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PS (MS (H))

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Lump Sum Payments for Haemophiliacs with HIV

1. Following the announcement of the £20,000 ex-gratia payment to haemophiliacs with HIV, we have been discussing with the Macfarlane Trust and the Charity Commission how this can be done in a way that we could properly commend to the Trustees.

Charity Commission Views

2. The Charity Commission is firmly of the view that the payments of £20,000 across the board are not possible within the terms of the Macfarlane Trust's Deed as this requires the Trustees to take account of need. Changes to the Deed to enable the lump sums to be paid would remove the Trust's charitable status; and it may not be possible simply to effect a change of status but would require the existing Trust to be formally wound up. It is unlikely that the Trustees would willingly agree to this.

New Discretionary Trust

3. The alternative approach is to set up a new discretionary trust to make the lump sum payments. Such a Trust would be taxed on income from investment but this is not a real drawback as the objective would be to make the lump sum payments from capital as quickly as possible. The Trust could be set up quickly. This approach is likely to be acceptable to the Charity Commissioners and has now been formally proposed by the Macfarlane Trustees (see Annex)

4. The new trust could be called the Macfarlane Capital Trust, or some such like, and have Trustees in common with the existing Trust. The new trust would be legally separate but there would be clear associations with the existing Macfarlane Trust. Ministers may regard this as presentationally desirable. Having the same administrators could also help speed up the payments and would

avoid duplication of effort, e.g. in validating claims by the new trust.

Direct Payment by the Department

5. A further alternative would be for the Department to make the payment. This would directly link Ministers with the payments and could theoretically provide more effective financial control. The actual control would depend on how the claims were to be validated and would be no greater if the Macfarlane Trust's records were made available and were used. Doing the validation ourselves, however, would entail much more work and delay the payments.

Effect on Social Security Benefits/Legal Aid

6. The Social Security regulations would have to be amended if payments from a new trust or the Department were to be disregarded for the purpose of social security benefits. We would have to confirm that Social Security colleagues are content to make the changes but we understand this is the case. We also need to confirm that the Lord Chancellor's Department are content that payments from the new trust or this Department would be disregarded for legal aid purpose. Again, though, we do not anticipate any difficulty over this.

Funding

7. A more serious problem is funding the lump sum payments through a different Trust. Ministers had envisaged that the Macfarlane Trust would top-up the Government's £19m with £5m from its existing resources which we understood are not yet committed and are unlikely to be needed before 1991-92. This would not be possible if the Department were to make the payments.

8. Moreover several difficulties have emerged with this, in relation to payments by the Macfarlane Trust or a new capital trust:

i. The Macfarlane Trust has, so far, made no payment remotely approaching the £20,000 provided by the Government. The Trustees would find it difficult to justify any such payments from the existing trust, even to the most deserving beneficiaries, simply because the Government had failed to fund adequately the new capital trust.

ii. If alternatively the Macfarlane Trust were to lend £5m to the capital trust, they would need to show that this was a prudent investment. We would therefore need to give a legally binding guarantee that the money would be repaid (say on 1 April 1991). Even so, it would look extremely mean-spirited for the Government to be borrowing from a charitable fund to pay for what is already widely regarded as an inadequate settlement.

iii. Finally, the £5m in question may not be committed yet but neither is it readily available. Some of it is locked up in long-dated Gilts (maturing in or around 1995) which would only be sold now at a financial loss because of the state of the Gilts market. Again, it would be difficult to persuade the Trustees that this was a prudent use of their trust funds.

9. Given the Trust's misgivings over the use of the £5m and the steps which would be required to obtain its use, Ministers may wish to consider alternative funding. One possibility might be for the new capital Trust to be given borrowing powers, but this solution is not likely to be acceptable to Treasury as the commercial borrowing involved would be more expensive than the equivalent Government borrowing. The alternative is to approach the Treasury again, with a view to increasing our use of the Reserve. We would need to seek the full £24m (or something very close to it) from the Reserve this year, with the "repayments" of £7m next year. The question of any possible "repayment" of the additional £5m would need to be negotiated. Any proposal would not be welcome to Treasury, and we cannot predict their reaction.

Conclusion

10. The difficulties for the ^{existing} Macfarlane Trust making the £20,000 lump sum payments under the Deed seem insurmountable. The option of a new discretionary Trust closely associated with the existing Charitable Trust is in our view the next best alternative but would require additional funding - or at the very least a firm commitment to future funding - on top of the the £19m already committed. It does not seem sensible to look to the Macfarlane Trust for a "loan" of £5m and giving the new trust borrowing powers is not likely to be acceptable to the Treasury. An approach to Treasury for the additional funding would therefore seem the only feasible course.

GRO-C

J C DOBSON