



SCOTTISH EXECUTIVE

FAX

HEALTH DEPARTMENT
Health Planning and Quality Division
Branch 5

DATE: Monday, December 23, 2002

Number of pages including cover sheet: 3



*TO: Simon Stockwell
Head of Branch
Social Policy
SCOTLAND OFFICE*

FROM: Bob Stock
GER
St Andrews House
EDINBURGH

E-Mail: bob.stock @ **GRO-C**

FAX No. 25994

TEL:
FAX No. GRO-C

LETTER TO ANDREW SMITH ATTCHED AS REQUESTED

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SCOTTISH EXECUTIVE

Minister for Health & Community Care
Malcolm Chisholm MSP

St Andrew's House
Regent Road
Edinburgh EH1 3DG

Rt Hon Andrew Smith MP
Secretary of State
Department for Work and Pensions
Richmond House
79 Whitehall
London
SW1A 2NS

Telephone: 0131-556 8400
scottish.ministers@ GRO-C
<http://www.scotland.gov.uk>

18 December 2002

Den Anderson

EX GRATIA PAYMENT SCHEME FOR 'HEPATITIS C FROM BLOOD' PATIENTS

I understand that officials have had further discussions following my letter of 5 November, and I thought it might be helpful to elaborate on the Executive's thinking in terms of how such a scheme might operate.

Our initial preference was for a scheme that would make ongoing payments to surviving patients – triggered by progression to a stage of disease that could easily be linked to the concepts of need and suffering. We feel that such payments would be less likely to be perceived as compensation, and therefore as being a new departure from the principle that the "NHS does not pay compensation when there is no legal liability".

As you know, our preliminary view is that any scheme for making ex gratia payments to this group of patients would lie within devolved competence. However, I understand that there may be an argument that a scheme based on lump sum payments is less likely to be viewed as involving reserved powers than one based on ongoing payments. We believe that a lump sum payment scheme would also offer a workable approach to meeting the needs of this group of people. If it would help to address any concerns on devolved competence, we would be willing to go forward on the basis that any new scheme would only involve lump sums.

I should be grateful if you could take this into consideration. I look forward to hearing from you.

I am copying this letter to Gordon Brown, Alan Milburn, Derry Irvine, Helen Liddell, Jack McConnell, Jim Wallace and Colin Boyd.

Yrs sincerely

GRO-C

MALCOLM CHISHOLM