

DATED

1991

DRAFT

DECLARATION OF TRUST

Constituting

THE MACFARLANE (SPECIAL PAYMENTS)

(NO.2) TRUST

NOW THIS DEED WITNESSES as follows:-

INTERPRETATION

1. IN THIS DEED words importing the masculine include the feminine, words in the singular include the plural, words in the plural include the singular and the following expression have the following meanings unless the context otherwise requires:-

"Trust Fund" means the sum of £10 paid to the Trustees and the sum of £42 million paid or to be paid to the Trustees by the Secretary of State and all monies and investments paid or transferred to and accepted by the Trustees as additions to the Trust Fund and all accumulations of income therefrom and the investments or property from time to time representing such monies and investments and income accumulations or any part or parts of it;

"Trustees" includes the trustees for the time being of this deed;

"haemophilia" includes von Willebrand's disease;

"infant" means a person with haemophilia under eighteen years old who has been treated in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate) and has thereby become infected with the human immuno-deficiency virus, whether or not he has developed AIDS;

"single adult" means a person with haemophilia who:-

(i) is eighteen years old or over,

(ii) is unmarried, is divorced without a dependent former spouse or is widowed,

(iii) has no dependent children,

(iv) has been treated in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate), and

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(v) has thereby become infected with the human immuno-deficiency virus, whether or not he has developed AIDS;

"married but childless" means a person with haemophilia who:-

(i) is married, or is divorced with a dependent former spouse or is eighteen years old or over and living with a partner,

(ii) has no dependent children,

(iii) has been treated in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate), and

(iv) has thereby become infected with the human immuno-deficiency virus whether or not he has developed AIDS;

haemophiliac

"~~married~~ with children" means a person with haemophilia who:-

(i) has dependent children,

(ii) has been treated in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate), and

(iii) has thereby become infected with the human immuno-deficiency virus whether or not he has developed AIDS;

"an intimate" means a person, not being a person with haemophilia, who has been infected with the human immuno-deficiency virus before the 13th December 1990 through, on balance of probabilities, either:-

(i) having been a heterosexual partner of, or

(ii) having been in regular intimate physical contact with

a person with haemophilia, that person with haemophilia being a person who has^d been treated in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate), and who was thereby infected with the human immuno-deficiency virus before the

13th December 1990, whether or not that person with haemophilia has developed AIDS;

XX "Category (g) plaintiffs" means a plaintiff in the HIV Haemophilia Litigation in England and Wales who had issued and served a writ before the 13th December 1990 and who falls within category 2(g) of the categories of plaintiffs as set out in the Re-amended Main Statement of Claim in that litigation;

"dependent children" means children under the age of 18 and adult children in full-time education, and:-

x (i) includes for the purposes of a payment under Clauses ¹³ 23 X of this deed a child conceived at the date by reference to which entitlement to a payment is determined and subsequently born alive;

(ii) includes an adult child whose full-time education has been interrupted for a period or periods of not more than one year; and

(iii) does not include an adult child whose full-time education is provided by his employer as part of the terms and conditions of his employment or an adult child who during his full-time education receives payments from a person or body with whom he has undertaken to work on completion of his education;

"living with a partner" means living:-

(i) as the husband or wife of a person, and

(ii) in the same household as that person;

"the Secretary of State" means the Secretary of State for Health;

"the perpetuity day" means the day on which shall expire the period of twenty-one years from the date hereof.

DECLARATION OF TRUST

2. THE TRUSTEES SHALL stand possessed of the Trust Fund upon trust at their discretion to retain the same in its existing form of investment or to sell the same or any part thereof and to invest or apply the net proceeds of any sale and any sum or sums of money paid to or otherwise held by the Trustees and forming the whole or part of the Trust Fund in or upon any kind of investments or property hereinafter authorised with power at any time and from time to time to vary such investments or property for others of any nature hereby authorised.

X 3. THE TRUSTEES SHALL hold the income of the Trust ^F fund UPON TRUST to
X accumulate the same until the perpetuity day and ^{shall} hold such accumulations
X as an accretion to the capital of the Trust ^F fund and as one fund
therewith for all purposes.

X 4. THE TRUSTEES SHALL HOLD the ^T Trust ^F fund UPON TRUST to pay to such
persons as are determined in accordance with the provisions of this
deed:-

(a) in respect of an infant, the sum of £21,500;

(b) in respect of a single adult, the sum of £23,500;

(c) in respect of a person who is married but childless, the sum
of £32,000;

(d) in respect of a person who is ^{a haemophilic} married with children, the sum
of £60,500;

(e) in respect of a person who is an intimate and either married
or at least 18 years old, the sum of £23,500; and

(f) in respect of a person who is an intimate, unmarried and under
18 years old, the sum of £21,500;

(g) in respect of a person who is a Category (g) plaintiff, the
sum of £2,000.

PAYMENTS TO LITIGANTS IN ENGLAND AND WALES

X 5. AS SOON AFTER THE DATE HEREOF as is reasonably practicable the Secretary of State shall provide the Trustees with details of the plaintiffs in the HIV Haemophilia Litigation in England and Wales such details to include, in a case where the original plaintiff has died, the name of the original plaintiff and details of any person who has obtained an order for the proceedings to be carried on.

6. AT THE SAME TIME as providing the details referred to in clause ⁵ above the Secretary of State shall certify in writing to the Trustees in respect of each plaintiff (other than a plaintiff who is a person who has obtained an order for proceedings to be carried on) and in respect of each original plaintiff who has died:-

(a) whether he was living on 13th December 1990 and if so:-

(i) whether on that date he was (specifying which) an infant, a single adult, married but childless, ^{a haemophiliac} married with children or an intimate (specifying the intimate's age and marital status),

(ii) whether he is still living, and if so, whether he is under a disability,

or,

(b) whether he had died before 13th December 1990, and if so whether on the date of his death he was (specifying which) an infant, a single adult, married but childless, ^{a haemophiliac} married with children or an intimate (specifying the intimate's age and marital status), or

(c) whether he is a Category (g) plaintiff.

7. WHEN THE TRUSTEES RECEIVE the details and certificates referred to in Clauses 5 and 6 above from the Secretary of State they shall as the case may be:-

(a) pay to each living adult in respect of whom the Secretary of State has provided a certificate under clause ^b5(a) or (c) above and who is not under a disability, or

(b) pay for each living person who is an adult under a disability or ^{who} is under 18 years old and in either case is a person in respect of whom the Secretary of State has provided a certificate under Clause 6(a) or (c) above, to such person as the Court directs, or

(c) in any other case, ^{where the Secretary of State has provided a certificate under clause 6(a)} pay to any person who has obtained or is ^{(b) or (c)} entitled to obtain an order for the proceedings to be carried on,

one of the sums specified in clause 4 above according to which category in clause 4 the certificate given by the Secretary of State relates.

8. IF AT THE TIME the Secretary of State provides the Trustees with the details referred to in clause 5 he is unable to certify to the Trustees all the relevant matters referred to in clause 6, the Secretary of State may ^{direct} ~~authorize~~ the Trustees to pay ^{to such person as may be specified} such sum on account of any sum to be paid under clause 7 as the Secretary of State may specify and on receipt of such an ^{a direction} ~~authorisation~~ the Trustees shall pay the sum ^{directed by the Secretary of State} ~~authorized~~ ^{specified by the Secretary of State} to the person who would otherwise be entitled to receive ^{it} ~~the~~ payment under clause 7.

9. IF THE Secretary of State:-

(a) notifies the Trustees that any details he provided to them under clause 5 or any certificate he provided to them under clause 6 were incorrect and that the payment made by the Trustees under clause 7 was ^{as a consequence less than it would have been had the correct} ~~therefore too small, and~~ details or certificate been provided, and

(b) ~~the Secretary of State~~ provides the Trustees with as the case may be the corrected details under clause 5 or a corrected certificate under clause 6

the Trustees shall pay to the person entitled to it under clause 7 a sum equal to the difference between the sum paid in accordance with the incorrect details or certificate and the sum payable in accordance with the corrected details or certificate.

X 10. AS SOON AS is reasonably practicable afterwards the Trustees shall notify the Secretary of State of each payment made under clause 7 ^{to} ~~and~~ 9 hereof.

PAYMENTS TO LITIGANTS IN SCOTLAND AND NORTHERN IRELAND

11. IF THE CIVIL PROCEEDINGS involving the Secretary of State for Scotland and the Secretary of State for Northern Ireland recited above are compromised on terms inter alia that the litigants in those proceedings shall receive payments under this deed of the appropriate sums specified in clause 4 the Trustees shall subject to clause ¹⁶ ~~12~~ below make such payments on mutatis mutandis the terms set out in clauses 5 to 10 of this deed.

MODIFICATIONS FOR SCOTLAND

take
X below } 12. IN THE APPLICATION of ~~the provisions of this Trust deed~~ in Scotland the provisions of Schedule ³ ~~1~~ shall have effect.

PAYMENTS TO NON-LITIGANTS

X ¹² 13. IF THE TRUSTEES are satisfied that on 13th December 1990 any person (other than a person in respect of whom a payment has been or is due to be made under clauses 5 to ¹¹ ~~12~~ above) was not under a disability and was a single adult, married but childless, ^{a haemophiliac} ~~married~~ with children or an intimate, they shall pay to that person the appropriate sum specified in clause ⁴ ~~3~~ above provided that that person:-

(a) applies to the Trustees for a payment within three months of the date hereof, and

(b) gives an undertaking to the Secretary of State in the form set out in Schedule ~~3~~ hereto.

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14. IF THE TRUSTEES are satisfied that on the 13th December 1990 any person (other than a person in respect of whom a payment has been or is due to be made under clauses 5 to 12 above) was an infant or was under a disability and was a single adult, married but childless, ^{a haemophilic} ~~married~~ with children or an intimate, they shall pay the appropriate sum specified in clause ⁴ above provided that:-

(a) application is made for a payment within three months of the date hereof, and

(b) ^{rule 9} an order is made under Order 80 ¹¹ Rules of the Supreme Court ^(rule 9 in Northern Ireland) approving and giving directions for dealing with the payment.

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15. IF THE TRUSTEES are satisfied that any person who died before the 13th December 1990 (other than a person in respect of whom a payment has been or is due to be made under clauses 5 to ¹² above) was at the date of his death an infant, a single adult, married but childless, ^{a haemophilic} ~~married~~ with children or an intimate, they shall pay to that person's personal representatives the appropriate sum specified in clause 4 above provided that the personal representatives:-

(a) apply to the Trustees for a payment within three months of the date hereof, and

(b) give an undertaking to the Secretary of State in the form set out in Schedule ¹ hereto, and

(c) ^{rule 9} obtain an order under Order 80 ¹¹ Rules of the Supreme Court ^(rule 9 in Northern Ireland) approving and giving directions for dealing with the payment in so far as such an order may be necessary.

15

16. IF THE TRUSTEES are satisfied that:-

(i) any person has been tested for the presence of antibodies to the human immuno-deficiency virus after 13th December 1990, and that

(ii) the test was positive, and that

(iii) that test was that person's first such test the result of which was positive, and ~~that~~

(iv) ~~that~~ on balance of probabilities that person was infected with the human immuno-deficiency virus before 13th December 1990, and ~~that~~

(v) the result of that test brings the person within the definition of a single adult, married but childless or ^{a haemophiliac} ~~married~~ with children, and ~~that~~

(vi) the person is not under a disability,

they shall pay to that person the appropriate sum specified in clause ⁴ ~~3~~ above provided that that person:-

(a) applies to the Trustees for a payment within twelve months of his knowing the result of the test or ^{by 31st December 1999} ~~within five years of the date~~ ~~hereof~~, whichever is the sooner, and

(b) gives an undertaking to the Secretary of State in the form set out in the Schedule ~~3~~ ₁ hereto.

¹⁶
17. IF THE TRUSTEES are satisfied that:-

(i) any person has been tested for the presence of antibodies to the human immuno-deficiency virus after the 13th December 1990, and that

(ii) the test was positive, and that

(iii) that test was that person's first such test the result of which was positive, and ~~that~~

(iv) ~~that~~ on balance of probabilities that person was infected with the human immuno-deficiency virus before 13th December 1990, and

(v) the result of that test brings the person within the definition of:-

- a single adult, married but childless, a ^{haemophilic} ~~married~~ with children, and that person is under a disability, or
- an infant,

they shall pay the appropriate sums specified in clause 4 above provided that:-

(a) application is made for the payment within twelve months of the person knowing the result of the test or ^{by} before 31st December 1999 whichever is the sooner, and

(b) ^{rule 9} an order is made under Order 80 ^{rule} 11 Rules of the Supreme ^(rule 9 in Northern Ireland) Court for approval of and giving directions for dealing with the payment.

¹⁷ 18. IF THE TRUSTEES are satisfied that:-

(i) at 13th December 1990 any person had been correctly diagnosed as infected with the human immuno-deficiency virus, but

(ii) that that person had not been informed of that diagnosis, and

(iii) that had that person known of the diagnosis he would have been able to apply for a payment under clause ¹² 13 or ¹³ 14 hereof

the Trustees shall pay to that person the appropriate sum specified in clause 4 above provided that that person:-

(a) applies to the Trustees within three months of his becoming aware of the diagnosis or ^{by} before 31st December 1999, whichever is the earlier, and

(b) gives an undertaking to the Secretary of State in the form set out in Schedule ¹ hereto.

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19. IF THE TRUSTEES are satisfied that:-

(i) any person with haemophilia had not been tested for the presence of antibodies to the human immuno-deficiency virus before the 13th December 1990, and ~~that~~

(ii) ~~that~~ that person has been so tested after the 13th December 1990, and ~~that~~

(iii) ~~that~~ that test was that person's first such test, and

(iv) that the test result was positive, and ~~that~~

(v) ~~that~~ the result of that test brings the person within the definition of a single adult, married but childless, ^{a haemophiliac} ~~married~~ with children or an intimate, and ~~that~~

(vi) ~~that~~ the person is not under a disability,

they shall pay to the person the appropriate sums specified in clause 4 provided that that person:-

(a) applies to the Trustees for a payment within twelve months of his knowing the result of the test or ^{by 31st December 1997} ~~within five years of the date~~ ~~hereof~~ whichever is the sooner, and

(b) gives an undertaking to the Secretary of State in the forms set out in Schedule ~~X~~₁ hereto.

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20. IF THE TRUSTEES are satisfied that:-

(i) any person with haemophilia had not been tested for the presence of antibodies to the human immuno-deficiency virus before the 13th December 1990, and ~~that~~

(ii) ~~that~~ that person has been so tested after the 13th December 1990, and ~~that~~

(iii) ~~that~~ that test was that person's first such test, and ~~that~~

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(iv) ~~that~~ the test result was positive, and ~~that~~

(v) ~~that~~ the result of that test brings the person within the definition of:-

- a single adult, married but childless, ^{a haemophilic} married with children or an intimate, and that person is under a disability, or

- an infant,

they shall pay the appropriate sum/ specified in clause 4 above provided that:-

(a) applications is made for the payment within twelve months of the person knowing the result of the test or ^{by 31st December 1999} ~~within five years of the date hereof~~, whichever is the sooner, and

(b) ^{ml} ~~an order is made~~ under Order 80, ^(rule 9 in Northern Ireland) All Rules of the Supreme Court/for approval of and giving directions for dealing with the payment.

20

21. IF THE TRUSTEES are satisfied that any person:-

(i) is the spouse of a person with haemophilia who is or was entitled to a payment under clauses ~~18 or 19~~ ^{17, 18 & 19} hereof, or

(ii) was, on the 13th December 1990, the spouse or widow of a person with haemophilia, which person with haemophilia had by that date been diagnosed as infected with the human immuno-deficiency virus, or

(iii) is the spouse, former spouse, widow or partner of a person with haemophilia, and that the name of that spouse, former spouse, widow or partner was included in Schedule 3 or Schedule 4 of the terms of settlement of the HIV Haemophilia Litigation in England and Wales,

and that that person:-

- (a) has been tested for the presence of the antibodies to the human immuno-deficiency virus after the 13th December 1990, and that
- (b) ~~that~~ the test was positive, and that
- (c) that test was the person's first such test the result of which was positive, and that
- (d) the result of that test brings the person within the definition of an intimate,

they shall pay to that person the appropriate sum specified in clause 4 above provided that that person:-

- (a) applies to the Trustees for a payment within twelve months of his knowing the result of the test or ^{by 31st December 1999} ~~within five years of the date hereof~~, whichever is the sooner, and
- (b) gives an undertaking to the Secretary of State in the forms set out in Schedule 3 hereto.

²¹
22. IF THE TRUSTEES are satisfied that any person:-

- (i) is the child of a person with haemophilia, ~~which person with haemophilia was not a plaintiff in the HIV Haemophilia Litigation in England and Wales~~, and that
- (ii) ~~that person was not a plaintiff in the HIV Haemophilia Litigation in England and Wales~~, and that
- (iii) that person was born or conceived before the 13th December 1990, and that
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(iii) that person was born infected with the human immuno-deficiency virus (other than with passive antibodies)

in respect of an infant
they shall pay the appropriate sum specified in clause 4 above/provided that:-

(a) application is made for the payment within twelve months from the 13th December 1990 or within five years from the date of that person's birth whichever is the ^{later} ~~earlier~~, and

(b) ^{rule 9 in Northern Ireland} an order is made under Order 80, ^{rule 9} ~~Rule~~ 11 Rules of the Supreme Court for approval of and giving directions for dealing with the payment.

²³ 23. IF ANY PERSON who ^{has applied for} ~~is or becomes~~ entitled to a payment under this deed dies before the payment is made the Trustees shall make the payment that person would have received to his personal representatives provided that the personal representatives:-

(a) give an undertaking to the Secretary of State in the forms set out in Schedule ¹ ~~2~~ hereto, and

(b) ^{rule 9 in Northern Ireland} obtain an order under Order 80, ^{rule} ~~Rule~~ 11 Rules of the Supreme Court approving and giving directions for dealing with the payment in so far as such an order may be necessary.

²³ 24. IN ADDITION TO all other powers contained herein the Trustees may in their absolute discretion ^{but} (subject to the written consent of the Secretary of State) make payments of the sums specified in clause 4 above to or in respect of such other persons infected with the human immuno-deficiency virus as are in the opinion of the Trustees consistent with the general purport of this deed.

CASES OF DOUBT AFFECTING NON-LITIGANTS

²⁴ 25. IF FOR ANY REASON the Trustees are not satisfied either as to a person's entitlement to a payment under this deed or as to its amount, or if the Trustees are unable to determine a person's entitlement to a payment under this deed ^{the entitlement of} (other than a person in respect of whom the Secretary of State has provided a certificate under clause 6 above) the Trustees shall refer the matter to the Secretary of State for Health, for Wales, for Scotland or for Northern Ireland for his determination

according to whether the person concerned is resident in England, Wales, Scotland or Northern Ireland.

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X 26. IF, WHEN THE TRUSTEES REFER a matter to one of Secretaries of State referred to in clause 25 above, and the Secretary of State concerned is for any reason not satisfied either as to a person's entitlement to a payment under this deed or as to its amount or if the Secretary of State concerned is unable to determine the person's entitlement to a payment the Secretary of State concerned shall refer the matter for determination by a medical or legal expert according to the nature of the uncertainty and the determination of that expert shall be final and binding on the Trustees for the purposes of this deed.

GENERAL POWERS OF TRUSTEES

X 27. THE TRUSTEES SHALL have power to pay out of the Trust fund costs or expenses of whatever nature incurred prior to the execution of this Deed in relation to the preparation of the Deed or the operation of the trusts hereby declared.

X 28. The Trustees may from the date hereof to the perpetuity day accumulate all or any part of the income of the Trust fund or so much thereof as shall not have been paid or applied as aforesaid and shall hold such accumulations as an accretion to the capital of the property from which such income arose and as one fund there with for all purposes PROVIDED ALWAYS that the Trustees may at any time or times during the said period at their absolute discretion apply any income so capitalised or any investments representing the same as though the same were or represented income of the Trust fund arising during the then current year.

X 29. (1) MONEYS REQUIRING TO BE INVESTED under this settlement may be invested or otherwise applied on the security of or in the purchase or acquisition of real or personal property (including chattels) rights or interests of whatsoever kind and wheresoever situate including in particular but without prejudice to the generality of the foregoing any stocks funds shares securities or other investments of whatsoever nature and wheresoever situate and whether involving liability or producing income or not To the Intent that the Trustees shall have the same

unrestricted power of investing and transposing investments as if they were absolutely entitled thereto beneficially and Section 6(1) of the Trustee Investments Act 1961 shall not apply hereto.

(2) IT IS HEREBY EXPRESSLY DECLARED that without prejudice to the generality of the foregoing sub-clause and without prejudice to any powers conferred by law the Trustees shall have the following additional powers:-

(a) Power to borrow money with or without giving security therefor for any of the purposes of this ^{deed} ~~Settlement~~ (including for the purpose of purchasing or subscribing for any shares or stocks securities properties options rights or interests or other property of whatsoever description or for effecting or maintaining any policies of insurance) and they may pledge or mortgage the whole or any part of the Trust Fund by way of security for any such loan.

(b) Power to lend any sum or sums forming part of the Trust Fund at such rate of interest (if any) and either with or without security other than a personal covenant to any person beneficially interested hereunder And so that no trustee hereof shall be liable for any loss to the Trust Fund accruing by reason of any such loan.

(c) Power to open current or deposit accounts with any Bank in the United Kingdom and to make such arrangements for the operation thereof as the Trustees shall in their absolute discretion think fit and without being liable for any loss occasioned thereby including but not by way of limitation arrangements as to the number of Trustees to be required to sign cheques drawn thereon and as to any maximum sum which may be withdrawn at any one time on such signature.

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30. THE TRUSTEES MAY EMPLOY and remunerate any agent or agents whether or not in any way whatsoever associated or connected with the Trustees or any of them to transact all or any business of whatsoever nature required to be done in the premises (including the receipt and payment of money) and so that the Trustees shall be entitled to be allowed and paid all charges and expenses so incurred and shall not be responsible for the default of any such agent or agents and any trustee being a

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Solicitor Chartered Accountant or other person engaged in any profession or business shall be entitled to charge and be paid all professional or other charges made by him or his firm for business done by him or his firm in relation to the execution of the trusts of this ^{deed} Settlement or the exercise of the Trustees powers or discretions hereunder whether or not ⁱⁿ on the ordinary course of his profession or business and whether or not such business requires the employment of a person engaged in any such profession or business.

³⁰
31. (1) THE TRUSTEES MAY DEPOSIT any moneys deeds securities or investments (including shares and securities to bearer) held by them as trustees with any banker or any person or firm or company in the United Kingdom for safe custody or receipt of dividends and may pay out of the income or capital of such part of the Trust Fund as they shall think proper any sum payable for such deposit and custody.

(2) ASSETS OF THE TRUST may be held in the name or names of any nominee or nominees on behalf of the Trustees and so that the Trustees shall not be liable for any act neglect or default on the part of any such nominee or nominees.

³¹
32. (1) IN SO FAR AS MAY BE PRACTICABLE the number of Trustees hereof shall be maintained at five of whom two shall be appointed by the Secretary of State and three shall be appointed by the Trustees for the time being of the charity known as the Macfarlane Trust.

(2) OF THE ORIGINAL TRUSTEES the said Alan Palmer and the said John Prescott Cashman constitute the Trustees appointed by the Secretary of State and the other parties constitute the Trustees appointed by the Macfarlane Trust.

³²
33. (1) ANY TRUSTEE (so long as the number of trustees remaining after his retirement shall be not less than two in number of whom one shall be a Secretary of State Trustee and another a Macfarlane Trustee) shall be at liberty to resign his trusteeship at any time by notice in writing to the other trustees.

(2) A TRUSTEE SHALL be removed and discharged from the trusts thereof by a Resolution of a meeting of the Trustees (other than the Trustee being removed):-

(i) if a receiving order in bankruptcy is made against him or he makes any arrangement or composition with his creditors, or

(ii) if he becomes of unsound mind.

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34. (1) IN THE PROFESSED EXECUTION of the trusts hereof no Trustee shall be liable for any loss arising by reason of any improper investment or application of the Trust Fund or any part thereof made in good faith or for the negligence or fraud of any agent employed by him or by any other trustee hereof (although the employment of such agent was not strictly necessary or expedient) or by reason of any mistake or omission made in good faith by any Trustee hereof or by reason of any other matter or thing whatsoever except wilful and individual fraud or wrongdoing on the part of the Trustee who is sought to be made liable,*

(2) EVERY DISCRETION hereby conferred upon the Trustees shall be an absolute and unfettered discretion and the Trustees shall not be required to furnish to any beneficiary hereunder any reason or justification for the manner in which any such discretion may be exercised.

VARIATION OF TRUST

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35. The Secretary of State may, subject to the ^{prior written} consent of the Trustees, at any time ^{at times and from time to time by deed} vary ~~either wholly or partially~~ the trusts ^{and provisions} and powers hereby declared concerning the Trust Fund or any part thereof, ~~provided~~ PROVIDED THAT this clause shall not permit any variation of clauses ^{and this clause.}

TERMINATION OF TRUST

29, 32, and 33

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36. IF AT ANY TIME the Trustees are satisfied:-

(a) that there are no outstanding claims for entitlement under this deed, and

* and in particular no Trustee shall be liable by reason that the Trust fund is insufficient to meet all claims and payments which the Trustees are directed or empowered by this deed or by law to make and so that the Trustees shall have absolute discretion as to the order in which such claims and payments are met

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x ²⁴ (b) that the time for registering new claims under Clauses ¹² ~~31~~ ¹³ to ~~21~~ ²¹ hereof has expired,

xx they shall pay any money ^{and any other property} remaining in the Trust Fund to the trustees for the time being of the charity known as the Macfarlane Trust to be held by those trustees on the trusts declared for that trust.

³⁶ 37. FOR THE AVOIDANCE OF DOUBT it is hereby declared that notwithstanding anything herein express or implied to the contrary no power authority or discretion exercisable by the Trustees or any other person shall be exercisable after the perpetuity day.

³⁷ 38. SUBJECT TO THE AFORESAID the Trustees shall on the perpetuity day stand possessed of the Trust Fund and the income thereof or such part or parts thereof respectively as shall not have been paid or applied under any power affecting the same in trust for the charity known as the Macfarlane Trust but if the said trust shall not then be in existence then for such charitable object or purpose or charitable ^{objects or} purposes as the ^{net} Trustees ~~shall~~ in their absolute discretion ~~shall~~ determine.

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SCHEDULE 3

UNDERTAKING TO BE GIVEN BY AN INDIVIDUAL NOT UNDER A DISABILITY IN ACCORDANCE WITH CLAUSES 13, 16, 18, 19 OR 21

THIS DEED of undertaking is made the [] of
[] 1991 by [] of
[] .

1. In expectation of receiving from the Macfarlane (Special Payments) (No.2) Trust the sum of [£] I undertake with the Secretary of State for Health that I will not at any time hereafter bring any proceedings against the Department of Health, ^{the} Welsh Office, ^{the} Licensing Authority under the Medicines Act 1968, the Committee on Safety of Medicines, any district or regional health authority or any other Government body involving any allegations concerning the spread of the human immuno-deficiency virus or ~~the~~ hepatitis viruses through Factor VIII or Factor IX (whether cryoprecipitate or concentrate) administered before 13th December 1990.

* [in Northern Ireland -
the Department of Health and Social Services Northern Ireland]
** [in Northern Ireland -
any health and social services board] in Northern Ireland

Signed and Delivered by)
)
)
 [])
)
 as a Deed in the presence)
)
 of:-)

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SCHEDULE A

UNDERTAKING TO BE GIVEN BY PERSONAL REPRESENTATIVES IN ACCORDANCE
WITH CLAUSES 15, 21 OR 23

THIS DEED of acknowledgement and undertaking is made the []
of [] 1991 by [] of
[] personal representatives of []
deceased.

1. In expectation of receiving from the Macfarlane (Special Payments)
(No.2) Trust the sum of [£] in respect of []
deceased we undertake:-

(i) with the Trustees of that Trust, that we will distribute that
sum in accordance with the orders of Mr Justice Ognall dated
[], and

(ii) with the Secretary of State for Health that we will not at any
time hereafter bring any proceedings against the Department of
Health, ^{the} Welsh Office, ^{the} Licensing Authority under the Medicines
Act 1968, the Committee on Safety of Medicines, any district or
regional health authority ^{or} any other Government body ~~as~~
~~Schedule 1~~ on behalf of the estate or dependants of
[] deceased concerning the spread of the human
immuno-deficiency virus or ~~the~~ hepatitis viruses through Factor
VIII or Factor IX (whether cryoprecipitate or other concentrate)
administered before 13th December 1990.

Signed and Delivered by)
)
[])
)
as a Deed in the presence)
)
of:-)

✓ [in Northern Ireland -
the Department of Health and Social
Services Northern Ireland]

[in Northern Ireland -
any health and social services
board] in Northern Ireland

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SCHEDULE 1MODIFICATION OF THE APPLICATION OF THE PROVISIONS
OF THIS TRUST DEED IN SCOTLAND

1. Any reference to Category (g) or Category (g) plaintiff means any pursuers who have instituted any action or proceedings before the Scottish Courts against the Secretary of State or any health service body alleging injury arising from treatment of that person or any other person with Factor VIII, Factor IX (whether cryoprecipitate or concentrate), which proceedings were instituted prior to 13th December 1990, and where those pursuers have not sero-converted and/or been infected with HIV to their knowledge, but are at risk of doing so because they are the intimates of haemophiliacs who have sero-converted and/or been infected with HIV or developed AIDS.

2. Any reference to "children" or "dependent children" means any minor or pupil child liable to be maintained by a person who is a beneficiary under the provisions of this Deed of Trust, any unborn child who when born would be liable to be so maintained and including any person over the age of 18 in full-time education liable to be so maintained.

3. Any reference to a person under a disability shall be taken to mean such a person who is an incapax and in respect of whom a curator bonis has been appointed.

4. Any reference to the Secretary of State in connection with the grant of an undertaking shall mean the Secretary of State for Scotland.

5. The provisions of clauses 10, 11, 13, 14, 15 and 17 ^{of this Deed Trust Deed} shall be read as subject to the following modifications:-

(a) in each of the clauses referred to the period of three months shall commence from the date upon which the person to whom payment may be made shall have received notice of entitlement in terms of the provisions of this Trust Deed;

(b) in each of the clauses referred to above the undertaking shall be in the form set out in Schedule 2 hereto;

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(c) in clause ¹⁴11 sub-paragraph (b) shall not apply.

6. Clauses 12 and 16 ^{of this Trust Deed} shall have no effect and the following provisions shall apply in their place:-

(1) If the Trustees are satisfied that any person, who is or may become entitled to a payment under this Deed, has died and was at the date of his death married with children, and where the Trustees are further satisfied that that person was at the date of death living with his spouse in the same household, they shall pay to that spouse the appropriate sum specified in clause ³ above ^{of this Trust} provided that that spouse:-

(a) has applied to the Trustees for payment within three months of the date on which the spouse shall have received notice of the provisions of the Trust Deed, and

(b) give an undertaking in the form set out in Schedule ²3 hereto.

(2) If the Trustees are satisfied that any person who is or may become entitled to a payment under this Deed has died and was at the date of his death an infant, a single adult, married but childless, an intimate, ^{hemophiliac} with children (other than a person who was married with children to whom paragraph 6(1) ^{of this Schedule} above applies), they shall pay to that person's personal representatives the appropriate sum specified in clause ³ ^{of this Trust Deed} above provided that the personal representatives:-

(a) have applied to the Trustees for a payment within three months of the date upon which they shall have received notice of the entitlement of the deceased in terms of provisions of the Trust Deed, and

(b) given undertaking to the Secretary of State in the form set out in Schedule ²3 hereto.

15 of the Trust Deed
7. In paragraph ~~14~~:-

- (i) sub-paragraph (b) shall not apply, and
- (ii) the person to whom payment is to be made shall give an undertaking to the Secretary of State in the form set out in Schedule ~~2~~₄ hereto.

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SCHEDULE 7X
UNDERTAKING TO BE GIVEN BY A QUALIFYING PERSON IN SCOTLAND
TO RECEIVE PAYMENT FROM THE MACFARLANE TRUST
(SPECIAL PAYMENTS) (No 2) TRUST

Whereas the Secretary of State for Scotland has set out proposals for payment of certain sums to or in respect of haemophiliacs infected with human-immuno deficiency virus and to or in respect of other persons who may have become infected as a consequence of their relationship to such a haemophiliac;

and whereas the proposals for payment involve such payment at the instance of the Trustees of the Macfarlane (Special Payments) (No.2) Trust; and whereas it is a condition for payment of funds to persons entitled to receive funds from the Trust that a discharge and undertaking be granted to the Secretary of State and others.

Now therefore I
hereby undertake as follows:-

residing at

1. I hereby discharge the said Secretary of State and all other Ministers of the Crown and Government Departments or bodies or any of their respective agents, servants or employees whomsoever (hereinafter referred to as "the Crown"), from any liability they may have in respect of the infection of

with human-immuno deficiency virus or hepatitis viruses, allegedly arising out of treatment ^{before 13th December} with Factor VIII or Factor IX (whether cryoprecipitate or concentrate).

2. I hereby discharge any Health Board, the CSA, the BTS or any other body established under the NHS (Scotland) Act 19 or any of their respective agents, servants or employees whomsoever (hereinafter referred to as "a health service body") from any liability they may have in respect of the infection of

with human-immuno deficiency virus or hepatitis viruses allegedly arising out of treatment ^{before 13th December 1991} with Factor VIII or Factor IX (whether cryoprecipitate or concentrate).

3. I acknowledge that payment of any sums is made without admission of liability on the part of the Crown or any health service body.

4. I undertake not to bring any proceedings against the Crown or any health service body now or at any time in the future in respect of the said infection of by human-immuno
deficiency virus or hepatitis viruses.

Provided that this discharge and undertaking shall be without prejudice to any claim competent to me against any health service body in respect of any alleged medical negligence in connection with the infection of with human-immuno deficiency virus or
hepatitis viruses allegedly arising out of treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate).

Further provided that this discharge and undertaking is conditional upon receipt by me of the sum of £ from the Macfarlane (Special
Payments) (No.2) Trust ~~which shall be evidenced by my grant of a receipt~~
~~to the Trustees of the said Trust;~~

Dated at this day 1991

Signed

Witness

Address

Occupation

Witness

Address

Occupation