18/01/2000

Ref: JH 60429/99

To: 1. Mrs J Gregory TC 21/12
2. Ms J Hutt, Assembly Secretary for Health and Social Services

cc: Mr P R Gregory
Dr B Smith ✓ 30/12.
Mr A Bold
Mr R Hughes
Ms C White
Ms A Jones

From: Sue Paterson
Health Service Strategy
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Date: 20 December 1999

HEPATITIS C - CAMPAIGN FOR COMPENSATION

1. Doc 1 is a letter from Jan Wallace of Whitchurch, seeking your support to a campaign for compensation for haemophiliacs in Wales who have been infected with hepatitis C, or co-infected with hepatitis C and HIV, via their NHS treatment. Mrs Wallace has an 18 year old son who has haemophilia but not infected with hepatitis C or HIV.

2. The aim of the campaign is to seek financial assistance for haemophiliacs infected; raise public and political awareness of the plight of these people; provide the best treatment possible to treat their infections and to keep the issue of infection through contaminated blood products high on the public and political agenda. Mrs Wallace also seeks a public inquiry to clarify what lessons can be learnt for the future.

3. This submission also informs you of related issues, particularly litigation over hepatitis C and recent requests for disclosure of documents related to this. Although not directly related to the letter and campaign, these issues may affect how you view the matter.

Timing

4. This is one of a number of letters that you have received as part of this campaign, which are due for response before Christmas. **An early response to Mrs Wallace's letter will enable Officials to provide a consistent response to these by the deadlines requested.**

Background

5. At Doc 2 is a copy of the advice (dated 4 August) on the issue of special payments for haemophiliacs infected with hepatitis C. That situation remains unchanged but there have been developments in related areas.

6/22/12

Hepatitis Litigation

6. Joint proceedings have been issued against the National Blood Authority (NBA) in England by a number of claimants who have been infected with hepatitis C via blood transfusion. The case is expected to go to court in October next year. A small number of claims are also being brought against Velindre NHS Trust who manage the Welsh Blood Service (WBS) in respect of infection following transfusion of blood provided by them. The Solicitors acting for the claimants (whom we believe to be acting in both cases) have submitted a request to the Department of Health and the National Assembly for disclosure of certain documents. They are requesting copies of all documents, letters, reports, internal memoranda, relevant to the introduction of routine hepatitis C screening of blood generated during the period 1 March 1988 to 1 September 1991. The litigation revolves around a claimed delay by the UK Government to introduce screening prior to September 1991, when the United States introduced screening in May 1990. This request for disclosure is being granted subject to Treasury Solicitors advising us which documents should not be disclosed on the grounds of "public interest immunity". While not of direct relevance, and while different arguments apply, if the claims relating to blood transfusion are successful they will increase the pressure to compensate haemophiliacs for infection via blood products.

Situation in Scotland

7. A further issue which has recently come to light relates to the use of Scottish blood products in Wales at a time when different treatment left the Scottish product less safe from infection than the Welsh. Blood products used in the treatment for haemophilia were first heat treated in 1985 to counter the HIV virus. In retrospect it was also discovered that heat treatment also inactivated hepatitis C but that full inactivation of this virus could only be achieved by heating to a higher temperature than required to inactivate HIV. The Protein Fractuation Centre in Edinburgh (PFC) did not heat treat their blood products to a high enough temperature to eliminate the hepatitis C virus, whilst the Bio-Products Laboratory in England (BPL - serving England and Wales) heat treated their products to a sufficient temperature to inactivate both the HIV and hepatitis C virus. The Haemophilia Society have successfully persuaded the Scottish Executive to carry out a review of the events behind the development of heat treated blood products in Scotland between 1984 and 1987 (1987 being the time when the PFC were made aware of the fact that heat treating to a certain temperature could inactivate both viruses.) This is in the hope that haemophiliacs in Scotland who were infected with hepatitis C in this period would receive compensation on the grounds that they were put at risk at a time when those haemophiliacs in England and Wales were not.

8. During this period a number of blood products from Scotland came to Wales, although it is not known how many, if any, of these were used in treating Welsh patients. In practice the vast majority of haemophiliacs in Wales who may have received a product produced in Scotland at that time would have already been infected before blood products were heat treated by BPL. However, there is a theoretical risk that a small number of patients were infected from the Scottish product before it was heat treated to the correct temperature. Officials are keeping in close contact with Scottish Officials and will provide further advice on this point when the outcome of their inquiry is available.

Haemophiliacs co-infected with HIV and Hepatitis

9. A special payment scheme for those infected with HIV was introduced in 1988. At that time there were very strong public attitudes to HIV and widespread fear of a new and untreatable fatal infection which was sexually transmitted. The payment scheme has continued since then. Nearly all of those haemophiliacs who were eligible at the time for special payments are co-infected with hepatitis C. However, those who received payments were required to sign an undertaking that they would not bring any proceedings against the Department of Health, Welsh Office or any other Government body involving allegations concerning the spread of HIV or hepatitis C before December 1990 through the blood products, Factor VIII or Factor IX. However, there is now some doubt over the legality of these undertakings and groups representing such individuals are making overtures to the Department of Health that they should be included in any compensation scheme for hepatitis C. The Department of Health are currently clarifying the position and Officials will include an update in future advice.

Advice

10. Combination anti-viral therapy has now been licensed for the treatment of hepatitis C. The National Institute for Clinical Excellence have been asked to look at this as a matter of urgency and report on whether this is the most effective treatment to make available on the NHS. The draft reply therefore rejects the request for a public inquiry.

11. Despite the litigation, we continue to advise against "no-fault" compensation for hepatitis C, and the reply at Doc 3 has been drafted accordingly. There have been calls for a public inquiry into the infection of haemophiliacs through blood products. Whilst the Government acknowledge that this is a terrible tragedy, the fact is that the technology to produce heat treated products for people with haemophilia in sufficient quantities to prevent HIV and hepatitis C was not available prior to 1985. Once that was possible, the NHS did precisely that. We do not believe an inquiry could serve any

useful purpose to ease the plight of haemophiliacs who have become infected. The important thing is that they receive the best treatment we can provide as developments in treatment emerge.

12. Officials are discussing with colleagues in Public Health Division and Health Promotion what action would be appropriate in raising awareness of hepatitis C.

Line to Take

13. It is likely that calls for compensation will increase, including those from the media. Therefore, a suggested line to take in response to these is:

" We believe that haemophiliacs in Wales who developed hepatitis C as a result of NHS treatment did so before blood products were heat treated from 1985; this heat treatment counters the hepatitis C and HIV virus. While we have every sympathy with those infected there are no plans to make special payments to these individuals on the grounds that they received the best available treatment at the time."

GRO-C

MISS S PATERSON