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Mr Phillips PS/SofS

From: Roger Scofield HC(A)4

Date: 13 April 1992

cc: Mr Sands PS/MS(H)
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HIV INFECTED RECIPIENTS OF BLOOD AND TISSUE

Summary

1. We have finalised details of a payment scheme for the HIV infected blood and tissue recipients and a copy is at Annex A. Secretary of State's agreement is sought for officials to implement the scheme. There has been an inevitable delay while the scheme has been worked out in detail. There is, therefore, some urgency about publicising it as soon as possible, even though the internal funding arrangements have not been finally resolved. The initial steps would be to send out the CMO letter at Annex B to all NHS Consultants and GPs and letters and application forms to the plaintiffs' solicitors and those individuals who made enquiry after the announcement on 17 February. A draft Press Release is at Annex C.

2. This submission provides some explanations and comments Secretary of State may find helpful in considering the scheme.

General

3. As you know, the previous Secretary of State agreed the main principles of the scheme in response to my submission of 20 February 1992. In the form now proposed the scheme does not depart from those principles.

4. The scheme has been based on the litigation settlement for the haemophiliacs. The same provisions have been made wherever appropriate and where changes were necessary to accommodate the circumstance of the blood transfusion cases we have stuck to the spirit of the haemophiliac settlement. In devising the scheme we have also taken into account the comments made by our panel Chairman, Mr Benet Hytner QC, the Communicable Diseases Surveillance Centre, the National Directorate of the Blood Transfusion Service, the two lead firms of solicitors acting for blood transfusion recipients and of course our Department's legal advisers.

5. We have also consulted medical and finance colleagues and colleagues in the other Health Departments about the scheme. Finance colleagues are now letting Treasury see the details.

Natural Justice

6. Following the advice of Mr Hytner and our own lawyers, we have been at pains to ensure that the scheme is fully consistent with the rules of natural justice. Apart from our desire to be fair and reasonable in our dealings with applicants, we also wish to minimise the risk that any decision on eligibility could be successfully challenged on judicial review.

7. Hence the scheme provides for the sharing of information with the applicant (except where it would be injurious to the applicant's health) and provides for the applicant to make representations to the panel in writing or orally if the panel thinks this appropriate.

8. Applications will be considered initially by officials (HC(A)4, medical adviser and lawyer) and in the straightforward cases I will make the decision to grant or refuse an application on behalf of the Secretary of State. The scheme does, however, provide that if the applicant is dissatisfied the Secretary of State will refer the case to the panel for reconsideration and will be bound by their decision. This arrangement will give the applicants every chance to make their case and should prevent any criticism that the Secretary of State as paymaster is making the final decisions on applications.

Lifestyle

9. The one point of detail raised by the previous Secretary of Statein response to my earlier submission was that we should have regard to legal advice on the matter of lifestyle. Mr Hytner recognises that lifestyle may be a consideration in some cases but is fully aware of the sensitivity of the issue and the need to handle it very carefully.

10. The scheme document does not make mention of lifestyle as we would not wish to fetter the panel in respect of this or any other consideration they think appropriate in determining an application. The application form does, however, seek to elicit factual

information on whether the applicant had attended a drug dependency clinic or genito-urinary medical clinic or been in contact with persons from countries where AIDS is endemic. If we did not do so, it might be thought that we were closing our minds completely to the possibility of other risk factors.

11. Intimates are defined as heterosexual partners in line with the haemophiliac settlement. Homosexual relationships would give rise to major difficulties over lifestyle risks. There is however a discretionary provision in the scheme should we ever consider it appropriate to use it, eg a homosexual carer who acquired HIV through blood spillage from a transfusion recipient.

Payments Machinery

12. We had considered the idea of using the Macfarlane Trust to make the payments in the interests of maintaining privacy for any of the recipients who were also social security beneficiaries. In the past, use of the Macfarlane Trust has helped preserve privacy for recipients who were on social security benefits; local offices did not necessarily equate payments from the Macfarlane Trust with HIV status. DSS have now come up with another formula for the regulations which will preserve privacy without channelling payments through the Macfarlane Trust. The smaller numbers involved will be manageable for the Department to make its own payments.

Charitable Trust

13. It was the intention that the blood and tissue recipients should be put on level terms with the haemophiliacs. This requires they be given access to a special needs fund in addition to the lump sum payments. The arrangements for lump sums have been finalised. We shall go ahead and draft a charitable deed and make the other necessary arrangements for setting up the new Trust as soon as possible.

Discretion

14. The groups eligible for payment are defined in the scheme. However, we think it prudent also to provide a measure of discretion to deal with hard cases. We cannot be certain that we have covered all possible types of circumstances which would bring an applicant within the spirit of the scheme. Also there are theoretical circumstances in which a person would qualify, eg it is possible that a household member could become infected through the blood of a transfusion recipient entering an open wound. However, it seems better to accommodate any such cases by use of discretion rather than including them on the face of the scheme. A similar discretionary power was incorporated in the Trust deed relating to the settlement of the haemophiliac litigation.

15. Since the blood transfusion scheme is not to be lodged in Court or agreed with another party, the provision for discretion is not strictly necessary. We could always change the terms of the scheme if we thought it appropriate to do so. However, the plaintiffs, and perhaps the panel, may find it reassuring to know that the Secretary of State could exercise discretion in suitable cases.

Press Release

16. We are proposing to put out a short factual Release saying that details of the scheme have been finalised and we are ready to accept applications. A draft Press Release is at Annex C. If Secretary of State is content we will issue it at the time the CMO's letter to Consultants is being issued.

Funding

17. As you know, we estimated that the cost of paying the reported blood and tissue cases and their HIV infected partners and children would be of the order of £12 M. We shall need to await the response to the CMO's letter before we can say whether this will prove to be a significant over or under estimate. The costs incurred in 1992/93 will have to be found from existing programmes. We have made a PES bid for 1993/94 and each of the following two years for £2 M to cover the possible cost of lump sum payments and contributions to the charitable trust continuing into later years.

18. In addition there will be administration costs for the panel and legal expenses incurred by the plaintiffs' solicitors. We estimate the overall cost could be around £½ M, mostly in 1992/93. This money will also have to be found from existing programmes.

Scottish Scheme

19. The SHHD thought it necessary to have a scheme of their own because of their separate legal system. We have kept in close touch with them to ensure that the two schemes do not differ in vital matters of eligibility or payments. There will, however, be some differences, mainly of presentation. The most obvious is that the panel in Scotland will have three members (two medical plus legal Chairman), whereas ours will have a Chairman assisted by two medical assessors. The Scottish arrangements reflect the wishes of their own panel Chairman. The differences between the schemes are manageable and should not give rise to any allegations that it is easier (or more difficult) to qualify under one scheme compared to the other.

Conclusion

20. We have devised a scheme in keeping with the principles agreed by the previous Secretary of State and we are now ready to start receiving applications. Secretary of State's approval is sought for

i) officials to proceed with its implementation;

ii) issue of the Press Release, draft at Annex C.

GRO-C

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ANNEX C

DRAFT PRESS RELEASE

SCHEME FOR PAYMENTS TO PEOPLE WITH HIV AS A RESULT OF INFECTED BLOOD TRANSFUSION OR TISSUE TRANSFER.

Following announcement on 17 February 1992 of help for people who have HIV as a result of National Health Service blood transfusion or tissue transfer, the Government has set up a scheme for making payments.

A small expert panel has been set up to help the Department to consider cases where necessary. The panel will be chaired by Mr Benet Hytner QC, who will be assisted by two medical assessors Dr Ian Fraser, Director of the South Western Regional Transfusion Centre and Professor Jonathan Weber, Professor of Genito-urinary Medicine and Communicable Diseases at St Mary's Hospital Medical School, London.

The Chief Medical Officer is writing to all NHS Consultants and General Practitioners asking for their help in identifying people who may be entitled to payments under the scheme. People who think they may be eligible, or the personal representative of a person who has died, are invited to apply for payment.

Notes for Editors

At the end of December 1991, there were 74 reports in the UK of HIV infection in people who received blood transfusions or tissue transfers in UK. On the basis of the reported cases we estimate the cost could be £12 million.

The scheme explains who is eligible for payment, the amounts, the conditions applying and undertakings to be given. The scheme also sets out how applications can be made, and how they will be considered.

The amounts of payments to be made to the HIV infected NHS blood and tissue transfer recipients will range between £41,500 and £80,500 each, according to family circumstances. Payments will also be made to recipients' infected spouses, partners and children.

The scheme covers people treated in England, Wales and Northern Ireland. The Scottish Office Home and Health Department has set up a similar scheme for people treated in Scotland.

Copies of the scheme and application form can be obtained from the Department of Health, Room 506, Eileen House, 80-94 Newington Causeway, London SE1 6TE.