

DATED

19th September

1991

DEED OF VARIATION

relating to

THE MACFARLANE (SPECIAL PAYMENTS)

(NO.2) TRUST

50p

THIS DEED OF VARIATION is made the 19th day of September 1991 BETWEEN THE SECRETARY OF STATE FOR HEALTH (hereinafter called the Secretary of State) of the one part and THE REVEREND PREBENDARY ALAN JOHN TANNER of [GRO-C], London, [GRO-C], CLIFFORD HAZELTON GRINSTEAD of [GRO-C], ALAN PALMER of [GRO-C] PETER STEVENS of [GRO-C] and JOHN PRESCOTT CASHMAN of [GRO-C] (hereinafter called the Trustees) of the other part.

WHEREAS:-

- (1) By a Declaration of Trust (hereinafter called the Trust Deed) made the 3rd of May 1991 the parties hereto declared certain trusts constituting the MacFarlane (Special Payments) (No.2) Trust
- (2) The Trust Deed contained (subject to certain exceptions) a power for the Secretary of State to vary the trusts, powers and provisions thereby declared provided that the Trustees gave their prior written consent thereto
- (3) The Secretary of State wishes to exercise the power to vary the trusts, powers and provisions contained in the Trust Deed so as further to modify its effect in Scotland and so as to include the covenant on the part of the Secretary of State hereinafter contained for the payment of further sums to the Trustees being a covenant which gives effect to a term of the settlement of HIV Haemophilia Litigation in England and Wales but which could not be included in the Trust Deed because of certain administrative formalities.
- (4) The Trustees have consented in writing to the making of this deed by executing it before execution by the Secretary of State.

NOW THIS DEED WITNESSES as follows:-

SUBSTITUTION OF SCHEDULE 3

1. FOR SCHEDULE 3 to the Trust Deed there shall be substituted the following:-

"SCHEDULE 3

**MODIFICATION OF THE APPLICATION OF THE PROVISIONS
OF THIS DEED IN SCOTLAND**

1. Any reference to Category (g) or Category (g) plaintiff means:-

(a) any pursuers who have prior to the 13th December 1990 instituted any action or proceedings before the Scottish Courts against the Secretary of State for Scotland 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), or

(b) any person who has prior to the 13th December 1990 presented a legal aid application to the Scottish Legal Aid Board in contemplation of any such action or proceedings

and in either case where those persons or 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" includes:-

(a) any minor or pupil child liable to be maintained by a person who is a single adult, married but childless or a haemophiliac with children; or

(b) any unborn child who when born would be liable to be so maintained; or

(c) any person over the age of 18 in full-time education liable to be so maintained, except when that full-time education is provided by that person's employer as part of his terms and conditions of employment, or where that

person receives payment from a person or body with whom he has undertaken to work on completion of his education.

3. Any reference to a person under a disability shall be taken to mean 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 12, 13 and 15 to 21 shall be read as subject to the following modifications:-

(a) in each of the clauses referred to the period of three months or twelve months shall date 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 Clauses 12, 15, 17, 18, 20 and 21 the undertaking shall be in the form set out in Schedule 4 to this Trust Deed;

(c) in clauses 13, 16, 19 and 21 sub-paragraph (b) shall not apply; and

(d) in clause 17 sub-paragraph (c) shall not apply.

6. Clauses 14 and 22 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 Trust Deed, has died and was at the date of his death:-

(a) married but childless, then subject to sub-paragraph (1)(c) below the provisions of sub-paragraph (2) below will apply;

(b) a haemophiliac with children, then subject to sub-paragraph (1)(c) below the provisions of sub-paragraphs (3) below and (4) below will apply;

(c) an infant, a single adult, married but childless (other than a person to whom sub-paragraph (2) below applies), an intimate, or a haemophiliac with children (other than a person to whom sub-paragraph (3) below and (4) below apply), then the provisions of sub-paragraph (5) below shall apply;

(d) survived by a parent or parents then the provisions of sub-paragraph (6) below will apply.

(2) In any case to which sub-paragraph (1)(a) above applies 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 4 of this Trust Deed 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 this Trust Deed; and

(b) gives an undertaking in the form set out in Schedule 4 to this Trust Deed.

(3) In any case to which sub-paragraph (1)(b) above applies the Trustees shall make payment of the appropriate sum under clause 4 of this Trust Deed as follows:-

(a) where the deceased was at the date of death living with his spouse in the same household then one half of the appropriate sum shall be paid to the spouse and the remaining half shall be payable as if sub-paragraph (b) below applied;

(b) where the deceased was not at date of death living with his spouse in the same household then the appropriate sum shall be paid to the curator for the children except that if any of the children is aged 18 or over at the date of death of the deceased the Trustees shall pay a proportion of the sum payable to that child calculated in accordance with sub-paragraph (4) below.

(4) In any case in which a sum is payable to a child aged 18 or over in terms of sub-paragraph (3)(b) above that sum shall be calculated by dividing the total sum payable for the benefit of the children by the number of children concerned.

(5) In any case in which sub-paragraph (1)(c) applies the Trustees shall pay to that person's personal representatives the appropriate sum specified in the said clause 4 of this Trust Deed.

(6) In any case to which sub-paragraph (1)(d) applies the Trustees shall pay out of the appropriate sum specified in the said clause 4 of this Trust Deed the sum of £2,000 to each parent the balance of the appropriate sum to be payable in terms of this Schedule,

provided that where any such parent claims in a case to which sub-paragraph (3) above also applies then the sum payable to that parent shall be deducted in equal parts from the sums otherwise payable to the spouse and for the benefit of the children.

7. The Trustees shall not be required to make any payment in terms of this Schedule except where the person to whom payment is to be made shall have:-

(a) applied for payment within 3 months of the date on which the person received notice of the entitlement of the deceased in terms of the provisions of this Trust deed; and

(b) given an undertaking in the form set out in Schedule 4 to this Trust Deed".

SUBSTITUTION OF SCHEDULE 4

2. FOR SCHEDULE 4 to the Trust Deed there shall be substituted the following:-

"SCHEDULE 4

UNDERTAKING TO BE GIVEN BY A QUALIFYING PERSON TO RECEIVE PAYMENT FROM THE MACFARLANE (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 or may yet become infected as a consequence of their relationship to such a haemophiliac;

and whereas the proposals for payment involve such payment by 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 _____ residing at

hereby undertake as follows:-

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, allegedly arising out of treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate).

2. I hereby discharge any Health Board, the Common Services Agency, the Scottish National Blood Transfusion Service or any other body established under the National Health Service (Scotland) Act 1978 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 allegedly arising out of treatment 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.

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 allegedly arising out of treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate) and for the purpose of this undertaking the expression "medical negligence" shall include only specific allegations as to negligence in the application of treatment including treatment with Factor VIII or Factor IX (whether cryoprecipitate or concentrate) and shall not extend to averments as to the policy for such treatment or the selection or screening of any blood products or other material in such treatment, and by way of example:-

- a. that self-sufficiency in blood products should have been achieved at any date prior to the date of a claimant's sero-conversion;
- b. that donor warnings were inadequate;
- c. that heat-treated blood products should have been made available for use by any Health Service body by any date earlier than that date on which they became available for such use;

d. that blood products screened for HIV should have been made available for use by any Health Service body by any date earlier than that date on which they became available for such use;

e. that Health Service bodies should have taken steps to increase the supply of blood products made from non-commercial plasma, whether by arranging for fractionation of such plasma otherwise than by the BPL or by increasing supplies of plasma by investment in plasmapheresis or by having plasma fractionated in Scotland or otherwise.

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

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ADDITIONS TO THE TRUST FUND BY THE SECRETARY OF STATE

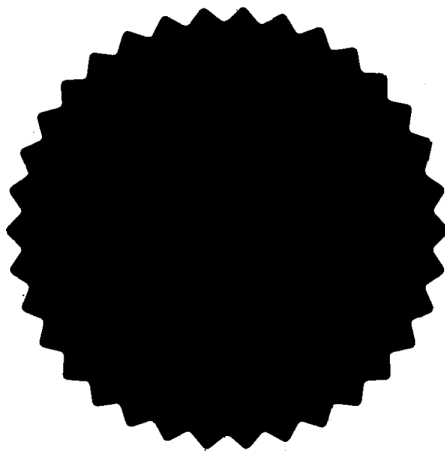
3. IF AT ANY TIME or from time to time it appears to the Trustees that the Trust Fund will be exhausted before the Trustees have made all the payments required by the Trust Deed they shall notify the Secretary of State to that effect and the Secretary of State HEREBY COVENANTS with the Trustees that he will in such an event pay to the Trustees a sum sufficient to enable the Trustees to discharge their obligations under the Trust Deed.

I N W I T N E S S whereof the Official Seal of the Secretary of State for Health has hereunto been affixed and the Trustees have hereunto set their hands the day and year first before written

THE OFFICIAL SEAL of
THE SECRETARY OF STATE
FOR HEALTH was hereunto
authenticated by

GRO-C: J.C Dobson

Assistant Secretary
Department of Health



SIGNED AND DELIVERED by
the said REVEREND PREBENDARY
ALAN JOHN TANNER as a Deed
in the presence of:-

GRO-C: T W Williams

GRO-C

London

GRO-C

GRO-C

SIGNED AND DELIVERED by
the said CLIFFORD HAZELTON
GRINSTED as a Deed
in the presence of:-

GRO-C: T W Williams

GRO-C

London

GRO-C

GRO-C

SIGNED AND DELIVERED by
the said ALAN PALMER as a
Deed in the presence of:-

GRO-C: T W Williams

GRO-C

London

GRO-C

GRO-C

SIGNED AND DELIVERED by
the said PETER STEVENS as a
Deed in the presence of:-

GRO-C: T W Williams

GRO-C

London

GRO-C

GRO-C

SIGNED AND DELIVERED by
the said JOHN PRESCOTT CASHMAN
as a Deed in the presence of:-

GRO-C: T W Williams

GRO-C

London

GRO-C

GRO-C