

Witness Name: Anthony Mallen

Statement No.: WITN0692001

Exhibits: Nil

Dated: 8. 01. 2023

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF ANTHONY MALLEN

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 13 October 2022.

I, Anthony Mallen will say as follows: -

Section 1: Career and Background

1. Early 1961 – Autumn 1967: I trained, qualified (in 1965) and practised as a chartered surveyor.
2. Autumn 1967 – Summer 1970: Newcastle University Law Degree.
3. Autumn 1970 – Summer 1971: Law School
4. Summer 1971: Called to the bar
5. Summer 1971 – Autumn 1972: Practised as a chartered surveyor
6. Autumn 1972 - Summer 1974: Law Lecturer, Newcastle Polytechnic
7. Summer 1974 - 1980: Practised at The Bar (retired due to ill health).

8. 1980 - Summer 2011: Admitted as a Solicitor

Section 2: Structure and Funding of the HIV Litigation

9. In about May 1977 I attended a meeting at J. Keith Park in St Helens (although I cannot recollect how I came to learn of the meeting). The meeting was led by Graham Ross. It was also attended by Nick Horsefell – a Solicitor from Lancashire, a solicitor from Bradford called Kingman, a Legal Executive, who's name I cannot recollect from Tilley, Bailey and Irvine in Hartlepool.
10. Graham Ross introduced himself as a medical negligence specialist with experience of group actions. Mr Kingman said he had experience of medical negligence cases, but I cannot remember whether he described himself as a specialist. I cannot recollect how Nick Horsefell or the legal executive described themselves.
11. I made clear that:
 - 11.1. I had no experience of medical negligence cases or group actions,
 - 11.2. My experience of personal injury cases was limited,
 - 11.3. My background was biased towards contract law, particularly in construction and civil engineering, together with professional negligence mainly relating to construction and civil engineering.
12. At Graham Ross' suggestion, a steering group was formed. It was not a case of electing. It was more a case of Graham Ross persuading.
13. It was decided that:
 - 13.1. He would communicate with what was expected to be an expanding group,
 - 13.2. He would seek to identify experts and appropriate counsel,
 - 13.3. Nick Horsefell was given a role but I cannot remember what it was,
 - 13.4. I was tasked with researching the medical/scientific literature

14. More particularly as to my role:

14.1. Despite then living over 50 miles away, I worked in Newcastle upon Tyne and my late wife and I owned a flat there.

14.2. I stayed at the flat from Monday to Thursday inclusive and many weekends when I needed to work.

14.3. I was sure, as was the case, that the wife of one of my then partners, who was a Senior Librarian at Newcastle Upon Tyne University would be able to give me access to the Medical School Library.

14.4. Relevant subject areas were identified, but by whom I cannot now remember. Those areas included;

- 14.4.1. Haemophilia A and B,
- 14.4.2. Serum hepatitis,
- 14.4.3. Hepatitis B,
- 14.4.4. Hepatitis non A non B
- 14.4.5. Factor VIII
- 14.4.6. Factor IX
- 14.4.7. Heat treatment

14.5. I attended the medical library most evenings, Monday to Thursday inclusive, from 5:30/6pm until 9pm. I cannot now remember how long that went on for.

14.6. I trawled through Index Medicus, noted all potentially relevant articles, and a colleague followed on by photocopying the relevant pages of Index Medicus. The titles were then highlighted and the articles obtained. The vast majority of the articles were available in Newcastle, but some were obtained from elsewhere. I cannot remember, though, from precisely where. The articles were read and the relevant ones bundled.

15. Further developments in the steering group:

- 15.1. In the latter part of 1987 Nick Horsefell moved firms and resigned.
- 15.2. Shortly after the hearing of the first summons, Graham Ross and I met Mark Mildred of Pannone Napier. He represented a substantial number of Plaintiffs. He accepted our request to join the Steering Group.
- 15.3. In about April 1990, Anthony Deas, one of my Partners in Deas Mallen, was co-opted on to the Steering Group.
- 15.4. His first task was to collect further expert evidence. I recollect that in about May 1990 he visited the United States.
- 15.5. He also attended further meetings of the Steering Group and attended conferences with Counsel and took part in discussions.
16. My recollection is that conditional fee arrangements were not available at any time during the litigation. I cannot be absolutely sure, though, as I never acted under one.
17. The vast majority of the plaintiffs were legally aided, but I cannot remember knowing the apportionment between those and the privately funded ones.
18. All legal aid certificates were issued from Chester and were overseen, to the best of my recollection, by Alan Hazelhurst. Sometime in 1989, it became apparent that he was reporting to, or supervised by, their Red Lion Square office in London.
19. There was some difficulty with Legal Aid funding. My recollection is that it was generally possible to claim on account of costs incurred and disbursements.
20. However, despite having started work in mid 1987, I had not been able to claim, even for substantial disbursements incurred, by First December 1989.
21. Also, Michael Brooke, who had commenced work in, probably, mid 1988 had not been able to claim.

22. After being unable to resolve the matter with Alan Hazelhurst, I had a meeting with Legal Aid in Red Lion Square in, I think, early 1990. I'm sure that one of my Partners, Anthony Deas, also attended. I cannot remember the name of the Legal Aid official we met.
23. Michael Brooke had given me permission to speak on his behalf.
24. Anthony Dear and I were told that in order to claim, we would need to prove hardship. We balked at that, saying it was self-evident.
25. It then transpired (and my recollection of the details is not as good as I would wish) that the certificate which permitted on account payments had ended.
26. I then remember asking why, then, could that right not be transferred to another certificate?
27. My point was taken and the certificate was transferred to someone else.
28. However, claims could only be made in respect of future costs and disbursements.
29. Michael Brooke, I remember thanked me for having stopped the rot.
30. Michael Brooke's fees for pre December 1990 work and my own firm's costs for that period were paid in, to the best of my recollection, 1992.
31. I have omitted to mention that the "difficulty" referred to in paragraph 19 had no bearing on the conduct of the litigation.
32. I should add that I have absolutely no complaint about any delay in those fees being paid after the conclusion of the case in June 1991.
33. It must have been the case that regular reports were made to Legal Aid to secure further funding, but I have no recollection of them.

Section 3: Conduct of the Central Defendants in the HIV Litigation

- 34. I cannot remember anything about the conduct of the Central Defendants themselves, in the litigation which was deserving of adverse comment.
- 35. I do, though, remember having a complaint about The Treasury Solicitor. I have no recollection of its nature. That it was not pursued makes me think it was not a major matter.
- 36. My recollection is that good relations were always enjoyed with the regional Health Authorities, their Counsel and Solicitors.

Section 4: Announcement of the Settlement of the HIV Litigation

- 37. I have no recollection about the announcement, but my reaction could only have been one of relief for the Plaintiffs and their families.
- 38. The negotiations leading to the settlement were conducted by Counsel with the approval of the Steering Group. I have no recollection of the details.

Section 5: Negotiation of the final agreement

- 39. I have little recollection of the negotiations.
- 40. My role in those negotiations, with other members of the steering group, was largely peripheral and limited to authorising counsel.
- 41. Each member of the steering group would have considered the advice given by Counsel, and ultimately, as can be seen by the public hearings, a settlement was agreed between the plaintiffs and the defendants for the reasons given in court.

42. As to the waiver:

42.1. My recollection is that this was first raised by Justin Fenwick with Michael Brooke after our being told that the ex gratia payment would be disregarded for entitlement to benefit.

42.2. Whilst I cannot remember whether it was regarded as a quid pro quo, I treated it as such.

42.3. Looking back, the reasons for acceptance were that:

42.3.1. Any further claims would have been on the facts already pleaded.

42.3.2. The prognosis for those infected with HIV was an average life expectancy of 10 years – the first 8 being with lesser problems, but the last 2 years with ARC and full-blown AIDS. That prognosis appeared to be uncontroversial.

Section 6: General Questions

43. All drafting was by counsel with, perhaps, some minor input by the steering group.

44. As to “red tape” holding up the conclusion of the settlement; I have no recollection of this.

45. Regarding the newspaper article of 2 April 2001[WITN1055192];

45.1. Before being provided with the documents, I had not seen this.

45.2. On seeing it, I was unhappy with the headline. I cannot imagine anyone who had ever known me would describe me as a “crusader”. It is wide of the mark.

45.3. I did support the calls for a public inquiry. I did so because problems had been known about since the mid 1970s, or perhaps earlier. I thought the government's response to it needed to be openly discussed.

- 45.4. I did describe hepatitis C as “no big deal” in about 1980, but that needs to be read in the context of haemophiliacs infected with HIV.
- 45.5. In particular prior to the use of Factor VIII, the life expectancy of severe haemophiliacs was stated to be 28 years.
46. It quickly became clear that Factor VIII use caused hepatitis non-A-non-B infection. However, there appeared to be no hesitation in continuing its use, even after the earlier stages of HIV infection became apparent.
47. I have been misunderstood/misquoted about the waiver.
48. I have set out my position on the waiver above. I also note that:
- 48.1. It arose after the “disregard” for benefit entitlement had been agreed, and
- 48.2. Even without the waiver, further claims in respect of hepatitis could not be made because they would have arisen from the already pleaded facts.
49. I had no knowledge in 2001 (nor now) of a sub-strain of hepatitis C particularly affecting haemophiliacs.
50. I have no recollection of the matters said to have caused the delay in the final settlement of the action.
51. As to what the HIV litigation achieved:
- 51.1. I believe it achieved limited, but valuable financial security for haemophiliacs and their families. Further, it gave a little more comfort than otherwise would have been available to those infected in their final years.
- 51.2. I am unsure what, if anything, the litigation provided for others.

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Statement of Truth

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

Signed

GRO-C

Dated

04. 01. 2023