

Witness Name: KEITH CARTER

Statement No.: WITN7196001

Exhibits: WITN7196002

Dated: October 2022

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF KEITH CARTER

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 7th September 2022 and a supplementary Rule 9 request dated 03 October 2022.

I, Keith Carter, will say as follows: -

Experience Informing Contribution to the Infected Blood Inquiry/Confirmation

Name: Keith Carter

Date of Birth: GRO-C 1949

Qualifications: BA Hons Sociology; MA Sociology

Address: GRO-C

Accredited Bodies:

Recruitment and Employment Confederation (formerly The Institute of Employment Consultants)

Law Society Register of Expert Witnesses

Register of Expert Witnesses

Academy of Experts

Founder Member of the Expert Witness Institute

Relevant Experience:

Close to 50 years' experience of working in the area of employment, education and training. Preparing reports and giving oral evidence for claimants, defendants and on joint instructions to assist the Court since 1984; Chair of the non-medical quantum experts' working group, giving written and oral evidence to Lord Woolf's Access to Justice report.

Since 1996, Keith Carter & Associates have assisted in providing salary data for the publication of Facts and Figures: Tables for the Calculation of Damages.

In addition to forensic labour market assessments, experience of management consultancy and assessing issues such as equal pay/equal value for claimant, comparator, applicant and defendant. Involvement in historical abuse cases, including multi-action cases, and multi-action medical negligence claims.

Confirmation:

I confirm I have not provided evidence to, or have been involved in any other 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.

Submission to the Infected and Affected Communities Inquiry

1. Following the Inquiry receiving a letter I had sent to Sir Brian dated 4th August 2022 [KCAR0000100], and based on my experience referenced above, I have been asked to provide a written witness statement to the Inquiry focussing on three key headings:
 - (i) What data (primary labour market data) could/should be applied to the Infected Blood Victims,
 - (ii) What secondary and supported labour market data could/should be applied to the Infected Blood Victims, and
 - (iii) Provide information/views regarding the assessment of future loss of earnings that may be applied to the Infected Blood Victims.

2. To put my views and comments into context, I start from the perspective that different careers will follow different paths, with individual's peak earnings likely being reached at different times. It is important therefore, it is my view, not to "freeze" an individual's career at a particular point in time.
3. A young man working at Tesco during his gap year before going to university to study Biochemical Science is unlikely to pursue a career as (and achieve the earnings of) a Supermarket Assistant.
4. A young female law graduate undertaking a traineeship at a law firm will most likely have a career in law (84% of Trainees were offered a permanent contract at the firm where they did their traineeship), with 17% to 32% of Associates going on to become Partner.
5. As every individual has a slightly different career trajectory, I believe that it is important, if not to assess every case individually (which in my view would be ideal), then to (following obtaining relevant information which I discuss below) cluster occupational, possibly educational and economic groupings.
6. It may also be necessary to consider:
 - (i) Those directly affected, i.e. the victims themselves, and
 - (ii) Those indirectly affected, i.e. spouse; parent; child etc. where, either due to needing to provide care or care for children/family, employment choices have been affected/reduced.
7. While those suffering from ongoing effects may find their whole career is damaged, indirect effects on a career may result in career delay or a "period of loss" (caring for others; having to care for children whilst school age, etc.).
8. It may also be possible to consider the effects of the contamination of blood on the claimant's career under broad headings, for example:
 - (i) Limited,
 - (ii) Damaging,
 - (iii) Severe,
 - (iv) Catastrophic.

Primary Labour Market Data

9. In setting out the method of calculation for compensation due to loss in earnings, Sir Robert Francis stated that “reference should be made to relevant statistics, for example the national average earnings for that class of employment”. Furthermore, where “working out a probable career path is speculative or disproportionately complex”, he suggests that reference should be made to national median earnings as recorded by ASHE. He also refers to the individual’s future employment, suggesting that “a sum could be awarded for the likely or possible loss calculated as a percentage of the probable earnings in that employment or career, the percentage to reflect the assessed chances of the claimant achieving that level of earnings.”

10. While ASHE can be a useful “tool”, it has a number of flaws. The primary purpose of ASHE, it should be noted, is not a “loss of employment” calculator, and to use it as such could lead to very serious errors. The first concern is the often broad and generic grouping of categories of employment. ASHE refers to Standard Occupational Classification (SOC) which often have quite diverse job titles which carry a diverse range of earnings. Some examples of vastly different job titles are noted in two examples below:

Example 1: The category of “Sales Supervisors” (SOC: 7130) includes a broad range of jobs, from junior roles such as Floor Walker and Round Inspector, to more senior positions like Shop Foreman, Team Leader, and Floor Manager and Department Manager.

Example 2: The category of “Financial Administrative Occupations” (SOC: 4129) includes a range of occupations from Receptionist-Cashier and Ticket Seller to Treasurer and Finance Administrator.

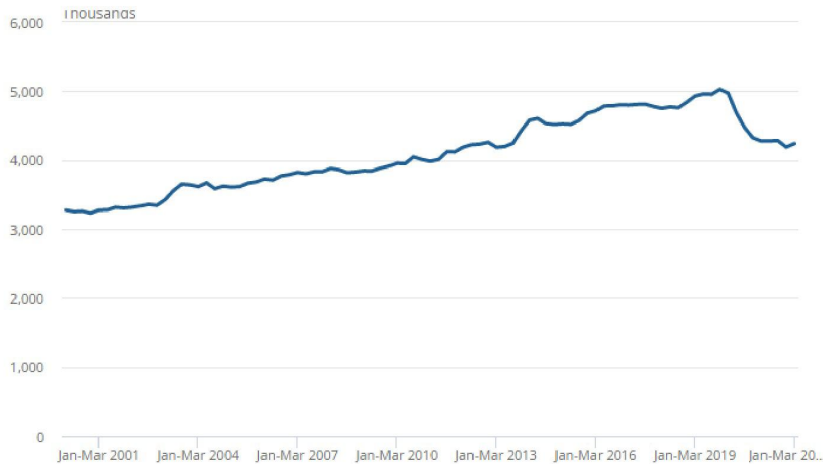
11. Further, and of major significance is the fact that ASHE only records earnings for those in waged employment. This means that ASHE completely misses a sizable proportion (estimated to be close to 20% of the labour market in the coming decade) of self-employed workers.

12. Research from the Office for National Statistics indicates that before the COVID-19 pandemic, self-employment had been steadily increasing in the UK, peaking in 2019 at 5 million people (15.3% of the total UK workforce). Up until the COVID-19 pandemic, the UK was the fastest growth in self-employment out of the (then) EU-28 Member States (D.W. Carter, 2022).

13. During the pandemic, the number of self-employed people fell significantly (unsurprising given the difficulties caused by the pandemic) to around 4 million (the lowest since 2013). That said, the number of self-employed persons has risen since the pandemic faded and is now estimated to be at 4.2 million (13% of total employment).

Figure 1

Number of people aged 16 years and over in self-employment (thousands, seasonally adjusted), UK, January to March 2000 to January to March 2022



Source: Office for National Statistics – Labour Force Survey

14. Further, there are those working self-employed through the Construction Industry Scheme (CIS). Under the CIS, a tradesman/labourer etc. (sub-contractor) will have 20% of their income deducted by the contractor. While the sub-contractor can “claim back” any overpaid tax at the end of the tax year, because this very sizeable group of workers is nominally self-employed, they will not be included in ASHE. One example of ASHE under-recording earnings for self-employed, is the category for Taxi Drivers.
15. Data from the Office for National Statistics suggests that, in the 2021 year, 83% of Taxi Drivers were self-employed, with the remaining 17% engaged on a waged basis. A black cab Taxi Driver (almost all self-employed) working in London, may earn 100%+ more than a Mini-Cab Driver working PAYE through a small mini-cab office in Hartlepool. Further, many of those working in media, particularly broadcasting, are engaged on a freelance basis, particularly early on in their careers. As such, SOC 3416 (which already covers a range of jobs including Assistant Producers, Producers, Editors, and Directors), is likely to be skewed in favour of high earning roles (where PAYE positions are available) at the expense of more junior roles (who are engaged on a freelance basis).

16. Tracking an individual's career progression is also difficult when using ASHE (particularly if only using median figures). For example, in the case of many skilled trades, ASHE does not distinguish between Apprentices, Tradesmen, and Team Leaders/Supervisors.
17. ASHE is also vulnerable to undervaluing market rates as it is a historic snapshot of earnings, and therefore unable to consider current and likely future market trends. The prime examples are the most recent ASHE figures, which were taken in April 2021, and so are already 17-months out-of-date, and also reflect a period of time when many workers were placed on the Government furlough scheme; had reduced levels of overtime, bonuses; etc. While it can be contended that there may be another pandemic in the future, I still think that, when taken in isolation, ASHE figures cannot truly reflect market rates and in turn an individual's earning capacity (see K. Carter, 'COVID and the claimant: reworking future loss', Journal of the Law Society of Scotland, January 2022).
18. When one takes into consideration all the above, it can be seen, I believe, that ASHE used without contrast and comparing with other indicators, could for very possibly a large section of those affected, be unable to truly value earnings and/or raise quite considerable concerns as to its reliability.
19. A final point I would raise with regard to solely relying on ASHE is that it only records "wage" (although this may include basic pay; overtime; productivity payments etc.). It does not include additional benefits, the most important of which being an employer contribution to pension.
20. The current minimum employer contribution to pension is 3% however, data from the Office for National Statistics indicates that the average employer contribution in the private sector is 5% of base salary.
21. In the public sector, there is the highly advantageous defined benefit scheme which in cases where it has been necessary to "benchmark" salaries against local market rates (in equal value/equal pay cases for example), this benefit can add some 14% to 25% to total remuneration.

22. If ASHE were to be used, I believe the suggestion by Sir Robert Francis to use ASHE Table 14.1a is inappropriate as this relates to weekly earnings data. I would propose instead to use the annual data included in Table 14.7a given that weekly figures are more likely than annual figures to be skewed by current (and sometimes temporary) trends. This is a particular concern when looking at the increase in zero-hour contracts in recent years (there was a 17% increase in 2021 alone), as employment and/or wages under such contracts may not be continuous throughout the tax year. If ASHE were to be used, I would strongly believe to use it in isolation without considering other indicators would be inadvisable.
23. While ASHE has value as a background guide (or to help benchmark market rates), it is not a “fit for all” salary guide; in fact, it could, depending on the survey group (infected and affected communities), “fit” less than half.
24. An additional source of salary information that I often use when preparing vocational reports is job advertisements. This can actually be more helpful than ASHE in some cases as it is more focused: it provides a localised and current indicator to salary levels for a particular role. It also allows for a separation between different levels of seniority (i.e. entry-level, mid-career, and high-career positions).
25. Job advertisements are available on a number of sites such including, to list just a few:
 - i. Indeed (a job search website which allows applicants to search by job title as well as geographical area),
 - ii. Reed (an employment agency based in the UK with offices around the country), and
 - iii. LinkedIn (a platform allowing professional employees to expand their professional network, provide career development programmes and seek alternative roles i.e. job advertisements or a platform for headhunting).
26. Additional specialist websites exist for certain areas e.g. NHS Jobs, Local Government Jobs, Charity Job etc.
27. Alternatively, it is possible to look at vacancies which are available through Jobcentre Plus on <https://www.jobcentreguide.co.uk/>. Further, the Government’s ‘Find a Job’ website (<https://www.gov.uk/find-a-job>) has a number of vacancies advertised to help those seeking employment.

28. When analysing advertised vacancies as a method of primary research, one has to be careful to ensure that the company listed is the company that the role is for (and not just a recruitment agency), that the role is applicable to a specific claimant by matching their skills and experience against it as well as ensuring that it is within a claimant's travel to work area if a localised job search is being undertaken. When considering vacancies from recruitment firms, this, in my experience, has to be double checked as there may be some duplication i.e. a vacancy placed on different job finding sites.
29. Another heading of primary research could include (i) postal questionnaires, (ii) targeted postal questionnaires (employer/employee) and (iii) Claimant interviews (telephone/video platform/in person). The typically low response rate to a general postal questionnaire to get a reliable sample size does encourage the need for follow up enquiries either by way of email or telephone.
30. The value of such focussed research is that it allows an analysis (and collection of empirical data) on a geographically specific basis. It also assists (and can be particularly helpful) when looking to obtain information on fringe areas of work to use a few examples, Rugby Player, Tattoo Artist, Fisherman, Life Coach, Embalmer etc. This primary research can thus be invaluable in cases where material on earnings is not easily available in the public domain as well as helping in considering:
- i. Typical career advancement (key stages of a career), and
 - ii. The availability of additional benefits (private healthcare, long-term incentive bonuses etc.).

Use of Secondary Market Data/Analysis of Primary Sources

31. Further primary/secondary salary data that can be used relates to specific pay scales available for individual sectors. Although finding a pay scale is secondary research, the interpretation of the data and applying to an individual requires additional primary research to take place. For the public sector, as an example, there is the NHS Agenda for Change pay scale which covers both clinical and non-clinical staff and has a banding of 1 to 9. To consider which band is appropriate per employee, the NHS have job descriptions which have to be matched to the pay scale (with separate pay scales for England & Wales vs. Scotland i.e. including primary analysis for each case), for example a Pharmacy Technician is paid in line with Band 4 (£23,949 to £26,282), a Nurse is paid in line with Band 5 (£27,055 to £32,934) and a Qualified Forensic Psychologist is paid in line with Band 7 (£41,659 to £47,672).

32. The teaching profession also have a spinal pay scale, the Main Teaching Pay Scale running from Spinal Points M1 to M6 (£25,714 to £36,961) but then with subsequent pay scales for Lead Practitioners, Deputy Headteachers and Headteachers. In addition to this basic pay, for some Teachers, there may be the additional benefit of Teaching and Learning Responsibilities payments (made at three levels) and Special Education Needs (SEN) Allowances (between £2,270 and £4,479). This is something that would have to be assessed on an individual case basis and would require primary research (questionnaire, telephone interview etc.).
33. For the Armed Forces, as a further example, the MoD issue a pay banding each year and they issue information with regard to average duration of service prior to promotion (which is separated by capbadge) which allows a particular serviceman/woman to be matched against the pay scale and the appropriate spinal point calculated (from Corporal onwards, there are six spinal points for each rank). There are further, and importantly which will require primary research, headings such as Longer Separation Allowance, subsidised housing allowance, Commitment Bonus, Enhanced Learning Credits etc. (possibly enhancing base pay by some 8% to 10%). These additional payments would need to be obtained through primary research. The MoD also provide a pension calculator showing different growth rates which is accessible to service personnel and can be accessed to help pension, depending on length of service, rank etc. (if known) by the general public.
34. Similarly to the NHS, Local Authorities have a spinal column of earnings (with a London Allowance if it should apply) however the spinal points run from 1 to 59. To obtain information on where a particular job fits within this spinal banding would require further analysis. A Care Worker, for example, will be paid in line with Spinal Points 4 to 5 (£21,189 to £21,575), a District Cleaning Operative (Refuse Worker) in line with Spinal Points 7 to 12 (£22,369 to £24,496) and an HGV Driver in line with Spinal Points 20 to 22 (£28,371 to £29,439).
35. Possible/appropriate alternative indicators to earnings (secondary labour market data) will depend on the employment/age/qualification clustering of those affected (commented upon further below).
36. While it may be suggested that the Labour Force Survey could be considered as it records earnings by highest qualification, there is a concern over this as it is in part self-reporting, focussing on "at a particular time" which may not reflect true graduate or professional earnings.

37. While one may consider using the Labour Force Survey (undertaken every 3 months) which records earnings by highest qualification, by focussing on qualifications to predict earnings, it excludes the possibility of training through one's career and/or choosing to take time out of a professional career. As an example, a graduate in Business and Finance may, for personal reasons (for example, childcare), be working as a part-time Classroom Assistant.
38. Further, a Labourer on Crossrail (with no qualifications) will, as an example, almost certainly with bonuses, achieve earnings higher than someone working in childcare with a degree.

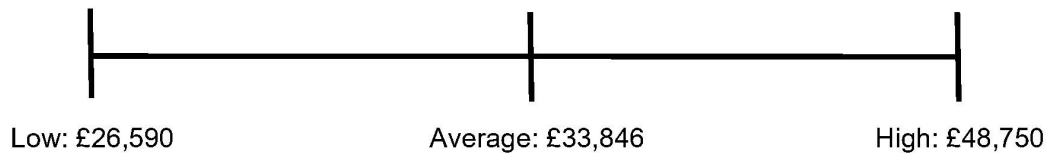
Table 1

Differential in Earnings by Qualification as Recorded by the ONS	
Qualification	Difference From No Qualifications
No Qualifications	-
GCSEs Grades C and below (Nat 5s)	+11%
GCSEs Grades A*-C (Nat 5s)	+19%
A Levels (Highers)	+29%
HNC/HND etc.	+73%
Degree	+117%

39. Two “online” salary indicators (although there are many, but two that I often refer to) are Glassdoor (a self-reporting salary survey) and Indeed (a self-reporting salary survey which is aimed at helping employees benchmark whether they are being paid the correct amount). These can be helpful indicators as they provide a “low” and “high” salary, as well as the number of contributors, which indicates whether the information contained is reliable or not. This is particularly useful for “niche” jobs where salary survey information or job advertisements with salary information included are not available. An example from Glassdoor of how this information is provided can be seen below:

Figure 2

Job Title: Pipefitter



Based on 6,442 Salaries

✓ High Confidence

40. As mentioned above, although having the flaw of not being able to test the online indicators, the specific occupational areas that can be accessed, and the sample size, results in them increasingly being referred to in labour market assessments. The data should not however, it is my view, be used in isolation to other sources to check and cross-check their validity.
41. A further study which is often relied on by labour market experts, particularly when offering assistance to the Court in personal injury matters, as well as Employment Tribunals, when considering dismissal; bullying at work etc., in the higher paying Business and Finance sector is the City Pay Guide. This is an annual salary survey produced by City Pay Associates, looking at market salary levels and bonus payments by job function in the financial services sector. ASHE data is not particularly strong when looking at salaries in the City as the average figures are skewed by the broad data (City Traders, for example, will fall into the ‘Broker’ ASHE category, the average earnings of which are suggested to be £83,893 p.a. gross. However, City Traders, as can be seen from other indicators such as the City Pay Guide, can earn anywhere between £100,000 and over £1 million+ p.a. gross). Industry specific or sector specific salary surveys are thus important when profiling certain strata of employment (levels of remuneration).

42. Further, the use of salary survey data (such as from Hays, Robert Walters, Robert Half, Morgan McKinley etc.) can be extremely helpful as some of them not only break down salaries into geographical location (for example, many include London, but Hays has specific information for London, the South East, the North East, Scotland etc.) but also some salary surveys provide information for job titles by years of experience.
43. For the self-employed, it is possible to request information from HMRC under headings of work i.e. CIS tax returns, self-assessments etc. HMRC records are thus valuable for both waged and self-employed (see Exhibit WITN7196002).
44. In addition to the above, there are numerous other indicators on which the labour market analyst or employment consultant can rely when looking to profile possible career trajectories and applies to a particular sector or individual. How to use this information in blood transfusion cases will depend on a range of factors which will need to be obtained from the claimants.

Assessment of Future Loss of Earnings

45. It will be necessary in regard to considering “possible future loss in earnings” to ascertain information on the victims’ education, career and earnings.
46. There would, I expect, amongst the claimants, be those who, due to illness or age, had at the time of the transfusion, little or no recent past work history or limited future work prospects. This could be obtained as a matter of fact (age) and medical opinion.
47. To consider and/or advise on employment opportunities, the labour market analyst/ employment consultant would initially need data on education, historical career timeline, earnings and benefits. Initially this may be obtained by way of an employment/vocational questionnaire, following which it may be possible to “cluster” claimants by sector, (salary, benefits, etc). While for some there may need to be a follow-up telephone enquiry (as indeed occurs sometimes with ASHE or the Labour Force Survey), once a body of information is available, it will be easier to see the primary/secondary data that could assist.
48. The question in respect to “future loss of earnings” requires consideration not only of a “but for” possible career trajectory, but a “but with” following transfusion career so as an assessment can be made whether there is a loss; the extent of that loss and whether the loss is ongoing.

49. It is sometimes possible in historic abuse cases, after requesting HMRC records, to clearly see the timing of a “trigger event” which often surrounds the time of enquiry related to the abuser or the trial. In these matters, one can quite often see a steady career trajectory, or indeed consistent employment but following an event, erratic employment or no employment. Requesting HMRC records (with approval from the claimants) would assist in helping to profile “but for” earnings (salaries could be uplifted with annual increases) and loss (achieved earnings) to date.
50. I have included, as Exhibit WITN7196002 to this submission, one example of where HMRC records have been particularly helpful in isolating a “trigger event” and how it is possible to uplift the career earnings achieved to date, compared with what was actually achieved, and so value of loss.
51. Future or ongoing loss, i.e. from date of trial (or assessment) would need to be considered separately although HMRC records could still act as a starting point for projected “but for” and give an indication as to the working pattern following transfusion.

Comment

52. What I feel is paramount for the Inquiry is to have information relating to the victims’ education, historic employment, and salary levels etc. Once this information is available with regard to age, education and employment clusterings, a methodology can be put in place to consider, from a vocational perspective, the value of loss. This may have to be on an individual basis or possibly by sector. The level of investigation undertaken for each individual case is a matter for the Inquiry, however, as I have put forward in this statement, I strongly believe that this should be based on a range of indicators, not solely reliant on ASHE which, as I discuss above, has many flaws.

53. To summarise the above, I believe that the most important points to take into consideration include:

- Obtaining as much information about the victims as possible (particularly related to education and employment history),
- Considering whether victims can be clustered together, and earnings realistically valued, once a pool of information is available to assess whether this would be possible,
- Factoring in historic market indicators and, if appropriate, future trends or likely trajectory,
- Using as many indicators to salaries as possible (both primary and secondary sources),
- Taking into consideration the total remuneration package, not just basic salary, and
- Applying all of the above to a specific victim or clustering of claimants by occupational grouping, taking into consideration socioeconomic circumstances.

Statement of Truth

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

Signed

GRO-C

Dated: October 2022

Table of exhibits:

Date	Notes/ Description	Exhibit number
October 2022	Examples of HMRC Records Indicating a Trigger Event	WITN7196002
04.08.2022	Letter from Keith Carter (Keith Carter & Associates employment consultants) to Sir Brian Langstaff, re Infected Blood Inquiry.	KCAR0000100