Witness Name: Glenn Wilkinson

Statement No.: WITN2050001

Exhibits: WITN2050002 – WITN2050114

Dated: 14 August 2020

INFECTED BLOOD INQUIRY

EXHIBIT WITN2050065

WRITTEN ANSWER HOUSE OF LORDS 1990 RE: HAEMOPHILIACS (AIDS)

HANSARD 1804–2004 : 1990s : 1990 : October 1990 : 15 October 1990 : Written Answers (Commons) : HEALTH : Haemophiliacs (AIDS)

Mr. Alfred Morris

To ask the Secretary of State for Health what is the total cost to the Government to date of the legal case in which people with haemophilia, having been infected with the AIDS virus in the course of national health service treatment, are suing the Government.

Mr. Kenneth Clarke

The cost of the time spent by civil servants on this litigation and other administrative expenditure is not separately identified. So far, £25,961 has been paid in legal fees, and £10,495 in fees to expert witnesses. This does not include the costs of legal aid, which are a charge on the Lord Chancellor's Department.

Mr. Alfred Morris

To ask the Secretary of State for Health, if he will make a statement on his reaction to Mr. Justice Ognall's appeal to both sides in the legal case in which people with haemophilia, having been infected with the AIDS virus in the course of national health service treatment, are suing the Government, to give anxious consideration to a compromise solution and the judge's offer to arbitrate in a speedy settlement of the case.

Mr. Kenneth Clarke

I have carefully considered the points put forward by Mr. Justice Ognall in his statement handed down on 26 June 1990. The text of the Department's response was as followsThank you very much for providing me with a copy of the note handed down by Mr. Justice Ognall on 26 June 1990. The Secretary of State has carefully considered the points put forward by the Judge, together with the advice given previously by Counsel in the light of the overall situation concerning the tragic effect on haemophiliacs of the use of Factor VIII containing the HIV virus. The Government has recognised that the plight of haemophiliacs and the fact that the treatment which led to their infection was intended to help them to lead as near a normal life as possible, makes their case wholly exceptional. Accordingly, and in recognition of their unique position, the Macfarlane Trust was set up following an announcement by the Minister of Health in November 1987 and was provided with £10 million, to make payments on an ex-gratia basis to affected individuals and their families throughout the United Kingdom. Since then, many payments have been made out of the fund, on the basis of financial need, and this continues. When announcing the establishment of the Macfarlane Trust, the Government made it clear that, while it considered the sum of £ 10 million to be appropriate at that time, it would nevertheless keep open to review the question of what funds were required. Following an announcement by the Secretary of State on 23 November 1989, a further sum of £24 million was made available for haemophiliacs. The aim was first, to make individual payments of £20,000 to each haemophiliac infected with AIDS virus as a result of treatment with blood products in the United Kingdom or the family of such a person who has died; and second, to enable the Macfarlane Trust to continue on a more generous scale to help families in

particular need. So the Government has already made available a total of £34 million to mitigate the effects of this tragedy on all haemophiliacs with HIV and their families and not just the litigants in this action. Some £24 million of this total has been distributed to individuals affected, irrespective of means, whilst the remainder has been and continues to be made available on the basis of need. None of these payments is taken into account for the purposes of social security or indeed of legal aid. The Government proposes to keep the sums available to the Macfarlane Trust and the needs of haemophiliacs under regular review. All these sums are of course paid on an ex-gratia basis. They are intended to provide the resources to respond positively to the particular needs of affected haemophiliacs and their families. They are not however intended to be a substitute for litigation of the issues presently before the Court. Mr. Justice Ognall has suggested that there are actions which should perhaps be settled on the basis of moral obligation rather than on a strict assessment of legal liability. The Secretary of State has already recognised the moral argument and the strong compassionate arguments in favour of providing assistance to haemophiliacs affected by HIV in the setting up of the Macfarlane Trust and in providing resources for their treatment. In the Secretary of State's view, the fact that the affected haemophiliacs have chosen to pursue their legal claim does not raise any fresh moral obligation beyond that already recognised by the Government. And, of course, he has the general duty to weigh up the claims for assistance of this particular group as against the claims of other groups of sick or disabled people, within the resources voted by Parliament. Ministers are always and understandably faced by an array of competing demands for highly desirable objectives within the inevitably finite resources available. Spending more on one group, whatever the reason for doing so, inevitably means spending less on others. The haemophiliacs with HIV infection have attracted public attention and quite rightly won the nation's sympathy, but there are many other examples of people suffering severe disability with the prospect of premature death also through no fault of their own—for example, patients with advanced cancer; patients with end-stage renal failure; or children born with severe congenital heart defects. It is the responsibility of Ministers and their advisers to weigh up these difficult choices and to arrive at a reasonable ordering of priorities. Ministers are, of course, and rightly, accountable to Parliament for their decisions on policies and priorities. As you know it is the Secretary of State's case in this litigation that such decisions do not and should not give rise to a duty of care to individual members of the public such as to enable those individuals to bring a claim for damages. This is an important principle and one which would have far reaching repercussions if compromised. There are strong public policy reasons why this is so. First, it would make the process of policy formation very much less effective if every decision were subject to the risk of legal challenge in the courts. Second, if it were accepted in this particular action that Ministers did owe such a duty of care this would be likely to lead to very large numbers of costly and time-consuming claims against the Department, Licensing Authority and CSM. There is nothing unique about this aspect of the present claim. The Secretary of State fully recognises the force of the argument that the resources likely to be taken up by this litigation would be better used to alleviate suffering. However, it would not achieve this purpose if the likely consequence of compromising these actions were to encourage other expensive litigation in future. The Secretary of State considers that the existence of this litigation on its own is not a sufficient reason to adopt different criteria from those which govern the decisions which regularly have to be made where the competing demands of many pressing and deserving causes have to be balanced

in the light of the resources that are actually available. The Secretary of State is satisfied that the best and indeed the proper way of meeting the need referred to by Mr. Justice Ognall is through the machinery of the Macfarlane Trust or similar means. The Government remains committed to pursuing that course and will ensure that the needs of all affected haemophiliacs and their families are kept under review. That resolve will not be affected by the progress or outcome of the litigation. It is recognised that it would be in the interests of everyone that the present litigation should be brought to a speedy conclusion. Apart from the anguish which it inevitably causes to plaintiffs and their families, it has placed a heavy burden on the resources of the Legal Aid Fund and of the Department and Health Authorities. That inevitably involves the diversion of scarce resources from elsewhere. It must be a matter for individual Plaintiffs and their advisers as to whether they wish to continue to pursue their allegations against the Central Defendants in the expectation or hope that they will be able to establish liability. However, whilst the Secretary of State will continue to review the position from time to time, until or unless you advise that there is a real likelihood of the Plaintiffs or any of them succeeding in establishing liability, his view is that these actions should continue to be defended firmly. Meanwhile, I know that you and Counsel will do everything possible to adhere to the timetable set by the Court. I would be grateful if you would express the Secretary of State's thanks to the Judge for his observations and make him aware of the matters set out in this letter. A copy of this letter may be provided to the Judge if you consider this appropriate.

Mr. Alfred Morris

To ask the Secretary of State for Health why he withheld from the courts documents that are wanted by the legal representatives of people with haemophilia who contracted the AIDS virus in the course of National Health Service treatment; and if he will make a statement.

Mr. Kenneth Clarke

A number of documents were withheld because the Department of Health considered that a claim for public interest immunity applied to them. This immunity cannot be waived by the Crown.

The documents in question related to the period of office of both the previous Labour Government and the present Conservative Government.

Public interest immunity is a principle of law that prevents the dislosure of documents on the grounds that production of those documents would be injurious to the public interest. The immunity prevents the disclosure of, for example, documents which concern the inner workings of the Government machine or policy making within Departments. In the course of his judgment in the Court of Appeal on 20 September 1990 Lord Justice Ralph Gibson said: The Department of Health has raised the matter of public interest immunity so as to prevent the disclosure of [certain documents]. The Department does not do that in order to put difficulty in the way of plaintiffs, or to withhold from the Court documents which might help the plaintiffs. The Department raises the matter because it is the duty of the Department in law to do so in support of the public interest and the proper functioning of the public service, that is the executive arm of the Government...It is not for the Department but for the Court to

determine whether the documents should be produced. The plaintiffs acknowledge the validity of the claim to public interest immunity but ask the Court to order production notwithstanding the existence of a valid claim to immunity. It is essential that the aspect of these proceedings should be clearly understood. The valid claim to immunity to be overridden by the order of the Court if the law requires that it should be overridden. The task of the Court is properly to balance the public interest in preserving the immunity on the one hand, and the public interest in the fair trial of the proceedings on the other".

Section citation: HC Deb 15 October 1990 vol 177 cc659-62W.