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INFECTED BLOOD INQUIRY

EXHIBIT WITN2287029

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Records reveal minister unease over blood scandal payouts

Published

1 January 2017

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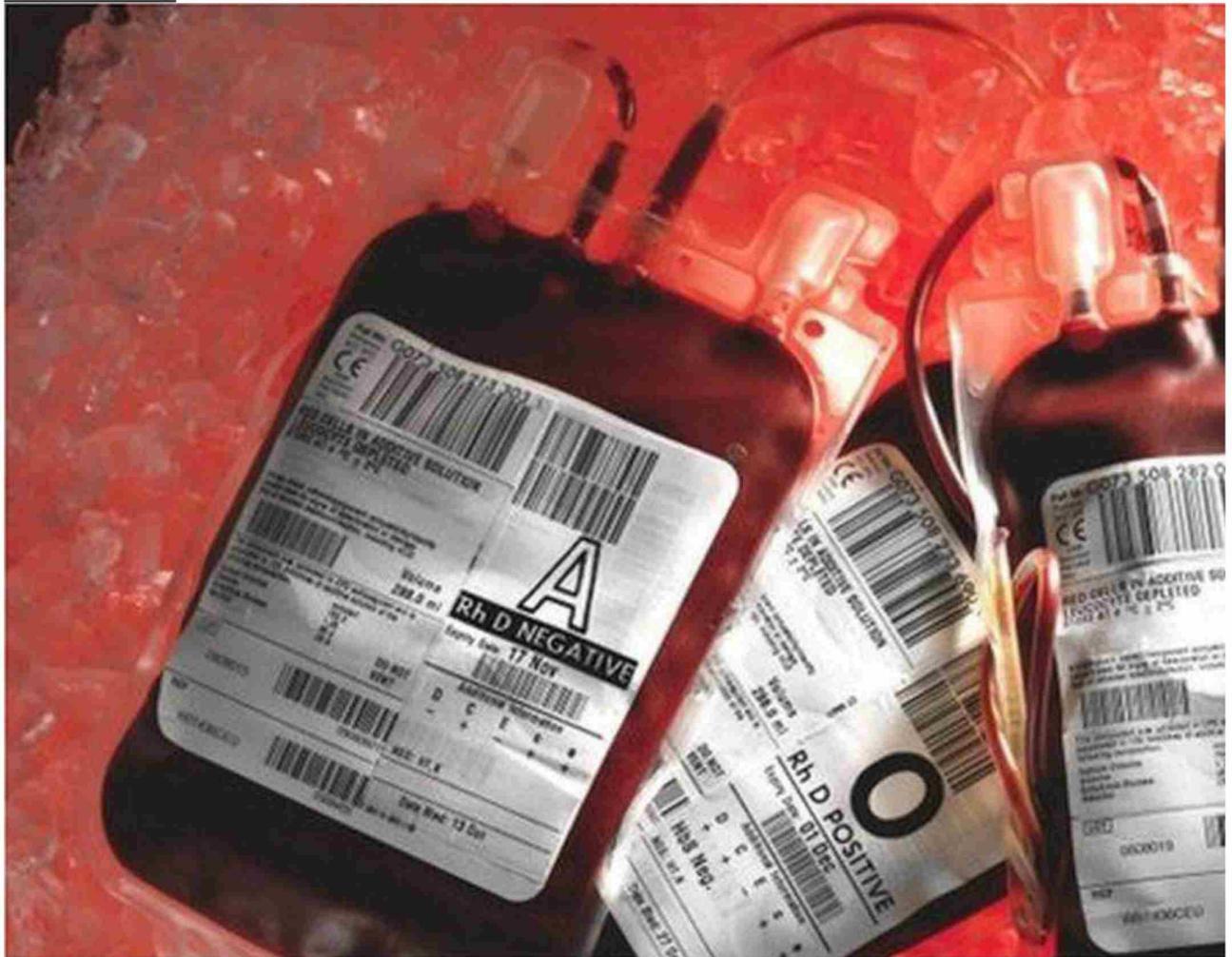


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image captionThe Penrose Inquiry estimated that up to 3,000 Scots were infected with contaminated blood

Ministers considered fighting early compensation claims by victims of contaminated blood in the courts, historic Cabinet documents have shown.

The newly-declassified papers from 2001 show the then Scottish Executive feared paying out up to £20m to people affected by the scandal.

Last year an inquiry concluded about 3,000 Scots had contracted hepatitis C or HIV through contaminated NHS blood.

The Scottish government has [agreed financial support for those affected](#).

The documents released by the National Records of Scotland under the 15-year rule show ministers feared making payouts to 400 patients who received contaminated blood between the 1970s and 1991 because they thought it would create a precedent for compensation and lead to "immense future difficulties".

Susan Deacon, health minister at the time, said defending the claims would mean the Executive would look "unsympathetic" but she said her "inclination" was for court action because of the wider implications.

'English judgement'

Ms Deacon considered the issue in a note for the Scottish Cabinet in April 2001.

That was the month after the High Court in England found in favour of a number of people who had been infected with blood supplied by the National Blood Authority.

The English cases were brought under 1987 consumer protection legislation but could have had a bearing on 24 cases in Scotland being taken forward on grounds of negligence, the note said.

Meanwhile, the Department of Health in England, despite "strong pressure" from the health minister and her officials, had chosen not to appeal.



image caption Susan Deacon was health minister in 2001 for the then Scottish Executive

"The English judgment will obviously carry some weight," the note states.

"There could be significant additional cases waiting in the wings - we estimate that more than 400 people in total are likely to have been infected with Hepatitis C through blood transfusions or haemophilia treatment.

"If we were to decide to settle with 24 of the current claimants who were infected after March 1988 - and in respect of whom, following the English judgment, absolutely liability (sic) could be deemed to apply under the Consumer Protection Act, then the cost could be in the region of £1.25m + costs.

"A worse-case scenario (sic) involving compensation to around 400 people might cost us £20m.

"There would be enough variation in the circumstances of all these people for this outcome to be unlikely.

"The danger, of course, if we get that far down the track, will be of having created a broader precedent for compensation, which could cause immense future difficulties right across the NHS.

"That is why I regard the Department for Health decision not to appeal the present case as being particularly regrettable."

'Look unsympathetic'

The note continued: "In relation to the current Scottish claims, the choice is between letting the cases proceed through the courts and defending them, or offering settlement to the 24 cases which are analogous to those decided in England.

"I need more information and a better assessment of what is going on in England before taking a final decision on this.

"However at present my inclination is that because of the wider potential implications of the case, and notwithstanding that we will look unsympathetic, we ought to defend the cases in court."



IMAGE COPYRIGHTPENROSE INQUIRY

image captionThe inquiry led by Lord Penrose concluded in 2015

The Scottish Executive later came under pressure from the Scottish Parliament's health committee to give financial support to all those affected by contaminated blood, arguing there was a "moral right" to it.

Papers show that in August 2001 it was announced NHS Scotland had been instructed to begin talks with lawyers of claimants, aimed at settling valid legal actions with "faster, fairer settlements".

[The Scottish government set up the Penrose Inquiry in 2009](#) to establish whether the authorities did enough to protect people from becoming infected and to warn them once the risks were known.

[Lord Penrose concluded in 2015](#) it was unlikely any individual or institution would be held criminally liable as a result of the scandal.

Victims have been [offered payouts of between £20,000 and £50,000](#). However, many have argued these are insufficient given that, even if victims had survived the conditions they contracted, they could not get life insurance or a mortgage and many were unable to work.

Earlier this year, the Scottish government pledged an extra £20m of support over three years for those affected.

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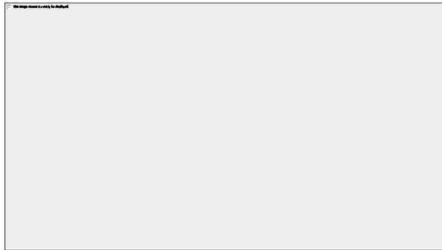
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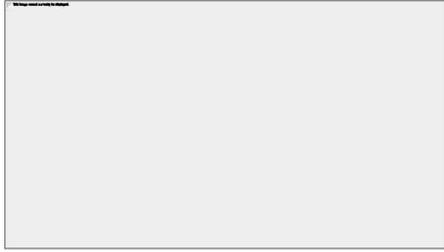
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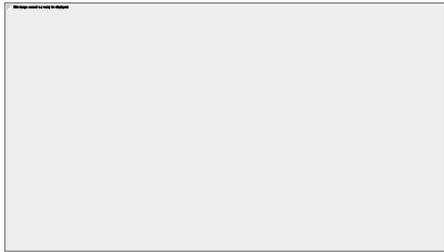
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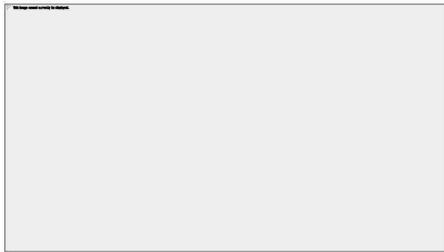
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