HIM 10
GEB 5
HIM 11

Mr Canavan
Dr Reiman - MEDISD
Mr R Powell - SOL

Mr Gutowski - M

Haemophilia

Motion made, and Question proposed, That this House do now adjourn.—*[Mr. Durant.]*

1.16 am

Mr. William McKelvey (Kilmarnock and Loudoun): I am grateful for the opportunity to speak about an important and urgent issue. I refer to those suffering from haemophilia and the further difficulties that they have encountered. I welcome the new Under-Secretary of State for Health and congratulate him on his recent appointment. He is to face his baptism at the Dispatch Box, and at this time of the morning it is hardly likely to be an exciting debate. It is probable that the temperature will not rise, but it is an extremely important debate. I know that the Minister will have done his homework. I am not here to harangue or harass a new Minister but, as I have said, the issue is important. I hope that the Minister will make a progressive response to my submissions.

The debate was prompted by a family in my constituency. I refer to Donald and Margaret Baird and their two sons, Ian and Walter. The tragedy that surrounded that family is directly connected with the fact that the two sons are both suffering from haemophilia and both are HIV-positive.

I am sure that it will help the Minister in his deliberations if I trace the difficulties that haemophiliacs have faced over recent years. There are over 5,000 people who suffer from haemophilia in the United Kingdom. Two thousand of them are seriously affected by the disease in their daily lives and receive treatment by means of blood products to enhance the ability of their blood to clot. There are 1,200 who have been identified as HIV-positive. I think that the House will agree that it is now recognised by all authoritative bodies that these people became infected through the use of contaminated blood products provided to them by the NHS, which were mostly obtained from America.

The Haemophilia Society, to which I am indebted for the information that I am imparting to the House, has consistently campaigned for out-of-court compensation for the victims of this disaster since it was first recognised. Hon. Members on both sides of the House have been involved in the campaign. The national campaign resulted in an ex gratia cash payment of £10 million in 1987. That was followed by a further £24 million last December. That has been distributed to victims and their families under the auspices of a newly created trust fund, the Macfarlane Trust.

Everyone realises that at the time of those payments the Government made it clear that the money was intended not as compensation but as a special payment made on the basis of a claim for the special suffering and need of the victims. The sum so far given amounts to £20,000 to £30,000 per person. That falls well short of a realistic figure for compensation for livelihood and life that would be acceptable to members of the Haemophilia Society. In the absence of real compensation, a significant proportion of people with haemophilia and HIV have taken out court cases aganist their local regional health authorities and, in some cases, the Department of Health.

The current position is not a happy one. The court cases are being substantially delayed. In England, the earliest possible start date is January 1991, but there are already strong signs that even that distant date may be too optimistic. In Scotland, the position is even worse. It is not yet possible to obtain an estimate for the start of any court procedures. Some 50 people in Scotland are taking out court cases against their individual health authorities. However, it appears that much of the delay in starting proceedings stems from difficulties with applications for legal aid. Very few people in Scotland have obtained legal aid so that they can begin the process of going to court.

For whatever reason, the Scottish Legal Aid Board is applying somewhat more stringent standards of documentation than its English counterparts before it grants legal aid. That is causing the current delay. It is an issue that I intend to take up privately. It may have something to do with the vagaries of the different legal systems, but any delay has serious and devastating consequences for those attempting to bring the matter to court. It is vital that we all recognise that delay must be prevented.

While the delays continue, those unfortunate people with haemophilia and HIV continue to die. By February 1990, 118 people had died. The longer they wait to go to court, the greater will be the number of people who die. Of those 118 people, 11 died between November 1989 and February 1990. It must be all too obvious to hon. Members that by the time the cases come to court many more will have died. Given that, the Haemophilia Society and those who support its views have reaffirmed that an out-of-court settlement is the only possible humanitarian solution to a problem that will be with us for some time.

I was prompted to request this debate by a letter from GRO A He has been in contact with me for a number of years. I have not sought in any way to make publicity out of this case, and I am sure that other hon. Members do not intend to do so. It is a tragic and difficult case of two boys with haemophilia who were injected by their parents—the injections took place at home—and who have subsequently been found to be HIV positive. That was a terrible double tragedy, but they have now been informed that the elder boy, GRO A who is now 19 has full-blown AIDS. It is virtually the pronouncement of a death sentence.

I would find it difficult to read the whole of the letter to the House because it is emotional and private, but I have given a copy to the Minister, and I am sure that he will understand why it is impossible for me to quote all of it.

Nevertheless, the father can express in a few words, and much more elequently than I could, the case that he wishes me to put to the House. He writes:

> "Dear Willie, It is with a heavy heart I write to you, to confirm the fact that my son GRO A has started treatment for the full blown AIDS. Although always a probability, it was such a shock that some three weeks passed before we could speak about it."

Further on in the letter he sadly says:

> "I cry alone at night as I pray for them, and I think every day that passes I also die a little with them.
>
> Why oh why, can this government not realise that time is something my sons—people like them—do not have. Their insistence that the courts must settle the matters of fault and compensation means that more and more haemophiliacs will not live to see justice being done."

It is a very moving letter, as I am sure hon. Members appreciate.

There are steps that the Government can take. The general secretary of the Haemophilia Society wrote to my right hon. Friend the Member for Manchester, Wythenshawe (Mr. Morris) who was a Minister in a previous Labour Government which dealt with a similar problem. In that role, David Watters, the general secretary

[Mr. William McKelvey]

of the society, had asked him to approach the Prime Minister with the idea of setting up an inquiry into the matter through the office of a retired ombudsman. The labour Government did exactly that for the outstanding thalidomide cases. Sir Anthony Barraclough could be appointed to resolve the dispute between the Government and the people with haemophilia who have contracted HIV in the course of NHS treatment. The Prime Minister is aware of the matter.

Perhaps when the Minister speaks to the Secretary of State he will bring the issue to his attention. That would be a positive step. Sir Anthony Barraclough is much respected by hon. Members on both sides of the House and in all establishments outside the House. If he were to be given that opportunity, he could perhaps draw up grounds for a settlement, and that would end the matter more quickly than it could be ended by going to court, if it can ever be settled in court. In many cases—particularly in Scotland—defendants have to prove negligence by the health boards and that will be difficult.

The third issue that we should consider is that the Macfarlane Trust has already spent most of its money.

In cases such as that of the [redacted] family, when a young man has been given what is virtually a death sentence, will the Minister arrange for the Macfarlane Trust to reconsider the case? The figures that have been mentioned to me by lawyers—not necessarily to be considered as the final figure that should be accepted in settlement—if the case went to court in Scotland are in the region of £80,000 to £90,000 per person. If that sum was made available to the [redacted] family at the moment, it would ease much of their grief and it would give the opportunity for the boys, and [redacted] in particular, to live a far better life for whatever time they have left. I ask the Minister to consider that seriously.

There is an opportunity for the Government to increase the funds to the Macfarlane Trust, to ensure that they are paid out as quickly as possible and to examine the position in general and the particular point that has been raised with the Prime Minister with a view to setting up an inquiry to settle the case.

It seems to me that a totally unfair battle is being fought. The burden of proof is on the victims of medical accidents: they have to prove negligence. Although I cannot ask the Minister, particularly in his first days of office, to promote the legislation that would be required to provide terms whereby medical accidents could be settled through compensation, which is an extremely long and complicated process, perhaps he will ask the Government to give the matter some thought along those lines so that we can correct the imbalance.

In this and other cases, young people cannot take their cases to court. They cannot get legal aid, and even if they get their case to court there is no telling how long it will take to settle, if they get settlement. Some people are gambling their settlements from the Macfarlane Trust to get the matter resolved in court before they expire.

It is a David and Goliath situation: the Government represent Goliath but David is unarmed. I ask the Minister to give the points I have raised serious consideration. Although I cannot expect definitive answers from the Dispatch Box tonight, perhaps he could give the House an undertaking that at least the matter is back on the agenda and, hopefully, we can make some progress.

1.31 am

The Parliamentary Under-Secretary of State for Health (Mr. Stephen Dorrell): I begin by congratulating the hon. Member for Kilmarnock and Loudoun (Mr. McKelvey) on taking the opportunity of an Adjournment debate this evening to raise a matter of real concern to his individual constituents and to the 1,200 people who are affected by this tragedy. May I also thank him for his best wishes on my appointment. There can be no better illustration than tonight's debate of the fact that I shall need those best wishes and the best wishes of anyone else who feels able to offer them.

The House will understand that it is a special moment for any Member of Parliament when he is asked to become a Minister. It is perhaps understandable that there is a certain amount of celebration and partying. However, the knowledge that I had to reply to tonight's debate in my first week in the Department has brought me up short. We all know in the abstract that a Minister's life is not all roses, but there can be no sharper illustration of the difficult issues that Ministers have to face than the particular human tragedy represented by the case that the hon. Gentleman has drawn to our attention.

The hon. Gentleman sent me [redacted] letter, which is quite as emotional as he described it. It underlines the special human tragedy represented by those events. Against that background, it would be totally inappropriate for me to begin with a recital of what has already happened and the Government's position. It is appropriate to begin simply by recognising that it is a tragedy and nothing that I can say from the Dispatch Box will change it. I hope to alleviate by actions and words some of the problems and effects of that tragedy, but the tragedy itself will remain and nothing that we say in the House will change its essential nature.

I remind the House that the Government's sympathy for those affected by these tragic events has been given practical expression. As the hon. Gentleman recognised, in November 1987 we announced an ex-gratia payment of £10 million to fund the Macfarlane Trust. That money has allowed the trust to give help to families in particular need by way of grants for a wide variety of purposes and through regular payments. Up to 31 March this year, the trust has paid out almost £1·7 million in one-off grants and almost £1·6 million in regular payments. Those payments have helped to ease the financial worries of the families who have received them.

Furthermore, the Government announced substantial extra help on 23 November last year. Under those arrangements, each infected individual is entitled to a lump sum of £20,000. With the help of the trustees of the Macfarlane Trust, arrangements have been made to administer those payments, and I am pleased to say that payments totalling almost £24 million have been made.

In addition to that money, the Government have made regulations to ensure that the payments from the trusts do not affect entitlement to income support, family credit or housing benefit. Payments, therefore, are genuinely additional money to those affected, and there is no question of our taking with one hand what we are seeking to give with the other.

I recognise that much hard work has been done by the trust in making payments, particularly on the £20,000 scheme, in such a short time. It is right to place on record the Government's thanks, and I am sure the thanks of the whole House, for the efforts represented by that action.

I should like to refer to a written answer given by my right hon. and learned Friend the Secretary of State in announcing the £20,000 scheme. He said:

> "The Government accept the need to ensure that the fund has adequate resources both to meet its existing commitments and to give more generous help to families in particular need. We will be discussing further with the trust how these objectives should be met."—[*Official Report*, 23 November 1989; Vol. 162, c. *12*.]

It is clear that when announcing the £20,000 scheme Ministers accepted the need to ensure that the original Macfarlane Trust had adequate resources both to meet its existing commitments and to enable it to give more generous help to families in particular need.

Naturally, the first priority of all concerned has been to implement the £20,000 scheme as quickly as possible. As that has been achieved, we should be following up my right hon. and learned Friend's commitment to discuss with the Macfarlane Trust the best way of providing additional targeted help.

I should stress that, as the hon. Gentleman recognised, the £34 million total provided to the two Macfarlane Trusts represents ex-gratia payments. They are not intended as compensation because in this country, under successive Governments, there has never been a scheme of no-fault compensation for those damaged by medical treatment.

The case for alternative means of compensating those who suffer from medical accidents was carefully considered by the Royal Commission on civil liability and personal injury, which reported in 1978. It decided against introducing a scheme of no-fault compensation. The system remains that those seeking compensation should pursue the matter through litigation. A number of haemophiliacs with the AIDS virus, as the hon. Gentleman said, are now doing just that. I am sure that the House will understand that it would not be appropriate for me to comment on issues that are before the courts.

The hon. Gentleman referred to the timetable for the hearing. He may be aware that yesterday the court decided that the main hearing of the English case should take place in March 1991. The Scottish case will, I imagine, follow that. He asked about entitlement to legal aid in Scotland. I shall look into that and write to him.

The hon. Gentleman said that the right hon. Member for Manchester, Wythenshawe (Mr. Morris) has written to the Prime Minister seeking to establish an inquiry as a means of resolving the compensation issue. He will obviously receive a considered reply from my right hon. Friend the Prime Minister. However, the right hon. Gentleman tried to draw a parallel between this case and the thalidomide case established in the late 1970s. That is not a precise parallel because in that case there was no dispute about the acceptance of liability on the part of the Distillers company. The simple question was whether there was a causal connection between the children affected on list Y and the smaller group for whom Distillers had accepted liability earlier. In the case to which the hon. Gentleman refers, the defendant does not accept any claim of liability in the negligence action.

Mr. McKelvey: I was not trying to draw a parallel between the cases. I was just saying that the Labour Government took the opportunity to set up an inquiry. I was not asking for something that we had not done or which could not be done. There is still the possibility that the Government will set up an inquiry, particularly because the people must in effect sue the NHS or the various health boards. The Government have a responsibility to solve the matter as quickly as possible if an inquiry can be set up.

Mr. Dorrell: My right hon. Friend the Prime Minister will obviously respond to the specific point about an inquiry. The much narrower point that I was trying to make was that there in not a precise parallel between the case referred to by the hon. Gentleman and the Distillers-thalidomide case. Against that background, the Government are entitled to claim a degree of credit for having recognised the special circumstances of haemophiliac victims of this tragedy. Thirty four million pounds is not an insignificant sum of money to be made available to provide financial assistance.

To sum up, the compensation that many of the haemophiliac victims are pursuing is a matter for the courts. We believe that the measures that we have already taken demonstrate the Government's willingness to do what they properly can to meet the special needs of haemophiliacs with the AIDS virus. We have already made available substantial sums of money and we have accepted also—and to some degree this responds to one of the points made by the hon. Gentleman—the need to discuss with the Macfarlane Trust how more generous help can be provided for families in particular need.

I am grateful for another opportunity to discuss this important topic. I hope that the hon. Gentleman will accept that, while our means may differ, the Government share with him the proper human desire to respond to this very human tragedy.

Question put and agreed to.

Adjourned accordingly at eighteen minutes to Two o'clock.