**INFECTED BLOOD INQUIRY**

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**SECOND WRITTEN STATEMENT OF JAMES WOLFE**

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I provide this statement in response to a request under Rule 9(1) and (2) of the Inquiry Rules 2006 dated 13 September 2022.

I, James Wolfe, Director for Disability and Health Support at the Department for Work and Pensions, will say as follows:

## Section 1: Comments on potential recommendations of the Inquiry

**The Inquiry has heard evidence from many of those infected with HIV and/or hepatitis C by blood and blood products about the indignity and harm caused by having to repeatedly tell their stories in order to access services and benefits. Please explain the circumstances in which the Severe Conditions Guidance is used and comment on the applicability of the guidance to people with life-long conditions consequent to the use of infected blood and blood products.**

1. It may help the Inquiry if I firstly explain some background and context addressing how and why claimants for benefits are assessed. I also refer the Inquiry to my statement of 3 September 2021 from paragraph 54, where I address concerns about claimants undergoing repeated assessments for Personal Independence Payment (PIP) and Employment and Support Allowance (ESA).

2. The first thing to note is that it is a fundamental policy and design principle for both ESA and PIP that entitlement is based on an assessment of the individual's functional capability for daily living or mobility activities (for PIP) or for work (for ESA and Universal Credit (UC)) arising from an individual's health condition or disability, rather than on medical diagnosis alone. This approach recognises that people suffering from the same condition can have very different capabilities and also that people's conditions and capabilities can change for the worse or for the better. Assessments are a vital tool to help determine the correct level of financial support for individuals depending on their level of need.

3. For the purposes of the ESA/UC health top up a Work Capability Assessment (WCA) could result in an outcome that the claimant:

   - Is Fit for Work (FFW - claimant is no longer entitled to ESA or the additional health element of UC);
   - Has Limited Capability to Work (LCW – claimant is entitled to ESA and/or gains access to the work allowance in UC and is required to attend work-focussed interviews and participate in work-related activity). These individuals are placed in the Work-Related Activity Group (WRAG) or Work Preparation in UC; or
   - Has Limited Capability for Work and Work-Related Activity (LCWRA – claimant is entitled to a higher rate of benefit and not required to attend work-focussed interviews or participate in work-related activity). These individuals are placed in the Support Group (SG).

   For PIP the result of the assessment and consequential decision can be an award at one of eight rates, depending on the level of daily living or mobility need, or a nil entitlement to the benefit.

4. In applying for ESA or PIP we ask claimants to provide any evidence they already hold about their condition and how that impacts on their needs. We also ask claimants to complete a questionnaire (PIP2 or ESA50/UC50) which allows them to express, in their own words, how their condition or conditions impact

on them on a day-to-day basis. For UC, the assessment determines access to additional UC, whereas for PIP and ESA, it determines eligibility.

5. Once a claim and the supporting evidence is received, including the relevant claimant questionnaire, we pass those details to one of our assessment providers, the Centre for Health and Disability Assessments (CHDA) for ESA/UC or Independent Assessment Services (IAS) and Capita for PIP. The providers will then conduct an initial review of the claim and the evidence received to determine whether:

   - the claim can be assessed on the basis of the paper evidence held;
   - further evidence is needed, to support a paper-based assessment or more generally (Health Professionals may contact GPs, any named specialist medical professionals or the claimant if they need more information to undertake a paper-based review); and / or,
   - a phone, telephone, video or face-to-face assessment will be required. If the Health Professional decides that this is required, they should also determine any difficulties the claimant may have attending and any reasonable adjustments which need to be put in place (such as a home visit, British Sign Language interpreter, ground floor consultation room, accessibility toilet, etc).

6. The Department recognises that participating in a face-to-face, video or telephone assessment can be a stressful experience, which is why we do not carry out a face-to-face assessment where there is enough existing evidence to determine benefit entitlement. The purpose of assessing claims on paper-based evidence only is to try and avoid face-to-face, telephone or video assessments where they are clearly unnecessary.

7. For PIP, we have introduced an audit criterion which will ensure claimants are allocated to the most appropriate assessment channel for their needs and circumstances. This was implemented from 01 July 2022. For the WCA, we are

currently exploring how best our approach to auditing assessment provider performance can help optimise the number of paper-based assessments made.

8. If a paper-based review is not appropriate, the claimant will be invited to an assessment. Where a video, phone or face-to-face assessment is required consideration will be given to claimants who need a specific assessment channel due to their health condition or circumstances.

9. Where ESA or PIP is awarded, such awards are generally subject to reassessment (for ESA) or review (for PIP). Reassessment and reviews ensure that the correct level of support continue to be provided. Award rates and their durations are set on an individual basis, based on the claimant's needs and the likelihood of those needs changing. Awards of PIP can be:
   - short term with no review;
   - longer term awards with a review before the existing award goes out of payment; or
   - ongoing awards which are subject to a light touch review at the ten year point (which we are currently testing following engagement with stakeholders).

10. Regular reviews are a key feature of PIP and ensure that payments accurately match the current needs of claimants, something fundamentally missing from Disability Living Allowance, which PIP began to replace in 2013.

11. Claimants in the WRAG and SG groups (LCW and LCWRA) would usually have a review period set by a DWP Decision Maker (DM), following advice from the Health Professional, indicating when they should be assessed again. Individuals should then expect to be reassessed through repeat assessments after the initial or last prognosis period expires. Review periods are typically set between 6 and 36 months, based on when the DM believes there may be a change in the claimant's condition. Reassessments help ensure that claimants are getting the right benefit entitlement and, should it be appropriate, labour market support. We continue to prioritise claimant-led reassessments, which

is where an individual notifies the DWP that they have a deteriorating condition or requests a reassessment for another reason, over cases which have exceeded their review period. This recognises that such claimants may qualify for higher payments before their next scheduled reassessment.

Severe conditions guidance/criteria

12. In line with our efforts to reduce hardship, stress and inconvenience to claimants, the DWP has formulated the Severe Conditions Criteria. These apply to claimants who meet the functional LCWRA threshold and in addition meet all of the following criteria: the claimant has an unambiguous condition i.e. they have been through relevant clinical investigation and a recognised medical diagnosis has been made; the level of function would always meet LCWRA; and the condition is lifelong and there is no realistic prospect of recovery of function. The criteria can be applied by the CHDA assessors at both a paper-based assessment and at a telephone, video or face-to-face assessment. Where the criteria are satisfied, and subject to a DWP Decision Maker agreeing that all other entitlement conditions are satisfied, the claimant will not be required to undergo reassessment in the future.

13. CHDA assessors give due consideration to whether the Severe Conditions Criteria apply to claimants who have acquired infections as a consequence of contaminated blood products. In making this determination, the CHDA assessors have access to guidance on hepatitis and HIV / AIDS that has been externally quality-assured by an external clinical expert [WITN6661012] Alastair Miller (Consultant Physician, Deputy Medical Director, Joint Royal Colleges of Physicians Training Board), for Hepatitis and Laura Jane Waters (Genitourinary Consultant and chair of the British HIV Association), for HIV infection. As with any claimant, each case has to be assessed on its individual merits.

14. Please note that the Severe Conditions Criteria are not the only mechanism of this type we have in place. For example, as mentioned above a similar scheme has been operating from August 2018 which ensures that claimants assessed as having highest level needs and where, because of their diagnosed medical

condition, those needs will not improve receive an ongoing award of PIP with a "light touch review" at the 10-year point.

15. We have also found that claimants of State Pension age (SPa) are less likely to see a change to their PIP award following a review compared to working age claimants. We therefore introduced a change whereby, from 31 May 2019, new claimants to PIP whose review would have been scheduled after they had reached SPa have been receiving an ongoing award with a light touch review at 10 years. From 9 July 2019, we also began moving existing PIP claimants, who have reached SPa, onto ongoing awards with a light touch review after 10 years. For existing claimants, changes to their award duration will take place prior to their scheduled award review.

16. The above changes mean that qualifying PIP claimants will not be sent a review form (AR1) or undergo a review or further assessment until the 10-year light touch point is reached.

**Core Participants have asked the Inquiry to make a recommendation that acceptance onto one of the Government *ex gratia* payment schemes and/or compensation for infected blood and blood products should provide passport to other benefits, in particular where relevant Personal Independence Payment and Employment Support Allowance. To inform consideration of that submission, please explain:**

**a. Under what circumstances has DWP used passporting?**

17. To the best of my knowledge, there is no definition of "passporting". However, by "passporting" I assume the Inquiry is referring to an arrangement where entitlement to one benefit automatically confers entitlement to another benefit or service. An example of passporting would be where an entitlement to the daily living component of PIP gives rise to entitlement to the severe disability premium paid within certain means tested benefits such as income-related ESA, Income Support or income-based Jobseeker's Allowance. It is important to note that passporting arrangements such as this are in addition to the usual

qualifying conditions for the benefit in question and only provide automatic entitlement to an element of that benefit which is paid as an additional contribution necessary for those with a disability or health condition.

18. The assessment criteria for both ESA and UC include a number of non-functional descriptors (ie, criteria not related to the claimant's level of functioning), which allow entitlement to the relevant benefit in certain circumstances prescribed in legislation[1] – for example, if the individual is awaiting, receiving or recovering from certain cancer treatments; if they are a hospital in-patient; if they are pregnant and there is a serious risk to their health or their baby's health; or if, by reason of their health condition or disability, there would be a substantial risk to their physical or mental health, or that of another person, if they were otherwise found not to have LCW/LCWRA.

19. Additionally, there are rules within both ESA and PIP (and UC, DLA and AA) which provide for fast-track access to these benefits for those reaching the end of their life. For ESA/UC, this means that they are assessed as having LCWRA and are put into the Support Group. For PIP it provides an automatic entitlement to the enhanced rate of the daily living component, with the mobility component remaining to be decided. However, even these cases require medical evidence in support of an application and a decision based on that evidence from a Departmental Decision Maker or Case Manager.

20. Aside from the above, entitlement to ESA, the additional health-related amount of Universal Credit (UC), or PIP is based on an assessment of the level of daily living or mobility needs or capability for work or work-related activity. It is not based purely on diagnosis of a particular medical condition. The position therefore is that there are no passporting arrangements simply by medical condition to automatic entitlement to either ESA or PIP. The reason for that is, as explained above, that diagnosis alone does not properly indicate an individual's capabilities and therefore their level of need.

[1] The Employment and Support Allowance Regulations 2008 and The Universal Credit Regulations 2013

**b. Under what circumstances does DWP consider passporting justified?**

21. As stated above, the overriding tenet for passporting is that an assessment for one service provides a reasonable assessment of need for another service or level of service.

22. As to whether an ex gratia payment and/or compensation should provide an automatic passport for either ESA or PIP (or both), my view remains that there are no realistic circumstances in which such a payment would provide suitable validation for an award at the correct level to help the individual meet their daily living costs or extra costs. This is because such payments serve a fundamentally different purpose.

**c. What are the steps that would need to be taken, and by whom?**

23. A direct passporting approach such as that envisaged by the Core Participants would be both a fundamental change to the structure and purpose of the benefit system, and an anomaly within it. As such it would be a decision for Ministers and Parliament.

**d. Any other observations you would like to make on this subject.**

24. I have no further observations to make.

**The Inquiry has heard evidence about the lack of understanding many assessors at the DWP have about the history of infected blood and the impacts on people of their infections. The Inquiry has been asked to make a recommendation to the DWP that they consult, design and implement a specific decision-making tool for disability assessments for this cohort, to be made publicly available to infected persons, and to be used by DWP and their contractors. To inform consideration of that submission, please explain:**

**a. What training and tools are available for assessors?**

25. The Department requires that all health professionals carrying out PIP assessments and WCAs on its behalf have a broad training in disability analysis, as well as training in specific conditions, including multiple and complex conditions. The Department has not specified that assessment providers employ health professionals who are specialists in specific conditions or impairments. Instead, the focus is on ensuring that assessors are experts in disability analysis, focusing on the effects of health conditions and impairments on the claimant's daily life.

26. Assessment providers are required to put in place suitable training programmes to ensure that assessors carrying out assessments meet the competency requirements. They should involve the department in the quality assurance process for the development and on-going refinement of these programmes and the quality standards associated with them.

27. The training programmes should include, but not be limited to, ensuring assessors have:

- an understanding of the legislative framework in which they are working and the legislative requirements for PIP;
- an understanding of, and an ability to perform, the role of a disability analyst in order to assess claimants with health conditions or disabilities and how these conditions or disabilities affect either their physical or mental function;
- an up-to-date knowledge of relevant clinical subjects;
- an understanding of the importance of customer service and equal opportunities and any relevant policies and procedures;
- an awareness of different cultures and their potential impact on the assessment process;
- an understanding of the needs of and challenges faced by disabled people
- an ability to deal with potentially violent situations; and
- an ability competently to use relevant IT systems.

28. Training programmes must involve both theoretical and simulated practical elements, with relevant examinations. Following training, assessors must undergo a written and practical assessment to ensure that the required level of competence has been achieved and that they can demonstrate this to the department.

29. Assessment providers regularly engage with organisations representing disabled people, discussing many aspects of PIP and WCA, including health professional training. These organisations have also developed specific condition insight reports and briefings to inform PIP providers' training. These reports highlight the daily difficulties of living with the various health conditions and are intended to give assessors an understanding into the lived experience of disabled people, providing insight and depth to conditions.

30. While preparing to undertake an assessment, assessors can access a wide range of clinical resources via an online library, to research any condition presented. This includes evidence-based protocols, e-learning modules and case studies. They are also required to keep their knowledge up to date through a mandatory Continuous Professional Development (CPD) Training Programme, the content of which is agreed annually with DWP.

31. PIP assessors have access at all times to the haemarthropathy training developed with the contaminated blood working group, expert clinicians and stakeholders in 2018, and it is included in new entrant training. Assessors also have a condition insight report on HIV developed with the National Aids Trust.

32. Of relevance to haemarthropathy, the following additional interventions were put into place in 2021 by IAS:

- The detailed haemophilia/haemarthropathy training module developed with stakeholders in 2018 is a mandatory part of assessor training, and IAS continues to ensure that new assessors joining PIP have completed it successfully;

- A condensed "desk aid" on the subject was issued early in 2020 to allow assessors to access the key information easily prior to assessing claimants with haemophilia. This has been updated with feedback from the 2021 DWP audit results;
- A clinical bulletin has been issued to all health professionals clarifying the issue of safety and the risk of bleeding, and how it is to be assessed for both mobility and daily living components.
- Haemophilia and haemarthropathy have been added to IAS's "TACT" list (Take Additional Care of These) for initial review and paper-based review purposes. The "TACT" cases are those with potentially severely disabling diagnoses, where all possible efforts should be taken to seek further evidence and produce a paper-based review. IAS have advised our teams that a paper-based review should be the outcome for these cases unless there is no other option.

33. Capita have in place similar procedures, updated in 2021, to ensure that a paper-based review is carried out, including requesting further evidence from the Haemophilia Treatment Centre and using and exhausting all contacts to obtain further medical evidence. Only when evidence is not forthcoming does the case proceed to telephone or video assessment. Face to face assessment is not used for this patient group by this assessor. At this point, prior to contact with the claimant, the assessor is mandated to complete the haemophilia and haemarthropathy training developed with stakeholders in 2018. The assessor is referred to a single point of contact, who is an experienced disability assessor who can provide support before, during and after assessment with regards to the selection of descriptors, the review period or the need to obtain further evidence before submission. These safeguards ensure as far as possible that assessments are consistently carried out within the guidance agreed with stakeholders in 2018.

**Has there been any consideration of developing training for assessors about how people came to be infected through blood and blood products given the psychological impacts on those infected and affected?**

34. The Department and its assessment providers recognise the psychological impact on people affected by contaminated blood products. Following the completion of the haemarthropathy guidance work, our assessment providers have been working on a condition impact report to explore and explain the psychological impact and lived experience of people affected by contaminated blood. Our intention is to engage in co-producing this material with people affected by contaminated blood to ensure it is fit for purpose before deploying to staff.

35. In addition, the haemarthropathy guidance for PIP flags the psychological impacts of contaminated blood and its many other effects. At page 19 of the Capita version of the guidance [WITN6661013] and page 21 of the Workbook in the IAS guidance [WITN6661014], it states:

*"Some people with Haemophilia may report they have contracted Hepatitis C, and/or HIV from contaminated blood transfusions and clotting factor products. These conditions will not be explored in detail in this training product. It is, however, pertinent to suggest that the HP MUST consider, that each of these conditions will have a range of symptoms which themselves can greatly impact on function, but in combination with haemophilia, can result in potentially significant/ severe functional difficulties… Remember to check for mental health problems, and probe to gather more evidence to establish any impact where relevant."*

**b. How does DWP judge the effectiveness of such training and tools?**

36. The DWP continues to work closely with its assessment providers to improve the quality of assessments for claimants in this vulnerable group. Following our first meeting with the contaminated blood working group, we carried out an initial audit of relevant PIP cases looking at the quality of assessments in 2017 and 2018. We did not identify systematic problems with the assessment of hepatitis B, C or HIV. There are many health conditions in the PIP caseload with similar effects and DWP has undertaken significant work in the development of PIP to recognise the problems people face, including a change

to assessing the fluctuating effects of a health condition over a year instead of a week, as was the case with DLA. Assessors are very used to assessing claimants with fatigue, treatment side effects and mental ill health.

37. We did find an issue in 2017 in the assessment of joint problems in people with haemophilia and we have continued to work with providers to improve the assessment of these cases. We have carried out a series of audits of all cases of claimants with haemophilia claiming PIP or moving across from DLA from the start of PIP up to 13.3.21. This is a process known as 100% audit – where every case in a series is reviewed (in this case either as part of a corrective exercise or a medical audit). This process has been designed to ensure that all cases are quality assured and continuous feedback is given to assessment providers to improve performance and to ensure that any remedial training or process changes agreed with DWP have been delivered. A further audit of all haemophilia cases decided since 13.3.21 is in progress. In the audits we specifically look at: whether the assessment could or should have been paper-based; whether a physical examination was carried out (this is forbidden where there is a risk of bleeding); and whether the award level and duration are appropriate. A holistic approach is taken, so if the effects of fatigue or treatment side effects have not been taken into account the assessment is considered not acceptable.

38. After each audit any claimant case file with the incorrect award or duration is sent to the provider for fresh medical advice and then to a decision maker to have their award corrected. Issues around assessment processes are fed back to providers who have put in place bespoke training for all assessors and upskilled individuals as appropriate.

39. We have not noted particular issues with the assessment of fatigue, treatment side effects or mental ill health in PIP claims. However, I should stress that the Department's medical advisers are open to looking at cases and have looked at many cases passed to us by the contaminated blood working group and stakeholder representatives.

40. For Work Capability Assessment ("WCA") haemophilia cases, in 2018 DWP and CHDA undertook an audit of a sample of these cases. Following this a training module was developed to upskill all CHDA health professionals in the assessment of claimants with haemophilia, incorporating lessons learned from the audit. The module included training on blood borne infections and the Severe Conditions Criteria and was externally quality-assured by two expert clinicians and a charity representing claimants with haemophilia. It was delivered to all health professionals in November 2018.

41. Another joint DWP CHDA review of WCA haemophilia cases was undertaken in March 2022. As a consequence, further training was developed in conjunction with an external clinical expert that is being delivered face to face to all health professionals in September 2022.

**c. Any other observations you would like to make on this subject.**

42. I have no further observations to make.

**Statement of Truth**

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

Signed GRO-C

Dated 24th November 2022