

Sir Michael Buckley
The Health Service Ombudsman for England
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Dear Sir Michael

On 5 February 1988 I wrote to your predecessor on behalf of a then constituent of mine, Mr GRO-A of GRO-A, requesting that he look into a case of gross maladministration by the Department of Health and Social Security, namely that the National Health Service did not become "self sufficient as soon as practicable in the production of Factor VIII including AHG concentrate" as I had announced as Minister of Health to the House of Commons in a written Answer on 22 January 1975 and this was not revealed to Parliament for many years.

You will no doubt have the correspondence on file and you will know that I requested that GRO-A's name should not be referred to in any discloseable document since at the time he was suffering from HIV in addition to his haemophilia.

The main reason that your predecessor refused to consider this as a case of maladministration is demonstrated by his letter to me of 14 March 1988 in which he said "the fact that no reference was made to relative contamination risk in any of the answers concerned [or so far as I am aware in any other communication to Parliament by the Government of the day] suggests that, at the time, such risks were not seen as a major consideration influencing the decision to achieve early self-sufficiency." He went on to say in a subsequent paragraph "Does it not follow - given the state of medical knowledge at the time - that the UK product would have been seen as carrying neither a lesser nor greater risk than that of imported Factor VIII?" I contested this in a letter of 11 April 1988 stating that "the decision was not purely financial, it was as much a fear of contamination. You would hardly expect a Minister of Health trying to maintain confidence in the Blood Transfusion Service to gratuitously introduce the contamination argument."

I was never able to get Sir Anthony to shift his ground in subsequent correspondence.

I have now looked at a transcript of a *World in Action* programme when I was Minister of Health where the following sequence of Questions and Answers took place:

1815 Do you yourself accept that paid donors either in America or in other countries are a greater health risk than volunteer British donors?

1. Yes, I think all the evidence shows this is the case because they have a commercial interest in not disqualifying themselves. Some of the questions they're asked – have you had jaundice, - things like this will in fact disqualify you from having a transfusion and therefore you don't get paid and that is one of the reasons why the donors source is an unreliable one under a commercial system.

Given the fact that I was not able to look at my papers in my Private Office because, for some inexplicable reason, they had been pulped under a 10 year rule, which I had never been told about, and certainly does not apply to my papers as Foreign Secretary a complete set of which have been maintained, I was never able to give Sir Anthony evidence of my personal view at the time that the donor source was unreliable, but this transcript makes it very clear we knew jaundiced donors carried a greater risk of transmitting hepatitis but we had no way of detecting the virus or of killing it without destroying the blood products.

Just recently I have also heard about an expert group held at the Department of Health and Social Security on 20 March 1973, which was before I took office early in 1974, but which recommended self-sufficiency as soon as possible. This advice was accepted by the Department in a memorandum to regional administrators dated 24 December 1974 when I was responsible. I gather there was a file note dated 29 November 1976 when the Department - through a Mr Clearsby - repeated that it was Departmental policy that all human products for the NHS should be produced on an in-house basis. I gather that the submission by the National Blood Transfusion Service for the Royal Commission on the National Health Service repeated the intention that the UK should be self-sufficient. There is also a substantial body of evidence now available that indicates that the Blood Transfusion Service was well aware that there was a higher risk of transmitting viruses using commercial products than products derived from voluntary blood donors. (see Biggs R. Haemophilia Treatment in

the United Kingdom from 1969-74 British Journal of Haematology 1977; 35: pp487-504)

I could give you many more references but I am now satisfied that your predecessor's conclusion was totally false and that this decision for self-sufficiency was never made on grounds of cost alone. Indeed my memory is still pretty good and this was a decision which I took primarily on the medical evidence.

Why I wish this issue to be re-examined by you is that I think a serious wrong has been done to haemophiliacs who caught Hepatitis C during the period when Parliament could reasonably expect, in the absence of any information to the contrary from Ministers of Health who followed me, that we were self-sufficient. It was far more likely that foreign blood products would have within it blood from people who had contracted jaundice, carried the Hepatitis C virus and who did not disclose in the rather primitive screening question that they had ever gone yellow. Previous Governments have given compensation on a non-fault basis to people it can be reasonably assumed have contracted HIV from blood transfusion from blood products from the National Blood Transfusion Service. For quite inexplicable reasons they have refused to grant compensation under a similar scheme for people who contracted Hepatitis C, some of whom are now suffering from the cancer that is a fatal consequence of earlier exposure to the Hepatitis C virus.

There seems to be still some confusion on this subject in Government. In the recent House of Lords debate instigated by Lord Morris, the Government spokesman referred to all products at the time being contaminated. That surely cannot be correct, since although there was pooling of blood transfusions to make up the particular product that was done in batches and not all the batches would be contaminated. Scotland at this time was not using blood products sourced from abroad and it might be worthwhile comparing the incidence of haemophiliacs with Hepatitis C in Scotland with that of England and Wales statistically adjusted over different periods.

I am not somebody who wants NHS patients to have to turn to the courts for criminal damages. I believe instead in a flexible compensation scheme. But this has been refused to these people. You might say it is all a long time ago. But you are really their only hope, for I have no doubt that if you upheld the case for maladministration, the scope of the present compensation scheme would be extended to people who suffered from contaminated products with a Hepatitis C

virus. I am not allowed to look at the Departmental files. Only you can do this. I hope very much that you will do so.

Yours sincerely

DAVID OWEN