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Mr G Calder  
 Scottish Home and Health  
 Department  
 St Andrew's House  
 Edinburgh  
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Your reference:

Our reference:

9 February 1987

*Dear Mr. Calder,*

CONSUMER PROTECTION BILL

Thank you for your letter of 19 December about the position of blood and blood products under the Consumer Protection Bill. I am sorry for the delay in writing to you, but I thought we should see how the Bill fared at Committee stage in the Lords.

We have considered at some length the position of blood and blood products under both the EC product liability Directive and the Bill. For the purposes of the Bill, blood and blood products would in our view fall within the meaning of "goods" as defined in clause 45(1) and the provision of such products would fall within the meaning of "supply" as defined in clause 46(1) either as a sale, a contract for work and materials or, in the case of the NHS, products supplied in the course of a statutory function.

We are not persuaded that there is any justification in removing the supply of blood and blood products from the legislation in the way you suggest (non-supply provides a defence under clause 4(1)(b)); and indeed it was recognised by DHSS, in the course of the negotiations, that they would be covered. Such products would be considered defective for the purposes of Part I of the Bill only if their safety is not such as persons generally are entitled to expect. That is a test which is to apply to all products and it would seem unjustified to make an exception in the case of blood products.

The article you enclosed in your letter points out that at any given time infectious agents that are unknown to medical service may exist, undetected and undetectable, in blood products. AIDS (until 1985) is

one such example. The case of a product containing an undetectable defect is covered by clause 4(1)(e) of the Bill which provides that it will be a defence for a person to show that the state of scientific and technical knowledge was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect. The availability of this defence should, I hope, go some way to removing your concern about blood products.

We have been in close contact with colleagues in DHSS on this issue and I can confirm that they concur with our view.

I am copying this letter to Mike Heritage in Medicines Division at DHSS.

*Yours sincerely*

*Peter Lambert*

PETER LAMBERT