Infected Blood Inquiry

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Bad luck for patients: A difficult policy dilemma

Two politicians wrestling with the question of whether to compensate patients for injury when there was no evidence of negligence.

John Major had been involved in this question in his various roles in government including Financial Secretary to the Treasury, Chancellor and Prime Minister.

His evidence was clear as he untangles the policy dilemma. One paragraph of evidence sums it all up.

> "*The Chief Secretary to the Treasury said that he believed that there was a very strong case for the Government providing financial assistance for haemophiliacs with HIV virus and it was important that the scheme should be established with minimum delay. However, it was vital that the proposed scheme should be ring-fenced as tightly as possible in order to minimise the risk of encouraging claims from other groups which the Government might find difficult to resist"*.

In a phase, he was later to apologise for, he explained that the infected patients had had "sheer bad luck". He meant that the incidence was a random sample of patients.

He had meant no offence.

He gives an interesting description of the bidding process by Departments for their share of whatever growth money was available.

As Financial Secretary he was never the "Abdominal no man". He listened to colleagues. If John Moore had underbid whilst Secretary of State for Health it was because of his Treasury background.

Some ministers were very keen to find a way to look after injured patients. Tony Newton another health minister wore his heart on his sleeve and argued strongly for a settlement.

Ministers eventually realised that the policy of arguing that injured patients could not be supported in case it created a difficult precedent was politically unsustainable. However, sympathy had to be tempered by the cost which some estimates put at

£200-£300m and the danger that it would open the floodgates for claims by other patients.

As it was the original support which was limited to patients with haemophilia had been extended to other patients [another £20m] who had also contacted AIDS from contaminated blood. The Court action by patients had eventually been settled when the government accepted a proposal made by their Counsel for a substantial package of support…not compensation.

He had no memory of the policy of self-sufficiency in blood products. It never crossed his desk.

It was thirty-five years ago. He recalled that Mrs Thatcher was not always the "iron lady" she was depicted as. She would not have blocked a sensible settlement.

Virginia Bottomley next, who had served as both Minister of State and Secretary of State. She had always been well supported by senior civil servants whose advice she respected and valued. Health and personal social services had been her life's work. We spend some time exploring the relationship been ministers and the CMO. Mrs Bottomley had always stayed close to medical advisers in and outside her department.

She had always fought the Treasury in the battle for resources. They could not be trusted.

She had accepted the legal advice that the Department could not be found guilty of negligence but had never the less wanted to do something for those patients who had been injured. She had been guided by the strong advice from two permanent secretaries that Ministers should have a "long reflection before they moved further into no fault compensation for medical accidents".

Then Stephen Dorrell got involved "Without enthusiasm I am in favour of extending the concession to Blood Transfusion etc victims".

Like everybody else he worried about the precedent that might be set. The line was being redrawn rather than erased.

Mrs Bottomley had asked civil servants for an international review of compensation arrangements. The results were very varied. Ex-gratia payment might be an alternative to compensation based on proven negligence but at the end of the day it presented the same policy and moral dilemmas. There was only so much money in the pot. She had a moral duty to ensure that money for the NHS was spent wisely. Towards the end we go over the ground of compensation for patients who contacted Hep C from contaminated blood [with very variable impacts on

their lives]. She had never met the trustees of the Macfarland Trust but relied on the briefing provided for her by those who had.

This was cool, articulate, thoughtful and candid evidence.

A question that will be in some people's minds is why the NHS did not immediately acknowledge that it had a duty of continuing care for those who had been injured and provided substantial help and support. Earmarked funding to the NHS from the Department was not uncommon. Compensation could then have been left to the Courts to settle.

Perhaps the reason was that the Department wanted to keep a firm grip on the boundaries of any support.

We will no doubt hear more when William Waldegrave gives evidence.