

Restricted

**To:** MS(R)

**From:** Steve Wells (Information Services)

**Date:** 11 May 2006

**Copies:** See attached list

## Blood Products - Destruction of Records

**Issue:**

1. You asked for briefing, ahead of your meeting with MS(PH) on 24 May, on a recent story in the Observer (23April – Annex A), which argued:
2. “Until now, officials have always said an inexperienced staff member was probably responsible for the destruction of the files. However, in a letter dated February this year, Health Secretary Patricia Hewitt stated that under the Public Records Act 1958 all departments were required to identify records requiring long-term retention. Such rulings, she said, would be made by a senior member of staff”.
3. This statement is based on a mis-interpretation of a letter from SofS to Charles Clarke MP (Annex B) and appears to conflict with previous statements by Ministers and officials that an inexperienced member of staff was probably responsible for the destruction in the mid-1990s of files covering the work of the Advisory Committee on the Virological Safety of Blood.
4. Lord Morris of Manchester has tabled a question, possibly in response to the Observer article, seeking further detail on the Department’s procedures, the level of seniority of officials making decisions on retention and destruction of records, and action taken on breaches of the procedures.

## Key Messages

5. Decisions on retention and destruction of records may be made by relatively junior staff (IP2 or above).
6. Line managers at all levels are responsible for ensuring that record keeping in their areas is consistent and meets Departmental standards. This includes making sure that staff making decisions on records retention and destruction are “sufficiently aware of the administrative needs of the section to be able to make the decisions”.
7. There was no deliberate attempt to destroy past papers.

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8. When the discovery was made that files had been destroyed, an internal audit report led to improvements in guidance and procedures on record keeping (summary of findings in Annex C).
9. This review led to recommendations for a number of records management improvements, including:
  - production of a retention schedule for departmental records;
  - building protection against inappropriate destruction into the Department's electronic records system;
  - ensuring that retention decisions are only made by staff at a higher level of seniority or with sufficient knowledge and experience to make such decisions; and
  - raising the emphasis given to records management in induction for new staff.
10. These recommendations have been put in place, and with guidance already in use should help prevent such errors in future.

### **Lines to take**

11. The guidance has been consistent. Although relatively junior officials are permitted to make decisions on retention or destruction of records, their line managers are responsible for ensuring that they are equipped to exercise that responsibility.
12. Clearly, the files and papers should not have been destroyed. Given the sensitivity of this issue, we have fully investigated this matter. We have concluded that this was a very unfortunate administrative error.
13. We greatly regret that these papers were destroyed in error and are doing everything we possibly can to ensure that any documents, which were not destroyed, are made available.

### **Elephant traps**

14. The Scottish Executive recently released a very large number of official documents covering this period and these are currently being analysed by a number of interested parties.
15. We do not know the precise contents of all these documents simply due to the huge volume involved. Some of these documents will inevitably be copies of the ones destroyed by DH. The policy division concerned is not resourced to examine the documents concerned.

## Background

16. The Secretary of State's letter (Annex B) re-stated departmental guidance available at the time the mistake was made. Decisions on retention and destruction of records should "be made by an officer of at least Executive Officer grade, who was "appointed by senior officers who are satisfied that the officer is sufficiently aware of the administrative needs of the section to be able to make the decisions".

17. Further background material is attached:

Annex C: Handling and destruction of files covering the use of blood products.

Annex D: Draft reply to Lord Morris (PQ 10421)

Annex E: Summary of record keeping practices in DH.

Steve Wells

ISG4C

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Ext: **GRO-C**

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## Annex A: Observer Article 23 April 2006

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# Tainted blood victims allege official cover-up

Letters reveal that senior civil servants destroyed crucial documents

by Lorna Martin

SURVIVORS OF Britain's contaminated blood scandal last night accused the government of a cover-up after doubts emerged about the reasons for the destruction of hundreds of critical documents. Earlier this year victims were told that paperwork had been accidentally destroyed by an inexperienced civil servant. However, letters seen by *The Observer* reveal that only senior officers, who would have known that the 600 sensitive files should have been stored for at least 25 years, would have been in a position to retain or destroy them.

The documents detailed meetings between the blood transfusion service, health boards, government officials and consultants during the Seventies and Eighties and contained critical information about what has become one of the worst disasters in the history of the NHS.

After several victims lodged a freedom of information request earlier this year, they were told they had been erroneously destroyed, some during the early Nineties and the remainder between July 1994 and March 1998. They were the only records relating to NHS policy which were 'inadvertently' destroyed during the Nineties, and contained information on when precisely the government became aware of the risks from imported blood and what measures were taken to warn patients.

In a further development, *The Observer* has learnt that the shredded documents were the same ones the Tory government had gone to extreme lengths to suppress in 1990. When a judge ruled that they must be released, ministers, in an apparent attempt to avoid handing them over, announced a spectacular U-turn, offering an immediate out-of-court settlement to around 1,200 victims, mainly haemophiliacs, who had contracted HIV from imported blood products.

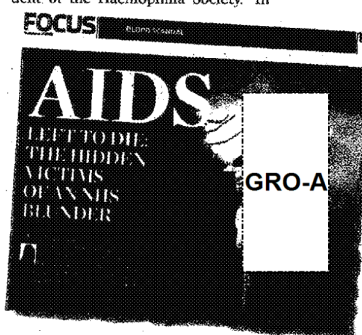
It is the only time the government has sanctioned 'compensation' without negligence first being proved by a court. Victims were urged, some say coerced, into accepting the money. The cash accepted ranged from £21,000 to £80,000. This compares with a recent case in which a man infected with a variant HIV virus from contaminated blood during surgery was awarded £750,000 after a seven-year court battle with the National Blood Service.

Last week, an *Observer* investigation found that many of the 400 still alive are living in poverty. Campaigners said the latest revelations added weight to their calls for additional compensation as well as an independent inquiry. 'In other countries they have investigated the disaster properly,' said Lord Morris of Manchester, the former Labour MP who is president of the Haemophilia Society. 'In

Canada there has been legal action. In Ireland, victims have been adequately compensated and in France people have been sentenced to imprisonment for their part in the disaster. But here in the UK, the government treats the victims with remarkable arrogance and disregard.'

Until now, officials have always said an inexperienced staff member was probably responsible for the destruction of the files. However, in a letter dated February this year, Health Secretary Patricia Hewitt stated that under the Public Records Act 1958 all departments were required to identify records requiring long-term retention. Such rulings, she said, would be made by a senior member of staff.

A spokeswoman from the Department of Health said that the victims' request for additional financial assistance was still being considered.



An *Observer* investigation last week found haemophiliacs such as GRO-A, who had been left in poverty.



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**Annex B: Letter from Patricia Hewitt to Charles Clarke MP**

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Rt Hon Charles Clarke MP  
Constituency Mail  
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Thank you for your letter of 14 December enclosing further correspondence from your constituent GRO-A of GRO-A about his Freedom of Information request for papers relating to the treatment of haemophilia patients and blood safety. Mr GRO-A's email also referred to Sir Nigel Crisp's letter of 1 December to Lord Jenkin, explaining how some of the papers were inadvertently destroyed, and my letter to you of 25 November setting out the Department's current policy and practice on retention of records.

Bringing this correspondence together has created a potential for misunderstanding. The retention and disposal schedule I sent you in November did not exist when the papers were destroyed in the 1990s, nor did we at that time receive certificates confirming the destruction of consignments of records. If I had appreciated that your letter requesting information about the Department's policies in the past, I would have given a more comprehensive reply, which I now give below.

Mr GRO-A asks specifically why an inexperienced member of staff was allowed to make decisions to destroy important papers. The plain answer is that we do not know enough about what happened to answer that question. Clearly, the papers should not have been destroyed. I am very sorry that they were.

When the records in question were destroyed, the general guidance on records management was broadly the same as it is today. Departments are obliged under the terms of the Public Records Act 1958 to identify records needing long-term retention, while destroying most of their records as soon as their administrative value ends. Decisions on retention and destruction of records should always be made by individuals with knowledge of the content and likely future importance of the records.

The guidance current when the records were transferred to the Departmental Record Office stated that decisions on retention or destruction of Departmental files should be made by an officer of at least Executive Officer grade, who was "appointed by senior officers who are satisfied that the officer is sufficiently aware of the administrative needs of the section to be able to make the decisions". A decision to destroy a file was appropriate when files either:



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- had no further administrative value at all; or
- only a short term administrative need.

Files marked for destruction would have been destroyed by the Departmental Record Office either two or five years after the date of the last paper on the file.

The appropriate decision for the records we are discussing would have been to retain the records for review after 25 years when a further decision would be made, whether to destroy or retain the files. After 25 years, we would only retain files if they had historical or continuing administrative value.

These particular records were destroyed between 1994 and 1998, in line with instructions written on the file by a member of the policy team when the records were transferred to the archive three or four years before. Sir Nigel's letter made it clear that the records should not have been destroyed. I do not believe we can go further in examining the causes of the mistake.

Sir Nigel's letter mentioned an internal review undertaken by officials when they discovered that the files had been destroyed. This review led to recommendations for a number of records management improvements, including:

- production of the retention schedule I recently provided;
- building protection against inappropriate destruction into the Department's electronic records system;
- ensuring that retention decisions are only made by staff at a higher level of seniority or with sufficient knowledge and experience to make such decisions; and
- raising the emphasis given to records management in induction for new staff.

These recommendations have been put in place, and with guidance already in use should help prevent such errors in future. We are making every effort to provide staff with good guidance and prevent mistakes.

Mr **GRO-A** also mentions article 14.7.1 of the Department's retention and disposal schedule, and asks to see a certificate confirming destruction. As I mentioned above, although the schedule and destruction certificates were not available in the 1990s when the records were destroyed, the guidance outlined above should have ensured that the right decision was taken.

May I say again how very sorry I am that these processing errors occurred.

I hope that this reply is helpful.

**PATRICIA HEWITT**

### **Annex C: Further Background on the handling and destruction of files**

Following enquiries by Lord Jenkin (former SofS for Health) and others, it emerged that many of the past papers on the issue of haemophilia patients infected with HIV and Hepatitis C through blood products have been destroyed.

During the HIV litigation in the 1990's many papers from the 1970's and 1980's were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990's. We are unable to establish the precise dates these papers were destroyed or the nature of the documents that were destroyed.

During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that many files were missing. An internal investigation was undertaken in April 2000, by colleagues in Internal Audit, to establish why files were destroyed.

This investigation by Internal Audit established that 14 volumes of papers relating to the Advisory Committee on the Virological Safety of Blood (ACVSB) between May 1989 – February 1992 were unfortunately destroyed. These papers were destroyed between July 1994 and March 1998. In respect of these files the Audit report states:

In February and March 1993, the files were closed, retained in the section, and marked for review 5 years from the date of the last document on each file. This part of the process followed normally accepted procedures;

Before any of the volumes reached their specified review date however, in July 1993 the files were marked for destruction and sent to Departmental Records Office (DRO). The files were then destroyed according to instruction, at various stages between July 1994 and March 1998".

The decision to mark the files for destruction was taken at a time of major organisational change in the Department, i.e.: the implementation of the Functions and Manpower Review (FMR), which resulted in two experienced members of staff leaving the relevant section. We believe that the upheavals of the FMR process probably resulted in either

a delegation of responsibilities without proper instruction, or  
an assumption of responsibility without proper authorisation.

Either occurrence, likely given the organisational context, is the most probable explanation for the decision to mark the files for destruction, and the short destruction dates assigned.

**Annex D: Reply to Lord Morris (PQ 10421)**

**The Lord Morris of Manchester** asked Her Majesty's Government:

What is the administrative procedure for authorising the shredding of documents within the Department of Health that have been stored or archived; what grade of official can make an order for the shredding of documents that have been stored or archived; and what action senior officials take if the administrative procedure for authorising the shredding of documents that have been stored or archived has been breached. (HL5511)

**The Minister of State, Department of Health (Lord Warner):**

The Department of Health is obliged under the Public Records Act 1958 to identify records needing long-term retention, while destroying most records as soon as their administrative value ends. Administrative decisions on retention or destruction of records are routinely made between two and five years after the date of the last paper on the file.

Records marked for destruction are held in the file store until the marked destruction date, then batched into consignments, marked as destroyed on the file store database, and despatched for secure destruction. The Department receives a certificate of destruction for each batch destroyed.

Current guidance states that decisions on retention or destruction should be made by "whoever has best knowledge of the subject matter. The reviewer should be in Payband IP2 (Executive Officer Grade) or above". Reviewing should be carried out by whoever has best knowledge of the subject matter; the reviewer should also be in payband IP2 or above. Reviewing should be carried out by whoever has best knowledge of the subject matter; the reviewer should also be in payband IP2 or above. Departmental policy on records management also states that "Line managers are responsible for ensuring that record keeping within their areas is consistent and meets Departmental standards".

Senior officials would become aware that the procedures had been breached if poor practice were revealed by an audit, or if a request for records could not be satisfied because records had been inappropriately destroyed.



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Any action taken would depend on the specific circumstances of the breach

## **Annex E: Record Keeping**

The Department operates well-established policies and procedures for the review and disposal of files in accordance with its administrative needs and the Public Records Act.

These policies and procedures aim to prevent records being destroyed erroneously, but also to ensure that records are not kept after their administrative value is over. The effectiveness of the processes depends on the judgement of individuals in selecting records for long term retention, and the availability of resources to carry out records management processes. The Public Records Act 1958, requires "every person responsible for public records . . . to make arrangements for the selection of those records which ought to be permanently preserved and for their safe-keeping".

There have been many changes in record keeping practices since the issue of contaminated blood products first arose in the late 1970s.

- The organisation of Departmental record keeping was de-centralised in the early 1980s
- The number of documents and copies of documents being created in the department grew dramatically as the use of photocopiers became widespread. The subsequent introduction of email has increased the rate of growth,
- The NHS Executive's move to Quarry House in 1992/3 led to a temporary relaxation of the rules for decision-making on the retention of files,
- The Department carried out a substantial training and awareness programme in 1993/1994 to improve the quality of record keeping and the guidance available,
- We have now rolled out a Department-wide electronic records system to help keep track of email and a range of other electronic records.

But the principles of good record keeping and the advice given to staff have been fairly consistent. In particular, the policies and procedures for the management, review and disposal of files and documents are designed to meet the Department's own administrative needs and the Public Records Act.

Staff are encouraged to transfer important documents, including email, into registered files at the earliest opportunity, and our electronic records system makes this easy to do.

Staff are also encouraged not to retain information any longer than needed to support departmental business. In giving staff this guidance, we are following best practice advice published by the National Archives.

In particular, the advice has always been that copies of documents held as background to policy thinking, or for reference, are unlikely to be needed long-

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term either to support Departmental business or to be preserved in the National Archives. Guidance has been to dispose of such documents when they are no longer required for business use.

Guidance on the policy and associated procedures is readily available to staff on the Departmental Intranet, and supported by training and a rolling audit of record-keeping practice, linked with the Department's Knowledge Management Programme.