

Witness Name: Brendan Sheehy  
Statement No. 2  
Exhibits: 15  
Dated: 02.02.2022

## INFECTED BLOOD INQUIRY

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### SECOND WRITTEN STATEMENT OF BRENDAN SHEEHY FOR THE DEPARTMENT OF HEALTH AND SOCIAL CARE

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I, Brendan Sheehy, C/O the Department of Health and Social Care ("DHSC"), Towneley House, Burnley, BB11 1BJ, will state as follows:

1. My full name is Brendan Sheehy. My professional address is set out above. I am currently the Records Disclosure Lead within the Information Risk Management and Assurance Directorate of the Department of Health and Social Care. I was previously the Departmental Records Officer between 2012 and 4 January 2022 and have previously held a number of roles related to information and records management in the Department since 2003.
2. Save where otherwise stated, all facts and matters referred to in this witness statement are true and within my own knowledge and have come to my attention during the course of my work. Insofar as facts and matters are not directly within my knowledge, they are true to the best of my knowledge and belief and I have indicated the sources of that belief. I am duly authorised to make this statement on behalf of the DHSC.

#### The Rule 9 Request

3. I make this witness statement in connection with the DHSC's role as a Core Participant in the Infected Blood Inquiry ("IBI") and further to a request under Rule 9(2) of the Inquiry Rules 2006, dated 5 January 2021.

4. Section 5 of this request asks the Department to address the following issues and matters:
  - a. the policy the Department of Health had in place concerning the retaining or archiving or destroying Ministerial or Private Office papers when Lord Owen left the Department in September 1976;
  - b. the office or department responsible for this process;
  - c. the individual or individuals who were responsible for this process;
  - d. the Department of Health's understanding of how Lord Owen's papers came to be destroyed and
  - e. Whether the Department of Health has ever operated a 'ten year rule' or routinely destroyed documents after ten years.
5. The context for these requests is set by paragraph 58 of the Witness Statement provided by Lord David Owen to the Inquiry [WITN0663001]. In it, he writes:

*"Regarding my Ministerial papers dating back to my decision to achieve self-sufficiency in 1974-75, within my constituency files I have a handwritten note made by one of my secretaries at the time which reads "DHSS Records. Papers have been destroyed. Normal procedure after 10 years." This was likely to have been written between late 1987 to 1989 and almost certainly was written in January 1988 coinciding with when I first started writing letters about my individual constituent ... No explanation has ever been given to me as to why Ministerial papers from my Private Office were destroyed without any reference to me ...."*

6. In making this Statement, I refer at times to my previous witness statement to the Inquiry, dated 10 October 2018.
7. The letters in this statement are in bold font and square brackets and reference to the letters in the exhibit.

**(1) DHSC policy for the storage of Ministerial or Private Office papers**

Introduction

8. The Department of Health and Social Security ("the DHSS") was the relevant government department at the time Lord Owen was in office. A process for the consideration of records was required under the Public Records Acts, following the recommendations of the Committee on Departmental Records (the 'Grigg Report') [WITN0001012]. The most complete guide to the processes followed by the Departmental Records Office ("DRO") at the time is set out in the 1971 "*Guide for Departmental Records Officers*" published by HMSO [WITN0001013]. This guidance was for government departments and other organisations subject to the provisions of the Public Records Act 1958<sup>1</sup>. I have described its provisions in more detail below.
9. I have not located policy and guidance documents which would have been issued to Private Office staff at the time. The 1971 Guide is addressed to the DRO, as set out at paragraph 8 above. The process in place would be that the DRO would be responsible for registering a file upon request by a 'business unit' (a term used to denote a policy unit, branch, directorate, group or team), and the business unit would then be responsible for the filing and recommending a review period (between 2 and 15 years after the last paper on the file); or if the file should be considered for permanence ('second review'), 25 years after the first paper on the file.
10. The *Guide for Departmental Records Officers* [WITN0001013] suggests at paragraph 52 that arrangements should exist for the management of Private Office papers consistent with the recommendations of the Grigg report.
11. Later guidance, issued in July 2001 [WITN0001016], on the management of Private Office records, recognised that there were two models which could be implemented. Please see paragraphs 41 and 42 below. DHSC had previously applied, and continued to favour, the model whereby policy papers which include interactions with Ministers are stored by the business unit in question, as the preferred way of maintaining a complete record of the development of an issue. I discuss this Model and its implications in more detail below.

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/Eliz2/6-7/51>

Outline of the DHSC archiving system

12. My witness statement of 10 October 2018 [WITN0001001] set out, inter alia, a complete account of the DHSC archiving system; a list of all DHSC repositories, including those storing documents and information in hard copy, electronic format and any other form (whether the documents and information stored within the repositories are considered relevant to the Inquiry's terms of reference or not), together with an indication of the quantity of documents and information stored at each facility; and an account of the process for archiving DHSC documents and information at The National Archives.

13. My account of the DHSC archiving system was informed by the following policy documents:

- i. 1958 Public Records Act;
- ii. 1971 'Guide for Departmental Records Officers' [WITN0001013];
- iii. 1989 'Guidance for file Sections' [WITN0001003];
- iv. 1991 (March) Modernising Government white paper, which set the objective for the Public Records Office<sup>2</sup>;
- v. 1994 'For the Record' [WITN0001002];
- vi. 2009 'Information Management Policy' [WITN0001005].

14. As explained in my 10 October 2018 witness statement (paragraph 15), "*the DHSC no longer holds records of the file structures and processes in place prior to 1979. A description of the organisation of files before this time has been added to The National Archives ("TNA") catalogue, known as Discovery*"<sup>3</sup> [WITN0001001]. Before 1979, we have no records of file structures and processes in place.

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[http://webarchive.nationalarchives.gov.uk/20131205122601/http://www.archive.officialdocuments.co.uk/document/cm43/43 IO/4310-OS.htm](http://webarchive.nationalarchives.gov.uk/20131205122601/http://www.archive.officialdocuments.co.uk/document/cm43/43%20IO/4310-OS.htm)

<sup>3</sup> Any searches of The National Archives have been conducted directly by the Inquiry.

Established practices

15. Records management at the Department of Health and Social Care and its predecessors operated by way of a federated management system according to policy and guidance for the individual business units set out by the Departmental Records Office. Under this system, records that were no longer actively needed by the relevant business units for the remainder of their lifecycle were stored by the DRO, which was responsible for compliance with the Public Records Acts 1958. The DHSS, existing between 1968 and 1988, had its paper files in a single file store in London before this was moved to Nelson, Lancashire in 1987. In 1994 the Department of Health ("DH"), moved their DRO to separate premises, and a separate repository, in Nelson.
16. It was left to the individual teams within the Department to decide the best way of managing their records in accordance with the published guidance. A 'file office', sometimes called a 'registry', was created and records that were being actively used were stored and managed there. Each file office was allocated a number to identify it, as well as prefixes that corresponded to a subject matter. This provided the individual business teams with a logical structure for managing the records. The DRO controlled the allocation of file office numbers and file prefixes. The file office actively managed files that were required by the business team by, for instance, recording new files, their location, and applying review decisions before they were sent to the DRO.
17. Historically, every file that reached its permanence review date would be considered for transfer to TNA. This reflected practices established by the '*Committee on Departmental Records: Report*' (commonly known as the 'Grigg Report') [WITN0001012] published in 1954. The report catalogued changes in document retention since 1836, referencing the importance of the destruction of documents "*under proper precautions*" to avoid documents otherwise "*taking up valuable room*" and "*imposing useless trouble*" (paragraph 20). The report also acknowledged the problem, when selecting records for preservation, of determining in advance the potential value of documents to posterity for historical or other non-administrative purposes; there was "*no perfect solution*".
18. The DHSC review processes of the relevant time are set out in guidance, including the *Guide for Departmental Records Officers*, [WITN0001013] which is dated 1971 and

published by HMSO. The guidance was for government departments and other organisations subject to the provisions of the Public Records Act 1958 and 1967.

19. The guide sets out (at Part III, 'Selection and Disposal Arrangements') that all papers and other records of which the useful life can be predetermined, should be given fixed retention periods, and instructions for their disposal should be included in 'Disposal Lists'. Registered files (other than those in series, which can be included in a Disposal List) and some kinds of unregistered files which need individual consideration should be subject to a 'First Review' five years after the date of the last paper on any file. Those not considered of any value for the Department's own purposes will be destroyed immediately. The responsibility for decisions at this stage is said to rest with the Department.
20. Under 'Selection and Disposal Arrangements' (Part IV) the guidance sets out the reviewing procedures. The reviewing procedure includes the creation of a Disposal List, which might set out a complete programme for dealing with records, giving directions for disposal of each kind or series either by automatic destruction or by normal review or other procedures. This latter practice was encouraged. Example disposal instructions are outlined as follows: 'Destroy after 3 years'; 'consider at First Review'; 'after 2 years move to Hayes, destroy after 5 years'; 'destroy after five years subject to sample'; 'preserve permanently'. In compiling and revising Disposal Lists, the guidance notes that it is necessary to consider the value for research purposes of taking suitable samples of case files and particular instance papers with no long-term administrative value.

#### First review

21. The object of the First Review is to enable all files not considered of further value for a Department's own purposes to be destroyed, while ensuring that no papers likely to be required for permanent preservation are destroyed. While it is recommended that the First Review take place five years after the files have passed out of active use, strict uniformity is not essential. The guidance notes that a DRO, wishing to vary the normal date of First Review, should discuss his proposal with the 'IO' (understood with reference to the *Grigg Report* [WITN0001012] to relate to an Inspecting Officer of the Public Records Office, although this acronym does not appear to be defined in the *Guide for Departmental Records Officers*).

22. At this stage, the reviewer must decide whether the record is likely to be required any longer for the Department's use, bearing in mind that 'departmental purposes' include the possibility of the file being required as a precedent or as a guide to action if similar circumstances arise in the future, and he must guard against destroying papers simply because those activities of the department, which they record, have ceased.
23. The Inspecting Officer ("IO"), from the Public Record Office ("PRO") will need to be satisfied that a balance is being struck at First Review by inspecting samples of the material being discarded, as well as by making test checks of the records being retained.

Second Review

24. Records retained at First Review will come up for a Second Review 25 years after their creation. At this point, the decision as to whether they are worth preserving permanently is a joint one, made by the Department and the PRO together, (the DRO, for the department, and the IO, for the PRO) on historical as well as administrative grounds. Each department was afforded some flexibility of how the DRO might be fitted into its organisation and how the responsible individuals would best liaise over the review process.
25. It may be practicable to undertake a Second Review of certain series earlier than 25 years, and in some cases there are advantages in dealing with blocks of years together. To delay Second Review much beyond 25 years would leave too small a margin of time for the subsequent listing and processing of records, before they become open to inspection when they are 30 years old.
26. Appendix A suggests some guidelines for use in deciding appraisal criteria which can be applied to the selection of records for permanent preservation. The Appendix sets out general descriptions of the main kinds of papers which should be kept permanently, including: "(1) *Papers relating to the origins of the Department...; Copies of annual and other reports; (3) Principal policy papers ...; (4) Selective papers relating to the implementation of policy and changes of policy; (5) Sets of minutes and papers of all Departmental Committees and working parties...; (6) Data about what the department has accomplished; (7) Papers relating to obsolete activities investigations, or to abortive schemes of the Department; ... (11) Papers which relate directly or indirectly to trends or developments in political, social, economic, or other fields...; (12) Papers*

*relating to the more important aspects of scientific or technical research and development....”.*

Disposal

27. The guidance notes that rejection of records at a review does not mean that they must be destroyed if a continuing need to keep them for Departmental purposes has been established; but any records not required for permanent preservation which are not immediately destroyed should be assigned a definite destruction date and not put aside for infinite retention. The destruction date will usually be expressed in terms of a calendar date or the lapse of a definite period of time, but it will sometimes be necessary to relate destruction to the occurrence of a future event which will make further retention of the records unnecessary.
28. The general rule is that if documents are worth keeping they will be preserved in the PRO or another place appointed by the Lord Chancellor; the remainder will be destroyed. However, the 1958 Act provides (at section 3(6)) that, subject to the Lord Chancellor's approval, rejected records may be disposed of in some way other than destruction. The disposal of the documents at the relevant time was performed by HM Stationery Office.
29. In my previous statement, at Section V, I set out the DHSC's retention and destruction policies and processes since 1948. As a result, it will be apparent that if any policy files or registered files were considered for first review some 5 years after 1976, the Department will not hold records of the decisions taken on file destruction at that date [WITN0001001].

Private Office Papers

30. Private Offices and Parliamentary Sections created their own files for MPs' correspondence and parliamentary questions, which used different colours for the file covers to indicate that they were not policy files. Once the correspondence or question was answered, the files should have been deposited with the DRO for retention for three years, after which they would be automatically disposed of. These files were not registered as part of the File Office. The correspondence function was automated in the



late 1990s and paper records for correspondence were no longer created, but the records on those systems were similarly retained for three years.

31. The 1971 guidance addresses 'Selection and Disposal Arrangements' for 'Records in Special Categories' (at Part V) and includes in this guidance Private Office Papers. The guidance for Private Office papers was relatively brief and read as follows:

*"Particular attention is to be paid to papers accumulating in the Private Offices of Ministers, to ensure that those which are public records are subjected to the approved procedures. In most Departments Private Office papers are duly registered, but a DRO must maintain close liaison with his Minister's private secretaries, to ensure the segregation of private correspondence from official papers so that when a Minister relinquishes office the disposal of his papers is in accordance with the recommendations of the Grigg Committee. A DRO should make a point of discussing arrangements whenever ministerial changes are imminent. A DRO should maintain similar liaison with the private secretary to the permanent head of his Department to make arrangements for the proper disposal of the Permanent Secretary's Private Office papers."*

32. While this guidance indicates that, in most departments, Private Office Papers were duly registered, it also highlights the expected close liaison between the DRO and a Minister's Private Secretaries, to ensure the segregation of private correspondence from official papers. This was so that when a Minister relinquished office the disposal of his papers was in accordance with the recommendations of the Grigg Committee.
33. For completeness, I add that the earlier *Grigg Report* [WITN0001012] addressed 'Special Category' Papers at page 34, noting that the most important of a Department's papers, for which separate arrangements are normally made, are those kept in the office of the Minister and the Permanent Secretary. The papers leading up to the enactment of important legislation, though often unregistered, are usually bound together and kept separately from the Department's registered papers. These papers are expected to be of more than temporary administrative usefulness and would automatically qualify for retention at the First Review.

34. The Report further notes that a Minister's office may include a certain amount of his private correspondence, for example copies of letters to and from his constituents. This was no longer (to the best of the report writer's knowledge) considered the Minister's private property and could not be removed by him on leaving office. The Report recommends that Private Secretaries should work in close contact with the DRO over the arrangements to be made for the handling of their Minister's papers. This point is followed through in the subsequent Guide for Departmental Records Officers [WITN0001013], as already noted above.

Subsequent developments

35. It is notable that at hearings for the BSE Inquiry in 1999, which broadly examined relevant events between 1986 and 1996, a number of former Ministers were critical about the fact that the actual papers that they had seen and written on when in office had not been preserved. The Department of Health's response to the BSE Inquiry's request for information concerning the reporting of "suspect cases", dated February 1999 [WITN0001017] confirmed that a search for original submissions to Ministers had raised a number of questions which would lead to an examination of the working practices in Private Offices. The response stated the following in relation to 'Handling Minister's Papers':

*"11. The submission received in the Ministers Private office is the 'original'. During the period covered by the Inquiry there were no specific instructions to Private Office staff about which papers should have been kept for the permanent record and it has become clear that many of the original papers seen by Ministers have been destroyed. In practice, once the Minister's decision/comment had been communicated to the relevant officials, these papers were usually retained by the Private Office, in case they needed to refer to them again. Private Office papers were 'weeded' periodically, often during the Parliamentary recess, and it was at this stage that a decision would have been made about the need to return papers to the originating section.*

*12. It is not possible to confirm that original papers were returned to officials for retention. This would not, however, have any significance for*

*normal department operation since the Minister's wishes would have already been conveyed to the originating section via the Private Secretary.*

*13. Searching for the original submissions seen by former Ministers has raised a number of questions about the Department of Health's handling of the original papers seen by Ministers. The Department is looking at the arrangements for review, retention and archiving of these documents and associated working practices within Private Office."*

36. The Inquiry may also be interested in a similar submission from the Ministry of Agriculture, Fisheries and Food [WITN0001018].
37. The Department of Health participated in the Cabinet Office inter-departmental working group, which had been established at the same time, to consider similar issues (see below).
38. In a Department of Health briefing document dating from August 2000 [WITN0001019] information was provided on the steps taken at that point (i.e., 1999) to improve recordkeeping in the light of the issues revealed, in particular, by the BSE Inquiry: "Arrangements have been put in place to ensure that Ministerial annotations to documents (submissions etc) are retained on file" (see paragraph CI, which recorded that "In Summer 1999 staff of the Departmental Record Office (DRO) worked with Private Office staff to set up a registered filing system, based on the recommendations of the review conducted by Dr Sue Shepherd in May 1999. Each Private Office is responsible for filing its own Minister's papers, including annotated documents and submissions"). The DRO and Private Office team considered whether to update Departmental guidance on record keeping (see paragraph CII). The DRO agreed with the Private Office Manager that it would be more appropriate for a specific guide to records management for DH Private Office to be produced, drawing on general guidance and highlighting particular issues for Private Office records. The new DH Private Office Guide to Records Management was issued to all Private Office staff in October 1999 and updated in February 2000.
39. It was considered therefore that there was no need to alter existing guidance for all DH staff. The Memo noted that "The filing arrangements put in place following the Shepherd review focus on action to be taken in Private Office with papers that

previously were not always returned to sections. Staff in policy sections are still required to ensure that their own records are complete, including where relevant any papers returned from Private Office that express Ministers' decisions."

40. The BSE Inquiry did not, in terms, cover the period of Lord Owen's time in office but there is no reason to think that the systems it explored would have been materially different in relation to the period when Lord Owen was in office. As a result, it is likely that the situation described in the submission set out at paragraph 35 above would have applied equally to storage practices in the 1970s.

41. Subsequently, guidance around records management in Ministerial Private Offices developed substantially. An inter-departmental working group was set up by Cabinet Office in 1999 to look at management of records in private offices and to produce guidance. The "Guidance on the Management of Private Office Papers" published in 2001 [WITN0001016] recommended the adoption of one of two models of records management:

- a. Model 1 - Reliance on policy areas to retain full and accurate records. All original papers and other action papers, as annotated by the Minister (or a Private Secretary Note) were to be sent back to the policy area to be placed on the appropriate registered file. Copies might be kept by the Private Office for ease of reference, but as they were copies they would not be kept indefinitely and might be destroyed, at the latest, upon a change of Administration or as otherwise agreed with the DRO. Only if subjects were dealt with solely by a Minister would it be necessary for a Private Office to keep their own registered subject files.
- b. Model 2 - This involved Private Office records keeping papers to support Ministers, and policy areas also being required to retain records. Private Office would keep the top copies of papers and file them in their own series of registered subject files. A copy of the annotated submission or the Private Secretary note should be sent to the policy desk, recording the response to the submission. The registered files from the Private Office were to be passed to the keeping of the DRO at an agreed point, at the latest at a change of Administration.

42. Updates to the guidance in 2004 and 2009 (the current guidance) kept to these two models.

43. My understanding is that the Department's existing established practices during the time of concern to this Inquiry (i.e., when Lord Owen was in office, and also in the period 1987 – 1988) thus reflected Model 1, whereby the submissions or other papers actually sent to Private Offices for Ministers, together with their answers, were not separately stored or retained in a "Ministerial" or Private Office file. Rather, copies of the submissions, etc, sent to Ministers and the records of the decisions or other reactions received in reply from Private Offices, were to be stored in the relevant registered file retained by the policy section or business unit in question. That said, Private Offices could retain files for administrative convenience, either as registered files or alternatively as loose folders. These would not have been subject to formal retention or destruction policies and were periodically 'weeded'.

44. Thus, in summary:

- a. Ministerial submissions and responses or similar documents relating to the issues with which the Inquiry is concerned would not have been filed in a separate 'Ministerial' or Private Office set of registered papers, but retained as part of the business unit or policy file. The main responsibility lay on the business unit.
- b. That said, some informal working files could have been retained by Private Offices for ease of reference. In addition, if subjects were dealt with solely by a Minister a Private Office would keep their own registered subject files.
- c. Decisions upon destruction or retention of the registered files should have been taken at a First Review stage after 5 years, i.e, in around 1980 – 1981.
- d. At this stage, further decisions on retention would have been taken, including marking files as suitable for a Second Review, approximately 25 years after their creation, at which point transfer to the National Archives would be considered. However, given the intervention of the HIV litigation in (I understand) 1988 – 1991 or thereabouts, it seems likely that this process would have been interrupted by any recall of files that took place as part of that process.

**(2) Responsible Office or Department**

45. The DHSC has been asked which office or Department would have been responsible for the process of ensuring that relevant Ministerial papers from Lord Owen's time were retained.
46. The relevant business unit would have had the responsibility of selecting and committing relevant papers to the registered files, including both copies of Ministerial submissions and any responses received back from the Minister. I have mentioned that some files might have been stored in Private Offices (see above), but this is not where I would expect the primary documentation to have been retained. Finally, I have explained how close liaison with the DRO was encouraged.

**(3) Responsible Personnel**

47. The DHSC has further been asked for the name or names of the individual or individuals who were responsible for this archiving process.
48. It is apparent that there are in fact three groups of individuals who would have had involvement in storage and archiving processes:
- a. The individual business unit;
  - b. Private Office staff; and
  - c. the DRO staff.
49. In relation to each responsible office, it is not possible to identify with certainty the individuals responsible at the relevant time for the document retention processes. This is in part due to the incomplete records, but it is also due to the allocation of responsibility. It is apparent that junior staff were, in practice, responsible for the implementation of document retention processes, while more senior staff retained overall control and accountability. It is further evident that under the established practices, there was an expectation that junior staff would share responsibility by liaison between the DRO and responsible staff.
50. The Civil Service Yearbooks are a guide to both business unit staff and Private Office staff. In addition, the names of senior staff at least will be evident from the names on the submissions in the Inquiry's possession, which name both Private Office secretaries

and those responsible for drafting and sending Ministerial submissions to Lord Owen's Private Office.

51. However, as explained above it appears unlikely that these more senior officials were in practice responsible for actions concerning the storage of papers. Although it is possible to supply the names of those listed in the Civil Service Yearbooks from the relevant period (and the DRO staff directories should also be available), it is important to note the limitations that these resources have: (i) the junior staff with whom the primary decision-making responsibility lay are not listed; and (ii) any Year Book or staff directory is necessarily a snapshot of a given date, and cannot provide a comprehensive overview, which would include temporary staff. It is also apparent that decisions about documents were not documented. As I explained in my 2018 witness statement, the records of destruction, for those documents which had been created in the 1970s, are no longer held.

52. I provide the Civil Service Yearbooks from Lord Owen's period in office, and also for the period 1986 – 1988, being the period ten years after Lord Owen's term. [WITN0001020]

53. In relation to the DRO staff, "*The Distribution of Business*" was a regular publication from the 1970s which showed the organisation of DHSS and the names of staff, and would include the relevant DRO office personnel. The original copies of these have been shared with the DHSC sponsor team and I do not currently have these available. These records are being actively searched for in the London premises and in the event that they are discovered, they will be provided to the Inquiry.

#### (4) Retention of Lord Owen's papers

54. I have been asked to set out the Department of Health's understanding of "how Lord Owen's papers came to be destroyed."

55. However, in the first instance, it is important to note that a number of the papers that must have been sent to Lord Owen, and his responses, survive. That is:-

- a. The documents with which the IBI is concerned include some of Lord Owen's Ministerial papers: see the List exhibited to this Statement [Table of 08.07.21

WITN0001021]. The table highlights the documents concerned with self-sufficiency / plasma supplies in yellow, both Ministerial submissions and also a letter from Dr Owen to an MP. There are also a number of submissions concerned with the pharmaceutical industry/information to doctors which have been 'picked up' by the DHSC in searches for the purposes of the IBI's disclosure requests, although they do not appear to be relevant to its Terms of Reference. Some, but not all of these (due to their lack of core relevance to the subject matter of the Inquiry) have been included in the Table, to indicate what is available.

- b. The Ministerial submissions relating to self-sufficiency include submissions with what appear to be Lord Owen's handwritten comments written on the top (for example, see the documents dated 17.03.1975, 11.07.1975 and 23.10.1975). The fact that these are Lord Owen's comments can be seen from the Private Office minutes dated 14.07.1975 and 29.10.1975, which transcribe the comments in the second and third of these documents and send them out to various officials.

56. I should add that it has not been possible to ascertain whether The National Archives holds further documents related to Lord Owen's period in office, outside of those documents related to infected blood which have been retrieved by the Inquiry. Searches on the Archives were performed by the IBI; it would be a matter for the IBI to determine whether any further investigation of the pattern of the retention of documents outside of the subject of infected blood would be useful. However, the existence of the Ministerial submissions related to the pharmaceutical industry and information to doctors may suggest that there could be further papers that are not related to blood/infection issues (assuming that it was on these matters only that the IBI's searches focussed). I mention this because the suggestion was that "Lord Owen's papers" had been destroyed – i.e., all Ministerial papers and not only those relating to blood policy.

57. I already have explained that the Departmental policy was not to store the papers that had been seen by Lord Owen personally or his personal responses as a complete set, but rather to keep complete 'policy' files (although I am not able to exclude the possibility that more informal working files were kept by his Private Office at the time). I have not



attempted to set out what is available from those policy or business unit files more generally, but the documents are in the IBI's possession.

58. I have highlighted the existence of these Ministerial papers, which appear to consist of a cluster of 'decision-making' documents centred around December 1974, followed by a record of updates on progress. However, it is beyond the scope of this statement to make an evaluation of the significance of those documents, or their numbers/completeness. Nevertheless, in the light of the matters set out at paragraphs 55 - 57 above, it seems to me the suggestion that papers belonging to Lord Owen (in the form of any collective set or files of these papers) were actively destroyed at some time in the mid-1980s is not supported by any evidence I have seen.

59. I have explained that I am not in a position to assess the completeness of the sequence of Ministerial papers that I have highlighted in exhibit [WITN0001021]. However, assuming that it is partial or incomplete, the best assessment I am able to offer is that the storage of these Ministerial documents was evidently inadequate, partial and arguably haphazard, i.e., that there was poor archiving. This is consistent with the explanation of staff lacking in time and resources to commit to schematic decision-making on document retention where that appeared at the time to be of secondary importance to

the pressing decision-making requirements of the Department at any given time. It also appears to be consistent with the comments of witnesses to the BSE Inquiry.

**(5) A 'Ten Year Rule'?**

60. The DHSC has been asked whether the Department of Health (or DHSS before it) has ever operated a 'ten-year rule' or routinely destroyed documents after ten years. This refers to paragraph 58 of Lord Owen's witness statement and to the handwritten note made by a member of his staff: "*DHSS Records. Papers have been destroyed. Normal procedure after 10 years.*" [LDOW0000318] However, no reference to such a procedure exists in the policies and guidance that have been reviewed; I am not aware of such a "procedure".

61. The business unit has a responsibility to consider the retention of a registered file and consider an appropriate retention period. I have not found any documentation of a

policy whereby a ten-year retention period would be routinely applied to records, aside from the model retention period of ten years for legal advice files (which starts when a matter is closed); or for contracts executed as a deed (which is consistent with the requirements of the Limitation Act).

62. The Department of Health and Social Security was split into the Department of Health and the Department of Social Security in July 1988. Noting this major organisational restructure perhaps assists with placing the reply which Lord Owen received in April of that year into an organisational context, though it is unclear what impact this upheaval had on document storage and document retention. It might be expected that this major restructure may have occasioned a detailed review of files that had been retained, but there is no evidence to indicate that this occurred.

63. Even before this major development, changes in geographical location for the relevant offices may also have contributed to difficulties with filing practices. In 1976 the Ministerial offices were based in Alexander Fleming House, Elephant and Castle. Richmond House in Whitehall became the location for Ministers' offices following completion of refurbishment in 1986. It would be conjecture, but it was again possible that in the process of moving offices between Alexander Fleming House and Richmond House decisions may have been made about what papers should be moved.

64. My experience of filing practices does not accord in any measure with the existence of a '10-year rule'. This is consistent with the response provided by Lord Prior of Brampton on 19 April 2016, in response to a Parliamentary Question in the House of Lords, that the Department of Health does *"not recognise that a ten year rule has been established for the destruction of records created by ministers. The Department works to the guidance published by The National Archives on the appraisal and selection of official records which are retained and transferred for permanent preservation"*.  
[WITN0001022]

65. The reference to a ten-year rule thus remains a mystery and is not reflective of the guidance or established practices detailed above. Having searched policy and guidance from the time, TNA guidance, legislation, the Ministerial code, including the 'Redcliffe Rules', I have been unable to establish the possible origin of such an erroneous reference to a 'ten-year rule'.

66. More broadly, I do not know why Dr Owen was not given a more helpful reply, as he should have been, when he asked for his former papers in 1987/88. He should have been granted access to these, as is the convention. It is, I suppose, possible that whoever gave the answer was not aware of how the papers would have been filed (i.e., that there were unlikely to be separate Private Office files on this topic) and that relevant policy files would need to be identified and searched. But in the absence of any further documentation relating to that exchange, I do not know.

**Statement of Truth**

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

Signed:

GRO-C

**Dated:** 2 February 2022

**Full name:** Brendan Sheehy

**Position:** Records Disclosure Lead in the Department of Health and Social Care, Towneley House, Burnley, BB11 1JJ.