



## THE SCOTTISH OFFICE

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Dear Sirs

### HIV WHOLE BLOOD COMPENSATION SCHEME

I refer to your letters of 30 March and 6 April and also to my telephone conversations with Mr Donald. I now attach a copy of the Scheme as approved on behalf of the Secretary of State. The Scheme is operational as from 10 April. The Department will take steps to publicise it but this will probably take about a week to arrange. However the Scheme now being operational applications for compensation under the Scheme can now be submitted.

So far as individual cases are concerned I think you indicated in your letter of 30 March those clients on behalf of whom you are instructed. It would obviously be easier if those cases could now be dealt with on the basis of applications completed in terms of the application form attached as Schedule 2 to the Scheme. If this is going to cause difficulties then please let me know.

So far as the GRO-A family are concerned I understand that the transfusion from which the infection of this family stemmed was administered in London. In these circumstances compensation would require to be pursued through the Scheme affecting England and Wales. That Scheme has not yet been finalised. I will however ask the Department to let you have a copy of that Scheme immediately it becomes operational. The application form and the terms of the Scheme itself, as you are aware, are slightly different to the Scottish Scheme.

In your letter of 6 April you ask about reimbursement of legal expenses in connection with the GRO-A family case. My understanding is that so far as the English Scheme is concerned if a case has not been before the Court prior to 10 March 1992 then legal expenses would not be recoverable although costs of appearing before the Panel established under the English Scheme would be recoverable where the Panel considered it appropriate. Under the Scottish Scheme expenses might be recoverable in relation to cases which were not in court but in which legal advice had been sought prior to February 1992. Separately of course expenses incurred in presentation of an application to the Panel

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may be recoverable. My understanding is that so far as you are concerned you were contacted by the **GRO-A** family only comparatively recently, and therefore there ought not to be any significant difference in the manner in which expenses were dealt with under the English Scheme as opposed to the Scottish Scheme. I would emphasise of course however that a decision on recoverability of expenses under the English Scheme must be a matter for the Department of Health.

You ask further in your letter of 6 April as to the eligibility for a "Special Needs" claim for additional payments. I do not have details from the Department or the Department of Health at this stage. The reference in the Scheme to this matter is really a signpost to arrangements which will be put in place. Obviously when I have those details I will let you know.

So far as the terms of the Scheme itself are concerned I think the only significant change from the terms of draft 5 which I attached with my letter of 31 March arise in relation to the form of undertaking. You will see that the form no longer refers to hepatitis infection. We received representations from Balfour and Manson about this matter and we checked again as to the form of undertaking which we had required in the context of the haemophiliac settlement. I should also point out at this stage that the form of undertaking for Scotland will differ from the form of undertaking for England not only because of the differences in jurisdiction but also because so far as I am aware the form of discharge and undertaking for England and Wales will include reference to the hepatitis virus since they take the view that that was covered in the haemophiliac settlement in England and Wales.

Further on your letter of 6 April you refer to the matter of age 18 or age 16. I am afraid that on this matter the Scheme stands as you have seen it to date, namely for the purposes of the Scheme a minor becomes an adult at 18. However I am not certain that this has the consequences which you fear. The definition of "infected adult with children" is not restricted to persons over 18. Similarly the definition of "married but childless infected adult" is restricted to persons over the age of 18 only in the case of persons not married to the person with whom the "married but childless infected adult" was or is living as husband and wife. In other words 16 to 18 year olds who have children or who are married or divorced would be treated as adults for that purpose.

As I indicated to you on the telephone I am to be out of the Office for the week 13 to 17 April. During that period any points that you have are probably best made direct to Mr Tucker in Scottish Office Home and Health Department on **GRO-C**

Yours faithfully

**GRO-C**

**RICHARD M HENDERSON**