

Witness Name: Stephen McGowan

Statement Number: WITN3947001

Exhibits: WITN3947002 - WITN3947007

Dated: 28 March 2023

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF STEPHEN MCGOWAN

I provide this statement in response to a request under Rule 9(1) and (2) of the Inquiry Rules 2006 dated 29 November 2022.

I, Stephen McGowan, will say as follows:-

Section 1: Introduction

1. My full name is Stephen Anthony McGowan. I was born on GRO-C 1973. My address is c/o Crown Office, 25 Chambers Street, Edinburgh. I hold the degree of LLB(Hons) from the University of Strathclyde (1995) and the Diploma in Legal Practice from the University of Strathclyde (1996). I qualified as a Solicitor in Scotland in 1997. I am a member of the Law Society of Scotland. I was a member of the Law Society's Criminal Law Committee between 2011 and 2021 and have been a member of the Council of the Law Society since 2017.
2. I was a trainee Solicitor and then Assistant Solicitor at Gilfedder and McInnes, Solicitors, Edinburgh from 1996 to 1999. In 1999, I joined Crown Office and Procurator Fiscal Service (COPFS) as a Procurator Fiscal Depute in Hamilton. In 2002, I became a Principal Procurator Fiscal Depute at the High Court Unit, Crown Office, Edinburgh. In 2004 I returned to Hamilton as a Principal Procurator Fiscal Depute with responsibility for the case marking unit. Between 2005 and 2007, I was seconded to the Scottish Executive as Secretary to the National Criminal Justice Board where I was involved in criminal justice reform and liaison between Government, Judiciary and criminal justice agencies in Scotland. In 2007 I became District Procurator Fiscal for Greenock and Rothesay, with responsibility for the investigation and prosecution of all crimes within those Sheriff Court Districts. Between 2008 and 2010 I was the District Procurator Fiscal for Aberdeen and Stonehaven, and between 2010 and 2012 I was the District Procurator Fiscal Edinburgh and Haddington with similar responsibilities to those I had in Greenock. Between 2012 and 2016 I was Deputy Director of Serious Casework at Crown Office. In that role I oversaw the work of the various operational units at Crown Office, including having responsibility for the expansion of the Scottish Fatalities Investigation Unit (SFIU) to discharge all of the Lord Advocate's responsibilities in the investigation of sudden and unexplained deaths in Scotland. In 2016, I became the Procurator Fiscal, High Court, where my duties were to lead COPFS work in relation to the prosecution of High Court cases (cases where the accused may be sentenced to 5 years imprisonment or more if convicted). In 2018, I became Deputy Crown Agent, Local Courts,

responsible for the prosecution of crime in Scotland's Justice of the Peace and Sheriff courts. In 2021 I was appointed Deputy Crown Agent, Serious Casework. My responsibilities include the prosecution of High Court cases, the prosecution of Serious and Organised Crime, Appeals, Extradition and International Co-Operation, and the SFIU.

3. Other than the events covered in this statement, I have never given evidence to, or provided reports for any other Inquiries or investigations concerning human immunodeficiency virus (HIV), and /or hepatitis B virus (HBV), and/or hepatitis C virus (HCV), and/or variant Creutzfeldt-Jakob disease (vCJD) in blood and/or blood products.

Section 2: Experience-related evidence

4. The Crown Office and Procurator Fiscal Service (COPFS) is Scotland's prosecution service and death investigation authority. COPFS is headed by the Lord Advocate, Solicitor General and Crown Agent. Together, the Lord Advocate and Solicitor General are known as the Law Officers. The Law Officers set the strategic priorities, objectives and prosecution policy for COPFS. The Lord Advocate is the ministerial head of COPFS, leading the system of criminal prosecutions and the investigation of deaths. She is assisted in her work by the Solicitor General.
5. The Lord Advocate is a Minister of the Scottish Government, but decisions by the Lord Advocate about criminal prosecutions and the investigation of deaths are taken independently of any other person. The Lord Advocate's independence is preserved by statute (see section 48(5) of the Scotland Act 1998:- '*Any decision of the Lord Advocate in his capacity as head of the systems of criminal prosecution and investigation of deaths in Scotland shall continue to be taken by him independently of any other person.*'))
6. The Lord Advocate appoints Advocate Deputes, who are independent prosecutors who may be drawn from the ranks of the Scottish Bar, or Solicitor Advocates, to assist her where required in making decisions in criminal cases, prosecuting before the High Court, and in the investigation of deaths. The Law Officers and Advocate Deputes are collectively known as 'Crown Counsel'.
7. The Crown Agent is the principal legal advisor to the Lord Advocate on prosecution matters and the Chief Executive of COPFS. The Crown Agent is accountable to the Law Officers for the delivery of efficient and effective prosecution of crime and investigation of deaths, in accordance with their priorities and prosecution policies. The Crown Agent is the Accountable Officer for COPFS and, as such, answerable to the Scottish Parliament for the regularity and propriety of COPFS' finance and the stewardship of public monies.
8. Crown Office is currently structured into COPFS is divided into three 'functions': Serious Casework, Local Court and Operational Support. Each function is headed by a Deputy Crown Agent.
9. Prosecutors in Serious Casework investigate and prosecute cases that need special knowledge or experience. Examples include environmental crime, organised crime, the investigation of sudden or unexplained deaths, and appeals. Serious Casework also includes High Court teams. The most serious crimes in Scotland are dealt with by the High Court. These include murder, sexual offences, and cold cases.
10. The Local Court function prosecutes cases in Justice of the Peace and Sheriff Courts. Local Court teams work in offices across Scotland. Offices are grouped into six Sheriffdoms:
 - Glasgow and Strathkelvin
 - Grampian, Highland and Islands
 - Lothian and Borders

- North Strathclyde
- South Strathclyde, Dumfries and Galloway
- Tayside, Central and Fife

A specialist national team in Local Court makes initial decisions in all summary crimes reported to COPFS.

11. Teams in Operational Support complete essential business tasks. The function's work is divided into two areas. Policy and Engagement includes Media Relations, Policy and our Enquiry Point. The Business Services teams include Finance, HR, and IT.
12. In 2003, the structure of COPFS was different to that today. In 2003, most of the work of COPFS, including most of the work which is currently undertaken in Serious Casework, was undertaken in 6 'Areas', which are coterminous with the current Sheriffdoms. Each Area was headed by an Area Procurator Fiscal. The Area Procurator Fiscal was assisted by a number of District Procurators Fiscal for each Sheriff Court District. The Area Procurator Fiscal and District Procurators Fiscal were collectively responsible for the prosecution of summary crime within their area of responsibility. They were also responsible for the investigation of serious crime, and investigation of deaths in their area of responsibility. In cases of serious crime, the procurator fiscal's investigation, known as the precognition, was sent to Crown Office to be considered by Crown Counsel who would 'mark' the case (marking refers to a decision by a prosecutor to prosecute, take no proceedings, or to instruct further work). Certain categories of deaths, for example where a Fatal Accident Inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 was in contemplation were also reported to Crown Counsel. Crown Counsel were assisted by procurators fiscal at Crown Office under the control of the Deputy Crown Agent.
13. In Scotland, the Lord Advocate has responsibility for the investigation and prosecution of crime and the investigation of deaths. In practice that role is discharged by the procurator fiscal who reports the result of their investigation to Crown Counsel. In the Scottish system the procurator fiscal directs the investigation and not the police. In practice, most criminal investigations will start with the police who almost always act on their own initiative. However, it is their duty to report on their investigation to the procurator fiscal and to act upon his further instructions. In practice most cases begin with a police investigation, which in 2003 was reported to the local procurator fiscal by means of a Standard Prosecution Report (SPR) or Standard Death Report (SDR). The procurator fiscal or their staff would consider the evidence and decide whether a crime was committed, whether there was sufficient evidence in law to prosecute and whether it was in the public interest to do so. The procurator fiscal could decide to take proceedings, to take no proceedings, or less commonly to instruct further inquiries before making a decision.
14. The police had, and still have, discretion as to whether to investigate an alleged crime. The resources applied to any investigation are a matter for the police to consider. If the police consider that there is insufficient evidence of a crime being committed the matter would not be reported to the procurator fiscal. If the matter was reported to the procurator fiscal, a decision to take proceedings or to take no proceedings could only be taken by the procurator fiscal or Crown Counsel, independently of the police.
15. In more serious cases, where proceedings on indictment before the sheriff court or the High Court may be contemplated, the procurator fiscal would carry out their own inquiry. In those cases, the procurator fiscal may from time to time give direction to the police to carry out further inquiries. In cases of homicide or suspected homicide, the procurator fiscal would be called immediately by the police and had the ability to exercise direction from the earliest stages in the inquiry.

16. In some instances, where police were not sure whether a crime had been committed, they may report the matter to the PF for consideration. That was not common but was and still is possible. A police inquiry would be instructed where there was reason to do so. If there was no good reason to suspect criminality then instruction of a police inquiry would be improper.
17. In 2003, I was a Principal Procurator Fiscal Depute in the High Court Unit at Crown Office. The High Court deals with the most serious criminal conduct, typically cases of murder, attempted murder, rape, serious sexual offences and drug trafficking. Where Crown Counsel instructed High Court proceedings, my role was to consider the precognition from the procurator fiscal, confirm that the case was ready to go to trial (and if not instruct any further work required), prepare the final indictment against the accused and to give advice to the Advocate Depute prosecuting the case in relation to any matters arising.

Section 3: Strathclyde Police Contaminated Blood Inquiry

18. My recollection of these events is limited and I am reliant to a large degree on the documents that have been provided for me. I have endeavoured to be clear on what I recall and where I am reliant upon the documents.
19. The Strathclyde Police Contaminated Blood Inquiry was an inquiry by Strathclyde Police on behalf of the Association of Chief Police Officers in Scotland (ACPOS). It was carried out by Strathclyde Police on behalf of Scottish Police forces as Strathclyde held the Crime Portfolio. The first I became aware of the matter was in late 2003, when I was approached by the Deputy Crown Agent, Bill Gilchrist and asked to consider a Report prepared by Detective Superintendent Heath, and to prepare a report for Crown Counsel's instructions. The police report had already been compiled by that point, and my job was to prepare a report with advice to Crown Counsel who would make a decision as to whether further investigation was required.
20. I am now aware, as Deputy Crown Agent Serious Casework, a role which shares many of the same responsibilities as the Deputy Crown Agent had in 2003, that questions of an unusual nature tend to be directed towards the Deputy Crown Agent. Whereas in 2003 I have the benefit of a team of lawyers to assist in preparing advice on unusual matters, the then Deputy Crown Agent did not have that advantage.
21. From recollection I was asked to consider the case as it was thought that questions of corporate liability (through for example Government and Health Board) may arise, and I had recent experience in a prosecution for corporate homicide, which had clarified the law in Scotland in that area.
22. The question that was being asked at that stage was whether there should be a full police investigation? That this question was being asked at all tells me that the police were sceptical or at least unsure as to whether they should carry out further investigation. What was in my mind in framing the report was in effect "could this ever be a crime"? If not, it would have been unreasonable and unjust to begin a full police investigation exposing members of the public to the consequences of being subjected to criminal investigation without reasonable grounds to suspect a crime had been committed. The material from the police was not, and never bore to be, a full police investigation into the matter. It was a scoping document which sought to set out the facts as known in order that a decision could be taken as to whether further investigation should be carried out.
23. I recall that on receipt of the report from the Deputy Crown Agent I contacted Detective Superintendent Heath and thereafter met him at Crown Office. The purpose of that meeting was to obtain further background information on his report. I would have discussed the matter with Bill Gilchrist but have no recollection of doing so.

24. I prepared a report dated 16 December 2003 for Crown Counsel's instructions. Crown Counsel made the decision in relation to this matter [COPF0000010]. The report is headed 'Advocate Depute' as it was for Crown Counsel's instructions and stylistically, this is how we headed such reports unless there was an Advocate Depute already dealing with the matter, in which case the report would be addressed to them. The report and accompanying materials such as the police report would have been provided hard copy to the Advocate Depute who considered the matter. The marking Advocate Depute had the full range of options available to them (agree with the recommendation, disagree and instruct and full inquiry, or instruct further, more limited investigation). I received instructions. I am aware of this as I have located a draft correspondence from the Deputy Crown Agent to ACPOS, Detective Superintendent Heath and Mr [GRO-A] who had been infected with contaminated blood. I located them in a personal electronic folder, including WITN3947002-WITN3947007. The original papers with the detail of Crown Counsels' instruction and the other materials are no longer retained. Without the papers I cannot say which Advocate Depute considered this matter.
25. I have been directed to the first paragraph of page three of the report which states that the Scottish Haemophilia Groups Forum "have petitioned the Scottish Parliament Health Committee for a public enquiry. This has not met with success. It seems that their complaint to the police is part of their ongoing campaign. It seems to have been made partly to apply leverage to the Executive to set up a public inquiry". The passage quoted reflects my understanding in 2003 based upon the information available to me at that time. It also reflects the information provided in the police report at page 11, in the second paragraph under the heading 'Summation – Scottish Case Selection'.
26. I have been directed to a passage of the report on page 14 which states that "In the context of the treatment of haemophiliacs, if knowledge could be brought home to a person that there were risks to haemophiliacs' health involved in the licensing, supply and administration of blood products, and if it could be proved that the products continued to be licensed, supplied and administered in the face of those known risks, and that could be said to involve an indifference to the consequences for haemophiliacs, that person may have the requisite mens rea to be criminally liable. In the circumstances therefore, if the facts matched up to the test set out above reckless conduct could be a relevant crime in this context." I am asked why in light of that statement a criminal investigation was not advised or instructed to determine whether blood products "continued to be licensed, supplied and administered in the face of those known risks"? The section quoted is a general exposition of the legal test to be applied. The answer to the question is to be found in the section headed 'Conclusions', and in particular at page 25 where I go on to say "The prevailing view until the late 1980's, by which point Scotland was virtually self sufficient and successfully heat treating blood, was that hepatitis C was not life threatening or severe. The treatment was potentially life saving and appropriate research continued. That is not indicative of recklessness." My conclusion was that the available material did not give a proper basis to suspect criminality and therefore further inquiry was not required from a prosecutor's perspective.
27. I am directed to a statement on page 26 of the report in which I state "It is submitted that there is no evidence whatsoever of any criminal activity in this whole affair." I am asked whether I believe that a police investigation ought to have been undertaken before coming to such a conclusion. Whilst there had been no full investigation by the police, their report had scoped out the general factual background and scientific context. There was no evidence that there was intention to harm others through the provision of contaminated blood products. There required therefore to be consideration of recklessness. Against the

background of lack of consensus in the scientific community, continued research and the life threatening nature of the underlying conditions suffered by those subsequently infected, there was nothing available to me, from the victims or the police, which provided reasonable grounds to justify a full police investigation. Exposing members of the public to a criminal investigation of their conduct without good cause would have amounted to oppressive behaviour.

28. I had access to an "Advice Note from the CPS". I believe that it was POSC0000021. Whilst I have no recollection of the document, I note that in my report at page 23, in the context of considering the position of medical professionals, I make reference in the second paragraph of page 23 to paragraph 3.6 of the CPS advice. Paragraph 3.6 of POSC0000021 contains an analysis of the relevant considerations in respect of medical staff. I therefore reason that it is most likely that this was the document to which I had access in 2003.

Section 4: Allegations against Professor Ludlam

29. I had no involvement in respect of allegations against Professor Ludlam.

Section 5: Fatal Accident Inquiries

30. I have been supplied with a copy of COPF0000102, a minute from Andy Shanks, Legal Assistant to the DCA, dated 11 March 2009, to the Law Officers. Paragraph 7, at page 2 contains the sentence "The Procurator Fiscal at Aberdeen has now met with the widow of [GRO-A] and ascertained her views". I was the District Procurator Fiscal at Aberdeen at that time. I recall going to visit a lady at her house in Aberdeen. I did so at the request of Mr Shanks. I recall this because it was unusual to visit someone at their home address. Normally meetings would be at the Procurator Fiscal's office and I did not meet any other nearest relative or victim at their home address in my time in Aberdeen. I visited her house as she was unable to travel to my office in the centre of Aberdeen. I attended on my own. I cannot recall her name, or the name of the deceased. I recall no other details about the meeting due to the passage of time, and the fact that the cases were being reviewed at Crown Office rather than by my own staff in Aberdeen. I have been unable to locate any other material in relation to this matter.

Section 6: Other Issues

31. I have no further information to add.

Statement of Truth

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

GRO-C

Signed

28/3/23

Dated