

Dr Rejman CAOPU2  
Mr Guinness CAOPU

From: Ruth McEwen  
SOLB4

Date: 12 May 1997

Copy: Mr Wilson SOLC2

**RE: HEPATITIS C HAEMOPHILIAC LITIGATION**

1. I write to confirm the outcome and points raised by Justin Fenwick in the conference on Friday 9 May at 2 Crown Office Row.

2. **The first matter raised by Justin Fenwick, which I would ask Mr Guinness to take forward, is to obtain firm instructions in relation to the future defence or otherwise of the Hepatitis C litigation.** As Counsel stated we require new instructions on whether this matter is to be vigorously defended prior to taking further action. As we discussed, since it seems clear that four haemophiliac cases are now active and proceeding to trial, we will shortly incur large costs in preparing these actions for trial by completing discovery, witness statements etc. (I have received the draft submission and shall comment upon it separately and as soon as possible).

3. If our instructions are to defend this litigation Counsel advises that a letter be written to Ross & Co raising our two concerns about this litigation namely, the viability of four actions and the fact that the generic opinion has not yet been considered. I attach a copy of my proposed draft letter based on Counsel's advice.

4. Counsel then advised that a further letter should be written in order to try to ascertain whether indeed this action is to be a group action. I will ask Ross & Co to clarify whether the cases are to proceed as a group action and threaten them with an Order for directions.

**Discovery**

5. In relation to the topic of discovery, Justin Fenwick stated that he believed that it was reasonable to use the HIV list as a base. He stated that obviously irrelevant documents should be removed for example, documents relating to research on HIV screening. **Dr Rejman agreed that he would prune the HIV discovery documents removing obviously irrelevant documents. It was arranged that he will attend New Court on Tuesday 13 May to examine all HIV discovery and HIV PII documents and mark the irrelevant documents upon the discovery list.** This list will then form the bulk of our discovery and a letter can be sent to Ross & Co stating that in order to save costs and make the exercise speedier, we have included largely all of the material which they will already have seen as part of the HIV

discovery exercise. Some may not be strictly relevant but we do not object to their inclusion and believe it to be more convenient to them to have included the documents and to rely upon the same numbering system, in light of the fact that they retain a set of the documents from the original discovery.

6. We will therefore simply mark upon our discovery list the irrelevant documents but not re-number or re-list the documents.

### **Missing documents**

7. I will prepare a second discovery list of missing documents which cannot be located at CAOPU or SOLB4. We can ask Ross & Co to confirm whether indeed they have copies of the documents missing from our files.

8. Justin also suggested checking with Davies Arnold & Cooper, the solicitors for the Health Authorities (Simon Pearl) whether they retained the original discovery documents. I shall arrange for this matter to be checked.

### **PII**

9. Justin Fenwick asked about the relevance of the PII documents; Dr Rejman indicated that a large number were relevant. In light of this the PII documents will have to be reviewed. I shall arrange for the documents to be sent down to Counsel with the new guidance on PII as provided in December 1996. The documents will need to be assessed again and advice provided by Counsel. The matter will then have to be referred to Stephen Richards of Treasury Counsel and to the Permanent Secretary.

### **Discovery Post 1986**

10. Justin Fenwick indicated that we would have to extend discovery post 1986, when the HIV discovery list ended. This is necessary in his view as an integral part of our defence will be to show that knowledge grew over time and to rebut their allegations that we should have known and acted earlier. The gradual development of knowledge regarding Hepatitis C and its consequences shows the false picture that the Plaintiffs are trying to create. Justin Fenwick advised that the discovery of documents relating to the knowledge and consequence of Hepatitis C (ie scientific papers) should be extended until the end of December 1993.

### **Experts**

11. In relation to the experts that we already have, Dr Rejman indicated that Professor Bloom had passed away. This topic was considered in rather a hurry at the end of the conference. Justin Fenwick asked whether all aspects of the allegations in the Statements of

Claim by haemophiliacs were covered in our experts reports. I would ask Dr Rejman to consider this matter further and should there be any gaps which he can identify can he contact a suitable expert and inform me. Dr Rejman also undertook to provide me with a full list of our experts and their addresses so that in due course we may check up on all our experts to ensure that they are still prepared to give evidence on our behalf.

12. Back at New Court we continued discussions in relation to discovery. I was instructed by you both that MCA, MDA and LA would have no relevant documents. Further neither would Dr Metters, the CMO, Perm Sec or any Ministers Offices. As Justin Fenwick had stated that only documents post 1986 dealing with the developing knowledge and consequences of Hepatitis C were relevant, the only departments which would have such documents would be HP3 and HCD.SCS(A).

13. It was agreed that I would contact HP3 (who deal with prevention of Hepatitis C) and HCD.SCS (who deal with treatment of Hepatitis C) to ask that all documentation and scientific papers dealing with the developing knowledge and consequences/progress of the prevention and treatment of Hepatitis C be disclosed. We agreed that I would indicate to both branches that should they require further clarification in relation to the type of documents to be discovered and the parameters of relevance, they should contact Dr Rejman. However, as it is the generally held view that the cases will not proceed to trial, we will not ask HP3 and HCD.SCS(A) to begin their discovery until after we have tried to "rattle Ross & Co's cage".

14. In relation to discovery by CAOPU, who are likely to have a large number of relevant files which may include documents in addition to Dr Rejman's discovery, it was explained that a reorganisation will be taking place in CAOPU at the beginning of June. However Mr Guinness undertook to progress this matter by trying to locate the files held and collect them at Eileen House.

15. In relation to the CSM, as they have already provided discovery these documents were given to Dr Rejman for him to examine as to relevance/PII.

16. Dr Rejman also undertook to examine his previous discovery lists prepared for 1989/1991 and pre 1989 to highlight any documents for which PII should be claimed and to send copies of the said documents to SOLB4 so that they can be sent on to Counsel for consideration.

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