Witness Name: John Rowe
Statement No.: WITN7669001
Exhibits: WITN7669002 - WITN7669003
Dated: 7 June, 2023

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF JOHN ROWE ON BEHALF OF THE HEALTH AND SAFETY EXECUTIVE

I provide this statement in response to a request under Rule 9(1) and (2) of the Inquiry Rules 2006 dated 27th February, 2023.

I, John Rowe, will say as follows: -

Introduction:

1. I am John Rowe, a Deputy Director with the Health and Safety Executive (HSE) and Head of the Operational Strategy Branch in the Engagement and Policy Division. I am authorised to make this statement on behalf of HSE. This statement is provided to the Infected Blood Inquiry in response to a request for the HSE's view on proposals made to the Inquiry.

Section 1: Response to Evidence

1. Please provide a brief outline of the role and responsibilities of the Health and Safety Executive.

2. The Health and Safety Executive (HSE) is a UK government agency sponsored by the Department of Work and Pensions ("DWP"). It is Britain's national

regulator for workplace health and safety and operates across England, Scotland and Wales.

3. HSE was established by The Health and Safety at Work etc Act 1974 (HSWA). HSE enforces workplace health and safety in certain workplaces, mainly through HSWA (and relevant Regulations).

4. HSE's general duty is set out in section 11(1) of HSWA, namely to *"do such things and make such arrangements as it considers appropriate for the general purposes of this Part,"*. HSE is provided with a variety of powers, including enforcement powers, to assist it in achieving that duty.

5. Section 11(1) of HSWA provides for a significant degree of flexibility and discretion for HSE in terms of how HSWA is applied. HSWA is non-prescriptive in nature in that it places duties on employers, employees and the self-employed ("Dutyholders") to reduce risks to health and safety arising out of work, but it is not specific about the precise actions which must be taken by any Dutyholder to fulfil those objectives. Appropriate action by a Dutyholder will depend on an assessment of the risks in a particular workplace, and also what is proportionate.

6. Responsibility for enforcing HSWA is divided between the HSE and other regulators by the Health and Safety (Enforcing Authority) Regulations 1998 ("the Regulations"). Under the Regulations, Local Authorities are the enforcing authority for certain premises, dependent upon the main activity carried out there. This includes, for example, office activities, accommodation provision such as hotels, the sale of goods (shops), church worship and religious activities, and beauty treatments.

7. Conversely, HSE has enforcing authority for HSWA purposes over schools, prisons, courts, factories, farms, most construction sites, and hospitals (for example). In some cases, the Regulations lead to additional complexity – for example, HSE is the enforcing authority for a care home where the main activity is nursing / medical care, but Local Authorities are the enforcing authority for

care homes where the care being provided is residential as opposed to medical. HSE has developed guidance to assist in understanding the Regulations and which types of business fall under our enforcing authority which is available on our website - Health and Safety (Enforcing Authority) Regulations 1998 (hse.gov.uk) (WITN7669002).

8. In addition, it is important to understand that HSE works collaboratively with other Regulators, agencies and government departments to ensure the most appropriate organisation takes responsibility when a health and safety issue arises and there are potential overlaps in regulatory responsibility. In order to facilitate this, we have entered into a number of agency agreements and Memoranda of Understanding ("MoU") with other regulators. These agreements are also all published on our website.

9. As GB wide regulator for health and safety, HSE's responsibilities in the health and social care sectors differ across the home nations. This is because health is a devolved matter in both Wales and Scotland, whereas health and safety at work is retained by the Westminster Parliament.

10. HSE has no remit in Northern Ireland, where health and safety at work is itself a devolved matter. The Health and Safety Executive Northern Ireland is a separate organisation. I understand that the Inquiry is in contact with the Health and Safety Executive Northern Ireland which will need to comment in its own right on any changes that may affect its role in the regulation of health and social care in Northern Ireland.

11. Since the publication of the Francis Report in 2013, and the increased powers for the Care Quality Commission (CQC), HSE's role in health and social care in England has been the protection of workers and members of the public who are not patients or service users. Amongst other things, the report concluded that at the time, in England, there was a regulatory gap, whereby HSE regulated some patient safety matters, such as equipment and systems failures, but not all, most notably not those arising from clinical decision making and medical procedures.

12. This led, in 2015, to the CQC being given additional powers analogous to those of HSE, including the facility to carry out criminal investigations and prosecutions (CQC's powers are derived from legislation introduced by the Department of Health and Social Care and are not connected to the Health and Safety at Work Act). The demarcation of responsibilities between HSE and CQC is covered in an MoU agreed by both organisations (WITN7669003).

13. These arrangements have not been replicated in Scotland and Wales due to health being devolved to the Welsh and Scottish governments. In the devolved nations (excluding Northern Ireland) HSE continues to be a regulator of patient safety matters to the same extent as it was in England pre-2015 (see above).

14. HSE's role in the regulation of patient safety stems from the general duty placed on employers by section 3 of the HSWA. Section 3 places general duties on employers to conduct their undertaking in such a way as to ensure, so far as is reasonably practicable, that persons other than themselves or their employees are not exposed to risks to their health or safety.

15. The scope of the general duties set out in HSWA Section 3 is very broad so HSE has developed a policy on where it will prioritise enforcement and define the extent of its remit. Where a matter is clearly within the remit of another authority, HSE will not intervene. The current position across GB, notwithstanding the differing remits of health and social care regulators in the constituent nations, is that HSE does not, in general, regulate or investigate matters of clinical judgement and or matters relating to the quality of care.

16. The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 (RIDDOR) place duties on responsible persons (usually employers) to report certain incidents to the relevant Enforcing Authority (e.g. HSE, Local Authority). The regulations apply to all sectors and workplaces in Great Britain.

17. Incidents involving people not at work are reportable where:

- any person dies as a result of a work-related accident (Regulation 6); or
- any person not at work, as a result of a work-related accident, suffers an injury, and that person is taken from the site of the accident to a hospital for treatment in respect of that injury (Regulation 5); or
- any person not at work, as a result of a work-related accident, suffers a specified injury (listed under Regulation 4) on hospital premises (Regulation 5).

18. The above are only reportable where the accident is "work-related", i.e. those arising out of or in connection with a work activity. Incidents are not reportable where the injury or death of a person arises out of the conduct of any medical treatment of that person (Regulation 14). Not all incidents involving patients are therefore reportable under RIDDOR. The health and social care regulators in England, Scotland and Wales have their own incident reporting requirements, which operate in parallel to RIDDOR.

2. Please set out your response, from the perspective of the Health and Safety Executive, to this proposal. Please provide any further comments regarding Mr. Bragg's proposals that you wish to provide.

19. With regard to Mr Bragg's proposal, HSE does not seek any change to the existing regulatory regime around patient safety in any of the GB nations and leaves such matters for consideration by the individual governments. One observation, however, is that in a complex regulatory landscape, where there are already many regulators and several different reporting regimes, the creation of both a new regulator and a new reporting regime would appear to add to (as opposed to reduce) this complexity.

20. An acknowledged issue with RIDDOR is that there is significant over and underreporting across all sectors and it is hard to see how a reporting system used by employees would not be even more inaccurate and inconsistent in its application.

21. Employees are not required to report anything to HSE but can raise concerns about their workplaces. Following an initial triage, a proportion of these concerns are followed up and those deemed most serious are investigated.

22. HSE does not have the specialist skills or expertise to regulate across all aspects of patient safety, unlike other healthcare regulators that may not have the powers to require changes or hold organisations or individuals to account. For example, we are competent and able to regulate matters around equipment systems failures relating to patients, such as the use of bedrails to prevent falls or removal of ligature points to prevent suicide; but HSE does not have the skills and expertise to assess suicide risk, make clinical assessments, or judgements on appropriate medical procedures, including systems failures associated with their clinical governance arrangements. We do not therefore consider the proposal that HSE should become the national regulator in this area to be viable.

23. Health and social care, including patient safety matters, are devolved issues, and as such there would be many significant challenges in setting up a GB or UK wide regulatory regime along the lines described by Mr Bragg. The creation of a criminal offence and presumably penalties for frontline health and social care workers who fail to report an incident also raises public interest considerations, such as the possibility it may deter people from taking employment within the sector or incentivise them to leave it. In particular, the potential impact on workers would need to be given proper consideration. HSE's annual statistics released in 2022 reported that 914,000 workers were suffering from work-related stress, depression or anxiety with health and social care being one of the worst affected sectors.

3. Ms Braithwaite's proposal:

24. HSE does not take a view on Ms Braithewaite's proposals for a national safety commissioner in each of the UK nations having high-level oversight of the work carried out by the other health and social care regulators. As previously stated, HSE's role is primarily concerned with the health and safety of workers and

whilst we raise no objection in principle to the proposals, we consider them to be a matter for the UK and devolved governments.

Statement of Truth

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

Signed _GRO-C

Dated _7 June 2023_____