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HIV Haemophilic Litigation

## Draft Settlement Agreement

(16.04.91)

Plaintiffs' suggested amendments by riders.

## RIDER

1. or to the current Plaintiff in the action in question or to the widow or widower of the infected haemophilic or intimate in question
2. or current Plaintiff in the action in question or widow or widower of the infected haemophilic or intimate in question
3. :
- (1)
4. (2) Nothing herein shall prevent a Plaintiff from bringing proceedings in respect of the administering prior to 13th December 1990 of Cryoprecipitate, Factor VIII or Factor IX where:
- (i) that has caused damage to such Plaintiff which had not been diagnosed by 13th December 1990; and/or
- (ii) the damage alleged does not include infection or the risk of infection by HIV and/or the hepatitis viruses.
5. save that nothing herein shall prevent a qualifying non-Plaintiff from bringing proceedings in respect of the

Not sure we  
can agree  
this

=&gt;

✓

administering prior to 13th December 1990 of Cryoprecipitate, Factor VIII or Factor IX where:

D:He

- (i) that has caused damage to such Plaintiff which had not been diagnosed by 13th December 1990; and/or
- (ii) the damage alleged does not include infection or the risk of infection by HIV and/or the hepatitis viruses.

6. (9) Where a Plaintiff has not been legally aided throughout the proceedings, the Plaintiff's individual non-generic costs in any period when no legal aid certificate was in force will be taxed on an indemnity basis and will be paid by the First Central Defendant

✓ 7. since 13th December 1990

✓ 8. by 31st July 1991

✓ 9. within a reasonable time thereafter

✓ 10. (to his or her knowledge at the date hereof)

✓ 11. delete (1)

✓ 12. delete (2) and renumber as (11)

✓ 13. delete "a Plaintiff" and replace by "Plaintiffs"

✓ 14. delete (11) and renumber as (12)

745. ✓ 15. and others

✓ 16. and of coordinating the obtaining of all documentation and information required within the terms of the settlement and in order to carry it into effect

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## NOTE

Can you also consider the following points:

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- a. On P.10 in para (2) and para (4) should (7) be read for (2) ?
  - b. On P.15: Medneg Plaintiffs:
    - i. Does DOH pay the Plaintiffs' own pre-13.12.90 costs, whatever the outcome of the Medneg claim?
    - ii. Does DOH indemnify Plaintiffs against claims by Health Authorities for costs where:
      - (a) the case is dropped at the end of the DAC process;
      - (b) the case is not dropped at the end of the DAC process
  - c. On P.16: the question of inserting 24.12.86 as the threshold date for the coordination; Ronald Powell agreed that at a meeting in February 1991.
  - d. P.20/21, Sch 8: J Keith Park agrees this form of schedule; it is Nicholas Underhill who does not. I am seeing Nicholas about it tomorrow at Noon at 2 COR.
- ✓



(ii) includes an adult child whose full-time education has been interrupted for a period or periods of not more than one year; and

(iii) does not include an adult child whose full-time education is provided by his employer as part of the terms and conditions of his employment or an adult child who during his full-time education receives payments from a person or body with whom he has undertaken to work on completion of his education;

(b) "living with a partner" means living:-

(i) as the husband or wife of that person, and

(ii) in the same household as that person.

(4) Where an infected haemophiliac or intimate has died prior to the date hereof, the appropriate sum as set out in paragraph 1(2) above will be provided to the new Macfarlane Trust for the purpose of paying such sum to their personal representatives <sup>①</sup> for the benefit of the estates and dependants under The Fatal Accidents Act of such deceased person and the relevant payment shall be made by such

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personal representatives <sup>(2)</sup> in accordance with the provisions of Schedule 7 hereto.

(5) For the avoidance of doubt, except in the case of Category G Plaintiffs, no person or their estate and/or dependants, shall be entitled to be included in more than one of the above categories (other than in the capacity of a personal representative or dependant of a deceased haemophiliac or intimate).

(6) In the event that the numbers of qualifying persons in Categories 1 to 6 above is such that the sum of £42 million is insufficient to provide for the making of the relevant payment to each of them, the First Central Defendant will pay to the new Macfarlane Trust Fund sufficient additional sums to make similar payments at the rates set out in paragraph 1(2) above to each qualifying person.

(7) The above payments will be made to :-

- (i) all plaintiffs in the existing co-ordinated arrangements whose reference numbers are set out in the Schedules hereto, and
- (ii) any other haemophiliacs infected with HIV through treatment in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate)

against any Defendant or against any other Government Department, Health Authority or treating doctor in respect of the administering prior to 13th December 1990 of cryoprecipitate, Factor VIII or Factor IX, save that <sup>③</sup>those Plaintiffs whose code numbers are set out in Part 1 of Schedule Eight hereto shall be entitled to pursue that element only of these claims against the relevant Health Authorities provided that they comply with the directions laid down by the Court on 1st March 1991. For the purpose of this settlement allegations as to medical negligence 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 Part 2 of Schedule Eight hereto.

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6. In the event that any Plaintiff pursues claims against Health Authorities for medical negligence, the entirety of such sums as that Plaintiff may receive under the terms of this settlement through the new Macfarlane Trust shall be brought into account in assessing what damages if any such Plaintiff is entitled to receive from the appropriate Health Authorities in respect of the allegations of medical negligence made against such Health Authorities, but only insofar as such damages are awarded in respect of infection or the increased risk of infection of the Plaintiff with HIV or other viruses. For the avoidance of doubt, the fact that a Plaintiff pursues claims against Health Authorities for medical negligence shall not disentitle or delay such Plaintiff from receiving all sums due to it under this agreement save insofar as set out above.



7. The First Central Defendant will use its best endeavours to secure that sums received under this settlement shall not be taken into account in assessing entitlement to legal aid or any contribution thereto in respect of the pursuance of such claims against Health Authorities for medical negligence and shall not be subject to the Legal Aid Board's statutory charge in respect of costs incurred in pursuing such claims for medical negligence.

8. Any qualifying non-plaintiff shall be entitled to receive benefits from the new Macfarlane Trust corresponding to their circumstances upon signing an undertaking not to bring proceedings against any Defendant or against any other Government body in respect of the administering of cryoprecipitate, Factor VIII or Factor IX before 13th December 1990<sup>(5)</sup>

9. The First Central Defendants will indemnify the Plaintiffs against any claim for costs by any other party (other than costs relating to issues of medical negligence which are pursued notwithstanding this settlement) and will pay to the Plaintiffs their costs of these proceedings against all Defendants together with interest on such costs from 30th April 1991 until payment at the Judgment Act rate on the following basis:

(1) The proportionate liability of all legally-aided Plaintiffs for the generic costs of the Plaintiffs shall be ascertained in the manner laid down in the Order of Mr Justice Ognall made on 24th July 1982

(7) 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;

(8) 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;

(6)

10. 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.

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 conveying the proposed Terms of Settlement to the Plaintiffs, their reasonable costs of being advised as to the proposed settlement, the reasonable costs of considering and negotiating the terms of the proposed Settlement and of any application to the Court in connection with the proposed Settlement other than the hearing on 27th March 1991<sup>(15)</sup> and the costs of concluding the approval of this settlement. For the avoidance of doubt this will include the reasonable costs of advice prior to 30th April 1991 in relation to issues of medical negligence in the case of those Plaintiffs who subsequently discontinue all proceedings including the consideration of the reasons for rejection of such claims by the Health Authorities



received from the new Macfarlane Trust will be ignored in assessing entitlement <sup>(7)</sup> to <sup>(15)</sup> social security benefits of the beneficiaries of the Trust, so as to implement the assurance given by the Secretary of State for Health in Parliament on 11th December 1990 that payments from the new Macfarlane Trust will not affect entitlement to social security and other statutory benefits. The Secretary of State for Health will use his best endeavours to ensure that such regulations having been laid <sup>(3)</sup> are approved and brought into being <sup>(9)</sup>. It is the common intention of the parties that such disregard for such purposes shall extend to the categories of persons set out in Schedule 9 hereto and to the extent there set out and that the said regulations shall so provide.

4. (1) 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. The First Central Defendant maintains its denial of any legal liability whatever.

(2) For the avoidance of doubt the Second and Third Central Defendants are not contributing to this settlement and firmly deny any duty of care owed to individual plaintiffs and any breach of any duty whatsoever.

3. The Plaintiffs will discontinue their actions against all Defendants and will undertake not to bring fresh proceedings

(iii) HIV infected spouses or partners or former spouses or partners of haemophiliacs in paragraph (i) above provided that the names of such spouses or partners are included in Schedules 3 or 4, and

(iv) any other HIV infected spouses or partners or former spouses or partners of a haemophiliac referred to in paragraph (i) or (ii) whether or not such spouses or partners are plaintiffs in the existing co-ordinated arrangements, provided that such person was infected through their haemophiliac spouse or partner before the 13th December 1990. 10

Provided that in the case of (ii), (iii) and (iv) applications made to the new Macfarlane Trust within three months of the date of the creation of the Trust.

(8) The provisions of the new Macfarlane Trust will also apply to the following categories of persons who have not as yet been informed that they are HIV positive:-

- (1) any haemophiliac who by 13th December 1990 had not been tested for HIV and who upon first testing is found to be HIV positive and who would otherwise be eligible under one of the other categories of

solicitors as soon as possible and by 30th April 1991 at the latest.

(10)(1)

Those Plaintiffs in respect of whom the First Central Defendant has not yet accepted that they fall within the category claimed are shown with a # sign in the Schedule relating to the category which such Plaintiff's solicitor has asserted as appropriate.

(12)  
(2)

The Plaintiffs and First Central Defendant will use their best endeavours to agree the appropriate category for such a Plaintiff as soon as possible and by 30th April 1991 at the latest.

(14)  
(11)

In the event that the category of a Plaintiff cannot be agreed between the parties, or that any Plaintiff or the First Central Defendant wishes to assert at any time prior to 31st October 1991 that a Plaintiff has by error been placed in the wrong category, the issue of the category to which that Plaintiff properly belongs shall be tried by Mr. Justice Ognall whose decision shall be final and binding.

2. The sum of £42 million will be paid not later than 30th April 1991.

3. The Secretary of State for Health will procure that there are laid before Parliament regulations providing that