



OFFICE OF THE SOLICITOR  
DEPARTMENT OF SOCIAL SECURITY  
DEPARTMENT OF HEALTH  
New Court, 48 Carey Street, London, WC2A 2LS

071-972-1300 (Switchboard)  
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To Solicitors acting  
for plaintiffs in the  
HIV Haemophilia Litigation

Your reference

Our reference

Date

1 May 1991

~~CONFIDENTIAL~~  
**CONFIDENTIAL**

Dear Sirs

**HIV HAEMOPHILIA LITIGATION**

The Department of Health is now prepared to settle the individual actions which form the above co-ordinated arrangements. The terms on which the Department is prepared to settle are those annexed.

The extent of the proposed Social Security disregard has been covered in correspondence between myself and Mark Mildred of Pannone Napier, copies of which are attached. The Department of Social Security is also proposing to extend the disregard which applies to money passing from a haemophiliac to his parents, step-parents or guardian, to life-time transfers, the disregard to apply from the date of payment until two years after the haemophiliac's death.

Please could you confirm as soon as possible with each of your clients that they are prepared to settle their claim on the above basis, in accordance with the procedure advised by the Steering Committee.

Yours faithfully

GRO-C

RONALD POWELL

ENCS:



**OFFICE OF THE SOLICITOR**  
**DEPARTMENT OF SOCIAL SECURITY**  
**DEPARTMENT OF HEALTH**  
New Court, 48 Carey Street, London, WC2A 2LS

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Messrs Pannone Napier Solicitors  
20/22 Bedford Row  
London  
WC1R 4EB

Your reference

Our reference

Date

16 April 1991

FOR THE ATTENTION OF MR M MILDRED

Dear Mr Mildred

**HIV HAEMOPHILIAC LITIGATION : SOCIAL SECURITY DISREGARD**

You asked me to comment on some aspects of the Social Security disregard as set out in my letter of the 9th April 1991:-

(i) I confirm that the phrase "for an indefinite period" means for the life of the individual concerned.

(ii) I confirm that a reference to a child who is dependant member of a family would include a child who is living with the family and for whom the husband and wife are responsible. (They would normally received Child Benefit for this child). It seems to me therefore that this would cover a "child of the family" for matrimonial purposes.

(iii) The Department of Social Security do not consider that it would be appropriate to extend the meaning of "dependant member of a family" to include someone in advanced education, because that person will be able to claim benefit, educational grants etc, in his or her own right and will no longer be dependant on his parents for benefit purposes.

(iv) Where eg, woman A is infected by haemophiliac B, but subsequently marries C (a non-haemophiliac) and has children by C, the disregard is not intended to operate to benefit C or those children.

(v) The existing provisions will be replaced by new ones which will be more generous. My understanding of the first Special Payments Trust, the earlier regulations and the latest draft regulations is that there will be no detriments to parents of a deceased haemophiliac who received money in their own right from the earlier Special Payments Trust.

In summary therefore the main points of the disregard as set out in my letter of the 9th April 1991 are as follows:-

Haemophiliac

Disregard to apply for life to his own payment and to any of his partner's payment which he receives, whether in the latter case as a life-time transfer from her or on her death.

Partner of a Haemophiliac

Disregard to apply for her life to her own payment and to any of her partner's payment which she receives, whether in the latter case as a life-time transfer from him or on his death.

Children of a Haemophiliac (Including Step-Children and "Children of the Family")

Disregard to apply to payments received from parents (whether as a life-time transfer or on a transfer on death) for so long as the child's parent or guardian receives benefit for him or her (this would normally be whilst the child is under the age of 19 and in full-time non-advanced education).

Parent or Step-Parent of a Haemophiliac (If the Haemophiliac has no Partner or Dependant Children)

Disregard to apply to payments inherited from the haemophiliac for a period of two years from his death.

The reference to partners above assumes that there has been no estrangement or divorce. The terminology "not estranged or divorced" is already used elsewhere in Income Support legislation. Estranged or divorced spouses are no longer dependant upon the haemophiliac for benefit purposes and so they have not been provided for in the inheritance/life-time disregard.

The disregard for the benefit of parents or step-parents will not apply to life-time transfers. Under current rules however anyone can make a gift of up to £3,000 capital to ex-spouses or parents and so long as this payment does not bring the recipients total capital to over £3,000 any benefit in payment will not be affected.

You also asked whether the Department of Health would be prepared to pay all the costs on an indemnity basis, notwithstanding the indication given by Mr Justice Ognall on the 27th March 1991. The answer I am afraid is, no.

Yours sincerely\

GRO-C

RONALD POWELL



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Messrs Pannone Napier Solicitors      Your reference  
20/22 Bedford Row  
London  
WC1R 4EB      Our reference

Date      9 April 1991

**FOR THE ATTENTION OF MR M MILDRED**

Dear Mr Mildred

**HIV HAEMOPHILIAC LITIGATION : SOCIAL SECURITY DISREGARD**

I have now heard from the Department of Social Security that they are prepared to put forward the following as the extent of the Social Security disregard:-

(1) a full disregard for an indefinite period of all payments made under the Macfarlane Trust to beneficiaries, and any resources into which these are converted. For this purpose 'beneficiary' will mean anyone listed in the schedules to the terms of settlement, being a person entitled to a payment from the trust, and their non-litigant equivalents. People who receive payments from the trust because the beneficiary has already died, eg parents of deceased haemophiliacs, will not be included as beneficiaries, but they will receive a disregard where appropriate if they are a partner, child or parent of the beneficiary;

(2) a full disregard of all payments derived from the trust by the haemophiliac or a partner, from whom the haemophiliac is or was not estranged or divorced, and given to or inherited by the haemophiliac, that partner, child or step-child who is or was a member of the haemophiliac's family; that disregard to be for an indefinite period in respect of the haemophiliac or that partner and for so long as the child is a dependant member of a family for benefit purposes (but not a partner of a claimant). A child is a dependent member of a family for benefit purposes if he is included in the claim for benefit made by his parents or guardian. It covers children under the age of 19 who are in full-time non-advanced education.

(3) where the haemophiliac has no partner or dependent children, and a payment derived from the trust is inherited by the haemophiliac's parents (or guardian if the haemophiliac has not yet completed full-time education), a full disregard for two years from the date of the haemophiliac's death. For this purpose full-time education will mean attending a full-time course of advanced or non-advanced education at, for example, a school, college or university.

(4) a full disregard of any income or capital derived from any of the payments mentioned above for the period stated.

In addition, you will recall that at our meeting last week, we confirmed that the DSS would provide the best advice it could on the treatment of inheritances for Social Security benefit purposes. I hope this assurance together with the disregards proposed above meet the concerns you expressed at our meeting, and I trust that you are now content with the Social Security disregard arrangements.

I look forward to hearing from you as soon as possible so that the necessary regulations can be drafted without delay.

Yours sincerely

GRO-C

RONALD POWELL

26.4.91

Re: HIV HAEMOPHILIA LITIGATION

THE MAIN SETTLEMENT AGREEMENT

(For the avoidance of doubt the term "haemophiliac" in all cases includes sufferers from Von Willebrand's Disease.)

1. (1) A Trust to be called The Macfarlane (Special Payments) (No.2) Trust will be established for the purpose of paying the following sums as soon as reasonably possible to each category of infected haemophiliac intimates or Category G Plaintiff:

(i) Infant	£21,500 each
(ii) Single adult	£23,500 each
(iii) Married adult without dependant children	£32,000 each
(iv) Haemophiliac with dependant children	£60,500 each
(v) Infected intimates:	
(a) adults or married infants	£23,500 each
(b) unmarried infants	£21,500 each
(vi) Category G Plaintiffs	£ 2,000 each

and for this purpose the Department of Health will provide the Trust with a sum of £42 million.

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

1. Infant - a haemophiliac under 18 years old on 13th December 1990 or if deceased by that date then under 18 years at the date of death who has been treated with cryoprecipitate, Factor VIII or Factor IX and has become infected with HIV, whether or not such infant has yet developed AIDS. For the avoidance of doubt, all those Plaintiffs whose code numbers and details are set out in Part 1 of Schedule One hereto plus all those deceased haemophiliacs whose code numbers and details are set out in Part 2 of Schedule One hereto shall be deemed to fall into this category.

2. Single adult - a haemophiliac who on 13th December 1990, or if deceased by that date then at the date of death, was 18 years or over and was unmarried, divorced or widowed with no dependants who has been treated



with cryoprecipitate, Factor VIII or Factor IX and who has been infected with HIV, whether or not such adult has yet developed AIDS. For the avoidance of doubt, all those Plaintiffs whose code numbers and details are set out in Part 1 of Schedule Two hereto plus all those deceased haemophiliacs whose code numbers and details are set out in Part 2 of Schedule Two hereto shall be deemed to fall into this category.

3. Married, but  
childless -

a haemophiliac without dependent children who on 13th December 1990, or if deceased by that date, then at the date of death, was married, divorced with a dependant former spouse, or over 18 years old and living with a partner, and who has been treated with cryoprecipitate, Factor VIII or Factor IX and has become infected with HIV whether or not such adult has yet developed AIDS. A list of all Plaintiffs and deceased haemophiliacs falling

within this Category is set out in Schedule Three hereto together with the name of their relevant spouse or former spouse or partner. For the avoidance of doubt, those haemophiliacs whose code numbers are set out in Schedule Three shall be deemed to fall into this Category and those haemophiliacs whose action numbers are set out in Parts 1(b) and 2(b) of Schedule 3 hereto shall be deemed to have been living with the partner there referred to on 13th December 1990 or on the date of their death if earlier.

4. Haemophiliac with children - a haemophiliac who on 13th December 1990, or if deceased by that date then at the date of death, had dependant children, (which expression shall include cases of haemophiliacs with children conceived before 13th December 1990 but born thereafter) who has been treated with cryoprecipitate, Factor VIII or Factor IX and has

become infected with HIV whether or not such person has yet developed AIDS. At Schedule Four hereto is set out a list of Plaintiffs and deceased haemophiliacs in this Category, together with the details of the persons who on 13th December 1990 or on the date of their death if earlier were:

(a) the spouse or former spouse of such Plaintiff or deceased haemophiliac;

(b) the partner of such Plaintiff or deceased haemophiliac;

(c) a dependant child of such haemophiliac.

For the avoidance of doubt, all those Plaintiffs and deceased haemophiliacs listed in Schedule Four hereto shall be deemed to fall into this category.

5. Infected intimates - those Plaintiffs who have issued and served Writs prior to 13th December 1990 and who fall within Category (c) and (d) as set out within paragraph 2 of the Re-Amended Main Statement of Claim and/or whose action numbers are set out in Schedule 5 hereto.

6. Category G - Plaintiffs who have issued and served Writs prior to 13th December 1990 and who fall within Category (g) as set out in paragraph 2 of the Re-Amended Main Statement of Claim and/or whose action numbers are set out in Schedule 6 hereto.

(3) For the purpose of this settlement:

(a) "dependant children" means children under the age of 18 and adult children in full-time education, and:-

(1) includes a child conceived at the date by reference to which entitlement to a payment is determined and subsequently born alive;

(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 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

personal representatives in accordance with the provisions of Schedule 7 hereto. In the event that no personal representative has been appointed prior to 1st May 1991, the following provisions shall apply:-

- (i) where there is a current living Plaintiff to the action, the payment shall be made to that person;
- (ii) where there is no living Plaintiff, but a surviving spouse of the deceased haemophiliac or intimate, then the payment shall be made to that spouse upon the spouse undertaking in writing to the Macfarlane Trust to pay such sum in accordance with the provisions of Schedule 7 hereto;
- (iii) in any other case, no payment shall be made by the Macfarlane Trust until a personal representative has been appointed.

(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<sup>(1)</sup>~~(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 prior to 13th December 1990 in the United Kingdom with Factor VIII or Factor IX (whether cryoprecipitate or concentrate),
- (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.

Provided that in the case of (ii), (iii) and (iv) applications were made to the new Macfarlane Trust before 31st July 1991.

(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 sub-categories set out at sub-paragraphs 1(2) 1 to 1(2) 4 above;
- (2) the spouse of a haemophiliac within sub-paragraph (1) above and any person who on 13th December 1990 was the spouse or widow of a haemophiliac who had already been diagnosed as HIV positive by that date and any spouse, former spouse or partner whose details are set out in Schedule Three or Schedule Four hereto, provided that such person has either not previously been tested for HIV or has been tested and found to be HIV negative, and



who after 13th December 1990 is tested and found to be HIV positive and who would otherwise be eligible under 1(2) 5 above;

(3) the child of a haemophiliac (who is not presently a plaintiff in these proceedings) who has been born or conceived before 13th December 1990 and who is found to be HIV positive (other than with passive antibodies) within five years from 13th December 1990 or within five years of birth, whichever is the later;

(4) any person who has been diagnosed as HIV positive, but has not yet been informed of that fact, and who would otherwise be eligible under one of the sub-categories set out in sub-paragraphs 1(2)1 to 1(2)4 or 1(8)2 above.

Provided that such persons apply to the new Macfarlane Trust within a period of twelve months from their first becoming aware that they are HIV positive or within five years of 13th December 1990, (or in the case of infected spouses and intimates before 31st December 1999) whichever is the earlier, then they shall be entitled to the appropriate payment for the category into which they fall as set out above provided that they satisfy the new Macfarlane Trust and the Department of Health that they fall within that category and provided that they sign an undertaking as set

out in paragraph 8 below. The First Central Defendant will pay to the new Macfarlane Trust such additional sums as may be necessary to permit the Trust to make such payments to such persons. For the avoidance of doubt, references to those who "upon first testing are found to be HIV positive" means those who are correctly so found, disregarding false positive and false negative tests.

(9)(1) Those Plaintiffs in respect of whom the Defendants have not been supplied with the documentary material evidencing the category of payment which is appropriate for them by 17th April 1991 are shown with an asterisk in the Schedule relating to the category which such Plaintiff's solicitor has asserted as appropriate.

(2) In each such case, the Plaintiff will supply such material to the First Central Defendant's solicitors as soon as possible and by <sup>15<sup>th</sup> May</sup> ~~30th April~~ 1991 at the latest.

(10) 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.

(11) The Plaintiffs and First Central Defendant will use

their best endeavours to agree the appropriate category for such Plaintiffs as soon as possible and by <sup>15<sup>th</sup> May</sup> ~~30th April~~ 1991 at the latest.

(12) 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 8th May 1991.

3. The Secretary of State for Health will procure that there are laid before Parliament by 31st July 1991 regulations providing that sums derived from the new Macfarlane Trust will be ignored in assessing entitlement to social security benefits of the beneficiaries of the Trust and certain others, 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 are approved and brought into being within a reasonable time thereafter.

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.

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

(1) 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 which relates to allegations of medical negligence against the relevant Health Authorities provided that they comply with the directions laid down by the Court on 1st March 1991; and

(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 the damage alleged does not include infection or the risk of infection by HIV and/or the hepatitis viruses.

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.

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 with HIV or other viruses of the Plaintiff or <sup>of</sup> the person <sup>in respect of whose HIV infection</sup> ~~for whose benefit~~ the action is brought. 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, save that nothing herein shall prevent a qualifying non-plaintiff from bringing proceedings in respect of the administering prior to 13th December 1990 of cryoprecipitate Factor VIII or Factor IX where:-

(1) that has caused damage to such Plaintiff which had not been diagnosed by 13th December 1990; and

(2) the damage alleged does not include infection or the risk of infection by HIV and/or the hepatitis viruses.

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 beyond 30th April 1990 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 1989.

(2) There shall be a legal aid taxation of all such generic costs of legally-aided Plaintiffs 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.

(3) The proportionate liability of all non-legally-aided Plaintiffs for the generic costs of the Plaintiffs shall be ascertained in the manner provided for in the order of Mr Justice Ognall made herein on 24th July 1989.

(4) There shall be a taxation of the generic costs of such non-legally aided Plaintiffs on an indemnity basis and the First Central Defendant shall pay the non-legally-aided Plaintiffs' taxed generic costs.

(5) The taxation provided for under sub-paragraph (4) above shall take place at the same time as or after the legal aid

taxation provided for under sub-paragraph (2) above, as the Court may direct or as may be agreed between the Plaintiffs and the First Central Defendants.

(6) For the avoidance of doubt, generic costs shall include all work incurred in and for the co-ordination of the HIV litigation group and all costs reserved from time to time by the Court and shall include the selection and preparation of lead cases.

(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.

(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 Defendants.

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 (including costs incurred prior to 13th December 1990 in bringing and pursuing claims herein for medical negligence against any Health Authority Defendant) 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, the costs of appointing personal representatives when a haemophiliac or intimate has died prior to the date on which the Macfarlane Trust makes the payment provided for herein and the costs of concluding the approval of this settlement and of co-ordinating the obtaining of all documentation and information required within the terms of the settlement in order to carry it into effect. 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 but shall not extend to any costs incurred after 13th December 1990 in relation to medical negligence issues by those who pursue claims against the Health Authorities for medical negligence beyond 1st May 1991.

12. The provisions of these terms of settlement will not apply to any person who has already brought proceedings in Scotland or Northern Ireland in respect of the infection of a haemophiliac with HIV through blood products or the consequences thereof.

13. All copies of all documents disclosed on discovery by any Defendant shall be returned to such Defendant's Solicitors or destroyed:-

(1) in the case of documents held by Solicitors for individual Plaintiffs within 28 days of the completion of taxation or agreement of costs on behalf of such Plaintiff;

(2) in the case of documents held by Solicitors on the Steering Committee, within 28 days of the completion of the taxation or agreement of the generic costs of the Plaintiffs represented by them or as otherwise directed by the Court pursuant to an application made by any party to the settlement;

(3) in the event of one or more Plaintiffs electing not to enter into this Settlement but to continue with this litigation (other than where the continuation is limited to claims for medical negligence) the obligations imposed by sub-paragraphs (1) and (2) above will be discharged by delivering up such documents to such solicitor or other person as the Court may direct upon application made by any party hereto, save that Plaintiffs pursuing claims for

medical negligence against Health Authorities shall be at liberty to retain documents disclosed by such Health Authorities until the conclusion of such litigation. All solicitors to whom documents have been disclosed by any Defendant shall provide such Defendant within the time stated above with a certificate confirming that all copies of all such documents have been returned or destroyed.

14. For the avoidance of doubt all parties undertake that they will not make any further use of any information acquired from documents disclosed on discovery in this litigation without leave of the Court or agreement of the party by whom such document was disclosed save for the proper purpose of pursuing such claims for medical negligence against Health Authorities as may be permitted hereunder. For the avoidance of doubt, this paragraph shall apply <sup>to</sup> were lawyers acting for any of the Plaintiffs in the coordinated arrangements are instructed to act in cases concerning HIV infection by blood transfusion or hepatitis infection by blood transfusion or treatment with blood products.

## SCHEDULE 7

### Guidelines for apportionment in Fatal Cases

The categories hereinafter referred to are as follows:

1. Infant
2. Single Adult
3. Married, but childless
4. Haemophiliac with children
5. Infected intimates

Where a person in one of the foregoing categories as defined in the detailed Terms of Settlement has died by the date for payment, payment will be made to the estate of such deceased person, except that in any case where a haemophiliac coming within category 3 or 4 or an infected intimate coming within category 5 all as defined in the detailed Terms of Settlement has died by the date of payment from the MacFarlane Trust, then (subject to the overriding discretion of the Trustees of the Trust, in respect of the value of the dependency of spouses, co-habitees and partners and the amount in consequence to be paid to the relevant estate but so that the value of the dependency of dependant children shall not thereby be affected):

- A. that part of the monies deemed to be in respect of dependency shall be paid to the dependants of the deceased, as defined by section 1(3) of the Fatal Accidents Act 1976, or into Court in accordance with

the value of their respective dependencies; and

- B. the remaining monies will be paid to the estate of the deceased haemophiliac or infected intimate as the case may be;

and that part of the monies deemed to be in respect of dependency shall be:

Category 3 claims: £4,250

Category 4 claims: £32,500

Category 5 claims: £4,250 (where there is a surviving spouse or stable partner but no dependant children)

£15,000 (where there are surviving dependant children)

The value of the Dependency will be deemed to be as follows:

- a. In Category 3 claims, the sum of £4,250 will be paid to the dependant widow or former partner (or if more than one such person, the sum will be divided equally between them).
- b. In Category 4 claims half of the sum of £32,500 will be paid to the dependant widow or former partner (or if more than one such person, that half will be divided equally between them); the remaining half (or if no dependant widow or former partner, the whole sum) will be divided between the dependant children in the following shares:

- The number of outstanding complete years of probable dependency as at and from the date of death of the relevant haemophiliac shall be identified for each dependant child in the case, taking into account any probability of engaging in full time adult education and the number of complete years of full time adult education yet to come, where such education will or has commenced;
- A "unit" of dependency shall then be established by dividing the sum representing the total value of the dependency of dependant children in the case by the total of all those children's outstanding years of dependency;
- The apportionment of the dependant children's dependency in the case shall then be achieved by multiplying the "unit" of dependency in the case by the number of outstanding years of dependency duly established for each dependant child in the case;
- The sum resulting from such apportionment shall be the share of the value of the dependency of the dependant child in question.

c. In Category 5 claims:

- Where the sum is £4,250, it will be paid to the dependant spouse or former partner (or if more than one such person, the sum will be divided equally between them).
- Where the sum is £15,000, one half will be paid to the

dependant spouse or former partner (or if more than one such person, that half will be divided equally between them); the remaining half (or if there is no dependant spouse or former partner, the whole sum) will be divided between the dependant children in shares to be identified in the same manner as for Category 4 claims.

The Court's approval of the valuation of the dependencies of spouses, co-habitees and partners is given upon the assumption that such spouses, co-habitees and partners also benefit under the will or intestacy of the relevant deceased person.

SCHEDULE EIGHT

PART 2

1. "Allegations as to medical negligence" means only allegations of negligence in individual cases which fall under one or more of the sub-paragraphs under heads 7 and 8 of the Particulars of Negligence under paragraph 92 of the Re-Amended Statement of Claim, save that the allegations lettered (as) and (bf), and that part of sub-paragraph (bt) which refers to those sub-paragraphs, should be struck out.
2. For the avoidance of doubt, it is the intention of the parties that a Plaintiff shall not, in the course of any allegation as to medical negligence, be entitled to complain of any matter of general policy or other acts or omissions of general application other than general clinical policy, and in particular any complaint raised against any Defendant in any other part of the Re-Amended Statement of Claim. Allegations of medical negligence shall thus be construed so as to refer only to allegations of negligence by the treating doctor or other Authority staff in relation to the treatment, clinical management and/or counselling of a particular Plaintiff or the haemophiliac in respect of whose treatment a "derivative" Plaintiff sues. It is however accepted:



- a. That a Plaintiff shall be able to complain of matters of general clinical policy formulated and promulgated by Regional or District Authorities (insofar as it is alleged to have caused him loss or damage) but not of matters of general clinical policy formulated or promulgated (and in both cases formally recorded in writing) by the Haemophilia Centre Directors Organisation or the Haemophilia Reference Centre Directors Organisation.
  - b. that other matters of general policy may be canvassed as part of the relevant factual matrix.
3. Thus, by way of example only, any Plaintiff who pursues an allegation as to medical negligence against any Health Authority will not seek to complain in those proceedings:
- a. that self-sufficiency in blood products should have been achieved at any date prior to the date of his or her sero-conversion;
  - b. that donor warnings were inadequate;
  - c. that heat-treated products should have been made available for use and/or used by Health Authorities or clinicians any earlier than 1st November 1984 (it being understood that the Authorities do not hereby concede that it was negligent in any case to use non-heat-treated products after that date);

- d. that NHS manufactured blood products screened for HIV should have been made available for use by Health Authorities by any date earlier than in fact was the case;
- e. that Health Authorities should have taken steps to increase the supply of blood products made from non-commercial plasma otherwise than by the BPL or by increasing supplies of plasma by investment in plasmapheresis or by having plasma fractionated in Scotland or otherwise.