

SoS

From: Ben Cole
Cleared: Ailsa Wight
Date: 30 September 2010

**WMS ON SUPPORT FOR PATIENTS INFECTED WITH HIV AND
HEPATITIS C BY CONTAMINATED NHS SUPPLIED BLOOD AND
BLOOD PRODUCTS, AND THEIR FAMILIES.**

Issue

1. This submission seeks your approval on the attached letter and Written Ministerial Statement (WMS), to send to the Home Affairs (HA) Committee, to seek policy approval to lay the WMS in the House.

Timing

2. Urgent. There is a Westminster Hall debate in this issue on 14 October. It is proposed to ask for comment from HA committee by 11 October.

Background

3. Cabinet Office have advised that the WMS should be circulated to HA Committee for policy clearance. The intention remains to lay the WMS either before debate on 14 October, or on the day of the debate itself.
4. Officials have already agreed the text of the WMS with officials in HMT and DCLG, and have been liaising with officials in DWP about the possibility of making ex-gratia payments to this patient group through the benefits system, rather than the existing Macfarlane and Eileen Trusts and Skipton Fund.
5. I sent a submission to you on 16 September which asked for your agreement to the terms of reference for the review into the payments made to people who received contaminated blood products in the 1970s and 1980s. The submission also flagged the potentially significant costs that could arise following the review which will need to be assessed in light of the Spending Review (SR) outcome. Both

the HA letter and WMS make clear that the review will take place in the context of the current financial climate and outcome of the SR.

6. Officials do not anticipate that HA committee will object to the content of the WMS.

Ben Cole
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Cc:

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Clare Macdonald
Ben Pledger
Matt Harpur
Jo Jones
Steph Parker
Bill Morgan
Richard Douglas
David Harper
Clara Swinson
Richard Murray
Ailsa Wight
Rowena Jecock
Debby Webb
Nannerl Herriott
Ted Goff
Rebecca Butterfield
Tom Nixon
Raguv Bhasin
Graham Addicott
Paul Stocks
Dilip Chauhan
Eleanor Shenton
Tim Elms
William Vineall

Rt Hon Nick Clegg MP
Deputy Prime Minister

[] September 2010

CONTAMINATED BLOOD – WRITTEN MINISTERIAL STATEMENT

I am writing to seek Home Affairs Committee clearance to respond to a Court ruling that was handed down on 16 April 2010, regarding the decision by the previous Government not to accept recommendation 6(h) of the report of Lord Archer's independent inquiry into NHS supplied contaminated blood and blood products. Recommendation 6(h) was one of a number of recommendations about the provision of financial support to those affected by this tragedy. It stated that:

“We suggest that payments should be at least the equivalent of those payable under the Scheme which applies at any time in [the Republic of] Ireland.”

Having considered the issue carefully, I have decided not to accept Lord Archer's recommendation 6(h). Attached to this letter is a draft Written Ministerial Statement (WMS) which I would like to lay in the House on 14 October, as there is a debate in the House later that day. I would therefore be grateful for comments by 11 October.

The history of this issue is that approximately 4,500 NHS patients were infected with HIV and/or hepatitis C by NHS supplied contaminated blood and blood products in the 1970s and 1980s, before tests were available for these viruses. Therefore infected donations or products could not have been removed from the blood supply.

Former Governments have acknowledged the financial hardship that these patients have experienced as a result of their infection, by setting up the Macfarlane Trust,

the Eileen Trust and the Skipton Fund, to make ex-gratia payments to those affected. Those who have been infected with HIV receive annual payments (average £17,400 in 2009/10), whereas those who have been infected with hepatitis C receive no annual payments (a lump sum payment of £20k is made to those with chronic hepatitis C infection, with a further lump sum of £25k if they develop serious liver disease). These sums are tax free and discounted for the purposes of calculating state benefits.

The size of payments to patients who were infected in Ireland varies according to their precise circumstances, but are significantly higher than in the UK, and in all the other countries which were similarly affected.

The previous Government published its response to Lord Archer's report in May 2009, but did not accept recommendation 6(h). That decision was subsequently put to a Judicial Review. The Court's Judgement, which was handed down on 16 April 2010, found against the Government. This WMS is the Government's formal response to that Judgement.

The Judgement requires Ministers to make a decision on whether to accept or reject recommendation 6(h). However, it does not require Ministers to necessarily come to a different decision than the previous Government, or to make extra funding available. The Court made it clear that matters relating to the allocation of resources were not under challenge in the Judicial Review, and that it would be legitimate for Ministers to take account of whether it has been at fault or would be vulnerable to a civil claim.

In deciding how to respond to the Judgement, Anne Milton, the Parliamentary Under Secretary for Public Health, convened a series of meetings to gather information and evidence to help inform the decision. Anne met the Chairs of the Macfarlane Trust, the Eileen Trust and the Skipton Fund, to discuss the operation of the current ex-gratia payment schemes. She also met representatives of the main campaign groups (Tainted Blood, the Manor House Group, the Contaminated Blood Campaign Coalition, the Haemophilia Society, and the Hepatitis C Trust), as well as two campaigners who spoke for women and widows. These meetings provided us with a much fuller understanding of the experience of those affected by this tragedy, and identified a wide range of options to help improve their quality of life and reduce their financial hardship.

Having considered the issue at length, I have decided not to accept recommendation 6(h). There were very specific events and failings that occurred in

Ireland that were unique to that country. In contrast, there have never been any findings of fault here in the UK. In addition, it is estimated that setting up a similar scheme here in the UK would cost in excess of £3 billion. A financial commitment of that size would require significant reprioritisation of other essential programmes.

However, the meetings that Anne held with those affected by this tragedy did highlight a number of aspects of this issue which were not adequately addressed by the previous Government. Hepatitis C campaigners have particularly highlighted the inequity between the HIV and hepatitis C payments. All of them have also complained about their inability to access commercial insurance, and having to pay for prescriptions. Therefore I think that there might be more that we can do to help relieve the financial hardship of this patient group.

We are therefore planning to conduct a short review of the following issues:

- ex-gratia payments in respect of hepatitis C. Including whether to put them on a par with payments for HIV, and payments to widows/dependents;
- the mechanisms by which all ex-gratia payments are made;
- access to insurance, or possible alternatives to conventional insurance;
- whether they can be made exempt from prescription charges;
- access to nursing and other care services in the community.

The review will take place within the context of the current financial climate and results of the Spending Review. Other Government Departments will be fully consulted, during the course of the review, on those aspects which are relevant to their areas of responsibility. I intend to report the outcome of the review before the end of the year.

ANDREW LANSLEY

Draft Written Ministerial Statement

CONTAMINATED BLOOD: SUPPORT FOR THOSE AFFECTED

The Parliamentary Secretary, Department of Health (Anne Milton): On 16 April 2010 Judgement was handed down on a Judicial Review of a decision made by the previous Government not to accept a recommendation made in the report of Lord Archer of Sandwell's independent inquiry into infections transmitted some decades ago through contaminated blood products. The recommendation in question, 6(h), which concerned payments to those affected by this tragedy, stated that:

“We suggest that payments should be at least the equivalent of those payable under the Scheme which applies at any time in [the Republic of] Ireland.”

The Judgement found against the Government, therefore I am now required to look again at this recommendation, and decide whether or not to accept it.

Having carefully compared the circumstances pertaining here and in the Republic of Ireland during the period when most of the infections occurred, and having taken account of the fact that this tragedy similarly affected many other countries; I do not consider there is a case for accepting Lord Archer's recommendation 6(h) that levels of payment here should match those made in Ireland. Every country must make its own decisions on financial support for those affected, taking account of its own particular circumstances, and affordability. The scheme in Ireland was set up on that basis, and has not been replicated in any other country, as far as we know. However, our ex-gratia payment schemes for HIV compare well with those of other countries.

In addition, it is estimated that implementing a similar scheme here in the UK, could cost in excess of £3 billion.

I recognise that this decision will disappoint all those who are living with serious health problems as a result of their infections, as well as their families and the families of those who have already died. During the Summer I met representatives of those affected, and heard first hand about the hardships that they have to face on a daily basis.

I believe that to a large extent the recommendations are already in place. The previous Government increased the level of payments to those affected with HIV to

a minimum of £12,800 per annum, and has increased the discretionary funding available to their dependents. I do not intend to revisit that decision, but I am persuaded that there are some aspects of Lord Archer's recommendations that should be looked at afresh. These include:

- the level of ex-gratia payments made to those affected by hepatitis C, including financial support for widows and dependents, and taking account of the level of payments made to those infected with hepatitis C in other countries;
- the mechanisms by which all ex-gratia payments are made;
- access to insurance;
- prescription charges;
- access to nursing and other care services in the community.

I have started a review of the issues raised by these recommendations, which will take place in the context of the current financial climate and results of the Spending Review. I expect to be able to report the outcome of this work and my decisions by the end of 2010.

