



Brian Bradley  
03/10/2006 10:35

To:  
cc:  
cc:  
bcc:  
Subject: RE: vCJD Trust - meeting 5 October



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02/10/2006 17:22

To: Jonathan Stopes-Roe/HP-SL/DOH/GB@GRO-C  
cc: Brian Bradley/HP-SL/DOH/GB@GRO-C  
bcc:  
Subject: RE: vCJD Trust - meeting 5 October

Jonathan,

1. I had an invitation this morning to meet with Justin Fenwick and Leigh-Ann Mulcahy in a rather impromptu meeting to follow up one or two thoughts that Justin had had consequent to our recent conference with him. Justin had produced a note covering his latest analysis of concerns expressed by Sir Robert Owen and possible solutions to these.
2. In short his view is that the Trustees are proposing a new scheme which effectively relieves them of any significant discretionary burden. We discussed three possible responses to this. First, to maintain without any change or compromise, the existing structure of the settlement. Secondly to effect a modest range of what might be termed "evolutionary adjustments" that appear in Justin's draft note. The third option would be to adopt the proposals made by Sir Robert Owen.
3. In deciding which suits us best I think the question to be asked of Robert Owen is not so much whether he thinks the present scheme works well enough but rather whether he feels he and the present board of Trustees are prepared to exercise the sort of discretionary judgments being expected of them under the terms of the existing settlement. It is clear on the strength of the Trustees recent track record, and indeed the proposals now being made by them, that they have some difficulty with this. As a pre-cursor to this there is an equally significant question to be asked of the Department and that is whether it believes that the current range and scope of discretion required by the scheme remains a necessary part of the settlement by which the Secretary of State wishes to compensate victims of vCJD (and in the process, ward-off litigation). My advice to you would be that this very significant discretionary element is an important component of the vCJD settlement as we negotiated it with the families and their representatives some 5 to 6 years ago. The alternative would be to follow the Trustees proposals and have more streamlined mechanisms for paying out monies leaving many subsidiary issues to be grappled with as to how compensation might be distributed in family situations. There might be a hard-nosed argument for saying that having paid compensation this is all that really concerns us. The alternative though is that responsible Government has a care about these things and does not wish to see monies destined to compensate victims of vCJD being swallowed up by lawyers acting in subsequent contentious business - particularly where Trustees charged with these judgments have not met the obligations expected of them. I think Justin Fenwick's view was also that our taking a rather tough view about this and not really caring about the exercise of any discretionary judgment until after monies had reached the families was something that probably exposed us to a slightly greater litigation risk in the longer term. I believe these are cogent reasons in themselves for the Department to wish to retain the present scope and extent of discretion within the settlement. If you agree then we really need to know whether the present Trustees are up to the task.
4. If we do not wish to change the complexion of the trust in this way then we need not trouble ourselves too greatly with the question of do we wish to accede to Sir Robert Owen's proposals which would do away with much of the discretionary business with which the Trustees are presently tasked. Of the three response options I am increasingly coming round to the view that to do nothing at all i.e. to resist entirely Robert Owen's proposals without effecting any sort of change, will not, presentationally, be an easily defensible one. The mid- course, to adopt a package of evolutionary adjustments, to my mind carries the

most sensible degree of risk for us. It also has a degree of integrity to commend it by which our approach is broadly consistent for all those that have been compensated to date as well as all those still to be compensated in the future. Otherwise any major shift in the amounts to be paid and the basis by which these are calculated will inevitably lead to disgruntled voices cases on either side of the line. By adopting something along the lines of the "possible solution" contained in Justin's note (which I am copying to you) we can be seen to be responding to the Trustees concerns as well as maintaining consistency and integrity in our approach towards the compensation of victims. At the same time we will hopefully assist the Trustees that little bit more with the exercise of their discretion although I still think that a frank exchange with Sir Robert Owen at some point about the suitability's of his fellow Trustees might be a reasonable and prudent step to take.

5. I am providing you with this note so that you are entirely aware of my discussions with leading Counsel which ordinarily I would have preferred you to have been a party to. I think Justin's intention was simply to convey some further thoughts on matters that he had and my being on his doorstep presented the easiest the way of his doing this. I hope you are not troubled by this. Having thought about our discussion and considered his note it occurs to me that one approach might be for us to meet with Robert Owen on Thursday with a view to asking some of the questions contained in the note which I recently circulated. Some of these are questions we might move to in the course of our meeting with Sir Robert Owen but equally I am conscious that some of them are probably better suited to an exchange of written questions and answers at a later point after the meeting. Equally there are some which you might feel are quite proper for us to ask but perhaps can be better handled in a single meeting between just yourself and Sir Robert Owen. If we were to pursue matters in this way then we could obviously consider the more detailed responses that we receive from the Trustees to some of the more substantive settlement questions that we have. These can and should inform our evolutionary adjustments type response against which a later view might be taken as to any need to consult more widely.

We have not of course had an opportunity yet to discuss an approach to Thursday's meeting but I hope that this note provides some assistance. No doubt you will call to discuss if I can assist further.

PS - Since dictating this I have received your e-mail below.

MARK GIDDEN  
ROOM 511  
NEW COURT  
**GRO-C**

—Original Message—

From: Stopes-Roe Jonathan DOH GSI  
Sent: 02 October 2006 15:17  
To: mrjustice.owen@ **GRO-C**  
Cc: Gidden Mark LSPG SOL LIT; Bradley Brian DOH GSI;  
Richard.Vallance@ **GRO-C**  
Subject: vCJD Trust - meeting 5 October

Dear Robert

I am looking forward to our meeting on Thursday (4:30 at your chambers at the RCJ), when we can follow up your proposals for revision of the vCJD Trust Deed. I understand that David Stevens and Richard Vallance will also be attending; I will be bringing Mark Gidden and Brian Bradley.

I thought it might be helpful to jot down some questions and points for discussion (attached - could Richard please arrange for it to be forwarded to David Stevens?). No doubt there are many other points that I have missed. My aim is to clarify the proposals themselves, but also to test the basis for them. Please forgive any rough edges and legal solecisms!

Jonathan Stopes-Roe  
Head of Strategy & Legislation  
Health Protection Division  
Department of Health  
Wellington House

**GRO-C**

(See attached file: vCJD Questions.doc)

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