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Patricia,
At a meeting with Caroline, Philip + Norman, you agreed to officials giving evidence at Lord Archer's inquiry on contaminated blood products. SOL's advice, which Hugh agrees with, is that we should avoid becoming in any way directly

MS(PH) involved. We could offer a

meeting between Lord Archer's team and DH officials to explain our review of all the documentation + the level of assistance we can provide to his inquiry. Are you

content with this approach?

Are you happy with the revised draft response to Lord Archer? For you to sign

GRO-C

28/3

From: William Connors

Date: 28 March 2007

Copy: R Lloyd PS/ MS(Q)

Richard Kelly/CMO

Greg Hartwell PS/PSec

David Harper

Lindsey Davies

Jonathan Stopes-Roe

Ailsa Wight

William Connors

Zubeda Seedat

Lord Archer letter to Sec of State: Public Inquiry on Haemophiliacs Infected with Hep C

Issue

1. Following SofS's meeting on Monday 19th March with Hugh Taylor we were asked to provide a redrafted letter for you to send to Lord Archer. A draft is attached at Annex A, which has been cleared by Hugh Taylor.

Timing

2. Urgent. The inquiry opens tomorrow Tuesday the 27th March.

Background

3. My email to you dated 21st Feb listed a number of concerns regarding this inquiry, which I understand were discussed by ministers. However, we have been asked to reply to Lord Archer, in a more cooperative spirit regarding the inquiry suggesting officials should give evidence and papers should be made available.

4. As you know we have commissioned our own review (carried out over the past six months by a senior member of staff) of all the documentation available to DH on this topic. We expect this report to be finalised by the end of April and we had always intended to circulate it widely to all interested parties, now including Lord Archer. Lord Warner had already agreed this approach.

5. We were also going to propose to ministers that we should make available all the documents reviewed in the report. These would be released following FOI principles with names redacted and ministerial submissions withheld, where permissible under FOI. Given that there are around 6,400 documents we had estimated that the work to prepare them would take four to five months and cost around £40,000.

6. These plans have obviously now been overtaken by the announcement of this inquiry and ministers' natural wish to be helpful. However there remain a number of significant questions and concerns amongst officials including solicitors branch, regarding any departmental involvement in this inquiry, which I would just like to flag up to you again. They mainly arise from the suggestion that officials should agree to appear as witnesses:

- There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985). Nevertheless, given the subsequent destruction and loss of a number of files there is considerable scope for embarrassment for the department if officials are asked to appear before the inquiry.
- With official Government Inquiries there is a clear legal framework under which to operate in the case of an inquiry under the Inquiries Act 2005 and in the case of non-statutory inquiries there are established principles and guidelines. These would not apply to a non-government inquiry such as Lord Archer's one and it is unclear exactly what departmental involvement may entail. For example, would officials be asked to attend?
- Colleagues are also naturally worried about the vast amount of preparation that would be required to prepare themselves if they were called to give evidence and answer questions about over 6000 documents.
- If it is agreed that officials should give evidence, this may in turn raise the possibility of ministers themselves being asked to give evidence.
- We will inevitably be pressed to release documents without any redaction – and to release submissions. While none of these policy documents gives rise to any real concerns over liability, some are sensitive in respect of potential for criticism or embarrassment of former ministers and senior officials. It may be much harder to maintain the line that we are only prepared to release documents under FOI principles if officials are asked to defend this line publicly in front of the inquiry.
- Sol have pointed out that the inquiry will not have any statutory powers therefore civil servants, ministers or others could not be compelled to attend or provide evidence. However, if it is suggested that they should do so, then no doubt the inquiry would draw adverse inferences from any refusal to do so.
- There is also a question whether the inquiry would offer legal indemnities to officials against the possibility of legal proceedings being instituted against them as a result of their evidence to the inquiry.

- Sol's view is that we should avoid becoming in any way directly involved.

Recommendation

7. For all these reasons, we think it is not advisable to offer in the reply that officials would be willing to give evidence to the inquiry. The offer of a meeting between Lord Archer's team and departmental officials is qualified to explaining about our review and the level of assistance we can provide his team.

Details of Lord Archer's Inquiry, inc funding is attached below.

William Connon.
Head of Blood Policy