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DRAFT LETTER FOR OFFICIALS TO SEND TO:

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Ref: CT95/19208

PAYMENTS FOR THOSE INFECTED WITH HEPATITIS C THROUGH BLOOD TRANSFUSIONS/BLOOD PRODUCTS

Thank you for the copy of your letter of 9 May.

I was grateful for the opportunity to consider your synopsis of the arguments for and against the case for payments to those who have been infected with the Hepatitis C virus. As I explained when we spoke on 17 May, this is an issue which we felt should be referred to our Secretary of State and Mr Redwood has agreed the terms of this response.

The Legal Position

The Department's legal advisers are firmly of the view that it would be difficult to maintain the current rejection of claims for compensation in the face of a determined campaign by the Haemophilia Society and others. The grounds upon which a distinction has been drawn between those infected with HCV and HIV (to whom payments have already been made) are not regarded as being sufficiently robust to withstand a judicial review or a well organised challenge in the courts. This view is re-enforced by the possible precedent set by Baxter's agreement to compensate people (including some in the UK) who have been infected by use of the company's blood products.

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Clinical Issues

On the assumption that it may well be necessary to develop a mechanism for testing claims and making payments, health professionals here have emphasised that the impact of Hepatitis C on individuals and the length of time which may elapse before a reliable assessment of such an impact can be made will be widely variable. A further problem would be in verifying that the infection, possibly occurring many years previously, had been caused by NHS treatment.

Finance

We have some doubts as to whether it would be possible to cash-limit payments on the basis of a simple sliding scale formulated on individual need or clinical condition. Either might change significantly over the kind of time scale which could well obtain in many cases. A further question is whether applicants would be prepared to waive their rights to seek further redress through the courts to obtain a higher level of compensation.

Further discussions with the Treasury would be needed to define the level of flexibility which might be built into a possible HCV settlement and on the question of possible claims made in respect of those infected in the same way with a different disease (eg CJD).

We are also very concerned that, if a substantial settlement has to be funded from existing Health Votes, there could be serious difficulties in delivering other Government health priorities.

To sum up, our initial reaction is fairly well in-step with most of the views either expressed or implied in your letter. Some form of "No fault" compensation, probably administered as a hardship fund very generally along Macfarlane Trust lines may be inevitable. Ministers in the Health Departments will need to agree (possibly with other Members of the Cabinet) the general principles and the financial parameters would have to be established with the Treasury. Detailed set-up arrangements might best be considered by a UK Health Departments working Group.

I hope this is helpful. Copies of this letter go to colleagues in Scotland and Northern Ireland.