

Witness Name: Sir Rupert Jackson

Statement No.: WITN7202001

Exhibits: Nil

Dated: 12 November 2022

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF SIR RUPERT JACKSON

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

I, Sir Rupert Jackson, will say as follows: -

Your career and background

1. Please provide an outline of your career, including details of your qualifications and training.

1.1. I read classics and then law at Cambridge. I was called to the Bar in 1972. From 1973 to 1998 I practised as a barrister at 2 Crown Office Row, Temple, taking silk in 1987. My main areas of practice were professional negligence and construction law.

1.2. I was appointed a High Court judge in January 1999 and a lord justice of appeal in October 2008. I retired in March 2018, and now practise as arbitrator and mediator.

2. Please explain, in broad terms, your role in the HIV Litigation.

- 2.1. Because of confidentiality and the clients' privilege, as well as the limitations of memory, I can add very little to what appears from the documents which are before the Inquiry and contained in my bundle ("the documents").
- 2.2. I was instructed on behalf of the plaintiffs in 1989 or 1990. I was junior to Dan Brennan QC, who was instructed to lead the team of plaintiffs' counsel.
- 2.3. My role in the litigation is apparent from the documents. As stated in **NHBT0091946**, §1: "My function within the Plaintiffs' legal team has been to research, advise upon and when appropriate argue the legal issues affecting liability."

The Structure and Funding of the HIV Litigation

3. Insofar as you are able to do so, and without breaching privilege, please describe:

- a. how the Plaintiffs' legal teams were organised in the HIV Litigation, including the roles allocated to different counsel and the role of the Steering Group;**
- b. how the Plaintiffs' claims in the HIV Litigation were funded;**
- c. the effect of the funding arrangements on how the litigation was fought and settled (for example, the need for ongoing certification from the Legal Aid authorities, and what was required for that certification).**

3.1. As can be seen from the documents, the Steering Committee liaised with numerous solicitors representing different plaintiffs. The Steering Committee instructed the team of leading and junior counsel. The Steering Committee took decisions about the conduct of the litigation and settlement.

3.2. Most plaintiffs were legally aided. The privately funded plaintiffs (about a quarter of all plaintiffs according to the documents) were at risk of adverse costs orders if the action failed. I cannot remember the Legal Aid authorities' requirements.

The Conduct of the Central Defendants in the HIV Litigation

- 4. From your perspective, how would you describe the way in which the Central Defendants conducted themselves during the HIV Litigation? Was there anything that you consider unusual, untoward or inappropriate in their conduct of their case? Please provide as much detail as you can in support of your answer.**

4.1. The Central Defendants maintained that the Plaintiffs' claims were untenable in law: see e.g. **DHSC0046936_091** and **WITN7067001**. Their position was that if the plaintiffs did not accept the settlement figures available, the case would go to trial and the plaintiffs would lose. Their counsel acted entirely properly on instructions. It is unfortunate that the government of the day did not face up to its moral responsibility, in the same way that the present government has.

- 5. From your perspective, how did the Regional Health Authorities conduct themselves during the HIV Litigation? Was there anything that you consider unusual, untoward or inappropriate in their conduct of their case? Please provide as much detail as you can in support of your answer.**

5.1. The settlement agreement allowed certain plaintiffs to pursue separate claims against Regional Health Authorities to top up their damages. I recall being instructed in two or three of those claims. One of those cases went to trial and it settled favourably during the hearing. I do not remember the outcome of the other case(s). I do not remember anything untoward in the conduct of the RHAs.

The Announcement of the Settlement of the HIV Litigation

- 6. In October and November 1990, discussions took place between counsel for the Plaintiffs and counsel for the Central Defendants in which the possibility of settlement of the litigation was discussed [SCGV0000230_018;**

DHSC0046962_068; DHSC0004365_043]. Insofar as you are able to do so, and without breaching privilege, please explain your role in those discussions.

6.1. The documents reveal that in October 1990 I conveyed a proposal from the Steering Committee to the Central Defendants' counsel; in November Dan Brennan, Michael Brooke and I had a meeting with the Central Defendants' counsel, at which we were told the sort of settlement figures which the Government would accept; otherwise the Plaintiffs "would have to go to court". I assume that Dan, Michael or I passed that information back to the Steering Committee. I do not recall ever conveying a specific proposal which was capable of acceptance, so as to result in a settlement of the litigation.

7. Following the discussions, a proposed scheme of compromise was provided to the Central Defendants, and was stated to have the authority of the "*steering group of the plaintiffs' solicitors*" [DHSC0046962_067, §3]. This proposed that the claims be settled, subject to certain terms, at a figure of £42 million. On 11 December 1990, the Prime Minister, John Major, announced that the Government had been able to agree in principle to proposals put forward by the Plaintiffs' lawyers [DHSC0003654_003]. Later that day, in a written reply to a Parliamentary Question, the Secretary of State for Health, William Waldegrave, provided further details [DHSC0020866_034]. The Plaintiffs' Steering Committee put out a press release on the same day responding to the announcements in Parliament and confirming that the Plaintiffs' counsel had acted on the instructions of the Steering Group when putting the proposal to the Central Defendants [DHSC0003654_029]. Insofar as you are able to do so, and without breaching privilege, please explain:

- a. your role, and that of the Steering Group, in putting forward the proposals to the Central Defendants;**
- b. whether you or (to your knowledge) the Steering Group were given prior notice by the Government of the Prime Minister's announcement;**

- c. what your views were at the time of the approach taken by the Prime Minister and the Secretary of State to announcing the Government's acceptance in principle of the proposals in the way that they did;
- d. your views now on the same issue.

7.1. As to (a), see answer 10.

7.2. My conversations with Steering Committee members were confidential and privileged. Therefore, I cannot answer question (b). Whatever views I held at the time were expressed to the Steering Committee and my co-counsel. Those discussions (of which I now have very limited recollection) must remain confidential.

The negotiation of the final agreement

8. In the months that followed, representatives of the Defendants and the Plaintiffs engaged in a negotiation over the terms of the final agreement. The terms of what the Inquiry understands to be the final agreement were contained in a letter sent from the solicitor for the Department of Health, Ronald Powell, to the solicitors for the Plaintiffs dated 1 May 1991 [HSOC0023174]. The settlement was announced in open court before Ognall J on 10 June 1991 [NHBT0091944]. The Inquiry has copies of what it understands to be prepared texts read at the hearing by you [NHBT0091946], Daniel Brennan QC [DHSC0003663_042] and Andrew Collins QC [MACK0001247_010]. Insofar as you are able to do so, and without breaching privilege, please answer the following questions.

- a. What was your role in the negotiations over the final agreement, and in presenting that agreement to the Court? What role was played by the other counsel representing the Plaintiffs?
- b. The first draft of the detailed terms of the agreement that the Inquiry has identified are those appended to a fax sent on 12 December 1990 [DHSC0003654_032, from p.3]. Are you able to say: (i) whether this was the first draft of the agreement, (ii) who initially drafted the document,

or whether it emanated from the Plaintiffs or the Central Defendants (or some other source)?

- c. The final terms included a clause to the effect that Plaintiffs seeking the benefit of the settlement agreement would have to discontinue their actions and undertake not to bring fresh proceedings relating to infection with HIV and/or hepatitis viruses through the use of blood products administered prior to 13 December 1990 [HSOC0023174, p.20, §5]. Please explain your understanding of how and why that clause was introduced into the final agreement.
- d. Was the issue of the waiver of the right to bring further litigation for HIV and hepatitis infection a controversial or prominent part of the negotiations between the Plaintiffs and the Defendants? (You may be assisted when answering this question by referring to the document cited in question 10 below.)

8.1. As to question (a), I was not involved in the negotiations over the final agreement. My role in presenting that agreement to the court on 10 June 1991 consisted of reading out (or summarising) the note at **NHBT0091946**. I cannot answer questions b, c or d as I was not involved in the negotiations over the final agreement.

QUESTIONS 9, 10 AND 11

These questions (which I have not copied out) all relate to the negotiations of the final settlement agreement. I was not involved in those negotiations and do not know the answers to your questions.

General Questions

12. In your view, what did the HIV Litigation achieve for the Plaintiffs, their families and partners, and others?

12.1. The plaintiffs received the monies provided for in the settlement agreement. I do not know what is the present value of those sums (allowing for inflation since 1991), but no doubt the Inquiry Team has worked that out.

12.2. Some Plaintiffs were near the end of their lives and the settlement enabled them to receive compensation before they died. Sadly, 148 Plaintiffs (according to **CBLA0000001_008**) had already died.

12.3. The settlement ended lengthy and complex litigation, in which the plaintiffs faced significant difficulties on liability and causation, as spelt out by Ognall J in **DHSC0046964_024**.

12.4. Those plaintiffs who were self-funding avoided paying more costs and escaped the risk of adverse costs orders.

13. Insofar as you are able to do so without breaching privilege, please provide any additional comment that you wish to provide on the HIV Litigation, or any further matters that you consider to be relevant to the Inquiry's Terms of Reference.

13.1. I remember that this case was very worrying. The documents record that Plaintiffs were dying every month, the Central Defendants were intransigent, we faced significant difficulties on liability and causation, but I do not now recall the details.

Statement of Truth

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

Signed GRO-C

Dated 12 November 2022