

From: Mr J C Dobson, FPA-FPS of Department of Health
Subject: COMPENSATION FOR HEP C ETC
Item posted: Tue 23 Apr 96 09:34
To: Miss Ann Towner, CA-OPU2 of Department of Health
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Mr John Sharpe, HP4 of Department of Health
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Mr Keith Paley, FPA-FPS2 of Department of Health
Mrs A Ryan, HEF 4.5 of Department of Health

I was intrigued by the sentence in square brackets in para 1.6 of your briefing note for the meeting with John Marshall, which says that

"In evidence to the Health Committee last year S of S, reaffirming the Govt's opposition to no-fault [compensation], acknowledged that payment to the HIV group was illogical."

For those of us working on the boundary of no-fault compensation/clinical negligence the precedent set by the HIV scheme is indeed a problem, but I didn't think we had ever gone so far in public! Can you possibly give me chapter and verse?

If ministers are having serious worries about the precedents caused by the HIV scheme there is an alternative handling option (which might also be worth thinking about if we ever need to consider compromising the current CJD litigation), and that is to admit that our legal case in the HIV litigation was not 100% watertight. In other words, we could (at this distance in time) suggest that the government agreed to the HIV scheme not because there was anything special about the plight of haemophiliacs, but on a straight calculation of the balance of risk that the court would in fact have found it negligent if the case had come to trial. This preserves the "purity" of the government's stance on no-fault compensation, and clearly implies that every new claim has to be looked at on its legal merits.

If colleagues in CA-OPU see any merit in floating this with ministers I wd be happy to collaborate in drafting a short submission.