

Witness Name: Brendan Brown

Statement No: WITN4496001

Exhibits: WITN4496002 to  
WITN4496011

Dated: April 2021

**INFECTED BLOOD INQUIRY**

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**WRITTEN STATEMENT OF BRENDAN BROWN**

**ON BEHALF OF THE NHS BUSINESS SERVICES AUTHORITY**

**EXHIBIT BB7 (WITN4496008)**

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# **NHS Business Services Authority** **England Infected Blood Support Scheme** **(EIBSS)**

**Response to Public Inquiry Rule 9(2) Request for further information-  
Dated 19 December 2018**

## Introduction

This paper forms the NHS Business Services Authority (NHSBSA) response to the Public Inquiry Rule 9(2) Request for further information- dated 19 December 2018. The original Public Inquiry response deadline was 16 January 2018 (28 days from the date of the request).

As the information requested by the Infected Blood Inquiry (IBI) contained personal data of beneficiaries, NHSBSA felt it necessary to redact personal details based on responsibilities under Data Protection Act and associated Regulations. NHSBSA requested an extension to the 16 January 2018 deadline, due to needing additional time to gather and redact the amount of evidence requested. IBI granted an extension on the 17 January 2019 to 5pm on 25 January 2019. The extension included a section 21 instruction, for NHSBSA to provide the requested information in an un-redacted format.

All evidence requested which contains EIBSS beneficiary personal/medical data will be supplied on a password protected encrypted disc entitled NHSBSA\_21012019. The disc is addressed to Senior Lawyer Thomas Powell and will arrive before midday 24 January 2019 via Royal Mail Special Delivery. Upon receipt, Thomas Powell should contact James Hardy for the password to access the disc, using the contact details supplied with the disc.

Additionally, NHSBSA are willing to transfer the evidence requested through a secure information sharing system named 'Egress'. Should the Inquiry provide access to this system ahead of the deadline, with sufficient time to allow for the transfer to take place, NHSBSA will share the evidence via this route also.

## Limitation

The NHSBSA response is based on the responsibilities that NHSBSA has in administering EIBSS on behalf of the Secretary of State for Health and Social Care. Any reference to policy and funding decisions will need to be referred to the Department of Health and Social Care (DHSC) by the Public Inquiry directly.

NHSBSA are not in a position to respond in relation to the previous administrators of the schemes, other than in the capacity of engaging with Alliance House during the development of EIBSS and transfer of beneficiary information.

## Questions and Responses

### **1. Have you already made arrangements for the DHSC to answer the aspects of this Rule 9 request on which you have indicated you defer to them?**

#### NHSBSA response

NHSBSA have not passed on any part of the original Rule 9 request to DHSC. Where questions require a policy related response IBI should direct them to the Department responsible. The NHSBSA are the scheme administrator of EIBSS and do not set policy. NHSBSA have no influence over DHSC policy. Referring to the previous NHSBSA response, please accept our apologies if this was not made as clear as intended. NHSBSA are happy to assist IBI in ensuring the questions you have for DHSC are forwarded to DHSC, if required.

### **2. In respect of the response at section 1.b. please provide all items except the 'Financial Records - payments to beneficiaries and accountants'**

#### NHSBSA response

The following documents will be shared via encrypted disc and are contained within folder NHSBSA\_IBI-2.

- a. Memorandum of Understanding between the Department of Health and Social Care (DHSC) and NHSBSA;
- b. DHSC policy for bereaved payments;
- c. DHSC Specification - England Infected Blood Support Scheme ("EIBSS");
- d. NHSBSA Directions 2017;
- e. Draft Report NHSBSA to DHSC on Discretionary Payments; and
- f. NHSBSA Financial allocation letter from DHSC 2018-19.

### **3. In respect of 1.c. and 5.d. and e. please:**

- a. Explain what 'SCM payments' are;

#### NHSBSA response

Special Category Mechanism (SCM) was introduced at the same time NHSBSA launched EIBSS. This new process enables beneficiaries with hepatitis C stage 1 to apply for the higher annual payments, equivalent to hepatitis C stage 2 and HIV annual payments. The intention of this new process is to enable people with a hepatitis C stage 1 infection that is having a substantial and long-term negative impact on their daily lives to apply for higher annual payments.

Throughout the set-up and introduction of SCM, NHSBSA consulted with DHSC and stakeholders to ensure that the application process was accessible for all who needed it.

On 1 November 2017 NHSBSA invited 1,763 eligible beneficiaries to make a SCM application; additional invitations were issued during 2017/18. Successful applications received by 23 February 2018 (providing the applicant had expressed intent by 12 January

2018), were eligible for higher payments backdated to October 2017. After this initial application period, payments for successful applications were backdated to the date on which NHSBSA received the application.

In 2017/18 NHSBSA received 715 SCM applications, with 77% of beneficiaries who submitted a complete application form securing higher payments. All applications received were eligible to receive the backdated payment. The backdated payment was made to successful applicants on 27 March 2018 with regular payments starting from 27 April 2018. NHSBSA requested additional funding to be accrued for SCM payments of £606,000 for 2017/18; this was carried forward into 2018/19 to cover any successful SCM application eligible for the backdated payment.

**b. Explain the decision making process for the determinations of each of these applications.**

NHSBSA response

**Administrative stage**

NHSBSA receive application forms for ex-gratia payments as part of EIBSS.

There are four Medical application forms:

- Hepatitis C stage 1
- Hepatitis C stage 2
- Special Category Mechanism
- HIV

When forms are received, experienced staff on the EIBSS team will review the content of forms and any associated evidence. Through experience and collaboration with medical professionals previously, there is a clear understanding from staff on the team what evidence is required to demonstrate a condition. This allows a 'pre-assessment' and a calibration of evidence required before an application can be passed to a medical assessor for review. Evidence may include test results, a demonstration of blood transfusion at a relevant time or other source of infection amongst other things.

Following this initial review from staff, applications are either returned for further evidence if relevant evidence has not been supplied, or passed to a medical professional if they feel sufficient evidence has been supplied. The medical professionals make the final decision on the evidence supplied or request further information if needed.

There are 2 Discretionary Application forms:

- Income Top Up
- Discretionary One Off

When forms are received, experienced staff on the EIBSS team will review the content of forms and any associated evidence. Applications are either returned for further evidence, if relevant evidence has not been supplied or assessed with a decision being made which would be either approved or declined.

## Medical assessment stage

The three assessors currently in post are:

- Prof. Howard Thomas – Professor Thomas worked with the previous schemes and has an extensive background in these assessments.
- Prof. Geoff Dusheiko – Professor Dusheiko also worked with the previous schemes and has an extensive background in these assessments.
- Dr. Janice Main – Dr Main was recommended by Professor Thomas as a medical expert in this field who had worked with him. She specialises in infectious diseases including hepatitis C and HIV.

When Dr Main joined EIBSS, she worked closely with both professors to understand the evidence required and how conclusions could be drawn for those with different applications. This gave her a firm understanding of the burden of proof required to be able to assess an application (i.e. on the balance of probabilities on the evidence provided).

Medical assessors will review applications regularly, be that in person or via email. This may be every week or as and when required. Their responses are fed into outcome letters/correspondence that is shared with the applicant. This outcome may either be successful, unsuccessful or there may be a request for further information to support the claim if required.

- c. Provide copies of 10 applications which have been granted and copies of all of those applications which have been declined, together with any decision making or explanatory materials in respect of each;**

### NHSBSA response

The documents will be shared via encrypted disc and are contained within folders NHSBSA\_IBI-3c\_Approved and NHSBSA\_IBI-3c\_declined.

Please note:

The discretionary figure of 72-declined previously supplied was incorrect. EIBSS apologise for this error, the correct figure is 42-declined, this was due to a typing error.

- d. In view of the answer given to 4.a., please explain whether a declined application for a type of payment is the same as or different to an unsuccessful attempt by an individual to register into the EIBSS scheme, and if so please give the total number of individuals who have unsuccessfully attempted to register, together with copies of the applications and any decision making or explanatory materials in respect of each.**

#### NHSBSA response

A prospective beneficiary may apply to the scheme, which may result in the application being declined. Volumes and reasons were supplied in the original response at points 1c, 5d and e. However, an EIBSS beneficiary would need to apply for additional support available from the scheme and they may either be successful or unsuccessful in this application, if unsuccessful they would be classed as declined. The volumes and reasons for these applications are also included in the original response at points 1c, 5d and e.

**4. In respect of 2.c. please provide the report(s) of the review to which you refer including any reports following the surveys and focus groups, and please provide any documents submitted by EIBSS / NHSBSA to the APPG on haemophilia and contaminated blood.**

#### NHSBSA response

The appropriate report relating to a review of the discretionary scheme has been shared via encrypted disc and can be found in folder NHSBSA\_IB-4. NHSBSA have not submitted any documents to the All-Party Parliamentary Group on Haemophilia and Contaminated Blood.

**5. In respect of 3.b. if the documents which NHSBSA submitted / submits to the DHSC are different to those at the end of the list provided in the table at 1.b., please provide these.**

#### NHSBSA response

The appropriate report relating to NHSBSA's monthly finance reporting to DHSC has been shared via encrypted disc and can be found in folder NHSBSA\_IB-5.

**6. In respect of 4.a.i, please confirm the total number of individual beneficiaries who transferred from Alliance House Organisations to EIBSS.**

#### NHSBSA response

2,943 beneficiaries transferred from Alliance House to NHSBSA, this includes those who registered with Alliance House and those who were in the process of registering with Alliance House at the point of transfer to EIBSS.

**7. 2,983 beneficiaries are currently registered to receive support from EIBSS.**

#### NHSBSA response

At the time of the initial response there were 2,983 beneficiaries currently registered to receive support from EIBSS. There were also 33 prospective beneficiaries in the process of registering/application part-complete. At the time of this response these figures have slightly increased, due to progression of prospective beneficiaries applications. As at 14 January 2019 the figure was 2,998.

Please note: the original figure of 2,983 included 22 duplicated applications; actual figure should have been 2,961. EIBSS apologise for this error, which was due to a data misclassification on the internal case management system, identified after the previous response had been supplied. The source of this data misclassification has been corrected and will not occur again.

**8. In respect of 5.a. and c., please:**

**a. Explain what medical evidence is required of a prospective beneficiary;**

NHSBSA response

**Stage 1**

Evidence from medical records to confirm that someone has, or had, chronic hepatitis C, and evidence from medical records to confirm that a blood transfusion, treatment with blood products or a tissue transplant prior to September 1991 was received.

Applications might still be successful if other forms of evidence can be provided. Examples are provided below.

- Medical records of the procedure that led to the need for treatment with blood, blood products or tissue but where this is not specifically mentioned.
- Witness statements from people who were witness to the treatment or were aware of it happening at the time.
- Personal statement giving as much information as possible regarding the procedure and the circumstances that led to the need for treatment with blood, blood products or tissue.
- Physical evidence of the procedure that led to treatment with NHS blood, blood products or tissue.

NHSBSA look at all available evidence regarding the risks associated with certain types of blood products at the time treatment was received.

The following are examples of blood products that were associated with a risk of hepatitis C transmission.

If someone suffers from haemophilia or another bleeding disorder:

- Factor VIII or Factor IX blood clotting factor
- cryoprecipitate or FEIBA
- plasma
- whole blood



If someone does not have a bleeding disorder, any blood they received through:

- whole blood
- albumin
- bone marrow
- intravenous immunoglobulin (not including Anti-D)
- plasma or DEFIX

## **HIV**

Evidence:

- applicant has HIV; and
- medical records to confirm that a blood transfusion, treatment with blood products or a tissue transplant prior to October 1985.

Please note: We have only provided an explanation of the evidence required for a prospective beneficiary, as requested. However, once an applicant becomes a beneficiary they would be able to apply for Special Category Mechanism (SCM) or Hep C Stage 2.

### **b. Explain the process by which medical experts consider that evidence;**

#### NHSBSA response

Applications are assessed using a balance of probabilities approach. If the evidence provided by a prospective beneficiary and their doctor clearly shows that treatment with 2NHS blood, blood products or tissue prior to September 1991 was the probable source of their infection with hepatitis C or treatment prior to October 1985 was the probable source of their infection with HIV, and that the infection was chronic, then it is likely the application will be approved.

### **c. Provide the documentation relating to 10 examples of this process.**

#### NHSBSA response

Please select from the evidence supplied for point 3c, contained within folders NHSBSA\_IBI-3c\_Appealed and NHSBSA\_IBI-3c\_declined, which will be shared via encrypted disc.

**9. In respect of 5.f. and 7.f. please provide the documents relating to each appeal which the NHSBSA has considered, including documents submitted by the appellant and any written determination following the appeal.**

NHSBSA response

The documents will be shared via encrypted disc and are contained within folders NHSBSA\_IBI-9\_Appeals.

**10. In respect of 6.c, please provide the report which you say the NHSBSA made to the DHSC in relation to its findings about discretionary payments.**

NHSBSA response

The draft report is the same report, which will be shared via encrypted disc within folder NHSBSA\_IBI-2, which the Inquiry requested as;

e. Draft Report NHSBSA to DHSC on Discretionary Payments

Please note: NHSBSA provided the draft report to DHSC, which DHSC used to inform their submission to Ministers. All of the key points within the draft report remained and following ministerial approval, DHSC worked with NHSBSA to ensure all materials for the scheme reflected the output of their submission. Communications on the new scheme was also a collaborative effort with DHSC.

The output of the approved version was used to inform the discretionary support scheme information on the NHSBSA EIBBS section of our website, a link is provided.

<https://www.nhsbsa.nhs.uk/support-scheme-members/discretionary-support-scheme>