

THE ARCHER INQUIRY

Evidence submitted on behalf of the Board of Directors of the Skipton Fund Limited (SFL) by the Chairman, Peter Stevens and Martin Harvey, a Director.

1.0 Introduction

- 1.1 Mr Stevens has been Chairman of the Board of Directors of the SFL since its inception in 2003. He was appointed as a director with the agreement of the Department of Health (DH) and the devolved administrations through his connection as a trustee of the Macfarlane Trust (MFT) where he was Chairman of the Board of Trustees until January 2007. Mr Harvey was appointed as Company Secretary by the Board of Directors from the Fund's inception in 2003 and was appointed to the Board, with the agreement of the DH, in the spring of 2004. Mr Stevens is also Chairman of the Board of Trustees of the Eileen Trust (TET); Mr Harvey is also Secretary of the TET and Chief Executive of MFT.
- 1.2 Following the announcement by the then Secretary of State for Health in August 2003 that a system of ex gratia payments should be made available to those that had been infected with the Hepatitis C virus by way of contaminated blood products, officials at the DH invited representatives from MFT to advise and guide them on how such a scheme might be put in place. Officials recognised the skill and expertise that was within MFT to bring about this process.
- 1.3 The initial round of consultations concerned the legal structure of the Fund, whether or not it could enjoy charitable status, seeking an assurance from MFT that it would be the quasi-agent prior to the formation of the SFL being determined and the formal agency arrangement being agreed. MFT accommodated all that was asked of it; it sought the appropriate legal advice, stated the process of application form design based on the scheme criteria and invested in IT, all later recharged, to create a dedicated data base.

2.0 Company Structure and Purpose

- 2.1 SFL is an agent company, limited by guarantee, acting on behalf of the DH and the devolved administrations. The sole purpose of the company is to administer the disbursement of a two tier system of payment. The first payment of £20,000.00 is for those who contracted Hepatitis C by way of contaminated National Health Service (NHS) blood, blood products or tissue before September 1991. The second payment of £25,000.00 is for those who have received the first payment and for whom the infection has led to advanced liver disease (specifically cirrhosis or cancer) or to the need for a liver transplant.

- 2.2 All applicants are required to register themselves before receiving an application form for the stage 1 payment. That primary registration is retained pending qualification for the second stage payment.
- 2.3 Qualification for both payments is subject to the applicant's hepatologist or other physician completing a formulaic series of questions. The SFL administers the scheme on behalf of the devolved administrations and all applicants are treated equally. As far as applications from Scotland are concerned, there is a residency qualification (at the request of the Scottish Executive).

3.0 Support Services to Applicants

- 3.1 The company has no remit or funding to provide any form of after-payment support service to applicants. It does publish a benefits waiver for those who are concerned about the impact of payments on their right to access benefits payable.
- 3.2 As part of its service remit, it does provide very limited advice and guidance to applicants when required, such as sources of investment advice or the names of charitable bodies that can help those infected with HCV.

4.0 The Inception of the company

- 4.1 From the start, it was clear that Mr Stevens and MFT had crucial expertise relating to the creation of the administrative infrastructure to enable SFL to be fit for purpose. It is fair to say that the construction of all the SFL literature, from the initial registration form to the two application forms, was largely led by Mr Stevens and, to a lesser extent, Mr Harvey. At all stages in this development process, the devolved administrations and interested parties were consulted, national considerations were taken into account and accommodated. It should be noted that this intermediate process was not without specific tensions.
- 4.2 SFL was under considerable political pressure to become operative as soon as possible. MFT as the advisory body, prior to the company formation, had to move premises to accommodate SFL and share staff resources prior to the recruitment of dedicated SFL staff to enable the administration of the scheme to progress.
- 4.3 The scheme commenced the business of receiving registrations and dispensing application forms on 5 July 2004, the first disbursements of payments being made shortly after that date.

5.0 Funding

- 5.1 SFL has no specific "ring fenced" allocation of funds, although the impression was given that the allocation available for disbursement was to the order of £250m. To date SFL has disbursed £87m to 3,727 applicants (Stages 1 & 2); currently about 13% of this number have received both payments.
- 5.2 SFL largely resources its staff and operating costs from the prudent investment of funds received from the DH. Overall management costs since 5 July 2004 are less than 1% of funds disbursed.
- 5.3 The directors are all volunteers and claim expenses only in the performance of their duties. Mr Stevens and Mr Harvey received some remuneration to reflect their level of input to the development of the scheme before SFL started operations.

6.0 Staffing

- 6.1 The staffing cadre is now a dedicated administrator, who also fulfils the role of Company Secretary, and one part-time clerical support officer. At the inception of the scheme, there was one dedicated Administrator with a number of temporary data input clerks.
- 6.2 It is common knowledge that the first scheme administrator, Mr Keith Foster, was charged with theft from SFL and subsequently jailed earlier this year. The SFL took all reasonable steps to secure the return of stolen funds and recovered about 70% of the total of about £400,000 (roughly 0.5% of the total disbursements to date).

7.0 The Agency Agreement

- 7.1 The formal agency agreement, to confirm the relationship between the DH, the devolved administrations and SFL was agreed in the spring of 2007.

8.0 Level of evidence necessary to qualify for payment

- 8.1 SFL considers applications on the balance of probabilities where, firstly, there is evidence of an applicant receiving blood or blood products through the NHS prior to September 1991, but not necessarily identifying a batch of blood that was infected with HCV, and, secondly, there is an absence of other significant risk factors.
- 8.2 In cases where there are no medical records which confirm the applicant was treated with blood or blood products the Directors of SFL exercise

discretion where appropriate. For example, where an applicant's records show the extent of injuries incurred in an accident were such that a transfusion would definitely have been needed, although this was not specifically mentioned in the existing medical notes, the application would be accepted. The same applies where records confirm the diagnosis of a disease for which the treatment would have involved the use of blood products without them being specifically mentioned. Other examples where discretion is likely to be exercised in favour of an applicant could include the case of an elderly applicant who appears to have been infected long ago and whose records cannot be traced but for whom the clinician has no doubts of the source of the infection and has written a strong letter of support.

- 8.3 If there are no records available and the treatment with blood products is simply in the applicant's memory then the application must be declined and referred to the Appeal Panel if the applicant so wishes.

9.0 Exclusions from the Fund

- 9.1 Under the guidelines set out by the Department of Health no payments are made in respect of those who died before August 2003 or to people who have cleared the virus spontaneously in the acute phase of the disease. SFL has received nearly 200 applications from such people, but there are others who, knowing the exclusion, have not applied. There is inconsistency in the attitude of hospitals in this respect: some clinicians believe that evidence of spontaneous clearance cannot be determined and support applications, while others take the contrary view.
- 9.2 Initially the guidelines stated that in the case of eligible persons who died after 5th July 2004 payments would only be made to their estate if the eligible person had applied to the Fund whilst they were still alive. Following a statement in the Upper House on 12th January 2006 this guideline was removed and it is no longer a requirement that the eligible person had to have registered before their death.
- 9.3 It is understood that there are around 200 widows who are excluded from receiving a Skipton Fund payment due to the cut off date of August 2003 being applied and that there is ongoing lobbying taking place to have this guideline removed.
- 9.4 It is also understood that there are a number of people who are unhappy that they are excluded from the scheme having cleared the virus naturally in the acute phase of the disease on the basis that being infected with the disease in the first instance should be grounds enough for a payment.

10.0 Appeal Panel

10.1 The appeal panel is now established and began considering cases on 3rd October 2006. A copy of the press release relating to the appointment of the panel members is attached. The secretariat to the panel is Nicholas Fish who is also the scheme administrator of the Fund itself. Mr Fish remains independent of all decision-making processes carried out by the appeal panel; his responsibility is to prepare and dispatch case files to the various panel members and to send written requests for further information to appellants on the panel's behalf.

10.2 The panel have met on three occasions and have considered a total of 88 cases. 42 of these cases were upheld, 38 were rejected and the remaining 8 have been deferred until the next meeting for further information to be provided by the appellant.

11.0 Revised procedures in light of the theft by the previous scheme administrator

11.1 There were a number of procedural alterations made following the discovery of the fraud carried out by the previous scheme administrator and the subsequent inspection carried out by the NHS Counter Fraud and Security Management Service.

11.2 These changes relate to a tightening of the internal checks on staff and to the verification of an applicant's identity and eligibility and not to the likelihood that an application will be successful.

12.0 Current Level of Activity

12.1 The level of activity has understandably tailed off a great deal since the influx of applications when the Fund was first established. Due to the dormant nature of the Hepatitis C virus there are still between 20-30 new applications being received every month; this will probably continue for a number of years with a slow but steady decline in numbers.

12.2 It is possible that recent media coverage surrounding the hepatitis C virus along with the interest surrounding this Inquiry will lead to an increase in the level of applications because of the resultant increase in awareness of the disease. High profile cases such as that of Dame Anita Roddick have also helped to raise the awareness of HCV.

13.0 Conclusion

13.1 The Skipton Fund is an ex gratia payment scheme that was set up to make payments to those infected with Hepatitis C through NHS blood or blood products prior to the commencement of screening for the virus in September 1991. The payments are not an admission of liability on

behalf of the Government and do not prevent individuals from undertaking litigation against the NHS.

- 13.2 The damage caused by the disease to the individual varies greatly; ranging from those who had a period of unknown infection and cleared the virus following treatment with no long lasting effects to those who have died as a result of the damage caused to their liver. Whether people feel that the level of payments are sufficient for the damage caused to them is a matter for the individual and would depend on their individual experience.