

POLICY IN CONFIDENCE

Mr Phillips PPS/SofS
Mr Sands PS/MS(H)

From: Roger Scofield
HC(A)4

Date: 14 February 1992

cc: Mr Armstrong PS/PS(H)
Miss Burnett PS/PS(L)
Mr Chan Parly
Mrs Campey Sp Ad
Mr Marsh Sp Ad
Ms Wright PS/PS
Mrs White PS/CE
Dr Nicholas PS/CMO
Mr Heppell HSSG
Mr Wilson HC(A)
Dr Reed HC(M)
Mrs Firth FCI-A
Ms Christopherson ID
Dr Shanks HC(M)2
Mr Kendall FCIA2
Mr Thompson AIDS Unit
Dr Rejman HC(M)2
Mr Canavan HC(A)4B
Mr Siswick FHS2C

BLOOD TRANSFUSION PATIENTS WITH HIV

I attach as requested a suggested reply pursuant to the Written Reply to Sir Michael McNair Wilson on 14 November 1991, for answer on Monday 17 February. Also attached are a draft press notice and Q & A.

For the Q & A we have assumed that the money is to be found from the Department's own programmes, but we have not yet seen a letter from SofS to the Chief Secretary on the matter.

Attached to the Q & A is a table showing the numbers of reports of HIV infected blood and tissue recipients.

GRO-C

R M T SCOFIELD
HC(A)4
EH 316 Ext **GRO-C**

1. Careful -
even more careful.

Suggested reply: Pursuant to the reply of 14 November 1991 (at c656) we have decided that the special provision already made for those with haemophilia and HIV is to be extended to those who have been infected with HIV as a result of ^{NHS} blood transfusion or tissue transfer in the United Kingdom. The payments will also apply to any of their spouses, partners and children to whom their infection may have been passed on. The rates of payment are shown in the table. [Similar help will be available throughout the UK.]

The Government has never accepted the argument for a general scheme of no fault compensation for medical accidents, as such a scheme would be unworkable and unfair. That remains our position.

However, ^{WHO} we made special provision for those with haemophilia and HIV because of their very special circumstances. It has been ~~forcefully~~ argued that this special provision should be extended to include those who have become infected with HIV through blood or tissue transfer within the United Kingdom. We have considered very carefully all the circumstances and the arguments which have been put to us. We have concluded that it would be right to recognise that this group, who share the tragedy of those with haemophilia in becoming infected with HIV through medical treatment within the UK, ^{are} also a very special case.

The circumstances of each infected transfusion or tissue recipient will need to be considered individually to establish that their treatment ^{in the UK} was the source of their infection. A small expert panel is being set up to consider cases where necessary. I am pleased that Mr Benet Hytner QC has agreed to chair this panel and I shall shortly appoint two medical assessors to assist in this work. Further detailed work needs to be done on the machinery for handling individual claims for these payments; but payments will be made as soon as possible.

Parliamentary authority for making these payments will be sought ~~through Supply Estimates and the Confirmed Appropriation Act.~~ ^{with the Vote on the Appropriation Act.} On the basis of the reported cases the estimated cost could be £12 million. However, we cannot be certain about the cost, as numbers of valid claims are not known.

I share the great sympathy which is universally felt for the blood and tissue recipients who have tragically become infected through their treatment. Money cannot compensate for this but I hope that the provision we are making will provide some measure of financial security for those affected and their families.

TABLE

The amounts of payments to be made to the HIV infected NHS blood and tissue transfer recipients are:

| | E |
|--|-------------|
| - Infant | 41,500 each |
| - Single Adult | 43,500 each |
| - Married Adult without dependant children | 52,000 each |
| - Infected person with dependant children | 80,500 each |

and to the infected spouses and/or children of the above:

| | |
|--|-------------|
| Adult infected spouse or partner of the blood or tissue recipient | 23,500 each |
| Infected child who is married | 23,500 each |
| Unmarried infected child | 21,500 each |

These are the amounts already paid to people with HIV and haemophilia.

14 FEB 14 '92 9124 FROM PARLIAMENTARY 230 RH
SD/5813P*

071 210 5475

ARL5/152

Thursday 14 November 1991
Written Answer

PD 267/1991/1992
Han ref: Vol 198
Col 656

HIV: BLOOD TRANSFUSIONS

972 Sir Michael McNair-Wilson (C. Newbury):
To ask the Secretary of State for Health, what is the total number of people who received National Health Service transfusions of blood contaminated with the HIV virus; how many have subsequently been diagnosed HIV positive; and how many have died.

MRS VIRGINIA BOTTOMLEY

No individual has knowingly been given HIV contaminated blood. Measures to safeguard the blood supply against HIV infection were applied when these became known and available.

There have been 50 reports in England, Wales and Northern Ireland of HIV infections in people who received blood in the United Kingdom. All these occurred before the screening of donations was introduced in October 1985. Of those persons infected 22 are known to have died.

GOVERNMENT ANNOUNCES HELP FOR HIV INFECTED BLOOD TRANSFUSION RECIPIENTS

The Government is to extend the special help for HIV infected haemophiliacs to people who have been infected with HIV as a result of blood transfusions or tissue transfers received within the UK, William Waldegrave, Secretary of State for Health, announced today.

In a Written Reply to a Parliamentary Question from Sir Michael McNair-Wilson, MP for Newbury, Mr Waldegrave said:

"We have decided that the special provision already made for those with haemophilia and HIV is to be extended to those who have been infected with HIV as a result of blood transfusion or tissue transfer in the United Kingdom. The payments will also apply to any of their spouses, partners and children to whom their infection may have been passed on. The rates of payment are shown in the table. [Similar help will be available throughout the UK.]

The Government has never accepted the argument for a general scheme of no fault compensation for medical accidents, as such a scheme would be unworkable and unfair. That remains our position.

However, we made special provision for those with haemophilia and HIV because of their very special circumstances. It has been forcibly argued that this special provision should be extended to include those who have become infected with HIV through blood or tissue transfer within the United Kingdom. We have considered

very carefully all the circumstances and the arguments which have been put to us. We have concluded that it would be right to recognise that this group, who share the tragedy of those with haemophilia in becoming infected with HIV through medical treatment within the UK are also a very special case.

The circumstances of each infected transfusion or tissue recipient will need to be considered individually to establish that their treatment was the source of their infection. A small expert panel is being set up to consider cases where necessary. I am pleased that Mr Benet Hytner QC has agreed to chair this panel and I shall shortly appoint two medical assessors to assist in this work. Further detailed work needs to be done on the machinery for handling individual claims for these payments; but payments will be made as soon as possible.

Parliamentary authority for making these payments will be sought with the Vote on the Appropriation Act. On the basis of the reported cases the estimated cost could be £12 million. However, we cannot be certain about the cost, as numbers of valid claims are not known.

I share the great sympathy which is universally felt for the blood and tissue recipients who have tragically become infected through their treatment. Money cannot compensate for this but I hope that the provision we are making will provide some measure of financial security for those affected and their families."

NOTES FOR EDITORS

At the end of December 1991, there were 74 reports in UK of HIV infection in people who received blood transfusions or tissue transfers in UK. There are also 17 reports where the place of transfusion is unknown at present. There may be some other cases which are not yet reported. There have been no reports of infection resulting from NHS blood or tissue transfer in recent years. Claims will need to be validated.

We cannot be certain about the cost, as numbers with valid claims are not known. On the basis of the reported cases we estimate the cost could be £12 million.

The amounts of payments to be made to the HIV infected NHS blood and tissue transfer recipients are:

| | £ |
|--|-------------|
| - Infant | 41,500 each |
| - Single Adult | 43,500 each |
| - Married Adult without dependant children | 52,000 each |
| - Infected person with dependant children | 80,500 each |

and to the infected spouses and/or children of the above:

| | |
|--|-------------|
| Adult infected spouse or partner of the blood or tissue recipient | 23,500 each |
| Infected child who is married | 23,500 each |
| Unmarried infected child | 21,500 each |

These sums comprise the variable amounts paid to HIV infected haemophiliacs following the settlement of the litigation, and the payments of £20,000 to each HIV infected haemophiliac which were announced on 23 November 1989.

HIV INFECTED BLOOD TRANSFUSION RECIPIENTS - Q & A

Q. Who will qualify?

A. People who have become infected as a result of blood transfusion or tissue transfer received within the UK, and their infected spouse, partner or child where the infection has been passed on. There have been no reported cases in recent years because of the safeguards in place.

Q. What if a person has died?

A. The payment would be made to the estate of the deceased person.

Q. How much will this cost?

We cannot be precise. The number who will have valid claims is not known, but on the basis of the reported cases it could be £12 million.

Q. How quickly can the payments be made?

A. Cases will have to be considered individually. Arrangements for the panel still have to be finalised, but we hope that it can start work shortly. Payments will be made as soon as possible.

[IF PRESSED - As with the haemophilia litigation settlement, a lot of detail still has to be worked out and it may take some months before payments can be made, but we will get the payments out as soon as possible.]

Q. Why have you not made special provision for this group earlier?

A. We do not accept the case for no fault compensation for medical accidents, a position which was supported by the House early last year. It is now widely argued that this group is in the same special category as the infected haemophiliacs, since both groups were infected with HIV as a result of NHS treatment. We are acting accordingly.

Q. Is the Government changing its stance on no fault compensation?

A. Not at all. The Government still believes that a general scheme of no fault compensation for medical accidents would be unworkable and unfair. The Government has recognised that both the haemophiliacs and the blood and tissue transfer recipients are very special cases, and justify the special provision which the Government is making.

Q. Is the Government now admitting negligence?

A. No. The advice given to Government, and the treatment given to patients, was at all stages reasonable in the light of medical knowledge at the time.

Q. Will recipients of the payments be able to pursue actions for negligence against the Government.

A. No. As with the haemophiliacs, agreement not to pursue court action against the Government will be a condition of acceptance of the payment.

Q. What about claims of medical negligence?

A. The Health Authorities are responsible for defending claims which allege specific errors of judgement on the part of clinicians. If the NHS were to be proved negligent in a court, of course it would accept its liability to pay damages.

Q. What is meant by tissue transfer cases?

A. Cases involving the transplantation of organ or part of an organ, or tissue.

Q. Will these payments go through the Macfarlane Trust?

A. Detailed arrangements have still to be worked out [we will discuss this possibility with the Trustees]

Q. Will this group also have access to the special needs payments from the original Macfarlane Trust.

A. Our intention is to put this scheme on level terms with the payments to HIV infected haemophiliacs. We are considering the means of giving this group access to special needs payments.

[This may be through the Macfarlane Trust or some separate arrangements.]

Q. How can people claim?

A. For those who have already started litigation we will be in touch through their solicitors. More generally we would hope to identify potential beneficiaries through the NHS. Also when the panel begins its work we will make known how people can contact it [and how people can contact it later on.]

Q. What consultation has there been with the blood transfusion recipients' legal representatives?

A. Further work is needed on the detail of the scheme. We will be consulting the legal representatives of the infected blood and tissue recipients.

Q. Will the scheme affect social security benefits?

A. These payments will be treated in the same way as those for haemophiliacs for the purposes of social security benefits.

Q. Are the payments taxable?

A. No income tax is payable.

[NB. But they will be included as a part of the estate of a deceased blood or tissue recipient for inheritance tax.]

Q. Would the payment scheme apply to other parts of the UK?

A. Yes.

Q. Where is the money for the scheme coming from?

A. [The scheme will be funded from within the existing programme.]

Q. How does this compare with other countries?

A. The payments compare very well with payments from nearly all other countries which have a scheme for those infected with HIV through medical treatment. Many countries have no scheme at all.

NUMBERS OF REPORTED CASES

The total number of reported cases at 31 Dec 91 - 191, of which:-

- transfused in UK = 74
- transfused abroad = 100
- place of transfusion unknown = 17

The figures for those transfused in the UK are:-

HIV reports in England, Wales and Northern Ireland - 62

HIV reports in Scotland - 12

Of 62 reports in England, Wales and Northern Ireland 29 are reported with AIDS, of whom 23 are known to have died. [We also know that 9 of the reported HIV cases have died. We do not know whether those who have died did so from an HIV/AIDS related condition or from some other cause.]