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Dear Philip

**HEPATITIS C – DECISION ON WHETHER TO APPEAL**

I was grateful for the opportunity to discuss with you yesterday the implications of the recent High Court judgement against the National Blood Authority, following the transmission of Hepatitis C through defective blood products.

I know that you and the Authority are being advised not to appeal, and I understand the reasons up to a point. On the other hand, there are good reasons for not wanting to leave the judgement standing if we can avoid it:

- what realistic alternative did the Authority have but to continue supplies of blood, even recognising the risk?
- the emphasis on consumer assessment of risk to the exclusion of professional assessment and knowledge
- the presumption of liability wherever risk is known, regardless of ability (or not) to access the risk

But these are points of detail on the particular judgement. There is a much wider set of potential implications, which could impact on the NHS in every part of the UK:

- will we ever be able to be fully satisfied about the risks of a new pharmaceutical product at the point of introduction?
- what will this do for pharmaceutical companies' willingness to invest in and produce new products?
- what will be the implications for NICE and panels who advise them?

- how far will government's liability stand to increase over the years as further judgements develop that this judgement has started
- that this would mean an end to the long established principle re – no compensation for non-negligent harm

And so on. We at least need to give ourselves breathing space to answer all this more thoroughly, and for that reason alone I think it would be more than prudent to give notice of appeal. I hope you will.

I am copying this letter to Alan Milburn, Gisela Stuart, Helen Liddell and to Jane Hutt and Bairbre de Bruin.

*Susan*

GRO-C

SUSAN DEACON

