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"RE: Self- Sufficiency in Blood Products"

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You might want to include the point I originally gave Linda about the repeal of old section 84 NHS Act to explain why we are not fully adopting the minister's suggestion - see below. This is subject to the fact that Sol's advice now is that the type of proposal suggested would fall within the Section 2 general power.

Linda - there used to be a power under Section 84 of the NHS Act 1977 for the Secretary of State to hold inquiries into any matter arising under the Act. The Bristol Royal Infirmary Inquiry for example was held under this provision. This section of the Act has been repealed. I agree with Colin that there is no other power under the NHS Act 1977 other than the general power under section 2. Even to rely on this, we would need to ensure that what SoS wanted to do was conducive or incidental to a duty under the Act - I am not sure that this proposal fits neatly into that category.

But in fact I can't see the problem with commissioning a review of the documents if that is as far as it goes - in fact that is what we did with the returned docs in commissioning an independent barrister to catalogue and review them and isn't that what you are doing now?

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Jacky
Becca

Jacky's note of 11 July set out MS(R) and MS(PH)'s comments on Gerard Hetherington's submission of 26 June about a possible inquiry into self-sufficiency in blood products. This included MS(R)'s suggestion, supported by MS(PH), that we might consider the option of using powers under the 1977 NHS Act for SofS to commission a review of ALL the documents (new ones, old ones and if possible Scottish ones) with a view to producing an independent legal/judicial commentary on them and putting all these into the public arena. MS(R) thought that a retired Judge/QC could do this with an administrative support team, with the aim to complete within 6 months.

We have consulted SOL on the Ministers' proposal. Their advice is as follows:

"An alternate course of action to a public inquiry would be to put the relevant documents in the public domain so far as we are willing and can legally do so. This might involve an appropriate person reviewing all the documents which we make available and producing a "commentary" on them. This could be commissioned under the NHS Act 1977 as something incidental to the discharge of the Secretary of State's duty to continue to promote a comprehensive health service designed to secure improvement in the treatment of illness, and the duty to provide medical services and other services required for the treatment of illness; because amongst other things it would be a way of passing information to the public about the treatment of illness. Of course the 1977 Act does not empower the Secretary of State to compel witnesses to give evidence or to produce documents therefore if the reviewer wanted to probe beyond the available documents, this may not be possible, and the reviewer's terms of reference should be drawn accordingly. Further, the more such a review takes on the nature of an inquiry in substance (for example the reviewer taking on a more investigative role), the less appropriate it is likely to be to rely on the powers under the 1977 Act."

Therefore there are likely to be powers to undertake this more limited approach. It may not fully meet the expectations of the pressure groups but

it would provide an independent perspective of the papers. Whilst this would cost less than a public inquiry, costs arising from the legal input could be a significant added pressure on resources.

A revised note for Ministers to send to SoS (Annex D of the 26 June email package) is attached.

(See attached file: Annex D blood inquiry.doc)

With thanks to colleagues for their input. This has been agreed with Gerard and with SOL.

Ailsa

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Annex D blood inquiry.doc