



HOUSE OF COMMONS
LONDON SW1A 0AA

19 December 1989

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I hope you will excuse my taking so long to reply to you. This is a sensitive and distressing case, and I wanted to consider it very carefully before coming to any conclusions.

I have also been very aware of events continuing to move on around us. No doubt you have heard of the Department of Health's offer of £19 million as a further ex gratia payment without prejudice to any legal proceedings following colleagues meeting the Prime Minister last week. I also understand that the initial hearing for the court case on the Government's liability has been set down for 15 January 1990. I am advised that this brings the matter under the sub judice resolution.

However, even if discussion by the Committee were not precluded by this, I must say that I do not think that we can look into this matter. The Committee is not a court of appeal against the Commissioner's decisions. While the Committee would quite properly be the first to raise any question of misuse or error on the part of the Commissioner in the exercise of his functions, I am not convinced that he has erred in this case.

It seems to me that the Commissioner could find no prima facie evidence of maladministration on which to base any investigation. While I acknowledge that it is possible to make a case that failing to honour the commitment you gave in 1975 as Minister for Health to achieve self-sufficiency in blood and blood products as soon as possible was an act of maladministration on the part of the Department, I think this is a matter of argument rather than a matter of fact. The decisions taken by Ministers on this matter and the advice given to them by officials may all have been taken perfectly properly. Since the symptoms of AIDS were not described until late 1981, and the means of transmitting the HIV virus were not identified for some time afterwards, the potential risks could not have been taken into consideration for much of the time in question. The negligence case will presumably turn on whether the Department can show that the blood supply was as safe as it could be.

I appreciate how galling it must be to see such a hard-won and
categoric assurance not being honoured by your successors,
particularly when, with hindsight, one can see the tragic
consequences which might have been avoided. I agree that the
House of Commons should have been informed when it was decided
that the pledge of self-sufficiency could not be honoured, for
whatever reason; but that is probably discourtesy to the House
rather than maladministration.

I regret, therefore, that I do not think it would be
appropriate for the Committee to take this matter further.

Gen. Sir,

GRO-C

Sir Antony Buck, Q.C., M.P.

Dr David Owen MP
House of Commons