

RESTRICTED – ADVICE TO MINISTERS

Minister for Health and Community Care

POSSIBLE PUBLIC INQUIRY INTO INFECTION WITH HEPATITIS C AS A RESULT OF NHS TREATMENT WITH BLOOD AND BLOOD PRODUCTS

Purpose

1. The Minister has asked for a SWOT analysis in relation to a possible public inquiry into infection with Hepatitis C as a result of NHS treatment with blood and blood products. This is attached as Annex A to this note.

Priority

2. **Routine** – for information

Considerations

3. The essential case for an inquiry is that it would allow a full examination in public of all the issues and provide a better-informed view of what happened to allow Hepatitis C infection to take place through blood and blood products. On the other hand, it is not clear that it would provide significant new evidence or lead to lessons being learned for the future.

4. A full inquiry would need to cover aspects of the role of the UK government and regulatory agencies which lie outside the powers of Scottish Ministers. **GRO-D**

GRO-D Any inquiry that was set up in Scotland would also potentially lead to pressures for an inquiry at a UK level which would need to be discussed with the UK administration.

5. The Lord Advocate is currently considering whether to establish a Fatal Accident Inquiry to investigate a number of Hepatitis C-related deaths. If this goes ahead, it will cover some of the ground a public inquiry would go over. If the Lord Advocate decides against holding these inquiries it may lead to further pressures on Ministers to establish an inquiry under the powers available to them.

Conclusion

6. The Minister is invited to note this analysis, and that we currently still await a decision from the Lord Advocate on an FAI.

NAME

Department + Division

Extension Number

Date

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constr Interest	General Awareness

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Not approved
per 10.1.2

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ANNEX A

**POSSIBLE PUBLIC INQUIRY INTO INFECTION WITH HEPATITIS C AS A
RESULT OF NHS TREATMENT WITH BLOOD AND BLOOD PRODUCTS**

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SWOT Analysis

Strengths/Opportunities

- Holding a PI would underpin the Scottish Government's stance on being open and transparent, and would eliminate the allegations of a "cover up" which are constantly being revisited by campaigning haemophiliacs and the media.
- It would allow public examination of the events in question and, depending on the exact remit, would allow a wider range of issues to be examined on greater detail than in previous inquiries.
- It would enable Ministers to distance themselves to some extent from this issue while an inquiry went on, and to demonstrate that the Executive takes the issue seriously and wishes to be supportive.
- It would allow patients and patient groups the opportunity to present their experience and express their views, and to put issues directly to the medical professionals involved, the blood service and government

Weaknesses/Threats

- The topic of infection with Hepatitis C through blood and blood products is a complex one with many different interests and groups involved. It might be quite difficult for an inquiry to come to an "accepted" view which would satisfy the different parties involved. An inquiry, therefore, would not necessarily settle the issues conclusively.
- Depending on the form and remit of a PI, it would be likely to be a lengthy process, involving many different witnesses, including patients, professional groups and public bodies. It would be likely to involve legal representation, and possibly cross-examination of witnesses, and could have a high cost. The Bristol Inquiry, for example, cost over £14m.
- A lengthy inquiry could become the focus for continuing media interest and publicity for this issue, and would be exploited as far as possible by campaigning groups.
- Some of the issues involved relate to the policy and actions of the UK Department of Health at the time, and regulatory agencies for which they were responsible. An inquiry established by Scottish Ministers within devolved powers would not necessarily have the remit or powers to address the full range of issues involved. A statutory inquiry could be set up under the NHS (Scotland) Act 1978, but could not require witnesses to attend or require the production of documents relating to reserved aspects of the regulatory framework. The alternative would be a non-statutory inquiry, but this could not require the attendance of witnesses or the production of documents, and there is some doubt whether it would be competent because of the existence of the statutory powers in the 1978 Act. GRO-D

GRO-D

- A Scottish PI would also raise issues for the UK Government. There would be pressure for the UK government to co-operate in order to ensure a full inquiry, and the outcome might be pressures for an inquiry at a UK level.
- Some other administrations – including Ireland – have held public inquiries. In Ireland, however, there was evidence of wrongful practices by the blood services. There has been no such evidence here.
- The key events took place up to 25 years ago. Many of the people involved at the time in provision of the service/treatment are either dead or retired and it would be difficult to access accurate witness statements or documentation. There are precedents for this, for example the Shipman Inquiry, but more generally inquiries take place reasonably close in time to the events involved
- There have already been inquiries into Hepatitis C by SEHD, and the Health Committee of the Parliament. The SEHD inquiry was an internal inquiry into certain specific issues around the role of SNBTS but it was based on extensive evidence which was published. A full public inquiry would be able to pursue a wider range of issues in greater detail, but it is unlikely that it would uncover significant new facts or evidence beyond what is already known.
- It is unlikely that there would be lessons from an inquiry for the ways that health care is now delivered. Steps to address the issue of Hepatitis C in blood were taken during the 1980's. The general approach to informing the public and patients of health risks, and ensuring patient safety is now based on greater transparency and highly-precautionary principles.
- The outcome of a PI is uncertain and would not necessarily satisfy all parties. The Haemophilia Society are seeking someone to blame for their condition. If a PI was "unsuccessful" in apportioning blame on an individual or an organisation, it is not certain they would accept that outcome and not merely continue their campaign.
- The inquiry could become a route to pursuing the case for higher payments and compensation for those affected by Hepatitis C through NHS treatment. The financial implications should the PI apportion blame could be significant if damages are then awarded to those infected.
- The demands on SNBTS senior staff of a lengthy PI could seriously divert time and effort, and affect the overall effectiveness of SNBTS. The unavoidable publicity could adversely affect the current donor base.
- In a recent ruling on those affected by asbestos, psychological damage caused by living with the threat of developing the disease has now been officially recognised as worthy of compensation. Those administering the Skipton Fund are currently arguing for similar recognition for Hepatitis C patients. This could increase any awards significantly.

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Health Planning and Quality Division
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ANNEX B

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