THE IRISH HAEMOPHILIA SOCIETY

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Statement from Brian O’Mahony, Executive Committee of the Irish Haemophilia Society

The Irish Haemophilia Society will be meeting with the Tanaiste and Minister for Health, Mary Harney on Thursday at 4pm in Leinster House. The Society has sought the meeting as it is deeply concerned at the manner in which legal issues in relation to people with haemophilia are being dealt with by the Department of Health. The Society has expressed the view over many years that US pharmaceutical companies would be held accountable for their actions in relation to the deaths of many members of the Society and the infection of many others with HIV and Hepatitis C. The State agreed with the Society and a commitment to this effect was given in 2002. We believe that as a minimum, the companies should be made financially accountable in relation to their actions and we believe, based on the legal advice we have received, that the Irish State can recoup hundreds of millions that has been spent on healthcare and compensation. Some of the pharmaceutical companies have already made provision in their accounts for such litigation.

Four years ago, a US firm of lawyers offered to take a case on behalf of the state to recoup the money from the pharmaceutical firms without any cost to the Irish State. The Department of Health has not made any progress in this regard in the last four years. We have been told several times by the Department that it was seeking its own legal advice. At our last meeting with the Tanaiste six months ago, we were told that she had appointed her own lawyers in the US and UK and that they would be in touch seeking our views. We heard nothing from them and instructed our legal advisor to make contact. Our legal adviser was told when he made contact that the firm had not received any instructions from the Department of Health.

We are unwilling to accept this effort to frustrate justice being done. It is in contrast to what has happened in other countries, for example in Canada where a criminal case has begun against Armour Pharmaceutical. We are especially unwilling to accept it when the State is failing to make proper provision for our members and is using adversarial tactics to frustrate their cases. We cannot accept an argument by the State that it is doing this on financial grounds, when upwards of a billion euro may be available to it, but it fails to take the case for the past four years. And because it has let so much time pass, by due to either incompetence, inability or unwillingness, the State has lost itself tens of millions as some of the claims that could have been made against the US pharma companies may now be out of time in legal terms.

The adversarial tactics being used include blockages that are being placed in the way of members seeking justice in relation to infections with Hepatitis C and HIV. In recent months, there has been increasing delays being introduced by the State for members seeking to complete their cases either at the Compensation Tribunal or at the High Court. The State has created unacceptable delays, frustration and problems for individuals, some of whom are very unwell.

When we meet the Tanaiste, the Society will be highlighting several cases where unacceptable situations have developed. In one case, it has had to be prepared three times for appeal. When the case came for hearing, halfway through opening submissions the State said it had issues even though its legal team had the papers for eight months and had given no warning of any matters arising. The infected person involved, the expert witnesses and the applicant’s wife, were all present expecting the case to go ahead. The Society considers this an abuse of our member, their family and their legal team by the State.

In another case, of a widow taking a case following the death of a member from Hepatitis C, the claim had to be reconstituted in the name of the widow even though she was in the original case and a death cert was available. A legal argument then occurred at the Compensation Tribunal requiring the case to go to the High Court for further legal argument. Even when the case was adjudged, a High Court order had to be obtained to release the settlement cheques.

Members are now being forced to wait 8 months for settlement cheques to arrive. For some, whose lives are in fragile conditions, this is an unacceptable wait. Unnecessary adjournments of the cases are taking place. Equally, unacceptable is the constant round of legal challenge, by the State, with the prospect of some, having to go to the Supreme Court, meaning a further wait of a year. The State has also sought to robustly cross examine ill members even though the State claims the system is non-adversarial. We have had to resist four attempts to inappropriately cross examine members.

The Hepatitis C compensation tribunal and appeals from the tribunal were designed to be non adversarial and document based. In the past year, cases have become more adversarial. Elderly members now feel intimidated at the prospect of cross examination, constant delays and what seems to them to be a never ending process.

It was anticipated that the in camera rule would be to the advantage of persons with HIV and/or Hepatitis C. Unfortunately, it means that the media cannot see directly what is happening in the Compensation Tribunal or at the High Court.

Despite many promises, the State has also failed to deliver legislation to allow our members with Hepatitis C to be insured. This scheme has been promised since 1997. One person who could have benefited from the scheme recently died leaving four children. Another died in December leaving a spouse and children. Draft legislation to implement the scheme was prepared by the legal teams from the representative organisations in November. We will be asking the Tanaiste to implement this legislation without further delay to allow sick and vulnerable people to provide for their families.

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