

RESTRICTED - POLICY

THE DEPARTMENT'S RESPONSE TO HIV INFECTION

Litigation

1 A number of writs were taken out against individual medical practitioners, against HAS and the Department; the final number was over 1000 in England and Wales. It was decided to bring them together effectively as a class action. A settlement out of court was eventually reached but the indications were that the courts would not have upheld the case for negligence against the Department. This was accepted in the final presentation by Counsel on behalf of the haemophiliacs. The motive for settling was as much to bring the matter to conclusion and to save the enormous costs of taking it to court, most of which would have come out of public funds since a high proportion of the litigants were legally aided.

Non-financial help

2 The Government has commissioned extensive research into all aspects of HIV infection and its treatment and management. Good practice guidance is available to the Field. Patients receiving treatment for haemophilia have been carefully screened for HIV infection and extensive counselling and support services set up, run both by NHS haemophilia centres and by the Haemophilia Society in the form of a self-help initiative. The latter has been supported by the Department through S64 funding. A limited process of "look back" has been undertaken for those receiving transfusions of infected blood. However since no cure or effective treatment has yet become available the motive has largely been to limit possible further transmission.

Financial assistance

3 In 1988 the original Macfarlane Trust was set up to address the social needs of those concerned. In 1989 a sum of £20,000 was given to each infected haemophiliac as an ex gratia payment allowing court action to proceed. In December 1990 the Government agreed to special payments for HIV infected haemophilia patients in return for settlement of outstanding litigation. A scheme of payments for those infected with HIV and their dependants was introduced and the original trust was allowed to continue in respect of social need.

4 In 1992 following a campaign on behalf of those infected with HIV through blood transfusion, the Government extended the payments to this group, concluding that they too were a very special case.

5 Both groups shared the tragedy of becoming infected with HIV through medical treatment and were considered to be a special category through:

- i) the nature of the HIV infection which was believed to be invariably fatal;
- ii) the significant lifestyle implications of HIV, including public hostility etc.;
- iii) in the case of the infected haemophilia patients the problems of HIV which were superimposed on the health, social and financial disadvantages they already suffered as a result of their hereditary haemophilia.

6 A discretionary trust (The Macfarlane Trust) was set up in order to enable payments to be made to those suffering particular hardship. The trustees established scales of support for those in need so that as far as was possible there was equality of treatment to all those who applied.

Scale of payments made

7 The solicitors representing the haemophiliacs originally asked in 1989 for payments of £250k per individual giving an approximate figure of £300 million for all 1200 patients. Three months before exchange of expert witness reports was due, the solicitors approached the department and offered to settle for £90 million. They then came back on subsequent occasions and eventually the department agreed to offer £42 million to bring the litigation to an end.

8 At the suggestion of the Haemophiliacs' solicitors this was broken down between patients, partners and children as follows:

Single person infected	under 18	£21,500
	over 18	£23,500
Married person infected		£32,000
Married person with children		£60,500
Infected intimate adult spouse/ partner		£23,500
Child who is married		£23,500
other child		£21,500

In addition the non-infected partners of all infected persons were awarded £2000 each to compensate them for the worry of possible infection.

9 The same rates, together with the additional £20,000 originally paid to the haemophiliacs, were applied to the those infected through blood transfusions. No adjustment was made for inflation over the two years. A discretionary trust (The Eileen Trust), was set up, along similar lines to the original Macfarlane Trust, to take care of the social needs of those infected through blood transfusions.

Cost to date

10 The costs of the haemophilia payment scheme have reached £81 million. (This includes £15 million paid to the Macfarlane Trust for the special needs of HIV haemophilia patients and their families.) Costs of the scheme of payments for those infected with HIV through blood or tissue transfer has reached £3.5 million including £0.5 million paid to the Eileen Trust for the special needs of this group.

CA OPU
10 February 1995