

Witness Name: Brendan Brown

Statement No: WITN4496012

Exhibits: None

Dated: May 2021

INFECTED BLOOD INQUIRY

SECOND WRITTEN STATEMENT OF BRENDAN BROWN

ON BEHALF OF THE NHS BUSINESS SERVICES AUTHORITY

I, Brendan Brown, Director of Citizen Services of National Health Service Business Services Authority ("NHSBSA"), will say as follows: -

1. I provide this second statement on behalf of the NHSBSA in response to a request under Rule 9 of the Inquiry Rules 2006 dated 7 May 2021. As with my first statement, this statement is based on information available to the NHSBSA from its records of the England Infected Blood Support Scheme ("EIBSS") and the knowledge of members of the EIBSS team. I have made clear where the information is from my own personal knowledge.

Section 1: Introduction

2. My full name is Brendan Craig McMahon-Brown (known as Brendan Brown) and I am the Director of Citizen Services at NHSBSA, based at Stella House, Goldcrest Way, Newburn Riverside, Newcastle Upon Tyne NE15 8NY. Details of my professional background and career is set out in my first statement.

Section 2: Assessment of applications

3. I confirm that where external advice, such as legal advice or policy advice, is required regarding assessments of applications, notes will be added to the EIBSS

system (a case management system with associated payment functions) by an EIBSS assessor. The notes will record that such applications for advice have been escalated to either the Service Delivery Manager and/or Senior Service Delivery Manager depending on the nature of the external assistance required. The Manager will liaise with legal and/or policy contacts until completion of the request for advice. The advice will then be shared with those assessing the applications in question for them to include this advice as part of an assessment outcome. The advice will be added to the beneficiaries' file, once complete.

4. I have also been asked whether a statement prepared for the purposes of the Infected Blood Inquiry will be accepted as evidence that an individual was infected with HIV or hepatitis C via NHS blood or blood products in lieu of medical records.
5. I have previously provided a detailed explanation in my earlier statement regarding the supporting evidence required to accompany an application and the associated assessment process of that evidence. For completeness, I have included the appropriate sections here.

“41. EIBSS does not provide for exemptions or waivers to documentary evidence requirements for any reason. Medical assessors (and the appeals panel where required) will consider all available evidence against the balance of probabilities to decide whether someone is eligible for payments under the scheme. The EIBSS website provides details of the types of information that can be provided in support of an application, which is not exhaustive. For the different application types, our website includes “Supporting Evidence” guidance under the “How to Apply” section, which aims to make clear what can be provided in support of an application. <https://www.nhsbsa.nhs.uk/who-can-join-scheme-and-how-apply/people-infected-hepatitis-c-stage-1-payment> Medical assessors could consider a witness statement on its own merits. The detail of that witness statement would determine whether or not this would be sufficient; obviously, a witness statement that provides other supporting evidence strengthens an application and provides the assessors with more to assist in their decision-making capacity.”

“141. In relation to the burden of proof on the applicant, EIBSS will examine all available information and evidence provided by an applicant. It is for the applicant to establish the facts that underpin their case for support, to the balance of probabilities. This means that EIBSS will consider all information and evidence that is provided by an applicant and whether it demonstrates that it is more probable than not (i.e. that there is 51% chance or higher) that certain events took place. If so, then those events are treated as having taken place and the applicant has succeeded in proving their case.”

“143. Applications are considered in their entirety. As set out in an earlier Rule 9 response to the Inquiry, with regard to hepatitis applications, usually evidence from medical records is provided to confirm that someone has, or had, chronic hepatitis C, and evidence from medical records to confirm that a blood transfusion, treatment with blood products or a tissue transplant prior to September 1991 was received. Applications might still be successful if other forms of evidence can be provided. Examples are provided below.

143.1. Medical records of the procedure that led to the need for treatment with blood, blood products or tissue but where this is not specifically mentioned;

143.2. Witness statements from people who were witness to the treatment or were aware of it happening at the time;

143.3. Personal statement giving as much information as possible regarding the procedure and the circumstances that led to the need for treatment with blood, blood products or tissue; or

143.4. Physical evidence of the procedure that led to treatment with NHS blood, blood products or tissue.

144. NHSBSA look at all available evidence regarding the risks associated with certain types of blood products at the time treatment was received.

145. An application would not usually be approved based on one of these examples of evidence. One example may be where a beneficiary has supplied photographic evidence of a scar or injury. This alone would not mean an application would be approved. However if medical records indicated an injury or operation had occurred that support the photographic evidence and a medical expert determined that this is likely to have led to a blood transfusion

at the time of the injury/operation, then this may lead to an application being approved.

146. Following discussions with managers and the EIBSS team, they are unaware of any instances where a prospective beneficiary has been approved using solely one of the examples of evidence provided above without using it in conjunction with other evidence. This is not to say that this is not possible but to-date the evidence provided in support of such cases has not been sufficiently robust to support an 'approved' decision.

147. One example where a combination of evidence led to a successful outcome when medical records confirming a blood transfusion were not available relates to a beneficiary that had an operation that would have required them to have a blood transfusion, as part of the treatment required. The supporting evidence confirmed that there was no medical evidence available due to retention periods and as such alternative evidence had been supplied. The evidence supplied was as follows:

147.1. A medical report for a court case to state an operation took place but there is no reference to a transfusion; and

147.2. Photographic evidence to show the extent of the injury.

148. Based on the type of injury and supporting information, the medical assessor was satisfied that the operation would have required a blood transfusion.

149. For the purposes of determining applications, the lack of evidence for whatever reason is not relevant. Medical assessors as part of EIBSS can only assess based on the evidence provided, in whatever form that may take."

"152. EIBSS does not provide for exemptions or waivers to documentary evidence requirements for any reason. Medical assessors (and the appeals panel where required) will consider all available evidence on a balance of probabilities to decide whether someone was eligible for payments under the scheme. Medical assessors would consider statements from applicants on their own but, to-date, the evidence provided in support of such cases has not been sufficiently robust to enable a medical assessor to reach an 'approved' decision, as set out above."

Section 3: Update to first statement

5.1. I would like to take this opportunity to make the Inquiry aware of a recent update to paragraph 68 of my first witness statement, which relates to obtaining timely funding. I confirm that there was a delay in receiving EIBSS funding from DHSC in order to make payments to beneficiaries in April 2021. I would like to assure the Inquiry that this delay did not affect any beneficiary in receiving their payments in any way.

5.2. NHSBSA has identified that the issue was because DHSC encountered technical difficulties in providing the funding to NHSBSA due to their new finance system and its associated processes, as this was the first time this system had been used by this DHSC Policy Team to setup a new financial year's funding allocation. Once alerted to the potential issue, NHSBSA agreed to temporarily provide the funding from our own (NHSBSA) DHSC funded operational bank account, to enable the EIBSS payments due to be made on time. This meant that no beneficiary has been disadvantaged by the issue.

5.3. DHSC have reassured NHSBSA that this was an isolated incident due to the introduction of the new finance system. DHSC have passed on their thanks for the full support of the NHSBSA in ensuring the continuity of payment to beneficiaries during the affected period.

Statement of Truth

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

Signed

GRO-C

Dated

13 May 2021

Table of exhibits:

Exhibit number	Date	Notes/ Description
None		