

SoS

ANNEXE A

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## **CONTAMINATED BLOOD PRODUCTS and HEPATITIS C**

### **Issue**

This note updates you on the issue of contaminated blood products and hepatitis C, and pressure for a Public Inquiry.

Significant parliamentary interest in this issue has been generated both in the House of Lords and in the Scottish Parliament, prompted by the concerns of patient groups.

### **Background**

Following firstly HIV and secondly hepatitis C litigation procedures in the 1990s, we know that various relevant Department of Health papers were destroyed in error. Currently we do not know the full extent of what was destroyed nor the content of all available papers. We need to establish more information about those papers as soon as practicable, as the issue has attracted considerable interest via Fol requests and parliamentary questions.

The Macfarlane and Eileen Trusts were set up to provide financial aid for, respectively, haemophiliacs and others infected with HIV as a result of receiving contaminated blood products. More recently, in 2004, the Skipton Fund was established to provide ex gratia payments for those infected by hepatitis C.

The Haemophilia Society believes that there should be a Public Inquiry into the issue of contaminated blood products and hepatitis C, and that their case is supported by the fact that relevant papers are missing. They have lobbied extensively to that end.

## **Documents**

Following an internal audit of events surrounding the loss of papers, officials are now analysing all the papers available, including over a thousand released in Scotland recently. They anticipate that this may take up to six months, but it is important it is undertaken to establish the facts and our position in relation to any Inquiry. We would propose to release these under Fol provisions.

Further, some files have recently been returned to the Department by Blackett, Hart and Pratt (Solicitors), and we have requested that high priority be given to examination of these by an independent Counsel following points made in a recent HoL starred question from Lord Jenkin. This is in hand.

## **Demand for a Public Inquiry**

The requests for a Public Inquiry have become more vocal. Haemophilia patient groups have pressed for higher levels of compensation, and believe an Inquiry could help to achieve this by demonstrating the Department was culpable. They are supported by Lord Morris and others in the House of Lords. In addition, the Scottish Parliament Health Committee decided in April this year to call for a full judicial Inquiry.

We have received a copy of the response to the SP Health Committee from the Scottish Minister for Health. This firmly rejects the call for an Inquiry.

While an Inquiry would ensure transparency, and be viewed by interested parties as an appropriate and independent response, as well as minimise the risks of judicial review, it would on the other hand not only be costly and resource intensive to run but also significantly raise the profile of the issue and expectations of interested parties that cannot be met. Importantly, it would also set a precedent, especially for an issue where we do not consider the UK was at fault.

Officials have therefore on balance advised that an Inquiry would be disproportionate and not justified in the circumstances, in line with the views of the Scottish Minister.

As an alternative we have explored the possibility of commissioning an independent review and commentary on all the papers. With regard to the relevant statutory powers, this could be done under the NHS Act 1977, as something incidental to your duty as SoS to continue to promote a comprehensive health service designed to secure improvement in treatment of illness, and to provide services required for treatment, as it would amongst other things be a way of passing information to the public about these issues. It would provide additional reassurance and information to the public, and would build on the steps officials are already taking to review all the existing papers. It would however not provide powers to compel witnesses to give evidence or produce documents, and we would need to draw the terms of reference accordingly.

## **Conclusion**

You are invited to note the current position, and the line we propose to take against the need for an Inquiry, and further, to consider the option of producing an independent commentary on the papers under the Act.