

Witness Name: Nicholas Fish
Statement No.: WITN4466003
Exhibits: WITN4466004
Dated: 23/02/2021

INFECTED BLOOD INQUIRY

SECOND WRITTEN STATEMENT OF NICHOLAS FISH

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 14 January 2021.

I, Nicholas Fish, will say as follows:

1. **At paragraph 16.1 of your statement to the Inquiry [WITN4466002], you note that the DHSC relaxed the time limit in which bereaved families were able to apply for an ex gratia payment, provided the applicant had a “good reason”.**
 - a. **Did DHSC provide any guidance or direction as to what would constitute a good reason? If so, how was this recorded by the Skipton Fund?**
 - b. **What constituted a good reason?**
- 1.1. I cannot recall whether or not official guidance was issued by the DHSC but I believe it wasn't and they left it to our discretion as to whether or not the person had a good reason for registering after the cut-off date.
- 1.2. A good reason was anything that meant it would not have been possible for the person to register before the cut-off date. I am fairly certain that every such reason provided was that the applicant had only learned of the change to the scheme after the cut-off date had passed; I do not recall anyone saying they had learned of the changes, but then decided to register after the cut-off date had passed. I am therefore fairly certain that nobody was prevented from making an application because they missed the registration cut-off date.

2. At paragraph 17.1 of your statement to the Inquiry [WITN4466002], you note that meetings were held with the DHSC on an ad hoc basis. Who attended these meetings with Peter Stevens once Martin Harvey left the SF?

2.1. It is likely that it would have just been myself and Peter, although one of the other directors may have attended on occasion.

3. At paragraph 17.4 of your statement to the Inquiry [WITN4466002], you describe an informal process of note taking for your meetings with the DHSC. How and where were the records of these meetings filed?

3.1. The informal notes of meetings with the DHSC would have been saved in a folder on the Skipton Fund server. Presumably the DHSC would have saved a copy as well.

4. At paragraph 30.1 of your statement to the Inquiry [WITN4466002], you note that Professor Mutimer assisted the SF with “the evidence required to show probable cirrhosis”. Can you please elaborate on the assistance provided by Professor Mutimer, covering the following points:

- a. How and in what capacity did Professor Mutimer assist the SF with the evidence required to show probable cirrhosis?**
- b. What other issues did Professor Mutimer assist the SF with? In particular did Professor Mutimer produce reports for use by SF staff? If so, how were these shared?**

4.1. Professor Mutimer would have provided assistance in writing in the capacity of an expert in hepatology.

4.2. As far as I recall this is the only issue we sought assistance on from Professor Mutimer.

5. At paragraph 31.3 of your statement to the Inquiry [WITN4466002], you describe a look back exercise carried out following the development of a model by Professor Thomas for the calculation of fibrotic progression. Can you please describe the outcome of this lookback exercise and cover the following points.

a. Which applications were included in the look back exercise?

b. How many decisions were overturned?

5.1. This look back exercise covered stage 2 applications from the estates of people who had died prior to 29 August 2003 and where there was no longer medical evidence available to confirm whether or not the applicant had developed cirrhosis.

5.2. I no longer have access to any Skipton Fund files or statistics to be able to answer this question but there were certainly applications that were overturned on the basis that, given the probable length of time that the deceased person probably had chronic hepatitis C and/or HIV that it was probable that they had gone on to develop cirrhosis.

6. At paragraph 33.4 of your statement to the Inquiry [WITN4466002], you describe the medical directors' involvement in reviewing Stage Two payment applications. What was the process for escalating a case for review by one or both of the medical directors?

6.1. Unless there was clear-cut evidence of a stage 2 qualifying condition, stage 2 applications would have been considered by myself and one of the medical directors as a matter of course (rather than myself and one of the non-medical directors if clear-cut). Occasionally, if the medical director felt that the complexities necessitated discussion with the other medical director this would be arranged, usually by email with a scan of the application form and any supporting evidence provided to both directors.

7. At paragraph 35.1 of your statement to the Inquiry [WITN4466002], you note that as per guidance from DHSC, the SF could not cover GP fees for the completion of application forms.

a. When and in what form did the DHSC issue this guidance?

b. Was there any fee incurred by an applicant in relation to the application process that the SF could or would cover?

7.1. This was before I started with the Skipton Fund so I am unable to answer this question.

7.2. Only through reading minutes that you provided me with on Egress was I reminded that on rare occasions we did cover fees for the completion of forms. It is most likely that on any such occasion we would have had to run it by the DHSC and there would most likely have been exceptional circumstances. I should reiterate that as far as we were aware it was very rare for an applicant to be charged for the completion of a Skipton Fund form and, if we learned of this, we would write to the doctor to explain that the application wasn't like an insurance request form and was for an ex-gratia payment scheme set up by the DHSC due to hepatitis C infections through treatment with NHS blood, and the patient should not therefore be charged.

8. At paragraph 36.2 of your statement to the Inquiry [WITN4466002], you note that the exclusion of natural clearers from the SF eligibility criteria was a consequence of a DHSC policy decision.

a. Did you or the SF as an organisation have a view of this policy decision? If so, what was it?

b. Did you or anyone else at the SF to your knowledge raise this with the DHSC? If so please give details.

8.1. It would not have been appropriate for the Skipton Fund as a company to have a view on the issue of natural clearance as the agent company administering the scheme on behalf of the DHSC as per their qualifying criteria.

8.2. As referenced in the first set of Rule 9 questions, the Agency Agreement that the Skipton Fund had with the DHSC prevented the Fund from making policy recommendations, so we would have been unable to share any collective

view on whether it was appropriate to exclude natural clearers from the scheme, even if one had existed.

9. **At paragraph 39.4 of your statement to the Inquiry [WITN4466002], you note that prior to the appointment of medical directors, Elizabeth Boyd would refer medical queries anonymously to her colleagues/contacts at the Royal Free Hospital. How frequently did the SF refer queries to the colleagues of Elizabeth Boyd when determining the outcome of an application? Please provide some examples.**

9.1. I cannot recall exactly how frequently this would have occurred but perhaps once or twice a month. Examples would have been a stage 2 application where the evidence of cirrhosis was borderline and the views of a specialist were necessary, or where more information was needed on medical terminology or abbreviations that were used in a person's supporting medical records.

10. **At paragraph 42.1 of your statement to the Inquiry [WITN4466002], you note that you were instructed during your training period that intravenous drug use was a far greater risk factor for hepatitis C transmission than treatment with NHS blood prior to September 1991. As part of this training, how were you instructed to assess the merits of those applications with documented instances of intravenous drug use?**

10.1. During my training period it was not my role to make decisions on applications as I was a scheme assistant, but I was told that for any application where there was a history of intravenous drug use this would be considered a more probable transmission route for hepatitis C infection than treatment with an NHS blood transfusion prior to September 1991.

11. **At paragraph 58.5 of your statement to the Inquiry [WITN4466002], you note that as the scheme evolved, a medical trustee was recruited to account for the increasingly complex cases being received.**
- a. **Why were the cases becoming increasingly complex?**
 - b. **Did the SF review previous complex cases once there was medical expertise available?**

- 11.1. In the case of stage 1 applications, as time went on, fewer and fewer applicants would have medical records/complete medical records still available to confirm whether or not they received treatment with NHS blood or blood products prior to September 1991.
 - 11.2. Secondly, the majority of the more straightforward applications from applicants with a bleeding disorder had by that point already been assessed. In the case of stage 2 applications it was because there were new technologies being utilised to assess the degree of liver damage that did not exist when the scheme was first established.
 - 11.3. We did not review the previously declined applications, but I believe the majority of such stage 1 cases had their applications reviewed by the independent appeals panel. Stage 2 applications were only ever deferred, so applicants could and did re-apply when new test results became available (using either established or new testing methods).
- 12. At paragraph 60.2 of your statement to the Inquiry [WITN4466001], referring to the report produced by Dr Ramsey on IVDU as a source of HCV infection, you note that “The Skipton Fund did not use the report per se.” If the SF did not rely upon the expert view expressed in that report when assessing an applicant with a history of IVDU, what was the basis upon which decisions were made?**
- 12.1. Applications where IVDU was a risk factor for hepatitis C had always been assessed on the basis that IVDU was considered a greater risk factor than treatment with NHS blood or blood products prior to September 1991. This was something that I was taught during my training with the Skipton Fund but, as previously mentioned, I was not there at the start of the scheme so am not sure what data/study the DHSC used to determine this. The report by Dr Ramsey reinforced this view, and although I am not sure you could say we relied upon it to make decisions, as we had made such decisions before it had been written, we did start to refer to it in IVDU rejection letters.

13. At paragraph 67.1 of your statement to the Inquiry [WITN4466002], you refer to efforts made by the Macfarlane Trust (MFT) to prevent “continual DWP investigations into beneficiaries’ income from the Trust” when beneficiaries applied for means tested social security benefits. Please elaborate on this comment:

- a. Who at MFT was involved in this effort?**
- b. What steps were taken by MFT?**
- c. What was the outcome of this effort?**

13.1. I believe this would have been the then Chief Executive, Martin Harvey, but it may have been in concert with other full time MFT staff members and/or Trustees.

13.2. Presumably they would have held meetings, telephone calls and written correspondence with relevant parties within the DWP and JobcentrePlus.

13.3. I would not be able to provide a comprehensive answer to this question as it was not part of my daily role, but I believe as a result the DWP contacted JobcentrePlus staff who conducted investigations to highlight the AHO schemes and that any payments received from them should be excluded when applicants were means tested for social security benefits. MFT beneficiaries also had access to a benefits advisor through the Trust who could assist if they were under investigation due to their MFT payments. It is also likely that the Macfarlane Trust had a letter similar to the attached which the Skipton Fund created jointly with Jobcentre Plus to try and prevent these investigations from happening. I believe I was put in touch with Dave White by the then MFT CEO Martin Harvey.

14. At paragraph 67.2 of your statement to the Inquiry [WITN4466002], you mention that you were asked to correspond about dental care.

- a. Who asked you to correspond on this issue?**
- b. Who did you correspond with and what was the outcome of this correspondence?**

14.1. I was asked to do this by the then CEO of MFT, Martin Harvey, who assisted with the process.

- 14.2. I corresponded with the Chief Dental Officer, who Martin and I also met with, but unfortunately I cannot now recall what the outcome of these discussions were and whether or not we managed to improve the access to dental care for people with HIV and bleeding disorders.
15. **At paragraph 86.1 of your statement to the Inquiry [WITN4466002], you note that the MFT and Caxton Foundation had census forms which they used to help assess the needs of their beneficiary communities. Did the SF have a means of assessing if the Stage One and Stage Two payments were sufficient to meet the needs of the respective beneficiaries?**
- 15.1. No, as the Skipton Fund was originally a lump sum ex-gratia payment scheme, set up as a company limited by guarantee, rather than a charitable trust, this is not something that formed part of our directives from the DHSC. I don't believe the DHSC ever claimed that the payments were intended to, or in fact did, meet the needs of the applicants. However, if this is something that they had wanted us to do, they would have had to set the scheme up in a way that applicants were informed from the start that it was necessary for them to keep their contact details with the Fund up to date. I do not know what, if any, assessments were originally made by the DHSC when considering the needs of potential Skipton Fund applicants nor when considering what level of lump sum payments to put in place.
16. **At paragraph 87.1 of your statement to the Inquiry [WITN4466002], you refer to a look back exercise, for the purpose of re-establishing contact with Stage One beneficiaries who had received the Stage One lump sum payment and had not had reason to contact the SF since. Please could you clarify the following:**
- a. **When was this exercise carried out?**
 - b. **What was the reason for carrying out the exercise?**
 - c. **Was this a one off exercise or were look back exercises of this nature periodically carried out?**
- 16.1. I cannot recall exactly, but I believe this would have been around 2014-2016 when the DHSC introduced, or were considering introducing, regular stage 1 payments for the first time. There was a similar look-back exercise carried out for recipients of the stage 2 payment when the DHSC introduced regular payments for this group for the first time and increased the lump sum

payment from £25k to £50k. After the initial look back exercises there were further efforts to find anybody still missing carried out at other times. As and when people were found they were informed that the Fund would now be maintaining an up-to-date database and that it was their responsibility to notify the scheme of any changes to their contact details.

Statement of Truth

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

Signed GRO-C _____

Dated 23/02/2021 _____

Table of exhibits:

Date	Notes/ Description	Exhibit number
	Joint letter from Skipton Fund and Jobcentre Plus	WTN4466004