

Witness Name: Neil Bateman

Statement No.: WITN3487001

Exhibits: Nil

Dated: 01 June 2020

## INFECTED BLOOD INQUIRY

---

### WRITTEN STATEMENT OF NEIL BATEMAN

---

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 10 July 2019.

I, Neil Bateman, will say as follows: -

#### Section 1. Introduction

1. My name is Neil Bateman. My date of birth is GRO-C 1955 and my address is known to the Inquiry.
2. I am not legally represented, I am happy for the Inquiry investigators to assist me with my statement.
3. I am not requesting anonymity because I would like my experiences to be shared and heard.
4. The Inquiry Investigator has explained to me the "Right to Reply". I understand this to mean that any significant criticism I have made of a medical professional, or other person the Inquiry considers necessary to inform, may be contacted for the purpose of responding to the criticism.

5. Academically, I have a number of qualifications in law and social care, including a Bachelor of Laws degree, two postgraduate diplomas in Social Policy and Social Work (the Certificate of Qualification in Social Work), and I hold membership of The Expert Witness Institute.
6. Professionally, I have over forty years of experience in welfare rights work, as a front-line adviser as well as an advocate, trainer, author, strategic manager and policy adviser. I specialise in welfare rights and social policy issues, particularly in solving benefit problems. I have represented claimants at all levels of the social security appellate system, including the Upper Tribunal, which hears appeals against decisions made by the First-tier Tribunal. I have also been involved in judicial reviews of social security and related matters. I have worked as a freelance welfare rights specialist since 2003. I also do some private client and pro bono work, as well as undertaking work as an expert witness in both civil and criminal law matters.
7. I have written extensively and I have authored or contributed to sixteen books on this subject, as well as articles in the legal and academic press. In addition, I have written articles for various popular publications including Bella, Yours and the Sunderland Echo about social security law and policy.
8. I now work part time, mainly on case work, the majority of which relates to individuals with conditions from infected blood and blood products. My fees are, and were, covered by the Macfarlane Trust, the Caxton Foundation and the England Infected Blood Support Scheme (EIBSS).
9. The typical process is for a client to contact the charity or EIBSS after they perceived a need for benefits advice and request a referral to myself. The previous infected blood charities, the Macfarlane Trust and the Caxton Foundation, also used to ask me to carry out benefit checks when people sought help with financial problems. This is not uncommon

among charities providing financial support, and it is part of their legal obligation not to subsidise state support.

10. I invoice the agency retrospectively for work done. In the case of EIBSS, I agree a written contract with each client and then invoice EIBSS for payment on behalf of the client, in the same way that a third party supplier, such as a builder carrying out adaptations to someone's home would.
11. I made contact with the Inquiry following numerous clients' suggestions that I should provide an insight and understanding into the welfare and, benefit challenges faced by infected blood individuals.

## Section 2. Experience and Role with Macfarlane Trust & Caxton Foundation

12. I first became aware of, and commenced work for the Macfarlane Trust in the summer of 2008. I received a call out of the blue from a beneficiary whose benefits had been stopped. He had no money and was in hospital. At the time the Macfarlane Trust were paying the Terrence Higgins Trust to carry out welfare rights work. My understanding was that their service was a light touch process and, in this case, they had sent an advisor to see him in hospital, who just left some forms for him to complete on his own.
13. In reality, the beneficiary required actual advocacy and casework to unravel and resolve the various administrative failings by the Department for Work and Pensions (DWP), which had left him without any benefits.
14. I took on the case and made a formal complaint to the DWP. It transpired that the benefits were stopped due to an administrative error, caused by the fact that he had changed his address, and was now under the responsibility of another DWP office. I wrote a letter and resolved the issue, and the benefits were reinstated together with an award of backpay. After this incident, I ended up receiving quite a lot of referrals.

Shortly afterwards, I believe the Terrence Higgins Trust lost the contract with the Macfarlane Trust.

15. I have since helped hundreds of individuals for the Macfarlane Trust and the Caxton Foundation, many of whom have required ongoing case work, including appeals and disputes. Some cases have involved bureaucratic breakdowns, for example, individuals not keeping the money given by the Macfarlane Trust separate from their day to day banking and savings. This can trigger issues with undeclared money at the DWP, and which can involve the DWP wrongly starting a benefit fraud investigation or compliance action.
16. Since 2009, I have had to do a lot of advocacy, including representation before the First-tier Tribunal for beneficiaries who have been denied the new benefits for disability and ill-health, Employment and Support Allowance (ESA) and Personal Independence Payment (PIP).
17. I also handle a mix of benefit disputes which all advisers come across, including delays in processing benefit claims, overpayments, disputes about income and capital. Sometimes, this work can involve very many hours and cases remain open for many months. As an example, one particularly complex case involved 75 hours of work spread over 18 months.
18. In my opinion, the staff at both the Macfarlane Trust and the Caxton Foundation were focussed on the needs of the individual. I always found them helpful and supportive both to myself and, to my requests for any additional financial support for clients.
19. I was given complete freedom to represent clients and to be a vigorous advocate against the DWP and local authorities. Many charities, especially those with links to government, get anxious about "not upsetting" government departments, but it is a tribute to those charities that they always fully supported my work on behalf of beneficiaries.

20. The charities' Chief Executives and I also lobbied the DWP on various occasions about problems with the benefits system. For example, the use of data-matching by the DWP, which identifies undeclared capital which was paid by the charities. Also, the poor quality of assessments for Employment and Support Allowance.
21. I found that they were good advocates for the beneficiaries during those meetings. In instances where an individual had their benefits stopped, the charities would step in and make payments to cover the shortfall, until I succeeded in getting them reinstated, often at Tribunals.

### **Section 3: Experience and Role with England Infected Blood Support Scheme**

22. In my opinion, the transition of my work from the Macfarlane Trust and the Caxton Foundation was not easy, but these teething problems were quickly resolved. I did not know whether they would continue to fund my services until about a week before EIBSS took over in November 2017. I had an existing caseload during the transition and I did not hear until so late in the day. I had to point out that I would have to stop work unless I could be funded.
23. These problems were within at the Department of Health. Some disruption was to be expected, but it was difficult to continue to provide an advice service to clients at such short notice.
24. We also had a few initial difficulties around the nature of contracts and how I would be paid. For example, initially, I had to send my invoices to clients who then had to pay me and send the invoice to EIBSS to be reimbursed. The system fell down as soon as it started with clients not paying me, and some invoices not getting to EIBSS. This system was swiftly changed so that I would invoice EIBSS on behalf of clients, and that has worked very well since.

25. From my perspective, I believe the EIBSS works well. They too allow me to be a vigorous advocate. It effectively allows one arm of government to challenge another, which in my view is a sign of a mature democracy in the same way that the Ministry of Justice, via the Legal Aid Board, funds legal challenges against state bodies.
26. I find that EIBSS staff are helpful and responsive and, in relation to my work, it is done with the minimum of bureaucracy. However, I feel they could do more to lobby the DWP about weaknesses in the benefits system, which impact on both beneficiaries and EIBSS finances, but I accept that traditionally this can be difficult for civil servants.

#### **Section 4: Experience of government departments**

27. My professional experience has made me a subject matter expert on the benefits system and dealing with the DWP and local authorities.
28. The new Personal Independence Payment (PIP) has replaced the Disability Living Allowance for most beneficiaries. The tougher eligibility criteria, as well as very poor standards of assessment and decision making by the DWP, and their private medical assessors (Capita and ATOS) meant many infected blood victims were refused PIP, or awarded too low a rate of PIP. I have represented around thirty individuals before the First-tier Tribunal. All but two, were successful which highlights the need for clear guidance.
29. The DWP carried out a review of cases of people with haemophilia, who were refused PIP. This was a result of representations and my supporting evidence from some of my challenges at Tribunal cases.
30. This demonstrated that there were many poor quality assessments of the impact of haemophilia on people's functional ability. As a result, 62% of those reviewed were either awarded PIP or awarded higher rates of PIP, and £1.2 million was paid out in arrears of PIP.

31. The private assessment companies were required by the DWP to issue new guidance to their staff about haemophilia. However, I still see examples of poor quality decisions, which I have had to challenge.
32. In addition, for beneficiaries without haemophilia or who have mild haemophilia, the impact of hepatitis C, liver disease, post-treatment symptoms, and the psychological impact of acquired infections, can still result in poor quality decision making. Although, in fairness, the presentation of these conditions is variable so it makes assessments more difficult.
33. The comparatively rare nature of the conditions which infected blood victims have, made it harder for staff working on assessments, who are overwhelmingly not doctors. This was revealed to the House of Commons Work and Pensions Committee, by senior staff in the assessment companies, who carry out accurate assessments of functional ability.
34. There is widespread concern among advisers and groups representing people with long term conditions and disabilities, about the quality of assessments by the private medical companies. There is also concern about the standards of decision making on ESA and PIP claims by the DWP staff. Nationally, for all cases, some 60% of people who appeal against decisions are successful at the First-tier Tribunal.
35. In my view, more needs to be done to raise the awareness of the DWP staff, but this is very difficult as the contaminated blood victims are such a tiny proportion of the overall number of people claiming benefits. Training and raising awareness are easily lost under the pressure of day-to-day benefits administration, and the DWP has always struggled to understand the needs of its more vulnerable customers. This also applies to assessments for ESA.

#### **Section 5. Other Issues**

36. Generally, as a result of welfare reform, the benefits system has become an increasingly hard and harsh place to people who rely on it. Standards of administration of benefits and some DWP staff attitudes can leave a lot to be desired.
37. Contaminated blood victims have been caught up in this as so many have to claim benefits to cover their living costs and/or the additional costs of long term conditions. Short of wider improvements to the benefits system, it is hard to know what can be done specifically for the victims, and it points to the need for an improved financial compensation scheme. Recent improvements to the EIBSS schemes have helped, though people are very likely to still need to make claims for benefits.
38. In addition, because of the need for additional funds to cover the cost of having a disability and/or a long-term condition, National Insurance Credits which helps people getting ESA qualify for Retirement Pension for people getting ESA. I am aware of a number of EIBSS beneficiaries who have chosen to rely on those payments, rather than face the long drawn out stress and embarrassment involved in challenging negative benefit decisions.
39. One issue which the DWP must resolve is the lack of public information for EIBSS beneficiaries about how the social security system treats EIBSS payments, and payments from the former charities.
40. Such payments were fully ignored and, until November 2017, there was an administrative easement operated by the DWP which meant that people did not have to declare these payments to the DWP and Housing and Council Tax Benefit. Legislation also exempted them from having to declare to local authorities. This was because of the stigma attached to HIV and Hepatitis C.
41. My own view is that the DWP is extremely good at safeguarding personal information, almost too good as it can obstruct advisers. There have been a number of really unacceptable and offensive attitudes and

behaviour, when the DWP staff have become aware of these conditions, and the payments people receive. I have triggered management action against several DWP staff over the years.

42. One effect of the undeclared monies is that this can be identified by a DWP data matching exercise, which then results in a fraud investigation or compliance activity by the DWP. Some of these have been horrendous for beneficiaries.
43. In addition to the inevitable stress of having to attend an interview under caution (Police and Criminal Evidence Act compliant), I've had reason to complain to the DWP about things such as, one of their compliance officers commenting how much money someone had from the charities, and that therefore they didn't need to claim benefits.
44. I have also experienced two DWP compliance officers, inadvertently, leaving a voicemail mocking someone with a disability on a client's voicemail.
45. Another example is where a now deceased client was subjected to repeated aggressive questioning by a fraud investigator, employed by East Hampshire District Council, about why he hadn't declared payment from the charities.
46. As a result of lobbying by myself and the charities' Chief Executives, I was given a named contact of a senior person within DWP's Fraud and Error Service, John Armstrong. He was extremely helpful at intervening quickly to put a stop put to fraud and compliance activity in unwarranted cases. I also spent a lot of time with Mr Armstrong, and other DWP officials, trying to find a solution to this problem. We were not able to find something workable and acceptable, other than the idea of having some written information for all beneficiaries, stating that they should voluntarily disclose the payments to prevent it showing up in a data match.

47. The last communication I had on this matter was from Keith Chapman, in DWP's Fraud and Customer Error Business Partner Team, on 29<sup>th</sup> January 2015:

*"As promised I want to give an update on the latest position regarding your suggestion for how we deal with beneficiaries of the McFarlane Trust identified from the Department's capital data matching exercises. Your suggestion has been raised to very senior levels in the Department and we are urgently investigating the implications. I appreciate your concern about the length of time this is taking, but there are a number of complex issues that we need to consider and we want to ensure that we provide the best possible solution; for beneficiaries, administrators of the McFarlane Trust and all similar trusts, and the Department."*

That was the last I heard and shortly afterwards Mr Armstrong retired, and the role he had with myself was not replaced, despite me asking several times.

48. Shortly after the EIBSS was established, I was given a named contact within the DWP, Mr Bobby Towers in the DWP's External Relations & Briefing, Fraud, Error and Debt, Strategy and Policy. Mr Towers has been exceptionally helpful and, has most speedily resolved individual problems when people have been subjected to fraud and compliance activity.
49. In November 2017, the law was changed, requiring beneficiaries to disclose EIBSS payments to the DWP and local authorities. This occurred without the DWP consulting the charities or myself as key stakeholders. Despite me lobbying for a leaflet to be published for beneficiaries by the DWP, explaining the treatment of payments and disclosure. Although I last commented on a draft in May 2019, nothing has been forthcoming, and this is a current real deficiency. Very few people have declared their payments because they don't know they have to and that is very unsatisfactory.

- 50. The false positives triggering fraud and compliance activity by the DWP are, of course, a waste of public resources.
  
- 51. I would like to formally place on record my thanks to both Mr Armstrong and Mr Towers for their assistance over the years. The DWP is a very difficult organisation to work with as an adviser, and their culture is both introspective and defensive. Both Mr Armstrong and Mr Towers have however straddled the interface between adviser and the DWP very professionally and effectively.

**Statement of Truth**

I believe that the facts stated in this witness statement are true.

GRO-C

Signed \_\_\_\_\_

Dated 01 June 2020