FOR DECISION **Paper number:** SC (03) 10

SCOTTISH CABINET

FINANCIAL AND OTHER SUPPORT FOR PATIENTS WHO HAVE CONTRACTED HCV FROM BLOOD TRANSFUSIONS ETC; SCHEME OPTIONS

MEMORANDUM BY THE MINISTER FOR HEALTH AND COMMUNITY CARE

Purpose

1. To agree the presentational approach for my further appearance before the Health and Community Care Committee (HCCC) on 29 January. To decide on the type of ex gratia payment scheme the Executive would wish to establish if associated legal and social security issues can be resolved.

Background

2. I have been asked to appear before HCCC again on 29 January. UK Ministers, however, have yet to reach a conclusion on the issue of devolved powers.

Devolved competence

3. We understand the view of DWP officials is that a scheme to make ex gratia payments is reserved on the grounds that it would provide assistance for social security purposes to individuals who "qualify by reason of old age, survivorship, disability, sickness, incapacity, injury, unemployment, maternity or the care of children or others needing care" (within the meaning of Section F1 of Part II of Schedule 5 to the Scotland Act). [redacted]

Scheme design

4. We are also being pressed in Parliament to be more specific on how a scheme would be designed. A difficulty in this is the variability of the health outcome resulting from HCV infection. Some individuals may never develop liver damage or symptoms, others will clear the virus and the remainder will develop some level of long-term symptoms or liver damage.

5. We expect about 16% of those infected to develop serious long-term harm within 20 years (in the form of cirrhosis, liver cancer etc). It is not possible to exclude the possibility that over a longer period this might rise to 60%. To budget for this however would be ultra-conservative – partly because the scenario is speculative but also because many of the individuals are likely to have died of other causes before reaching this stage. In any case any additional expenditure would not occur for a number of years.

6. The Expert Group's scheme would provide payments to all those infected – including those who have cleared the virus. It would also make payments to the dependants or estates of infected individuals who are now deceased, which substantially increases the potential cost of the scheme.

7. I believe instead that the scheme should be targeted at those who are still alive and who are experiencing long-term symptoms or signs of liver inflammation. The category most

seriously affected are those suffering from cirrhosis, liver cancer or liver failure. Whilst it is possible to construct a scheme that would only make payments to individuals who had reached that stage, I do not believe to is realistic or fair to do so.

8. The following options provide for payments to all those experiencing long-term symptoms or signs of liver inflammation, but with increased awards to those who develop the more serious conditions such as cirrhosis. I invite the Cabinet to confirm that this should be our approach.

The options are:

Option 1: awards at the levels recommended by the Expert Group (£50k to all with long-term symptoms or damage; plus further £50k to those who develop cirrhosis etc).

The estimated cost of this option would be between £22m and £44m.

Option 2: £35k to all with long-term symptoms or damage; plus further £35k to those who develop cirrhosis etc)

The estimated cost of this option would be between £15m and £31m.

Option 3: £25k to all with long-term symptoms or damage; plus further £25k to those who develop cirrhosis etc)

The estimated cost of this option would be between £11m and £22m.

[Lump sum awards are proposed because we understand it might be easier for these to be disregarded for social security purposes. The lower estimate in each case is based on payments to the 568 individuals recorded as being alive. The higher estimate also covers the possibility of payments to an additional 597 individuals (i.e. a total of 1165) thought to be alive on the basis of epidemiological estimates. I expect the take-up for the 568 group to be fairly heavily front loaded with a possible profile of 60%;30%;10% over the first three years. Take-up for the larger 1165 group is likely to be slightly less front loaded.]

9. These options all have significant financial implications. The Health Department does not have explicit provision for these costs at present, and its Reserve for next year currently stands at only £25million to meet all unexpected pressures. The PFO has already reported that the central Reserve is also severely constrained. Furthermore, because of the measures we have been taking to reduce the underspend this year, resources available from end year flexibility next financial year (which might normally be used for a one off cost like this) are likely to be less than in recent years

10. On that basis I can only support Option 3. I would be willing to provide up to £10 million in the next financial year – 2003-04 to meet these costs, and I accept that that amount would be for the health budget to meet. But I could not find any more than required to fund this option. If any of the options are pursued, difficult decisions will be required about stopping other activities or developments, with a potential impact on Executive priorities and targets.

Issues for the HCCC meeting

11. It is likely that we will be in the position on 29 January of still waiting for a view from the UK Government on the devolved powers issue. We are likely to be criticised for the length of time it is taking to resolve this. We will have to indicate that the issues are in front

of the UK Government, that there are difficult constitutional and legal considerations, and that it is the responsibility of the UK Government to reach a view on these.

12. It would be helpful if I could say a little more to the Committee about the type of scheme and criteria we have in mind. I have in effect already broadly outlined to the Committee our preferred approach, and we should not at this stage be completely specific about what we propose and the costs, in case this further raises expectations of what we will be able to do. Clearly we cannot make any payments if we do not have the legal powers to do so, and we cannot make any firm statement ahead of further advice from the UK Government on this point. But I could indicate that we favour a scheme based on the principles stated in paras 7 and 8.

13. Given the state of progress, it is likely that the Committee will wish to take a report to the Parliament, probably recommending implementation of the Expert Group proposals. We will need to consider in due course our response to and handling of such a debate

Conclusion

I invite colleagues to agree that we base our design of a scheme of payments to those who have contracted Hepatitis C from blood on Option 3, as set out in para 8 above, and to endorse the handling line for HCCC set out in paras 11 to 13.

MALCOLM CHISHOLM
22 January 2003