

Witness Name: Andrew Michael March

Statement No: WITN1369064

Exhibits: WITN1369065-83

Dated: May 2021

**INFECTED BLOOD INQUIRY**

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**EXHIBIT WITN1369071**

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GRO-C

London

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25 April 2012

Russell Mishcon, Trustee  
C/o The Macfarlane Trust  
Alliance House  
12 Caxton Street  
London  
SW1H 0QS

Dear Mr Mishcon,

I am a beneficiary of the Macfarlane Trust (registrant number 1143) and I am writing to complain about the unlawful nature of the letter you sent out in early April 2012 regarding the MFT reserves.

I am formally stating, as a victim of economic duress, psychological coercion, unfair pressure and undue influence in a financial situation, that the line in your letter which states: *"I have to make it clear that if you decide that you do not want a visit, the Trust cannot consider written requests for payment out of the reserves"*, is unlawful and that I reject it, and wish for you to note my objection to it for the legal reasons set out below. I am recording this protest in writing now so that when legal proceedings commence I will be able to show the court that I have actively eschewed your attempts at subjecting me - as a beneficiary of the Macfarlane trust - to undue duress and coercion.

Duress can be defined as any unlawful threat or coercion used to induce another to act in a manner they otherwise would not have. Coercion can be defined as: the practice of forcing another party to behave in an involuntary manner by use of intimidation or some other form of pressure or force. The purpose of coercion is to substitute one's aims to those of the victim. This can take a psychological form as well as a financial one.

The wording in your letter is somewhat reminiscent of cases where there is duress to goods: where one party refuses to release the goods belonging to the other party until the other party enters into a contract with them. For example, in *Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd* (1991) 22 NSWLR 298, the contract was set aside after Hawker Pacific's threats to withhold the helicopter from the plaintiff unless further payments were made for repairing a botched paint job.

Where there is the possibility of economic duress, a wrongful or improper threat does not necessarily require a precise definition, it can simply concern a 'tortious conduct' or be 'morally wrong'.

In the case of *The Sibeon and The Sibotre* [1976] 1 Lloyd's Rep 293, in order to prove economic duress, the court had to be satisfied that the consent of the other party was overborne by compulsion so as to deprive someone of their free consent and agreement. This would depend on the facts in each case. Two questions must be asked before the test could be satisfied: (1) did the victim protest at the time of the demand and (2) did the victim regard the transaction as closed or did he intend to repudiate the new agreement? For the reason set out in (1) above, I record my protest in this letter.

In the case of *Universe Tankships of Monrovia v ITWF* (1982), it was decided that the threat made by the union in the matter of a ship, because workers demanded a change in circumstances was seen as economic duress. Furthermore, in the case of *North Ocean Shipping v Hyundai Construction* (1979), it was decided that the economic duress was present in the contract, due to unfair pressure.

Mental duress is the use of threats or other forms of psychological coercion, done to induce another to act against his or her will. This can be an issue in contracts which, by law, require all parties to act on their own initiative. Any agreement is void if it can be shown that mental duress was used in the contracting process because an agreement, by definition, requires a meeting of the minds.

There is also the more remote angle of undue influence in a financial situation, where if it can be shown that there is a relationship of trust, and that I was subjected to unfair and stressful pressure; and if it can be shown that signing in agreement to what you have proposed could be detrimental to me as a beneficiary (such as an invasion of privacy and possible breach of my Article 8 rights), then I may be able to make out a valid case for undue influence in a financial situation.

On the basis of the accounts I have seen on the Charity Commission website, the very fact that Trust reserves of about £4 million were accumulated prior to at least 2006 and have been held at about this level ever since is indicative of a harsh policy of uncharitable and improper hoarding of funds. This failure to identify need and disburse the funds according to the Government's intended purpose may amount to a breach of duty by the Trustees. Of particular concern is a period of over 2 years, from the date of the Government's response to the Archer Recommendations (of February 2010) to the present day. The Trust's excuse for failing to disburse the funds simply does not suffice. I do not accept the reason already given that for those 26 months the Trust was not in a firm position to rely upon year-on-year DOH funding. It should not have taken 26 months to realise that you were on a safer footing - after Archer.

You should note that certain MFT beneficiaries are considering obtaining some legal advice on this matter.

Yours faithfully,

Andrew March