

**"HCV INQUIRY - [VERY, VERY, URGENT]"**

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**David Reay**

13/05/2004 10:53

To: Mary.Trefgarne@ **GRO-C** Anita.James@ **GRO-C**  
 cc: Martin.Cantrell@ **GRO-C** Mike.Burns@ **GRO-C**  
 Jan.Marshall@ **GRO-C** Richard Gutowski/PH6/DOH/GB@ **GRO-C**  
 bcc: Subject: HCV INQUIRY -  
 [VERY, VERY, URGENT]

Mary/Anita, further to my email on Monday attaching a press article calling for a public inquiry into the contaminated blood saga, please see the attached from colleagues in the Scottish Executive.

Anita, I know that you have been involved in much of the history of this issue and therefore wondered if you could help Bob/Jan with their request for any known precedents?

Mary, grateful for any advice on the HRA and what we should be doing if similar action is threatened against DH!

Thanks

David

----- Forwarded by David Reay/POLICY/DOH/GB on 13/05/2004 10:23 -----

<Bob.Stock@GRO-C  
13/05/2004 10:20

To: David  
Reay/POLICY/DOH/GB@GRO-C Richard  
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cc:  
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bcc:  
Subject: HCV INQUIRY -  
[VERY, VERY, URGENT]

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I've lost track of who I have been in contact over this – so forgive me for any repetition.

We have received letters addressed to Malcolm Chisholm and the Lord Advocate from Thompsons (compensation lawyers) alleging that under Article 2 of the EU Charter of Fundamental Rights the State is obligated to hold an inquiry into the deaths of two named individuals. One of these allegedly had HCV caused by blood transfusions associated with a renal transplant and at death was found to have liver disease, myelo fibrosis and poor function of his transplant. The other was a haemophiliac whose death was attributed by a post mortem to hepatocellular carcinoma in transplanted liver due Hepatitis C due to transfusion of blood products. In the case of the letters to Mr Chisholm the nature of the inquiry is unspecified; in the case of the letter to the Lord Advocate, a Fatal Accident Inquiry is considered to satisfy the alleged duty. If we refuse to hold the requested inquiry or do not reply by Wednesday, a judicial review is threatened into that refusal (or deemed refusal).

Our lawyers believe that what is being requested is an inquiry into the individual deaths – although obviously an individual inquiry would inevitably need to explore most or all of the underlying issues that would have emerged at a public inquiry into the infection of all the people affected in this way.

The UK is not a signatory to the EU charter, but we do not intend to base any response on such a technicality (not least because the UK might become a signatory in the future). We propose treating the letter as if it was in fact citing the Article 2 of the Human Rights Act 1998.

I have the impression that England, and possibly Wales (?) have already seen off similar allegations of duties under the HRA? If that is the case, then we don't want to reinvent the wheel and it is vital that our lawyers are made aware of the legal basis used in rejecting such allegations.

Our lawyers are going to meet with the Lord Advocate's office sometime in the next two working days. **Please could you either send me information today or tomorrow on**

**what English/Welsh lawyers believe are the issue around the HRA in this context, or else ask you lawyers to do this on your behalf.** Given that I am out of the office tomorrow and with you in London on Monday, could you please ensure that any reply is copied to our solicitor – Jan Marshall ([Jan.Marshall@](mailto:Jan.Marshall@GRO-C)GRO-C)

Many thanks

Bob