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Dr. Vanessa Martlew
Director
National Blood Transfusion Service
Mersey & North Wales
Regional Transfusion Centre
West Derby Street
Liverpool L7 8TW

VJM.MJL

Your Ref: ARM.BAM.2.7.552
Our Ref: Mr.A.R.Mowat

5th November 1993

Dear Vanessa

RE: ANTIBODY TESTING OF BLOOD DONATIONS

Many thanks for your letter of 21st October, with interesting enclosure. I agree with the final sentence contained within the first paragraph of your letter of 21st October.

Dr.Gunson's letter appears, to me, to indicate that managerially he feels that on the basis of his paragraphs numbered i - vii that on balance the Service should not continue with hepatitis B core antibody testing of the sort referred to in your letter of 21st October.

It is not for me to intermeddle in the managerial decisions of the National Blood Transfusion Service. However, as a matter of law, I apprehend that at some time in the future, the decision could be challenged within the context of legal proceedings for damages by an infected recipient of NBTS blood products.

The recent class actions brought in respect of various products, whether blood products (as in the HIV Haemophilia Litigation) or medicinal products (as in the Benzodiazepine Litigation) have resulted in careful scrutiny by plaintiffs not only of individual clinical decisions but also of connected managerial

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FROM HILL DICKINSON DAVIS CAMPBELL

Dr. Martlew

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05-Nov-93

To

No.

Date

decisions.

The decision, therefore, to discontinue the testing referred to in your letter of 21st October is one that may, in due course, be judicially tested and compared or contrasted with the arrangements in North America and the rest of the Western World.

It should also be borne in mind that under the provisions of the Consumer Protection Act 1987 blood products are a "product". The Act contains certain "strict liabilities" i.e. liabilities which apply irrespective of negligence. The 1987 Act did not apply in the HIV Haemophilia Litigation because the date of treatment preceded the implementation of the Act.

When, therefore, finalising the decisions relating to hepatitis B testing I would invite you and your colleagues to consider the possible legal implications to which I refer above.

Best wishes,

Yours sincerely,

GRO-C

A R MOUNT

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