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SCOTTISH EXECUTIVE

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News Release

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EXECUTIVE TO LOOK AT FUTURE HEALTH COMPENSATION SYSTEM

An expert group is to be set up to look at the pros and cons of a system to offer financial and other support for people who have been harmed by health service treatment and where the NHS is not at fault.

The move comes as part of the response by the Scottish Executive to a Health and Community Care Committee report that investigated the infection of some patients with the Hepatitis C virus following blood transfusion or treatment with blood products.

Also planned is an investigation into how the Executive can assist these patients in overcoming difficulties they face in getting mortgages and insurance, as well as listening to patients to identify any difficulties with the care and treatment they are receiving.

However, the Executive believes that extending the current compensation regime to include all patients infected in this way would be unfair to those who have been affected by other conditions in a similar way, as well as creating a 'risk-averse' culture within the NHS.

Health Minister Malcolm Chisholm said:

"Each and every case where someone has contracted Hepatitis C through infected blood is a tragedy for the individuals involved and their families. I have the utmost sympathy for them, and in no way underestimate the depth of feeling that exists on this issue.

"I share with the Committee the desire to help and support those who have inadvertently contracted this serious disease through health service treatment.



Making it work together

"We welcome the report and, in particular, its conclusion that a further, independent inquiry is not desirable. We are also pleased that the Committee concluded that there was no negligence in relation to the introduction of screening or heat treatment and no policy to deliberately withhold information on risk from patients.

"The Committee has stated that there is currently too much onus on aggrieved patients having to prove their case in the law courts- with justice often deferred for years as cases proceed expensively through the legal system. We feel it is important to avoid this happening in the future. We must strive to achieve better dispute resolution.

"The Committee also makes a number of recommendations for providing additional support to these patients and has recommended that we review the advice given to patients on the risks involved in blood transfusions and treatment with blood products.

"We note that one of the main areas where these patients encounter problems is in obtaining insurance and mortgages. This is a difficult area but we will explore whether there is anything we can do to help alleviate the problem - particularly in terms of entering into a dialogue with relevant financial institutions.

"The chance of getting Hepatitis C from a blood transfusion is now so small that it is extremely difficult to measure. We are putting an unprecedented amount of resource and managerial commitment into making sure that patients are protected from any harmful agents that may be present in blood donations.

"But new agents will inevitably arise and it may take many years before any risk from them becomes apparent so we can never rule out the possibility of some risk. Treatment with blood products can save life, improve its quality or speed recovery; but blood products, like most other treatment (including alternative therapies), are not free of risk. The risks of receiving a blood product must be balanced against the risks of not receiving it. We are already reviewing the way in which that risk is portrayed generally. In addition we will now establish a regime that will enable routine monitoring of the advice given by clinicians to individual patients.

"We have always maintained the principle that the NHS should not pay compensation where there is no legal basis for it being found at fault. The basis of that principle remains sound, and in the wider interests of the public. Every day judgements must be made about how best to treat an individual patient. A life saving operation or blood transfusion can, on occasion, have adverse consequences. Every drug, treatment, therapy and medical procedure carries a degree of risk.

"The issue here is how we manage that risk. It would not be in the interests of the NHS or, more importantly patients, to create a climate where health professionals withhold beneficial treatment because there is

a small chance of an adverse effect. In the long run, a 'risk averse' NHS would not serve the public as well as it does today.

"However, I do accept that sensitive legal and personal issues are involved. That is why we will set up an expert group to investigate the pros and cons of establishing a universal system for providing ex gratia financial and other support in the future. This group will have both independent and patient representation.

"We would want the group to explore this issue in the context of situations where people have been harmed but the NHS is not at fault. It remains to be seen whether the group will decide that such a system is feasible and desirable. If so we should want it to operate in a way that was consistent, equitable and transparent. Support should not be meted out on an ad hoc basis - people need to know where they stand.

"With this range of measures, we aim to offer better support for people who have been in this difficult and painful situation, as well as taking steps to create a better system for addressing similar situations should they occur in the future."

NOTES FOR NEWS EDITORS

1. All those claimants who have raised an action under the CPA alleging that they received blood from the Scottish National Blood Transfusion Service (SNBTS) after 1 March 1988 that was contaminated with Hep C have already been contacted through their solicitors.

2. An evaluation of the current NHS complaints system is being carried out on a UK basis and will be published shortly. As set out in the Scottish Health Plan, Our National Health, a reformed NHS complaints system will be introduced in Scotland in 2002. It will include, for the first time, conciliation measures to help resolve disputes.

3. The Royal Society of Edinburgh has drawn together a wide-ranging group to review the use of mediation in the NHS in Scotland. The group, which includes representation from NHSScotland, the BMA, the voluntary sector, and the legal community will report with recommendations by end January 2002.

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Bob, I have now got a considered clinical view; unfortunately, I am still awaiting a legal view, which I should get before 1400.

Can I offer you two alternative statements. I suspect that you will use the first; but we would be very grateful if you would read the second so that you are aware of our thought-process:-

1. The chance of getting hepatitis C from a blood transfusion is now so small that it is extremely difficult to measure. We are putting a huge amount of resource and managerial commitment into making sure that patients are protected from any harmful agents that may be present in blood donations. But new agents will inevitably arise and it may take many years before any risk from them becomes apparent, so we can never rule out the possibility of some risk. Treatment with blood products can save life, improve its quality or speed recovery; but blood products, like most other treatment (including alternative therapies), are not free of risk. The risk arising from receiving a blood product must be balanced against the risk arising from not receiving it. We are already reviewing the way in which that risk is portrayed generally. In addition, we are now setting up systems that will enable routine monitoring of the advice given by clinicians to individual patients.

2. The chance of getting hepatitis C from a blood transfusion is now so small that it is extremely difficult to measure.
[I believe that it is scientifically true and accurate [and important] to be clear that it is now virtually impossible to measure the size of a further reduction in any remaining Hep C risk to patients provided that we maintain the performance of our current testing and processing regimes]
 A very large amount of resource and managerial commitment is going into making sure that patients are protected from any harmful agents that may be present in blood donations. With the accelerating scientific advances over the last 30 years, the viruses that cause hepatitis B, AIDS and hepatitis C have been identified. An effective test was developed within a few years of the identification of each of these agents. As soon as each of these tests was judged to be reliable it was introduced to detect and exclude blood donations that could transmit these infections to a patient. As a result the risk of being infected with any of these viruses as a result of a transfusion in the UK is now very low but it is not zero.
[I am queasy about saying "unprecedented". I am sure that precedents exist for doing more than we are doing – e.g., provision of recombinant products to replace fractionated plasma products]
 It is an inescapable reality that treatment with blood products can never be entirely free of risks. There are infective agents that can be transmitted by blood that are known about but cannot yet be tested for. It is reasonable to expect that there will prove to be others that so far have not been recognised.

Treatment with blood products can save life, improve its quality or speed recovery; but blood products, like most other treatment (including alternative therapies), are not free of risk. The risk arising from receiving a blood product must be balanced against the risk arising from not receiving it

We are already reviewing the way in which that risk is portrayed generally. In addition we will now establish a regime that will enable routine monitoring of the advice given by clinicians to individual patients."

[Providing that it is totally clear that "we" is the SE, and not the SNBTS, I think we have to leave it to SE to make whatever public commitment they decide to make.. However, before issuing this, I would want to be very confident that we [i.e. SE and SNBTS] had done the "Q&A" work to prove to ourselves that we can explain how we are going to deliver on this with respect to blood product treatment.]

End.