

Witness Name: Ms Sarah Esther Moore

Statement No.: 1

Exhibits: SEM/1-SEM/ 14

Dated: 21 October 2024

UK COVID-19 INQUIRY

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WITNESS STATEMENT OF MS SARAH MOORE

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I, Sarah Esther Moore, provide this statement in response to a Rule 9 Request for Evidence dated 21 October 2024.

**A. Scope of the Rule 9 Request**

1. I have been asked by the COVID-19 Inquiry (**Inquiry**) to provide this statement to assist its examination of the workings of the UK Vaccine Damage Payment Scheme (the **VDPS**) and its assessment of whether any reforms are necessary to the Vaccine Damage Payment Act (the **VDPA**) in which the VDPS is rooted.
2. In providing this statement I have been asked to focus on the period from 30 January 2020 to 28 June 2022, in particular (the “proposed date range”).
3. The facts in this statement are based upon my personal understanding, experience, and research. Where I have relied upon specific documents these are exhibited to this statement.

**B. Background**

4. I am a solicitor of the Court of England and Wales; my SRA number is 358014.
5. I qualified as a solicitor in 2006. I trained at the Firm Freshfield Bruckhaus Deringer in London and Paris. Shortly after qualification I joined Leigh Day & Co. Solicitors where I remained from 2006- August 2020.
6. From October 2020 to January 2024, I took up a position as a salaried Partner at Hausfeld LLP.
7. In January 2024 I rejoined Leigh Day & Co. solicitors as a salaried Partner. At the date of this statement, I remain in this position.

*My experience relating to both product liability claims and the COVID-19 Vaccines*

8. To date much of my legal practice has involved group claims, that is claims on behalf of groups of individuals who have suffered injuries and/or other losses arising out of similar or the same circumstances.
9. My group claims experience has included acting on behalf of claimants from a wide range of jurisdictions including Colombia, Iraq, the Ivory Coast and the UK, against both corporations registered in the UK and in some instances against Departments of the UK Government.
10. Around 60% of my workload has involved product liability issues. Product liability, in my specific experience, has involved acting against Pharmaceutical and Medical Device companies, so called "Big Pharma" in relation to allegedly defective medicines and medical devices. Products upon which I have acted include the anti-emetic pregnancy drug Thalidomide; metal on metal hip implants; Sodium Valproate in relation to the IMMDS Review; Allergan breast implants; and most recently claims concerning the AstraZeneca COVID-19 vaccine (Vaxzevria), hereafter referred to as the **AstraZeneca Litigation**.

11. Prior to my involvement with the AstraZeneca Litigation, described below, my experience of the VDPS was limited: In 2018/19 I investigated potential Legal Aid claims on behalf of the Association of Vaccine Injured Persons concerning the DTP vaccine. It was in that context that I first became aware of the VDPS.

12. Aside from my role as a practitioner with a particular interest in product liability, I have written several legal articles concerning product liability matters; these are listed at **SEM/1 - INQ000468496**. At the date of this statement, I am appointed to the role of Joint Co-ordinator on the Association of Personal Injury Lawyers, Product Liability, Special Interest Group. I am also an active member of the Product Liability Forum run by the British Institute of International and Comparative Law.

### *The AstraZeneca Litigation*

13. At the date of this Witness Statement, I am instructed by 50 individuals all of whom are engaged in litigation against AstraZeneca Limited under the Consumer Protection Act 1987<sup>1</sup>. The Claimants allege that they have suffered serious injuries or bereavement because of “Vaccine Induced Immune Thrombosis with Thrombocytopenia” (or **VITT**) caused by the AstraZeneca Vaccine (hereafter the **Vaccine**).

14. Through my work with vaccine injured and bereaved persons during 2021-2022, as described in Section G of this Witness Statement, and from 2023 onwards as the lawyer leading the AstraZeneca Litigation; I have developed a good understanding of the VDPS, the experience of applicants to the VDPS and, in my submission, the shortcomings of the current Scheme.

### **C. Damage Payment Scheme (VDPS) generally.**

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<sup>1</sup> Relevant Claim Forms numbers are: KB-2023-003297; KB-2023-003280; KB-2024-001512.

15. A full account of the history of the VDPA 1979 is beyond the scope of this witness statement. A useful overview is provided in the academic papers exhibited to this Witness Statement as [SEM/2A - INQ000468498](#).

16. However, to contextualise the evidence that follows I wish to draw attention to 3 key features of the history of the VDPS which, in my view, are essential to understanding the intended purpose, the potential function and the urgent necessity of reform:

- a. **The original purpose of the VDPA was to improve public confidence in vaccination:** The VDPA was created in 1979 to respond to growing rates of “*vaccine hesitancy*”, i.e., concerns regarding the adverse effects of vaccination leading to fewer people coming forward for vaccination: Reporting in 1978, the Pearson Commission<sup>2</sup> explained that there was growing concern regarding reduced take-up of the childhood DPT vaccination between 1972-1976. The Commission attributed this to being “*caused to some extent by the adverse publicity given to cases of vaccine damage, especially following vaccination against whooping cough*”<sup>3</sup>. The creation of a financial support scheme would, it was anticipated, go some way to countering “vaccine hesitancy” because the public perception would be that in underwriting such a scheme “*The Government must be confident about vaccination before it should make such provision*”<sup>4</sup>.
- b. **The VDPA was created to recognise the “special case” that the vaccine injured constituted as a group who had been seriously injured as a result of a Government recommended vaccination programme:** In recommending a compensation scheme for those injured as a result of vaccinations recommended by the Government, the Commission recognised that there is a “*special case for paying compensation for vaccine damage where vaccination is recommended by a public authority and is undertaken to protect the community*”<sup>5</sup>. The Commission concluded that “*some kind of financial assistance*

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<sup>2</sup> The Pearson Commission published the Report on Civil Liability and Compensation for Personal Injury 1978 (Pearson Report): Chapter 25 concerning Vaccines is provided at [SEM/3 - INQ000411782](#).

<sup>3</sup> Ibid. [1380]

<sup>4</sup> Ibid. [1410]

<sup>5</sup> Ibid [1398]

*should be made available for very serious injury resulting from vaccination recommended by a public health authority". "We reach these conclusions because vaccination is recommended by the state for the benefit of the community and where it causes injury the state ought to provide compensation as part of the cost of providing protection for the community as a whole" <sup>6</sup>. In making this finding the Commission was formalising concepts that had been powerfully articulated in other sources, for example in a 1973 BMJ editorial that argued, "the moral justification for compensation ...is based on the social contract. National immunization programmes not only aim to protect the individual but also to protect society....if individuals are asked to accept a risk (even a very small one) partly for the benefit of society then it seems equitable that society should compensate the victims of occasional unlucky mishaps!"<sup>7</sup>.*

- c. **From the outset the VDPA fell short of the Pearson Commission's recommendations and was intended as an "interim measure" with more fulsome legislation to follow:** The recommendations of the Pearson Commission to create the VDPA were readily accepted by the incumbent Labour Government, however, with the 1979 General election looming the Act was hastily drawn up and brought to Parliament with the caveat that once final recommendations on vaccines safety from the JCVI were available more comprehensive legislation would be created. However, after the General Election, Margaret Thatcher's Government decided not to revisit or amend the nascent VDPA<sup>8</sup>.

17. In my submission, these three features of the history of the VDPS indicate that the VDPA has always been a statute based on good intentions, with the potential to perform a crucial social and public health policy function: However, that potential has never been fully realised, to date, because no Government has been willing to revisit the recommendations of the Pearson Commission and create an Act that fully upholds the

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<sup>6</sup> Ibid [1409]

<sup>7</sup> [434] Millward at

<sup>8</sup> [442] Millward at

SEM/2A - INQ000468498.

SEM/2A - INQ000468498.

Government's end of the "social pact" that the Pearson Commission recognised was central to the Statute's function.

18. That lack of willingness can be explained, until now, with reference to the fact that there have been relatively few applications to the VDPS over the years<sup>9</sup>. Consequently, incumbent Governments have likely seen the VDPS as a "footnote" issue in terms of public health policy.

19. As set out below – with the significant increase in VDPS applications through the pandemic<sup>10</sup>, growing evidence of vaccine hesitancy<sup>11</sup>, and the prediction that pandemics are likely to be a recurrent feature of our future<sup>12</sup>, it is crucial that the Government engages fully with the fact of vaccine injury, rather than seeking to ignore it, and provides proper compensation for the Vaccine Injured and Bereaved.

20. In my submission, that engagement, is essential not only for those who have been injured or bereaved already as a result of vaccination, but also for our national public health strategy and pandemic preparedness: Through the pandemic we have learned that vaccines are an essential weapon in countering the devastating effects of any future pandemic, however, the efficacy of that weapon relies upon public willingness to come forward for vaccination: As recognised by the Pearson Commission in 1978, and understood by Government's across the world through the course of the pandemic<sup>13</sup>, a fully functional VDPA has the potential to maintain and increase "vaccine confidence".

SEM/2B -  
INQ000377815

<sup>9</sup> See: [Goldberg 2022, Table 2](#) for a summary of historic application rates to the VDPS.

<sup>10</sup> As at 9:2024 there had been 14,844 applications to the VDPS relating to COVID19 vaccines for the period from January 2021 to September 2024 (i.e. 3.5 years): Contrast this with the figure of 6799 applications in total over the period from 1977 to 2020/1 i.e., **44 years**: Before the pandemic the application rate averaged out at around 154 applications per year (but note the significant spikes c.1977/8), whereas during the pandemic annual applications rose to 4,241 applications per year. This information is based upon the NHSBSA's response to FOI request ref: FOI-02148. [SEM/2C - INQ000508128](#).

<sup>11</sup> Vaccine hesitancy may be a factor in the significant decreases reported in vaccine uptake in the UK in 2024: See for example: UKHSA Vaccine update: issue 346, June 2024: This reports that there was a decrease in maternal vaccine uptake from 72.3% in December 2019 to around 59.5% in December 2023. [SEM/2D - INQ000508129](#).

<sup>12</sup> Various expert bodies have made this prediction, for example, the World Economic Forum. See [SEM/2E - INQ000508130](#).

<sup>13</sup> See p.78 of Fairgrieve et.al., *Comparing No-Fault Compensation Systems for Vaccines*, Tulane J. of International and Comparative Law, Vol.31., *"the number of vaccine injury compensation schemes has nearly doubled since COVID-19 arrived"*. A copy of this Article is provided at [SEM/4A - INQ000414146](#).

21. To realise that potential, in my submission, the Government needs to engage in a thoroughgoing review and reform of the VDPS.

**D. How the VDPS currently works:**

22. The workings of the VDPS are rooted in the VDPA: As per the VDPA, the VDPS exists to '*provide a single tax-free payment*' for "*vaccine damaged persons for death or severe disablement*"<sup>14</sup> proved on a balance of probabilities<sup>15</sup> to have been caused by "*vaccination against any of the diseases to which this Act applies*" (1(1)b).

23. Presently the "*single tax-free payment*" available under the Act is £120,000<sup>16</sup>.

24. On 3.12.2020, during the pandemic, the Government announced that COVID-19 vaccines would be added to the VDPA<sup>17</sup>.

25. The VDPS has traditionally provided payments for claimants who are under 18. However, in recognition of the initial adult centric focus of the COVID-19 vaccine campaign, the eligibility criteria for VDPS applicants expanded to include individuals over the age of 18 where injuries and death resulted from COVID-19 vaccines specifically<sup>18</sup>. The relevant Statutory Instrument was implemented on 31.12.2020.

26. The eligibility criteria for the VDPS can be summarised as follows:

- a. Geographical: The vaccination causing alleged injury or death must have been administered in the UK or the Isle of Man.
- b. Type of vaccination: The vaccination must be within the scope of the Act.

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<sup>14</sup> VDPA 1(1) a.

<sup>15</sup> VDPA 3 (5).

<sup>16</sup> By virtue of The Vaccine Damage Payments Act 1979 Statutory Sum Order 2007.

<sup>17</sup> The Vaccine Damage Payments (Specified Disease) Order 2020, 2020 No.1411 Article 2.

<sup>18</sup> Ibid. Article 3.

c. Severity of injury: That a person is, or was immediately before his death, “*severely disabled*” because of vaccination against any of the disease to which this Act Applies.

27. The determination of what constitutes “*severe disablement*” has been highly contested over the years. The Act originally stated that a person is severely disabled if s/he suffers disablement to the extent of 80% or more, this was amended by Statutory Instrument in 2002, to 60%<sup>19</sup>. The assessment of percentage disablement is made with reference to s.1(4) of the VDPA and, in turn, s.103 of the Social Security Contribution and Benefits Act 1992. This issue of percentage disablement is looked at more closely at para. 83 of this Witness Statement.

28. In terms of the application process, the VDPS is intended to be user-friendly and lawyer free, i.e., the Government advises on its VDPS webpage that “*you do not need a legal representative*” to make an application to the VDPS”.

29. Notably, payment under the Act does not, from a statutory perspective, preclude a successful applicant from bringing a civil claim<sup>20</sup>. However, in practice, advancing a civil claim against a vaccine manufacturer in the UK is fraught with difficulty as several high-profile vaccine cases have shown<sup>21</sup>.

30. At the end of the application process, upon receipt of the Outcome of their application, applicants can request a Vaccine Damage Assessment Outcome Report, which provides a detailed review of their application, and concludes:

a. Causation: Whether “*on the balance of probabilities*” the vaccine caused the injury or death alleged; and

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<sup>19</sup> The Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002, s.2.

<sup>20</sup> VDPA 6(4), but it will be offset against the value of any civil claim. This is also stated clearly on VDPS website.

<sup>21</sup> See for example, *Loveday v. Renton* [1990] 1 Med. LR 117, *The Times*, 31.3.1988 and the *MMR Litigation*. As described by Fairgrieve & Goldberg in Product Liability, para.9.58 and footnote 221.

SEM/4C - INQ000508131.



b. Percentage Disablement: Whether the injury alleged renders the applicant “severely disabled”, or >60% disabled.

31. Only if both thresholds are met will a payment of £120,000 be made to an applicant. A copy of a template Assessment Outcome Report is provided at **SEM/5 - INQ000468503.**

32. A more detailed overview of the VDPS process is now also described on the Government’s VDPS website.

**E. The VDPS and COVID19 Vaccines**

33. On 3.12.20, the Government issued a press release, advising that COVID-19 vaccines would be added to the scope of the VDPA, and that the VDPA was created to provide a ‘*safety net to help ease the burden on individuals who have in extremely rare circumstances experienced harm due to receiving a government recommended vaccine*’.<sup>22</sup>

34. From around March 2021, whilst employed by Hausfeld LLP, I received a steady stream of approaches from members of the public seeking further information on the VDPA. At that date Hausfeld did not have an established Product Liability claims profile in the UK generally or regarding VDPA work more specifically. It is my recollection that these initial enquiries were directed to me by Professor Duncan Fairgrieve who had published an article in the Lancet in December 2020<sup>23</sup>, concerning the VDPA. In addition, my own article in the New Law Journal<sup>24</sup>, may also have prompted some people to contact me directly. Both articles are provided at **SEM/6 - INQ000468504.**

35. At this date there were very few legal Teams nationally who were offering to assist individuals who were vaccine injured or bereaved, and even fewer who were willing to

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<sup>22</sup>Government press release 3.12.20. [accessed 4.10.24]

<sup>23</sup>Fairgrieve et.al, In Favour of a Bespoke COVID19 Vaccine Compensation Scheme, [accessed 9.2.24]

<sup>24</sup>Moore, Following the Herd, [accessed 9.2.24]

**SEM/4D - INQ000508132.**

**SEM/4B - INQ000468502.**

**SEM/6 - INQ000468504.**

do so on a pro bono basis. Hausfeld LLP recognised the urgent need to offer those who had suffered injury or bereavement, because of vaccination, assistance.

36. At Hausfeld LLP we initially directed enquirers back to Government's VDPA website, however, it became apparent that this was not enough. The form of the website in the early part of 2021, appeared to prompt more questions than it answered. For further information on this please see the information provided at **SEM/10 - INQ000508136.** and para.64.

37. To answer some of those questions, and to provide a broader forum for discussion, Hausfeld LLP set up monthly Zoom calls through 2021/22, for anyone who needed assistance with VDPS applications. In most cases, we did not assist directly with completing VDPS applications, but instead offered to review applications pro bono, when asked to do so, and provided a forum within which those making applications could discuss their difficulties and solutions they had found. Through the course of 2021/2 we invited in guest speakers including an expert on benefits, a barrister with experience of the Parliamentary Ombudsman system for those frustrated with waiting for an outcome from the VDPS, 2 Professors of Haematology with VITT expertise, and MP Sir Christopher Chope who had drafted a Private Member's Bill<sup>25</sup> to compel a Judge-led review of the VDPA.

38. From July 2022, some individuals within the group began to receive confirmation that their VDPS applications were successful. Others received rejections but, in most cases, individuals waited for over 12 months for responses to their applications. This delay in processing by the VDPS is explained further at para. 73.

39. During the course of this experience through 2021/22, two things became clear; (1) that the VDPS had a backlog of applications which left many vulnerable vaccines injured and bereaved individuals and families waiting for outcomes of their applications for a long time; and (2) for many who did receive the £120,000, this was not the "safety net" they needed in terms of financial support.

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<sup>25</sup> A copy of this is provided as Exhibit **SEM/7 - INQ000468505.**

40. Consequently, along with colleagues at Hausfeld and the group that we had built through Zoom calls, we decided to initiate a campaign for reform of the VDPA and VDPS. Through the course of 2021/2 this is where my professional efforts, concerning vaccines, was focussed.

**F. Hausfeld LLP and the Campaign for Reform of the VDPA 2021/2022**

41. In December 2021, we encouraged members of the group to write to their MPs to ask them for assistance and advice in seeking to reform the VDPA. Few MPs engaged substantively: Many wrote back with standard form responses an example of which is provided at SEM/8 - INQ000468506.

42. In parallel, Lord Phillip Hunt lent his support to the campaign. He advocated in the House of Lords for an Amendment to the Health and Care Bill, to require the Government to establish an independent Judge led review into the operation of the Vaccine Damage Payments Act 1979 and the adequacy of payments offered to persons seriously injured, or bereaved.

43. In addition, Sir Jeremy Wright MP, former attorney general, and constituency MP for one of the individuals within the group who suffered significant neurological injuries because of vaccination, advocated for reform. In a debate in Westminster Hall in September 2022, Sir Jeremy reminded the House that there was a moral and social imperative underscoring the VDPA and that if there was no reform of the VDPA there could be significant implications for vaccine confidence.

44. Sir Christopher Chope has also provided support for the vaccine injured and bereaved, constituting an APPG<sup>26</sup> in July 2022 and tabling Private Member's Bill for a Judge-led

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<sup>26</sup> The COVID-19 Vaccine Damage APPG, first registered 22.7.22, last registered 30.5.24.

Review of the VDPA as set out at Exhibit **SEM/7 - INQ000468505.** Sir Christopher's Bill has yet to have its second reading, 2 years after it was first tabled.

45. With the announcement of the COVID-19 Inquiry, and a call for submissions regarding issues to be included within the scope of the Inquiry, we advocated for the VDPS to be included as a topic for consideration by the Inquiry, particularly in the context of future pandemic preparedness and the Government's intransigence to review the VDPA of its own accord.

#### VIBUK

46. At the beginning of 2023, with support from Hausfeld LLP, some of the individuals and families with whom Hausfeld had been in discussion through 2021/22, set up the group Vaccine Injured Bereaved UK (or VIBUK), with the objective of continuing the campaign for reform of the VDPA.

47. VIBUK have Core Participant status in this Inquiry, and, for that reason I say no more about the group aside from commending their tireless work to improve the financial support available to those who are vaccine injured or bereaved: Akin to many campaign groups, VIBUK is led and organised through the hard work of those who have been personally affected by vaccine injury or bereavement. Despite the circumstances of their own personal adversity, in the face of social stigma arising from "anti-vaccination" presumptions and political indifference, this group have campaigned persistently for VDPA reform<sup>27</sup>.

48. These efforts led the former Health Secretary, Victoria Atkins, to order a review of the VDPS, in May 2024<sup>28</sup>. However, with the announcement of a general election shortly afterwards, and the change of Government, it is not clear if this review was ever initiated. Three members of VIBUK met with the incumbent Health Secretary, Wes Streeting, in

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<sup>27</sup> These themes were eloquently addressed in Anna Morris KC's submissions during the opening phase of Module 4.

<sup>28</sup> See Exhibit **SEM/8A - INQ000508133.**

September 2024, however, to date, the new Labour Government has made no formal public announcement committing to a similar review of the VDPS.

### **G. Experiences with the VDPS**

49. Through my experience working with families and individuals affected by vaccine injury and bereavement from 2021 onwards, in my submission there are 4 reasons why potential applicants may be reluctant to seek damages through the VDPS, including:
- a. Lack of awareness and information regarding the VDPS.
  - b. Lack of “bandwidth”, i.e., the time, energy and headspace to make an application that requires significant administrative engagement.
  - c. Social stigma; and
  - d. Low value of the award and high threshold of disablement required.

#### **Lack of awareness and information**

50. In my experience, one of the initial issues impacting access to the VDPS was lack of awareness of the scheme.

51. In December 2020, there was some publicity regarding the addition of COVID-19 vaccines to the Act, as explained at para.24 however, many of those who contacted Hausfeld during 2021/22 had never heard of the VDPA.

52. This is perhaps not surprising given the historically low number of applications to the VDPS<sup>29</sup>. Indeed, pre pandemic, the VDPS operated through a small staff of 4 people within the Department for Work and Pensions<sup>30</sup>. In the 5 years immediately prior to the pandemic the number of claims averaged around 75 per year. That number has now grown significantly, as set out at para. 19.

<sup>29</sup> See Goldberg, Table 2: Total number of applications to the VDPS 1977-2021 = 6799 of which 946 awards were made. Averaging

– 283 applications per year nationally, but with applications peaking, 1978/9. Exhibit

<sup>30</sup> See Vaccine Damage Payment Scheme – Media Fact Sheet, dated 9.5.23. Exhibit

**SEM/2B - INQ000377815**

**SEM/8B - INQ000508134**

53. To the best of my knowledge, the Government did not provide any additional signposting for the VDPS during the pandemic, particularly in contrast with its concerted efforts to message the importance of vaccination.

54. Many of those who approached Hausfeld LLP in 2021/2 explained that they had been unable to find any single website that pulled together resources such as information on benefits, bereavement payments and VDPS payments. As a result, one of the early objectives of VIBUK was to try and build their own sign-posting website to support others who were vaccine injured or bereaved. My understanding, from VIBUK, is that these efforts were frustrated from the outset as they were perceived by social media sites to be promoting anti-vaccination materials/messages and were blocked or removed by platforms such as Facebook<sup>31</sup>.

55. In that context, the Hausfeld website became one of the few portals through which individuals could find some assistance and advice on VDPS applications. Subsequently, when VIBUK was set up, the group created another portal with the support of the platform FindOthers. At the date of this statement, that website continues to function and provide invaluable advice and support for those affected by vaccine injury and bereavement<sup>32</sup>.

### Bandwidth

56. The VDPS application process is intended to be user friendly and accessible without the assistance of a legal representative. Yet many of those with whom we have worked have reported that the forms were difficult to complete: Initially the standard form available through the website was not set up to enable applications by bereaved families, and so

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<sup>31</sup> The FindOthers website now set up by VIBUK provides an example of the kind of material the group were seeking to put together. I.e., links to useful websites and signposts.

<sup>32</sup> Screenshot of FindOthers webpage, provided at Exhibit **SEM/8C - INQ000508135.**

families were left to create extra boxes to make the form relevant to their application<sup>33</sup>. Similarly, there was initially no way to apply online – applicants were required to print off and post application forms which was particularly challenging during the pandemic, whilst many found that helplines were insufficiently staffed.

57. All VDPS applicants are dealing with extreme personal circumstances, lives changed through serious injury, disablement, or bereavement, many of those whom I encountered at Hausfeld felt overwhelmed by the application process and could only access the VDPS through peer and pro bono support. Some of these experiences are captured in Exhibit **SEM/10 - INQ000508136**.

58. Whilst some aspects of the VDPS website have now improved<sup>34</sup>, and overall public awareness of the VDPA remains low.

### Social stigma

59. Professor Paul Bennett's<sup>35</sup> research describes the extent to which those affected by vaccine injury and bereavement have had their grief and anxiety compounded by social stigma arising from perceived "anti-vaxxer" associations, see **SEM/9 - INQ000468507**. As described by Professor Bennett, and in my experience of working with those who have been vaccine injured and bereaved during the relevant period, this has made many of those affected feel less able to speak with family, friends, and colleagues about the negative impacts of vaccination upon their lives<sup>36</sup>.

60. In Professor Bennet's view, and in my own professional experience, this has prevented vulnerable people from seeking help, compounded mental health difficulties, and delayed or prevented applications to the VDPS.

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<sup>33</sup> Note that there is now a bereavement specific application form available through the VDPS website, however, this is a relatively recent addition – following complaints by applicants throughout the pandemic.

<sup>34</sup> For example, online applications are now possible, and there are separate forms for injured and bereaved applicants

<sup>35</sup> Prof. Paul Bennett, BMJ, Living with VITT – **SEM/9 - INQ000468507**.

<sup>36</sup> Ibid. P.5-6.

61. Respondents to Professor Bennet's study commented:

*"Compensation through the Vaccine Damage Payment Scheme has proven difficult to obtain, with most participants still awaiting a decision over a year after initiating a claim even in cases where there has been significant physical damage and critical levels of financial stress. This lack of financial support frequently resulted in bitterness, in that participants viewed their having the vaccination in support of a governmental policy and as a way of supporting the wider health of the population, but the government had not reciprocated this personal commitment when people had experienced the negative effects of the vaccine, nor was it taking the plight of those affected seriously. It was also noted that the compensation available would be of limited value to individuals in their 30s who were unlikely to work again and counted against future benefit payments. Many had begun to investigate bringing legal action against the manufacturer of the vaccine in order to obtain more substantial redress. The lack of government support was an emotive issue for all, and a highly emotive issue for some: 'I get very angry about the lack of acknowledgement, support, yes. Horrific. No human being should be put through this. I think it's a stark fact, that the government produced its own VITT guidelines in which it recommended psychological support. And they can't even follow up on that. We need to rely on a charity stepping in... We really do appreciate it. We all talk, you know, we all know each other - all the names I could go through. And we are so appreciated about that because no human beings decide to go through this. I'm fully aware that if someone goes through a trauma, irrespective of whether that's imagined or real, that psychology has a massive impact. To be added on to that the burden of fighting to get support and things like that. These are the things that keep me angry. These are the things that I was always brought up not to accept ...'<sup>37</sup>.*

60% criteria and Inadequate Awards

62. Some individuals within the AstraZeneca Litigation Group who have suffered significant life changing injuries have made the decision **not** to apply to the VDPS: This is because

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<sup>37</sup> Ibid. p.5 column 2.



they have concluded that the requirement to meet a 60% disablement threshold, together with the low success rates for applicants to the scheme, will likely mean that their prospects of receiving adequate financial support through the courts are greater than receiving inadequate financial support through the VDPS.

63. For those who have suffered serious injury, but have been able to return to some form of paid employment, notwithstanding their life changing injuries and ongoing additional needs, their perception has been that they would not be successful in an application to the VDPS and have chosen not to apply.

*In their own words*

64. In preparing this Witness Statement, I asked the individuals and families with whom we are working, all of whom have suffered vaccine injury or bereavement first hand, to provide their responses to the following 4 questions:

1. If you have not applied to the VDPS, why have you decided not to do so?
2. In your experience, was the VDPS “user friendly”?
3. What made you want to bring a legal claim?
4. If you have already received a VDPS payment, what motivates you to bring a legal claim as well?

65. The Group’s anonymised responses are provided at Exhibit SEM/10 - INQ000508136. These responses [unredacted and unedited], are submitted to the Inquiry with the consent of the respondents so that the Inquiry can reflect upon the impact that the poor functioning of the VDPS, the eligibility criteria and the low quantum awarded through the Scheme have upon those applying.

**H. The VDPS in 2024: Too little, too late, for too few**

66. In my submission, the VDPS in its current form offers too little, too late to too few people.

Too Little: £120,000 is insufficient.

67. The £120,000 currently available through the VDPS was last revised in 2007<sup>38</sup>. In raising the cap to £120,000, Lord Falconer indicated that the purpose of this increase was to restore the value of the payment in “today’s prices”, i.e. prices as of 2007.
68. There has been no further increase in the VDPS cap since 2007. Any such inflationary adjustment in 2024 would, according to the Bank of England’s inflation calculator, lead to a payment value of around c.£196,000.
69. However, even if the payment level were increased to £196,000, this figure would still be wholly inadequate to provide the “safety net” that the Government intend the VDPS to provide and fails to provide financial support for individuals and families who suffer 60% disablement or bereavement because of vaccination. Whilst the VDPS is not, and has never been intended to constitute “compensation”, the current level of the VDPS payment compares very poorly with the levels of compensation achievable through personal injury litigation, particularly given the severity of disablement required to be eligible for a VDPS payment.
70. The spreadsheet at **SEM/11 - INQ000468497** (Table 1) provides a brief overview of a selection of cases upon which Leigh Day is currently instructed, with the consent of those whose cases are featured, describing the types of injuries suffered, the level of disablement that the VDPS Medical Assessment Panel have attributed to these injuries, and the comparative level of financial compensation which similar cases have been awarded through civil litigation, with reference to relevant Quantum Reports available on Lawtel.
71. It should be noted that in all cases, that fall below the VDPS disablement assessment of 60%, it is likely that the individual would still achieve some level of compensation if they were to advance their case through civil litigation. Moreover, as set out in Table 1, it is anticipated that where individuals have secured a VDPS award of £120,000 by

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<sup>38</sup> Increase was made via the Vaccine Damage Payments Act 1979 Statutory Sum Order 2007.

evidencing 60% disablement, the award available to them through civil litigation may be in excess of, £1,000,000, when factoring in pain suffering, loss of amenity, future and special damages.

72. This is perhaps not surprising, given that whilst VDPS Medical Assessors are required to take account of “*future prognosis*”, they do not do so with reference to expert reports, “*condition and prognosis*” reports or any examination of the individual’s personal circumstances or losses. Indeed, it appears that the question of prognosis is, at best, approximated by VDPS Medical Assessors based on the available medical records and without any direct physical examination or discussion with the Claimant.

*Too late: The VDPS process is too slow*

73. One of the reasons why the VDPS has adopted a threshold criterion and a single payment mechanism, rather than a more detailed case-by-case approach, as per other jurisdictions, is because the scheme was intended to provide “*prompt*” support for the vaccine injured and bereaved.

74. However, the simplistic structure of the Scheme has, to date, failed to deliver the prompt outcomes for applicants. As per Professor Bennett’s paper **SEM/9 - INQ000468507.** and the applicant’s experiences of the VDPS captured in Exhibit **SEM/10 - INQ000508136.** delays have been a particular feature of the VDPS’ performance throughout the pandemic.

75. The Government has advised that, to improve assessment times, the VDPS staffing levels were increased 20-fold from just 4 personnel before the pandemic to 80 by May 2023<sup>39</sup>. To improve the VDPS’s processing speed, responsibility for the scheme was shifted from the DWP to the NHSBA in November 2021, and subsequently sub-contracted to Crawford and Co. These are logistical, rather than substantive, changes to the VDPS – but have still not speeded up the process sufficiently.

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<sup>39</sup> See Exhibit **SEM/8B - INQ000508134.**

76. Delays remain a defining feature of the VDPS application process: In a Freedom of Information Access Response dated 9 September 2024, the NHSBSA confirmed that at that date there had been 14,844 applications to the VDPS in relation to COVID19 vaccines, of which only 47% (7,028) had been notified of an outcome. Of those still awaiting an outcome, as of 9.9.24:

- a. 1078 have been outstanding for over 12 months.
- b. Of these, 119 were received more than 24 months ago<sup>40</sup>.

77. For those left waiting for the outcome of a VDPS payment, this can mean the difference between being able to access time-sensitive capacity building rehabilitation, meeting mortgage repayments, or accessing timely counselling services for children whose lives have been turned upside down because of a parent's vaccine injury or death, for example.

78. The NHSBSA has explained that these delays have, for the most part, been caused by the length of time it has taken to access each applicant's medical records. That is understood. However, in a system where medical records are required to be produced by NHS record holders within 28 days of request, particularly where requests are being made through the NHSBSA, it remains hard to understand how access to records can justify a delay of over 6 months in the processing time of more than 50% of applicant's cases.

79. Further, in cases where a death certificate has been issued by a Coroner's Court in relation to a bereaved applicant's claim, which confirms that the applicant's loved one died as a result of vaccination, it is difficult to understand why the VDPS still requires sight of all medical records relating to that claimant, unless they have any reason to doubt the coroner's verdict.

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<sup>40</sup> FOI response from the NHSBSA to request Ref: FOI-02148.

80. It is submitted that in cases where a death certificate confirms that the death was caused by vaccination, the VDPS should be readily able to confirm (1) >60% disablement; and (2) vaccine causation, on the balance of probabilities, without any substantive delay.

*For too few people: The problem with the 60% threshold*

81. As of 9.9.24, the VDPS had received 14,844 COVID-19 vaccination applications, of which 7,028 had been notified of an outcome. Of these claims, 6845, or 97% of these claims were rejected.

82. At the same date, 370 claims were unsuccessful because whilst the independent medical assessor concluded that, on the balance of probabilities, the vaccine had caused the injury, they went on to conclude that the injury suffered did not constitute sufficiently “severe disablement” for a payment.

83. Under the VDPS severe disablement means at least 60% disabled, with reference to section 103 of the Social Security Contributions and Benefits Act 1992<sup>41</sup>, and the Social Security (General Benefit) Regulations 1982, Schedule 2<sup>42</sup>.

84. As the details of Schedule 2 indicate, this assessment scale was designed with reference to industrial injury cases and workplace accidents: The focus of the scale is on amputation and limb loss, both of which constitute 100% disablement under the Schedule, as set out at SEM/12 - INQ000508137.

85. By contrast, injuries caused by vaccination can be extremely wide-ranging: For example injuries causatively linked with the AstraZeneca COVID-19 vaccine, include VITT, which can result in intracranial haemorrhage causing significant long-term cognitive disablement<sup>43</sup>. The fact that VDPS Medical Assessors are required, under the terms of

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<sup>41</sup> VDPA, s.1 (4).

<sup>43</sup> For an introduction to VITT and the range of injuries associated please see Clinical Features of VITT, by Sue Pavord et al., October 2021, New England Journal of Medicine: SEM/13 - INQ000508138.

the VDPA, to assess disablement with reference to the 1982 Regulations, means that in making their assessments they must determine whether a non-orthopaedic injury, such as aphasia or dyspraxia is equivalent to amputation. Notably, none of the references in Schedule 2 of the underlying Act, include brain injury or neurological complications.

86. To take one example from a VDPS Assessment Outcome Report reviewed by the Witness a Medical Assessor explains:

*“102. The claimant lost part of their small intestine due to infarction caused by the COVID-19 AstraZeneca vaccine, which had to be surgically removed and led to hospital admission, including a stay in the ICU. It is acknowledged that during the acute post-COVID-19 AstraZeneca vaccination stage, the claimant had a significant disability. 103. The disability caused by the COVID-19 AstraZeneca vaccination was compared to the percentage criteria set out in Appendix B of Part 1: Schedule 2 to the Social Security (General Benefit) Regulations 1982. Disability caused by VITT is not specified in these regulations. For this reason, the impact on daily life was considered against the conditions that would be regarded as a 60% disability by the regulations when compared to a person of the same age and sex with normal mental and physical health. For example, an amputation below the knee or loss of a hand would result in 60% disability according to the criteria set out in the regulations”.*

87. This leads to convoluted assessments of disablement, even where the Claimant has died, for example:

*“61. As the claimant died, the disablement is rated at 100%. 62. The overall disability experienced by the claimant following the COVID-19 AstraZeneca vaccination was compared with the percentage criteria set out in Appendix B of Part 1: Schedule 2 to the Social Security (General-Benefit) Regulations 1982. Disability caused by intracerebral bleeding is not specified in these regulations. For this reason, the impact on daily life was considered against the conditions that would be regarded as a 60% disability by the regulations when compared with a person of the same age and sex with normal mental and physical health. An amputation below the knee or loss of a hand is classified as 60% disablement. As the claimant died it is considered as 100% disablement.”*

88. It is worth noting that these reports are made available to the Claimant or the Claimant's family in cases of bereavement and can often trigger confusion or anger in the way in

which injuries are calibrated, approximated, and converted into seemingly illogical percentages.

89. It should be noted that under English/Welsh civil law we already have established tariffs against which disablement can be assessed and converted into guideline compensation figures. Such sources include the Judicial College Guidelines, that provide guideline payment figures for a wide range of bodily injuries, well beyond the scope of the Regulations. In this context, it is difficult to understand why the VDPA persists in utilising a percentage scale for assessing vaccine damage injury which seems to be ill-fitted for its purpose and creates additional challenges for the Medical Assessors engaged who must calibrate injury percentages with reference to guidelines that are, in most cases, irrelevant or inappropriate.

**I. The impact of VDPS payments on benefits and entitlements**

90. I do not provide any comment on the impact of VDPS payments on other benefits and entitlements as this is outside of my professional experience.

91. I do, however, wish to draw attention to the fact that it was only through the efforts of VIBUK, Mrs Sheila Ward and her MP, that VDPA payments were added to the Universal Credit Disregards Regulations during 2023<sup>44</sup>. Prior to this amendment, an individual receiving Universal Credit in receipt of a VDPA payment because of a bereavement had no way to ringfence their Universal Credit entitlement such that receipt of VDPS monies meant forfeiting Universal Credit payments. This position has now been corrected, but only after months of Government lobbying by VIBUK.

92. This omission of VDPA payments from the Universal Credit Disregards Regulations is, in my view symptomatic, of the way in which the VDPA has been seen as a footnote or afterthought in wider health policy and medical regulation in the UK. In my submission –

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<sup>44</sup> See further at **SEM/14 - INQ000508139**.

a VDPS that is “fit for purpose” has the potential to boost vaccine confidence and play an important role in future pandemic preparedness.

**J. The impact of a failure to reform**

93. It is understood that the pandemic and the scale of the mass-population vaccination roll-out through 2021/22 was unprecedented.

94. It is also understood that the Government’s priority, during that period, was to ensure mass-population access to vaccination.

95. However, it is more difficult to understand why in the aftermath of the pandemic, the Government has refused to grasp the relationship between vaccine confidence and a fit-for-purpose VDPS. This relationship was a key motivation for the VDPS at the point of its creation in 1979 – as per the Pearson Commission’s recommendations and is a factor in the doubling of vaccine injury compensation schemes, across the world, through the course of the pandemic:

96. It is noteworthy that 74% of the Claimants within the AstraZeneca Litigation had vaccine causation for their injuries confirmed by the VDPS on the balance of probabilities, whereas only 50% of this group have reached the level of “severe disablement” required to access any financial support from the VDPS. It is submitted that if the level of compensation available through the VDPS was more in-step with values available through litigation, and enabled people with a wider range of injuries to be eligible for payment, this would make litigation unnecessary. This understanding is validated by the comments at SEM/10 - INQ000508136.

97. In its refusal to consider reforming the VDPS, the Government may be calculating that it can minimise the cost of VDPS payments by keeping the VDPS payment figure at its current low level: If that is the calculation made, then it has failed to take account of the litigation costs that will accrue to the Government through the AstraZeneca Litigation, by



virtue of the Government's indemnification of the company; but more significantly it fails to understand that in failing to reform the VDPS the Government is potentially gambling with vaccine confidence and future pandemic preparedness.

#### **K. Proposals for Reform**

98. The final paragraphs of this statement engage with the question of what, in my submission, a new-improved VDPS for the UK should look like.

99. Several academic papers provide analysis of how vaccine damage payment schemes work in different jurisdictions and make important recommendations as to how the UK VDPS should be remodelled. Two of these papers are provided at **SEM/4A - INQ000414146** and **SEM/6 - INQ000468504**.

100. Reflecting on those papers and drawing upon my own experience of the VDPS, in my submission, reform of the VDPS should engage with the following key points:

- a. **Funding of the Scheme:** The UK VDPS is currently funded solely by central Government. This is one of the reasons why the payment value in the UK is so low and is used as a justification for the decision not to increase payments, as per **SEM/8 - INQ000468506**. By contrast, in Scandinavia, a levy system is used through which all pharmaceutical companies permitted access to the Scandinavian markets are required to pay a percentage of their profits into a central fund. That fund is then used to make payments available to those who are injured by vaccines and/or other medical products. This permits more generous levels of payment to those who are vaccine injured or bereaved. It also avoids what Fairgrieve et.al describe as the "*socialisation of risk and the privatisation of profit*" which characterises the current UK system: Presently, the Government underwrites the VDPS, and in the context of the pandemic, has also indemnified the vaccine companies from all civil liabilities, such that vaccine companies enjoy the profits of vaccination sales whilst also being insulated from the risk of

litigation or liability. In my submission, any reform of the VDPS should consider the benefits of the Scandinavian levy model.

- b. **Eligibility:** The 60% disablement threshold currently used by the VDPS is, as set out in this statement, antiquated, overly complicated and too high. A reformed scheme should be more inclusive and capable of reviewing the circumstances of each applicant on a case-by-case basis. This would be more in line with the way in which injuries and damages are dealt with through civil litigation. Such an approach would have the potential to ensure that the VDPS fulfils its original purpose of enabling applicants to obtain meaningful compensation without the stresses and delays of litigation.
- c. **Causation:** The “balance of probabilities” assessment used by the VDPS is sensible, in my submission, and for those who wish to consider litigation outside of the scheme has obvious resonance. It is also right, in my view, that the VDPS should have access to and review available medical records for applicants in most cases. However, where applicants present death certificates confirming vaccine causation, or authoritative expert reports from leading world-renowned specialists, the VDPS should have the flexibility to fast track those applications. This would free up greater resource for more complex cases and would avoid unnecessary duplication and delay for families who have already endured, for example, an inquest.
- d. **Quantum:** There is much in this Witness Statement that criticises the current £120,000 limit available through the VDPS. I do not suggest any alternative cap but would propose that to ensure fairness and sensitivity to the needs of each applicant a “one size fits all” position should be avoided. It is for this reason that the JCG Guidelines have been developed in a civil liability context, and it is submitted that there is enough expertise in personal injury and quantum in the UK to devise a more appropriate payment tariff which balances the need for transparency, speed and fairness to all applicants. Living examples of such schemes include the Thalidomide Trust banding schema for example.
- e. **Logistics:** The current VDPS is, as outlined in this statement, subject to extensive delay and many of those who have applied have had awful

experiences, as per **SEM/10 - INQ000508136**. Recent schemes including the Canadian scheme set up in 2021<sup>45</sup> provide examples of user-friendly applicant portals in contrast with the current UK scheme. In my submission, a reformed VDPS should make fulsome support available to applicants including funding for those who require legal or administrative assistance in progressing an application.

101. Professor Fairgrieve and his colleagues conclude that there are 4 hallmarks for a successful fund **[SEM/4B - INQ000468502**, p.117], which can be summarised as; (1) accessibility (2) transparency (3) timely decision making and (4) delivering compensation that *“has a reasonable relationship with the harm and provides a realistic alternative to a legal claim”*.

102. As set out in this Witness Statement the VDPS currently fails all 4 tests. In the context of the post-pandemic backlog, the likelihood of future pandemics and the need to sure-up vaccine confidence in the UK, the time to review and reform the VDPS is now.

### Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a comment verified by a statement of truth without an honest belief of its truth.

**Personal Data**

Signed:

Dated: 21.10.24

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<sup>45</sup> [Vaccine Injury Support Program](#)

