

cd-18.4

Mr Alcock PS to S of S

From: J C Dobson EHF1

Date: 18 April 1991

cc: Mr Sands PS/MS(H)  
Mr Heppell HSS  
Mr Thompson SOL  
Mr Powell SOLB3  
Dr Rejman MEDISP  
Mr Kendall FA2  
Mr Gutowski MCA  
Mr Canavan EHF1 o/r  
Mr Clark ID  
Mr Provan DSS  
Mr Tucker SHHD  
Mr Scott DHSS(NI)  
Mr Williams WO

#### HIV HAEMOPHILIA LITIGATION

##### Summary and recommendations

This submission invites Secretary of State to give authorisation to officials

- i. to make a final offer to the solicitors for the plaintiffs in the HIV/haemophiliac litigation
- ii. to make payments to individual plaintiffs on receipt of a letter of discontinuation, rather than wait until a preset number of such acceptances have been received.

##### Present position

1. Detailed negotiations on the terms of settlement have reached the point at which, - in our judgement and that of the majority of the plaintiffs' solicitors - no further worthwhile progress is likely. A minority faction among the plaintiffs' solicitors, led by the Mersey firm of J Keith Park, were until very recently attempting to prolong the negotiations in the hope of securing further concessions, but the latest indications are that they too will now recommend their clients to settle. A detailed note on the four main points at issue is at Annex A.

2. The steering group of the plaintiffs' solicitors have suggested that we should exchange letters to agree the terms of the final offer, which they would then recommend to their clients. A suitable draft is at Annex B. If this exchange of letters can take place tomorrow, payments to plaintiffs and non-litigants accepting the offer could begin as early as the week beginning 29 April, ie around or just before the next Court hearing on 1 May which will have to approve the settlement for minors.

3. Our advice is that the time has come to call an end to the negotiations and that a final offer should be made. Once payments have begun for the great majority of plaintiffs, we believe that there will be great pressure on any remaining waverers among the provincial solicitors to fall into line. The only significant issue on which any

dissidents might still be looking for further concessions is on the question of social security disregards for money inherited from a haemophiliac or other primary beneficiary (see Annex A para iv). They might attempt once more to enlist the support of the media, but we would be able to argue in return that the concessions already made have been accepted by the vast majority of the plaintiffs (and by their own steering group) as fair and reasonable, and that we did not want any further discussions to hold up the payments any more. We therefore recommend that a letter along the lines of Annex B should be sent as soon as possible.

#### Payment against individual discontinuation letters

4. The offer letter, as drafted, does not make the offer conditional on any particular number or percentage of litigants accepting it. This means in effect that we would be able (and obliged) to pay out to individual plaintiffs on receipt of a letter from them accepting the offer and agreeing to discontinue the action against the central defendants. Proceeding in this way entails a theoretical risk that the number of acceptances might fall short of the 95-99% which ministers had in mind when the decision was taken to offer a settlement. In practice we believe that the vast majority of plaintiffs will accept the offer. Building in some form of "threshold" condition into the offer letter, so that payments could only begin when say 95% of plaintiffs had accepted, would be seen as grudging and would seriously delay making any payments. We therefore recommend that the offer letter should be unconditional.

#### Scotland and Northern Ireland

5. Once the final form of the England and Wales settlement is available, colleagues in Scotland and Northern Ireland will be able to make a similar offer to end the separate litigation in those two countries. There is however likely to be a little delay before plaintiffs are able to accept the offer, since their legal advisors have consistently refused to make any detailed analysis of the offer until it is available in definitive form. There is no reason to expect any significant number of plaintiffs in these two countries to refuse the offer once made.

#### Conclusion

6. Secretary of State is invited to agree that

- i. a letter conveying the government's final offer should be sent as soon as possible to the steering group of plaintiffs' solicitors
- ii. this letter should enable payments to be made at once to individual plaintiffs on receipt of a letter of discontinuation, without waiting for a given number of acceptances to be received.

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