

*Caring for people with bleeding disorders*



THE  
**HAEMOPHILIA**  
SOCIETY  
UNITED KINGDOM

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2 October 2000

Dear Anne Marie

I write to seek your advice on the legal position for this charity regarding the campaign for financial assistance/recompense for people with haemophilia and hepatitis C. The trustees and myself recently spent a day reviewing the future of the campaign following which I received the enclosed letter from our treasurer Simon Taylor. I believe his points are well founded; however we need your detailed legal advice on each of the issues raised in his letter and possibly in addition we may require guidance from the Charity Commission itself.

The timescale for this is that your advice in written form will be needed **before** the next Board meeting on **30th November**. Ideally, I would like to get together with you to talk over these issues before you commit your opinion to writing. One of the sensitivities and difficulties around this hepatitis campaign is that almost every trustee has a personal interest in it, as alluded to in Simon's point 3, hence making objective decisions about the campaign has been very problematic.

To assist your consideration I enclose also a set of the briefing materials which went to the trustees for the review meeting on the hepatitis campaign, together with notes of the meeting. If we can fix a time to meet – or speak on the phone – perhaps your office could contact Sue, my PA, to arrange it.

Yours sincerely

GRO-C

Karin Pappenheim  
Chief Executive

Enc: 1. Copy of letter from Simon Taylor  
2. Briefing pack for trustees  
3. Notes of campaign review meeting 11/9/00



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## *Taylor Public Affairs*

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Chris Hodgson

26 September 2000

Dear Chris,

I am writing to you as Chairman of the Haemophilia Society in my capacity as the Society's Treasurer, in connection with the matter of the political campaign for financial assistance for those affected by HCV. I have a responsibility to the Board and to the Society to safeguard the Society's assets, and to warn the Board of the financial implications of its actions. This is what I am seeking to do in this letter. I am copying this letter to all the other Trustees as well as the Chief Executive.

I should like to place on record four points.

1. As I made clear at the Board meeting held 12<sup>th</sup> September, I cannot support the political campaign for financial assistance for those affected by HCV. This is primarily because I believe that, as I set out in my paper presented to the Board, the prospects for success are negligible, and in the light of this I cannot justify further expenditure of charitable funds on a campaign which I do not believe can succeed. This judgment, which I know is shared by a number of trustees, is based on my professional experience of more than two decades of working in the field of political campaigns. Anyone who believes that in the current political climate, we can obtain a reversal of a government policy that has been endorsed by three successive Secretaries of State, in two governments of opposing political persuasions, is deluding themselves. To continue this campaign, is in my view, an inappropriate use of Society resources, both in terms of staff time as well as direct expenditure, to the detriment of the Society's mainstream activities and the campaigns for improved treatment and care of people with haemophilia.
2. I have asked Karin to seek advice from Paisners, as to the legality of pursuing this campaign, as I am concerned that the campaign may be outside our objectives as a charity. If this is the case, we would be operating ultra-vires, and we as trustees would be individually liable for breach of trust and for any costs incurred by such action<sup>1</sup>. The objectives of the Society are: (1) the relief of people suffering from Haemophilia, and (2) the advancement of public education into the nature and causes of Haemophilia. Clause 4, paragraph (3) empowers the society to represent the

interests of people with haemophilia and their families. This may be sufficient, however we need a clear ruling.

3. We also need clear legal advice in relation to another issue. This relates to general principles of charity and trust law, and may be summed up by the question as to whether it is a legitimately charitable activity for members of a charity to seek financial advantage for themselves? Can a compensation campaign be a charitable activity? I am not clear if other high profile financially based campaigns are charities, such as war widows, Far East veterans etc.? I believe that this is a concern that has already been raised by Ann-Marie Piper at Paisners. There of course would be nothing to stop people establishing a campaign organisation outside the Haemophilia Society, but it would not be charitable, and by definition we could not use charity money to fund an activity that was not charitable.
4. Finally, we need to be clear as to how any campaign would be viewed in the context of the restrictions by the Charity Commission on political activities and campaigns. The Charity Commission paper CC9 refers.

This makes clear that whilst campaigning for a political purpose is not charitable, however some political activities by charities may, under certain circumstances, be permissible. Political purpose is defined as “securing, or opposing, any change in the law or in the policy or decisions of central government or local authorities, whether in this country or abroad.” Prima facie, this is precisely what the financial campaign is seeking to do, however any political activities must be in support of the charitable objective (see 2 above) and conducted in specific ways.

“In summary, therefore, a charity can engage in political activity if:

- there is a reasonable expectation that the activity concerned will further the stated purposes of the charity, and so benefit its beneficiaries, to an extent justified by the resources devoted to the activity;
- the activity is within the powers which the trustees have to achieve those purposes;
- the activity is consistent with these guidelines; and
- the views expressed are based on a well-founded and reasoned case and are expressed in a responsible way.” *Charity Commission. CC9 Sec 3 para 14*

I have concerns under all these headings.

- I do not have a “reasonable expectation that the activity concerned will further the stated purpose of the charity” see 1 & 2 above, nor do I believe that the resources devoted to the activity are justified.
- I do not know if “the activity is within the powers which the trustees have to achieve those purposes.” See 2 above.
- I do not believe that “the activity is consistent with these guidelines”, see below.
- I am not convinced that “the views expressed are based on a well-founded and reasoned case.” See below.

With regard to the last two points, I have concerns about the nature of the campaign we have run, and would need to run in the future. The guidance from the Charity Commission is clear that research, evidence and argument used in any campaign must be balanced, well-founded and reasoned. It quite specifically says “*a charity must not seek to influence government or public opinion on the basis of material which is merely emotive.*” I am not convinced that the campaign is robust enough to pass these tests. The medical evidence is not as compelling as we might like, nor do we have detailed quantifiable financial evidence. The main thrust of our campaign is equitable and fair treatment, which is clearly primarily “emotive”.

As trustees, our duties and responsibilities are considerable and serious. However much we might wish the world to be otherwise, it is our job to safeguard the assets of the charity and administer it in the best interests of all its members. It is also essential that at the Board meeting in November, all trustees are clear on the legal implications arising from the questions and issues I have raised. If they can all be satisfactorily cleared by our legal advisors, then the Board will be able to make a decision as to whether to carry on the financial assistance campaign. If they are not, then every trustee needs to understand the legal consequences.

Yours sincerely.

GRO-C

Simon Taylor

Hon Treasurer – The Haemophilia Society

CC: All Trustees; Chief Executive

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#### **<sup>i</sup> Liability for breach of trust**

All trustees must administer their charity in accordance with the terms of its **governing document** (ie its constitution, trust deed, or memorandum and articles) and with the requirements of charity law. A charity's governing document sets out the charity's objects and powers that the trustees can exercise in pursuing those objects. A breach of trust occurs when trustees act in a way that is contrary to the terms of their governing document, or when they fail to perform their duties as trustees. Using the charity's resources for some purpose not within the charity's objects (what it has been set up to do) is a breach of trust as is, for instance, investing the charity's money in a type of investment not permitted under the investment rules applying to the charity. Our leaflet **CC14 Investment of Charitable Funds : Basic principles** looks at investment rules in more detail.

When trustees commit a breach of trust which results in some financial loss to the charity, they become liable to make good that loss.

Trustees who are familiar with the contents of their charity's governing document, and who have acquired a reasonable knowledge of the law as it applies to their charity, are very unlikely to commit a breach of trust. Trustees can reduce the likelihood even further by taking and following professional advice or consulting us on any point on which they are unsure. (Charity Commission guidance)