Witness Name: Brendan Brown
Statement No: WITN4496001
Exhibits: WITN4496002 to
WITN4496011
Dated: April 2021

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF BRENDAN BROWN

ON BEHALF OF THE NHS BUSINESS SERVICES AUTHORITY

EXHIBIT BB9 (WITN4496010)

NHS
Business Services Authority

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Date: 18 October 2019

Rule 9 request- 24 September 2019

Dear Mr Powell

Thank you for your recent Rule 9 request dated 24 September 2019. I can confirm that NHSBSA are committed to assisting the Inquiry, all requested information and related clarification is detailed within my response below.

All evidence requested which contains England Infected Blood Support Scheme (EIBSS) beneficiary personal/medical data has been supplied to the Inquiry via 'Egress' transfer, to allow for secure point-to-point transfer of this sensitive information. The information can be found in the parent folder entitled 'Inquiry Response - 24 September 2019'. If you experience any difficulties with the documents, we've transferred please contact James Hardy, who will assist the Inquiry directly. His contact details are jameshardy GRO-C or GRO-C.

A. Appeals

i) Please provide the minutes of all meetings convened by the Appeals Panel since 1 November 2017 where applications are discussed. If no minutes are kept of these meetings, how are discussions between panel members about the merits of an application recorded?

The Appeals Panel does not keep minutes of the meetings. The format for each Appeals Panel is summarised below:

- Chronology - The Chair prepares a chronology ahead of the meeting, which is used to introduce each case at the meeting and goes through everything that has been provided in terms of evidence.

- Chair's Notes - Handwritten notes of the appeal meeting, which are referred to for creating the decision summary document and maybe referred to for creation of the appeal outcome letter.
- Decision Summary- A document is created for each meeting, this summarises key evidence considered and the agreed appeal outcome status, which will be referred to for creation of the appeal outcome letter.

Through the combination of the three documents for each meeting, NHSBSA can be fully accountable for each decision reached by the Appeals Panel.

Please note:

We have securely shared the documents for 8 of 9 Appeal Panels held. The latest Appeal Panel was held on the 7 October 2019, as a result the outcome process of notifying appellants is still in progress, and NHSBSA will share the documents for this meeting separately once the notification process is complete.

To assist the inquiry NHSBSA have provided each of the three documents per Appeals Panel held, sequenced by meeting date. The documents have been shared via 'Egress' and are contained within the folder entitled 'Appeals Panel Notes' within parent folder 'Inquiry Response - 24 September 2019'.

ii) Are earlier decisions of the Medical Assessors and Appeals Panel considered in determining cases with a similar set of facts/claims?

There is not a set process for a Medical Assessor or Appeals Panel member to assess a new application against another case, with a similar set of facts/claims.

Each application is independently assessed by Medical Assessor(s) or Appeals Panel member(s) to determine application success.

Applications are assessed using a balance of probabilities approach. If the evidence provided by a prospective beneficiary and their clinician clearly shows that treatment with NHS 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.

iii) Please give the names, titles and qualifications of the four appeal panel members. Please also provide a brief overview of their relevant experience.

Solicitor - Nicola Richardson:

Nicola Richardson is a Partner and Head of Health and Regulatory at Ward Hadaway solicitors. She qualified as a solicitor in 1999 and since that time has acted on behalf of NHS Trusts and then NHS Resolution (and previously NHS Litigation Authority) in clinical negligence claims and providing a full range of health legal advice. She is currently a Nominated Partner approved by NHS Resolution for the clinical negligence panel. She has extensive experience across the entire field of health law including issues relating to consent, disclosure of records and capacity and has represented Trust's interests at complicated high-profile Inquests, and in potential corporate manslaughter/gross

negligence matters. She is recognised by Chambers and Legal 500 as a leading individual. Before qualifying as a solicitor Nicola was a qualified Medical Laboratory Scientific Officer in the Department of Haematology at a large teaching hospital.

Hepatologist - Professor Peter R Mills MD, FRCP:

Professor Peter R Mills MD, FRCP is a recently retired Consultant Physician and Gastroenterologist based in Glasgow at the Queen Elizabeth University Hospital, Western Infirmary and Gartnavel General Hospital. He specialises in Hepatology and Therapeutic Endoscopy. He is an Honorary Professor in Medicine at Glasgow University and has published over 180 original research papers. He has long experience in training and assessment of junior doctors having been Director of Examinations for the Royal College in Glasgow and Chairman of the MRCP (UK) Specialty Certificate Examination in Gastroenterology. He was President of the Scottish Society of Gastroenterology and Honorary Member of both the British and Scottish Society of Gastroenterology. He still serves as an Associate with the General Medical Council and the Ministry of Justice Social Security Tribunal. He has years of experience working with Scottish NHS Central Legal Office.

Haematologist - Dr Patricia Hewitt, MB, ChB, FRCP, FRCPath:

Dr Patricia Hewitt, MB, ChB, FRCP, FRCPath trained in general medicine and then specialised in Haematology. During her training she treated patients with a wide variety of haematological conditions, including leukaemia, haemoglobinopathies and haemophilia. Dr Hewitt was appointed Consultant in Transfusion Medicine in June 1984 and worked within NHSBT (and its predecessor bodies) until her retirement in June 2018. She specialised in Clinical Transfusion Microbiology, and her areas of responsibility included management of donors found to be infected with blood-borne infections (HBV, HIV, HCV, HTLV and syphilis) following screening of blood donations, and investigation of reports of possible transfusion-transmitted infection. She managed look-back investigations, including large-scale look-back exercises following the introduction of new screening tests. At various times, Dr Hewitt was a member of the UK Joint Professional Advisory Committee (JPAC) Standing Advisory Committee on Transfusion Transmitted Infection, the Serious Hazards of Transfusion (SHOT) Steering Group, the CJD Clinical Incidents Panel, and the Advisory Committee for Dangerous Pathogens (ACDP) Transmissible Spongiform Encephalopathy (TSE) sub group.

General Practitioner (GP) - Dr Norman Gourlay, MB ChB, MRCGP, DMedEth:

Dr Norman Gourlay, MB ChB, MRCGP, DMedEth is a General Practitioner with special experience of Blood Borne Viruses, Intermediate Care, Substance Abuse, Health Care Regulation and Law and Ethics. He worked as a General Practitioner for 20 years, within which time he gained experience with the drug rehabilitation unit and in 1996 became a member of the medical tribunal service. From 2003- 2016 he was employed as a Portfolio GP with a medico-legal practice. His work included carrying out medical negligence report writing regarding General Practitioners for solicitors and Defence Unions, A GP expert witness for FAIs, GMC and negligence in addition to be a Locum GP. He ceased Locum GP work in 2016 but is still licensed to practise. He chaired Fitness to Practise Panels for the MPTS (GMC) until 2015.

iv) What is the appeals procedure for non-medically based applications, such as discretionary grants and income top up?

If a beneficiary appeals non-medical based application for discretionary support, such as one-off payments or an income top-up application, these are initially escalated to the EIBSS Team Manager to assess the original decision at a 'local resolution' stage.

If the applicant wished to escalate their appeal further, their appeal would be investigated by the NHSBSA Customer Resolutions Team, who will undertake an independent review of all available information, internal and externally published materials will be considered as part of the review.

B. Discretionary Payments

i) What happens when the funding for the discretionary payments scheme has run out for the year, but an application clearly fits within the policy or is particularly urgent? Is there a procedure for obtaining urgent funding from the DHSC?

Both the discretionary and non-discretionary funding is agreed around the start of each financial year, this is informed by the previous financial year's final spend and any expected spend variation in the coming financial year, this sets the budget.

EIBSS spend is reported to DHSC by NHSBSA each month, this 'open-book' approach allows for the spend to date and forecast spend to the end of the year to be compared to the budget allocation. Through this regular monitoring of the EIBSS spend DHSC can have early indications of any possible overspend against budget. If the figures do show a possible overspend, DHSC have standard internal processes in place to request additional funds, to ensure all eligible discretionary payments can be made by NHSBSA.

C. Special Category Mechanism

i) Are all refused Stage 2 applications automatically assessed for SCM or are beneficiaries required to apply separately?

When an application for Hepatitis C Stage 2 payment is declined, the application is not automatically assessed for SCM, as the question on each application refer to a different medical criterion.

Stage 2 payments ask for evidence of:

- cirrhosis of the liver
- primary liver cancer
- B-cell non-Hodgkin's Lymphoma
- type 2 or 3 cryoglobulinemia accompanied by membranoproliferative glomerulonephritis (MPGN)
- if you have received, or are on the waiting list for, a liver transplant

Special Category Mechanism (SCM) payments look to see if the infection, its treatment or associated conditions has a long-term negative impact on the ability to carry out daily activities of a stage 1 beneficiary, where the condition has worsened, but is not stage 2.

We seek the opinions of the beneficiary and their medical specialist to confirm how their mental health has been negatively impacted and/or if they have any of the following medical conditions:

- autoimmune diseases due to, or worsened by, interferon treatment for hepatitis C:
    - Coombes positive haemolytic anaemia
    - Idiopathic fibrosing alveolitis of the lung
    - Rheumatoid arthritis
- Sporadic porphyria cutanea tarda causing photo-sensitivity with blistering
- Immune thrombocytopenic purpura with anti-platelet antibodies
- Type 2 or 3 mixed cryoglobulinaemia, which is accompanied by:
    - Cerebral vasculitis
    - Dermal vasculitis
    - Peripheral neuropathy with neuropathic pain

D. Hepatitis Stage 1 Payments

i) Please provide the Inquiry with 50 applications for Hepatitis Stage 1 payments that have been approved since 1 November 2017.

The applications have been shared via 'Egress' and are contained within the folder entitled 'Hep C Stage 1 Applications' within parent folder 'Inquiry Response - 24 September 2019'.

Yours sincerely

GRO-C

Brendan Brown
Director Citizen Services