

WITNESS NAME: SIR ROBERT ANTHONY FRANCIS

STATEMENT NO.: WITN7413001

EXHIBITS: Nil

DATED: 25 OCTOBER 2022

## INFECTED BLOOD INQUIRY

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### WRITTEN STATEMENT OF SIR ROBERT ANTHONY FRANCIS KC

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I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 21 September 2022.

I, Robert Anthony Francis, will say as follows:-

1. I have been asked for clarification of my recommendation with regard to the account, if any, to be taken of future support payments with regard to entitlement to state benefits. In particular my attention has been drawn to the following passages in my report:

#### **Paragraph 9.90 (RLIT0001129)**

*I recommend that in exchange for the lifetime guarantee of this increased annual sum, uprated annually for inflation, by reference to the annual increase in median earnings equivalent to ASHE 80% 118 ,[ support] payments should be taken into account in the assessment of entitlement to any means tested state benefits. The payments should still be disregarded against any entitlement to non-means tested benefits such as disability living allowance.*

#### **Paragraph 10.10 (RLIT0001129)**

*Under the Social Security (Infected Blood and Thalidomide) Regulations 2017 and the Social Security (Scottish Infected Blood Support Scheme) Regulations 2017 , a range of means-tested benefits administered by the Department for Work and Pensions (DWP) discount infected blood scheme payments for the purposes of calculating a beneficiary's income or capital (such as savings). Beneficiaries are still required to declare receipt of scheme payments, in order to ensure that benefit assessors can determine what money to disregard in benefit calculations and avoid any effect upon*

entitlement. The DWP benefits this exemption relates to are: Income support; Jobseeker's Allowance (JSA); State Pension Credit; Housing Benefit; Employment and Support Allowance (ESA); and Universal Credit. I recommend that this exemption continues to apply to the annual payments that continue to be made under the support schemes, or their equivalent under the compensation scheme.

**Recommendation 15 (RLIT0001129, Pg. 38)**

*I recommend that, with regard to the relationship between compensation, support payments and benefits:*

...

*d) such deductions as would be made from damages under the Social Security (Recovery of Benefits) Act 1997, but no other, should be made in respect of equivalent awards under the scheme;*

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2. I was asked about these recommendations in the course of my oral evidence to the Inquiry (INQY1000225, Pg. 17):

*Q: I do want to ask you a little more about the position in relation to benefits. Could we go to page 116. So, at paragraph 9.90 you say -- and this is having set out, as we have seen, your recommendation of an uplift in the annual support payments and the tax-free sum for additional financial issues -- you say at 9.90:*

*"I recommend that in exchange for the lifetime guarantee of this increased annual sum, uprated annually for inflation ... such payments should be taken into account in the assessment of entitlement to any means tested state benefits. The payments should still be disregarded against any entitlement to non-means tested benefits such as disability living allowance."*

*Then if we could turn to page 129, you set out in paragraph 10.10 the current position, which is:*

*"... a range of means-tested benefits administered by the Department for Work and Pensions (DWP) discount infected blood scheme payments for the purposes of calculating a beneficiary's income or capital ..."*

*Then you set out the DWP benefits to which the exemption relates. Then you say that:*

*"[You] recommend that this exemption continues to apply to the annual payments that continue to be made under the support schemes, or their equivalent under the compensation scheme."*

*Is there a contradiction between paragraphs 9.90 and 10.10 or have I misunderstood?*

*A. I don't think there is a contradiction. This is about recognising and accepting the continuation of this exemption in terms of the account to be taken of support payments, in relation to other state benefit, as I understand it. What I'm talking about in the recommendation that you looked at is a slightly different issue, which would be subject to this exemption I think, that where there are other benefits -- so, for instance, income support, which is independent of anything to do with infected blood, or there are social security issues around that, that those should be taken into account in the same way -- sorry, there should be a clawback in relation to that in the same way as there would be in a personal injury claim. So, in other words, we don't take account of payments that are being made to do with the infected blood but there will be people who receive payments who have nothing to do with this at all, they may have been on support in any event. So that's what I'm seeking to address. Whether I have expressed that sufficiently clearly is for others to judge, but that's what I'm trying to get at.*

*Q. Again, it may be --*

*A. Can I just explain, where in a personal injury's claim an award is made of damages, say for loss of earnings, but it is required in every single personal injury case that the Department of Work and Pensions is asked for a certificate as to what has been received by way of defined benefit, and there is a list of them in the last I think it's three years, it may be five years, it's a period, and then that can be reclaimed by the Department and in effect is reclaimed out of the damages. So that is what I'm suggesting. But clearly in this case it would be subject to the exemption that applies to anything that's in these regulations or any similar regulations which exempt those being taken into account for the purposes of those income support and other benefits.*

*Q. So in terms of any current exemptions, you are not suggesting that should change?*

*A. No.*

3. With reference to these passages, the question I have been requested to answer from a Rule 9 Request sent on 21 September 2022 is as follows:

*On the face of it, these statements appear to contradict themselves. Can you clarify whether you are recommending that the ongoing support payments should be disregarded for benefits purposes or not?*

**My response is as follows:**

4. I accept on reflection the observation that these recommendations could have been expressed more clearly and therefore I have reviewed them. I respectfully request that the following paragraphs be taken as a substitute for the recommendations quoted above.

5. *Relationship between support payments and compensation*

The requirements of overall fairness and proportionality mean that it would be wrong for past support payments to be taken into account to reduce entitlement to compensation for past financial losses or the value of past gratuitous care provided. By “past” support payments I mean support payments made up to the point when a compensation scheme is set up. This means that I do not consider that past support payments in this sense should be subject to the requirements for claw back provisions in the Social Security (Recovery of Benefits) Act 1997. However support payments made after the compensation scheme is set up, but before the compensation award is made, should be subject to those provisions.

6. I remain of the view that for compensation to reflect future losses, it would be fair to take into account future support payments to reduce the compensation for such losses to which the claimant would otherwise be entitled. By “future” support payments I mean those which will be paid after the award of compensation is made.

7. *Relationship between support payments and state benefits*

With regard to entitlement to state benefits essentially I consider that the existing position should continue in relation to entitlement to existing benefits. That means that they should be disregarded in the assessment of entitlement to such means tested benefits and remain irrelevant to assessment for non-means tested benefits. Were new benefits to be introduced the relationship of those benefits with support payments would have to be considered afresh. So support payments should be taken into account in assessment of entitlement to means tested benefits save to the extent that existing regulations provide that they should be disregarded. In practice this may mean that entitlement to few if any means tested benefits would be reduced by reason of a regular support payment.

8. Non-means tested benefits should also continue to be awarded without regard to a support payment.

9. *Relationship between state benefits and compensation*

I have recommended that:

*A deduction, however, should be made from any award for care, past or future, of any attendance allowance received or receivable in future, unless it was shown that the disability for which it was awarded was unrelated to the injury forming the basis of the claim. [paragraph 10.6, RLIT0001129]*

and

*Where an applicant has received income support in the past, the same approach should be made with regard to deductions from the award as would apply in a personal injury action pursuant to the Social Security (Recovery of Benefits) Act 1997. [paragraph 10.7, RLIT0001129]*

10. The intention of these recommendations, if accepted, would be that no claimant would be worse off by reason of receiving a support payment than they are at present, but also that the risk of double recovery from benefits and compensation is minimised to the same extent as is the case in a damages claim

**Statement of truth**

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

Signed:

GRO-C

Dated:

25 October 2022