

ANONYMOUS

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GRO-B

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*From the
Minister for Health*

16 NOV 1990

Dear Peter,

Thank you for your letter of 29 October enclosing one from Mr and Mrs [GRO-B] of [GRO-B] about the current Court action concerning haemophiliacs who have contracted the AIDS virus.

First, there is no argument about the scale of the tragedy or the desperate plight of haemophiliacs infected with the HIV/AIDS virus. It is difficult to find words to describe the depth of the distress which both they and their families must be experiencing.

The Government has never disputed our moral responsibility to pay attention to the needs of the victims and their families. We have, quite uniquely, paid haemophiliacs with HIV at least £20,000 each to help with their problems and we have paid more in cases of hardship. We have always promised to keep the sums available to the Macfarlane Trust and the needs of haemophiliacs under review.

Despite our promise to keep under review the £34 million already made available, many haemophiliacs have decided to pursue legal proceedings alleging negligence against the last Government, the present Government, the licensing authorities, the health authorities and the doctors who treated them. On the information before me, I have no grounds for conceding that the tragedy was the fault of the NHS or of this or previous Governments.

It is sometimes argued that all those who are injured by any kind of medical accident should receive compensation from the state, whether or not anyone had been at fault. Successive Governments have never been persuaded that a general scheme of "no fault compensation" of this kind would be fairer than present arrangements. The Pearson Commission carefully considered the matter in 1978 but came down against changing our system for seeking compensation through litigation in the Courts.

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There have been no substantial changes in the basic arguments since then. While no fault schemes remove the perceived unfairness between those who can prove negligence and those who cannot, they create unfairness between those disabled as a result of a so-called medical accident and those who are equally disabled through natural causes. They also generally result in individual claimants receiving much smaller amounts of compensation than would be awarded through the Courts in cases where negligence could be proved.

Our NHS is greatly threatened by the increase in the number of writs that are being issued claiming compensation for allegations of medical negligence. The American health care system is being ruined by excessive litigation and the mounting costs of compensation. It is possible to organise powerful emotional campaigns for many groups whose treatment has failed to restore good health. All medical treatment has an element of risk and involves considered judgements of those risks in the light of current scientific knowledge.

I am sorry if this is a disappointing reply but the Government is showing its great concern for haemophiliacs with HIV, by the ex-gratia payments it is making. I am afraid that the question of compensation has to remain a matter for the Courts to decide if some of the haemophiliacs insist on pressing their legal claim to a Court hearing.

Yours sincerely

GRO-C

VIRGINIA BOTTOMLEY