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Brian Deer  
[REDACTED]

Our Ref: S/IC/FOI(19) Log No 446

Date: 22 December 2006

Dear Mr Deer,

**FREEDOM OF INFORMATION ACT REQUEST: MMR/MR MULTI PARTY ACTION**

I refer to your request dated 1 October for information relating to the payments made to experts in the MMR/MR multi party action. I apologise for the delay in responding fully to your request but I have explained the reasons in my previous emails to you and by telephone when I have kept you informed of the position.

I confirm that the Commission has now received the court's assessment certificate (previously referred to as a taxation certificate), setting out the payments it has authorised us to pay for the generic work (that is the legal work common to all claimants) undertaken from 1992 to 2004 in this action. The payments relate to the work undertaken for the autism and bowel disorder cases in this multi party action.

The Commission does not make payments directly to any experts. The solicitor acting in a case will contract with experts and once a case is completed the court will assess the reasonableness of the costs claimed and then issue the assessment certificate directing the Commission to pay the amounts allowed. Payment is then made directly to the solicitors, who distribute the money. A copy of the assessed bill was received with the assessment certificate but we do not record the detail of the bill on our system, only the details included in the assessment certificate.

I set out below the breakdown of the total amount of £15,882,159 included in the assessment certificate, which we have now paid to the solicitors. The sums allowed for experts amount to just over £3.4M and are included in the total figure for disbursements.

**Assessment certificate**

Item	Costs	VAT
Solicitors' costs (excl disbursements)	£8,026,617	£1,404,658
Counsel's fees	£1,704,813	£298,342
Total Disbursements (incl. experts fees & expenses)	£4,262,245	£114,905* where appropriate
Cost of assessment and court fee	£60,181	£10,398
<b>Total</b>	<b>£14,053,856</b>	<b>£1,828,303</b>

\* not all disbursements attract VAT.

The total amount that the court allowed in respect of each expert is as set out in the attached schedule. It is not possible to provide a more detailed breakdown of these figures in the format you requested, as we do not hold copies of the detailed work schedules considered by the court when it assessed the bill. As the total payment has been made direct to the

solicitors, we cannot confirm the amounts the solicitor will pay or has paid to each individual expert. The totals in the attached schedule will not agree with the disbursement figures above, as other disbursements are included in the assessment certificate. I can, however, provide some explanation of the payments to Unigenetics Ltd and to Dr A. Wakefield, as I understand you are interested in these two experts in particular.

Unigenetics Ltd carried out monthly testing of samples from children involved in the action. Approximately £115,513 of their expenses related to equipment for the testing and £490,000 related to the monthly sample analysis undertaken over a period of three years.

The payments allowed for Dr Wakefield are for: the research he undertook, the work detailed in his fee notes considered by the court for assessment, travel, accommodation and expenses attending meetings with other experts over the period. His involvement related to examination of part of the biological mechanism by which intestinal inflammation involving measles virus in claimant children could allegedly lead to toxins escaping into the child's bloodstream. This involved testing, liaising with other experts (including travel to meetings) so that his views could be tested and he could provide information and report on his findings. The court assessed the detailed work included in his fee notes and allowed the sums it considered reasonable to pay.

### **Background to the action**

To put all the information into context, these types of cases, although rare, are often very expensive as they are exceptionally complex and involve many experts. This case involved allegations that very serious injuries had been caused to a large number of children. Litigation was authorised because the Consumer Protection Act 1987 carries a 10-year limitation period that cannot be extended.

The action was initially managed in our Newcastle regional office when in 1991/92 it first began to receive an increasing number of applications on behalf of children, claiming personal injury as a result of the MMR/MR vaccination. It was contracted under the MPA Arrangements 1992 and was subsequently transferred to a designated MPA unit to be managed in 1999. As our experience of the complexities of this type of action has developed, there have been a number of further important changes made to the way these cases are funded since this litigation began.

They would now go through tougher merits and cost benefit tests introduced under the Access to Justice Act 1999 and would be subject to an affordability test. This means that cases would compete against other major multi party action cases for funding from a capped budget of £3M per year. If funded, the contracted solicitors would be paid at "risk" rates, that is, at lower level rates and if the case were unsuccessful, the solicitors would not expect to make a profit. If the case were successful, they could claim their commercial rates against the opponent. This significantly transfers the burden of risk in this type of litigation from the taxpayer to the claimants' lawyers. Cases can be put out to tender based on quality and price so that the firm dealing with the case initially may not be allowed to continue to do so if it can be dealt with more efficiently and cost effectively by another firm.

In 2003, the Commission discharged the lead MMR/MR certificates despite the recommendations from three QCs that funding continue, as we were not satisfied the evidence demonstrated a sufficiently strong case. Our decision was upheld by our independent appeal panel, the Funding Review Committee (FRC), and then by a High Court Judge, when the claimants launched a Judicial Review against our decision.

Since then, most of the 1,200 certificates have been discharged, although, it is important to note that funding is still continuing in a small number of individual cases relating to other disorders within this action. This follows the recent decision of the FRC when it considered

appeals against the discharge of legal aid certificates. Some individual autism and bowel disorder cases may also be continuing, but are no longer funded by legal aid.

I hope that this information satisfies your request. I acknowledge that we have not dealt with your request within the statutory timescale under the Freedom of Information Act. The reasons for the delay have previously been explained to you. However, if you are dissatisfied with the way I have handled your request, you can request an internal review to be conducted by the Commission's Legal Director by writing to her at the above address. You do, of course, have a right to refer the matter to the Information Commissioner should you remain dissatisfied following the internal review. The Information Commissioner's address is:

Wycliffe House  
Water lane  
Wilmslow,  
Cheshire. SK9 5AF.

Yours sincerely,

Jacquie Elliott  
**Information Compliance Manager**