

RESTRICTED – EMBARGOED COURT JUDGEMENT

SofS

From: Debby Webb
Cleared: Clara Swinson
Copy: Clare Macdonald
Yemi Fagun
Steve Pidgeon
Catherine Pearson
Nick Johnson
Natalie Tomecki
Graham Kent
Rowena Jecock
Date: 15 April 2010

Judgement of Andrew March Judicial Review – EMBARGOED UNTIL 10.30am ON FRIDAY 16 APRIL 2010

Issue

1. To advise you **in confidence** that we have received the draft judgement from the Courts in respect of the above judicial review and that **the decision is in favour of the claimant** (i.e. against the Government).
2. The judgement is embargoed until it is handed down at the Royal Courts of Justice at 10.30am, Friday 16 April. SOL has stressed the importance of maintaining this embargo so as not to be breach our obligations in this respect by disclosing the substance of the judgement in advance of it being handed down. The copy list of this submission is therefore intentionally restricted, and this should not be copied wider without SOL's permission. We will provide a note to a wider group after the judgement.

Recommendation

3. To note the judgement in this case; that we will seek leave to appeal this judgement; and that we will work with press office and your office to agree a reactive factual line, taking into account advice on the election period.

Background

4. Mr March sought a judicial review of the Government's decision not to follow recommendation 6(h) of Lord Archer's report into contaminated blood and blood products. This recommendation was about the level of compensation that should be paid to individuals who have contracted HIV and/or hepatitis C from blood or blood products supplied by the NHS. Lord Archer recommended that this should be at least equivalent to the amounts paid under the (more generous) compensation scheme in the Republic of Ireland.

RESTRICTED – EMBARGOED COURT JUDGEMENT

5. The judicial review hearing took place on 25 and 26 March 2010 at the Royal Courts of Justice (see previous submission of 23 March – attached as **annex A** for ease of reference).

Embargoed judgement

6. The judgement allows this claim for judicial review and quashes the decision of the government not to accept recommendation 6(h).
7. The judgement makes it absolutely clear that the allocation of resources is entirely a matter for the government and therefore the decision cannot force us to pay more. Indeed, the judgement states that is entirely a matter for the government, and which the Judge neither expresses, nor has, any opinion or comment on whatsoever. The judgement can only therefore make the government re-consider its decision in respect of recommendation 6(h) and it is possible that in so doing, could reach the same decision.

Costs

8. Mr March was funded from the public purse. The Court will order that we pay Mr March's legal costs of these proceedings, following an assessment, and there is no basis upon which we could successfully argue against such an order being made. The general rule that the loser pays the winner's costs applies.

Appeal

9. The first decision is whether to seek leave to appeal against the judgement. We will have 21 days from the date that judgment is handed down in which to appeal. Counsel's preliminary view is that we should not appeal on the basis that prospects of success are weak. However, Counsel and SOL agree that it is prudent to apply for permission to appeal once judgment is handed down so that the option of an appeal against the judgment is left open. We understand that the Mr March's barrister will oppose an application for permission to appeal. However, **on balance, we feel that we should seek leave to appeal**, as, if granted, this will give us the greatest flexibility.
10. If leave to appeal is granted by the Administrative Court after tomorrow's judgment, we would also need to seek an extension for time to file notice of appeal as the current deadline is 7 May 2010 and it would be impossible for the new government to be in a position to comply with this deadline as we would not know in advance whether they would want to appeal.
11. If leave to appeal is not granted, we will then need to decide whether to seek leave to appeal from the Appeal Court. We can request an extension of time from the Court for permission to be sought from the Court of Appeal. We understand that Mr March's Barrister will not oppose an application for such an extension.

RESTRICTED – EMBARGOED COURT JUDGEMENT

Handing down of judgement

12. Counsel and SOL will be in Court to receive the judgement on Friday. We suggest Counsel says in court that this judgement reflects criticism of a long standing policy and that DH will think very carefully about the judgement of the Court.

Media response and lines to take

13. Mr March has put a notice on the “Tainted Blood” (campaign group) website to say that the verdict will be handed down on Friday. Journalists were in court for the hearing. As this group of people are very active in lobbying, it is most likely there will be media attention following the judgement.
14. We have considered our options in light of the Cabinet Office’s general election guidance and discussed with the election preparation team. DH Press Office will prepare a factual reactive line, to be agreed with your office separately, that will be released on Friday once confirmation has been received from SOL that the judgement has been handed down and the embargo has therefore been lifted (not expected to be earlier than 11am).
15. The draft line is 'We aware of the decision reached in the judicial review. Ministers will consider the position and decide on how best to proceed after the election.'

Recommendation

16. To note the judgement in this case; that we will seek leave to appeal this judgement; and that we will work with press office and your office to agree a reactive factual line, taking into account advice on the election period.

Mrs Debby Webb
Infectious Diseases and Blood Policy Branch
Health Protection Division
530 WEL
(GTN GRO-C Ext GRO-C)