

Witness Name: Alfred Tyler
Statement No.: WITN7665001
Exhibits: None
Dated: 06/04/2023

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF ALFRED TYLER

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 8 February 2023.

I, ALFRED J TYLER, will say as follows: -

Section 1: Introduction

1. My full name is Alfred James Tyler and I reside at [GRO-C], Edinburgh, [GRO-C]. My date of birth is [GRO-C] 1951.
2. I hold the degree of LLB, Hons and I am a member of the Society of Solicitors in the Supreme Courts of Scotland. Until I retired, I was also a Notary Public.
3. I qualified as a solicitor in Scotland in 1975.
4. I became a partner in the firm of Balfour & Manson, Solicitors, Edinburgh (now Balfour+Manson LLP) in 1978.
5. I served as Head of Litigation in the firm between 2001 and 2006, then as Chairman between 2006 and 2014.

6. I retired as a partner in the firm in 2016 and then served as a Consultant for 3 years.
7. I finally retired as a practising solicitor in 2019.
8. I served as a Tribunal Judge with the Criminal Injuries Compensation Tribunal between 2007 and 2022 and with the Social Security Tribunal between 2011 and 2022.
9. I have served as a Legal Member of the Pension Appeals Tribunal for Scotland since 2015 and I also serve on the Social Security Tribunal for Scotland.
10. I was a member of the Coulsfield Committee which led to the introduction of new rules for personal injury actions in the Court of Session; the Court of Session Personal Injuries User Group; the Court of Session Rules Council; the Lord President's Advisory Committee on Fees; the Civil Justice Committee and the Pre-Action Protocol Committee of the Law Society of Scotland; and on the Executive Committee of the Association of Personal Injury Lawyers.
11. Throughout my career, my principal areas of practice were catastrophic injury and clinical negligence.
12. I also had considerable experience in dealing with multi-party cases and was on the Steering Committees for the Chinook Helicopter Disaster (1986); the Piper Alpha Disaster; the Lockerbie Air Disaster; The Chinook Mull of Kintyre Disaster; and the Scottish Haemophilia/HIV Litigation Group.
13. I have not provided evidence to any other inquiries, or been involved in any investigations, criminal or civil litigation in relation to human immunodeficiency virus and/or hepatitis B virus and/or hepatitis C virus infections in blood and blood products.

Section 2: Scottish Haemophilia/HIV Litigation

14. In or about 1988/9, I was instructed by a haemophiliac, who had contracted HIV through contaminated Factor VIII, to pursue a claim for damages.
15. Given that this was around 35 years ago, my recollection of the particular case and of the haemophilia/HIV litigation in general, is vague and the Balfour & Manson files have been destroyed, in accordance with practice guidance issued by the Law Society of Scotland.
16. At or about the same time, a number of other solicitors were instructed in similar claims and an association of solicitors was put together to pool resources and to proceed with these claims in a common and coordinated fashion.
17. There would have been an initial meeting of the solicitors involved, possibly facilitated by the Law Society of Scotland, but I cannot now recall.
18. The Association was named the Scottish Haemophilia/HIV Litigation Group.
19. I was appointed Chairman of the Group.
20. The Secretary was Mr Tom Williamson of Robertson & Ross Solicitors, Paisley.
21. I believe that the Group represented about 40 claimants.
22. The principal function of the Group was to seek to achieve a fair and just basis for settlement of the individual claims.
23. Whether or not proceedings were commenced would have depended partly on the issue of time bar and partly on the availability of funding.

24. In Scotland at that time, there was no provision in the Rules of Court which allowed a “group” or “class” action to be pursued on behalf of all claimants in a single action, and each case required separate legal proceedings.
25. According to my recollection, all cases that were raised in Scotland proceeded in the Court of Session.
26. Funding was a particular issue for claimants who required to litigate.
27. The options were to make applications for legal advice and assistance and legal aid for those who were financially eligible, or to fund litigation privately.
28. A legal advice and assistance certificate from the Scottish Legal Aid Board (‘SLAB’) provided limited funding to prepare a case for litigation.
29. On completion of sufficient preparation to establish a probable cause of action, application then had to be made for a legal aid certificate, before proceedings could be raised.
30. An emergency legal aid certificate could be issued in urgent cases, for example, where time bar was about to operate.
31. In such cases, proceedings would be raised to defeat the operation of the time bar and the action would then be sisted (stayed) pending full consideration of the legal aid application.
32. If a legal aid certificate was issued to an individual claimant to litigate, that certificate only covered that claimant and it was not generally permissible, for example, to use the certificate for generic preparation which would benefit the entire Group.
33. Very few, if any, of the clients represented by the Group would have been in a position to fund litigation privately, particularly in view of an adverse finding in expenses (costs) in the event of failure.

34. They may have paid an amount sufficient to cover the court costs of raising proceedings, at which point the actions would have been sisted.
35. Counsel would have been instructed to draft the summonses and to provide advice.
36. Senior Counsel was Brian Gill QC (as he then was) and there would have been one or more junior counsel.
37. I cannot now recall the identity of the defenders in the cases which were raised.
38. I think that the defenders were Secretary of State for Scotland, the Scottish National Blood Transfusion Service (SNBTS) and individual Health Boards which provided treatment were also convened as defenders.
39. The Secretary of State and SNBTS were represented by the Solicitor to the Scottish Office.
40. Health Boards will have been represented by the Scottish Health Service Central Legal Office (CLO).
41. Initially, correspondence with the defenders' representatives will have been restricted to the formalities of intimating legal aid applications and of raising proceedings.
42. On 11 December 1990, the government announced agreement in principle to settle "the HIV litigation", following upon negotiation with the HIV Litigation Group in England & Wales.
43. The Scottish Group would have been aware of the existence of a Group in England and Wales, although I do not recall the content of any contact that the Scottish Group had with them.

44. The Scottish Group was certainly unaware that negotiations had been taking place between the Government and the English Group.
45. The Scottish Group had no input into those negotiations and at the time, it was not known whether the agreement extended to claimants throughout the UK.
46. On 12 December 1990, I wrote to Ian Lang MP, the Secretary of State for Scotland, expressing the dismay of the Scottish Group that an agreement had been reached without their knowledge or involvement and asking for clarification of the position of Scottish claimants.
47. The members of the Group were both dismayed and angry that they had not been involved in negotiations which resulted in proposals in settlement being “agreed.”
48. The members of the Group were also concerned on behalf of the Scottish claimants, who would have been taken by surprise by the Government announcement.
49. Their representatives were in the dark and were not in a position to advise or reassure Scottish claimants.
50. Given problems with funding, the Scottish cases had not proceeded beyond raising proceedings in a small number of cases and no generic investigations had been carried out.
51. There was insufficient evidence available to the Scottish Group to contemplate entering into negotiations for settlement.
52. In response to my letter to Ian Lang, I was contacted by the Scottish Office and I was invited to a meeting with Mr Richard Henderson, the Principal Solicitor, which took place on 19 December 1990.

53. Mr Henderson, I feel sure, would have advised me that the Scottish Office had not previously known about or been involved in the discussions between the Government and the Group in England & Wales.
54. I am reminded by documents DHSC0003655_004 and SCGV0000501_138 that I was shown a draft of the latest, detailed terms of settlement, although I was not provided with a copy to take away.
55. I am also reminded that there was a discussion around the terms of this draft.
56. It was anticipated that offers in settlement would be made to claimants in January 1991.
57. The principal concern for the Scottish Group was that they would be unable to advise claimants on the proposed terms of settlement without detailed investigation being carried out.
58. There was also a concern that the Scottish claimants were being presented with a *fait accompli* and that Government would impose an unrealistic time limit for the acceptance of settlement offers, once formally made.
59. On becoming aware of the agreement, the Group will have immediately circulated members with as much information as they had available, and with a commitment to press the Scottish Office for full information on the position of Scottish claimants, and to keep members advised.
60. I now have no detailed recollection of the progress of settlement discussions between the Scottish Group and the Scottish Office.
61. Such recollection as I have has been largely informed by §§ 628 *et seq* of the Scottish Office Note, document INQY00003730001 and by the Addendum Note, document INQY0000442_0027.

62. A succession of draft settlement agreements went back and forward, and the Scottish Group took detailed advice from Counsel in relation to their terms.
63. Inevitably, there were differences between the terms in Scotland and in England, and in the timing of settlement offers, but the Government was insistent that the size and categories of payment on offer must be common to all litigants wherever they had pursued their action.
64. The Scottish Group would not have countenanced less advantageous settlement terms for Scottish claimants than in England & Wales.
65. The Scottish Group was made aware of the terms of settlement of claims in England & Wales.
66. Formal offers for the Scottish claimants came to me from Mr Henderson in a letter dated 24 June 1991 and these offers will immediately have been distributed to the members of the Scottish Group to enable them to take instructions from the individual claimants.
67. The Government's stated intention was that the proposals set out in the English Settlement should, with appropriate modification, apply to Scotland.
68. As indicated at §63 above, over a period of some months in 1991, various drafts of the proposed settlement agreement for Scottish claimants went back and forward between the Scottish Office and Balfour & Manson.
69. The drafts included an undertaking and discharge that each claimant was required to give to the Secretary of State as a condition precedent to receiving a payment.
70. Because of the passage of time and the destruction of the Balfour & Manson files, I now have no recollection as to why the Scottish undertaking covered future claims for infection with HIV only, while the equivalent undertaking in England and Wales covered infections with both hepatitis and HIV.

71. I regret that I have no recollection either of the prominence in the negotiations of the waiver of the right to bring future claims.
72. Equally, I cannot now recall discussing the undertaking with lawyers for the plaintiffs in England and Wales during settlement negotiations – I may well have done.
73. Nor do I recall whether I was aware, at the time, that reference to hepatitis had been added to the undertakings for England and Wales, as well as to the undertaking for Scotland contained in the 3 May 1991 MFT (No.2) deed.
74. I am unable to explain, now, why references to hepatitis were subsequently removed from the Scottish undertaking.
75. I can see from the Scottish Office Note, document SCGV0000235_160, that in September 1991, I was involved in negotiations with the Scottish Office as to the eligibility of individuals who came within “Category G” for payments under the settlement scheme.
76. I am reminded that there had been a refusal to allow any latitude, in Scotland, in relation to the date of 13 December 1990 by which date either proceedings required to have been raised or Legal Aid Applications lodged for such a claim to qualify.
77. I note that in correspondence, I said that the failure to treat Category G claims in Scotland sympathetically gave rise to anger and upset by a number of families who feel that they ought to have qualified.
78. I also note that there were many more Category G claimants in England & Wales than in Scotland and that may well have been the driver to seek a more sympathetic approach to such claimants in Scotland.
79. I think it extremely unlikely that I would have threatened to go to the press on the matter (that was not generally my style of negotiation or litigation), but I can see that there would have been a reluctance by the Government to read in the

media that potential Scottish claimants were less sympathetically treated than those in England & Wales.

80. I have no recollection as to when the extended Category G claimants received settlement of their claims.

Section 3: The Scottish HIV Blood Transfusion and Tissue Transfer Scheme

81. Early in 1992, I was involved in negotiating the terms of a Scheme for payments to patients infected with HIV by blood and tissue transfer in Scotland.

82. I do not now recollect the detail of my involvement or whether my firm represented clients who had been infected with HIV through blood transfusion.

83. From documents SCGV0000238_068 and SCGV0000238_053, it appears that my firm worked along with J & A Hastie, Solicitors in negotiating the terms of the Scheme and associated undertaking.

84. I do recall that the finalised undertaking in the blood transfusion cases did not include reference to hepatitis as it had in England & Wales. It referred to HIV only.

85. My recollection is that the undertaking was drafted so as to mirror the undertaking given in the Scottish haemophilia claims.

86. Funding for individual claimants would initially have been on the same basis as in the haemophilia cases, that is, by legal advice and assistance and legal aid or by private funding.

87. Successful claims would have involved payment of expenses of the claimants' solicitors.

88. Funding for my firm and J & A Hastie in negotiating the terms of settlement appears to have been on the basis of an undertaking from the Secretary of

State for Scotland to reimburse the reasonable expenses and recoverable outlays incurred in relation to the coordination of claims, the securing of expert and other advice on common factors in the settlement of the terms of this Scheme.

Section 4: General Questions

89. In general terms, I always found Mr Henderson to be straight forward in his negotiations with the Scottish Group, insofar as professional obligations allowed.

90. I do not believe that the Group was in any way misled, intentionally or otherwise, in the course of the negotiations.

91. Inevitably, however, the Group was handicapped by the fact that the Scottish claims were far behind those in England & Wales and it had not been possible to carry out full investigation and preparation of the Scottish claims because of the lack of funding.

92. I also believe that the Scottish Office was hampered to an extent by the fact that the principal Government Department dealing with these cases was the Department of Health, and they clearly did not have autonomy in the negotiations.

93. The Scottish cases could not be settled on any more advantageous terms to those in England & Wales.

Statement of Truth

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

Signed:

GRO-C

Dated: 06/04/2023