



"RE: Fw: Urgent: Hepatitis C/ HIV Inquiry: Legal Proceedings in Scotland"

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"Griffiths Leah LEGAL
GROUP DH LEGAL
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<Leah.Griffiths@GRO-C

15/10/2008 12:15

To:Ailsa Wight/PH6/DOH/GB

cc

bcc

Subject:RE: Fw: Urgent: Hepatitis C/ HIV Inquiry: Legal Proceedings in Scotland

Noted-thanks

-----Original Message-----

From: Wight Ailsa DOH GSI

Sent: 15 October 2008 11:53

To: Griffiths Leah LEGAL GROUP DH LEGAL SERVICES

Subject: Fw: Fw: Urgent: Hepatitis C/ HIV Inquiry: Legal Proceedings in Scotland

Fyi - you may want to tell scotland if you're discussing lawyer attendance on Monday.

Message sent from a Blackberry handheld device.

From: Laura Kennedy

Sent: 15/10/2008 11:48 GDT

To: Ailsa Wight

Subject: Re: Fw: Urgent: Hepatitis C/ HIV Inquiry: Legal Proceedings

in Scotland

About 5400

Kind regards,

Laura Kennedy

PA to Liz Woodeson, Director of Health Protection

Tel: GRO-C

Ailsa

Wight/PH6/DOH/GB

To

15/10/2008 11:44

"Laura Kennedy"

<Laura.Kennedy@GRO-C>

cc

Subject

Fw: Urgent: Hepatitis C/ HIV

Inquiry: Legal Proceedings in

Scotland

Fyi - can you remember exactly how many docs we've now released, is it about 5,600?

Message sent from a Blackberry handheld device.

----- Original Message -----

From: "Griffiths Leah LEGAL GROUP DH LEGAL SERVICES"

[Leah.Griffiths] [GRO-C]
Sent: 15/10/2008 10:31
To: <andrew.macloed] [GRO-C]
Cc: <sylvia.sheare] [GRO-C] Ailsa
Wight/PH6/DOH/GB [GRO-C] William Connon/PD-PMD/DOH/GB [GRO-C] "Cohen Paula LEGAL
GROUP DH LEGAL SERVICES" <Paula.Cohen [GRO-C]
Subject: FW: Urgent: Hepatitis C/ HIV Inquiry: Legal Proceedings in
Scotland

Andrew

Thank you for your email to William Connon. With regard to the starred questions you have raised with us, we set out the Department's position below (and we are content for this position to be shared with the Court to the extent that your Counsel considers it appropriate).

1. As you say, our position is relation to an inquiry in England remains unchanged. The Department does not consider that an inquiry in England would be either necessary or justified. The reasons for this include the lack of prospects of adding to current knowledge about how infections occurred, the fact that lessons to be learnt have been learnt and relevant measures have been put in place to prevent any recurrence of events and to provide ex-gratia payments to those affected by events, and that there have been various reviews (including "Self-sufficiency in blood products in England and Wales; A chronology from 1973 to 1991" and "Review of documentation relating to the safety of blood products 1970-1985 (non-A, non-B hepatitis)", both available on the Department's website), litigation and now the Archer Inquiry relating to the contamination of blood and blood products (and that bearing these things in mind the cost and length of any inquiry would be unjustified).

2. The Department has already put around 6000 documents relating to the contamination of blood products from 1970-1985 (with both Hepatitis C and HIV) into the public domain (which can be found on the Department's website). The Department would co-operate with any Scottish inquiry on this matter in a way similar to the way it has cooperated with the Inquiry set up by Lord Archer of Sandwell. The Department would provide any reasonable and appropriate assistance and would make all relevant information available.

3. There would be no value in any current Department of Health Minister or official appearing before the Inquiry because there would be no current Minister or official who could give first hand evidence as to the events and policy around the time the Inquiry would be looking at- any such Minister/ official would be reliant on looking at documents from the time in question which would already be available to the Inquiry. This reflects the position in the Archer Inquiry where no current Ministers or officials gave evidence. If any former Ministers or officials are asked to, and choose to, appear before the Inquiry, that is a personal decision for them to make.

We hope this is helpful.

Kind regards

Leah Griffiths
DH Legal Services
Public Health and Medical Ethics Division
(part of Legal Group)
Room 533, New Court

Tel: [GRO-C]
Leah.Griffiths [GRO-C]

----- Forwarded by Michelle Haywood/PH6/DOH/GB on 13/10/2008 14:55 -----

<Andrew.Macleod [GRO-C]

[GRO-C]

k>
To

William Connors/PD-PMD/DOH/GB [GRO-C]

13/10/2008 14:56
cc

Patrick
Hennessy/POLICY/DOH/GB [GRO-C]

<Gillian.Russell [GRO-C]
k>,

<Sylvia.Sheare [GRO-C]
>,

<Mark.Dorrian [GRO-C]

Subject
Urgent: Hepatitis C/ HIV Inquiry:

Legal Proceedings in Scotland

William

As you are aware, there are continuing legal proceedings here in relation to the Hepatitis/ HIV Inquiry, and how far it complies in various respects with ECHR. Our general position is that we intend

that the Inquiry will be Article 2-compliant, and that challenges at this stage before the Inquiry has started its work are premature.

Questions have been raised, however, by the petitioners in the hearing as to whether the Inquiry can be considered to be Article 2-compliant in relation to the UK state.

It would help us in clarifying and answering these points if our Counsel were able to indicate clearly the position of the Department of Health in relation to the Inquiry.

Our understanding is that you have indicated:

* you understand the legal need for an inquiry in Scotland but that this does not apply to England

* you will, as with the Archer inquiry, aim to be helpful by supplying documentary evidence where you can do so and will be as helpful as possible with any official documents you may have and which have not already been published.

* as the Scottish inquiry must be confined to Scottish matters, it cannot summon UK Government Ministers or anyone speaking on behalf of the UK Government, which would include officials of DH, NHS Blood and Transplant (NHSBT), and any other NHS body performing delegated functions on behalf of the Secretary of State. It would be a matter of policy decision whether anyone should attend or give evidence on behalf of the UK Government.

This suggests that you have at this stage not ruled out DH or other English public bodies giving evidence if requested. Is this correct, or is it your position that Ministers, civil servants and public officials will definitely not give evidence?

Also, there is the issue of former Ministers and retired officials - either government officials or those of NHS bodies. Some former Ministers did give evidence to Archer. Would it be your understanding that they, and others, would be free to do so again for this Scottish Inquiry if requested and if they wished to do so. In relation to retired officials, is it your understanding that they would be able to give evidence if they wish to the Inquiry, or would they require the permission of their previous employer? If the latter, does this mean

they are effectively in the same position as serving officials in relation to the Inquiry?

It would be most helpful if you were able to provide us with an early response on these issues, and indicate what you are content for our Counsel to say in Court. The next legal hearings are provisionally scheduled for 20 and 21 October.

I would be happy to discuss further

Best wishes

Andrew

GRO-C

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