

POLICY IN CONFIDENCE

PS/SofS

From: Roger Scofield HC(A)4

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cc: Mr Sands PS/MS(H)
Mr Armstrong PS/PS(H)
Miss Burnett PS/PS(L)
Mrs Campey Sp Ad
Mr Marsh Sp Ad
Ms Wright PS/PS
Mrs White PS/CE
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Mr Wilson HC(A)
Mrs Firth FCI-A
Mr Kendall FCIA2
Mr Thompson AIDS Unit
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BLOOD TRANSFUSION PATIENTS WITH HIV

Background

1. William Chapman's minute of 5 February recording the meeting between the Prime Minister and a group of senior Conservative MPs noted that Mr Major agreed to consider further the question of financial help for people infected with HIV through blood transfusion or tissue transplant and to discuss it with S of S and the Chief Secretary. The minute called for a progress report on the latest position, including negotiations between DH and the Treasury. I understand that S of S is minded to send a robust personal note to the Prime Minister seeking his intervention with the Treasury to enable a settlement to be reached.

2. A draft minute is attached.

Finding the money

3. Peter Kendall's minute of 17 January set out the options for finding the money and the potential difficulties of implementation. He concluded that a sum of up to £12 million could be found in 1992/93 by reviewing priorities on spending with a view to deferring some expenditure into subsequent years and/or by aiming to cover the sum through shortfalls arising through the year. A further option was to defer matters until the Autumn to give time to make a bid through PES 1992.

Linkage with Doctors and Dentists over payment

4. S of S wrote to Chief Secretary 27 January insisting that there should be no linkage between his claim for a contribution from the Reserve towards the cost of a settlement for the blood transfusion patients and the overpayments to doctors and dentists. He recognised the difficulty in providing resources from the Reserve and would investigate what scope there might be for longer-term action on the blood transfusion patients though remaining firmly of the opinion that the provision of £6 million from the Reserve - to match £6 million which he believed could be paid from existing provision - remained politically and morally the correct course. There have been no further discussions with the Treasury at official level.

Timing of payments

5. In my minute of 5 February (attached for some addressees) I indicated that from the experience of dealing with the haemophiliac settlement and having regard to the greater complexities in the non-haemophiliac cases, I thought it likely to take three to six months to get a formal compensation system up and running. However, if the over-riding priority was to make some payments as soon as possible after an announcement there are 21 cases which we are told have been validated by the CDSC and the Department could make payments to at least some of these cases during this financial year at a maximum cost of £2 million to £3 million. Finance colleagues confirm that such money could be found. An early decision would be necessary to clear the many administrative hurdles, including amending DSS regulations so that payments from the Department will not affect entitlement to social security and other statutory benefits.

Ring fencing

6. Both the Prime Minister and the Chief Secretary have emphasised the need to establish a robust position on ring fencing. This is difficult as a settlement now for recipients of HIV-infected blood and tissue following public clamour may well encourage claims from those damaged by hepatitis, CJD or other medical accidents. Ministers will be seen as susceptible to public pressure if only it is intense enough. Ministers will be more vulnerable on the 'no fault compensation' issue. On the other hand if a line has to be drawn on which to stand ground the distinction between recipients of Factor 8 and whole blood is proving a very weak position to defend and there is little public understanding or sympathy for the Department's position. Compensation for HIV infected patients from the non-haemophiliac group would at least be limited to cases where HIV infection, likely to lead to fatal illness, had been brought about through NHS treatment.

Conditions of payment

7. It is assumed that, as with the haemophiliacs, blood and tissue recipients who accept payment will be required to give an undertaking not to pursue legal action against the Government or Health Authorities on broad policy or operational issues. Allegations of medical negligence against HAs in respect of individual treatment could still be pursued.

Handling

8. Officials have been working, on a contingency basis, on a scheme for handling ex gratia payments to this group modelled on the haemophiliac settlement. It is expected that greater use would have to be made of a three-man expert advisory board to judge eligibility. Discussions with third parties, eg the Solicitors for the litigants, cannot go ahead until such time as an announcement is made, nor have we pursued certain matters with CDSC or NBTS lest this be seen to signal a change of policy. However, we hope to be able to put up a fairly detailed submission on such a scheme next week.

9. If the Prime Minister does intervene to break the impasse with the Chief Secretary, Ministers will wish to decide when and how to make an announcement. There are no new factors which can be drawn on to justify a change of policy. Ministers may therefore have to say that they are respecting the overwhelming wishes of Members of the House. An announcement by means of an arranged PQ would probably be appropriate.

GRO-C

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