

*Mr Henderson*

PS/Minister of State

Copy to: PS/Secretary of State  
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PS/SHHD  
PS/Chief Executive  
**Solicitor**  
Mr Anderson  
Mr Mills, PFO  
Director, SIO  
Mr Carter  
Mr Young

#### SCOTTISH HAEMOPHILIA/HIV LITIGATION GROUP

1. I refer to your minute of 18 December to PS/Secretary of State recording Mr Forsyth's views that we should move speedily towards a settlement in Scotland and that it would be helpful to have an indication of the timetable.

2. I appreciate Mr Forsyth's concerns but the offer has been directed to all haemophiliacs with HIV in the United Kingdom and we have to move in step with the Department of Health who are the lead Department on this matter to ensure that the terms of settlement minimise the risk of legal challenge. As yet the Department of Health lawyers and Counsel have not finalised the detailed Heads of Agreement for the Settlement. This will be put to the English Steering Committee of solicitors and Counsel representing the English plaintiffs before Christmas. But there are still some points of difficulty to be resolved over the detail of the social security disregards (so that plaintiffs are still eligible for full benefit). Also there is a proposal to include a paragraph in the Agreement to commit Ministers to secure the "best available treatment" to alleviate the effects of AIDS; this is being resisted by Department of Health on the basis that the NHS standard of treatment is appropriate. Finally, there are difficulties to be resolved over negligence claims in respect of the clinical management of patients.

3. As soon as these aspects have been clarified the formal document will be sent to the Steering committee who will then wish to consult their clients. The Counsel for the Department of Health is of the view that there should be no pressure, at least initially, on plaintiffs to make up their minds but that the position should be reviewed around the middle of January in the light of initial responses obtained by the Steering Committee. If Department of Health Ministers then agreed that the response was sufficiently encouraging, a form would be sent to all plaintiffs which they would have to sign and return by a given date giving their formal acceptance of the proposals. Those who failed to meet the deadline would be sent a letter offering a further period of grace before the settlement offer was finally withdrawn. Similar arrangements would be required for non-plaintiffs and the MacFarlane Trust will write to them to ask whether they are prepared to accept the settlement in return for waiving their litigation rights. It is understood that Department of Health Ministers have indicated that they are content with this timetable.

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#### Scottish Position

4. Our solicitors have now had an informal meeting with Messrs Balfour and Manson, the solicitors acting for the Scottish Steering Group. They have appraised them of the broad thrust of the terms of the proposed settlement as a gesture of good faith. But they are not yet in a position to put a formal offer to Messrs Balfour and Manson until the final version of the Heads of Agreement is available from the Department of Health. The Scottish Steering Group have indicated that they would wish to put the detailed offer when finalised to their clients and that they are acting on behalf of some 41 claimants not all of whom have commenced legal action. Three claimants are legally aided. Some of the remaining claimants have applied for legal aid but their solicitors do not expect the legal aid certificate to be available until middle to end of January. The Steering Group has explained that the Scottish actions are significantly behind those in England and Wales and that consequently in order for proper advice to be given as to the acceptability of the settlement and to avoid any charges of negligence on the part of the solicitors, it will be necessary for them to carry out a full scale assessment of the prospects before they can advise their clients on the suitability of the settlement. They have been unable to carry out investigation and preparatory work in the absence of legal aid cover. The solicitors estimate that the process of investigation will take about 6 months, and they do not envisage that advice could be tendered on whether the settlement should be accepted.

5. Such a delay is unlikely to be acceptable so far as Department of Health is concerned. It will not accord with the proposed timetable envisaged for England. If a strict time limit for acceptance of the offer is imposed, the Steering Group solicitors have indicated that they would have to consider whether they could carry out their investigations before the expiry date. If they concluded that they could not then they would so advise their clients that they are not in a position to give any advice on whether or not the settlement should be accepted. This could lead to possible criticisms that the Government is attempting to steamroller a settlement without giving an opportunity for proper investigation of the value of the claims and the consequent wisdom of acceptance of the offer. It would be difficult to argue that delay to date was the fault of the claimants or their advisers, especially in the legal aid cases. There could well be pressure then to extend the time limit for Scottish litigants and it may be prudent to allow the Scottish Group an extension of perhaps 2 months (ie to March/April) rather than the 6 months requested (ie to June/July). However, if an extension was granted, it could pose problems for Department of Health as it would continue to keep the issue in the forefront of people's minds. We are consulting Department of Health for their views.

6. We assume that Ministers would wish where possible for us to keep in step with the pace of developments in England and not to give any impression to the Scottish Steering Group that there may be scope to amend the terms of the settlement. However it is clear that the terms of settlement as advanced in England and Wales are proposed without regard to the situation of the Scottish claimants and there may well be pressure for such amendment. If Ministers agree therefore, the first stage will



be to issue an offer to the Scottish Steering Group based on the terms of the formal agreement as adjusted between Department of Health and the English Steering Group as soon as it is available and to review the position with Department of Health before advising Ministers further.

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G W TUCKER  
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ME3  
Room 161A  
SAH  
Ext. GRO-C

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