

## Background

1. Mr **GRO-A** is requesting documents relating to the Court of Appeal Hearing on 20 September 1990 in relation to the HIV haemophilia litigation. We believe that Mr **GRO-A** would like access to these papers as part of an on-going campaign calling into a public inquiry into why so many patients were infected with HIV and Hepatitis C through contaminated blood and blood products.

## HIV Litigation

2. In 1989, around 770 haemophilia patients, and 190 of their partners and close relatives took legal action against the Department, Welsh Office, the Medicines Licensing Authority and Committee on Safety of Medicines to claim compensation for damages, alleging negligence. The Government denied liability.

3. We understand that DH wanted to withhold from the court documents that were wanted by the legal representatives of people with haemophilia. This was because the DH considered that a claim for public interest immunity applied to them. I have found the following PQ reply from a debate in the HoC on 15 October 1990.

**Mr. Alfred Morris :** To ask the Secretary of State for Health why he withheld from the courts documents that are wanted by the legal representatives of people with haemophilia who contracted the AIDS virus in the course of National Health Service treatment ; and if he will make a statement.

**Mr. Kenneth Clarke :** A number of documents were withheld because the Department of Health considered that a claim for public interest immunity applied to them. This immunity cannot be waived by the Crown.

The documents in question related to the period of office of both the previous Labour Government and the present Conservative Government.

Public interest immunity is a principle of law that prevents the disclosure of documents on the grounds that production of those documents would be injurious to the public interest. The immunity prevents the disclosure of, for example, documents which concern the inner workings of the Government machine or policy making within Departments. In the course of his judgment in the Court of Appeal on 20 September 1990 Lord Justice Ralph Gibson said :

"The Department of Health has raised the matter of public interest immunity so as to prevent the disclosure of *[certain documents]*. The Department does not do that in order to put difficulty in the way of plaintiffs, or to withhold from the Court documents which might help the plaintiffs. The Department raises the matter because it is the duty of the Department in law to do so in support of the public interest and the proper functioning of the public service, that is the executive arm of the Government. It is not for the Department but for the Court to determine whether the documents should be produced. The plaintiffs acknowledge the validity of the claim to public interest immunity but ask the Court to order production notwithstanding the existence of a valid

claim to immunity. It is essential that the aspect of these proceedings should be clearly understood.

The valid claim to immunity to be overridden by the order of the Court if the law requires that it should be overridden. The task of the Court is properly to balance the public interest in preserving the immunity on the one hand, and the public interest in the fair trial of the proceedings on the other".

4. There is a submission on file to the Permanent Secretary dated 27 November 1990 about the HIV litigation. The submission makes reference to "a number of preliminary hearings to determine whether the Government should release certain documents for which PII is claimed (the Appeal Court found in favour of the plaintiffs). The main court hearing, scheduled to begin on 4 March 1991....."

5. However, it appears [*my conclusion*] that documents were not released because discussions were underway on a proposed settlement. A settlement was reached and details were announced on 11 December 1990.

#### **Papers requested under FOI**

6. We have two cabinets of papers (about 60 folders) which we understand were sent to our solicitors at the time of the litigation. However, it is not clear which papers, if any were made available to the plaintiffs lawyers.

7. A briefing note on file indicates that a search for some papers (about self sufficiency into blood products) from the 70's/early 80's could not be found. It has been suggested that some of these paper were marked for public interest immunity during the discovery process on the HIV litigation and were destroyed in error at some time in the mid 90's by a junior official.

Draft

GRO-A

Dear Mr. GRO-A

Thank you for your e-mail of 29 January to Melanie Johnson requesting documents which were the subject of a Court of Appeal Hearing on 20 September 1990 in relation to the HIV litigation. I have been asked to reply.

I am writing to advise you that following a search of our papers, I have established that the information you requested is [can not be located]

or

[has been destroyed in accordance with best records management practice]

If you are unhappy with the decisions made in relation to your request from this Department you may ask for an internal review. You should contact the FOI Unit, 360c Skipton House, 80 London Road, London, SE1 6LH if you wish to complain.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

If you have any queries about this letter, please contact me.

In your letter you also refer to the review of internal papers commissioned in 2002 about the issue of self sufficiency in blood products. I am sorry to say that officials have not managed to progress the report to completion. We are aware that it has been some time since the review was first commissioned and will seek to complete the report as soon as possible. We will of course, let you know when the report has been completed.