

DEPARTMENT OF HEALTH

FACIMILE MESSAGE

EHF1A

TO:.....*Ron Powell*.....

FAX NUMBER.....GRO-C.....

NUMBER OF PAGES (excluding this cover).....*1*.....

ACTION.....*Early thoughts on medical negligence*
.....*procedure from John!*.....

.....
.....
.....
.....
.....

Elaine

12/12

MISS ELAINE WEBB

FROM.....

EHF1A Room 516 Eileen House

ADDRESS.....

GRO-C

(GTN GRO-C)

TELEPHONE NUMBER.....

Department of Health
Room 516 Eileen House
80-94 Newington Causeway
Elephant & Castle
LONDON
SE1 6EF

FAX NUMBER GRO-C
GTN GRO-C

CD-11.12

Draft 1

Medical negligence cases: Criteria

1. Unnecessary medical treatment of mild haemophiliacs led to use of F8 which on balance of probabilities was responsible for HIV infection Jan 1984 (Whether mild or not)
2. Unnecessarily large use of F8 in (mild haemophiliacs which on balance of probabilities was responsible for HIV infection Jan 85
3. Use of non-heat-treated F8 for mild or virgin haemophiliacs when heat-treated available, which on balance of probabilities was responsible for HIV infection. in reasonable quantities
Jan 85
4. Failure to advise haemophiliacs of risks of of treatment where the situation was not very severe or life threatening
of HIV
5. Failure
Jan 85 to take account of express wishes of patient in respect of elective treatment, specific manufacturer etc.]

In every case the critical event to have occurred after a cut-off date to be agreed [opening bid: January 1985].

6. Elective surgery ^{treat or prophylaxis} at a time when risk of HIV is high or known
e.g. in 1984 onwards

1. Inappropriate use of concentrate e.g. in a mild haemophiliac
5. Failure to keep promise to act upon the wishes of a patient in respect of elective treatment, use of specified product, etc. at any time
7. Failure to tell haemophiliac of result of HIV test within a reasonable period, and of risks in sexual relationships when known to be positive. From mid 1984 (?)

From Ron Powell 2pm 12/12.

- 28683 fax

Re: HIV HAEMOPHILIA LITIGATION

PROPOSED DETAILED TERMS OF SETTLEMENT

- 1 (1) The sum of £42 million to be provided to the
 (MacFarlane Trust) is based on the following provisional
 figures for each category of affected haemophiliac or
 dependant: intimate

<u>Category</u>	<u>Number</u>
Child (Infant)	175
Single man	533
Married but childless	214
Married with children *	293
Infected intimates	25
Category G	150

* "Children" here means dependant minors and
 adult children in full-time education.

described men
 beyond 18

- (2) A separate Trust will be established with the
 existing Trustees of the MacFarlane Trust as Trustees
 of the settlement, to pay the following sums to each
 category of affected haemophiliac or dependant: intimate

Child (Infant)	£21,500 each
Single adult	£23,500 each
Married adult without dependant children	£32,000 each

Where evidence of donor status haemophiliac is shown under annex schedule H hereto shall be deemed to be in stable relationships.

Married adult with dependant children	£60,500 each
Infected intimates	£23,500 each
Category G Plaintiffs	£ 2000 each

(3) The definition of each of the categories is as follows:-

1. ^{Infant} Child - ^{person} an infant under 18 years at the date hereof who is a haemophiliac who has been treated with Factor VIII or Factor IX and has become infected with HIV, whether or not such ^{person} infant has yet developed AIDS.
why did Govt not put in!
2. Single adult - an unmarried, divorced or widowed ^{haemophiliac} haemophiliac with no dependants who has been treated with Factor VIII or Factor IX and has been infected with HIV, whether or not such adult has yet developed AIDS.
widowed such a haemophiliac.
3. Married, but childless - ^{divorced with dependant spouse} an adult who is married ^{or} in a stable relationship but without dependant children who is a haemophiliac who has been treated with Factor VIII or Factor IX and has become infected with HIV.
OK treatment

whether or not such adult has yet developed AIDS.

4. Married with children -

(w/under of a haemophilic)
an adult haemophiliac ^h with dependant children who has been treated with Factor VIII or Factor IX and has become infected with HIV

whether or not such person has yet developed AIDS. *plus those the spouses of those haemophiliacs whose act's was not set out in Schedule 5 hereto.*

5. Infected intimates -

those Plaintiffs who have issued and served Writs prior to the date hereof and who fall within Category *plus (d)* (c) as set out within paragraph 2

of the Re-Amended Main Statement of Claim. *and those act's number not set out in Schedule 6 hereto.*

6. Category G -

Plaintiffs who have issued and served Writs prior to the date hereof and who fall within Category *the definition* (g) as set out in paragraph 2 of the Re-Amended Main Statement of Claim (for the purposes of these definitions "children" means dependant minors and adult children remaining in full-time education). *and those act's number not set out in Schedule 7 hereto.*

*discretionary power being brief**do not know
need to be
reconsidered
goes to estate*

(4) Each of the above categories will include the estates of those persons who have died but who would otherwise fall within one of the above categories.

*Belonging
to category G*

(5) In the event that the numbers of affected haemophiliacs and ^{infected} intimates who have already been infected with HIV and/or ^{infected} the number of existing Category (g) Plaintiffs is greater than the number set out at paragraph 1(1) above, the First Central Defendant will pay to the new MacFarlane Trust Fund sufficient sums to make similar payments at the rates set out in paragraph 1(2) above to each qualifying person.

*in E+W?**or with make
a claim for them
3 months of
settling up to
Trust*

(6) The above payments will be made to all Plaintiffs in the existing co-ordinated arrangements ^(E+W) and to all haemophiliacs (and their estates where appropriate) currently registered with the MacFarlane Trust. Those haemophiliacs and intimates infected with HIV who are not presently Plaintiffs in these proceedings and who have not yet registered with the MacFarlane Trust shall be entitled to receive payments as set out above provided that they apply to the MacFarlane Trust within ^{within 3 months of Trust} a period of three months from their first becoming aware that they are HIV positive or three months from the date hereof, whichever is the later.

(7) The distribution of those sums between different

*Separate arrangements to cover
any plaintiffs in Scotland
covered by above definition*

imminent
whereby
tariff - is it
based on
not

beneficiaries and classes of beneficiary will be at the discretion of the (MacFarlane Trust), but they will be invited to have regard to the apportionment proposed by the Steering Committee and any other representations which may be put forward by the Steering Committee or Haemophilia Society. *[Plus SHAD / AI representations]*

(8) In the event that the numbers of ^{injected} affected haemophiliacs and those in other categories are greater than those set out above, or in the event that additional affected haemophiliacs or dependants come forward subsequently as provided below, the sum of £42 million will be apportioned between the above persons, and the Government will provide to the MacFarlane Trust sufficient additional funds to permit such additional applicants to receive the same level of payments as those paid to the original group out of the £42 million. However, the maximum amount available for Category G Plaintiffs will not exceed £300,000 *in total*

very needed
if
needed
to

(9) The MacFarlane Trust will be requested to have regard to the individual family circumstances and dependancy of beneficiaries, but the payments will not be subject to any means test.

duplication
76

(10) Haemophiliacs or their intimates who are not presently Plaintiffs in these proceedings or registered with the MacFarlane Trust shall be entitled to

participate in the benefits provided under this settlement provided that they notify the MacFarlane Trust within a period of three months from their first becoming aware that they are HIV positive or three months from the date hereof, whichever is the later.

2. The sum of £42 million will be paid not later than 30th April 1991. A first tranche of up to £12 million will be made available prior to 1st April 1991 for immediate distribution if specifically requested by the MacFarlane Fund.

3. Sums received ^{from} through the (MacFarlane) Trust will continue to be ignored in assessing entitlement to State Benefits ^{disregarded} (of affected haemophiliacs). In the case of sums received by dependants of affected haemophiliacs, whether such sums are received directly or by inheritance, they will be disregarded in assessing entitlement to State benefits to the following degree:-
- Statutory*

(1) in the case of spouses or persons in stable relationships with affected haemophiliacs, such disregard will continue throughout their life;

(2) in the case of children, such disregard shall continue during their infancy and for such time as they remain in full-time adult education but

thereafter shall be taken into account in the usual way.

4. These payments are made on behalf of the First Central Defendants and not on behalf of any other Defendant and are made without any admission of negligence, breach of statutory duty or other liability.
- hereby
S. [unclear]*

5. The Plaintiffs will discontinue their actions against all Defendants and will undertake not to bring fresh proceedings, save that those Plaintiffs who have already made allegations as to clinical management shall be entitled to pursue that element only of these claims against the relevant Health Authority. For the purpose of this settlement allegations as to clinical management shall be those parts of Sections 7 and 8 of paragraph 92 of the Re-Amended Main Statement of Claim which involve specific allegations of medical negligence in individual cases, as further defined in Schedule 1 hereto. In such cases, the paragraphs of the Re-Amended Main Statement of Claim set out in Schedule 2 shall be struck out. A list of all cases in which the Plaintiffs propose to pursue claims as to clinical management shall be provided to the Treasury Solicitor and to the Health Authority Defendants' Solicitors by 11.. January 1991.
- noted*
- X

6. Any qualifying non-plaintiff shall be entitled to

weave
S. H. M. I.
after
presented
date

reflect my be
already be
highly
Scotts
not
but
any
actions

receive benefits from the MacFarlane Trust corresponding to their circumstances upon signing an undertaking not to bring proceedings against any Defendant or against any other Government body.

7.

The First Central Defendants will indemnify the Plaintiffs against any claim for costs by any other party (other than costs relating to issues of clinical management which are pursued notwithstanding this settlement) and will pay to the Plaintiffs their costs of these proceedings on the following basis:

- (1) there shall be a legal aid taxation of all the Plaintiffs' generic costs and all such costs shall be paid by the Legal Aid Fund on the usual basis. The First Central Defendants will give the Legal Aid Fund a complete indemnity in respect of such costs;
- (2) there shall be a legal aid taxation of the individual non-generic costs of legally aided Plaintiffs and the First Central Defendants will give the Legal Aid Fund a complete indemnity in respect of such costs;
- (3) the individual non-generic costs of the non-legally aided Plaintiffs will be taxed on an indemnity basis and will be paid by the First Central Defendants.

8. The settlement will be announced in Open Court and Counsel for the Plaintiffs and all Defendants will have an opportunity in appropriate cases to explain why it should be approved.
9. *only* The Government is resolved to take all steps that are reasonably possible to give affected haemophiliacs and their affected intimates, as well as all others infected with AIDS, the best available treatment to delay and alleviate the effects of HIV infection.
10. All further proceedings in these actions shall be stayed forthwith with liberty to apply, such stay to be lifted either on the announcement of a final settlement or otherwise at the discretion of the Court.
11. The First Central Defendants' liability for costs will extend up to but not beyond costs incurred prior to 13th December 1990 save that the First Central Defendants will pay on the above basis the costs of all parties of conveying the proposed terms of settlement to their clients, their reasonable costs of giving advice as to the proposed settlement and the costs of concluding the approval of this settlement. For the avoidance of doubt this will include the reasonable costs of advising in relation to issues of clinical management those Plaintiffs who subsequently discontinue all proceedings but shall not extend to any

costs incurred after 13th December 1990 in relation to clinical management issues of those who pursue claims against the Health Authorities for clinical management notwithstanding this settlement.