

Witness Name: Brendan Brown

Statement No.: WITN4496035

Exhibits: Nil

Dated: 4 October 2022

INFECTED BLOOD INQUIRY

ELEVENTH WRITTEN STATEMENT OF BRENDAN BROWN ON BEHALF OF NHSBSA

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

1. I provide this statement in response to notification of criticism made by a witness under Rule 13 of the Inquiry Rules 2006 dated 23 September 2022. As with my first ten statements, 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 Chief Operating Officer at NHSBSA as from 1 February 2022. Prior to this date, I was the Director of Citizen Services at NHSBSA, and this fact is reflected in my previous statements. My role is based at Stella House, Goldcrest Way, Newburn Riverside, Newcastle Upon Tyne NE15 8NY. Details of my professional background and career are set out in my first statement.

Section 2: Response to Criticisms of W6966

3. My attention has been drawn to criticism made by witness W6966, to the Inquiry in relation to her application to the EIBSS. In particular, my attention has been specifically drawn to

comments she has made in her witness statement. These comments will be referenced in my statement below for context, along with my response.

4. The answers provided are in response to the witness's criticisms, based upon the administrative processes of the England Infected Blood Support Scheme (EIBSS), based upon the scheme rules (scheme specification) agreed with the Department of Health and Social Care (DHSC). 'Annex A: Eligibility Criteria for Primary Beneficiaries' from the scheme specification, provides the criteria that must be met, for an application to be successful (WITN4688006).

5. In paragraph 23, Page 6 of witness statement WITN6966001, W6966 states the following:

"I also think that my race played a part in determining my application for financial assistance. Dr Wright and EIBSS made a leap in determining that I probably contracted Hepatitis C in Kenya (see the section on Financial Assistance for a fuller explanation of this point)".

6. As previously mentioned in my earlier evidence to the Inquiry, EIBSS 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>

7. EIBSS refute the accusation that race played a part in determining the outcome of the application.
8. EIBSS cannot comment on the views of Dr Wright (Consultant Hepatologist) from the University Hospital Southampton.

9. In paragraph 27, Page 7 of witness statement WITN6966001, W6966 states the following:

"I think the duty of care towards me has repeatedly not been met. Right from the beginning from when I was first diagnosed to later having treatment for Hepatitis C, I felt really let

down by clinicians and the England Infected Blood Support Scheme ("EIBSS").I have always felt as if they are not telling me everything and I have not been given proper information".

10. Requirements for medical evidence are given in guidance on the application forms themselves, and sections 5A to 9 on the application forms are also required to be completed by the medical professional. The hepatitis Stage 1 application form can be accessed from the EIBSS website, by selecting 'How to apply'.

<https://www.nhsbsa.nhs.uk/who-can-join-scheme-and-how-apply/people-infected-hepatitis-c-stage-1-payment>

11. Where a beneficiary is unsure, they are advised to contact the EIBSS team who may be able to help explain in more detail, or access the EIBSS website to guide them to where full information is available; <https://www.nhsbsa.nhs.uk/who-can-join-scheme-and-how-apply>.

12. If an application is declined, the EIBSS team advises that they can reapply if they obtain further evidence to support their application.

13. If a beneficiary would like to appeal and submits further evidence as part of their appeal, to avoid the wait for the next appeals panel (which may be up to eight weeks), their application can be reviewed with the additional evidence by a medical assessor to see if the additional evidence may change the outcome of the application. If this is still unsuccessful then the application can still be referred to the appeals panel.

14. In paragraph 36, Page 9 of witness statement WITN6966001, W6966 states the following:

"Accessing the medical records regarding my blood transfusion was a very arduous process. Both EIBSS and Dr Wright have not referred to any of the evidence we provided to determine what the source of my infection was. Just because it is a rare genotype, that doesn't mean - conclusively - that I got Hepatitis C from my BCG vaccination. I don't think they've provided enough evidence to show that I didn't receive my infection from the blood transfusion in the UK".

15. Firstly, EIBSS are unable to fully examine the evidence provided, as part of this criticism, without the permission of the applicant, in keeping with Inquiry rules. However, if approval is provided, EIBSS would be able to undertake an administrative review of the application

files, including the application outcomes, in order to be able to check what information was provided to the assessors and appeals panel at each stage of the process.

16. 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.

17. In paragraph 37, Page 9 of witness statement WITN6966001, W6966 states the following:

"I feel like I have been put aside because I have genotype 4. But that has nothing to do with Hepatitis C. I had a blood transfusion in the UK during the relevant period. The crux of it is whilst genotype 4 is rare in the UK, it doesn't mean it doesn't exist. It may have been from a BCG vaccination but equally, it may have been from a blood transfusion. My case should not be dismissed on the basis of a hunch. I feel like they want people to die before their compensation".

18. We have described earlier in this response our process regarding the full assessment of all evidence for initial application assessment, but for completeness we have also described the process relating to the appeals process below.

19. The chairperson arranges and chairs all appeal panel hearings. Prior to the panel hearings, they will review the information provided by the applicant including the application form, any medical records provided, and any support provided in respect of the appeal. Where appropriate, the chair also advises the panel of any matters which may require further direction. At the hearing, the chair will facilitate discussions and seek views from each of the medical members, canvassing views as to the merits of the application and the evidence in support of the appeal. The chair will also ask questions, where relevant and appropriate, particularly in cases where there is little in the way of evidence to support the application or where the prima facie case appears to be weak. These questions and discussions can often lead to discussions around the prevailing circumstances of practices at the time relevant to the application which the applicant often will not know themselves. During discussions, the chair will provide legal and procedural guidance ensuring that the final decision is fair (both from a procedural and evidence-based perspective) and legally

defensible in the event of further challenge. In addition to fully participating in the decision-making process, the chair is also responsible for drafting the decision letter sent to the appellant ensuring that letter is sufficiently clear to assist the applicant in understanding the basis on which the decision was made.

20. On appeal, the appeals panel will examine all available information and evidence provided by an applicant, and it is this information and evidence that is used to determine whether the burden of proof of the application (the balance of probability) is met.
21. To calculate probability, the appeal panel needs to establish whether a case is more likely than not. This means that panel 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.

Section 3: Other

22. NHSBSA are committed to taking equality, diversity and inclusion into account in everything we do. This includes providing and transforming services, employing people, procuring goods and services, developing policies, communicating, and involving people in our work. Our Diversity and inclusion policy can be found on our website at: <https://www.nhsbsa.nhs.uk/our-policies/diversity-and-inclusion>
23. Diversity and Inclusion is included as part of the NHSBSA induction training process, where all employees are directed to our employee hub (intranet), for full information about our Diversity and Inclusion strategy. Additionally it is a requirement for all staff to complete a mandatory Diversity and Inclusion training module, available through our internal staff training platform.
24. The EIBSS service is responsible for the distribution of public monies to beneficiaries and has a duty to beneficiaries that this money, which is dedicated to their welfare and support, is distributed correctly and fairly, in accordance with the scheme rules. NHSBSA is required to formulate procedures that reduce the potential for fraud and claimant error, as well as making sure that payments and applications approved are done so consistently against set criteria. EIBSS asks for evidence to demonstrate eligibility for payments and is unable to reduce this requirement without lessening safeguards around the EIBSS monies.

Statement of Truth

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

Signed

GRO-C

Dated 4 October 2022