

Witness Name: CHRISTOPHER FITZGERALD

Statement No: WITN5261001

Exhibits: None

Dated: 11 February 2021

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF CHRISTOPHER FITZGERALD

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 10 December 2020.

I, Christopher FitzGerald, will say as follows:

Section 1: Introduction

1. Name: Christopher Francis FitzGerald
Address: [GRO-C] London [GRO-C]
Date of Birth: [GRO-C] 1945
Qualifications: MA Oxon (Law): Admitted as Solicitor of the Supreme Court of England and Wales 1971.
2. Career: articulated with Slaughter and May 1967; Partner 1976 -1995; General Counsel/Member of Executive Board at NatWest Group 1995-2000; Chairman of the Financial Services Authority's independent Regulatory Decisions Committee 2001-2004; Financial Reporting Review Panel 2006-2012; non-executive director of various listed and unlisted companies 2001 to date; currently Lead Independent Director of Mimecast Limited (listed on NASDAQ).
3. I was appointed a trustee of The Macfarlane Trust as Chairman elect in January 2007. My tenure as Chairman began in April 2007 and ended in April 2012. My appointment followed an extensive interview process involving an external search organisation and interviews with and election by the then Trustees; as Chairman I had rights of attendance at the meetings (but not formal

membership) of all committees and working groups of the Trust. I held no position at the Eileen Trust but did from time to time represent the Trust at meetings of other Alliance House organisations.

4. As Chairman I led the Board and represented the Trust in its engagements with external bodies including the Department of Health, its Ministers and officials.
5. During my first three months as Chairman elect I had the benefit of extensive briefings from the then Chairman and the Chief Executive as to the charitable objects of the Trust and its functions and aims.
6. The time I devoted to my role as Chairman varied considerably with the intensity of the issues facing the Trust. I was always available to the Chief Executive and other members of the Trust's staff, visited the office at least once a week and prepared for and attended all Board meetings (held quarterly), most meetings with officials at the Department of Health (held ad hoc as required) and various meetings with groups representing the Trust's beneficiaries.
7. See 3. above; as I recall I did not have formal membership of any other bodies relevant to the Inquiry's Terms of Reference.
8. I have not provided evidence to or been involved in any other relevant inquiry, investigation or litigation. I did attend for a day at the Archer Inquiry as an observer.

GRO-C

Section 2: Establishment of the Trusts and Schemes

9. The objects for which the Trust was established were "to relieve those persons suffering from haemophilia who as a result of receiving infected blood products in the United Kingdom are suffering from Acquired Immune Deficiency Syndrome or are infected with human immunodeficiency virus and who are in need of assistance or the needy spouses, parents, children and other dependants of such persons and the needy spouses, parents, children or other dependants of such persons who have died".

The principle underlying the Trust's establishment by the Department of Health was to provide further assistance (lump sum "ex gratia" payments having previously been made to the infected beneficiaries of the Trust) both to infected beneficiaries and those related to and/or dependent on them) but on the basis of 'need' as that term was recognized under charity law, i.e. by the Charity Commission.

10. As a charity, the Trust was regulated by the Charity Commission.
11. The Macfarlane and Eileen Trust Limited was incorporated as part of the implementation of the Government's Response to the Report of the Archer Inquiry. The Response proposed a move away from discretionary to non-discretionary payments for infected individuals. That proposal affected the infected communities both of the Trust and of the Eileen Trust, the charity established by the Department of Health to provide relief, on a basis substantially similar to that applying to the Trust, to those infected with HIV but who were not also haemophiliacs.
12. However non- discretionary purposes were fundamentally incompatible with the charitable purposes of both Trusts. It was in any event the clear intention of the Response to move away, at least so far as infected individuals were concerned, from the concept of charity. MFET was therefore established as the vehicle for making such payments to those qualifying as infected beneficiaries both of the Trust and of the Eileen Trust.
13. MFET was a company incorporated under the Companies Acts and regulated accordingly.

Section 3: The MFT

14. The MFT had been established by the Department of Health with a constitution which provided for a Trustee body composed of
- four Trustees appointed by the Secretary of State for Health (one of whom should be a Haemophilia Reference Centre Director and one a Haemophilia Centre Social Worker)
 - four appointed by the Executive Committee of the Haemophilia Society (two being persons suffering from haemophilia who as a result of receiving blood products in the UK were suffering from AIDS or were infected with HIV ("User Trustees")) and
 - up to four Trustees (two of whom might be "User Trustees") who might be appointed by the Trustees for the time being.

As I recall, by the time my tenure began the Department of Health's appointments included one "Medical Trustee" with non-trustee support in respect of "social work" from the Terrence Higgins Trust. Subject to that I believe the composition of the Board remained as it was established until it was re-organised, in consequence of the implementation of the Government's response to the Archer Inquiry report, shortly after my tenure ended.

15. See 14. above. The Department of Health and the Haemophilia Society were responsible for their own appointments but I believe their processes involved appropriate canvassing and subsequent interviewing of candidates, including in the case of the Haemophilia Society messaging their members regarding any vacancies. I believe the Board's own appointments followed an advertising process and in the case of the Chairman the involvement of a headhunter/search agency.
16. See 15. above.
17. There was never any shortage of appropriate applicants.

18. See 14. above. There were always at least two User Trustees.
19. The original constitution provided for Trustees to serve a maximum term of four years but they were eligible for re-appointment. My recollection is that the practice became for them to serve a maximum of two three year terms with (in theory, if never in practice) the opportunity of a further appointment after a one year gap.
20. The contribution of the User Trustees was considered by me and by all Trustees to be both desirable and helpful in terms of having ready access to the views of and feelings among infected community.
21. Trustees were not remunerated but I believe there was an arrangement by which those (particularly User Trustees) coming from some distance to attend meetings in London could obtain re-imburement for their travelling and (if appropriate) accommodation expenses.
22. Any 'overlap' that there was between the governing bodies of the Alliance House organizations was purely for ease of administration. Each of the organisations had an interest in the efficient operation of the Trust's office which, through its staff, provided the means by which the respective activities of the various organisations were delivered.
23. The proposal to reduce the size of the Trust's Board of Trustees was not for the purpose of reducing the influence of either the Department of Health or the Haemophilia Society. As indicated in 14. above, the re-organisation of the Board came about as a response to the new arrangements put in place following the Archer Report which very substantially reduced the volume and value of the charitable activities of the Trust. The balance of 'influence' among the Board of Trustees remained the same: three appointments instead of four for each of the Department of Health, the Haemophilia Society and the Board.

Structure of the MFT

24. From the outset the Trust, as having by far the largest organizational requirements, had provided the accommodation and all the administrative services required by each of the other Alliance House organizations with an appropriate sharing of costs. I believe the beneficiaries of both charities were fully aware of these arrangements and that all data-sharing, confidentiality and storage issues were appropriately managed.
25. The Caxton Foundation came into being as a further consequence of the substantial reduction in the volume and value of the charitable activities of the Trust. Legal advice from external advisers was that it was not possible within its charitable objects for the Trust to provide services to Caxton in the same way as it had until then to the Eileen Trust, the Skipton Foundation and MFET: even to 'related bodies' that was only permissible on a de minimis basis. For the same reason the Charities Commission would not have permitted an amendment to the Trust's objects to accommodate this.

The advice was that Caxton could have wider powers and each of the Alliance House organizations could reimburse Caxton (as the others had previously reimbursed the Trust) for their fair share (in proportion to their respective administrative requirements) of the overall costs of administration going forward.

26. See 25. Above.
27. The Department of Health had expressed a strong preference that in order to minimize costs all Alliance House organizations should continue to be administered together. Using Caxton for this purpose was decided to be the least undesirable way forward, even though it meant the Trust giving up direct control of the means of delivering its welfare and disbursement policies, not

least because it should result in more funds being available for the delivery of those policies from the new funding arrangements agreed by the Department.

28. The Service Level Agreement only came into effect towards (or after) the end of my tenure but I do not believe it had any adverse effect on the ability of the Trust to support its beneficiary communities.
29. My recollection of the relationship between the various Alliance House organizations is that it worked effectively and harmoniously.
30. My recollection of the working relationship among the Trustees, the Chief Executive and his staff is that it too worked effectively and harmoniously. In particular during the period of the Chief Executive's extended absence on sick leave, I spent more time myself visiting the office in order to ensure that everything there continued to run smoothly. The relationships there were such that they did.
31. Having established the Trust with the right to appoint one third of its Board of Trustees from time to time the Department of Health's role was to provide such funding as it thought appropriate (and affordable within the "usual" Governmental constraints) for the Trust to support the needs of its beneficiaries. The Department did not otherwise have any involvement with and/or give any direction/guidance to the Trust regarding the policies it adopted, the way in which the Trust should discharge its charitable objectives, the kinds of applications from its beneficiaries it should grant or the quantum of any grants/payments it should make.
32. In my view the Trust was sufficiently independent of the Department to be able to deliver its charitable objectives so long as the Department provided the funds required to do that to the fullest extent possible and permissible within the charity law definition of "need".
33. The inadequacy of the Department's funding was a constant subject of submissions by the Trust. See for example: the Trust's submission "Long Term

Survival” in respect of the 2006/07 funding settlement; my letter to the incoming Secretary of State in July 2007 essentially repeating the message that, in the fundamentally changed circumstances of the Trust’s beneficiaries, there was a demanding requirement for substantially increased funding and a renewal of the political commitment given by successive administrations over the years; the Trust’s submission in July 2009 in relation to the implementation of the Ministerial Response to Lord Archer’s Independent Inquiry Report on NHS-Supplied Contaminated Blood and Blood Products; and subsequent submissions made in meetings with Department officials (see the note of the meeting in September 2009 where the Department’s calculations on which it purported to base its delivery of the Ministerial Response were challenged as inaccurate as was its assertion that life assurance was available to infected beneficiaries).

Reserves Policy

33.1 Other matters regarding the Trust, its organization and administration were also raised at regular meetings with Department officials. These were mainly by way of report save for the issue of the Trust’s Reserves Policy. This Policy was a long running subject for debate with Department officials who considered the level of the Trust’s reserves to be unnecessarily high. The Trustees took the position that they could not reduce them in the light of the historical uncertainty as to the continued funding of the Trust.

33.2 By 2003 the Trust had still been operating with whatever funding it could negotiate from the Department from time to time. Then for the first time a three year settlement was agreed. However, when that expired the Department’s response to the Trust’s submission “Long Term Survival” was to say no more than that the rate of funding for 2007 (a roughly 10% increase) would remain effectively the same for 2007/8 and should be the same for 2008/9 but made no commitment beyond that.

33.3 The following statement was therefore made in the Trustees' Report for the year ended 31 March 2007:

“the Trustees have therefore concluded that the risks to the Trust's ability to perform its functions through financial disbursements, both in terms of Government policy and of investment risk, remain such that their policy should continue to be to retain a reserves balance represented by its managed investment fund of around £4million. This is on the basis that £4million now represents roughly one year's expenditure at the current rate of disbursement plus a provision for management costs. In coming to this conclusion the Trustees have regard, inter alia, to reference in the Charity Commission's guidance to 'the need to secure the Trust's liability beyond the immediate future and to provide reliable services for the longer term'.”

33.4 In early 2008 further representations were made by the Trust regarding “the security of DH funding in the context of a change of policy for use of reserves”. In response the Department confirmed both its intention “to continue funding the MFT on an annual basis” and its commitment “to supporting the MFT and to make available a level of funding that is fair and reasonable, taking all the circumstances into account”. In the light of these exchanges the Trustees agreed that it was reasonable for them to reduce the level of the Trust's reserves by increasing the amount of its disbursements beyond the amount of the annual funding being received from the Department. Thereafter the reserves target level became six months' cover for all outgoings (both disbursements to beneficiaries and administration costs) plus a modest buffer against adverse market movements.

33.5 In view of the substantial reduction in the Trust's discretionary outgoings inherent in the implementation of the Government's response to the Archer Inquiry report, the Department once again raised the issue of the Trust's reserves. The Department's initial position was that there should be no need for Departmental funding of discretionary disbursements, which should instead be funded from the reserves until

those had been brought down to the level commensurate with the Trust's policy of six months' forward cover on the basis of the new level of discretionary outgoings inherent in the Government's proposals. This position was unacceptable to the Trust as its reserves were widely held, by both the Trustees and the beneficiary communities themselves, to be already committed to the beneficiaries and should not be used as a lever to justify relieving the Department of its funding obligations. The Department eventually agreed to defer its proposals as to allow time for the Trust to reduce the level of its reserves by enhancing its support to meet the needs of beneficiaries, particularly among the bereaved and their dependants.

34. Guidance was issued to the beneficiary communities early in 2008 as to the explanations/justifications they should give if called for interview by local fraud investigation offices of the Department of Work and Pensions. A meeting took place with DWP officials in September 2008 involving the Trust's Chief Executive and its Benefits Adviser at which the forthcoming implementation of the Employment and Support Allowance (replacing Incapacity Benefits) was discussed in relation to the need to raise awareness of the Trust's communities of care among DWP staff so that they would be recognized when being reviewed. While it was understood that the Trust's beneficiaries could not be given a blanket exemption from assessment, the DWP officials confirmed that the opinion of a beneficiary's Haemophilia Centre Director could be taken into account when an assessment was being made. They also agreed that a note would be posted on the DWP's Intranet about the Trust's history and its beneficiaries for staff reference purposes.

Further guidance was issued in 2009 urging any beneficiary undergoing the medical assessment procedure for work capability to contact the Trust office which was geared up to help them through the process.

35. The Department of Health officials with whom the Trust's relationship was principally conducted during my tenure were Jonathan Stopes-Roe and Brain Bradley and latterly Ailsa Wright, Nannerl Herriott and Rowena Jeacock. I have

referred above (see 33. above) to the regular meetings that took place between the Trust and the Department. The relationship generally worked effectively, although the exchanges (also described in 33. above) regarding the adequacy (or inadequacy) of the Trust's funding and the sufficiency of its reserves made for some long running tensions.

36. The package of measures referred to in Anne Milton's letter to me dated 26 November 2010 were the measures set out in the Statement by the Secretary of State for Health on 10 January 2011.

Section 4: Funding/finances of the MFT

37. I have referred at length above to the processes involved in the Trust receiving funding from the Department of Health.
38. The Trust's input to the Department's budgets for the funding of the Trust is also described above, principally submissions such as those referred to in 33. above and regular meetings of the kind referred to in 34. above.
39. I do not have access to any papers beyond those provided to me by the Inquiry team. However again I have referred above to the various representations made to the Government regarding the funding of the Trust and the way in which, or extent to which, those representations were taken into account. As to MACF00000177_21 please refer to 307.07 in the Minutes of the Board Meeting on 23/07/07. MACF0000012_097 refers to a meeting and follow-up phone call which were part of the representations regarding the implementation of the Archer Report.
40. The Trust was at no time a campaigning body. Others, such as the Haemophilia Society and the group of infected haemophiliacs known as Tainted Blood as well as individual beneficiaries were well placed to exert political pressure by lobbying Members of Parliament and campaigning themselves. However I did take the opportunity provided by the appointment of a new

Secretary of State for Health and a new Minister of State for Public Health Protection to write to the latter in July 2007 with a robust exposition of the needs of the communities of care which the Trust was charged to relieve and the failure of the Department of Health to engage effectively with the Trust's recent submission entitled "Funding Long Term Survival". In October 2009 I also endeavoured to engage with the then Minister of State regarding what the Trust considered to be the inaccuracies in the calculations on which the Government had based the detail of its response to the Archer Inquiry report. Such interventions with their political masters appeared to the Trust to be the most effective and appropriate way of keeping pressure on officials at the Department.

41. All the information regarding the beneficiary population and their needs came from the beneficiaries themselves. The existence and purposes of the Trust were made known through existing support channels, principally the Haemophilia Society and Haemophilia Centres, to primary beneficiaries who applied to be registered and then, in response to a survey provided by the Trust, supplied all relevant information regarding themselves, their dependants and their needs. In no circumstances was any of the personal data of any beneficiary shared outside the Trust. The information provided to the Government was based on the total number of beneficiaries from time to time and estimates (informed by the details provided by individual beneficiaries) of the aggregate of their needs.

42. The Trust was established by the Government in 1988 with an initial capital grant of £10million. By 2003 the Trust was still operating with whatever funding the Department of Health could be persuaded to provide from time to time and no commitment was given as to the future. Then for the first time (as explained in the discussion of the Reserves Policy in 33. above) a three year settlement was agreed but when that expired in 2006 the Department agreed only to a roughly 10% increase in funding for the next three years but again no commitment beyond that. However in 2008, in the context of yet further discussions about the level of the Trust's reserves, the Department did finally give its commitment to continue funding the Trust on an annual basis and "to

make available a level of funding that is fair and reasonable, taking all the circumstances into account". A total amount of £59.5million had been received by the Trust from the Department by way of funding by the end of my tenure in April, 2012 when there were approximately 360 surviving primary beneficiaries and the Trust was also supporting over 200 non-infected beneficiaries, comprising widows, partners and children (including orphans) and carers.

43. As explained in 33. above the inadequacies of the Department's funding was a constant subject of submissions by the Trust. Its policy was that such funding as the Department did provide from time to time should be focused primarily on infected beneficiaries. The Trustees considered, and the Charity Commission agreed, that the "needs" based requirement of its objects extended beyond the relief of the financial needs of primary beneficiaries to include the additional needs arising from their medical conditions. It could be said at times that the funding received from the Department was strictly speaking sufficient to fulfil the specifically limiting requirements (even with that extension) of the Trust's objects under charity law at least so far as the "needs" of primary beneficiaries were concerned. However it was never considered to be adequate to provide as fully for those beneficiaries as the Trustees would have considered appropriate, taking all the circumstances into account. Perhaps even more significantly, it was only with the implementation of the Government's response to the Archer Inquiry report and the consequent change from 2009 to principally non-discretionary (from wholly discretionary) payments to primary beneficiaries that it became possible to provide more meaningfully for the needs of those qualified to be non-infected beneficiaries. Many of those, widows in particular, had lost touch with the Trust and could only be contacted through a programme of national advertising.
44. It was acknowledged by the Department officials in 2008, as an aside in the context of the Reserves Policy discussion referred to in 33. above, that "in the event that the Trust raises funds from other sources, [they] would not see that as a justification for reducing the funding from [the Department]". Until then it had always been understood, albeit implicitly, that any funds received by the Trust (as a wholly-funded Government entity) from other sources except on a

de minimis basis would indeed be "taken into account" by the Department in assessing its funding plans. The only exceptions that I recall involved funding provided for additional individuals to attend meetings of the World Haemophilia Congress.

45. Both regular and ad hoc meetings took place from time to time between the Trust and the Department. I do not recall whether any written Agenda were prepared for such meetings but they were certainly minuted by the Trust and, I believe, by the Department: see for example MACF0000061_104 and MACF0000089_038. I attended all regular meetings, as well as most ad hoc ones, along with the Chief Executive and other members of the Trust's staff. Reports of all such meetings were made at Board meetings of the Trustees who were able to raise issues or concerns at that time. At most meetings discussions centred on the Trust's funding requirements arising from its disbursement policies but also covered from time to time such matters as the Trust's reserves policy, its objects clause and, most significantly during my tenure, implementing the Government's response to the Archer Inquiry report.
46. As indicated in 45. above ad hoc meetings did occur between the Trust and the Department, usually at the request of the Chief Executive and attended by him sometimes accompanied by members of his staff. When matters affecting policy were to be raised I would also attend if I could. In any event all such meetings were reported on to the Trustees at subsequent Board meetings when again they were able to raise any issues or concerns. As I recall there was one informal meeting with the Department which was requested by the Trustee who was then leading the group working on "Funding Long Term Survival" after what was effectively the rejection of their submission. In his subsequent report to the Board he advised that in his view further representations to the Minister or officials were unlikely to succeed.
47. See 44. above. The donation referred to in MACF0000023_002 was from Wilsons who provided legal advice as required by the Trust. The purpose of the donation is specified in those minutes and I have no reason to believe that the wishes of the donor were not fulfilled as agreed.

48. Rowena Jeacock's statement regarding future funding was made against the background of the greatly increased payments to primary beneficiaries of a non-discretionary nature and the ongoing discussions regarding the future of the Trust's reserves. Beneficiaries were kept informed of ongoing developments in the Trust's discretionary disbursement policies through regular newsletters and other direct communications.

Financial management/governance

49. Budgets forecasting disbursements to the communities of care were prepared by the Trust's National Support Services Committee on an ongoing basis and approved by the Board. Such budgets were prepared from information held by the Trust which was kept current with real time updates from individual beneficiaries.
50. Any "spikes" in applications for grants or for increases in regular monthly disbursements which might from time to time have caused such budgets (and in theory therefore the Government's funding) to be exceeded could be covered from the Trust's reserves.
51. See 43. above.
52. See the discussion in 33. above under Reserves Policy.
53. Again see 33. above. The level of reserves was dictated in the view of the Trustees by the need to guard against the risk, in the absence of an ongoing commitment by the Department, that future Government funding would be significantly reduced or even terminated. The initial plan, when appropriate commitments were eventually given by the Department in 2008, to lower the level called for by the policy from 12 months' to six months' forward cover of outgoings led to further discussions regarding increased support for widows and other dependants. The infected community remained the Trust's priority but the change for them after 2009 from wholly discretionary to principally non-

discretionary payments provided the scope for additional support for the non-infected.

As with disbursements to primary beneficiaries such support could be given in the form of either regular payments or one-off grants or a combination of the two but, again as with all payments by the Trust and consistent with its charitable objects, subject to establishing "need".

54. As I have explained, the level of the Trust's reserves had a continuing impact on discussions with the Department with regard to funding. I have also explained the rationale underlying that policy which was reviewed in the light of the commitments eventually made by the Department in 2008. The Trustees decided that the reduction consequently proposed should be calibrated: that is that it would be safe (and still appropriate in the context of the Charity Commission's guidelines) to move to the figure implied by the new level of six rather than 12 months' cover over time, with a target of £3million by the end of the financial year 2008/09 which would be reviewed in the light of the Department's funding plans at that time. That would still make it possible for some increases in financial disbursements to be made out of the reserves during that year.
55. Again I have explained the need to maintain an appropriate level of reserves in light of Trustees' concerns regarding the commitment of the Department to future funding. MACF0000015_003 records the extensive discussion which took place at the Trust's Board meeting on 1 September, 2010 regarding discretionary payments to the non-infected community, particularly widows and their families. The discussion reflected the challenges posed both in making contact with the community and in obtaining the information necessary to establish need. The £12,000 figure agreed was to provide a minimum level of annual net income.
56. The level of the reserves could only be reduced by making disbursements to beneficiaries and such disbursements could only be made within the constraints of the Trust's charitable objects. With the introduction of non-

discretionary payments for primary beneficiaries which for most represented a substantial increase in the total of their previous wholly discretionary packages, establishing "need" became increasingly challenging. It was not possible within the constraints of the Trust's charitable objects simply to share out the reserves among its beneficiaries.

57. The operational costs of the Trust were always kept well within Charity Commission guidelines.
58. The Trust's Employment Affairs Committee kept all aspects of its staff's remuneration under regular review and had full regard to comparables in the charitable sector. The Committee reported appropriately to the Board.

Business Case

59. The 2007 Business Case was developed as part of the Trust's continuing efforts to persuade the Department of Health to review its approach to funding the Trust's objectives and its purpose was to be ready to move quickly after the publication of the Archer Inquiry Report.
60. I believe the decision to appoint Signum Public Sector Consulting was made before the start of my tenure. The details of their fees are set out in MACF00000177_008. I do not recall what amount they received in total but I do recall that these were in any event paid by the Department. In the light of the criticisms of the report made at the Board meeting on 23 July, 2007 by one of their number who had considerable experience of government financing and the NHS, the Trustees decided that the document was inadequate for the Trust's purposes. The criticisms are set out at length in MACF000016_108. I accepted that decision.
61. Accordingly the Business Case was not submitted to the Department.

Pre-Archer Inquiry Funding

62. MACF00000179_013 sets out in some detail the circumstances of the effective rejection by the Department of the submission then developed by the Trust and entitled "Funding Long Term Survival" and refers to that rejection having been made "without the Trustees being advised of any analysis of the detailed evidence and grounds provided". The letter from Dawn Primarolo which is referred to in MACF00000179_013 did indicate a willingness to consider a revised case from the Trust on behalf of its registrants in due course but no indication was given of what aspects of the submission was in need of revision. Following a subsequent "off the record" meeting between the Trustee who was then leading the working group which had made the submission and Department officials it was reported that there was little enthusiasm at the Department for any change but at least some more appreciation of the Trust's aims and objectives.
63. I do not recall any reason being given for the 2007 funding allocation not having included a separate allocation to cover administrative costs.

Post-Archer Funding

64. Lord Archer's Report was widely welcomed as a vitally important step towards providing necessary support for the victims of the Infected Blood calamity in an appropriately respectful manner. The emphasis on non-discretionary support was intended, at least for the infected community, to remove the necessity for beneficiaries to establish that they were in "need" in order to qualify for discretionary support from the Trust. In its April 2009 Newsletter the Trust sought the views of its community of care before making any further submission to the Department of Health. The views of the Haemophilia Society and a response from the Department itself were also awaited. If the Report was, as the Trust saw it, fully implemented, the Trust's purpose would have become limited to providing ad hoc additional grants to both the infected and the non-infected communities on a very much smaller scale.
65. In the event the Government's response did not remove the need for discretionary payments to be made, either to the infected community or to non-

infected beneficiaries. This would leave the Trust in the difficult position of having to continue to establish “need” in order to justify what would become a continuing, albeit more limited, programme of discretionary disbursements.

66. The Trust was not consulted at all in the development of the Government’s response.
67. It must be the case, if the Minister states that to be so, that “all relevant information had been assessed” but in the Trust’s view the Government’s response did not take full or proper account of the level of the Trust’s current payments across the infected beneficiary community, the net value of which the response purported was to be doubled. The effect of that understatement was to leave the Trust in the position of having to continue to assess “need” in order to provide significant supplementary discretionary payments to infected beneficiaries and that was not at all what the Archer Report had envisaged.
68. See 67. above. The Trust’s submission urged that correct account should be taken of the current level of discretionary payments in setting the level of the new non-discretionary payments to infected beneficiaries. The Government’s response instead committed further funding for the provision by the Trust on a discretionary basis of both additional financial support to those infected beneficiaries who would still be in need and much increased support for widows and others of the Trust’s non-infected community of beneficiaries who were also in need and whom inadequate funding had made it so difficult to help in previous years. This meant that the Trust would continue in being both to deliver assistance in these ways and also to maintain the vital non-financial support, such as benefits advice and social events, which the Trust already provided to both communities.
69. Certainty and regularity of payments were certainly in the best interests of all the Trust’s beneficiaries but were not in the Trust’s power to deliver adequately through the arrangements for its funding. it was therefore a matter of widespread disappointment that the Government’s response did not deliver these essentials to the extent that the Archer Report had recommended.

Discretionary Disbursement Policy

70. The Trust was not able within the constraints of its charitable objects to make non-discretionary payments. All policies formulated by the Trust in respect of discretionary payments, including banding levels, were initiated and developed in the Board's National Support Services Committee. Such policies were submitted to the Board for approval along with supporting papers which provided an understanding of their budgetary implications. Such papers were prepared for the Committee by the Chief Executive supported by his Assistant and the Support Services Manager and her Assistant.
71. I do not recall specifically how adjustments to the disability living allowance received by primary beneficiaries were allowed for in setting their regular payments but I am confident that the National Support Services Committee would have ensured that their finances were not adversely impacted.
72. I was naturally made aware of the position regarding regular payments at the time I assumed my role as Chairman. Indeed the lack of funding to support any increase was precisely the reason for the various submissions then made to the Department for additional resources.
73. The figure for household income of £50k gross (roughly equal to £35k net of income tax and National Insurance) was suggested as being the maximum figure which the Trust could reasonably justify in view of the limitation of its charitable objects to provide for "the needy". Even acknowledging that the Charity Commission agreed that "need" could be taken to include needs arising from a primary beneficiary's medical as well as financial condition, the National Support Services Committee proposed and the Board subsequently agreed that it was fair within the constraints of the Trust's objects to limit the proposed new supplementary payments to primary beneficiaries in this way. Indeed one member of the Board who had expressed some hesitation pointed out that a net income of £35k would actually put the recipient into the top 10% of incomes across the whole of the UK population.

74. MACF0000018__086 is a record of the Trustee Development Day held in November 2006 just after I had been appointed a Trustee and before the first Board meeting I attended. The reference to the decline in relative purchasing power of payments was a reflection of the fact that due to the continuing inadequacy of government funding there had been no increase in "Regular Pay" since 2001. Although still inadequate for the Trustees to fulfil their charitable objectives as fully as they considered appropriate, the Trust's relative success in obtaining additional funding in subsequent years meant that at the least Regular Pay could be increased so as to keep pace with rises in the cost of living.

Eileen Trust

75. I do not recall what was the amount of the fee charged by the Trust to MFET but I do certainly recall that the auditors of both organisations were satisfied that it was appropriate

76. The Trust and the Eileen Trust were distinct charitable entities with their own separate constitutions and individual registrations with the Charities Commission. Given that for the sake of convenience and the saving of costs it was responsible for the Eileen Trust's administration and to ensure effective communication at Board level, the Trust had the right to appoint one Trustee to the Board of the Eileen Trust.

Section 5: Identifying beneficiaries for the MFT

77. At the outset the existence of the Trust and the support it could provide would have been known to all potential beneficiaries as they would have come forward themselves in order to claim the "ex gratia" payments made by the Government in the settlement of the claims made by those haemophiliacs who had been treated with infected blood.

78. Thereafter the communication systems of the Trust itself, the Haemophilia Society, the representative groups comprised of those who were victims

themselves and their Haemophilia Reference Centres would together have ensured that at least any further potential beneficiaries who were infected would come forward, including those who had been infected by their partners.

79. The challenge was to ensure that those potential beneficiaries who were not infected would come forward if they needed (and wanted) support. This challenge became particularly demanding with the implementation of the Government's response to the Archer Inquiry report as it then became possible to provide support for the widowed community and their families to a much greater extent than before when such support was limited by funding constraints and priority was given to the primary beneficiary community. I do not know whether this was for the first time but certainly in that context the Trust did engage in a national advertising campaign.
80. I believe that everything that could be done was done to reach potential beneficiaries.
81. See 78. above.

Section 6: Eligibility for the MFT

82. Eligibility for support from the Trust was self-evidenced. A reference from an infected person's doctor or Haemophilia Centre Director or evidence of a relevant familial relationship would be sufficient to bring a potential beneficiary into the Trust's purview. In the case of others who were not infected and were not in a formal relationship with a primary beneficiary (the partner of a deceased primary beneficiary or a carer for example), a follow up visit from the Trust's Support Services Manager would have provided any further assurance needed.
83. Eligibility having been established as I have described in 82. above, the question became whether a potential beneficiary qualified for financial support on the basis of "need" within the constraints of the Trust's charitable objects – as I have described at numerous points in this statement already. The Trust's "Welfare Policy" (incorporating the details of relevant financial conditions from

time to time) – see for example MACF0000124_066 - was certainly made known to beneficiaries through direct communication with the communities of care. It was also available to any beneficiary at any time on application to the Trust office. I believe the Policy would also have been made known to such representative bodies as the Haemophilia Society. The Government had no part in setting any such policy. Any information that was shared with the Department in that connection was for the purpose of illustrating both the limits of the support capable of being provided on the basis of existing funding and also how much more they could do to help beneficiaries, whether by further funding the Trust or themselves by direct non-discretionary payments, through MFET for example.

84. See 83. above. The Trust's Welfare Policy was kept under constant review by the Trust's National Support Services Committee, with changes recommended from time to time being brought to the Board for approval.

85. It was certainly not for me as Chairman to make changes to any policies. I did express my views as I thought appropriate, whether in attendance at National Support Services Committee meetings or at meetings of the Board (of which I was of course a member) but it was for those bodies to make their recommendations or decisions as they saw fit.

86. The "eligibility" requirements of the Eileen Trust (the only other relevant Alliance House organization) were not known to me.

87-93. See 82.to 84 above.

94. The determination whether and to what extent any application from a beneficiary for financial support satisfied the qualifying conditions of the Trust's Welfare Policy would, as I recall, be made in the first instance by the Support Services Manager with reference as necessary to the Chief Executive. In the event of any doubt the application would be considered by the National Support Services Committee. In any event the outcome of every application was determined by the Committee. I do not recall any particular instance of any

further consideration being required but in every such instance the Committee would have referred the matter to the Board for final decision.

I also do not recall any particular concerns being expressed concerning the Trust's processes in this regard, although I have no doubt that there were from time to time degrees of disappointment with the substantive outcomes of particular applications. It was often, and not surprisingly, difficult for some applicants to understand (or accept) the limits imposed by its charitable objects on the Trust's ability to provide financial support.

Section 7: Decisions on substantive applications within the MFT

The process

95-97. See 94. above.

98. The proportion of applications for support granted to those refused is a matter which is no doubt discoverable from the Trust's financial records. I certainly do not have that information available to me.

99. I have to assume that reasons were given to unsuccessful applicants. The details would have been an issue for the National Support Services Committee to decide and for the Trust office to communicate but I certainly do not recall being aware of any instance of any application being referred to the Board where the reasons for its refusal had not been disclosed to the beneficiary.

100. The inadequacy of the Trust's support to widows of infected beneficiaries, whether they had children or not, was a matter of considerable and continuing concern to the Trust. There were instances where widows lost touch with the Trust because they simply preferred to move on and leave the trauma of their past life behind them. However there were many more widows who clearly did fall within the scope of the Trust's charitable objectives but for whom all too often insufficient funds remained after the provision of support (also all too often inadequate) to primary beneficiaries.

MACF0000045_009 drew attention to the problems stemming from this dilemma and to the determination of the Trustees to do whatever they could to alleviate them. I had no special role in advising the Trust (or any other of the Alliance House organisations) on policies for the support of widows. My concerns were the concerns of all the Trustees and it only became possible for those concerns to be addressed properly as part of the implementation of the Government's response to the Archer Inquiry report.

101. See 55. above. I believe the system was introduced and was enhanced as more information as to the number and needs of widows and other non-infected beneficiaries became available.
102. I am sure that any request by the National Support Service Committee that a notice be put on the Trust's website would have been complied with and equally sure that the circumstances in which relevant applications could be made would have been made clear. These are matters which will be apparent from the Trust's records which are no doubt available the Inquiry. They are not available to me.
103. I do recall that, in the interests of speedy determination, some applications were dealt with by the National Support Services Committee by round robin. I was not myself a member of that Committee and do not recall how frequently that happened or whether the system was used for loan as well as one-off grant applications. The members of the Committee, like all others of the Trustees, were dedicated and committed to serving the Trust and the interests of its beneficiaries and I have no doubt that their attention to such applications would have been just as considered and as fair as when they were addressed in Committee meetings. In any event if an application was declined, it would always have been open to the beneficiary to request that the application be reconsidered at the next meeting of the Committee who could, if necessary, have referred the matter to the Board for final decision.

104. The members of the Trust office, in particular the Support Services Manager and her Assistant, were always available to assist beneficiaries, whether in respect of grant applications or with any other matter.
105. The total number of beneficiaries receiving financial assistance during the year ended 31 March 2007 was 584, comprising 371 registrants, 43 infected intimates and 170 non-infected widows and dependants. By the end of my tenure there were approximately 360 surviving primary beneficiaries and the Trust was also supporting over 200 non-infected beneficiaries, comprising widows, partners and children (including orphans) and carers.
106. I believe that each application was considered on its merits with full regard to the "needs" of the beneficiary.
107. The Committee (and the Trustees) would necessarily have had regard to budgetary limitations but I do not believe that there were any instances in which such limitations caused appropriate examples to be declined.
- 108-109. I do not have any information as to the number of successful applications in any year or as to any material fluctuations from year to year in the number of successful applications.
110. I was not a member of the National Support Services Committee but I did from time to time exercise my right (as Chairman of the Board) to attend meetings of the Committee when issues of policy were being reviewed. However, as a matter of principle given that any such application could be referred to the Board for final decision, either I left the meeting before any beneficiary applications for financial support were considered or I took no part in any discussion that ensued. I do not know whether any beneficiary's previous application history was taken into account by the Committee, although I think it likely that such history would have been disclosed by way of background. In any event I believe that the Committee's determination would have been made entirely on the merits of each particular application and consistently with the Trust's welfare policies.

111. The Trust aimed always for the highest standards of consistency and fairness in its assessment of all applications from beneficiaries and I believe was successful in maintaining those standards.

The NSSC

112. See 110. above. There were occasions when I attended meetings of the Committee when relevant matters were being reviewed but any contribution that I might have been able to offer would have been by way of guidance only and carried no more weight or influence than the views of the members of the Committee themselves.

113. I believe meetings of the Committee were held with sufficient frequency as to process applications from beneficiaries promptly and effectively. In any case where greater urgency was required the determination of the Committee could be made by the "round robin" procedure referred to in 103. above.

114. The contribution of the Medical Trustee was of the greatest importance to the Trust, both in terms of its history and the delivery of its continuing objectives. The Medical Trustee was usually therefore present at Board meetings and also many meetings of the National Support Services Committee. However, as appears in MACF0000127_056, I felt that the demands on the time of a busy professional, whether running a medical practice or a Haemophilia Reference Centre, were such that it should not be necessary for the Medical Trustee to review the papers for every application submitted to the National Support Services Committee. The medical circumstances of applicants were generally already known and so in most cases, where applications were based on financial considerations, no additional input from the Medical Trustee was needed to inform the Committee in making its determination.

Payments

115. The detailed information regarding regular and one-off payments to beneficiaries over time is not readily available to me but is to the Inquiry. Analysis of the Trust's annual Financial Statements, in particular the Hon. Treasurer's Reports, for the years ended 31 March 2008 to 2012 should provide the details for the years of my tenure. The total of such payments in each year certainly changed over time but my understanding is that since its inception more than £56million in aggregate had been disbursed by the end of my tenure. As explained at length throughout this statement the amount from time to time available for disbursement varied with the amount of funding provided by the Government and, as also discussed at length, depended upon such commitments as the Government was prepared to give regarding future funding.

As also emphasized repeatedly, the Trust was a charity for the relief of need and was not therefore an appropriate vehicle for non-discretionary lump sum payments. Funds received from the Government in respect of such payments were disbursed through vehicles such as MSPT(2) and MFET. The policies and processes for the making of one-off grants were set out in the Trust's Welfare Policy from time to time. Again see MACF0000124_066.

116. I do not recall that the question of using the services of a debt counsellor arose in any circumstance other than that referred to in MACF000123_023. Credit card debt tends to be a recurring problem and this was clearly a case where the beneficiary would benefit from having assistance not just with paying down current debt but also with managing future liabilities.

Loans made by the MFT

117. It was entirely consistent with the Trust's charitable objectives to make a short-term loan when the "need" of a beneficiary was only of a short-term nature. Such loans were made, as I recall, only very occasionally and care had to be

taken to ensure that the circumstances were such that loan could be repaid without imposing an unmanageable burden on the beneficiary.

118. MACF0000023_049 is an example of just such a situation as is described in 117. above.

119-123. As I recall loans or advances made by the Trust to its beneficiaries were either of the short-term nature described in 117. above or, very occasionally and historically, secured by a second charge on property. It is the latter category (not the former) which is referred to in MACF000012_083. The concern regarding such loans (and of the comparable arrangements, which had also been entered into, also historically and very occasionally, by way of equity sharing) arose from the risks involved both in terms of realisation of the security and of the human costs involved in enforcing recovery. I believe it was for those reasons that it was decided early in my tenure that, as a matter of policy, such secured loans and equity sharing arrangements should no longer be considered as a suitable means of providing support to the community of care.

I do not believe there was any requirement for the services of a financial adviser to be retained or for any particular criterion for the selection of recipients. I had no role at all in the approval of loans to any particular beneficiaries.

124. I do recall that there came a need to take legal advice on the question whether such loans as were made from time to time by the Trust might give rise to the need to register under the Consumer Credit Act. I believe the answer was negative and, if there were any conditions to that advice, I am sure the Trust would have strictly followed them.

127-128. If there were any instances of secured loans being cancelled or any security being discharged, I do not recall them.

Non-financial support

129-130. Non-financial support was available to beneficiaries in various ways and was known to them through all the usual channels. The first port of call would usually have been the Support Services Manager in the Trust office or her Assistant. Contact might also have been made with the Chief Executive himself or his Assistant. The two main sources of support were the Terrence Higgins Trust and the Trust's retained Benefits Adviser. Its Service Agreement with the Terrence Higgins Trust meant that every beneficiary of the Trust who needed support had a dedicated case worker skilled to meet his or her individual needs. I had no part in any of those arrangements.

Section 8: Complaints and appeals

131-132. I do not believe there was any formal appeal procedure. I have explained (see 94. above) that there were opportunities for determinations of the National Support Services Committee to be reconsidered and, if necessary, referred to the Board for final decision.

133. Again I do not recall there being any formal complaints process. Any complaint regarding his staff in the Trust office would have been dealt with by the Chief Executive. Any complaint regarding the Chief Executive might have been referred first to the National Support Services and, if not resolved, would have come to me as Chairman.

134. Any complaints would have been dealt with on a "need to know" basis.

135-138. The only complaint I recall having to deal with myself was that referred to in MACF0000179_016 and MACF0000179_014. That complaint was not against me but against my predecessor as Chairman. My conclusion was that, while the letters my predecessor had written were factually correct, they were written in a manner that was likely to cause offence. I wrote to the beneficiary expressing the Trust's apology.

The draft complaints procedure referred to in MACF0000179_014 was reviewed at the Trust's next following Board meeting – see MACF000016_108 – when it was agreed that a response to the Terrence Higgins Trust would be sent by the Chief Executive on my behalf which would include a reassurance as to the robustness of the Trust's processes regarding confidentiality.

Section 9: Engagement with the beneficiary community

139. The Trust took steps to engage with and understand its various communities of beneficiaries in many ways. Reference has already been made to the provision of benefits advice and access to the Terrence Higgins Trust. Beneficiaries also received the Trust's quarterly newsletters and other direct communications regarding significant developments affecting the work of the Trust for their benefit. The Trust also helped with the provision of social events and engaged directly with representative bodies such as the Partnership Group.

140. The Partnership Group provided a vitally important route through which issues of concern among the beneficiary communities could be expressed to the Trustees. Partnership Group business was an item on every Board Agenda and its Chairman was welcome to speak freely then about any concerns raised. During my tenure it became accepted Board policy that at least one of the Trustees should be in attendance at each Group meeting.

MACF0000016_089 records the minutes of one such meeting. I did not have membership of the Partnership Group nor did any of the other Trustees who from time to time attended meetings of the Group. Such meetings were held at least once a year and, as I recall, I attended most if not all of them. If there were formal agenda, I do not recall seeing them but the meetings involved lively discussions about the issues facing beneficiaries and the work of the Trust. I understood that all male infected beneficiaries were welcome to attend meetings of the Group. I believe there was a similar forum for female infected beneficiaries with which the Partnership Group liaised and with which the Trust office was also in frequent communication.

141. As is apparent from MACF0000012_152 the Group's bulletin Board was removed from the Trust's website due to the level of mis-information and abuse reported to the Trust. As also reported there, Tainted Blood, a campaigning body separate from the Partnership Group, had set up its own forum.
142. I believe the Trust's relationship with its beneficiaries was generally very good, at both Executive and Board level. Most beneficiaries appeared to me to value the support, both financial and non-financial, the Trust was seeking to provide and the efforts made by both the Executive and the Trustees to deliver that support to the greatest extent possible within the constraints of the Trust's charitable objectives. It must be acknowledged, however, that there also many for whom the understandable belief that they were owed unconditional compensation led them to blame the Trust (rather than the Government) for their not receiving that. Ensuring that the Trust was represented at every meeting of the Partnership Group was one way of making its relationship with beneficiaries effective.
143. The acceptance by the Government's response to the Archer Inquiry report that there must be a much greater emphasis (even if it did not accept that it must be the total emphasis) on non-discretionary as opposed to discretionary payments, reduced at least to some extent the dissatisfaction described in 142. Above.

Objects Clause

- 144-145. The context in which the Trust was seeking approval from the Department of Health (as its sponsoring body) for a change in its Objects Clause was, as indicated in MACF0000015_044), the great shift of the emphasis of the Trust's charitable activities, resulting from implementation of the Government's response to the Archer Inquiry report, from infected beneficiaries towards the non-infected community of care. This change in emphasis made it all the more important that the Trust's objects should establish with complete clarity the principle, long followed by the Trust and accepted by the by the Charity Commission, that in relation to any primarily infected beneficiary 'spouses'

included the divorced and the widowed, that “children” included step-children and that “dependants” included infected partners, carers and co-habitants who were not spouses.

146. The law firm Berwin Leighton Paisner was responsible for the drafting of the new Objects Clause.

147. The approval of both the Department of Health and the Charity Commission was obtained before the new clause was adopted by the Trustees.

148. No other amendment to the Objects Clause was made during my tenure (or at any other time).

Section 10: Relationships with other organisations

149-150. I believe the relationship between the Trust and the Haemophilia Society was at all times extremely harmonious and co-operative. The Chief Executives of the two organisations communicated frequently. There were occasions when I also visited the Society's offices.

151. See 14. and 23. above. I do not recall whether any of those appointed from time to time by the Society to the Trust's Board were themselves also trustees of the Society. In any event their involvement in the work of the Society had no impact on the relationship between the two organisations. All Trustees, by whomever appointed, understood that they served the interests and objects of the Trust and not those of their nominators..

152. I do not recall any particular involvement or interaction with the UK Haemophilia Centre Directors Organisation. The Board benefitted greatly from having a Haemophilia Centre Director appointed by the Department of Health as one its Trustees and there would have been other frequent communications between the Trust's office and individual Centres and their Directors. I believe I am right in recalling that it was the East Kent Haemophilia Centre which sponsored the

attendance of one of the Trust's "User Trustees" at a meeting of the World Haemophilia Congress..

153. I do not believe there was any formal relationship between the Trust (or me as Chairman) with Tainted Blood. The fact that the group set up by the Trust to review its long-term funding for the benefit of all its beneficiaries was continuing its work was well known among the Trust's communities of care, including through its User Trustees, the Partnership Group and the Haemophilia Society. As I recall Tainted Blood was a campaigning body, some of whose members were also members of the Partnership Group and I imagine also members of the Society.

154-155. See 152. above.

Section 11: Other

156. I do consider that the Trust was well run during my tenure. Its Trustees and its staff were dedicated at all times to achieving the fullest support possible for all its beneficiaries within the limits of its objectives and crucially within the limits of its funding. I believe the Trust did as much as it could within those limits to achieve its aims and objectives.

157. I have nothing to add.

Statement of Truth

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

Signed

GRO-C

Dated 11 February 2021