

CONFIDENTIAL

10 DOWNING STREET

THIS FILE MUST NOT GO OUTSIDE 10 DOWNING ST

FILE TITLE:

POLICY

SERIES

AGRICULTURE

PART:

54

PART BEGINS:

14 SEPTEMBER 2000

PART ENDS:

20 October 2000

CAB ONE:

LABOUR ADMINISTRATION

PART 54 CLOSED

20.10.00



10 DOWNING STREET

~~on~~

(f)

Are you relying on we should
not exercise an intention
to not a no-fault
ex gratia compensation scheme?

This is now taken for
granted, despite the protests
DN draws attention to below

GRO-C

From: David North
Date: 20 October 2000

PRIME MINISTER

cc: Jonathan Powell
Jeremy Heywood
Alastair Campbell
Robert Hill

BSE/vCJD COMPENSATION

1. As you know, the BSE Inquiry report will be published on Thursday. Although the report's findings will be less critical of past actions than many are expecting, it will put the spotlight on previous administrations. There will, however, be one issue on which the pressure will be focused squarely on this Government: whether we should provide compensation for vCJD victims and their families.
2. One of the key difficulties in taking any decision on compensation is the huge uncertainty about the eventual number of victims. The best forecast at present ranges between 63 victims (and we have already had 84) and 136,000.
3. Some of the families have taken legal proceedings against the Government to secure compensation. By mutual agreement, these cases are stayed until four months after publication of the Inquiry report. The view of Counsel is that the Inquiry report weakens the legal case of those seeking compensation: it gives few if any additional grounds for establishing legal liability on the part of the government. In particular, the 84 people who have contracted vCJD to date are believed to have been infected before 1989, the earliest date by which the Government could reasonably have been expected to put public protection measures in place. As a result, Counsel puts the families' chances at below 20 per cent. This could, of course, change if vCJD cases emerge in people born after 1989. This would throw the spotlight much more on the Government's failure to enforce its protection measures adequately before 1994/95, and might alter the balance on legal liability.
4. But Alan Milburn firmly believes that it would be disastrous simply to take a decision based on whether we can defend the cases in court. He believes that the political, media and public pressure to grant some form of no-fault

compensation will be overwhelming. He thinks that, if we do not, the political heat on BSE/CJD will quickly shift from the last Tory Government onto us. Nick Brown agrees with this view. The Treasury are not contesting it, although they have yet to concede Alan's proposal that the costs (see below) should be met from the Reserve.

5. Alan proposes that the Government's position on the victims on Thursday should be:

- to respond positively to the Inquiry's plea for a better care package which responds much more quickly and flexibly to the needs of victims (which can change and increase rapidly as the disease takes hold). Alan plans to announce a new central fund for individual care packages and equipment, and a new national support network with specialist staff. This should help to meet the criticism that the NHS is currently not responding sufficiently to the needs of the victims. The cost at present would be under £1m (though this could rise depending on the number of victims);
- to make it clear that we do not accept legal liability in respect of the victims;
- but to go on to say that we accept the strong moral case to help the victims and their families by providing a system of no-fault compensation. We will not set out a detailed scheme at this stage, but will consult the families on the most appropriate way forward.

Discussion

6. The advice is helpfully clear that, viewed strictly in terms of legal risk, there is a good case for continuing to resist the claims for compensation. So any decision to grant compensation would essentially be a political judgement. On Alan's side, there is clearly huge public sympathy for the victims, and this will increase with the publication of the Inquiry. The pressure for compensation is well-organised and the media will make it into a sustained campaign. It would arguably be better to concede it on the front foot now than to have it dragged out of us later.

7. **But if you are to agree to Alan's proposal, you need to be aware that there it raises some big issues and questions which will not be easy to handle:**

- (a) we would need to explain why we were granting compensation in this case but not in other cases. Other groups with a grievance – ranging from those infected with Hepatitis C to Far Eastern PoWs – would contrast any decision with their own position;
- (b) we would need to be careful in setting up the mechanism for determining compensation. Alan's current preference is to set up a mechanism along the lines of the Macfarlane Trust, which pays compensation to haemophiliacs infected with HIV through blood transfusions. It has proved responsive to victims' needs and therefore popular with the families;
- (c) even if we get (b) right, setting the rate of compensation could prove difficult. You will remember the long-running campaign to increase the payments for vaccine-damaged children. The circumstances are clearly different. But we need to be mindful that a decision to compensate may not bring an end to campaigning by the families;
- (d) nor can we guarantee that it would bring an end to the court actions. Alan does not want to make compensation conditional on the families dropping their court cases. He thinks this would sour relations when we need their backing for any scheme adopted. I think that judgement is right. Moreover, if their lawyers reach the same view as ours, it seems unlikely that the families will think it worthwhile to continue with the cases. And even if we could bind the current families, we could not bind future ones;
- (e) although the costs might be small now, the future is very uncertain. Assuming the amount paid per vCJD victim was around £30,000 (which might be seen to be on the low side), and assuming the total number of victims was 250, the overall cost would be around £7.5m. But, towards the other end of the spectrum, if there were 100,000 cases, the cost would rise to around £3 billion. Alan's view is that, if the numbers looked like getting into the thousands, we would need to reopen the question of compensation. But that would be easier said than done.

8. Alan will put more detailed proposals to you next week. But do you have a preliminary view on all this? The political arguments in favour of compensating are powerful. But it would give rise to some very tricky issues.

9. Alastair is separately working up some words you might use at Prime Minister's Questions to signal our intentions if you were inclined to agree to compensate.

GRO-C

DAVID NORTH

we can look at extra help
can perhaps, financial help
etc. ; but a general
compensation pay-out will run
into millions very quickly. We
shd. steer a middle way.
Home help but not a full-blown
compensation scheme