

**Witness name: James Wolfe**  
**Statement No: WITN6661001**  
**Exhibits: WITN6661002 - WITN6661010**  
**Dated: 03 September 2021**

## **INFECTED BLOOD INQUIRY**

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### **WRITTEN STATEMENT OF JAMES WOLFE**

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I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 10 March 2021.

I, JAMES WOLFE, will say as follows:

#### **1: Introduction**

1. My name is James Wolfe and my professional address is Caxton House, Tothill Street, London SW1H 9NA. I am employed by the Department for Work and Pensions ('DWP') as Director of the Disability and Housing Support Directorate. I have worked in various roles for DWP and its predecessor, the Department for Social Security, for 22 years. I have led the team responsible for health and disability benefits policy since 2017, and prior to that I was the head of policy for Universal Credit.
2. I confirm that I have not previously provided evidence to, or been involved in, any other inquiries, including parliamentary inquiries, investigations or criminal or civil litigation in relation to human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products.

#### **2: Relationship between the DWP and the Trusts and Schemes**

3. Since 1988, the government has provided financial support for people who were inadvertently infected with blood-borne diseases as a result of the use by the NHS of contaminated blood, or blood products, during the 1970s and 1980s.
4. Since 1988, successive governments have set up a number of schemes to provide support to individuals infected with contaminated blood and (in the case of most schemes) their family members:

- a. **The Macfarlane Trusts** (comprising: the Macfarlane Trust; the Macfarlane (Special Payments) Trust; and the Macfarlane (Special Payments) (No 2) Trust), first established on 22 March 1988 to provide support to people with bleeding disorders infected with HIV (including those co-infected with hepatitis C) and their families, including bereaved family members and dependents.
  - b. **The Eileen Trust**, established on 29 March 1993 to provide support to: (i) people who were not haemophiliacs but who contracted HIV (including those co-infected with hepatitis C) through blood transfusion; and (ii) their families, including bereaved family members and dependents.
  - c. **The Skipton Fund Ltd**, established in 2004 to administer an ex-gratia payment scheme for the benefit of people infected with Hepatitis C; Stage 1: chronic Hepatitis C; Stage 2: cirrhosis, primary liver cancer, b-cell non-Hodgkin lymphoma, and liver transplant.
  - d. **MFET Ltd**, established in 2010 and funded by the (then) Department of Health to support people infected with HIV as a result of treatment by the NHS with blood or blood products.
  - e. **The Caxton Foundation**, established on 28 March 2011 to administer funds provided by the (then) Department of Health to support people infected with only hepatitis C and their families, including bereaved family members and dependents.
5. These schemes were run by charitable organisations which are referred to collectively in this statement as 'the Alliance House Organisations' or 'the AHO'.
6. From 1 November 2017, the AHO ceased to exist. The NHS Business Services Authority ('BSA') took over the administration of a new England Infected Blood Support Scheme, providing financial support to former AHO beneficiaries resident in England.
7. Three other Infected Blood Support Schemes (IBSS) took over the responsibility for administering similar schemes in Wales, Scotland and Northern Ireland. In this statement, the English, Welsh, Scottish and Northern Irish schemes are referred to collectively as 'the IBSS'. The Scottish scheme was introduced in April 2017, and the other schemes were introduced in November 2017.

8. Beneficiaries of the AHO were asked to consent to the transfer of their data to the BSA and the IBSS so that their support payments could continue uninterrupted during and following the transition. The current position is that the BSA and IBSS administer the following four schemes:
  - a. The England Infected Blood Support Scheme;
  - b. The Infected Blood Payment Scheme for Northern Ireland;
  - c. The Wales Infected Blood Support Scheme; and
  - d. The Scottish Infected Blood Support Scheme.

**What, if any, contact did the DWP (including any of its predecessors) have with the Alliance House Organisations in relation to the welfare benefits?**

9. The DWP has the following predecessor departments of relevance:
  - (a) the Department of Health and Social Security ('DHSS') (1968-1988); and
  - (b) the Department of Social Security ('DSS') (1988-2001).
10. In 1988, the DHSS became aware that beneficiaries of the MacFarlane Trust (the only AHO in existence at that time) may have been experiencing difficulties in claiming means tested benefits because of the payments they had received from the Trust. The DHSS provided the MacFarlane Trust with a letter to give to its beneficiaries which stated that they did not need to declare any payments received from the MacFarlane Trust when making a claim for income support; housing benefit; family credit; a social fund payment or help with NHS costs. The letter also stated that, if, for example, the recipient decided to save or invest the payments, the savings or investments did not need to be declared provided that they were kept separate from any money the recipient may have. I exhibit this letter as **WITN6661002**.
11. A similar letter was produced by the DSS for Macfarlane Trust beneficiaries in 1991 (**WITN6661003**) and for Eileen Trust beneficiaries in 1993 (**WITN6661004**). A further letter was issued by Job Centre Plus in 2010 in relation to the Macfarlane and Eileen Trusts and MFET Ltd (**WITN6661005**).
12. I have also seen a draft of a leaflet, dated 2004, to accompany the application form for the Skipton Fund. The draft leaflet included information about social security benefits

although it has not been possible to locate the final version of this document. The draft states:

***“Will I lose other benefits I am entitled to under other Government schemes if I receive payments from the Skipton Fund?”***

*No. Payments made from the Skipton Fund will be disregarded when assessing means tested Social Security benefits and tax charges/credits. They will also be disregarded when you are means tested for housing improvement and repair grants and for residential care charging”.*

**What, if any, ongoing contact does the DWP (including any of its predecessors) have with the Devolved Payment Schemes in relation to welfare benefits?**

13. In this statement ‘Devolved Payment Schemes’ is taken to mean the IBSS.
14. The Department had limited communication with the IBSS when they were first established in relation to: (a) the change in policy (explained below) with respect to the declaration of IBSS payments for benefits purposes; and (b) to ensure that the Schemes’ websites included accurate information on how income and capital payments from the Schemes were to be treated when beneficiaries made a claim for a means-tested benefit. Further detail about the information on these websites is given below.
15. There is no ongoing communication with the IBSS.

**Are regular or ad hoc meetings held between the DWP and the Trusts and Schemes? If so, what is discussed at these meetings and how often do these meetings occur? Please also provide the Inquiry with copies of any relevant meeting minutes**

16. The AHO no longer exist. There are no regular or *ad hoc* meetings held between the DWP and the IBSS.

**Please provide the names of any senior staff in regular contact with the Trusts and Schemes and provide a summary of their responsibilities and how long they have been in their role.**

17. As above, there is no regular contact between the DWP and the IBSS.

**Were (and are) there any issues or difficulties with communication between the DWP and the Trusts and Schemes? If so, what was (and is) the impact of these difficulties and how, if at all, were they (or are they being) resolved?**



18. The DWP has not experienced any issues or difficulties in communicating with the AHO or the IBSS.

### **3: Investigations and assessments by the DWP**

**Please provide a narrative outlining the development of the key legislation, regulation and policies relevant to the consideration of charitable income for the purposes of assessing eligibility for payments made by the DWP. In doing so, please describe any reviews, consultations and reforms undertaken by the DWP relating to beneficiaries of the Trusts and Schemes**

#### ***Legislation***

19. This section addresses the legal framework governing the approach taken to payments from the AHO and the IBSS when assessing income and/or capital for the purpose of means-tested benefits. Non-means tested benefits<sup>1</sup> are not considered here as income or capital are not relevant to assessing eligibility for these benefits.

#### ***Relevant means-tested benefits***

20. Relevant<sup>2</sup> means-tested benefits that have been available since 1988 (when the first AHO was established) are as follows (referred collectively as 'the means-tested benefits'):

(a) Income Support ('IS') governed by the Income Support (General) Regulations 1987;

(b) Housing Benefit ('HB') governed by the Housing Benefit (General) Regulations 1987 and later the Housing Benefit Regulations 2006 and the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006;

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<sup>1</sup> For example: (1) Widow's Pension (1925-2001); (2) Widowed Mother's Allowance (1946-2001); (3) Carer's Allowance (formerly Invalid Care Allowance) (1976-present); (4) Invalidity Benefit (1971-1995); (5) Widow's Bereavement Allowance (1980-2000); (6) Incapacity Benefit (1995-2011); (7) Disability Living Allowance (introduced in 1992); (8) Widowed Parent's Allowance (2001-2017); (9) Bereavement Payment (2001-2017); (10) the Personal Independent Payment (introduced in 2012); (11) Bereavement Support Payment (introduced in 2017); (12) New-Style Employment and Support Allowance (introduced in 2017); and (13) New-Style Jobseeker's Allowance (introduced in 2017).

<sup>2</sup> Supplementary Benefit (the precursor to Income Support) came to an end on 11 April 1988 and is not considered here because of the short period of time that it was in force while AHO payments were being made.

- (c) Family Credit governed by the Family Credit General Regulations 1987;
  - (d) Disability Working Allowance (introduced in 1992) governed by the Disability Working Allowance (General) Regulations 1991;
  - (e) Jobseeker's Allowance ('JSA') (introduced in 1996) governed by the Jobseeker's Allowance Regulations 1996;
  - (f) State Pension Credit ('SPC') (introduced in 2003) governed by the State Pension Credit Regulations 2002;
  - (g) Employment and Support Allowance ('ESA') (introduced in 2008), governed by the Employment and Support Allowance Regulations 2008;
  - (h) Universal Credit ('UC') (introduced in 2013) governed by the Universal Credit Regulations 2013.
21. From 2013, UC was introduced in order to simplify the benefits system by replacing a number of working-age benefits with a single integrated payment. UC has now replaced the following benefits (sometimes referred to as 'Legacy Benefits') for most people: (a) Housing Benefit; (b) income-related ESA; (c) income-based JSA; and (d) Income Support. It is intended that those still in receipt of Legacy Benefits will be transferred over to Universal Credit once the necessary arrangements can be made.
22. I am aware that there are disregard provisions applicable to schemes such as tax credits and Council Tax reduction schemes that are administered by HMRC and the Ministry of Housing, Communities and Local Government (along with the devolved administrations) respectively. I have not addressed those schemes in this statement as they do not fall within the remit of DWP.

***The general duty to provide information and offences for providing false information***

23. At all relevant times: (a) eligibility for the means-tested benefits was subject to statutory income and/or capital thresholds; and (b) claimants of such benefits were subject to duties to provide certain relevant information and not to make false statements or representations for the purposes of a benefits claim. That remains the position.
24. Applicants for means-tested benefits are subject to an obligation to provide such information or evidence in connection with the claim "as may be required" and to notify

any change of circumstance that may affect their entitlement to benefits, see: (a) regulations 7 and 32(1A) of the Social Security (Claims and Payments) Regulations 1987; (b) regulation 86(1) of the Housing Benefit Regulations 2006 and regulation 67(4) of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (previously regulation 73 of the Housing Benefit (General) Regulations 1987); and (c) regulations 37 and 38 of the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013.

25. Section 71(1) of the Social Security Administration Act 1992 ('the 1992 Act') applies to state pension credit and most Legacy Benefits and provides as follows:

*"Where it is determined that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure—*

*(a) a payment has been made in respect of a benefit to which this section applies; or*

*(b) any sum recoverable by or on behalf of the Secretary of State in connection with any such payment has not been recovered,*

*the Secretary of State shall be entitled to recover the amount of any payment which he would not have made or any sum which he would have received but for the misrepresentation or failure to disclose."*

26. The 1992 Act also makes provision for recovery of payments in excess of entitlement in relation to UC, JSA and ESA (section 71ZB); IS (section 74); and Housing Benefit (section 75).
27. Under section 112 of the 1992 Act it is an offence to make a false statement or representation for the purpose of obtaining any benefit or other payment under social security legislation and, since 1997, section 111A makes it an offence to dishonestly make a false statement or representation with a view to obtaining any benefit or other payment under social security legislation. Sections 112 and 111A also create offences arising from the production of false documents for the purpose of a benefits claim.
28. Since 2001, a number of new offences have been created which penalise a failure to give prompt notification of a change in circumstances affecting a person's entitlement to a benefit (ss.111A (1A)-(1E) and 112(1A)-(1D)).

29. Prior to 1992, section 53(1) of the Social Security Act 1986, which was in identical terms to section 71(1) of the 1992 Act, applied to: (a) benefits under the Social Security Act 1975; (b) IS; and (c) Family Credit. By section 55, it was an offence knowingly to make a false statement or representation, or knowingly to furnish a false document, for the purpose of claiming a benefit,

***The policy of disregarding payments from the AHO/IBSS for the purpose of income or capital assessments***

30. Since the creation of the AHO, DWP policy has been to disregard AHO (and now IBSS) payments when assessing income or capital for the purpose of entitlement to means-tested benefits. This is because such payments do not supplement income in the way that means-tested benefits do but rather are intended to support 'infected persons' and their relatives in recognition of the physical, mental and other health needs of those individuals which can lead to additional costs that cannot be met through the benefits system. The disregard policy continues to date and applies to the IBSS.
31. The relevant legislation (as applicable in England<sup>3</sup>) is summarised in Table 1.

**Table 1**

| <b>Benefit</b>                          | <b>Regulations</b>                         | <b>Statutory definition of the AHOs/IBSS</b>                    | <b>Disregard provisions</b>   |
|---|--|---|---|
| <b>Income Support</b><br>(1987-present) | Income Support (General) Regulations 1987  | Reg. 2(10)  | Regs. 42(4ZA), 48(10), 51(3A); Sch. 3 para. 18(5); Sch. 9, paras. 21(2) and 39(1)-(7); Sch. 10, para. 22(1) |
| <b>Housing Benefit</b><br>(1987-2006)   | Housing Benefit (General) Regulations 1987 | Reg. 2(1)<br>(Macfarlane Trusts, Eileen Trust and Skipton Fund) | Regs. 35(3); 40(6); 43(3); 63(9)(b); Sch. 4, para. 34(1);   |

<sup>3</sup> The same provisions are in force in Wales, Scotland and Northern Ireland although, in some cases, are governed by regulations that are specific to those regions.

|  |  |           |  |
|--|--|-----------|--|
|  |  |           | Sch. 5, paras. 23(1) and 32.   |
| <b>Housing Benefit</b><br>(2006-present)                   | Housing Benefit Regulations 2006   | Reg. 2(1) | Regs. 42(7); 46(6); 49(4); 74(9); Sch 5, para 35(1); Sch 6, para 24(1)                                       |
|  | Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 | Reg. 2(1) | Regs. 55(10); Sch 6, para 16(1)  |
| <b>Family Credit</b><br>(1988-2000)                        | Family Credit (General) Regulations 1987   | Reg. 2(1) | Regs. 26(3A); 31(3), 34(3A), Sch.2 para 34; Sch. 3, para. 23   |
| <b>Disability Working Allowance</b><br>(1992-1999)         | Disability Working Allowance (General) Regulations 1991  | Reg. 2(1) | Regs. 29(3A), 34(3) and 37(3A); Sch. 3, para 33(1); Sch. 4, para. 23(1).                                     |
| <b>Jobseeker's Allowance</b><br>(1996-present)             | Jobseeker's Allowance Regulations 1996   | Reg. 1(3) | Regs. 105(10A), 110(10), 113(3A); Sch. 2, para. 17(8); Sch. 7, paras. 22(2) and 41; Sch. 8, paras. 27 and 31 |
| <b>State Pension Credit</b> (2003-present)                 | State Pension Credit Regulations 2002  | Reg. 1(2) | Reg. 174(8) and Sch. 5, para. 15(1)  |
| <b>Employment and Support Allowance</b><br>(2008 -present) | Employment and Support Allowance Regulations 2008  | Reg. 2(1) | Regs. 107(5), 112(8), 115(5); Sch. 6, para. 19(8); Sch. 8, paras. 22(2) and 41; Sch. 9, para 27              |

|   |                                      |                   |         |
|---|--------------------------------------|-------------------|---------|
| <b>Universal Credit</b><br>(2013-present) | Universal Credit Regulations<br>2013 | Reg. 76 (1)(a)(i) | Reg. 76 |
|---|--------------------------------------|-------------------|---------|

***The policy on declaring AHO capital/income (1988-2017)***

32. As noted, the general position with respect to benefits is that applicants must provide such information as may be required in support of their benefit claim. The information that is required is notified to the applicant on the application form and accompanying guidance documents. In most cases, an applicant to whom a statutory 'disregard' with respect to the calculation of income or capital applies will need to provide the required evidence so that the DWP decision maker can decide whether the disregard applies.
33. From the outset, the position with respect to the beneficiaries of payments by the AHO was different because of the perceived stigma associated with disclosing that the person was a recipient of a contaminated blood payment.
34. On 22 March 1988, the Rt Hon. Michael Portillo, the then Parliamentary Under Secretary for State for Health and Social Security, described the policy in the following terms (HC Deb 22 March 1988 vol 130 c306):

*"By virtue of the provisions in the [Income Support (General) Amendment Regulations 1988], any income or capital received from the [MacFarlane] trust will be ignored completely in the assessment of a claimant's entitlement to income support or family credit. I am sure that the House will particularly welcome that. I should add that, through an administrative arrangement, beneficiaries will not be required to inform the Department that they' have received payments. The arrangement has been introduced, exceptionally, to keep confidential the individual's condition. Similar provisions on disregards and confidentiality are in the Housing Benefit (General) Amendment Regulations, to be debated tomorrow."*

35. In the case of Housing Benefit, the policy exempting the recipients of payments from the AHO from the duty to declare or evidence the payments was/is provided for in the relevant Regulations. Thus, from 4 April 1988, the provision imposing a statutory duty to provide 'such information as may be required' under the Housing Benefit (General) Regulations 1987 specifically excluded information relating to payments from the McFarlane Trust (the first AHO) (reg. 73(1), later reg. 73(1A) and (3)). The exemption was later extended to the other organisations within the AHO and was continued under the Housing Benefit Regulations 2006 (reg. 86(2)) and the Housing Benefit (Persons

who have attained the qualifying age for state pension credit) Regulations 2006 (reg. 67(4)).

36. In the case of all other mean-tested benefits, the 'administrative arrangement' referred to in the Minister's statement meant that payments from the AHO were not included in the evidence that was required to be produced in support of a benefit claim. As noted, a number of letters were issued expressly confirming that AHO payments did not need to be declared (see above and Exhibits **WITN6661002 - WITN6661005**).

37.

***The change in policy with respect to declaring income from the IBSS***

38. In 2017, DWP implemented a new policy that required payments from the IBSS (but not the AHO) to be declared for the purpose of claiming means-tested benefits. The reasons for the change in policy are explained in more detail below.
39. This change does not: (a) affect the policy that IBSS payments should be disregarded: the policy of disregard remains in place; or (b) apply to payments received from the AHO although, as these organisations no longer exist, issues with respect to such payments are increasingly rare.
40. This policy is detailed on the DWP Intranet under the heading 'Infected Blood Support Schemes':

*"Declarations and disregards*

***Payments from the following Schemes and Funds do not have to be declared by claimants but if they are, they do not have to be verified and any capital, fluctuating capital and money derived from those payments will be disregarded for benefit purposes by the Decision Maker.***

*Previous Government Funds or Trusts (ceased 2017)*

- *the MacFarlane Trusts*
- *the Fund*
- *the Eileen Trust*
- *the Skipton Fund*
- *the London Bombings Relief Charitable Fund*
- *MFET Limited*
- *Caxton Foundation*

***Payments from the following Schemes do need to be declared by the claimant and verified by the compliance officer, however capital, fluctuating capital and money derived from those payments will be disregarded for benefit purposes by the Decision Maker.***

*Infected Blood Support Schemes (from 2017)*

- *Scottish Infected Blood Support Scheme (SIBSS) introduced from 1st April 2017*
- *England IBSS (from 1st November 2017)*
- *Wales IBSS (from 1st November 2017)*
- *Northern Ireland IBSS (from 1st November 2017)”*

41. The online application form for UC includes a page that informs the applicant that some types of savings, investments and capital do not normally affect entitlement to UC but still need to be declared. The list of assets falling within this category includes “*compensation payments for infection by contaminated blood products*”.

#### ***The 2017 Regulations***

42. As noted, in 2017 the IBSS came into force, replacing the AHO. As a result, the Social Security (Scottish Infected Blood Support Scheme) Regulations 2017 and the Social Security (Infected Blood and Thalidomide) Regulations 2017 (together ‘the 2017 Regulations’) were brought into force, bringing about two important developments in the law.
43. **First**, as with the AHO, DWP’s policy is to disregard payments from the IBSS for the purpose of income and/or capital assessments for means-tested benefits. The new Regulations amended the disregard provisions in Table 1 above to include the new-IBSS, with the exception of: (a) those that are no longer in force; and (b) the Universal Credit Regulations 2013, because Regulation 76 already operated to disregard payments from the IBSS schemes for the purpose of income or capital assessments. Regulation 76 provides (so far as relevant) as follows:

#### ***“Special schemes for compensation etc.***

*76.— (1) This regulation applies where a person receives a payment from a scheme established or approved by the Secretary of State or from a trust established with funds provided by the Secretary of State for the purpose of—*

- (a) providing compensation or support in respect of—*
  - (i) a person having been diagnosed with variant Creutzfeldt-Jacob disease or infected from contaminated blood products...*



*(2) Any such payment, if it is capital, is to be disregarded in the calculation of the person's capital and, if it is income, is to be disregarded in the calculation of the person's income."*

44. Regulation 76 applies to payments from the IBSS and the AHO (although as noted, the latter have now been superseded by the IBSS).
45. **Second**, the statutory exemption to providing information in: (a) regulation 86 of the Housing Benefit Regulations 2006; and (b) regulation 67 of the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006, was amended to remove reference to the Scottish IBSS. This reflects the change in policy that requires recipients of payments under the IBSS to declare those payments when making a benefit claim. Regulations 86 and 67 had never made reference to the English, Welsh and Northern Irish Schemes as these came into force slightly later than the Scottish scheme. There was no need to amend any other benefits legislation to give effect to this new policy because, as noted, in relation to all other benefits the exemption from the requirement to provide information was contained in policy and not in statute.

#### **The statement of Neil Bateman**

#### **Why did the DWP in 2017 decide to require individuals in receipt of payments from the Trusts and Schemes to declare this income?**

46. Only persons who have capital holdings below a certain threshold are eligible for means-tested benefits. Capital-related fraud occurs where a person deliberately claims, or continues to claim, a benefit even though they have capital holdings in excess of the threshold. In fiscal year end 2021, 3.9% of benefit expenditure was overpaid. This amounted to £8.4bn of overpayments. The estimate of the rate of overpayments on UC in fiscal year end 2021 was 14.5%, up from 9.4% in 2020. Capital errors<sup>4</sup> equate to 17% of UC and 17% of benefit expenditure overpayments.
47. DWP is committed to doing all that it can to reduce capital-related fraud and error. As part of its strategy to tackle the problem, in 2011/2012 DWP introduced capital-based

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<sup>4</sup> Concealed or incorrect declaration of the amount of savings in bank or building society accounts, cash, ISA/PEPs, premium bonds, other property interests or shares that exceed the minimum value for capital limits.

Capital official errors include incorrect calculation by DWP staff of the value of declared savings, money and other financial assets available to the claimant, or failure to correctly adjust tariff levels and amend the benefit entitlement due.

data matching to identify means-tested benefit claimants with undeclared capital above the relevant thresholds. Data-matching is a process that allows DWP to cross-refer its data with data held by other bodies to identify discrepancies between the amount of capital that has been declared.

48. Data matching is a valuable tool that allows DWP to identify cases of potential fraud where there is a discrepancy between the information provided to DWP and information held elsewhere. However, following the introduction of the IBSS, it presented potential difficulties. This was because, if the policy on not declaring income under the AHO was extended to the IBSS, there was considered to be a high risk that IBSS recipients would be identified in a data-matching exercise as having more capital than they had declared. That, in turn, would put them at risk of being subject to enforcement action. In order to avoid this, a policy was introduced requiring those payments to be declared.
49. Prior to introducing the policy, DWP considered whether there were any alternatives to requiring the IBSS payments to be declared but none was considered workable:
  - (a) Consideration was given to bulk disclosure by the relevant Scheme Administrator to allow de-selection in the data-matching process, but this would have required the informed consent of all Scheme members some of whom may not have wanted to claim benefits or to share their data owing to its sensitive nature. Furthermore, this would have placed an annual additional administrative burden on the IBSS given there were approximately 3,000 beneficiaries.
  - (b) Consideration was given to requests from stakeholders, including Mr. Bateman, to allow claimants to declare capital without being required to submit evidence. DWP concluded that that it was not possible to draw a distinction between the IBSS recipients and the recipients of other government approved trusts and funds whose capital is also disregarded for benefits purposes, and it was not considered appropriate to exempt all schemes from the requirement to submit evidence of capital given the risk of fraud implicit in such a wide exemption.

**Were the Trusts and Schemes consulted and informed about this change? If not, why not?**

50. DWP worked with the IBSS to ensure that their websites correctly explained that beneficiaries of IBSS who claim means-tested benefits need to declare their capital and/or income to DWP.
51. The Contaminated Blood Working Group (see below) was briefed on the need for payments from the Schemes to be declared before they could be disregarded in order to avoid unnecessary and potentially distressing enquiries being made in the future.

**What progress has been made to produce the leaflet referred to by Mr Bateman at paragraph 55 of his statement? When will the DWP publish this leaflet?**

52. Mr. Bateman refers to a DWP leaflet that he was asked to review in 2019. The leaflet was to be produced and provided by DWP to the IBSS with the intention that they would pass it on to their beneficiaries. The leaflet explains the policy change (explained above) in relation to the requirement to declare capital/income from the IBSS to DWP. One of the purposes of the leaflet is to mitigate any difficulties that might arise if an IBSS beneficiary is invited to an interview under caution or a compliance interview as presentation of the leaflet may assist the interviewer in understanding that the capital originates from an IBSS and thus should be disregarded, which would enable the enquiry to be swiftly concluded.
53. Work on the development of this leaflet was paused in the Spring of 2020 when staff needed to be redeployed to deal with the increased volumes of Universal Credit claims as a result of the COVID-19 pandemic. DWP has recommenced this work and hope to be able to make the new leaflet available to IBSS beneficiaries soon.

**What steps are being taken by the DWP to address the concerns about repeated assessments for PIP and ESA for beneficiaries of the Trusts and Schemes referred to by Mr Bateman at paragraph 70?**

***Personal Independence Payment (PIP)***

54. Personal Independence Payment (PIP) is a benefit for those with a long-term disability or health condition. It is intended to act as a contribution towards the extra costs that arise as a result of a long-term disability or health condition. It replaces Disability Living Allowance for working age claimants. Entitlement to PIP is based on the needs arising from a long-term disability and/or health condition rather than the condition itself.
55. PIP is intended to ensure that benefit awards are made according to a claimant's overall level of need, regardless of their medical condition. People with the same

condition can have very different circumstances, so DWP has developed an assessment which measures the impact of a person's health condition or impairment on their ability to live independently rather than focusing solely on the health condition or impairment itself.

56. The assessment looks at an individual's ability to carry out a series of everyday activities which are fundamental to living an independent life, such as the ability to: (a) prepare, cook and eat food; (b) dress and undress; (c) make budgeting decisions; (d) manage and monitor their health condition; (e) engage with other people; and (f) plan and follow journeys.
57. PIP is paid at one of eight rates depending on need. The duration of an award is based on an individual's circumstances and can vary from nine months to an on-going award with a light touch review at the ten-year point. The purpose of the reviews is to ensure that the benefit continues to reflect the correct level of need for the customer. Wherever possible, the review is a paper-based exercise, and further in-person assessments are only undertaken when further information is needed to complete the review.
58. Regular reviews are a key component of PIP in order to ensure that claimants are receiving the correct level of award.

#### ***Work Capability Assessment (WCA)***

59. The Work Capability Assessment (WCA) is an objective and independent assessment that supports the determination of a Claimant's entitlement to ESA or the relevant measures in UC. WCA reassessments are designed to ensure that claimants continue to receive appropriate financial support given that the impact that a person's health condition or disability has on their ability to work can change over time. The aim of the WCA is to ensure that ESA and UC claimants who can work are supported to do so, and that those who have limited capability for work are provided with the appropriate level of financial and employment-related support. Reassessments are an important part of this process.
60. The WCA was developed in consultation with medical and other experts, including representative groups to ensure it is appropriate for all conditions. The majority of claimants who have a disability or health condition who make a new claim for ESA or UC will require a WCA. Claimants are subject to repeat WCAs throughout their claim

to ensure that they are receiving the correct rate of benefit and the support they need to return to work as their capabilities change.

61. The healthcare professional ('HCP') who carries out the WCA advises the decision maker ('DM') on when an individual should be re-assessed, based on when it is expected that the individual's condition may have changed. While advice on the re-referral point is made by the HCP, it is the DM that makes the decision. Re-referral dates can be between 6 months and 3 years.
62. Wherever possible claimants are assessed on the basis of the available paper evidence, without requiring them to attend an appointment. Only if the HCP is unable to provide advice to the DM on the paper evidence alone, will the claimant be asked to attend an assessment.

### ***The LCWRA and ESA Support Groups***

63. Entitlement to ESA or the relevant measures in UC is based on an individual's capability to work rather than the disability or health condition itself. Claimants are put into one of 3 groups; fit for work (FFW), limited capability for work (LCW), and limited capability for work and work-related activity (LCWRA/ESA Support Group).
64. Individuals placed in the LCWRA/ESA Support Group, are those who have the most severe and lifelong health conditions or disabilities, whose level of function will always mean that they will have limited capability for work and work-related activity, and who are unlikely ever to be able to move into work. These individuals are not routinely reassessed.

### ***Training in relation to haemophilia and HIV/AIDS***

65. DWP has worked with providers to deliver training on haemophilia and haemarthropathy to all HCPs assessing PIP and WCA claimants. This was in place by 15 February 2019. DWP has seen significant improvements in the quality of assessments for these cases. In addition, as explained below, all new entrants to DWP Operational roles undergo a standardised training programme which includes a module designed to improve knowledge and understanding in relation to HIV and AIDS and a 'Condition Insight Report' into HIV has been provided to PIP assessors.
66. DWP notes the comments of Mr Bateman. We are committed to getting every one of these cases right and we will continue to work with our providers to improve the quality of our assessment processes. DWP remains open to communication with stakeholders

to help us ensure that the experience of benefit claimants suffering from HIV and blood disorders is as smooth as possible.

### ***Green Paper***

67. On 20 July 2021, DWP published a Green Paper on health and disability support, focusing on the welfare system. The Green Paper will explore how the welfare system can better meet the needs of disabled people and those with health conditions now and in the future, to help build a system that enables people to live independently and move into work where possible.

68. DWP recognises that there is more to be done to improve the experience of disabled people. We want to consult on how to improve our services to make them better and easier for disabled people to access and use.

### **When did the DWP (including its predecessors) first become aware that beneficiaries were being investigated by the DWP for fraud and compliance action commenced as a result of payments from the Trusts and Schemes?**

69. From at least 2011 (following the introduction of data-matching), DWP became aware that there was a wider issue with respect to AHO and IBSS beneficiaries in receipt of means-tested benefits being investigated for fraud and compliance action, commenced as a result of payments from the schemes. Even prior to 2011, such discrepancies could be identified by DWP and referred for investigation (although this is thought to have occurred less frequently prior to data-matching).

### **Why did the DWP commence these investigations when payments by the Trusts and Schemes were to be disregarded?**

70. As explained above, in most cases benefit claimants are required to provide evidence of any capital so that DWP can assess any amount that is to be disregarded for the purpose of mean-tested benefits. The procedure was different for the recipients of AHO payments who were not required to declare or evidence their AHO income owing to the fact that to do so would also disclose sensitive information about the individual's medical condition.

71. The introduction of capital-based data matching in 2011/2012 enabled DWP to identify discrepancies between the capital declared by a claimant for the purpose of a benefit claim and other sources of information. Where such a discrepancy was identified in relation to an AHO or IBSS recipient, there was often nothing to alert DWP that the cause

of the discrepancy was capital that fell within a disregard. This was a consequence of the policy that exempted AHO recipients from disclosing their payments for the purpose of benefits claims.

### ***Previous guidance***

72. Prior to 2012, the guidance issued to DWP officers was held locally in hard copy. In 2012, the guidance was moved to an electronic format and uploaded onto the intranet and the hard copies were destroyed. The guidance on the intranet has since been updated and the version, as in force prior to 2012, is no longer in existence.
73. I have been informed by officials who worked in fraud and error prior to 2012, that the guidance then in force required the investigating officer to interrogate all DWP systems available, and to consult the Operational Intelligence Unit, to ascertain whether the capital/income had already been declared or could be identified as monies from a source that fell to be disregarded. Such sources would include income from the AHO although I am not aware of whether the guidance specifically referred to the AHO. While beneficiaries of AHO funding were not required to declare capital, some may have chosen to do so when applying for means-tested benefits or in subsequent communications with DWP and, in such cases, the information would be recorded in their records.
74. If the officer was unable to confirm that the capital or income had been declared (or was exempt from declaration) then the claimant would be invited to an Interview Under Caution (IUC). This meant that some AHO beneficiaries were invited to an IUC on the grounds of suspected fraud which required them to disclose to the interviewer the source of the capital. DWP regrets that this was the cause of embarrassment and distress to such claimants.
75. Between 2006 to 2017, DWP 'Investigations Instructions' specified that, in cases where a claimant disclosed that they had received a payment from an AHO, the IUC had to be suspended, and a confidential process was initiated to confirm that the payments fell within the 'disregard' policy. In cases where such confirmation was obtained, the IUC process was terminated and a letter was issued to notify the claimant.

### ***Current Guidance***

76. Fraud and Compliance Investigations are investigated by officers in the Counter Fraud, Compliance and Debt Directorate ('CFCD') within DWP.

77. The Fraud Investigations Staff Guide is publicly available:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799788/fraud-guide-part-1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799788/fraud-guide-part-1.pdf) (Part 1)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/799891/fraud-guide-part-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/799891/fraud-guide-part-2.pdf) (Part 2)

78. The section on 'Capital Investigations' provides as follows (Part 1, pp.131, 135-136, 513-514):

### ***"Capital Investigations***

#### ***00 Introduction***

*1. This section deals with any capital that the claimant has not disclosed to the Department for Work and Pensions (DWP) for the purposes of assessing benefit entitlement.*

*2. The dictionary definition of 'capital' is 'money' and may include money received from:*

*investments*

*property*

*shares*

*interest paid on bank/building society accounts*

*occupational pensions and/or*

*any other income excluding paid employment.*

*3. For the purposes of proceedings, the definition of 'capital' will usually be confined to the explanation given to the term on the benefit claim form/accompanying documentation.*

*4. There is a possibility of fraud if a claimant, or partner, in receipt of an income-based benefit fails to declare to the DWP/Local Authority that they, or any of their dependents, have any of the following:*

*all non-exempted capital, see Government funded trusts and funds...*

*...*

#### ***02 Investigations***

*...*

#### ***General Matching Service referrals***



21. Data is extracted from Department for Work and Pension systems at regular intervals and is then matched against the most up to date [Redacted] savings data held by Database & Matching Service.

22. General Matching Service (GMS) referrals are automatically downloaded onto Fraud Referral and Intervention Management System (FRAIMS).

23. Before approaching the claimant to interview them regarding the alleged undeclared capital, further intelligence may have to be undertaken. Case papers must be checked and consideration given to:

when the data was matched

whether the claimant was in receipt of benefit

whether the claimant has received capital from any Government funded Trusts and Funds which may be exempt

whether the claimant has previously declared the capital

...

### **03 Government funded Trusts and Funds**

Payments received from Government funded Trusts and Funds do not have to be declared and may be disregarded for benefit purposes. This section relates to payments made by the following Trusts/Funds:

the Macfarlane Trusts

the Fund

the Eileen Trust

the Skipton Fund

the London Bombings Relief Charitable Fund

MFET Limited

Caxton Foundation.

2. See Decision Makers Guide (DMG) Volume 5 Chapter 29 ... paragraphs 29418 et seq, for further information regarding payments from these funds and disregards.

3. Payments from these organisations may be identifiable at the evidence gathering stage of an investigation. However, if the source of the capital/payment is not identifiable, the claimant may be invited to attend an Interview Under Caution (IUC). See Arranging appointments.

...

### **Interview under Caution**

...

### **Government funded Trusts and Funds**

*Payments received because of a Government funded Trust or Fund do not have to be declared and may be disregarded for benefit purposes. This relates to payments made from the following Trusts or Funds:*

*the MacFarlane Trusts*

*the Fund*

*the Eileen Trust*

*the Skipton Fund*

*the London Bombings Relief Charitable Fund*

*MFET Limited*

*Caxton Foundation*

*Such payments may be identifiable at the evidence gathering stage of an investigation. However, if the source of the capital or payment is not identifiable, the claimant may be invited to attend an IUC.*

### **Payment details provided or obtained**

*If the claimant is in receipt of a Government funded Trust or Fund and is invited to an IUC, they may contact the appropriate organisation. The Trust or Fund will obtain the claimant's authority to disclose information and will notify the department of any such payments.*

*[Redacted] Operational Intelligence Unit (OIU) will act as a post box for the receipt of payment details from:*

*the MacFarlane Trusts*

*the Eileen Trust*

*the Skipton Fund*

*MFET Limited*

*Caxton Foundation*

**Note:** *MacFarlane Trust can only supply information from 2004 onwards.*

*Payment details will be entered on to a consent form and sent to a designated inbox at [Redacted] OIU prior to being forwarded electronically to the relevant investigator for action. It will not be the responsibility of the OIU to check completion of any consent form provided.*

*On receipt of payment details provided by the Trust or Fund, a decision will be required from the Decision Maker (DM) and the investigator must refer to the DM for advice or a decision as to whether the payment should be disregarded for*

*benefit purposes. See Decision Makers Guide (DMG) Volume 5 Chapter 29 (link is external), paragraphs 29418 et seq, for further information regarding payments and disregards. Alternatively, they should seek advice from a Decision Maker.*

*Where applicable, the Decision Maker (DM) must note the claim or Jobseekers Allowance Payment System or Income Support Computer System (JSAPS or ISCS) notepad that 'capital of X amount at (date) is to be disregarded.*

***Payment details not provided***

*If the claimant attends the IUC without contacting the appropriate organisation, the investigator must be sensitive in their questioning where capital is identified as a result of a Trust or Fund named above. The IUC must be terminated where payment details are required to establish any payment disregard.*

*All payment enquiries should be directed by e-mail to the Single Point Of Contact (SPOC):*

*[Redacted]*

*Counter Fraud and Compliance Directorate*

*[Redacted]. (40 \* Personal data (absolute exemption in relation only to information that is the personal data of the applicant)*

*The Benefit Delivery Specialist Operations Team will obtain information about payments from other organisations if necessary."*

79. The same guidance is also provided in 'CFCD Instructions' which are available on the staff intranet.

***Compliance***

80. The compliance process was introduced in April 2006. Where a case is referred to compliance, the claimant will be interviewed (but not under caution) and questioned about any allegations of non-compliance with the benefits process. Following the interview, the claimant may be reminded of their obligations whilst in receipt of benefits, advised as to future conduct, and put on notice as to any action that may be taken with respect to their claim (which might include civil penalties or the recovery of over-payments). Since January 2020, compliance interviews are conducted almost exclusively by telephone.
81. DWP is aware that AHO or IBSS recipients have been invited to compliance interviews for the same reasons as they were invited to interviews under caution, namely a discrepancy was identified between their capital and the amount declared/not declared to DWP.

82. As noted, the DWP intranet provides staff guidance in relation to payments from the AHO (which do not need to be declared) and payments by the IBSS (which do need to be declared).
83. Guidance issued to the DWP Compliance Team, which applies where undeclared capital is being investigated, requires a claimant to be invited to interview using Form CCT1 (previously Form FESL 2). The letter states:

*“Certain trusts and charitable payments are not taken into account for benefit purposes and if you get one of these we need to know as you may not need to attend the interview”.*

84. DWP has updated all relevant Compliance forms to include wording in relation to Government trusts and funds. Prior to this, the Form CCT1 (and its predecessor Form FESL 2) advised the claimant that they may need a record of bank statements and other financial information for use during the telephone call but did not specifically refer to the AHO or the IBSS.

#### **Additional support to recipients of funding from the AHO/IBSS**

85. DWP has taken several steps to provide additional support to recipients of funding from the AHO/IBSS.

##### ***Single Point of Contact (SPOC)***

86. From approximately 2006, a single point of contact ('SPOC') for Fraud Investigations was established in the DWP Operational Intelligence Unit. If a claimant stated prior to, or during, an IUC that their undeclared capital was from one of the AHO, the SPOC would contact the relevant AHO. The AHO would then obtain the consent of the relevant claimant to disclose to DWP information on the payments they had made to ensure the amount was disregarded. The purpose of this was to ensure that any concerns about the source of the person's capital could be resolved quickly and sensitively.
87. This arrangement ceased in 2017 when the AHO ceased to exist. A similar arrangement does not exist with IBSS as claimants are required to declare IBSS payments to DWP.
88. The letters inviting claimants to attend IUC were amended in December 2017 to explain that certain Government funded trust or charity payments may be disregarded and claimants were provided with a number to contact at DWP, if they believed they were in receipt of such a payment to ensure that the issue could be resolved quickly and

sensitively. The relevant funds were not named on the letter to prevent potential fraudsters from claiming that capital holdings were also from a source that could be disregarded. As noted, the invitation to a compliance review has now also been amended to include the direction.

### ***Undeclared Capital***

89. CFCD are in the process of implementing additional guidance applicable to the compliance and investigation process in cases involving undeclared capital. The new guidance will provide that, where a person is identified as having undeclared capital and it is known that they have had any AHO/IBSS payments either declared or not, all their capital will be treated as being from the AHO/IBSS and will be fully disregarded for means tested benefits purposes, unless there is good reason to believe that the individual has received capital from another source. It is hoped that this new guidance will be implemented by the end of July 2021.

### ***UC Application Process***

90. The online application process for UC is currently being updated. The new system, which will be in place shortly, will direct claimants who declare a certain level of capital to a page that will ask them if any of this income comes from a compensation payment. The answers given will be saved on the claimant's benefit notes which will be available to Investigators and Compliance officers who will then make a thorough search of all relevant benefit notes and recorded details as stated in the relevant CFCD Instructions. Consideration is also being given to making it easier for UC claimants to retrospectively declare payments from the AHO (if they wish to do so) to avoid data-matching issues.

### ***The Contaminated Blood Working Group***

91. In order to increase engagement with those affected by contaminated blood, DWP set up a Working Group in 2017 ('the Working Group'). I chair the Working Group in my role as Director of the Disability and Housing Support Directorate. Its primary role is to provide a collaborative and mutually beneficial forum in which DWP and individuals representing people affected by contaminated blood can discuss relevant issues.
92. At the Working Group's initial meeting on 31 October 2017, it was explained that payments from the AHO and IBSS schemes should not be taken into account as income or capital when calculating entitlement to ESA. Working Group members referred to the change in policy that required these payments to be disclosed during the application

process and raised the concern that several people had had issues where DWP staff were unaware that these payments should be disregarded. It was clarified that guidance is in place, and new regulations were recently laid to ensure payments from the four new schemes for England, Scotland, Wales and Northern Ireland, are also disregarded when calculating entitlement to ESA and certain other means-tested benefits.

93. On 31 January 2018, the Working Group discussed the new requirements that *ex-gratia* payments be declared so that they can be disregarded while avoiding the risk of potentially distressing enquiries being made in the future. There was a discussion of the reasons why the policy had been adopted, and the data protection issues associated with the BSA disclosing records of payments directly to DWP.
94. At subsequent meetings, the Working Group continued to discuss the approach to be taken to *ex-gratia* payments and the relevance of the information in the new IUC letter that enables claimants to quickly flag to DWP that they are the recipient of an *ex-gratia* payment.

***Publicly available information***

95. DWP has worked with the BSA (England) and the Wales Infected Blood Support Scheme to ensure that information on their websites is accurate: making clear that, while these payments are fully disregarded for means-tested benefits purposes, they need to be declared to DWP. NHS National Services Scotland and the Regional Business Services Organisation (Northern Ireland) have already provided this information on their websites.
96. In addition, DWP worked to ensure that websites addressing this issue correctly detailed how payments were to be disregarded when applying for means-tested benefits. All of the websites now contain the following information:

*“Payments from the scheme do not count when applying for any of the following means-tested benefits from the Department for Work and Pensions (DWP):*

- *Income support.*
- *Jobseeker’s Allowance (JSA).*
- *State Pension Credit.*
- *Housing Benefit.*
- *Employment and Support Allowance (ESA).*

- *Universal Credit.*

*This means that your income and any grants from the scheme are not taken into account when DWP assesses your application. You're still required to declare to DWP any payments that you receive from the scheme. If you do not tell DWP about payments received from the scheme, they will not be able to determine what money they should ignore. This might mean any benefits that depend on the amount of money you have could be affected."*

97. DWP recognises that, despite being required to declare IBSS payments, claimants may still have undeclared capital from the AHO which could result in fraud or compliance enquiries being made to establish the source of any unidentified capital. There are very few such cases per year of which DWP is aware and it is hoped that the new compliance/IUC letters, and the relevant guidance, will result in any such cases being resolved quickly and with the minimum of distress to the individual. As noted, DWP is currently reviewing whether the UC application process can be updated to make it easier for individuals to retrospectively declare payments if they choose to do so.

**How many Interviews under Caution or Compliance Interviews have been conducted by the DWP in relation to income received by the Trusts and Schemes?**

98. It has not been possible to identify how many IUC or Compliance Interviews have been conducted by DWP in relation to income received by the Trusts and Schemes. DWP stores information relating to IUC and compliance interviews on the Fraud Referral and Interventions Management System ('FRAIMS'). While interviews relating to suspected undeclared capital are recorded on the system as "Undeclared Income/Capital/Living Beyond Means", there are thousands of such cases every year and no sub-category for AHO/IBSS cases.

**Please outline how the appeals procedure for welfare benefits operates. How many appeals have been commenced in response to compliance action by the DWP, including how many appeals have been filed in the First-tier Tribunal?**

***Appeals procedure.***

99. DWP's regulatory powers are contained in:

- (a) the Social Security Act 1998;
- (b) the Social Security (Decisions and Appeals) Regulations 1999;

(c) the Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001;

(d) the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013; and

(e) the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008.

100. A decision made on a claim or an application to adjust an award, a changed award, or a refusal of benefit. These are known as 'outcome decisions'. There are two stages to challenging an outcome decision. First, the decision must be disputed through the 'Mandatory Reconsideration' process. If the individual remains unsatisfied following that process, the decision can be appealed to an independent tribunal (administered by Her Majesty's Courts and Tribunals Service).

***Mandatory Reconsideration and housing benefit reviews***

101. The Mandatory Reconsideration process allows the claimant to apply to the decision-maker to consider revising the decision under dispute. The Mandatory Reconsideration Rules allow for a decision to be disputed on any grounds provided an application for reconsideration is submitted within one month of the date of the original decision. The application may be made verbally or in writing.

102. The time limit for requesting a reconsideration can be extended by a further 12 months in 'special circumstances' (Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance Regulations 2013, reg. 6; Social Security (Decisions and Appeals) Regulations 1999, reg 4). If the reason for the late application is accepted, then the time for making the application is extended and the application is treated as having been made in time. In certain prescribed circumstances, an 'any time' application can be made. An example of this situation is where it is accepted that a decision is wrong because of official DWP error.

103. When re-considering the application, the decision maker may, as necessary, contact the claimant to discuss their dispute and to give them the opportunity to provide further evidence as necessary. The decision, whether it is revised or not, is notified to the claimant by a Mandatory Reconsideration Notice (MRN).



104. If a decision is revised, the change is effective from the date of the original decision (or earlier if that date itself was incorrect).
105. Where a decision maker does not revise the original decision, the claimant has one month from the date of refusal in which to lodge an appeal, i.e. against the original decision; the refusal itself is not a separate decision. The MRN explains that the decision can be appealed to an independent tribunal and how to do that.
106. The Mandatory Reconsideration process does not apply to Housing Benefit decisions; in those cases an application for review/appeal is made in the first instance to the relevant local authority. As with other benefits, if the decision maker upholds their decision there is a right of appeal to a tribunal.

### ***Appeals***

107. An appeal is lodged directly with Her Majesty's Courts and Tribunals Service by the claimant. The claimant has one month from the date of notification of the MRN/housing benefit review decision to do this (this period can be extended by 12 months for 'special circumstances.') On receipt of an appeal, which must be in writing (and for some benefits can now be made online), the Tribunals Service will tell DWP (or, where the appeal relates to Housing Benefit, the relevant local authority) that an appeal has been received and ask for the appeal response, that is, the Secretary of State's detailed reasoning for her decision, to be provided within 28 days.
108. In the case of DWP appeals, before drafting the response, the appeals writer will first check the accuracy of the decision – effectively another reconsideration. Where the decision-maker is able to revise the decision to the claimant's advantage, giving them all that they could be awarded by the tribunal, the decision would be notified to the claimant and the appeal would lapse. (If the revision would only give the claimant part of what is being sought, the claimant would first be asked whether they would accept this change, which itself would be appealable, or prefer their appeal to continue as lodged).
109. Where the decision is revised but it is not more advantageous to the claimant, the claimant has a month from the date of notification of the revised decision to make further representations. If this doesn't change anything the appeal is processed against the revised decision.

110. All benefit appeals are heard by the First-tier Tribunal. The claimant has a choice of attending their hearing or allowing the appeal to be heard on the papers alone. During the pandemic, telephone and video conference hearings have also been used. The composition of the tribunal is determined by the benefit under dispute, e.g. in the main a UC appeal would be heard by a judge sitting alone; whereas an ESA appeal would be heard by a judge and doctor; and a PIP appeal by a judge, doctor and disability specialist. Claimants can of course be represented. The Secretary of State herself, in addition to her written response, may also be represented in person by a Presenting Officer. Hearings are inquisitorial not adversarial.
111. The tribunal's decision can be further appealed to the Upper Tribunal (and beyond) on a point of law by either party.
112. It is not possible to determine how many appeals have been commenced in response to compliance action by the DWP or local authorities for AHO/IBSS recipients. So far as DWP is concerned, the data for appeals related to capital is not broken down to this level and we are not able to give an answer to this question.

**What, if any, ongoing training, advice and guidance is provided to DWP staff regarding payments made to beneficiaries of the Trusts and Schemes? Please provide the Inquiry copies of any relevant circulars and guidance provided to staff**

113. Staff guidance is contained in publicly available documents such as the Decision Maker's Guide and the Advice for Decision-Makers as well as internal guidance available on the DWP staff intranet. As this guidance is often updated, I have provided the links to the online version rather than a hard copy so that the Inquiry can access the most recent version.

**114.        *Legacy Published Guidance***

***The Adjudication Officers' Guide ('AOG') (1988-1999)***

115. Guidance was provided in the Adjudication Officers' Guide ('AOG') which was first published in 1988 and was available in public libraries on request, and in central locations such as the British Library. The AOG, and its successors, were also available in consumer rights organisations such as the Citizens Advice Bureau. DWP no longer holds a copy of the AOG, but a copy can still be obtained from the National Archives.

***The Decision Maker's Guide ('DMG') (1999-present)***

116. From 1999, the guidance in the AOG was replaced by the Decision Maker's Guide ('DMG') in a phased programme while the functions of benefits Adjudication Officers were transferred to the Secretary of State as a result of the Social Security Act 1998. Clerical copies of the DMG were available in public libraries on request, and, since 1 June 2013, it has been available online:

<https://www.gov.uk/government/collections/decision-makers-guide-staff-guide>.

### **Staff Guidance**

117. From March 2017, DWP and local authority staff were informed about the disregard provisions applicable to the new IBSS. In relation to Housing Benefit, Circular HB/G3/2017 was issued on 20 March 2017 with respect to the SIBSS and, as noted, Circular HB A9/2017 was issued on 19 October 2017 and reflected the changes made by the 2017 Regulations in relation to all the new IBSS.
118. In the case of all other income-related benefits, information about the disregard provisions as applicable to the SIBSS was disseminated via ADM and DMG Memos in March 2017: (a) ADM/AJ/17; and (b) DMG/AJ/17.
119. On 9 July 2018, an 'Operations Line Managers' Update ('OLMU') was issued to operational Line Managers which included the information about the disregards for the new schemes and stated that *"unlike the former schemes, claimants now have to declare payments from the new schemes before they can be disregarded"*. I exhibit the relevant OLMU as **WITN6661006**. The OLMU is a weekly internal publication issued by DWP Internal Communications to line managers across DWP Operations which includes staff who make decisions on benefits claims as well as staff involved in enforcement investigations. Information contained in an OMLU is passed on to operational staff by their line managers in face-to-face team meetings as well as by email where appropriate.
120. Further ADM and DMG Memos were issued to reflect the changes in the 2017 Regulations: (a) DMG/20/17 (September 2017); and (b) ADM/AJ/17 (October 2017).

### **Current Published Guidance**

121. Guidance in relation to 'Legacy benefits' is contained in the DMG. For historical reasons the DMG has a 'Common Section' and then individual volumes containing guidance for individual benefits which each contain a section for 'Income other than

Earnings' and 'Capital'. Guidance in relation to the policy of disregard as it applies to payments from the AHO and IBSS is contained in the following chapters of the DMG:

- (a) Chapter 28 (Income other than earnings for JSA and Income Support), paras. 28450 – 28491

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932374/dmgch28.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932374/dmgch28.pdf)

- (b) Chapter 29 (Capital for JSA and Income Support), paras. 29446-29467

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932375/dmgch29.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932375/dmgch29.pdf)

- (c) Chapter 51 (Income other than earnings for ESA), paras. 51341-51389

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932377/dmgch51.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932377/dmgch51.pdf)

- (d) Chapter 52 (Capital for ESA), paras. 51447-52470

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932378/dmgch52.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932378/dmgch52.pdf)

- (e) Chapter 84 (Deemed weekly income from capital for State Pension Credit), paras. 84475-84498

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932381/dmgch84.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932381/dmgch84.pdf)

- (f) Chapter 85 (Income other than earnings for State Pension Credit), paras. 85345, 85245 and 85370

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/945910/dmgch85.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945910/dmgch85.pdf)

### ***Advice for Decision Makers (2013-present)***

- 122. Since 2013, the Advice for Decision Makers ('ADM') has replicated the DMG for Universal Credit and can be found at:

<https://www.gov.uk/government/publications/advice-for-decision-making-staff-guide>.

123. The relevant guidance with respect to the disregard policy as it applies to Universal Credit is contained in Chapter H2 of the ADM (Capital Disregards), para. 2051. Chapter H2 can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/932331/admh2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932331/admh2.pdf)

124. ***Guidance in relation to Housing Benefit***

125. DWP is responsible for Housing Benefit policy, but the benefit itself is administered by local authorities. DWP produces guidance for local authority decision-makers in the form of the Housing Benefit Guidance Manual and Housing Benefit 'A Circulars' which are publicly available:

<https://www.gov.uk/government/collections/housing-benefit-and-council-tax-benefit-manual>

126. The current guidance on capital disregards is reflected in Circular HB A9/2017: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/652798/a9-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/652798/a9-2017.pdf)

***DWP Intranet guidance***

127. In addition to the published guidance for decision-makers, guidance in relation to enforcement action is also contained on the staff intranet. I exhibit relevant extracts from the current Investigations and Instructions Manual as **WITN6661007 - WITN6661010**.

**Guidance and Training for DWP Staff: long-term Impact of HIV/Hepatitis C from Blood and Blood Products**

128. As noted, since 2019, DWP has worked with providers to deliver training on haemophilia and haemarthropathy to all HCPs assessing PIP, ESA and UC claimants.

129. From 2018, all new entrants to DWP Operational roles (which includes all staff making decisions on benefits claims or working in an enforcement role) undergo a standardised training programme in the form of a 'Fundamental Learning Journey'. This includes training under the heading 'Vulnerable Customers and Complex Needs'. Topic 18 of this heading is entitled "HIV & AIDS" and at the end of this module staff can:

- (a) separate the myths and facts around HIV;
- (b) identify the differences between HIV and AIDS;
- (c) describe the effects of living with HIV;
- (d) describe the impact of HIV on a person's ability to work;
- (e) explain disclosure and confidentiality;
- (f) identify what support DWP can offer.

130. The purpose of this training programme is to ensure that operational staff have an appropriate level of skill and knowledge to enable them to identify the individual circumstances and/or needs relevant to the customer and benefit in question. This includes knowing how to access to the appropriate guidance and support within DWP, as well as being able to signpost customers to the support that is available from outside organisations.

131. For enforcement staff, there is a topic on 'Preparing for Interviews under Caution' that covers: (a) the investigators job role; (b) satisfactory standards of evidence; and (c) the importance of preparing thoroughly in advance of the interview under caution. The training includes real-life scenarios selected from current caseloads. This module provides staff with the generic skills and knowledge to enable them to identify individual circumstances/needs relevant to the customer and benefit in question.

132. In November 2019, a 'Condition Insight Report on HIV' containing clinical information in relation to HIV was produced by DWP to provide to PIP assessors to inform their approach to PIP assessments.

**Please provide any other information and/or views you may have that are relevant to the Inquiry's Terms of Reference**

133. I have addressed all of the issues of relevance above.

### **STATEMENT OF TRUTH**

This statement has been prepared following discussions taking place by email and telephone at a time when social isolation was in force.

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**Signed:**

**GRO-C**

**Print name: James Wolfe**

**Date: 3 September 2021**