



OFFICE OF THE SOLICITOR

Department for Work and Pensions • Department of Health

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Anne.Mihailovic@ **GRO-C**

Your Ref:

Our Ref: AM/LAD/06/59/DH

Date: 8 June 2006

Dear Sir

**RE: HIV HAEMOPHILIAC AND HEPATITIS C LITIGATION -
DOCUMENTS RETURNED TO DEPARTMENT OF HEALTH**

Please find instructions to Counsel in respect of the above matter. As discussed my client department envisages at this stage that production of Counsel's report could be undertaken within a period of 40 hours maximum and I have approval for the necessary funding. However if on perusal of the instructions Counsel feels that the current time estimate is problematic, please do not hesitate to contact me.

Yours faithfully

GRO-C

ANNE MIHAIOVIC
(For the Solicitor)



**HIV HAEMOPHILIAC AND HEPATITIS C LITIGATION – DOCUMENTS
RETURNED TO DEPARTMENT OF HEALTH**

**INSTRUCTIONS TO COUNSEL TO EXAMINE DOCUMENTS
AND PREPARE A REPORT**

1. Counsel will find herewith:

- (1) 7 Lever Arch files containing copy extracts from the files of J Keith Park and Co and Ross and Co Solicitors.
- (2) 5 Lever arch files containing copy Department of Health documents in the possession of Blackett Hart and Pratt Solicitors.
- (3) Order dated 11 December 1991 made by Mr Justice Ognall
- (4) Copy of Internal Audit Report into destruction of Department of Health documents.
- (5) Copy of Article, Observer – 21 May 2006
- (6) Extract from Hansard – 24 May 2006

2. Counsel is instructed in this matter on behalf of the Department of Health. The solicitor with conduct is Anne Mihailovic of the Office of the Solicitor to the Department of Work and Pensions/ Department of Health and the relevant client contact in the Department is Dr Ailsa Wight, Head of the General Health Protection Programme.

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Background

3. The Government has accepted that a number of haemophiliacs were infected with HIV and Hepatitis C through infected blood products prior to the viral inactivation of blood products introduced in 1986 and introduction of the screening of blood donors in 1991. This led to litigation on behalf of haemophiliacs so infected in the 1980s and 1990s. Six claims by haemophiliacs infected with Hepatitis C were brought by Solicitors Ross and Co (who replaced J Keith Park and Co, Solicitors.) Papers from their files are among those returned to the Department. Blackett Hart and Pratt Solicitors ("BHP") acted as co-ordinating solicitors in the Hepatitis litigation, *A & Others v National Blood Authority*.
4. In February 2006 BHP contacted this office enclosing a copy of an order dated 11 December 1991 (see enclosure 3) made by Mr Justice Ognall in the HIV Haemophiliac litigation enabling Government documents from the HIV litigation to be used by claimants' lawyers in the Hepatitis litigation, subject to an undertaking that those documents or information gained from them would not be used for any other purpose than establishing liability in the Hepatitis litigation. BHP advised that they had been contacted by Mrs Carol Grayson (widow of the late Mr Peter Longstaff, a haemophiliac who died of infection with HIV/Hepatitis C) requesting sight of those documents. BHP informed Mrs Grayson that pursuant to the order of Mr Justice Ognall they were not permitted to allow her access to the documents.
5. Mrs Grayson is now involved with a pressure group, Haemophilia Action UK and has been actively campaigning for the disclosure of all relevant documents by the Department of Health in respect of contaminated blood products and for a public inquiry to be held. This campaign has some parliamentary support and the Department has already agreed that all relevant documents and information should be put into the public domain where possible. However it emerged at the time of the Hepatitis C litigation and has been made public that many relevant papers from the 1970's and 1980's have been destroyed. This has led to concern by members of the public active in the campaign and within parliament

that the documents now returned to the Department should be preserved under the most strict conditions of security and they have been kept securely under lock and key since their arrival at this office.

6. In spite of the fact that an internal inquiry was held into the destruction of the documents (see Enclosure 4) there remain suspicions as to the circumstances surrounding their destruction and accordingly Ministers have requested that independent verification of the documents returned to the Department be carried out in order to lay to rest any concerns that relevant documents may in the future disappear or be destroyed.
7. The return of these 12 lever arch files to the Department has led to some misreporting and heightened expectations from members of the public active in the haemophilia campaign. An article appeared in The Observer on 21 May 2006 (Enclosure 5) indicating that the returned files contain some of those documents which were previously destroyed. In view of the sensitivity of these documents, their high profile since they have been returned and the fact that it has been agreed that they should be inspected and logged by an independent person, Instructing Solicitor has not in fact been through or perused the documents personally. There is some urgency to establish the nature and importance of the documents and a parliamentary question was asked by Lord Jenkin of Roding on 24 May 2006 (see Enclosure 6). At least 3 Freedom of Information Act request for copies of the documents are also outstanding.
8. During the course of the litigation, to which the Department itself was never a party, the Department was advised generally and specifically on the question of discovery by Justin Fenwick QC. Instructing Solicitor's understanding is that the cases were eventually settled out of Court by payment of compensation. There are a large number of general litigation files and papers relating to this litigation but Instructing Solicitor, who did not have conduct of this matter at the time, has not been through these as this would not seem to be required at this stage.

Instructions

8. In order to meet the concerns expressed by members of parliament and Ministerial commitments in the face of those concerns, Counsel is instructed to:

- (1) Examine and log each of the documents/classes of documents contained in the 12 lever arch files herewith which have been returned to the Department.
- (2) Produce a short description of the document or classes of documents and brief initial assessment of its likely relevance/importance.
- (3) Identify generally whether the documents are likely to be exempt from publication under the Freedom of Information Act or Data Protection Act provisions.
- (4) Produce a report for the Department dealing with the above issues by Friday 16 June 2006. Counsel should not hesitate to contact instructing solicitor Anne Mihailovic 020 7412 1550, Anne.Mihailovic@GRO-C if she has any queries in respect of this matter or wishes to discuss the matter.

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HEPATITIS C LITIGATION –
DOCUMENTS RETURNED TO
DEPARTMENT OF HEALTH**

INSTRUCTIONS TO COUNSEL

Leigh-Ann Mulcahy
4 New Square
Lincolns Inn

The Solicitor to the
Departments of Health and
Work and Pensions
New Court, 48 Carey Street
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Ref: AM/LAD/06/59/DH

RECEIVED BY:	David
DATE RECEIVED	08 JUN 2006
CASE No:	85656