

Subj: **Re: Hep C payments**  
 Date: 30/09/2003 10:54:13 GMT Daylight Time  
 From: Richard Gutowski@ GRO-C  
 To: peter@ GRO-C  
 CC: ann@ GRO-C Mrtharvey@ GRO-C  
 Sent from the Internet (Details)

Peter

Thanks for your note. I am consulting with lawyers on the waiver and other issues raised by you. I have to give a progress report to Secretary of State on his return from the party conference this Friday. Is there any chance you will have some sort of view from your trustees by then. sorry to push you on this but it is a key element of the proposed scheme.

Richard

"Peter  
 Stevens" To: Richard Gutowski/PH6/DOH/GB@ GRO-C  
 <peter@ GRO-C> cc: "Ann Hithersay" <ann@ GRO-C>  
 "Martin Harvey" <Mrtharvey@ GRO-C>  
 bcc:  
 25/09/2003 Subject: Re: Hep C payments  
 17:51

Richard

Thank you for the copy of your Email to Ann on the MSPT2 undertaking.

Thank you, also, for the letter from Ms GRO-A about GRO-A's participation in the 6/10 meeting. I was becoming somewhat agitated about that - your perception of the problem has resolved the issue perfectly.

I thought I should respond, although less definitively than you would like, on the main topic.

I have no doubt that we would want to make available the resources of MFT to managing the scheme. Before making a firm commitment I would prefer to consult my co-Trustees and hope that you will permit such consultation, on a totally confidential basis; not to involve them substantially devalues their role.

That should enable us to respond fully and positively to point 1 of your letter of 22 September.

On point 2 it might be helpful if I list some of the issues that we are considering as potential caveats:

- the entitlement of the co-infected haemophiliacs (MFT registrants) to payment in respect of HCV, and any limitation in their entitlement compared with other beneficiaries (full, or nearly full, entitlement is likely to be a *sine qua non* of our participation)
- the availability of post-mortem payments to bereaved families. This

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is a very difficult issue on which there is not yet a settled MFT view, and we would also wish to try to reach agreement with the Society. I cannot predict whether the consensus view would make this essential for our participation.

- exemption of payments from determination of eligibility for social security and from tax (in our view essential for the scheme, but probably not a constraint on our involvement)
- support for the scheme from our registrants (with two Trustees who are themselves MFT beneficiaries we cannot totally ignore this - it depends on the scheme finally chosen)
- whether the payments would be conditional on an MSPT2-type waiver (we might find that difficult, again thinking of our registrants' reaction)
- whether the scheme is a once-for-all payment or has some form of top-up payments or hardship fund to deal with long-term development of disease.

I would hope to eliminate some of those points with a bit more consideration and, if permitted, consultation.

Answering your third point is far from easy, since the piece of string is currently of such indeterminate length. I have confirmed with our lawyers that a new non-charitable Trust would most likely be required, but it should not take long to establish that. I am awaiting their detailed advice, including whether a scheme with four different elements for each administration would entail for different Trusts. (The selection of Trustees would need discussion with you and others - MFT and the Society should probably both be represented, but we need to think whether and how to represent the non-haemophiliac beneficiaries; I understand that the Primary Immunodeficiency Association has about 50 members who would be beneficiaries, so that might be a useful source of a Trustee.)

Costings depend on so many things, and we are trying to come up with some estimates under various sets of assumptions. The most important unknowns are

- the likely duration of the operation
- the number of different payment levels
- the likely number of non-haemophiliac beneficiaries, and the means of obtaining information about them.

We will, therefore, do our best to give you an adequate answer to point 3, but it is likely to be very broadbrush. Would it not be possible to set up the scheme with a total capital fund of £x million, to include an initially indeterminate element for administration costs, the whole lot to be financed outside S64 but accounted for to you?

We will do our utmost to resolve all the issues soon. I assume that this subject will not be covered in any detail on 6 October, although GRO-A will, I know, have something to say about the passage of time since the 29/8 announcement.

Peter

— Original Message —

From: <Richard.Gutowski@GRO-C>  
 To: "Ann Hithersay" <ann@GRO-C>  
 Cc: "Peter Stevens" <peter@GRO-C>, <Richard.Gutowski@GRO-C>  
 Sent: Thursday, September 25, 2003 2:40 PM  
 Subject: Re: MSPT2UNDERTAKING

> Ann  
 >

30 September 2003 AOL: Mrtharvey

> Thanks. I have asked my lawyers for a view and am awaiting their advice.  
 > In the meantime at our meeting last week we asked for your views on whether  
 > the Trust could take on the role of managing the new Hep C Scheme. I know  
 > you had concerns if co-infectants were excluded but it order to take this  
 > work forward it would be helpful to have views even if covered with caveats  
 > as soon as you caan get them to us. I look forward to hearing from you.

> Richard

> "Ann  
 > Hithersay" To: Richard  
 > Gutowski/MDA/DOH/GB@GRO-C  
 > <ann@GRO-C> cc: "Peter Stevens"  
 > <peter@GRO-C>  
 > GRO-C bcc:  
 > Subject: MSPT2UNDERTAKING  
 > 22/09/2003  
 > 11:01

> Richard, I am forwarding you a copy of 'the waiver' signed by those  
 > Macfarlae Trust registrants not involved in the litigation in 1990. The  
 > wording states that they 'undertake not to bring proceedings against the  
 > Department of Health etc'. It would appear to me that if the Secretary of  
 > State makes a decision to create a Financial Assistance Scheme, the  
 > Undertaking given could not possibly be used to preclude those people who  
 > signed it from receiving benefits under that scheme. After all they have  
 > not brought proceedings; the Secretary of State has decided to make  
 > payments... I hope your legal team will agree with this point.

> Ann Hithersay

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