

SofS

From: R M Gutowski PH6.6
Date: 26 August 2003
Cc: As attached list

**Ex gratia payment scheme for people infected with Hepatitis C through
treatment with contaminated NHS blood and blood products – Update on
position in Scotland**

Issue

1. On 9 September, Malcolm Chisholm is due to update the Scottish Parliamentary Health Committee on the Scottish Executive's plans to set up an ex gratia payment scheme for people infected with Hepatitis C. DH has asked that he does not refer to discussions about setting up a scheme elsewhere in the UK, which have taken place as a result of your letter to Mr Chisholm of 28 July 2003.
2. This constraint, along with pressure from the Scottish Parliament for movement, has persuaded Mr Chisholm to consider conceding to the Committee that the Executive's proposed scheme is within devolved competence. The Executive are also unhappy about our agreed line to take as they do not feel it is positive enough and is untenable given Mr Chisholm's appearance before the Committee.
3. As far as the Committee is concerned, the unresolved issues over devolution were the only obstacles preventing the Executive launching its scheme. This concession would in effect be a 'green light' for a unilateral scheme and would be within the public domain. A copy of the Committee's letter and Malcolm Chisholm's proposed reply is attached.

Recommendation

4. Officials recommend making an interim announcement of a UK scheme.

Timing

5. An urgent response is required as the Scottish Executive intends to send the proposed letter on 27 August and Mr Chisholm intends to phone you today.

Background

6. In January 2003 Malcolm Chisholm, the Minister for Health and Community Care in Scotland announced his intention to set-up a scheme of ex gratia payments for people infected with Hepatitis C as a result of treatment in Scotland with NHS blood or blood products. The scheme has since been accepted as within devolved competence. You asked that we collaborate with the Scottish Executive over the summer and develop proposals for a scheme elsewhere in the UK, with a view to making an announcement in the autumn.
7. Discussions with the Executive have been progressing well over the summer and we have been working towards submitting initial proposals to Ministers, both in England and Scotland, at the end of August.

8. Given that Mr Chisholm feels compelled to offer the Parliament something progressive and positive regarding the scheme's development, there is little else he can offer except to confirm that Scotland is now free to pursue a unilateral scheme. But this would have significant political implications.

Options

9. With the announcement in January of a Scottish Executive scheme, Scotland has already taken the lead on this issue. A further announcement by Chisholm at this stage would not jeopardise our discussions with the Executive or rule out the development of a UK wide scheme, but it would put strong pressure on DH to announce a similar scheme sooner than we would have liked. Although any announcement by Mr Chisholm at this time will make it clear that the Executive is keen to sign-up to a scheme, the political implications are –

- That DH may be seen to have been forced into accepting a scheme
- That Westminster policy will be seen to be dictated by the Scottish Executive
- That this may set a precedent for Scotland to make further unilateral decisions on other contentious policy issues that are accepted as within devolved competence
- That DH will not be able to gain the initiative following an announcement by the Executive

10. The following handling options have been considered –

- Persuade Mr Chisholm to make no announcement at the Committee meeting

The joint announcement of a UK wide scheme is not expected until the autumn, and Chisholm has already indicated that he is not prepared to say nothing in the meantime. He feels that his position is untenable and that because he cannot reveal details of the development of a UK wide scheme, this is the only progress he can offer the Committee. He is unlikely to be dissuaded, but this would represent the ideal outcome for DH and you may wish to pursue this line during your telephone conversation.

- Mr Chisholm is asked to inform the Committee that an announcement has been postponed until a future date. No mention of DH involvement would be made, but the date would be the date of the joint announcement.

There are still a number of outstanding issues concerning the UK wide scheme (devolution in Wales – we are currently seeking counsel's advice, sourcing funding for the scheme and other administrative issues such as how the scheme will be managed) which cannot be guaranteed to be resolved by any particular date. SofS and the Treasury may not wish to be committed to a date. Postponement will clearly not be acceptable to the Committee.

- DH does not challenge Mr Chisholm's decision to make an announcement that any scheme is within devolved competence, but ensures that it contains no reference to the UK Government and that it stresses that the format of the scheme has not been finalised. A further announcement would be promised.

Chisholm will be able to give the Committee good news and DH will not be seen to have affected the decision. The implications outlined above will still apply however.

- **Preferred option.** DH and Scottish Executive Ministers make a joint announcement prior to Mr Chisholm's Committee appearance that work is progressing on setting up a scheme.

We would ask that the letter to the Committee does not contain any reference to the devolution issue, which Mr Chisholm would instead cover verbally. Any announcement will need to stress that work is at a very early stage and would not quote any figures, timescales etc. This is not ideal given the problems still to be resolved but seems to be the best way forward and would negate some of the political implications/fallout referenced above. In addition, Treasury have indicated that any announcement would need to be agreed with them first.

Conclusion

11. Officials accept that Chisholm's position is untenable and that he has a duty to inform the Scottish Parliament of the devolution decision. The best way to avoid critics of the UK Government would be to make an interim announcement now. However, this recommendation goes beyond the remit of policy advice and SofS will wish to discuss the implications outlined above with special advisers.