

Parliamentary Branch

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Date: 16 January 1991

cc: Mr Heppell DS
Mr Wilson HC(A)
Mr Thompson AIDS Unit
Dr Rejman HC(M)2
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PQ 747

I attach a draft answer and full briefing, which takes account of the comments on the bull points from the Ministerial meeting. On reflection the point about NHS resources is more appropriate to the question of no fault compensation generally rather than this particular group.

GRO-C

R M T SCOFIELD

Ady cluff

*Letter to Kelly
French things
(fco reports)*

Question: Mr Gavin Strang (Edinburgh East): To ask the Secretary of State for Health, if he will make provisions comparable to those made to haemophiliacs to non-haemophiliacs infected with HIV as a result of National Health Service blood or tissue transfers.

Suggested Reply

We have every sympathy with the plight of those infected with HIV as a result of NHS blood or tissue transfer. However we have not been persuaded that it would be right to extend the special provision which has been made for the infected haemophiliacs.

BULL POINTS

Earmarked funding for services for all people with AIDS or HIV infection

- * £160 million provided this year (almost £200m in 92/93).

Government's position on no fault compensation for medical accidents

- * The Government's position is that a scheme of no fault compensation for medical accidents would be unfair, impractical and costly.

- * This position was recently accepted by the House in a free vote

ELEPHANT TRAPS

*Help provided for haemophiliacs with HIV & hepatitis
primarily with state help given elsewhere & many countries
have provided no such help.*

Haemophiliacs a precedent for payments to all those infected with HIV during NHS treatment

- * The haemophiliacs are widely accepted as a special case. We acted accordingly.

- * [IF PRESSED - we have not been convinced that the blood transfusion cases are a special case (but we would consider any new arguments).]

** Whenever lines are drawn those outside will argue that it should be moved*

Small cost to compensate blood transfusion cases

- * The cost is not insignificant, and could exceed £10 million.
- * [This overlooks the possible consequences if others regard it as a precedent.]

Other countries compensate blood transfusion cases

- * Not all countries have made provision.
- * Decisions by other countries reflect their own circumstances.

Lengthy process for those who take legal action

- * Measures are already underway to improve procedures.

KEY FACTS

Numbers

HIV infected blood/tissue transfers - UK Reports

Treated in UK	-	62	73	+ 11
Treated abroad	-	27 ⁸⁶	100 100	+ 14
Place of treatment unknown	-	86 ²⁷	17	- 10
		<hr/> 175	<hr/> 190	<hr/> + 15

Estimated cost of extending haemophiliacs settlement and other help to HIV Infected Blood/ Tissue Transfer Recipients.

Haemophilia Settlement Payment Amounts:-

Blood/Tissue transfer recipients	-	£5m
Infected partners and children	-	£5m

Other help given to haemophiliacs, to blood/tissue recipients	-	£2m
		<hr/> £12m

Any announcement could provoke more claims from people who currently have no reason to suppose they are infected through blood/tissue. The costs could therefore be greater.

Payments made to HIV infected haemophiliacs and families

- 1987 - £10 million to help HIV haemophiliacs & their families in special need
- 1990 - £24 million to provide for payments of £20,000 to each HIV haemophiliac
- 1991 - £42 million and settlement of the litigation, to provide for payments to HIV haemophiliacs and infected partners and children ranging from £21,500 to £60,500 depending on family circumstances.

Key facts & figures (AIDS)

In 1991/92:

- * NHS receives £137.3m
- * LAs receive £10.2m (supporting expenditure of £14.6m)
- * S64 for AIDS £1.8m
- * HEA receive £11m including almost £2m for National AIDS Helpline

Next Year:

- * 50% increase in AIDS Support Grant to £15.3m (supporting expenditure of £21.9m)
- * 32% increase in Health Service Funding to £181.4m

Anonymous Sero Surveys:

- * Preliminary Results showed overall prevalence in certain inner London ante natal clinics of 1 in 500 (1 in 200 to 1 in 1,000 range)

Latest UK Figures:

- * AIDS 5,451 (3391 died) (to 31 December 1991)
- * HIV 16,828 (to 31 December 1991)

WHO estimate that by year 2000 there will be:

- * 10 million adults worldwide with AIDS
- * 30m adults infected with HIV
- * 10m children infected with HIV
- * 10m children orphaned

Note of MP's known special interests in this and related fields

Gavin Strang is known to have a special interest in the whole question of HIV and AIDS. He sponsored the AIDS (Control) Act 1987 which enables the Government and health authorities to monitor the progress and effectiveness of their prevention and treatment efforts in the area of AIDS and the use of earmarked money.

Special constituency issues

In the debate on 20 December, Gavin Strang brought to the attention of the House the case of one of his own constituents who became infected following a blood transfusion in the course of the birth of her first child in 1984. It is not certain whether this is one of the 6 cases in Scotland in which intimations of claim have been addressed to the Secretary of State. [Two writs have been served in Scotland so far. One writ cites Scottish National Blood Transfusion Service and the Health Board, the other SNBTS only. Neither writ cites the Scottish Office].

PQ 747 - LIST OF SUPPLEMENTARY QUESTIONS

1. Why not extend the help for haemophiliacs to blood transfusion recipients?
2. Why are haemophiliacs a special case?
3. Small cost to compensate the blood transfusion recipients
4. Why not follow the lead of other countries which compensate?
5. France
6. Were the Government negligent in this matter?
7. Preservation of blood donor anonymity could hamper court action
8. Who will pay damages if the NHS is found to have been negligent?
9. Legal action lengthy process
10. Consultation on arbitration for medical negligence as alternative to court action
11. No fault compensation for road accidents as precedent
12. Vaccine damage payments scheme as precedent
13. Safety of the blood supply
14. NAO report on underspend AIDS/HIV services [if pressed]

PQ 747 - SUPPLEMENTARY QUESTIONS

1. Why not extend the help for haemophiliacs to blood transfusion recipients?

* The Government does not accept case for no fault compensation for medical accidents. We recognised the arguments forcefully put to us that the haemophiliacs are a very special case, and we acted accordingly.

2. Why are haemophiliacs a special case?

* The health, social and financial problems caused by their lifelong condition were exacerbated by the onset of HIV. This combination of circumstances not generally true of transfusion/tissue recipients.

3. Small cost to compensate the blood transfusion recipients

* The cost is not insignificant. For example, it equates to the cost of eg 1,000 kidney transplants or 500 heart transplants or 300 bone marrow transplants. [Arguments that the cost would be small overlook the possible consequences if others were to regard it as a precedent.]

4. Why not follow the lead of other countries which compensate?

* Not all countries have made State provision for those infected with HIV as a result of medical treatment. Circumstances vary between countries and countries differ in their approach to social benefits, health care and other matters. Governments make their own decisions in these matters in the light of the circumstances of their cases and are accountable to their own parliaments.

5. France

* The decision by the French Government reflects the circumstances in that country.

6. Were the Government negligent in this matter?

* I am advised that as soon as the nature of the AIDS epidemic became apparent, we took all reasonable steps to protect the blood supply. If allegations of negligence are made, we will defend them.

7. Preservation of blood donor anonymity could hamper court action

* If transfusion recipients were to seek details of donors as a material part of their legal action, any claim to withhold that information in the public interest could be challenged in the courts. The courts would decide whether the greater public interest lay in disclosing further details.

8. Who will pay damages if the NHS is found to have been negligent?

* If the NHS were to be proved negligent in a court, of course it would accept its liability to pay damages.

9. Legal action lengthy process

meas } * There are measures already underway which will improve procedures for those who do take legal action. Cases will be better matched to the appropriate court, earlier disclosure of information will be encouraged, and real and substantial measures introduced to reduce delay.

10. Consultation on arbitration for medical negligence as alternative to court action.

* We are presenting this suggestion with an open mind. We are asking whether it would be a welcome addition to current procedures and whether it would be feasible. The consultation ends on 31.1.92.

11. No fault compensation for road accidents as precedent

* The proposals in relation to minor road traffic accidents bear no relation to the issue of medical accidents, and if implemented create no relevant precedent. The scheme would be paid for by motorists through increased insurance premiums.

12. Vaccine damage payments scheme as precedent

* The scheme does not provide a precedent. Recipients of blood transfusion are given this treatment for their own benefit. Vaccines are given to the healthy for the general good, and therefore it is right that they should be compensated *[if vaccination is the cause]*

13. Safety of the blood supply

* The safety of the blood supply is maintained in two ways:

- leaflets have been issued since 1983 to blood donors which describe those people who must not give blood, and
- since October 1985, all donations have been screened for HIV antibody.

14. NAO report on underspend AIDS/HIV services [if pressed]

* Information is that in this financial year health authorities are spending more than their total allocations. This shows the extent to which authorities are themselves taking forward the challenge of providing AIDS and HIV related services.