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Fighting for justice

LIVING with the knowledge that one is suffering from AIDS is difficult enough as it is. But the haemophiliacs who contracted the virus after receiving infected blood products during NHS treatment now have to cope with two life-threatening conditions. It would not, therefore, be unreasonable to expect a helpful attitude from the Government in seeking to establish the chain of events which allowed this to happen. Instead, there has been obfuscation and an attempt to prevent access to documents which could assist those affected in their claim for damages.

5 The Appeal Court judges who yesterday ruled in favour of disclosure were clearly unimpressed by the Department of Health's arguments. Indeed, those who went to court must be encouraged by the view taken in the judgment that they appear to have "at least a good arguable case" of negligence. The Health Secretary, Kenneth Clarke, tried to insist that to the best of his knowledge the papers contained nothing that could help the claimants. But that begs the question why his department should then be so keen to keep them secret.

Lord Justice Bingham got to the heart of the matter in his opinion that "the tragedy was avoidable in the sense that had different measures been taken in the 1970s and early 1980s, it could at least in large measure have been prevented". The issue which must be decided is whether that happened from negligence or because people were genuinely unaware of the threat at the time. That can only be done with full access to all the relevant documents, and the Health Secretary's reluctance to allow this only heightens the suspicion of an attempted cover-up. It is alleged that the Government failed promptly to institute proper screening of blood donors even after the AIDS danger became known in the mid-1980s.

Mr Clarke maintains that huge compensation payments would set a costly precedent and move the NHS towards the American system where every doctor had a lawyer. But that is being alarmist. Indeed, would he argue on that basis that victims should never be compensated, even when negligence has been proved? Perhaps one way forward is a no-faults scheme such as suggested by the Opposition health spokeswoman Harriet Harman.

Those are longer term considerations, but for the present the Health Secretary should draw the proper conclusions from the Appeal Court decision and agree to the humanitarian out-of-court settlement which the haemophiliacs want.

PS/SHAD

CLM