

Witness Name: Samantha Baker
Statement No: WITN0713015
Exhibits: WITN0713016-17
Dated: 21 April 2021

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF SAMANTHA BAKER

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 27 October 2020.

I, Samantha Baker, will say as follows: -

Section 1: Introduction

1. Please set out your name, address and your role within the Scottish Government.

My name is Samantha Baker and I am based at the following work address:

Area 3E, St Andrew's House
Regent Road
Edinburgh EH1 3DG

I am the team leader within the Scottish Government with overall responsibility for infected blood. My team sits within the Scottish Government's Health Protection Division, within the Directorate for Population Health.

Section 2: Establishment of and initial funding and budgeting for the Scheme

2. Please provide a narrative account of the relationship between the Scottish Government and SIBSS.

2. The Scottish Government works with National Services Scotland (NSS) to seek to ensure the Scottish Infected Blood Support Scheme (SIBSS) continues to operate effectively.

Further, please:

a. specify the team in the Scottish Government that was and remains responsible for setting the policies and budget of SIBSS, including any particular point of contact and

his/her qualifications and experience (if this has changed since SIBSS has been set up, please specify each relevant key contact);

Responsibility for SIBSS and setting its policies and budget sits within my team, the Donation and Abortion Policy team. Responsibility has sat within my team since SIBSS was established and began making payments in April 2017 (although the team name has changed over time in line with my policy responsibilities, but it remains the same team).

The points of contact for liaison with and policy/funding of SIBSS are:

- Myself, Samantha Baker as team leader
- Michelle Kivlin, blood policy officer

I have managed SIBSS since it was established, while Michelle has been their contact firstly in November 2018 and then when she returned to the team from maternity leave in June 2019.

Previously, Robert Girvan acted as policy manager for SIBSS within my team until June 2018. Prior to and during Michelle Kivlin's maternity leave I received part-time support to work with SIBSS from a member of our Burials and Cremations team, Paul Sorensen.

As team leader I retain overall policy responsibility for SIBSS and its budget, in agreement with Scottish Ministers, Finance colleagues and senior managers where appropriate. I have worked for the Scottish Government since May 2000 (with periods on secondment to the European Commission and the Foreign and Commonwealth Office). I have held a range of policy roles in the following areas: sustainable development, additional support needs, climate change (within the European Commission's DG Environment), Structural Funds, health, culture, sport and regional development (within the UK Permanent Representation to the EU), policy on transfer of Glasgow Housing Association homes to community-based housing associations, private renting, first time buyers policy, housing innovation and empty homes and the Freedom of Information unit.

I moved to my current role at the start of February 2016, with implementation of the Financial Review Group's recommendations being a key part of the role I was given.

Michelle Kivlin has held various roles within the Scottish Government, initially joining the Science and Advice for Scottish Agriculture laboratories in November 2010, then moving into Justice Directorate's Organised Crime unit, before holding a number of financial management and policy roles across Justice, with a short departure to HMRC, before returning to Scottish Government into her current post in November 2018.

Robert Girvan has worked for the Scottish Government since May 2001. He has held policy roles in the following areas: looked after children; adoption and fostering (including the Adoption and Children Bill); regulation of the health professions; Scottish National Blood Transfusion Service, Penrose Inquiry and Infected Blood policy and support; sexual health and blood-borne viruses; and Public Health Reform.

He moved to the blood policy role in November 2011 and left in June 2018, with the response to the Penrose Inquiry and implementation of the infected blood financial support review being a key part of the role.

b. outline the process by which the original policies and budget of SIBSS were agreed, including the materials and/or expertise that the Scottish Government considered (for example, (i) medical opinion, (ii) views of Scheme beneficiaries and (iii) expert opinion in respect of amounts to pay beneficiaries);

The original policies and budget of SIBSS were based on the proposals set out in the 2015 Financial Review Group's report [WITN4508014]. I understand that the views of beneficiaries were sought as part of the Financial Review Group process and so the Group's proposals took account of their views. The Group also considered expertise from the Alliance House Organisations and the Central Legal Office (CLO) in their deliberations. The former Cabinet Secretary for Health and Sport agreed that the payment levels recommended by the Financial Review Group should be adopted and so colleagues in our Health Finance Directorate allocated budget funding for this. The budget was estimated based on the information the Scottish Government had from the Alliance House organisations about beneficiary numbers.

The Scottish Government also consulted third sector organisations, in particular Haemophilia Scotland and the Scottish Infected Blood Forum (SIBF), on a number of points in developing SIBSS policies.

c. set out any information sought from or given by the Alliance House Organisations ("AHOs") when SIBSS was being set up;

The Scottish Government sought a range of information from the Alliance House organisations. In particular, we sought information on numbers of beneficiaries who would fall into the eligibility criteria for SIBSS in different categories (such as Skipton Stage 1, Stage 2, etc.), copies of application forms, the levels and types of discretionary payments made to 'Scottish' beneficiaries by the three discretionary schemes and details of the

policies of the schemes, for example in relation to eligibility for grant applications and which benefits were counted in determining beneficiaries' incomes.

d. specify how much, and what, information the Scottish Government had about the policies and decision making processes of the AHOs when setting policies and criteria for SIBSS;

As above, the Scottish Government sought and received a reasonable amount of information from the Alliance House organisations on their policies. NSS also sought certain information from the organisations. As far as I am aware, the Scottish Government did not receive full details of their decision-making processes, although I understand that this was discussed at a meeting which NSS staff and a Scottish Government representative (Robert Girvan) attended with Jan Barlow and other Alliance House representatives prior to the launch of SIBSS.

e. set out the role of any other organisation (including the UK Department of Health) in having any input into setting policies and the budget for the SIBSS when SIBSS was being set up.

The Department for Health and Social Care (DHSC) did not have any direct role in setting the policies or budgets for SIBSS, although we did of course discuss our plans with them given that it had an impact on the future of the Alliance House organisations. We did liaise with HM Revenue and Customs (HMRC) and the Department for Work and Pensions (DWP) to agree amendments to their secondary legislation in order to allow regular payments to be exempt from income tax and to avoid SIBSS payments being considered in DWP calculations of entitlement for means-tested benefits.

As noted above, the Scottish Government did have discussions with some organisations, such as Haemophilia Scotland, SIBF and the Hepatitis C Trust, as part of setting the policies and guidance for SIBSS.

Section 3: Funding for the Scheme

3. Please set out the process by which SIBSS receives funding from the Scottish Government on an ongoing basis, including the HIV allocation from the UK Department of Health. Has this changed since SIBSS was first established? If so, how? What, if any, problems have arisen from this process and what were (or continue to be) the consequences?

Although the Scottish Government does not receive the allocation of final or confirmed HIV funding from the Department for Health and Social Care (DHSC) until December of each financial year, an estimate of the anticipated funding receipt from DHSC is used to calculate

the budget available for SIBSS in advance of the financial year to ensure that an allocation can be made to NSS.

The Scottish Government transfers an initial funding budget for SIBSS to NSS between May and July of each financial year. As it is difficult to estimate the funding requirement each financial year, particularly given the number of new applicants to the scheme varies, along with the numbers who will move between categories, the initial funding allocation is based on a lower estimate of likely requirements to reduce the need for NSS to repay funds in the event of any underspend. Further allocations may be made to NSS throughout the financial year as actual expenditure data becomes available e.g. the numbers of beneficiaries in each category and information on lump sums paid to new applicants. This ensures that NSS receives funding to meet the full costs of the SIBSS each year.

This process has not changed since SIBSS was established and generally works well, although as noted above, it is difficult to estimate SIBSS' budget requirements in advance and costs often turn out to be higher than budgeted for. Therefore it can be challenging to ensure we have sufficient budget available, but we have so far always been able to ensure we meet SIBSS' costs.

4. Please describe any particular formula or methodology for calculation currently applied by the Scottish Government in setting funding levels for SIBSS.

The Scottish Government uses the latest available data from the SIBSS team on expenditure, numbers of beneficiaries in each category and information on trends in changes in numbers of beneficiaries in each category. We also now apply the September Consumer Prices Index (CPI) rate increase to all regular payments to provide an uplift to SIBSS' budget requirements for the next financial year.

5. Does the Scottish Government take account of any representations made by SIBSS and by beneficiaries in relation to ongoing and future funding levels? If so please provide details of the representations made and the Scottish Government's consideration of those representations.

The Scottish Government discusses budget requirements with SIBSS and agrees what is likely to be needed, although SIBSS does not specifically 'make representations' on this. Beneficiaries or organisations representing them do sometimes make representations around funding of particular aspects of the scheme and these are discussed and taken into account where it is feasible.

In particular, in 2018 a number of beneficiaries sought support for annual payments for those with chronic hepatitis c (HCV) and for widows, widowers, civil partners and long-term cohabiting partners of those with chronic HCV who had died. A number of beneficiaries had also asked for some time that the £30,000 lump sum for those with chronic HCV should be available to the widows, widowers, civil partners or long-term cohabiting partners of those with chronic HCV who had died. These changes were all agreed and confirmed by the Minister for Public Health, Sport and Wellbeing in November 2018.

In addition, some organisations argued that payments should be increased in line with inflation. As a result, that change was able to be implemented to increase payments each year in line with the Consumer Prices Index (CPI) from April 2020.

6. Are any further monies to be made available to SIBSS following the Clinical Review Group's recommendations?

The SIBSS budget has already increased as a result of the Clinical Review Group's recommendations [GGCL0000168]. Please see table below:

| Year | Funding (£) | Comment |
|---------|-------------|---|
| 2017-18 | 6,967,561 | Pre-Clinical Review |
| 2018-19 | 8,393,436 | New payments for those with chronic HCV and widows/widowers/civil partners/long-term cohabiting partners, backdated to September 2018 |
| 2019-20 | 9,491,747 | First full year of new payments. |

7. Other than in relation to those suffering from HIV, is there any particular minimum funding commitment by the UK Government/Department of Health towards the Scottish Government's funding for the SIBSS? If so, how does this operate? If not, are there any mechanisms to ensure continuity of payments and existing payment levels to non-HIV beneficiaries at the SIBSS?

There is no minimum funding commitment from the Department for Health and Social Care (DHSC) or any other part of the UK Government that relates to SIBSS funding. The Scottish Government uses its annual budget setting process to seek to ensure there is sufficient budget available to meet SIBSS' estimated requirements. The Scottish Government's draft budget is then approved by the Scottish Parliament each year.

8. What is the funding commitment from the UK Government for the SIBSS for those suffering from HIV? Please provide details of how this operates.

Since 2017, DHSC has provided a payment to the Scottish Government for beneficiaries with HIV. It is not yet clear if this payment will continue long term. The payment is calculated based on the English annual payment level multiplied by the number of SIBSS beneficiaries with HIV or who are coinfectd. An amount is also added for discretionary payments, which is now based on 8.17% of DHSC's actual discretionary spending on beneficiaries with HIV or their widows, widowers, civil partners or long-term cohabiting partners. 8.17% reflects Scotland's share of the UK population.

Section 4: The Department's role in eligibility, policies and payment levels

9. Are there any agreements/policies in place which set out the arrangement between the Scottish Government and NSS for the administration of SIBSS? If so, please provide them. If not, please set out the basis upon which the Scottish Government has commissioned NSS to administer SIBSS.

Yes. See the Memorandum of Agreement of March 2017 between Scottish Ministers and NSS in relation to the management of SIBSS [WITN4728006].

10. Please describe the decisions SIBSS (administered by NSS) is able to take, and those decisions that are and/or must be taken by the Scottish Government. In particular:

(a) Which organisation set the eligibility requirements?

The Scottish Government sets the eligibility requirements for SIBSS. These are set via the Scottish Infected Blood Support Scheme 2017 (as amended), which is made under and meets the requirements of section 28 of the Smoking, Health and Social Care (Scotland) Act 2005. Copies of the original Scheme document and all amending scheme documents are available on the Scottish Government website.

(b) Which organisation set the procedural requirements?

The overarching procedural requirements are set out by the Scottish Government in Schedule 6 of the Scottish Infected Blood Support Scheme 2017 (as referred to under part (a)). As set out in Schedule 6, decisions about more detailed points, such as the information required in application forms, are generally drafted by the SIBSS team and agreed with the Scottish Government.

(c) Which organisation makes the decisions as to whether or not an applicant meets the eligibility requirements?

SIBSS staff make decisions as to whether or not an applicant meets eligibility requirements.

(d) Which organisation sets the payment levels?

The Scottish Government sets the payment levels.

(e) Are any applications for assistance either determined by or referred to the Scottish Government?

Applications for assistance are not determined by the Scottish Government, although SIBSS staff do sometimes contact Scottish Government staff for views, for example where an application for a grant relates to something not covered by the existing published guidance, where the team may want a view on whether the Scottish Government is content that it is something which could be funded.

11. Please explain why the cut-off date for treatment for a person suffering from Hepatitis C is 1 September 1991. In particular did the Scottish Government make any enquiries (and if so what) as to whether all blood/plasma/blood products collected prior to this date and so not subject to HCV screening, were taken out of circulation and destroyed?

The cut-off date of 1 September 1991 is set out in section 28 of the Smoking, Health and Social Care (Scotland) Act 2005 and so no application could be accepted via SIBSS if the person became infected via a later transfusion.

The Scottish Government understands that testing of blood in Scotland for HCV was already being piloted in a number of areas for some time prior to September 1991.

Based on the evidence the Scottish National Blood Transfusion Service (SNBTS) provided to the Penrose Inquiry (which the Inquiry should have copies of) on the introduction of HCV screening by SNBTS, SNBTS introduced routine HCV testing throughout Scotland in August 1991 and all transfusions of blood components were from HCV-tested donations on or before 1 September 1991. Therefore on and after 1 September 1991 all blood donations issued for transfusion and plasma supplied for fractionation were HCV antibody negative.

12. Does the Scottish Government review decisions made by SIBSS employees about beneficiary eligibility? If yes, why and how do such reviews take place? Please provide details, including the names and qualifications and experience, of the relevant members of the Scottish Government who are involved in any such process.

No. The Scottish Government does not review any SIBSS decisions about beneficiary eligibility.

13. To what degree are the Scottish Government's policies and/or levels of payment influenced by those found in the other Devolved Schemes, and is there any mechanism of oversight or comparison to monitor the consistency of policy and

awards made across the Devolved Schemes? In answering this question, please have regard to:

i. The comments on the Scottish Government's willingness to increase parity between the four Devolved Schemes in the letter to the Chairman of the Inquiry from Joe FitzPatrick MSP, Minister for Public Health, Sport and Wellbeing dated 4 December 2019.

The Scottish Government largely sets its policies and levels of payments based on the recommendations of the Financial Review Group of 2015 and the Clinical Review Group of 2018 [GGCL0000168], while taking account of representations from beneficiaries and organisations representing them and other feedback mechanisms, such as the two SIBSS member surveys. However, the Scottish Government also takes account of both the policies and levels of payments in other schemes to see if there are approaches which work well and which could be adopted for SIBSS. For example, we asked the Clinical Review Group to consider the DHSC's special category mechanism proposals as part of their review in order to decide if it was an appropriate option for SIBSS, albeit this was not ultimately recommended for adoption by the Group.

There is no mechanism of oversight to monitor the consistency of policy across the devolved schemes, although the four nations' governments do discuss their policies so there is a reasonable level of shared understanding of the key elements of the different schemes' policies.

As set out in the December 2019 letter from the former Minister for Public Health, Sport and Wellbeing, Joe FitzPatrick MSP [SCGV0000320], the Scottish Government is happy to explore the potential for greater parity between the schemes where appropriate. However, in line with the spirit of devolution, the Scottish Government wishes to ensure that there continues to be sufficient flexibility to allow SIBSS' policies to reflect priorities of Scottish beneficiaries and stakeholders.

Section 5: The Department's role in outreach and publicity by the Scheme

14. Has the Scottish Government taken any steps to identify potential (i.e. additional) beneficiaries? If so, please provide details. If not, why not?

The Scottish Government issued a public information notice in October 2016 following the short-life working group which considered how to implement the Penrose Inquiry Report's recommendation [WITN0713016]. 380,000 leaflets and 7,500 posters were distributed to the following venues across Scotland: GP practices, pharmacies, Health Boards/hospitals, Care

Homes, Citizens Advice Bureaux, dentists, leisure centres, libraries, community centres and out of hours centres. The materials encouraged anyone who had had or may have had a blood transfusion before September 1991 to get tested for HCV.

In addition, the former Chief Medical Officer also issued a CMO letter on 20 September 2016 to remind medical practitioners to consider the possibility of HCV infection among any patients who may have received a blood transfusion or blood products in the past. This letter followed a previous letter on the subject issued immediately after the Penrose Inquiry Report was published – see [WITN0713017].

15. What (if any) role does the Scottish Government have in deciding whether SIBSS discloses information to the public about its policies and assessment criteria?

It is primarily for the SIBSS team to decide what information it makes available and clearly it is for NSS to make decisions about how to respond to any FOI requests in line with the requirements of the Freedom of Information (Scotland) Act 2002.

However, the Scottish Government does sometimes discuss with the SIBSS how we can best ensure SIBSS' policies are sufficiently clear and transparent, for example we sometimes agree if it would be useful to add or update certain information on the SIBSS website.

Section 6: The Department's role in reviews and consultations

16. Please describe the process, frequency and outcome of any reviews and consultations on SIBSS payment levels and policies carried out by the Scottish Government.

The Scottish Government established the Financial Review Group in 2015 to consider and consult on future SIBSS payment levels. There have not been any formal consultations since then, although the Clinical Review of the Impacts of Chronic HCV was undertaken from 2017 to 2018. However, the Scottish Government and SIBSS have continued to consider and, where appropriate, refine the scheme's policies and payment levels in response to feedback, in particular via the SIBSS beneficiary surveys and through engagement between officials and/or Ministers and stakeholders, such as Haemophilia Scotland and SIBF. A number of changes have been made to the scheme since its inception as a result of stakeholder or beneficiary feedback, including for example:

- To extend the annual payments for widows, widowers and civil partners in order to make them available to long-term cohabiting partners as well;
- To introduce annual payments for those with chronic HCV and their widows, widowers, civil partners or long-term cohabiting partners;
- To make lump sum payments of £30,000 to those widows, widowers, civil partners or long-term cohabiting partners of those with chronic HCV who had died and not received this additional lump sum;
- To apply CPI increases to annual payments from April 2020 onwards;
- To ensure that grants for counselling support were easier to access without any means testing.

Section 7: Other

17. Please provide any other information you may have that is relevant to our Terms of Reference.

I am aware that, while we have already provided a lot of files to the Inquiry there are still files to be reviewed by Inquiry staff, which the Inquiry may determine are relevant. As agreed with the Inquiry, once the Inquiry indicates which of the files in the spreadsheets we previously provided are of interest, we will look to make those available for review. Clearly some of that work is not possible at the moment due to coronavirus restrictions, but the Scottish Government is of course happy to provide any files which are available electronically that the Inquiry chooses to request and to make paper files available for review as soon as it is possible to access them. If there are any questions arising from information in those files, I would of course be happy to answer them.

April 2021 update

Provide any relevant updates to your evidence in light of the recent announcement by the Government relating to the SIBSS payments dated 25 March 2021.

Following further discussions between the four nations' governments, the UK Government announced¹ on 25 March 2021 that it would provide funding to enable broad parity of annual and lump sum payments between the four infected blood support schemes and that the increased annual payments would be backdated to April 2019. As this announcement was made after the start of the pre-election period in Scotland, the Scottish Government was not able to comment on the announcement in detail or to agree all the final details of the provisions with Ministers. However, it was agreed that an indicative statement could be provided on the Scottish Government's infected blood webpage to give SIBSS beneficiaries

¹ See <https://questions-statements.parliament.uk/written-statements/detail/2021-03-25/hcws895>

some information on the changes the Scottish Government expects to be making to funding levels². This information was also included in the April 2021 SIBSS newsletter.

We are working with lawyers and SIBSS staff to prepare for the changes and allow beneficiaries to receive additional money as soon as is feasible. However, some points are likely to need to be considered and agreed with future Ministers after the Scottish Parliament elections following initial discussions with the SIBSS Advisory Group about them. The Scottish Government is also seeking clarity from the UK Government on the level and timing of funding being provided and arrangements for this, whether HIV funding will continue to be provided (as covered in question 8) and whether the UK Government will continue to provide this additional financial support for SIBSS after 2021-22 or will expect the Scottish Government to find the additional funding.

Statement of Truth

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

Signed _____

GRO-C

Dated ____21 April 2021_____

Table of exhibits:

| Date | Notes/ Description | Exhibit number |
|-------------|---|-----------------------|
| Undated | Scottish financial review group recommendations | WITN4508014 |
| 09/03/2017 | Memorandum of Agreement between Scottish Government and NSS | WITN4728006 |
| 01/05/2018 | Clinical Review of the Impacts of | GGCL0000168 |

² See
<https://www.gov.scot/publications/scottish-infected-blood-support-scheme---payment-changes-statement/>

| | | |
|------------|---------------------------------|-------------|
| | Hepatitis C | |
| 01/01/2018 | SIBSS Survey 2018 | WITN4728024 |
| 01/01/2020 | SIBSS Survey 2020 | WITN4728013 |
| 04/12/2019 | Letter from Joe FitzPatrick MSP | SCGV0000320 |
| 01/08/2016 | Penrose Recommendations | WITN0713016 |
| 27/03/2015 | Penrose Inquiry letter | WITN0713017 |