

Name of witness: William Vineall

Statement No: WITN4688062

Exhibits: WITN4688063- WITN4688073

Date: 24 December 2021

INFECTED BLOOD INQUIRY

SIXTH WITNESS STATEMENT OF WILLIAM VINEALL

I provide this Statement in response to a request to the Department of Health and Social Care, dated 19 December 2018, under Rule 9 of the Inquiry Rules 2006.

I, William Vineall, will say as follows:

INTRODUCTION

1. My name is William Vineall. My professional address is 39 Victoria Street, Westminster, London SW1H 0EU.
2. This is my sixth statement to the Inquiry.
3. I have been Director of NHS Quality, Safety and Investigations at the Department of Health and Social Care ("the Department") since 2016. Part of my role includes oversight of on-going inquiries or investigations pertaining to the responsibilities of the Department, not just restricted to current NHS issues. I am duly authorised to make this statement on behalf of the Department.

4. The team in the Department that provides evidence and information to the Infected Blood Inquiry has sat within my directorate since late 2018. Since early 2019 the team responsible for policy and governance of the England Infected Blood Support Scheme ('EIBSS') has sat within my directorate also. I did not work in blood policy and my directorate did not encompass blood policy. Since August 2021, I have been the senior sponsor of NHS Blood and Transplant, but wider blood policy remains outside my Directorate. It is important to recognise that I do not have first-hand knowledge of the evidence covered in this statement.
5. This statement responds to a Rule 9 request made to the Department, dated 19 December 2018. In response to that request Dr Ailsa Wight ('Dr Wight') prepared a draft statement. At that time Dr Wight was a Deputy Director in the Emergency Preparedness and Health Protection Policy directorate in the Department. Dr Wight had worked in health protection roles in the Department since the early 1990's, including policy on the blood payment schemes from 2006 until around early 2019. However, she no longer works for the Department and, as the Rule 9 request was made to the Department, this finalised signed statement is being made by me as the Director of the team responsible for providing evidence to the Inquiry. It is based on the draft statement prepared and approved by Dr Wight in January 2019. I understand that draft statement was prepared based on Dr Wight's personal knowledge and recollection and on documents made available to her in December 2018 and January 2019. I am not now able to set out the extent of the document searches carried out at that time or which documents were available to Dr Wight (other than those exhibited to her draft statement). It may be that further documents have become accessible or identifiable since then but this statement very largely reflects the draft prepared by Dr Wight. Save where expressly stated, additional documents have not been used in finalising this statement.
6. Where I have made changes to Dr Wight's draft, this have been done to

include a summary of Rule 9 questions within the statement, to ensure the statement most accurately reflects the contemporaneous documents (on which I must rely for the reasons above), to provide a little more detail based on those documents, or to attempt to make the chronology clearer. I have also been able to provide a small number of additional documents to assist the Inquiry.

CHANGES TO FINANCIAL PROVISION MADE BY AHOs IN 2009 AND 2011

7. The Rule 9 request asks about changes to the financial provision made by the Alliance House Organisations (the 'AHOs') following the Archer Report in May 2009. It also asks about further reforms in 2011, with a request to explain the Department's response to the Archer recommendations that there should be reform of the scheme for providing financial support; that this should be made through the Department of Work and Pensions ('DWP'); that payments should be higher, and commensurate with those in Ireland; and that anomalies should be removed, e.g. as to dates of death.

Response to Archer Report in 2009

8. I am aware that Dr Wight was part of a small team in the Department of Health that worked on the government's response to Lord Archer's report.
9. The Department of Health responded to the Archer Report via a Written Ministerial Statement, made by Baroness Primarolo (Minister of State for Public Health) to the House of Commons on 20 May 2009, and an associated formal response. These are exhibited to this statement at [WITN4688063]. Consideration of which of Lord Archer's recommendations should or should not be accepted is set out in Exhibit [DHSC0011471], a written submission from officials in the Health Protection Division to Baroness Primarolo, dated 13 May 2009.¹ That submission itself

¹ The submission I have exhibited appears to be the final version of the submission that was provided to the Minister. The document exhibited to Dr Wight's draft statement appeared to be an earlier draft.

refers to an earlier submission to the Minister, dated 17 April 2009, which I also exhibit to this statement [WITN4688068].

10. The main financial recommendations which the government committed to acting on were:

(a) To provide an increase in funding available to the Macfarlane and Eileen Trusts, to allow for annual flat-rate payments of £12,800 to the infected and to enable trustees to pay more to dependents (with such decisions still to be made by the trustees on a case by case basis);

(b) To provide funding of £100,000 per annum to the Haemophilia Society for the following five years, in addition to already-committed funding from the Department of Health.

11. In relation to hepatitis C, a commitment was made to review the Skipton Fund in 2014, when it would have been in existence for ten years.

12. Dr Wight's draft statement exhibited a version of annex A to the submission dated 13 May 2009 [Exhibit WITN4688065], which I am uncertain is the final version. That annex A discussed each of Lord Archer's recommendations in turn (Lord Archer's individual proposals at recommendation 6 are not each addressed separately).

13. Specifically, in terms of making payments via the DWP benefits system, which was part of Lord Archer's recommendation 6, that version of annex A [WITN4688065] records: "*Your agreement [i.e. Baroness Primarolo's] was not to make payments via DWP, but instead to keep the existing Trusts in operation.*"

14. That annex A indicates that the Minister wished to explore removing the discretionary aspects of the Macfarlane and Eileen Trusts but legal advice

was that they were both charities and so needed to operate in accordance with charities' law. The annex stated "*it seemed unlikely that a straightforward distribution without regard to need or other charitable circumstance would be lawful*". The annex also stated that changing the terms of the Trusts' funds was considered difficult within a reasonable timescale and would need the involvement of the Charities' Commission.

15. I can see from the documents that the possibility of administering payments via DWP was again considered by the 2011 review, which did not recommend such a reform (see paragraph 37 below).

16. In finalising this statement I have been shown:

(a) A further copy of the annex A that was exhibited to Dr Wight's draft statement with handwritten comments on it [Exhibit WITN4688066].

This tends to suggest [WITN4688065] may not have been the final version of annex A; and

(b) Another annex A which deals with the government's response to Lord Archer's recommendations [Exhibit WITN4688067]. That document also contains what appears to be annexes B and C to the submission dated 13 May 2009.

17. Unfortunately I am not now in a position to say which of these documents was annexed to the submission that went to the Minister dated 13 May 2009 (as between Exhibits WITN4688065 - WITN4688067). As explained above, I cannot assist with the extent of document searches carried out when the draft was prepared. I am aware that searches for documents can now be carried out in a more sophisticated way. However, since these additional documents were drawn to my attention I wanted to provide them to the Inquiry.

18. Another part of Lord Archer's recommendation 6 (at 6(e)) was that: "*the anomalies which at present apply according to the age when the recipient*

was first infected, or when the infection took place or, in the case of dependents, the date of death of the original patient should be rectified. In particular, the government should review the conditions under which the widow of a patient infected by blood products now becomes eligible for benefit from the Eileen Trust and from the Skipton Fund." For context, the Macfarlane and Eileen Trusts operated in relation to HIV, and the Skipton Fund operated in relation to hepatitis C.

19. The submission at [DHSC0011471] refers to a note from the Minister to the Secretary of State which included that:

- (a) The package of measures being proposed by the government would "not satisfy Lord Archer or his supporters entirely";
- (b) Making changes to the Skipton Fund would be unaffordable because of the larger number of claimants (and the government was likely to face significant criticism from the Hepatitis C community);
- (c) To rectify the main anomaly in the Skipton Fund to make payments to those who died before it was introduced would cost up to £54m; and
- (d) To introduce annual payments for Skipton Fund recipients, even if limited to those with the most serious form of disease, would cost £10m per annum (assuming an annual payment of £12,800).

20. As explained above the Government's formal response to the Archer report [WITN4688063] announced increased funding for the Macfarlane and Eileen Trusts.

21. The Minister's note to the Secretary of State, dated 23 April 2009 and referred to in the submission dated 13 May 2009, has been located and is exhibited at [WITN4688069] (it appears the note to the Secretary of State provided a copy of the submission, dated 17 April 2009).

22. Lord Archer also recommended (at 6(h)) that *"payments should be at least*

the equivalent of those payable under the scheme which applies at any time in Ireland". The government's response did not expressly address recommendation 6(h).

23. I understand from Dr Wight's draft statement that this recommendation was not considered in great detail and was not fully costed or investigated. I am aware that was also stated in a witness statement prepared in the subsequent judicial review. I can also see from subsequent documents (see Exhibit [WITN4688070] a Lords' Oral Questions Briefing Pack for Answer on 2 June 2010, from pg. 45) that a rough costing of £3 - £3.5 billion was calculated to make payments equivalent to those made in Ireland. This was stated by the Minister in response to a PQ on 29 March 2010. The Minister's PQ response states it had not been possible to calculate an accurate figure because the Irish scheme used a series of eligibility criteria meaning that different claimants had received different amounts of compensation, depending on their circumstances, and an accurate calculation of likely cost would require each UK claimant to be assessed individually against the same criteria. However, £3 – 3.5 billion was based on an understanding that individual payments made in Ireland to infected patients ranged between £500,000 and £1m and was derived by multiplying the average of those figures by the estimated number of infected claimants in the UK. It did not take account of payments to dependents of those infected.

24. As the Inquiry will know, Andrew March, who was infected with both HIV and Hepatitis C as a result of treatment with blood products, brought a judicial review linked with recommendation 6(h) and based on two answers given by the Minister of State for Public Health, Gillian Merron, in June and July 2009. Essentially the judicial review argued that these answers revealed a material error of fact that undermined the Department of Health's reasoning process in deciding to reject recommendation 6(h).

25. The Department of Health's position had been that the situation in the Republic of Ireland was not comparable with that in the UK, primarily on the basis that the Irish scheme was established further to findings of fault by the Irish blood transfusion service. As a result, payment levels in the Republic of Ireland were significantly higher as they were intended to compensate for losses incurred. The UK schemes, on the other hand, were ex gratia schemes established in recognition of the plight of the infected and affected, in circumstances in which there had been no finding of fault on the part of the state.

26. On 16 April 2010, the High Court found that the Department's approach to recommendation 6(h) was and remained "infected by an error" (*March* judgment §53). The Court found that the evidence presented demonstrated that the scheme in the Republic of Ireland was an ex gratia scheme, and that it was in fact established prior to any finding of fault and with scope greater than those findings. The Court quashed the government's decision not to accept recommendation 6(h). The Court did not make any recommendation about equivalence of payments.

27. The Department of Health's revised response was issued by way of a Written Ministerial Statement dated 14 October 2010, exhibited to this statement as [DHSC0006627]. Whilst the substance of the response to recommendation 6(h) remained the same, in that the Department of Health did not accept that payments should be equivalent to those made in the Republic of Ireland, the basis for this revised decision was: "Every country must make its own decisions on financial support for those affected, taking account of its own particular circumstances and affordability." The Written Ministerial Statement stated that the UK support schemes for HIV compared well with those of other countries, and that implementing a scheme similar to Ireland's would cost in excess of £3 billion. The Written Ministerial Statement noted the extent to which other recommendations made by Lord Archer were already in place and identified some aspects of

the recommendations that should be looked at afresh.

Changes to Financial Provision Made by AHOs Following the Further Reforms in 2011

28. The Department's original response to Lord Archer's recommendations noted that the Skipton Fund was due to be reviewed in 2014. The Written Ministerial Statement of 14 October 2010 [DHSC0006627], announced that the government intended to look afresh at "the level of ex gratia payments made to those affected by Hepatitis C, including financial support for their spouses and dependents, and taking account of the level of payments made to those infected with HIV in the UK and via schemes in other countries", along with a wider review of other aspects of support.

29. The review was published in January 2011 and is exhibited to this statement as [PRSE0004024]. The Terms of Reference can be found at paragraph 1.2 and were:

- (a) To review the level of ex gratia payments made to those infected with Hepatitis C, including the consideration of financial support for their dependents, the eligibility date for entry to the current scheme, and a comparison with the ex gratia payments made in the UK to those infected with HIV (and their dependents);
- (b) To review the mechanisms by which the ex gratia payments for HIV and Hepatitis C were made;
- (c) To consider the issue of prescription charging for those infected;
- (d) To review the provision of, and access to, nursing and other care services in the community for those infected; and
- (e) To develop options arising from the above, and make recommendations to Ministers by the end of that year.

30. Furthermore, this review stated that issues "raised during the House of Commons backbench debate on contaminated blood on 14 October 2010", were also to be incorporated into the review, namely ex gratia payments

for people infected with HIV and their dependents in light of the options considered for individuals infected with Hepatitis C, exemption from DWP work capability assessments, and access to dentistry for people infected with Hepatitis C (paragraph 1.4). The review examined these issues in relation to all those infected with HIV and/or Hepatitis C through NHS-supplied blood products or whole blood transfusions, regardless of whether sourced from the UK or elsewhere.

31. The following principles were central to the review:

- (a) To reduce the existing anomalies between the HIV and Hepatitis C payment schemes, and to avoid the creation of new anomalies;
- (b) To ensure the review was evidence-based, where evidence was available; and
- (c) That payments be made in recognition of the special circumstances of individuals concerned as a result of their infection, and their financial need.

32. The review was conducted by the Department of Health, with input from relevant external experts and groups including:

- (a) The Chairs of the Macfarlane Trust, the Eileen Trust and the Skipton Fund;
- (b) The Advisory Group on Hepatitis;
- (c) The Expert Advisory Group on AIDS;
- (d) The UK Haemophilia Centre Doctors Organisation;
- (e) The Hepatitis C Trust;
- (f) The Health Protection Agency;
- (g) The Association of British Insurers; and
- (h) Hannover Life Assurance (UK) Ltd.

33. The Parliamentary Under-Secretary of State for Public Health (Anne Milton MP) met with representatives of the main campaign groups and the Chairs of the existing schemes, and written submissions and correspondence

were received.

34. The review also liaised with relevant government departments and the Department of Health and Children in the Republic of Ireland.

35. The review included an expert scientific review of the evidence base on the spectrum and impact of disease associated with Hepatitis C infection. That expert scientific review can be found at Annex 4 of the review, and is summarised in section 4 of [PRSE0004024] along with the members of the expert working group.

36. The review concluded by making the following recommendations:

- (a) Living Skipton Fund recipients with stage 2 Hepatitis C should receive a recurrent flat-rate annual payment of £12,800, to be uprated in line with CPI annually in order to keep pace with living costs;
- (b) To set up access to additional discretionary payments for those infected with Hepatitis C and their dependents, including dependents of those who have died, targeted at those in greatest need;
- (c) Individuals infected with both HIV and stage 2 Hepatitis C to be eligible to receive two flat-rate annual payments (i.e. 2 x £12,800), again to be uprated in line with CPI;
- (d) Extended eligibility for stage 1, or both stages 1 and 2, payments under the Skipton Fund - payments should be available in relation to those who died prior to 29 August 2003, with a registration window until the end of March 2011;
- (e) A further lump sum payment of £25,000 to be paid to all those eligible for stage 2 payments from the Skipton Fund (in addition to the existing stage 2 payment of £25,000), including those who had developed Hepatitis C-related B cell Non-Hodgkin's lymphoma. This additional £25,000 payment should also be made to those who died

before 29 August 2003. That would result in those eligible for stage 2 payments receiving £50,000 in total;

- (f) Those infected with HIV and/or Hepatitis C should be able to apply for a payment to cover annual prescription costs if not otherwise exempt;
- (g) Social Care guidance should be updated to reflect regulations which exempt ex gratia payments from means testing for social care purposes;
- (h) £100,000 per year to be provided to selected third sector organisations over the next three years, in order to provide access to counselling for individuals infected with HIV and/or Hepatitis C by NHS supplied blood transfusions and blood products.

37. The review proposed no changes to the mechanisms by which the ex gratia payments should be made, on the basis that it was not clear there would be any tangible benefits from making the payments through the benefits system, it would not be consistent with the DWP's role, and the mechanism for administering the schemes was well established through the Trusts. The review also pointed out that the written submission from the campaign groups stated that they wanted the existing charitable Trusts to continue providing support (section 6 of the review).

38. The review also considered the concerns about access to insurance (section 7). It concluded that no new scheme would be established but instead the increased ex gratia payments should help individuals pay for insurance premiums if they wished.

39. In finalising this statement, the Department has been able to locate a number of submissions to Ministers relating to the review and its outcome, along with a letter from the Secretary of State to the Prime Minister. To assist, these documents are now exhibited as [DHSC0041266_064, DHSC0003814_090, DHSC0041266_030, WITN4688064 and WITN4688071].

40. Following this review, the Secretary of State, Andrew Lansley, announced changes to the support available on 10 January 2011. For ease, his statement is exhibited at [WITN4688072] (and was not exhibited to the draft statement). The Secretary of State announced that:

- (a) The lump sum payment for people with stage 2 Hepatitis C would increase from £25,000 to £50,000;
- (b) This increased lump sum payment would apply retrospectively so that if a person had already received an initial stage 2 payment of £25,000, he/ she would get a further £25,000;
- (c) Annual payments of £12,800 would be introduced for those with stage 2 Hepatitis C;
- (d) Those infected with both HIV and Hepatitis C at stage 2 from contaminated blood would now receive two annual payments of £12,800;
- (e) These annual payments would be updated annually in line with CPI;
- (f) A new charitable trust (i.e. the Caxton Foundation) would be established to make discretionary payments to those infected with Hepatitis C and their dependents (including dependents of those who had since died);
- (g) Removing the provision which prevented the families of those infected with Hepatitis C who passed away before 29 August 2003 (when the Skipton Fund was established) from claiming lump sum payments. There would be a window of opportunity, until the end of March 2011, in which a posthumous claim of up to £70,000 could be made on behalf of those infected with Hepatitis C who died before 29 August 2003 (with the amount depending on whether the infection was stage 1 or stage 2);
- (h) £300,000 over the next three years to fund counselling; and
- (i) Those infected with HIV or Hepatitis C would no longer pay for their prescriptions.

41. I understand from Dr Wight's draft statement that the funding arrangements for the Macfarlane and Eileen Trusts were restructured. The Macfarlane Special Payments Trusts 1 and 2 were dissolved, and a new private company - the Macfarlane and Eileen Trust Limited ("MFET") - was established. MFET was to administer lump sum payments and distribute non-discretionary ongoing payments to those with and without haemophilia. As funding for the Macfarlane Trust and the Eileen Trust (i.e. the charitable Trusts) had previously provided for ongoing payments, it was reduced to take into account the revised position.

REPORT OF ALL-PARTY PARLIAMENTARY GROUP ("APPG")

42. The Rule 9 request asks about the role (if any) that the APPG's 2015 report had on the consultation and reform process, and in particular what influence the APPG's conclusions on (i) the level of awards, (ii) the evidence beneficiaries were required to produce to prove eligibility and the difficulties with that, and (iii) the relationship between the Trusts and Schemes and the Department of Health had on the reformed schemes.

43. At the time Dr Wight prepared her draft statement the Department had been unable to find specific documentary evidence relating to its response to the recommendations made by the 2015 APPG report. Documents from around that time, if available, are likely to be stored on the Department's electronic database called IWS. I cannot now say what searches were carried out on that system when the draft statement was prepared. As explained in my second statement (WITN4688003) document searches on IWS are very challenging to deal with and not very useful. Because of this and the wish to keep the content of this finalised statement close to the draft, further searches have not been performed on IWS in the process of finalising the statement.

44. I cannot provide first-hand insight to answer this question but am aware that Dr Wight's draft statement said the APPG report contributed to an

impetus in the Department to consult on reforming the existing payment schemes such that they were less confusing for claimants and more equitable across their individual circumstances and needs, within the context of the upcoming 2015 Spending Review. The Department of Health's consultation on "Infected Blood: Reform of Financial and Other Support" published in January 2016 (the "2016 Consultation") [WITN3904006] stated that the Department of Health was aware some people had criticisms about the financial support schemes in operation then and the way in which they had been structured, and that the government proposed to reform those schemes. Paragraph 2.4 of the consultation document included: "Over the years, there has been criticism from different groups of beneficiaries and their representatives about the way that the current system has been set up and operates. This has been clearly set out in various ways, including the independent inquiry chaired by Lord Archer (February 2009); numerous campaigns; the All Party Parliamentary Group (APPG) on Haemophilia and Contaminated Blood's *Inquiry into the current support for those affected by the contaminated blood scandal in the UK* (January 2015); letters to the Department of Health and Ministers, meetings with Ministers; Parliamentary debates and questions." I can also see from the 2016 Consultation document that the Parliamentary Under-Secretary for Public Health, Jane Ellison MP, met with members of the APPG for Haemophilia and Contaminated Blood to update MP's on the consultation process on 5 November 2015 (paragraph 2.10). The Department of Health's consultation on "Infected Blood: Consultation on Special Category Mechanism and Financial and Other Support in England" published in March 2017 [WITN4688037] stated that "[i]n developing the proposals in this consultation, we have listened to scheme beneficiaries, the All-Party Parliamentary Group ('APPG') for Haemophilia and Contaminated Blood, parliamentarians, wider stakeholders and sought advice from our Infected Blood Reference Group" (paragraph 2.5).

EXPERT PANEL AND REFERENCE GROUP

45. The Rule 9 request asked about certain parts of a draft statement prepared by Donna McInnes (a Departmental official at that time), in response to a Rule 9 request to the Department. At the time of finalising this statement I have not seen Donna McInnes' final statement but I will use the paragraph numbers and references used in the Inquiry's Rule 9 request. If Donna McInnes' final statement differs from her draft then this statement may need to be amended or supplemented.
46. The Rule 9 request asks who was on the "expert panel" referred to in paragraph 30 of Donna McInnes' draft witness statement. It asks how the expert panel was involved in advising the government and at which point in the reform process. It also asks if the expert panel was involved in advising the Department of Health on how much it would cost to meet beneficiaries' needs.
47. Paragraph 30 of Donna McInnes' draft witness statement refers to an "expert reference group" advising the Department of Health in its response to the 2016 Consultation.
48. The Rule 9 request also asks who was on the "reference group" referred to at paragraph 59 of Donna McInnes' draft witness statement. That relates to the reference group to support policy development for (what would become) the special category mechanism planning. That was the subject of the "Infected blood: consultation on special category mechanism and financial and other support in England" (March 2017, exhibit WITN4688037).
49. Dr Wight's draft statement explained that the "expert reference group" and the "reference group" referred to in Donna McInnes' draft statement were one and the same and their role were not to advise on the financial level of payments, but instead on the functional and clinical evidence, and issues around practical assessments of need. The Department provided the

secretariat for the group. That appears to be supported by documents already provided to the Inquiry, which I exhibit here [WITN4688073]

50. The documents show that the members of the group comprised Chris Pond (Chair of the Group), Steve Winyard (Deputy Chair), Peter Stevens, Jan Barlow, Alasdair Murray, Jeff Courtney (the Haemophilia Society), Charles Gore (Chief Executive of the Hepatitis C Trust), Matthew Gregory (trustee of the Macfarlane Trust), Margaret Kennedy (trustee of the Caxton Foundation), **GRO-A** (trustee of the Macfarlane Trust), Siobhan Butterworth (trustee of the Caxton Foundation), Professor Howard Thomas (hepatologist), and Professor Keith Palmer (clinical/ DWP expert) and Dr Wight.

I believe that the facts stated in this witness statement are true and confirm I am duly authorised to make this statement on behalf of the Department.

Signed:

GRO-C

Dated: 24 December 2021

Full name: William Vineall

Position: Director of NHS Quality, Safety and Investigations