

MAIN ISSUES OUTSTANDING ON THE SETTLEMENT

1. The main issues which have held up the conclusion of the settlement are as follows:

- i. categorisation of plaintiffs. As S of S will recall from the "Sunday Times" article, there have been delays on the part of the plaintiffs' solicitors in assigning plaintiffs to the various payment categories and in providing the minimal supporting evidence that would enable us to agree the assignment. This work is now largely completed. So that payment to the majority is not held up as a result of a handful of difficult cases, our leading Counsel has drafted an extra clause into the settlement allowing either side to propose changes to a plaintiff's category after conclusion of the settlement, with final decision by the trial judge if the two sides cannot agree. This appears to solve the problem to everyone's satisfaction.
- ii. clinical negligence cases. J Keith Park were unhappy with the criteria drawn up by our counsel to define which allegations could be pleaded by plaintiffs who wish to continue proceedings against individual health authorities. They have drawn up an alternative draft of their own. This has in turn been rejected by the HAs' solicitors, and further discussions are taking place. We hope that this can be resolved on Monday, possibly by going back to a version of the original draft, which we understand will be acceptable to the majority of the plaintiffs' solicitors.
- iii. legal aid claw-back. The Legal Aid Board have recently suggested that, where a legally-aided plaintiff decides to continue with a clinical negligence action against an individual HA, the payment made under the main settlement should be retained by the Board in case the plaintiffs' case fails. This goes against the spirit of ministers' undertaking that plaintiffs should be free to accept the main settlement but continue with a clinical negligence action. We are seeking an urgent meeting with the Legal Aid Board to see if this can be resolved.
- iv. social security disregards. S of S will be aware that the plaintiffs have been pressing for further concessions so that anyone who inherits from a haemophiliac will not have entitlement to social security removed as a result. J Keith Park have now put the case for 3 specific concessions; DSS officials are recommending Mr Newton to accept one and reject the other two (which would result in a further delay in laying the regulations). We understand that J Keith Park would be prepared to recommend this outcome to their clients, but may still seek to generate further adverse publicity. The other solicitors are expected to accept the outcome without any difficulties.

2. Of these issues, the only real remaining difficulties are over

items ii. (which may be resolved on Monday) and iv. (where we have almost certainly gone as far as we can). Item iii. is technically difficult but there is no real difference of intent between the two sides and it should be possible to find a solution outside the main settlement. In our view therefore, the time has come to call a halt and to conclude the main settlement so that payments can begin as soon as individual plaintiffs have accepted the offer.