

HIV LITIGATION
VIEWS OF REGIONAL DIRECTORS OF PUBLIC HEALTH

Background

1. The Department, the Licensing Authority, CSM and Health Authorities as well as CBLA have been preparing their defence against claims from HIV infected haemophiliacs. In spite of the addition to the funds handed out through the MacFarlane Trusts, the Plaintiffs are pressing on. Court proceedings are now expected to start in March 1991, though there may be a further delay if the Plaintiffs are not ready by then.

2. The RDPHs have been very concerned at the prospect of this litigation. They have recently considered the matter again and have asked me to pass their concerns to you. They agree our defence is sound, that is apart from a possible handful of cases where individual doctors may have specific accusations of negligence against them. Nevertheless RMOs consider there are reasons why an ex-gratia settlement should be attempted for these haemophiliacs who became infected with HIV through no-fault of their own.

3. The RDPH's case is:

a) there is a particular moral case for the Government to settle with the HIV infected haemophiliacs. They argue that these unfortunate individuals were infected with a mortal condition as a direct result of treatment within the NHS;

b) accepting that the treatment given was in good faith, and that before this treatment was available the life expectancy of the haemophiliacs was greatly reduced. Nevertheless, RMOs do not believe that given the appalling human tragedy visited upon the haemophiliacs, this excuses the Government from making a generous settlement;

c) that the stigma associated with HIV and AIDS and the consequent difficulty in concluding their lives, singles out this particular group of individuals for such special treatment;

d) the exceptional circumstances of the haemophiliacs would allow a publicly acceptable "ring fence" to be placed around this litigation, and that there should be no knock-on effect on the other litigation already in the pipeline, such as benzodiazepines;

e) limited human professional and management resources are being diverted from patient care to paper work in preparation for this case; and

f) very substantial legal costs are being incurred by HAs.

4. The RDPH's conclusion is that thrashing out these issues in Court will not be in the best interests of patients or the NHS. They would favour some mechanism, eg ex-gratia payment, which avoids this.

Other Considerations

5. The RDPHs consider that there is a strong possibility that around £40-60K in total per head may be enough for the majority to call of the action. At £60K a head the bill for haemophiliacs would be around £70 million, money which presumably would have to be diverted from other priorities.

6. There is an additional difficulty with HIV infected transfusion recipients. The RDPHs believe they should be included in any settlement as otherwise they sit very uncomfortably outside the "ring fence". This was the subject of a recent adjournment debate. There would be many practical difficulties with an extension to this small but growing group, many of whom were infected overseas. The transfusion service would not welcome resurrection of fears about the safety of the blood supply nor the job of testing and counselling all those people who have been transfused in recent years and who would worry that a new initiative was thought necessary.