

WILLIAM CONNON RULE REQUESTS: CHRONOLOGY OF DOCUMENTS  
Destruction of Papers Relating to Contaminated Blood and Blood Products

Witness Name: William Connon

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INFECTED BLOOD INQUIRY

WILLIAM CONNON RULE 9 REQUESTS: CHRONOLOGY OF  
DOCUMENTS

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## **Section 0: Purpose and methodology**

- 0.1. This chronology of documents has been prepared by lawyers representing Mr William Connon. It is prepared in response to the Rule 9 requests sent to William Connon, dated 25 March 2022 (containing questions) and 31 March 2022 (providing further documents). The chronology is structured to reflect the section headings in the Rule 9 request dated 25 March 2022. The questions in that Rule 9 request have been used to assess the information to be included in this chronology.
- 0.2. The chronology includes reference to all documents specifically referred to in the Rule 9 request dated 25 March 2022. The chronology also makes limited reference to additional documents and the documents provided with the Rule 9 request dated 31 March 2022.
- 0.3. This chronology does not respond to questions put to William Connon that seek his personal views



## Section 1: Employment History

- 1.1. William Connon was the Head of Blood Policy (Grade 6) at the Department of Health (“DH”) between December 2004 – November 2008. During his time as Head of Blood Policy he was a DH representative on the Committee on Microbiological Safety of Blood Tissues and Organs
- 1.2. William Connon was managed by Dr Ailsa Wight, Deputy Director of Infectious Diseases and Blood Policy (Grade 5). Gerard Hetherington, Director of Health Protection was the head of division (Grade 4). Elizabeth Woodeson took over from Gerard in 2006.
- 1.3. Throughout William Connon’s time as Head of Blood Policy, he managed Zubeda Seedat who was a Higher Executive Officer. He also managed Dr Neil Ebenezer and subsequently, Dr Simon Brown, both scientists
- 1.4. Following his time in Blood Policy, he was moved to work on the Swine Flu Pandemic. He retired in 2012.
- 1.5. The following table outlines his employment history:

**Table 1 – Employment History**

Early 1999 – Jan 2002	Principal Private Secretary to Baroness Jay of Paddington
Jan 2002 – 2003	Head of Substance Misuse Team (DH)
Mar 2003 – Nov 2004	Project Management of Criminal Justice Interventions Programme (Home Office)
Dec 2004 – Nov 2008	Head of Blood Policy (DH)
Nov 2008 – 2012	Head of Cross Government Policy – Pandemic Influenza (Cabinet Office)
2012 – Present	Retired

## **Section 2: Destruction of Papers Relating to Contaminated Blood and Blood Products**

### **Summary of questions 7 to 16 in Section 2 of the Rule 9 request**

2.1. The Inquiry has asked:

- (1) When and how William Connors was first made aware that papers from DH relating to contaminated blood and blood products had been destroyed?
- (2) What papers he understood to have been destroyed?
- (3) What steps he took to discover how and why DH papers from the 1970s, 1980s and 1990s came to be destroyed?
- (4) If any steps were taken to identify the civil servants, and their line managers responsible for the destruction of documents and if so, who was identified and if not, an explanation why.
- (5) Who the “junior official” was that had been identified in a briefing as having destroyed the documents in error.

2.2. The Inquiry has further asked questions about a briefing, dated 8 December 2005, which covered materials to be released to the Scottish Executive **[DHSC0200103]**:

- (1) Whose handwritten annotations were on the briefing note?
- (2) The significance of the date ‘before 97?’,
- (3) If prior to this briefing any attempts had been made to locate copies of the destroyed documents from the Scottish Executive? and if not, why not?
- (4) Whether any FOI requests before this date had informed applicants that the Scottish Executive might hold hard copies of the destroyed documents? and if not, why not?

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- 2.3. The Inquiry has set out its understanding that, when files were destroyed, a certificate of destruction was provided which noted the weight of files destroyed but not the number or reference for those files **[DHSC0200107, DHSC6548564 and DHSC6548565]**. The Inquiry asks for an explanation of the reasons for the weight being included on certificates rather than the number of or references for the files destroyed
- 2.4. The Inquiry has asked about an email, dated 8 February 2006, from Zubeda Seedat to Steve Wells, copying in William Connon which asked whether someone could help to find out which files DH held that were not destroyed **[DHSC5402137]**. The Inquiry asks whether there were any attempts prior to this to establish which files were still held and, if not, why not.
- 2.5. The Inquiry has referred to documents at **[DHSC5468582 and DHSC5468584]** and asked:
- (1) when, to the best of William Connon's knowledge it was first identified that the Macfarlane Trust waivers had been lost;
  - (2) whether William Connon was ever informed of the circumstances of their loss and whether they were destroyed; and
  - (3) if so, for William Connon's understanding of what took place including when, why and by whom they were destroyed.
- 2.6. Finally, the Inquiry has asked whether, to the best of William Connon's knowledge, DH has ever operated a 'ten-year rule' or routinely destroyed documents after ten years.

**Chronology in relation to questions 7 to 16 in Section 2 of the Rule 9 request**

- 2.7. On 10 June 2003 Charles Lister, then DH Head of Blood Policy (from 1998 – 2003), emailed Zubeda Seedat as follows [DHSC0020720\_081]:

*“Unfortunately, none of the key submissions to Ministers about self sufficiency from the 70s/early 80s appear to have survived. Our search of relevant surviving files from the time failed to find any. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have since been destroyed in a clear out by SOL (there is an email from Anita James to me confirming this). This would have happened at some time in the mid 90s.”*

- 2.8. On 10 June 2004 Joan Planter emailed the DH Document Records Office, copying Zubeda Seedat. She requested the return of a number of files and acknowledged that some may not be available as they may have been destroyed [DHSC0020720\_067]. The reply from the Document Records Office on the same day states that 38 files were being sent to Ms Planter for review and that further searches would be undertaken for other relevant files.
- 2.9. On 29 January 2005, Robert Mackie emailed Melanie Johnson, Parliamentary Under Secretary of State for Public Health making a Freedom of Information (“FOI”) request for the disclosure of documents related to the HIV Haemophilia litigation [WITN6887002].
- 2.10. On 2 February 2005 Anna Norris (then Private Secretary to Melanie Johnson) emailed William Connon regarding a call “*public enquiries*” had received from Carol Grayson at Haemophilia Action UK chasing up an “*informal internal report*” [DHSC0006164\_024]. Anna Norris also referred to an article from “*The Journal (Newcastle)*” which stated that Carol Grayson wanted to discuss the possibility of papers having been destroyed. On 3 February 2005 William Connon forwarded Anna Norris’ email to Zubeda Seedat and asked her to “*check that this is for us and then see if you can identify which report the*

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*person is referring to and sort out the background to this”*  
**[DHSC0006164\_024].**

- 2.11. Memo or background note from the Blood Policy Team dated March 2005 relating to a FOI request ‘case 209 DH Correspondence Ref: TO6013666’ from Mr Mackie **[WITN6887003]**. The final paragraph repeats:

*“It is also our understanding, having spoken to the previous head of the blood team that that [sic] an earlier search for some papers (about self sufficiency into blood products) from the 70’s/early 80’s could not be found. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have been destroyed in error at some time in the mid 1990’s”*

- 2.12. The Inquiry has also provided an undated memo or background note concerning the same FOI request referenced at paragraph 2.11 from Mr Mackie **[DHSC0200044]**. The final paragraphs stated:

*“6. We have two cabinets of papers (about 60 folders) which we understand were sent to our solicitors at the time of the litigation. However, it is not clear which papers, if any were made available to the plaintiffs lawyers.*

*7. A briefing note on file indicates that a search for some papers (about self sufficiency into blood products) from the 1970’s/early 80’s could not be found. It has been suggested that some of these papers were marked for public interest immunity during the discovery process on the HIV litigation and were destroyed in error at some time in the mid 90’s by a junior official.”*

The document does not assist with who the “junior official” was.

- 2.13. There is a further memo or background note from the Blood Policy Team dated March 2005 relating to the same FOI request referenced at paragraph 2.4 **[WITN6887003]**. The final paragraph repeats:

*“It is also our understanding, having spoken to the previous head of the blood team that that an earlier search for some papers (about self sufficiency into blood products) from the 70’s/early 80’s could not be found. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have been destroyed in error at some time in the mid 1990’s”*

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2.14. In late March/early April 2005 a number of officials exchanged emails about a FOI Request **[DHSC0038529\_017]**. In the course of this exchange, Anita James, a government lawyer, wrote:

*"...My colleague Ronald Powell had conduct of the litigation all those years ago. Once the litigation was finished the files were sent to remote storage. About six years ago I looked for them in relation to another case we had and was unable to retrieve them because they had been destroyed. Department of Health records (as opposed to ours) were inadvertently destroyed in the early nineties as the HEO working in the branch had given them a ridiculously short destruction date..."*

2.15. William Connon sent a submission dated 8 December 2005 to Caroline Flint, Parliamentary Under-Secretary for Public Health **[DHSC0200103]**. The submission informed Ministers of documents to be released by the Scottish Executive concerning haemophilia patients infected with Hepatitis C through contaminated blood products in the 1970s and 1980s. The "background" section of this submission stated:

*"3. Since the Freedom of Information Act came into force we have had numerous requests for the release of papers dating back to the 1970s/early 80s relating to the issue of haemophilia patients infected with HVC [sic]. Unfortunately, many of our papers dating back to this period have been destroyed. Our understanding is that during the HIV litigation in the 1990s many papers were recalled. We understand that papers were not adequately archived and were destroyed in the early 1990s. In addition, we have established that many papers on HVC infection were destroyed in error in the mid-1990s [sic]. In response to various FOI requests we have had to own up to this fact.*

*4. There has been considerable lobbying for a public enquiry in the Scottish Parliament by haemophilia lobby groups. The Scottish Executive plan to release a significant volume of material which, they believe, will allow their Minister to say that he has met a commitment he made to Scottish representatives of the Haemophilia Society, when he appears before the Scottish Parliament's Health Committee in January 2006 to explain why he still does not wish to hold a public inquiry.*

*5. All the relevant action took place prior to devolution. It is highly likely that, amongst the volume of documents being released by the Scottish Executive, there will be copies of papers that were destroyed in DH. As this information is held by the Scottish Office and not DH it is for them to release it under FOI if appropriate. They have taken the decision to do so.*

*6. Inevitably, this may well give renewed ammunition to the conspiracy theorists, and continue allegations of a "cover-up", all of which have*

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*long been strenuously. If there is media interest we can hold the line that blood safety is of paramount importance to DH and the blood service, and all the relevant issues have previously been fully explored and lessons have been learned. We are not aware of any new evidence in the papers which the Scots are about to release.*

*7. On a separate but related matter, PS(PH) will be aware that we have finalised a report of a review of surviving documents on self-sufficiency in blood products. The report is currently with the printers and we hope to publish early in the New Year. There will inevitably be criticism when the report is published because members of the haemophilia community are aware that many DH papers have been destroyed."*

2.16. Also in (unidentified) handwriting on this submission are the following questions:

- (1) "When were papers destroyed?
- (2) If Scotland had copies why didn't we acknowledge this when FOI requests came in?
- (3) What will the papers confirm?"

2.17. On 12 December 2005 Brenda Irons-Roberts (a Senior Press Officer in Caroline Flint's private office) sought approval of, amongst other things, a DH statement in response to the release of papers by the Scottish Executive **[DHSC6275275]**. The draft press release is not attached to this email and has not been identified from searches.

2.18. On 13 December 2005 Jacky Buchan (Assistant Private Secretary to Caroline Flint) confirmed that Caroline Flint was content with the press statement but wanted answers to the handwritten questions on the submission dated 8 December 2005 **[DHSC6275275]**.

2.19. On 13 December 2005 William Connon replied **[DHSC6275275]**:

*"We have said in briefings etc. that the documents were destroyed during the 1990's. There were several files destroyed, I believe, and there is no one date.*

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*Not entirely clear what the FOI question is getting at. Under FOI we respond in terms of England not the UK therefore I doubt that we consider Scottish documents and are not obliged to do so. In the case of the forthcoming Report into Self-sufficiency the report only looked into England and North Wales (the NBA catchment areas). The report it seems did not consider whether copies of documents were held by DA departments which is unfortunate.*

*We do not expect the documents to report/confirm any particular facts which have previously been unknown but as we have not been able to examine the Scottish documents, due to the huge volume and the fact that we do not know exactly which documents were destroyed in the 1990's it is impossible to answer this question. There may well be documents released which express views which could be potentially difficult or inconsistent: I simply do not know.*

*Sorry I can't provide a more definitive reply. Call me...if you would like to discuss this."*

- 2.20. On 13 December 2005, Jacky Buchan emailed William Connon and wrote **[DHSC6275275]**:

*"I think the main point about when the documents were destroyed is do we know whether they were destroyed before 1997? I presume as we have said the early 90s it was before 97?"*

- 2.21. On the same day, Jacky Buchan sent a note to Caroline Flint which set out the information William Connon had provided **[DHSC0041162\_034]**. In relation to when the papers were destroyed she wrote:

*"[t]he documents were destroyed during the early 1990's but exact dates are not known. There were several files destroyed."*

There is also a handwritten note which says *"almost certainly pre-'97 but cannot guarantee that."*

- 2.22. While the documents referred to above do not explain the significance of 1997, the references would appear to be to the 1997 General Election when Labour entered government.



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2.23. On 14 December 2005 Charles Clarke MP wrote to Patricia Hewitt, Secretary of State for Health, enclosing an email from one of his constituents regarding the destruction of departmental records and requesting a copy of the certificate of destruction under the FOI Act **[DHSC6548565]**.

2.24. In emails dated 5 January 2006 and relating to the letter from Charles Clarke MP, Roseanne Pratt (Records and Information Services Manager) wrote:

*"We keep certificates of destruction on a working file at DRO Nelson, but I doubt there would be any useful purpose served by anyone having sight of them, as they only states that an amount (in weight) has been collected from us on a particular date and received by the recyclers and destroyed. As I said previously it forms part of the audit trail, but does not give any specific details of individual files that have been destroyed."* **[DHSC0200107]**

2.25. In reply, Chris Gibson (DH Customer Service Centre) wrote:

*"Thanks – that's really helpful information. The certificate of destruction has been requested under FOI by Charles Clarke MP, so I believe that we may have to provide it for that reason – whether or not it's "useful". Would I be correct in saying that there is no identifier for files on the certificate, so there would be no way of knowing if the files that were discussed in the FOI request were the ones destroyed in a certain group (other than within a specific time period of destruction?)"*

2.26. On 8 February 2006 Zubeda Seedat emailed Steve Wells in the Freedom of Information, Records and Data Protection team **[DHSC5402137]**. Her email stated:

*"Steve*

*I would be grateful for your advice/ comments on two PQs that we have received about the destruction of papers.*

*Given that this has become an issue, I think it would be helpful if we could try to draw up a list of files on blood safety that we do hold by subject area ie. committees, finance, briefings, PQs, imported plasma etc...going back to the 1970's and 1980's. It makes us vulnerable to say that we are aware of papers that have been destroyed, without having a clear understanding of what we do hold.*

*When we met last week I mentioned that we are not resourced to undertake detailed enquiries about past papers. I wondered whether*

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*you would be able to identify someone to help out so that we could establish what files exist. Grateful for your views on this approach. At present its difficult to assess if this issue will quieten down.*

*Happy to discuss and thanks for your help so far."*

- 2.27. The Inquiry has provided an undated letter of response to Charles Clarke MP **[DHSC6548564]**. This is a draft. The Secretary of State replied by letter date stamped 9 February 2006 **[WITN6887004]**. Her letter included:

*"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."*

The letter then gave information about guidance on records management.

- 2.28. On 18 April 2006 William Connon emailed Jacky Buchan replying to a number of questions that had been posed in response to some questions raised in relation to a PQ **[WITN6887005]**:

*"Q: Why didn't we check what papers the Devolved Administrations held when we found out we had destroyed some files?*

*A: I don't know and there is no way of establishing the facts now. It appears that no-one did think to check with DA's which I agree was remiss.*

*Q: Finally, PS(PH) is not convinced by the argument about destruction of documents from Lord Owen's private office. She said there surely must have been guidance from Cabinet Office - isn't there guidance now?*

*A: Private offices are not required to hold papers. All papers should be routinely either returned to officials in the department or destroyed. Cabinet Office have never issued guidance for that reason."*

- 2.29. On 23 April 2007 William Connon emailed Edward Goff (in the Strategy and Legislation branch of DH) and other officials in relation to one or more Parliamentary Questions ('PQs') **[DHSC5468582]**. In the email William Connon asked:

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*"Are we certain that the waivers were destroyed? This is not something which has been specifically identified in Linda Page's report on the "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A and Non B Hepatitis) and given the timing of these PQ's and Lord Archer's inquiry, perhaps we need to consider this. The loss of the signed waivers seems to me to be a fairly critical aspect of all of this. Has Sol's view been sought.*

*Perhaps you could discuss with Linda to establish if this aspect has been directly addressed..."*

- 2.30. On 23 April 2007 Edward Goff forwarded William Connon's response to Philip Davidson, a government lawyer, and wrote **[DHSC5468582]**:

*"We spoke this morning. William has suggested that I speak to his colleague Linda about the lost/ destruction of the Macfarlane Trust waivers. From earlier PO correspondence last year our replies made clear that it seemed that we could not find the signed waivers because some files were inadvertently destroyed..."*

- 2.31. On 23 April 2007 Ted Goff from the Strategy & Legislation Branch at DH emailed Brian Bradley and Jonathan Stopes-Roe, and wrote **[DHSC5468582]**:

*"Philip Davidson at SOL is content with all of the PQs. His response was:*

*"...As we wee [sic] discussing on the telephone I am happy with the suggested replies and the background accompanying them..."*

*Further to William's earlier email. Linda Grant has confirmed that she did not come across any waivers in her searching of the old files and I have taken out of the PQs background any reference to hepatitis. Are you and Jonathan content for these PQs to go up now?"*

- 2.32. The Inquiry has provided undated draft responses to the three PQs referenced at paragraphs 2.29 – 2.31 **[DHSC5468584]**:

*"PQ 04540*

*How many requests her department has received for original copies of legal waivers signed by haemophiliacs undertaking not to take legal action against the department...*

*Suggested reply:*

*In the period April 2006 to March 2007 the Department received three requests for copies of waivers signed by haemophiliacs infected with HIV through blood products. The Department has been unable to satisfy these requests. There is no requirement for such waivers in relation to infection with hepatitis*

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*Background*

*... In the last year the Department has received three requests for copies of individual waivers. The Department was unable to find the requested waivers because some files had been inadvertently destroyed. The subject of the destroyed files has been the subject of recent parliamentary questions (the last written answer was on 27 February 2006),*

*...*

*PQ04541*

*...*

*PQ04542*

*How many legal waivers were recorded by the department as being signed by haemophiliacs undertaking not to take legal action against the department or any other public body in respect of infection with HIV or hepatitis viruses as a result of infected blood products; how many original copies of such documents the department holds; and if she will make a statement*

*Suggested answer:*

*The Macfarlane Trust has 364 registrants (as at 31 March 2007), most of whom are haemophiliacs infected with HIV, who were required to sign a 'Deed of Undertaking' at the time of their registration which indemnified the Government against any further litigation.*

*The Department currently hold 90 original waivers. A number of signed waivers, going back to 1989, were inadvertently destroyed with the files in which they were held.*

*...*

*Background*

*... In 1991, as part of a settlement of court proceedings a further lump sum payment was made under the scheme for haemophilia patients infected with HIV. From that time, all beneficiaries of the Trust have been required to sign a waiver undertaking not to take legal action against the Department or any other public body in respect of infection from HIV, or hepatitis viruses. It is usual in litigation that when a settlement is reached, claimants cannot then reopen the proceedings. In the last year the Department has received three requests for a copy of a waiver.*

*..."*

This does not appear to be the final version of the responses to the PQs and the final version has not been identified.

## **Communications with Lord Jenkin**

### **Summary of questions 17 to 25 in Section 2 of the Rule 9 request**

2.33. In relation to communications with Lord Jenkin the Inquiry has asked:

- (1) When Lord Jenkin was first informed about the destruction of DH papers relating to blood products;
- (2) If Lord Jenkin was not informed of this at the time of his first enquires about documents, why not;
- (3) Whether William Connon was aware of any reasons for hesitating to grant Lord Jenkin a meeting (by reference to **[DHSC0200074]**).

2.34. In relation to the meeting on 13 April 2005 between Lord Jenkin and Sir Nigel Crisp to discuss the papers from his time as Secretary of State, the Inquiry has asked why, in the briefing note prepared, it was thought that Lord Jenkin's papers would not have been retained because they 'would not have been required either to support administrative needs or accountability'.

2.35. The Inquiry has referred to a briefing note for Sir Nigel Crisp prepared in advance of a meeting between Lord Jenkin and Sir Nigel on 13 April 2005 **[WITN3996010]**:

- (1) In relation to this briefing note the Inquiry has asked why it was thought that Lord Jenkin's policy papers from 1979 would not have been retained because the "*would not have been required either to support administrative needs or accountability.*"
- (2) The Inquiry has referred to a part of the briefing note which says the NHS Executive's move to Quarry House in 1992/93 led to a temporary relaxation of the rules for decision-making on the retention of files, and asks why this move led to a relaxation of rules; how and by whom this was decided; how William Connon came to realise there was a temporary relaxation of the rules; what, if any, evidence

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William Connon was given to demonstrate there was a temporary relaxation of the rules; and to what extent William Connon believes that the relaxation of the rules led to destruction of DH papers on blood products;

- (3) The Inquiry has asked for comment on the extent to which the account given for destruction of documents relates to the account in **[DHSC0041198\_026]**.
- (4) In relation to the briefing note, the Inquiry has asked for an explanation of a comment, "*in light of the above*", that the principles of good record keeping and the advice given to staff were fairly consistent.

2.36. In addition, the Inquiry has asked:

- (1) Why a formal note was not taken of the meeting on 13 April 2005 between Lord Jenkin and Sir Nigel Crisp and whether it was standard practice to take formal notes of such meetings.
- (2) For William Connon's explanation of why there was a need to prevent an alliance between Lord Jenkin, Owen and Morris (referring to an email dated 13 January 2006 **[DHSC5399020]**). The Inquiry has also asked for William Connon's understanding of this "*alliance*" and whether steps were taken to prevent such an alliance.
- (3) About the explanation given in a memo to Sir Nigel Crisp, dated 6 February 2006, in relation to the destruction of documents, and why that explanation was given then other documents suggest the Blood Policy Team was aware, prior to Lord Jenkin's enquiries, of the destruction of DH documents **[WITN3996022]**.
- (4) Whether William Connon considers that the draft reply, that he approved, to Lord Jenkin's PQ in April 2006 answered the question that was asked and if not, why the reply was drafted as it was **[DHSC0041198\_088]**.

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- (5) For a response to Lord Jenkin's statement to Lord Archer's inquiry on 20 April 2007 in which Lord Jenkin said there was something in William Connon's manner when speaking to him about his search of files, that led Lord Jenkin to suspect he may have known more about the files than he was prepared to disclose. The Inquiry will appreciate that this chronology, prepared by lawyers, cannot respond to this.

**Chronology in relation to questions 17 to 25 in Section 2 of the Rule 9 request**

- 2.37. On 14 December 2004 Lord Jenkin wrote to Lord Warner, the then Parliamentary Under-Secretary of State for Health in the Lords [WITN4912005]. Lord Jenkin attached correspondence that he had exchanged with Mr [GRO-A] [WITN4912006]. Mr [GRO-A] was seeking copies of documents from Lord Jenkin's time in office including '*...a secret Westminster funded report into Haemophilia and Hepatitis non A non B between 1979 and 1982*' which he had been seeking from the Scottish Executive.
- 2.38. Documents show that Zubeda Seedat had been working on Lord Jenkin's request before William Connon took on the role of Head of Blood Policy and she continued to lead on the matter.
- 2.39. On 30 December 2004 Victoria Lindsay from the Customer Service Centre emailed Zubeda Seedat seeking a contribution to the draft response to Lord Jenkin [WITN4912007]. Zubeda Seedat composed a draft reply for Lord Warner to send to Lord Jenkin, as per Victoria Lindsay's request [WITN4912009]. The final letter was sent by Lord Warner on 27 January 2005 [WITN3996005].
- 2.40. Lord Warner's reply noted that officials had carried out a search of the relevant files but could find no trace of information relating to the 'secret Westminster-funded report' being referred to. A further copy of the report of

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the Haemophilia Centre Directors' Hepatitis Working Party for the year 1980/1981 was provided, which had previously been sent by the Scottish Executive in answer to the similar query of them from Mr **GRO-A**

**2.41.** The Inquiry has referred William Connon to an email chain in February – March 2005 between officials and Lord Warner's private office **[WITN3996008]**. This email chain followed the letter from Lord Warner to Lord Jenkin. On 9 February 2005, Shaun Gallagher, from Sir Nigel Crip's private office, emailed Zubeda Seedat to say that Lord Jenkin was concerned Lord Warner's letter "*gave the impression that the Department held no records on the subject in question and was looking to take up the issue of DH's filing and document management with the Permanent Secretary*". William Connon was copied into the email. It was suggested that a follow-up letter should be written and Zubeda Seedat drafted this letter and sent it to Lord Warner's private office on 1 March 2005 **[DHSC0200048]**.

**2.42.** On 10 March 2005 Lord Warner wrote to Lord Jenkin, responding to this concern about DH's filing and record management systems **[ARCH0002570]**. Lord Warner wrote:

"...

*I would firstly like to correct the impression I may have given that we hold no records on the treatments of haemophilia patients, blood safety and related issues. The Department of Health has a Departmental Records Office (DRO) that holds closed files on these areas. These files have been subject to a branch review.*

*Clearly, keeping good records is fundamental to the day to day running of the Department. We recognise that much of the work we do has long term consequences and accurate records are essential if future users are to be able to see why certain decisions were made...*

*Mr **GRO-A** refers to what he calls a secret Westminster report. Officials have established that this refers to the document entitled "Haemophilia Centre Directors' Hepatitis Working Party Report for year 1980-81" ...*

..."



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It also appears that Zubeda Seedat's background note provided with the draft letter was inadvertently sent to Lord Jenkin.

**2.43.** On 16 March 2005, Lord Jenkin asked for access to his papers from when he was Secretary of State for Health and Social Security and requested a meeting with Sir Nigel Crisp (NHS Chief Executive and Permanent Secretary for Health) [DHSC0200058].

**2.44.** On 31 March 2005, Shaun Gallagher emailed William Connon [DHSC0200074]:

*"Just to alert you that we now have had to give in to a meeting with Lord Jenkins [sic]. It is set for Wed 13 April 9 to 9.45am. Could you please provide briefing for Sir Nigel by Monday 11th, and we will need one person to attend as well please. I would be grateful if this could include some briefing from Linda or team on records management/ filing in the Department, as Lord Jenkins [sic] believes that we do not seem to have kept proper records from the period in question. I am not sure about the "denied access" issue – he hasn't asked to see papers, though I suppose that may be one of the outcomes of the meeting..."*

**2.45.** William Connon sent a briefing note to Sir Nigel Crisp dated 11 April 2005, in advance of the meeting with Lord Jenkin on 13 April 2005 [WITN3996010].

The note included:

*"4. We understand from colleagues that on a previous occasion, in 1999, Lord Jenkin wrote seeking access to policy papers, including unpublished research studies, that he brought with him when he arrived at the DHSS in 1979. On that occasion, colleagues were unable to locate the documents. In fact, it is unlikely that they would have been retained, as they would not have been required either to support administrative needs or accountability."*

The briefing note does not include an explanation for the comment that the papers previously requested (said to be policy papers, including unpublished research studies that Lord Jenkin had brought with him) would not have been

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retained as they were not required to support administrative needs or accountability.

2.46. The briefing note also included the following:

*"LINE TO TAKE*

*Many key papers from the 1970s and 1980s have been destroyed. During the HIV litigation in 1990 many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s.*

*We have been in touch with Departmental Records Office to check which files related to the treatment of haemophilia patients and blood safety are still in existence from the period between 1979-1981. We have obtained a list of some files from this period. However, at first glance it is not clear about the extent to which these files will hold papers that Lord Jenkin will have handled. It would require significant staffing resource to go through these files to identify official papers that Lord Jenkin handled at the time.*

*We have not sought to deny Lord Jenkin access to any official papers. The reply from PS(L) focused on addressing some very serious comments from Mr GRO-A about blood safety and the transmission of Hepatitis C.*

*...*

*Departmental obligations for record keeping*

*8. 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".*

*9. There have been many changes in record keeping practices since Lord Jenkin was Secretary of State:*

- 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 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,*

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- *We have now rolled out a Department-wide electronic records system to help keep track of email and a range of other electronic records.*

...

*12. 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.*

*13. 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-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."*

- 2.47. On 13 April 2005, Shaun Gallagher emailed Zubeda Seedat to thank her for attending the meeting with Lord Jenkin that morning [DHSC0200058]. William Connon and other officials were copied in. Shaun Gallagher wrote:

*"Zubeda*

*Many thanks for this briefing, and for attending the meeting with Lord Jenkin this morning. This is a brief note of what was agreed.*

*Lord Jenkin said that he would like to come into the Department to go through papers that he would have seen while SofS. He recognised that not all the papers would still exist; and that it would take some time and effort to identify the relevant files and find this appropriate papers. Nigel said that we should write to Lord Jenkin next week setting out a timescale for this to happen, and how his access to the papers would be facilitated..."*

- 2.48. On 19 April 2005, Zubeda Seedat wrote to Shaun Gallagher, copying William Connon and other officials [DHSC0200082]:

*"LORD JENKIN OF RODING – ACCESS TO PAPERS*

*1. Following the meeting with Sir Nigel Crisp I attach a letter for you to send to Lord Jenkin regarding his access to papers on the issue of haemophilia patients who were infected with contaminated blood products. We have been able to trace a number of existing files which may assist Lord Jenkin. We have been in touch with the Departmental Records Office and The National Archives to retrieve these files.*

*2. I have also contacted Sally Perry, in the Propriety and Ethics Team at the Cabinet Office and she has advised that Lord Jenkin may have*

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*access to the full files so long as they cover his period in office. We will ensure that he gets the appropriate access.*

*3. Lord Jenkin made a brief reference to the report "The Hepatitis C Scandal" by the All-Party Parliamentary Group on Hepatology. This report was published on 22 March and, as requested, I am sending you a photocopy of the report via internal post. The report contains 13 recommendations, is critical of Government action in tackling hepatitis C and calls on the Government to give it greater priority. I attach the briefing produced by colleagues at the time which covers what is in the report and our position on it."*

2.49. On 5 September 2005 Zubeda Seedat emailed William Connon saying that Lord Jenkin would be coming into DH on 13 September *"to complete his search of the files"* [DHSC0200087].

2.50. On 6 October 2005, Zubeda Seedat sent Lord Jenkin a letter which enclosed copies of documents he had requested following his inspection of files on blood safety and the issue of haemophilia patients infected with hepatitis C [WITN6887006].

2.51. On 19 October 2005 William Connon wrote to Lord Jenkin [DHSC0200089]:

*"Further to your conversation with Zubeda this morning, I attach two sets of papers which have been clearly marked. The set of papers for you include research documents from Professor Zuckerman. We are resending all the documents for ease.*

*I understand that you have concerns about the fact that there were limited files available to you. As you know we requested all files relating to your period in office, dealing with haemophilia patients who were infected with contaminated blood products. A number of files from the 1970's and 1980's have in fact been destroyed but we have made available to you all those which are currently held. I trust you will find the enclosed papers helpful."*

2.52. On 25 October 2005 Lord Jenkin wrote to William Connon [WITN3996015].

His letter included:

*"With regard to the missing files, Sir Nigel warned me when I saw him earlier in the year that a number of files dealing with contaminated blood had been destroyed after the settlement of all the HIV claims.*

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*While this may in fact represent what happened, I find it difficult to believe that this was an appropriate cull. I intend to make a further appointment to see Sir Nigel with a view to seeking an explanation of why this happened. The Department must have known that there were many more outstanding cases of people who claimed to have been infected by contaminated blood, and indeed, many of the present generation of haemophiliacs fall into this category. However, that is not a matter for you and I will pursue it with Sir Nigel.*

*I would, however, like to place on record, yet again, how very helpful Zubeda Seedat has been in making available to me the many files that do remain. I am most grateful to her and to yourself."*

- 2.53. On 25 October 2005 Lord Jenkin wrote to Sir Nigel Crisp and asked to meet with him about why it was "thought right to destroy these files" [DHSC0046961\_014].

- 2.54. On 9 November 2005 Zubeda Seedat emailed Billy Reid from the Blood Transfusion and Rehabilitation Branch, Health Planning and Quality Division at the Scottish Executive [DHSC5399526]. This was in response to Billy Reid seeking DH input on three PQs the Scottish Executive had received. William Connon had asked Zubeda Seedat to assist and she sent a long email setting out DH's recent engagement with Lord Jenkin.

- 2.55. On 22 November 2005 Zubeda Seedat emailed Anita James, a government lawyer, asking for a copy of the "audit report" that had been mentioned in Anita James' emailed, dated 22 February 2005 [WITN3996017]. That "audit report" is dated April 2000 and its overall conclusion was that [DHSC0046961\_056].

*"an arbitrary and unjustified decision, most likely taken by an inexperienced member of staff, was responsible for the destruction of a series of files containing the minutes and background papers of the Advisory Committee on the Virological Safety of Blood (ACSVB)."*

- 2.56. On 29 November 2005 Zubeda Seedat sent a submission to Sir Nigel in relation to Lord Jenkin's meeting request [WITN3996019]. William Connon and other officials were copied in. The submission included:

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*"4. At your meeting with Lord Jenkin and his two visits to the Department to inspect the files, we made clear that many key papers from the 1970's and 1980's have been destroyed. These events took place a long time ago. However, our understanding is that during the HIV litigation in the 1990's many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990's.*

*5. In addition we have established that many other important documents, mostly papers and minutes of the Advisory committee on Virological Safety of Blood were destroyed in the 1990's. This should not have happened. During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that many files were missing. A low key internal investigation was undertaken, by colleagues in Internal*

*Audit, to establish why files were destroyed. We have managed to obtain the report by Internal Audit. This concludes*

*"The decision to mark the files for destruction was taken at a time Of Major organisational change in the Department, ie: 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"*

*6. The report by Internal Audit made recommendations about the importance of record keeping and the need to train new recruits. In a letter from PS(L) to Lord Jenkin on 10 March 2005 - see Annex C, PS(L) set out the Department's commitment to good record keeping."*

**2.57.** The submission recommended that Sir Nigel Crisp should not meet again with Lord Jenkin but instead a letter should be written to explain in detail *"our understanding about why papers were destroyed."* A draft letter was attached to the submission.

**2.58.** Sir Nigel Crisp wrote to Lord Jenkin on 1 December 2005 **[WITN3996019]**. The letter explained,

*"When we met in April I explained that certain papers dating back to the 1970's and 1980's had been destroyed. I appreciate that you would like to discuss this further, however I thought it would be helpful to write to you about this issue instead. Naturally, I am concerned that important*

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*files from this period no longer exist. Although these events took place a long time ago, my officials have undertaken to explore why important documents were destroyed.*

*As previously mentioned, it is our understanding that during the HIV litigation in the 1990's many papers from that period were recalled for the purpose of the litigation. We understand that papers were not adequately archived and were subsequently destroyed in error in the early 1990's.*

*Officials have also established that a number of files were marked for destruction in the 1990's. Clearly, this should not have happened. When the discovery was made that files had been destroyed, an internal review was undertaken by officials. I understand that a decision, most probably made by an inexperienced member of staff, was responsible for the destruction of a number of files. The decision to mark the files for destruction was not a deliberate attempt to destroy documentation. It is very unfortunate that the staff member at the time was not fully aware of the significance of the files and the possibility of future litigation."*

- 2.59.** Lord Jenkin replied to Sir Nigel on 14 December 2005 **[WITN3996020]**. He made clear that he viewed the issue as a very serious case of maladministration by the Department of Health, and was considering reporting it to the Parliamentary Ombudsman for the Health Service. Lord Jenkin took issue with the explanation of the destruction of papers asserting that at the meeting on 13 April, Sir Nigel Crisp had caused him to believe that the destruction was the result of a decision, not "an administrative cock-up". The letter also raised two issues. First issue was around the destruction of papers dating back from the 1970's and 1980's. The second issue was around the destruction of papers relating to the Advisory Committee on Virological Safety of Blood (ACVSB) which were destroyed in the 1990s.
- 2.60.** The Inquiry has referred to a series of emails on 13 January 2006 between various officials with William Connon on the copy list **[DHSC5399020]**. Rebecca Spavin from Lord Warner's private office wrote to Ruth Cuthbert, Principal Private Secretary to the DH Permanent Secretary and NHS Chief Executive:

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*"Ruth,*

*I understand your office has been leading/ coordinating the internal review into the destruction of papers mentioned in the Lords question and press highlight. I would be grateful if you update me on when you think the internal review will publish. MS(D) views on this are that if the internal review is not published as soon as appropriate there will be increased interest/queries into the internal handling of this review.*

*If you look at the transcript of Lord Jenkins in Hansard you will see that he is somewhat vexed about this issue and this needs to be nipped in the bud to stop an alliance of Lord Jenkins, Lord Owen and Lord Morris of Manchester."*

- 2.61.** This email chain does not expand on the nature of any "alliance" or explain why this should be stopped. The later emails in the same chain do not address this issue further.
- 2.62.** On 6 February 2006 Zubeda Seedat sent a further submission to Sir Nigel addressing the letter dated 14 December 2005 from Lord Jenkin [WITN3996022]. William Connon was copied. The submission stated:

*"2. As you know, Lord Jenkin has been seeking access to papers on the treatment of haemophilia patients and blood safety, which he would have had access to when he was Secretary of State for Health and Social Security (DHSS), between 1979 – 1981. His request for access to papers was made following a letter he received from [GRO-B] a haemophilia patient infected with Hepatitis C and HIV through blood products.*

*3. Lord Jenkin was informed that, many papers from the 1970's and 1980's were destroyed. During the HIV litigation in 1990 many papers from that period were recalled. Our understanding is that some of these papers were not adequately archived and were unfortunately destroyed in the early 1990's.*

*4. Following Lord Jenkin's enquiries, we established that a number of files, mostly papers and minutes of the Advisory Committee on Virological Safety of Blood were destroyed in the 1990's. During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that a number of files were missing. A low key investigation was undertaken, by colleagues in Internal Audit to establish why files were destroyed. We managed to obtain a copy of the Internal Audit Report from colleagues in Solicitors Division.*

*5. In the reply to Lord Jenkin dated 1 December at Annex B, we made reference to the fact that, officials have discovered that further papers were destroyed. Lord Jenkin has passed this letter onto members of the haemophilia community. This has prompted accusations that the Department deliberately destroyed documents."*



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2.63. On 6 February 2006 Sir Nigel wrote again to Lord Jenkin. His letter included:

*"When we met in April I explained that certain papers dating back to the 1970's and 1980's had been destroyed following the HIV litigation. Following your enquiries, officials established that a number of other files were also marked for destruction. As I said in my previous reply, I am very sorry that many papers have been destroyed..."*

2.64. The report titled *"Self-Sufficiency in Blood Products in England and Wales: A Chronology from 1973 to 1991"* was published at the end of February 2006 (the 'Self-Sufficiency Report') [GFYF0000127].

2.65. The Inquiry has referred to a draft reply to a PQ from Lord Jenkin in April 2006 and an accompanying briefing pack [DHSC0041198\_088]. Lord Jenkin asked whether the Self-Sufficiency report was a *"complete account of the circumstances leading to the infection of [NHS] patients with HIV and hepatitis C due to contaminated blood products."* The suggested reply, which appears to have been drafted by Zubeda Seedat and approved by William Connon, was:

*"The scope of the report published on 27 February was to examine key issues around self sufficiency in blood products in the 1970's and early 1980's. The review was commissioned following comments about the failure to implement the policy on self sufficiency in blood products during this period."*

2.66. Transcript from Hansard confirms that Lord Warner did not use the suggested reply [WITN6887007]:

*"...the report published on 27 February examined key issues around self-sufficiency in blood products in the 1970s and early 1980s. The review was commissioned following suggestions that implementation of what was called the "self-sufficiency policy" in blood products in that period might have avoided haemophiliacs being treated with infected blood products. The report makes it clear that it was based on surviving documents from 1973, but that self-sufficiency would not have prevented infection of haemophiliacs with hepatitis C."*

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**2.67.** On 11 May 2006 Steve Wells from Information Services sent a briefing note to Lord Warner and Caroline Flint about the destruction of records **[DHSC0041198\_026]**. William Connon was copied into the briefing note. The note stated:

*"1. You asked for briefing, ahead of your meeting 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 raid-1990s of files covering the work of the Advisory Committee on the Virological*

*...*

*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.*

*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).*

*...*

*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.*

...

- 2.68. On 9 October 2006 William Connon provided Lord Warner a briefing note regarding Lord Jenkin's query regarding papers on blood policy. The briefing note outlines the work being undertaken to examine and analyse departmental files and papers on the policy of self-sufficiency in blood products between 1970 and 1985 [DHSC0200135]. The note also concludes with:

*"The 47 files have only recently been examined as part of this review when it became clear that they contain relevant documents. We are confident that they were included in the analysis for the self-sufficiency report, as colleagues were present at that time recall seeing the consultants working on documents from the cupboard where the files were held. But we cannot be certain and I have therefore not included this in the reply to Lord Jenkin.*

*However, they were not made available to Lord Jenkin when he came to examine the registered files. This was simply because as they are not registered files we were not aware that they contained relevant information. You may now wish to invite Lord Jenkin to come into the department and examine any papers contained in these files, which are relevant to his period in office."*

It is unclear if Lord Jenkins was indeed invited to view the files.

## Internal Review

### Summary of questions 26 to 27 in Section 2 of the Rule 9 request

- 2.69. The Inquiry has asked a series of questions going to William Connon's role in producing the report 'Self-Sufficiency in Blood Products in England and Wales: A Chronology from 1973-1991'. He is specifically asked:
- (1) What he understood to be the purpose of the report;
  - (2) Who authored the report; how were they selected; who were the consultants who completed the report; and why were they used;
  - (3) Why was the Self-Sufficiency report not published until 2006 and the reasons for the "*delay in publication*";

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- (4) Why documents referred to in the Self-Sufficiency report were not released at the time it was published;
- (5) Who decided that DH would release documents on request but would not supply a complete set, and why;
- (6) Why the Self-Sufficiency report did not include reference to or an explanation of how and when documents from the relevant time were destroyed;
- (7) What part the Self-Sufficiency report played in the government's decision not to hold a public inquiry "before now". '.

2.70. The Inquiry has also asked about a memo, dated 3 February 2006, in which advice was given that the Secretary of State should decline a meeting about the Self-Sufficiency Report with the Manor House Group [WITN1567016]. The Inquiry has asked why, in contrast, William Connon met with the Haemophilia Society [HSOC0009208].

**Chronology in relation to questions 26 to 27 in Section 2 of the Rule 9 request**

2.71. The Self-Sufficiency Report was commissioned in 2002 by Yvette Cooper, then Parliamentary Under-Secretary for Health. It was published at the end of February 2006 [DHSC0200111]<sup>1</sup>.

2.72. The introduction to the Self-Sufficiency report included, in relation to its purpose:

*"About 3000 patients with haemophilia treated with blood products in the 1970s and early 1980s were infected with hepatitis C (HCV), and many with HIV. A number of MPs have suggested that this might have been avoided had the UK achieved self-sufficiency in blood products, a policy the Government initiated in 1975, and Ministers have asked officials to investigate this. This report is the result of a review of surviving documents from 1973 (when a decision was made to pursue self-sufficiency for England and Wales) to 1991 (when a validated screening test for HCV was introduced in the UK). It contains a*

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<sup>1</sup> [GFYF0000127] appears to be incomplete. An alternative version of the report is therefore included.

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*chronology of events (at Annex A) and an analysis of the key issues, including:*

- *the developing understanding of the seriousness of Non A Non B hepatitis (NANBH), later known as HCV*
- *the evolving understanding of the viral risks associated with pooled blood products, both domestically produced and imported, and how this influenced policy*
- *the development of policy on UK self-sufficiency in blood products, the factors that influenced it, and imported, and how this influenced policy*
- *the developing technologies to enable viral inactivation of blood products and the timing of their introduction in the UK*
- *the ability of the Blood Products Laboratory (BPL) to produce the volumes of products required”*

**2.73.** On 27 May 2005, William Connon wrote to Dr Terry Snape and others in relation to the draft Self-Sufficiency Report [DHSC0020720\_015]. The letter stated that Dr Snape might recall speaking to “*Peter Burgin at the Department in August 2002*” and invited comments on the factual accuracy of the report. The letter said that:

*“Due to other work pressures we have been unable to complete work on the report before now...It would be helpful to have any comments you have by 10 June if possible. We would like to submit this report as soon as possible to the Minister with a recommendation that the report should be published.”*

**2.74.** On 20 July 2005 William Connon sent a submission to Caroline Flint which informed her of the “*outcome of the internal review of papers on the issue of self sufficiency in blood products, during the 1970’s and 1980’s*” and attached a copy of the draft report [DHSC0006259\_020]. The submission included:

*“4. In 2002, Yvette Cooper the then Health Minister asked officials to undertake an internal review of the surviving documents, roughly between 1973-1991, to produce a chronology of events and an analysis of the key issues. The remit of this work is attached at Annex I. Without this it is difficult to answer any detailed accusations levelled against the Department by Lord Owen and others.*

*5. The review does not address comments by Lord Owen about the destruction of papers from his Private Office.*

...

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13. *Due to a number of pressures, there has been a long delay in finalising the report. A draft report was submitted to the Blood Policy Team in January 2003. However there were a number of outstanding issues which had to be resolved before the report could be finalised and submitted to Ministers.*

14. *There were a number of unsubstantiated statements in the report which had to be checked for accuracy, we had to draw up a lengthy list of references to the report and include an executive summary. In 2004, officials commissioned consultants to analyse the papers and finalise the report. We have also had to consult with colleagues in the devolved administrations, BPL, National Blood Service and some clinicians. The draft may be subject to some minor amendments to reflect comment from clinicians which we have just received. However, this will not alter the main findings of the report.*

15. *We recommend that this report is made public, and that we aim to publish the report when you return from recess. It is likely to generate media interest and will need careful handling. We will liaise with COMMS appropriately and provide more detailed briefing nearer the time.*

16. *We would also recommend that a copy of the report is sent to Members of Parliament and Peers, including Lord Owen, and pressure groups who have expressed an interest in the outcome of the review. In addition a copy to be placed in the library of the House of Commons.*

17. *The report contains a number of references to not only published scientific papers but also to internal documents. We see no reason why the latter cannot be released on request but for reasons of sheer volume would resist supplying a complete set of documents.*

18. *Are you content for officials to proceed with arrangement to make public the report?"*

2.75. On 8 December 2005 William Connon sent a submission to Caroline Flint on documents to be released by the Scottish Executive **[DHSC0200103]**. In that submission William Connon wrote:

*"On a separate but related matter, PS(PH) will be aware that we have finalised a report of a review of surviving documents on self-sufficiency in blood products. The report is currently with the printers and we hope to publish early in the New Year. There will inevitably be criticism when the report is published because members of the haemophilia community are aware that many DH papers have been destroyed".*

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**2.76.** On 31 January 2006 Zubeda Seedat emailed Elisabeth Vanderstock (DH Chief Planning Officer) asking for a date on which the Self-Sufficiency Report could be published. On 2 February 2006 Elisabeth Vanderstock replied that 16 February had been “*agreed with No.10 for publication*” [DHSC5204958]. William Connon was copied into these emails.

**2.77.** On 3 February 2006, Zubeda Seedat sent a submission to Caroline Flint’s private office in response to a letter from the Manor House Group to meet the Secretary of State [DHSC0200104]. Jacky Buchan, from Caroline Flint’s private office, had asked in an email dated 18 January 2006, whether Caroline Flint (rather than the Secretary of State) should meet with the group. The submission was copied to William Connon. The submission explained that:

*2. A meeting with Secretary of State is not recommended. Nor would we recommend that a meeting is offered with PS(PH). A letter declining the invitation to meet is attached at Annex A...*

*4. Ministers are familiar with the key issues concerning the haemophilia lobby groups, and public statements have been made in response to the issue concerning them. Ministers will have nothing further to add.*

*The Manor House Group have requested a meeting to discuss why the Department has been unable to provide papers under the Freedom of Information Act. We have had 6 FOI requests from individuals involved with haemophilia lobby groups. In general, we have been unable to meet these requests for a number of reasons:*

*i) We established that in some cases papers have been destroyed.*

*ii) DH are not the holders of some of the documents requested.*

*iii) Some of the requests would exceed the £600 limit applied to cases.*

*We have been able to provide papers relating to a research project and a copy of a Medicines Control Agency Inspection Report on Blood Products Laboratory”*

**2.78.** The Inquiry has provided a document, dated 21 March 2006, with the title “*Update on Press Work from Mark Weaving, Myriad*” [HSOC0009208]. This document was not prepared by DH officials. It states that “[t]he Society met with William Connon of [DH] and was able to put concerns about the inadequacy of the report.”

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2.79. On 6 February 2006 Zubeda Seedat advised Caroline Flint that the Self-Sufficiency Report was scheduled to be published on 27 February 2006 [DHSC0041198\_138].

2.80. It is unclear why the date of publication changed from 16 February 2006 to 27 February 2006.

2.81. On 23 February 2006 Sophie Coppel from the DH communications team sent Caroline Flint a media handling plan in relation to publication of the Self-Sufficiency Report [DHSC0200112]. William Connon was copied into this. Under a summary of “risks and considerations” Sophie Coppel wrote:

*“There may also be accusations that the report took so long to be published. The reason for this was having to check for accuracy for the report which took a significant amount of time. In 2004, officials commissioned independent consultants to analyse the papers and finalise the report. We have also consulted with colleagues in the devolved administrations, BPL, National Blood Service and some clinicians for factual accuracy.*

...

*There could also be criticism that the review had not been an accurate representation of events because of the destruction of papers, as referred to Lord Warner’s debate in the House of Lords...”*

2.82. An undated briefing pack was prepared by unknown officials on the Self-Sufficiency Report [DHSC0041198\_108]. On the length of time taken to complete the Self-Sufficiency Report and the publication of documents, the briefing pack stated:

**“DELAY IN CONCLUDING THE REVIEW**

*Due to a number of pressures, there has been a long delay in finalising the review report commissioned in 2002. A draft report was submitted to the Blood Policy Team in January 2003 following a 3 month assignment by a DH Official. However there were a number of outstanding issues which had to be resolved before the report could be finalised and submitted to Ministers.*

*There were a number of unsubstantiated statements in the report which had to be checked for accuracy, a lengthy list of references to the report had to be drawn up and an executive summary to be included. In 2004,*



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*officials commissioner independent consultants to analyse the papers and finalise the report. We have also consulted with colleagues in the devolved administrations, BPL, National Blood Service and come clinicians for factual accuracy.*

REFERENCES

*The report contains a substantial number of references to published scientific papers but also to internal documents. We see no reason why the latter cannot be released on request but for reasons of sheer volume, we have resisted supplying a complete set of documents with publication of the report."*

- 2.83. On 19 April 2006 Jacky Buchan emailed Rebecca Spavin in which she confirmed, in response to the comment in the submission, that Caroline Flint saw no reason why the documents referred to in the Self-Sufficiency Report should not be released once they had been anonymised as necessary **[DHSC0200122]**.
- 2.84. On 23 May 2006 William Connon approved a briefing pack with a suggested response to a PQ from Lord Jenkin **[DHSC0015839]**. It is unclear if this is a draft. The briefing pack explained that a number of the references referred to in the Self-Sufficiency Report were already in the public domain and that DH were considering releasing the other documents following a FOI request. This is also confirmed in a submission from Gerard Hetherington to Rebecca Spavin dated 26 May 2006 which detailed the steps being taken by DH following the PQ from Lord Jenkin **[DHSC0041159\_205]**.
- 2.85. On 9 October 2006 William Connon provided a submission to Lord Warner which confirmed that unpublished references to the report '*Self-Sufficiency in Blood Products in England and Wales A Chronology from 1973 to 1991*' were released on 24 August 2006 **[DHSC0200135]**.
- 2.86. The Inquiry has referred to an exhibit of David Tonkin's statement dated April 2020, which exhibited an exchange of correspondence between the Manor

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House Group and Caroline Flint between October and December 2006 [WITN1567016]. The letters from the Manor House Group do not request a meeting to discuss the Self-Sufficiency Report.

**Documents returned to DH from External Solicitors**

2.87. The Inquiry has asked about documents disclosed by DH in the HIV and hepatitis C litigation and which were retained by external solicitors and then returned to DH in 2006. The Inquiry has asked:

- (1) When William Connon was first made aware that external solicitors had retained these documents;
- (2) What investigation was done to establish if any of the returned documents included documents which Lords Jenkin or Owen had previously been informed had been destroyed;
- (3) Where any copies of documents that were returned believed to be copies of those which had been destroyed in DH files;
- (4) What investigation was done to establish whether any of the returned documents included any documents marked for public interest immunity in the HIV litigation;
- (5) What investigation was done to establish which documents were still missing.

2.88. In early February 2006 Zubeda Seedat exchanged emails with the DH FOI team about a request made by Carol Grayson to external solicitors who had been involved in the HIV and hepatitis C litigation, and asking for DH papers held by those lawyers [DHSC6697600]. William Connon was copied in. Zubeda Seedat's email, dated 9 February 2006, included: "*Neither we nor SOL know what's contained in the papers which is why we have asked for copies. We do not know how many papers we are talking about.*"

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- 2.89.** On 21 February 2006 Stephen Castello, a government lawyer, emailed Zubeda Seedat, attaching a copy of a letter received from external solicitors, Blackett Hart & Pratt and saying that Zubeda had, in principle, no objections to having papers returned **[DHSC0015858]**. On 22 February 2006 Zubeda Seedat replied to ask Stephen Castello to arrange for the papers from Blackett Hart & Pratt to be returned to government solicitors and asking to be informed when the papers were received **[DHSC0015858]**. William Connon was copied into this reply.
- 2.90.** On 17 May 2006, Zubeda Seedat forwarded William Connon confirmation from Anne Mihailovic, a government lawyer, that files had been received from Blackett Hart & Pratt and she asked to discuss how to take things forward **[DHSC5412535]**.
- 2.91.** On 19 May 2006 emails were exchanged between Vicky Wyatt, a Press Officer on the Public Health Desk, and Zubeda Seedat. **[DHSC0015834]**. William Connon was copied in to these emails. Vicky Wyatt explained that the *Observer* had been in touch to confirm reports that DH had received files from Paul Sexton Solicitors and other firms. Zubeda Seedat stated she was only aware of DH having received papers from Blackett Hart & Pratt but explained that she was copying the Solicitor's Division in case they had received anything further. The email also stated:
- "The papers comprise of 7 lever arch files containing copy extracts from the files of J Keith Park and Co and Ross & Co and 5 lever arch files containing copy DH documents in the possession of BHP....It is possible that the papers that have been received may contain documents believed to have been destroyed. We have arranged an internal meeting for next week to discuss a way forward ie. to consider release in light of the FOI request."*
- 2.92.** On 19 May 2006 Karen Arnold, a government lawyer, emailed Vicky Wyatt and Zubeeda Seedat, copying William Connon **[WITN6887008]**. Karen Arnold said she was not aware of any papers being received from Paul Sexton solicitors and copied the email to the Director of the Litigation Team asking for

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him to confirm of further papers had been received, or if the papers already received contained documents from Paul Sexton solicitors.

**2.93.** In May 2006, Lord Jenkin tabled a PQ which asked whether the returned papers supported the claim by haemophiliacs that their infection was caused by contaminated blood products [DHSC0004232\_078]. On 23 May 2006, William Connon approved a draft reply confirming that the papers had been returned to government lawyers [DHSC0015839].

**2.94.** On 23 May 2006 Rebecca Spavin emailed William Connon and others highlighting that at the briefing meeting on Lord Jenkin's PQ, Lord Warner requested that the reply to be amended [DHSC0041159\_082]. The amended draft reply included [DHSC0004232\_078]:

*"We have established that a number of documents which had been disclosed by the Department in the HIV and Hepatitis C litigation were held by Blackett Hart and Pratt solicitors. They agreed to return the papers to our solicitors who are now considering these with other Department officials. Advice has yet to be given to Ministers on the significance of the returned files."*

**2.95.** The briefing note accompanying the amended draft reply included

[DHSC0004232\_078]

*"We do not know what proportion of the papers returned, include documents which have been destroyed. We know that there have been two instances in the 1990's where papers were destroyed in error.*

*(i) During the HIV litigation in the early 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 following the litigation. We do not know the full extent of what has been destroyed, therefore it is impossible to know what proportion has been recovered.*

*(ii) During the discovery exercise for the hepatitis C litigation in 2000 it emerged that files on the Advisory Committee on the Virological safety of Blood (ACVSB) were missing. A low key internal investigation was undertaken in April 2000, by colleagues in Internal Audit, to establish why files were destroyed. The investigation by Internal Audit established that 14 volumes of papers relating to the ACVSB between May 1989-February 1992 were unfortunately destroyed. These papers were destroyed between July 1994 and March 1998. In relation to*

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*these files we may be able to establish whether some of the papers returned include papers from the ACVSB."*

2.96. On 24 May 2006 William Connon emailed Rebecca Spavin **[DHSC0200023]**:

*"We need to try to establish the date the papers were returned to DH, the exact period they cover, and how many files there are.*

*....*

- *On the line to take regarding MS(PH) I suggest "The Minister for Public Health has requested advice on these papers and, once this has been received, I have asked the minister to ensure that all interested parties are fully informed as to whether these files do indeed shed any new light on the issues surrounding the infection of haemophiliacs."*

*Lastly, can we give Lord W a rough indication of what proportion of the total files erroneously destroyed by DH these new files constitute i.e. how many files have been returned and how many were destroyed? ..."*

2.97. Lord Warner answered Lord Jenkin's PQ on 24 May 2006 as follows **[DHSC0041304\_052]**:

*"My Lords, we have established that a number of documents that have been disclosed by the department in the HIV and hepatitis C litigation were held by Blackett Hart & Pratt Solicitors. It agreed to return the papers to our solicitors, who are now considering them with other departmental officials. Advice has yet to be given to Ministers on the significance of the returned files."*

2.98. On 24 May 2006 a meeting took place between Caroline Flint, Lord Warner and officials. On 25 May 2006, William Connon emailed Gerard Hetherington as follows **[DHSC0200125]**:

*"Following yesterday's meeting with Caroline Flint and Lord Warner the following action is urgently required:*

*FOI case: there are, I believe, three cases including the Carol Grayson one. I had already agreed yesterday, and Ailsa confirmed the decision, that we should write to Mr Robert Mackie (one of the other correspondents on this) stating that we would provide all documents by 20th June. Ministers yesterday asked that we copy this letter to Lords Morris and Jenkin and all others, to whom we wrote at the time of the publication of the self sufficiency report. I assume we will have to clear this with the FOI team as we may not be able to copy personal correspondence in this way without the inquires consent. Ministers also asked for details of the total number of documents (references in the*

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*report), which ones have already been released, which ones are in the public domain and which ones are outstanding. Numbers only, not details of the actual docs.*

*Destroyed documents: although not explicitly requested, I think it would be helpful to compile a definitive list of all the sets of documents which have been destroyed (there are two sets and we know more about one than the other), when they were destroyed (if we know) circumstances of destruction and likelihood of the documents which have just been found by the solicitors being copies of some of the destroyed documents. We have this info but just need to pull it together in a crib sheet. We should also perhaps attach the list of documents (of which there are thousands) recently released by Scotland.*

*[...]*

*Documents returned to sol: Ministers suggested that we could ask an independent legal expert to examine the returned documents and provide an initial analysis of what they contain. I think it was on this point that it was suggested that we could invite the Information Commissioner to look into this and we need to discuss this. We also need to stress to Sol the importance of ensuring these documents are held securely.*

*Resource Management: Ministers have asked that you appraise CMO and Hugh Taylor of the position and impress upon them the urgency and potential embarrassment for DH (although not discussed yesterday the same will apply to ministers) if we do not bring this situation to a satisfactory conclusion. All concerned are agreed that we need to have additional resources to do this and you agreed to explore this. My initial view, which we briefly discussed, is that it will require a minimum of a high calibre IP3U (or poss fast streamer), with some support, preferably full time and also I think dedicated medical/expert advice is essential. The latter would not need to be full time. We agree to discuss this today..."*

- 2.99. On 26 May 2006, Rebecca Spavin emailed William Connon and Gerard Hetherington (among others) to say that, while they were not the officials who caused the problem and resources were recognised to be an issue, Caroline Flint and Lord Warner wanted "*more proactive measures [to be] taken to appease the Lords that are campaigning on the issue*" **[DHSC5286062]**. A list of actions the Ministers wanted taken was set out, which included informing the Chief Medical Officer and Permanent Secretary, seeking further resources, engaging an independent person to conduct a "stocktake" of the documents, and drafting a paper to inform the Secretary of State. It was requested that the paper should review the content of the returned files,

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provide information on the returned files (i.e. “*what % are they of the destroyed volumes*”) and discuss the possibility of a public inquiry.

2.100. On 26 May 2006 Gerard Hetherington sent a note to Becky Spavin regarding Lord Jenkin’s PQ about contaminated blood products **[DHSC0041159\_205]**. A draft letter was included with this note to be sent to Lord Jenkin and Lord Morris **[WITN6887009]**.

2.101. On 2 June 2006 Jacky Buchan emailed Gerard Hetherington regarding the draft letter **[DHSC5414762]**. In her response the same day, Jacky explained that Caroline Flint was not happy with the draft response as it did not sufficiently address the safe storage issue or instructing an independent party to review the documents received, so there could be no question of documents going missing. On 5 June 2006 Gerard Hetherington emailed Jacky Buchan with a revised draft letter to Lord Jenkin **[DHSC5415371]**.

2.102. The Inquiry has provided an undated appendix to another document **[DHSC0041159\_228]** which states that officials were giving “*high priority*” to examining the files returned by Blackett Hart & Pratt; that work had been reprioritised; and that extra staff were being recruited. Panel counsel was also being instructed to prepare an analysis of the contents of the returned papers. In addition, this document states that there were two instances in the 1990’s where papers were destroyed in error. The first instance was following the HIV litigation. The second related to 14 volumes of papers relating to the Advisory Committee on the Virological Safety of Blood.

2.103. On 26 June 2006 Gerard Hetherington provided Rebecca Spavin and Jacky Buchan a submission **[DHSC0041159\_204]**. William Connon was copied in. The submission noted:

*“a) Handling of documents returned by solicitors.*

*SOL have arranged for independent Counsel to list the recently returned documents and undertake an initial evaluation of their contents*

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*as set out in the letter of 8 June 06 from Ministers to Lord Jenkins. A report from Counsel is expected imminently.*

*b) Other documents, including those destroyed.*

*Following HIV and hepatitis C litigation procedures in the 1990s, we know that various papers were destroyed in error, following an internal audit of events surrounding this loss of papers. We have identified an additional member of staff who is expected to start work next week, to identify and analyse all the papers currently available, including the very large number recently released in Scotland. We anticipate that preparing a comprehensive inventory and report of all the papers may take up to six months (a recent similar, incomplete, exercise in Scotland took nine months).*

2.104. On 21 August 2006 Brian Bradley emailed Linda Page and Gerard Hetherington thanking Linda Page for contributing to the line to take on a file enquiry which explained that 630 documents had been received from a firm of solicitors and were being reviewed with the intention of releasing as much information as possible upon completion [DHSC5429693]. William Connon was copied into this email

2.105. On 9 October 2006 William Connon provided a memo to Lord Warner regarding papers on blood policy [DHSC0200135]. This included:

*"Project Brief*

*The brief is to review all the documents held by the Department in order to assess the approach to issues in relation to the self-sufficiency of blood, specifically the inactivation of blood products, by those involved during the period 1970 -1985.*

*There are three sets of documents held by the Department*

- 1. Wellington House files, these have always been in the possession of DH and held at Wellington House, including the unpublished references to the report 'Self-Sufficiency in Blood Products A Chronology from 1973 - 1991' This includes the 47 lever arch files which Lord Jenkin refers to, which were not properly filed on registered departmental files.*
- 2. Documents that have been returned to DH by a firm of solicitors in the North East following press articles on lost documents.*
- 3. Files recalled from Departmental Record Office (DRO) Nelson, these files were recalled as part of the 'look back' exercise and a subsequent search for relevant files.*



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*Project Deliverables*

- *An inventory of all documents related to the subject held by DH. There are about 7,000 - 8,000 documents. The majority of these documents relate to 1970- 1985.*
- *A review of all documents inventoried to assess the approach taken between 1970 and 1985 to the inactivation of blood products; Non-A Non-B Hepatitis (Hepatitis C).*
- *Prepare and process for release, in line with, but not under FOI, two sets of documents; those relating to the unpublished documents referred to in the published report 'Self-Sufficiency in Blood Products in England and Wales' and those documents returned to DH by a firm of solicitors.*

2.106. On 3 December Linda Page provided a progress report entitled 'Review of Documentation Related to the Safety of Blood Products: 1970 – 1985' [DHSC0004232\_037]. This covered actions over the period 25 October 2006 – 3 January 2007. The report confirmed that the documents returned by Blackett Hart & Pratt were released in November 2006, apart from those withheld under FOI [DHSC0004232\_037]. The report also discussed what further steps were being taken to review documents held by DH, including the 'Wellington House' files, documents held by the Scottish Executive, documents of English origin held by the Scottish Executive, and communications with the Northern Irish and Welsh administrations, to find out if they had carried out any document reviews or held any papers relating to the Advisory Committee on Virological Safety of Blood ('ACVSB'). In addition, this report stated that an inventory of documents that had been returned by external solicitors would be held in the House of Commons Library.

### **Wellington House Files**

2.107. The Inquiry has asked when William Connon was first made aware of the discovery of the Wellington House files, and what he was told about the circumstances in which David Burke discovered the 47 boxes of files. He is further asked whether the discovery of the Wellington House files led to any further investigations or enquiries into other unregistered files in DH.

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- 2.108. Progress report dated 5 September 2006 by Linda Page (an official who carried out a document review and wrote the *“Review of Documentation Relating to the Safety of Blood Products 1970-1985 (Non-A, Non-B Hepatitis)”* report) referencing the review of documents found at Wellington House. **[DHSC0004232\_052]**.
- 2.109. On 12 September 2006 Zubeda Seedat emailed William Connon to which she attached a copy of an article which appeared in the Sunday Herald on 27 August 2006. The article referred to the finding of *“45 boxes of documents”*. Linda Page responded to Zubeda’s email and stated that the finding of 45 boxes is incorrect. **[DHSC0004232\_029]**.
- 2.110. Progress report dated 26 September 2006 by Linda Page which referenced that 23 of the 47 Wellington House files had been reviewed. **[DHSC0004232\_043]**.
- 2.111. Email chain dated 27 September 2006 from Sophie Longbottom, Assistant Private Secretary to MS(R) to Linda Page which requested further clarification regarding the 47 boxes of files and stated that Lord Jenkins had requested a letter. The email also mentioned David Burke. **[DHSC5435884]**.
- 2.112. Unsigned letter dated 27 September 2006 from Linda Page to Lord Jenkin providing an update on her document review. **[DHSC5121354]**.
- 2.113. Document dated 29 September 2006 in which Linda Page recorded the contents of a telephone conversation which she had with Lord Jenkin. This email referred to 47 files and not boxes. **[DHSC5435079]**.

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2.114. On 5 October 2006 William Connon received an email from Jacky Buchan, in which she requested an urgent short submission in a form that could be put directly to Caroline Flint and Lord Warner regarding the 47 files [DHSC5435885].<sup>2</sup>

2.115. Email dated 9 October 2006 from William Connon to Elizabeth Woodeson with reference to the 47 files. William Connon stated that [DHSC5154769]:

*“...On the question of the 47 files I will speak to Linda once she comes in to the office and will see what can be done. This whole area is far from straightforward, hence Linda's arrival to tackle it. I am by no means certain that the 47 files were included in the self-sufficiency report and I am told they were not shown to Lord Jenkin either. The reason being that they are not actually registered files but folders of papers which were simply found in a cupboard in the office [...] I will try and speak to you by phone later today once I have spoken to Linda and Zubeda (who is more familiar with the background)”*

2.116. On the same date, a copy of a submission from William Connon to Lord Warner concluded [DHSC0200135]:

*“The 47 files have only recently been examined as part of this review when it became clear that they contain relevant documents. We are confident that they were included in the analysis for the self-sufficiency report, as colleagues who were present at that time recall seeing the consultants working on documents from the cupboard where the files were held...”*

## **Review of Documentation Relating to the Safety of Blood Products**

### **Summary of questions 30 to 32 in Section 2 of the Rule 9 request**

2.117. The Inquiry has referred to a project plan of the review of documentation relating to the safety of blood products and asked why it was decided that the review would cover documents on HCV only up to 1985. Further, the Inquiry has asked why it was considered a risk for new information to be identified in relation to the safety of blood products through the review and why it was

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<sup>2</sup> [DHSC5435884] appears to be a duplicate of this document.

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considered a risk for documents assumed to have been destroyed to be located.

2.118. The Inquiry has also asked why the documents reviewed for the report were not all disclosed in one tranche, why some documents were initially withheld from disclosure and what William Connon's understanding was in respect of precisely which documents and how many documents were reviewed and considered for the report.

**Chronology in relation to questions 30 to 32 in Section 2 of the Rule 9 request**

2.119. A project initiation document drafted by Linda Page of the 'Review of Documentation Relating to the Safety of Blood Products 1970-1985 (Non-A, Non-B Hepatitis ('NANBH'))' was sent to William Connon on 4 July 2006 [DHSC0004232\_030].

2.120. The background and project objectives explained the review of Hepatitis C from 1970-1985 as it stated [DHSC0004232\_030]:

*"Most patients with haemophilia treated with blood products in the 1970s and early 1980s were infected with hepatitis C (HCV), and many with HIV.*

*There has been considerable pressure from haemophilia patient groups for a Public Inquiry. Lord Morris and others support them in the House of Lords and there is now an urgent need to review and assess the available documents relating to policy on the safe use of imported and domestic blood products" [...]*

*"Project objectives: Assess and report on documents relating to previous Government policy on the safe use of imported and domestic blood products during the period 1970 to 1985 when BPL commenced general issue of 8Y heat-treated factor VIII..."*

2.121. Further the Risk Plan stated [DHSC0004232\_030]:

*"Files/documents assumed destroyed could be located, provision to review these files have not been included in the project plan"*

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2.122. Apparent final report on the 'Review of Documentation Relating to the Safety of Blood Products 1970-1985' dated April 2007 which noted that **[WITN6887010]**:

*"the review covers the period 1970 to 1985 as in September 1985 a heat-treated factor VIII product, Factor 8Y, was introduced by the Blood Products Laboratory (BPL) to inactivate the virus. BPL was accountable to the Central Blood Laboratories, which was established as a special health authority in 1982"*

2.123. Email exchange dated 18 August 2006 between Linda Page and Colin McDonald from the Customer Service Centre to which William Connon is copied. Linda Page identified that the FOI documents requested were likely to be the papers returned to the Department by external solicitors and that her team had other requests for release of these documents under FOIA. **[DHSC5429552]**.

2.124. Minutes of Project Board Meeting held on 4 September 2006, attended by William Connon, which provided an update on the review and release of documents **[DHSC0004232\_056]**.

2.125. Submission dated 9 October 2006 from William Connon to Lord Warner **[DHSCO200135]** which set out progress to date on the examination of files on the policy of self-sufficiency in blood products between 1970-1985.

2.126. Minutes of Project Board Meeting held on 25 October 2006 attended by William Connon which provided a further update on the review and release of documents **[DHSC0004232\_035]**.

2.127. Email exchange dated 15 November 2006 to which William Connon was copied in, in which Linda Page requests assistance from Anne Mihailovic at DH Legal Advisors in respect of **[DHSC0015758]**:

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*“...a number of documents that were withheld from disclosure during the 1989/1991 HIV/Hepatitis Litigation. The reasons for non disclosure are given, primarily, that they relate to policy formulation, ministerial correspondence and frank and open discussion. We would like to release as many, if not all, of these documents in line with FOI...”*

2.128. Linda Page went on to request that Anne Mihailovic should arrange for independent Counsel to review the documents. She explained that the documents were held in 16 registered files, about 900, the majority of which dated from 1980.

2.129. Report dated 3 January 2007, drafted by Linda Page [DHS00004232\_037]. The progress report provided a summary of the number and state of disclosure of the documents according to category as at this date. It also included reference to filing cabinets being searched for missing documents.

2.130. Further, Linda Page summarised the position regarding the review and release of documents by category as follows [DHSC0004232\_037]:

*“FOI Requests, released in line with but not under FOI.*

*The documents returned by external solicitors were released in line with FOI in November 2006. A request for an internal review of the original decision to withhold documents has been requested by a member of 'Haemophilia Action UK'. This member made fifteen requests under FOI in 2006. Nineteen out of the nearly 600 documents have been withheld; 11 under Section 43 (Commercial), two under Section 40 (personal data), five under Section 35 (frank and open discussion to develop policy) and one under Section 34 (Submission to Royal Commission on the NHS). In addition Section 40(2) has been used to redact all names in the documents as they are over 15 years old. A meeting with DH FOI unit who will manage the review is planned for the 4th January 2007. It is considered that the documents withheld under Section 43 (commercial) should be released...”*

2.131. Minutes of a Project Board meeting held on 16 January 2007 at Wellington House. It provided a further update on the reviewing of documents and finalisation of the report being produced by Linda Page [DHSC0004232\_031].

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2.132. On 06 February 2007, Linda Page emailed Zubeda Seedat to update her on the returned solicitors' files as follows **[DHSC0103399\_065]**:

*"623 documents were returned by solicitors. Independent Counsel reviewed all documents returned prior to forwarding them to DH. Of the 623 documents returned, 604 were released in November 2006, 19 withheld. An internal review was requested by Carol Grayson and as a result it was determined that nine of the nineteen originally withheld could be released, these have not yet been sent out, Stephen Fay will be advising Carol Grayson, who asked for the internal review of the result and will be sending the nine papers to all who received the original release in November. Therefore, once these have been sent out, of the 623 documents returned, 614 have now been released with 10 withheld ..."*

2.133. Email exchange dated February 2007 with instructions from Linda Page to her colleague, Stephen Fay, to dispatch the documents noted above **[DHSC0103400\_003]**.

2.134. On 2 April 2007, Rowena Jecock emailed Linda Page to which William Cannon was copied in relation to her draft report on NANBH **[DHSC5465598]**.

2.135. On 24 April 2007 Elizabeth Woodeson put a submission to Ministers on the report drafted by Linda Page which attached the report into NANBH papers 1970-1985. In the Ways Forward section Elizabeth Woodeson advised **[DHSC0041193\_026]**:

*"... In addition we recommend that we should release the documents reviewed in line with FOI principles. Overall, there are around 4,500 of these documents so this will be a major task. It is estimated that the preparation and processing of the documents will take approximately four to five months. To achieve this timescale will require a member of staff to be dedicated to the task with some administrative support. The cost is estimated to be at least £40,000. Nevertheless, we recommend this approach, as release of the documents may go a considerable way to support our line that a public inquiry is not required as all the information is in the public domain, this includes fifty-eight previously unpublished documents specifically referenced in the current report, which we would treat as a priority."*

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*10. Based on previous experience we expect that approximately 12% of documents overall would be withheld, the majority under section 35 of the FOI Act as they relate to Ministerial submissions or formulation of government policy. However clearly the more we can release the better, so we would take further advice from solicitors about this and report back to you during the preparation of the documents. Some of the documents also cover BPL and Aids, as well as self- sufficiency, so there may be concerns about releasing them - again, we will come back to you during the preparation of the documents if we think this might be a problem."*

2.136. Email dated 25 April 2007 between Linda Page, Elizabeth Woodeson, Alisa Wight and William Connon which set out what is proposed to be released to accompany the report and NANBH papers to Lords Archer, Jenkin and Morris including '4,500 odd other papers'. **[DHSC5137401]**.

2.137. Email dated 8 May 2007 from Linda Page to Bradley Smythe (Press Officer at the time) copied to William Connon, which stated that she was awaiting ministerial sign off in order to send the report and NANBH papers. **[DHSC5471137]**.

2.138. Emails dated 21 May 2007 between Jacky Buchan, Alexander Ord (Deputy Parliamentary Clerk at the time) and William Connon about placing the 'Review of the Documentation relating to the Safety of Blood Products 1970-1985' in the Commons Library **[DHSC5473468]**.

2.139. Submission dated 13 June 2007 to Jacky Buchan, copied to William Connon which confirmed that documents were being released in batches in the order they are held. **[WITN6887011]**

2.140. Email dated 19 June 2007 from Linda Page to Elizabeth Woodeson copying William Connon, including minutes of a Project Board Meeting of 12 June 2007. **[DHSC5528801]**. Minutes of meeting dated 19 June 2007 which



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confirmed the intent to release as many papers as possible and in batches  
**[DHSC5051140]**.

2.141. Written Answer to Jenny Willott's question dated 25 June 2007 that papers were being released in batches and to the inquiry team at monthly intervals  
**[DHSC0006780\_005]**.

2.142. Submission dated 27 February 2008 from Patrick Hennessy to Hugh Taylor, copied to William Connon which confirmed that 18,000 pages had been issued to the Lord Archer inquiry **[DHSC6366277]**.

2.143. An undated submission from Linda Page to Dr David Harper, CMO and MS(PH), MS(Q) which copied William Connon and recommended that all documents be released in line with FOI **[DHSC6359060]**.

2.144. Linda Page drafted a submission to Caroline Flint and Lord Warner (undated), which attached her report on the brief and extent of the internal review into the 'Review of Documentation Relating to the Safety of Blood Products 1970 – 1985' to which William Connon was copied. Linda Page summarised the extent and scope of the internal review as follows **[DHSC0015740\_001]**:

*"... 5.3. Over 6,000 documents were read and NANBH (hepatitis C) was the subject, or primary subject, in 2.2% of these.*

*5.4. References to the 'Self Sufficiency' report were released in line with FOI in August 2006, the documents returned by solicitors were released in November 2006. This represents 12% of the documents available, an inventory of the documents was provided with the release, not a review.*

*5.5. Some documents previously thought destroyed or mislaid have been located. These are documents that were the subject of non disclosure during the HIV litigation. No minutes of the Advisory Group on the Safety of Virology of Blood have been found.*

*5.6. One document has been located that required a detailed explanation on its release in August 2006..."*

### **Further Discovery of Files in Wellington House**

2.145. The Inquiry has asked, in relation to the finding of a further 41 folders of unregistered files discovered in Wellington House in July 2008, what William Connon's understanding was of why these files were not previously identified. The Inquiry has further asked what William Connon's understanding was of DH's position in relation to the disclosure of documents and specifically whether the starting point was to disclose documents or to find reasons to withhold them.

2.146. Letter dated 28 April 2008 to Elizabeth Woodeson from Ken Clarke MP and letter of the same date from Elizabeth Woodeson to Ken Clarke regarding the release of documents on 6 May 2008 in relation to advice from the Chief Medical Officer to the Secretary of State for Health in August 1990 **[DHSC5042275 and DHSC6407940]**.

2.147. Draft letter dated May 2008 from Elizabeth Woodeson to Ken Clarke **[DHSC5516763]** about the release of advice given to Ken Clarke when he was Secretary of State by the Chief Medical Officer.

2.148. Email dated 6 May 2008 from William Connon to Zubeda Seedat which stated **[DHSC6700836]**:

*"...Just so that the DH position is quite clear, I have always supported the release of this document. Whilst I was initially against withholding this document the majority view differed, and I reluctantly agreed that the submission to CMO could go ahead, and that I would consider the views of CMO and the AG before we asked MS(PH) and made any final decision. CMO's decision confirms my view that we should release the document. Mr Clarke's reaction is entirely understandable but does not change my view that we should disclose this memo. I completely agree with CMO's view on the availability of CMO advice generally and can see no reason for withholding this particular document. Furthermore, I feel quite strongly that the potential impact of the Scottish Public Inquiry, not to mention Lord Archer's Inquiry, compounds the need to release this document..."*

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2.149. Email chain dated 26 June 2008 from Laura Kennedy (PA to Elizabeth Woodeson) to Patrick Hennessy which set out why certain documents were exempt from disclosure. **[DHSC5528801]**.

2.150. Email dated 16 July 2008 from William Connon to Laura Kennedy copying Dr Alisa Wight, Patrick Hennessy and Zubeda Seedat which stated **[DHSC5532594]**:

*"Laura – thanks*

*Patrick - will you expand of the background to this please? Don't understand how come we have just found these files and what the significance is. Sorry I am very hectic right now and have not had time to assimilate all this properly" (860)*

2.151. On the same date, William Connon received an email from Laura Kennedy which stated **[DHSC5532594]**:

*"Sorry for being unclear - I can explain this.*

*Patrick and I discovered these files when reorganising the filing cabinets in Wel 517. We assume they were stored there by a previous inhabitant of Wel 517, perhaps since the 1989./90 Haemophilia litigation .They are not registered files, and are not very well organised. They contain documents from the time of the litigation, and documents from the 1970-1985 that have been removed or copied from the original files in order to be organised for discovery prior to the litigation. [...]*

*I would like to make inventories of these files so we know exactly what is in there. After this, we would need to consider how to store these files, and whether they need to be considered for release. [...]"*

2.152. Dr Alisa Wight responded to Laura Kennedy and William Connon on the same day copying Patrick Hennessy and Zubeda Seedat and confirmed that the documents need to be put in an inventory **[DHSC5532594]**.

**2.153.** William Connon asked for more information on the background of the files being found and Patrick Hennessy sent an email, dated 18 July 2008 which explained that the files relate to the *'hanging file system at the entrance of bay*

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*517' which contain '41 folders of documents apparently compiled at the time of HIV litigation (1989-90)'. [DHSC5533007].*

2.154. Email dated 1 August 2008 from Patrick Hennessy which confirmed that he had taken over from Linda Page with the task of reviewing and releasing documentation. **[DHSC5483426]**.

**2.155.** Three further emails dated 21 August 2008 set out that Laura Kennedy emailed William Connon with an update on inventorying the unregistered files and Dr Alisa Wight responded asking whether the documents were 'new' with a presumption that they could be released. **[DHSC5061894]**. William Connon was copied to a reply from Laura Kennedy on the same day confirming that she would check **[DHSC5061894]**.

2.156. Email from Laura Kennedy to Paula Cohen (of the legal team) dated 23 September 2008 to which William Connon is copied, referred to an expert witness report of Professor Bloom. The email requested the legal position on releasing the documents to the Scottish inquiry or to the public **[DHSC5562807]**. The email chain continued back and forth in order to consider FOIA. A further email in this chain dated 6 October 2022 stated, '*unfortunately William is away*' **[DHSC5562807]**.

2.157. Series of emails dated 24 September 2008 to 30 September 2008 between Laura Kennedy and others who dealt with FOI requests. The first email explained that documents dated from 1971 to 1985 had been found marked 'Legal Professional Privilege' and the emails discussed whether or not they would be exempt from disclosure **[DHSC5544778]**.

2.158. Submission dated 2 October 2008 from William Connon to Hugh Taylor which attached draft letters to be sent to Lord Owen and Lord Archer enclosing documents found in Wellington House to be released **[DHSC6694278]**.

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2.159. Submission dated 6 October 2008 from Elizabeth Woodeson to Hugh Taylor, which again attached draft letters to be sent to Lord Owen and Lord Archer enclosing documents found in Wellington House to be released [DHSC5276915].

2.160. Email dated 8 October 2008 from Aimee Gaston (Private Secretary to Hugh Taylor) to Elizabeth Woodeson which confirmed that Hugh Taylor was content with the letters to be sent to Lord Owen and Lord Archer as suggested. [DHSC6714579].

2.161. Letter from William Connon to Lord Archer dated 8 October 2008 which stated [DHSC6700949]:

*"...I am pleased to inform you that we have located a small number of documents dating from 1974-75 that appear to have been sent by Lord Owen's Private Office [...] I am enclosing copies of these documents which may be of interest to your inquiry.*

*These documents were located in a cabinet containing unregistered files dating from the late 1980s and early 1990s. Many of these are administrative legal documents dating from the litigation under way at that time [...]"*

### **The Destruction of Papers Relating to ACVSB**

2.162. The Inquiry has asked for details of what steps William Connon took to discover why the ACVSB papers were destroyed, details on steps taken to identify or trace those responsible for marking the ACVSB papers for destruction, and details on steps taken to trace Dr Rejman or discover why the ACVSB papers still held by the Department Record Office prior to destruction were not recalled when DH became aware it had to collect relevant information in 1994. Further the Inquiry has asked for an explanation of what William Connon's understanding was of the content of the destroyed ACSVB papers.

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2.163. Internal Audit Report titled 'Hepatitis C Litigation Final Report' dated 11 April 2000 (1) which concluded *that "an arbitrary and unjustified decision, most likely taken by an inexperienced member of staff, was responsible for the destruction of a series of files containing the minutes and background papers of the Advisory Committee on the Virological Safety of Blood (ACVSB)"* and also set out a number of recommendations to ensure the same mistake is not repeated **[DHSC0046961\_056]**.

2.164. Paragraph 4.7 of the audit report stated that two questions remain outstanding from the audit investigation **[DHSC0046961\_056]**.

2.165. Email from Linda Page to Elizabeth Woodeson, Dr Alisa Wight, and William Connon dated 8 March 2007 referencing the ACSVB files as follows **[DHSC6359061]**:

*"...One query responded relates to the missing documents. The ACVSB files lost related to post 1985 and is not part of this review, their content might well have helped identify the process of introducing screening test for hepatitis C in 1991 but would not have covered the 1970-85 period..."*

## Section 3: Engagement with the Archer Inquiry

**Summary of questions 38 to 41 and 43 to 45 of section 3 of the Rule 9 request.**

- 3.1. The Inquiry has referred William Connon to page 9 of the report published by the Archer Inquiry on 23 February 2009, which stated “*The Department of Health maintained its view that the Inquiry was unnecessary, and decline to provide witnesses to give evidence in public, but they supplied documents which we requested, and responded to questions from us and sent representatives to three private informal and unminuted meetings.*”

**[ARCH0000001]**. The Inquiry asks:

- (1) What were William Connon’s responsibilities and the extent of his involvement with DH’s engagement with the Archer Inquiry?
- (2) What were the names and job titles of the individuals in DH who had responsibility for engaging with the Archer Inquiry?
- (3) Who was responsible for the DH’s position that the Archer Inquiry was unnecessary and why was this position adopted?
- (4) Whether or not William Connon agreed with DH’s position in respect of the Archer Inquiry?

- 3.2. The Inquiry also asks William Connon to explain the basis of his statement that “*...the Government of the day acted in good faith, relying on the technology available at the time*” in a memo for Caroline Flint **[DHSC0041155\_023]**.

- 3.3. The Inquiry has referred William Connon to a number of documents, including Lord Archer’s letter to Patricia Hewitt dated 19 February 2007 regarding the Archer Inquiry **[DHSC0041193\_056, DHSC6700786, DHSC5264793, DHSC5458311, DHSC5458312, DHSC5238049, DHSC5152770, DHSC5458364, DHSC6323081, DHSC0006752 and DHSC5458735]**, In relation to these documents, the Inquiry asks:

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- (1) What was William Connon's interpretation of Lord Archer's request and his expectations of DH?
  - (2) Can William Connon outline any meetings or discussions that took place among ministers and officials within DH upon receipt of Lord Archer's letter.
  - (3) Referring to William Connon's email dated 20 February 2007, where he stated "*...we do need to be very careful and ensure that we do not become involved in an inquiry "through the back door" given that ministers across the UK have consistently declined requests for an inquiry*" **[DHSC6700786]**, the Inquiry asks:
    - i. What did William Connon mean by this statement and what were the reasons for taking this position?
    - ii. Was the approach taken by previous ministers ever questioned by William Connon or others to his knowledge?
  - (4) What William Connon meant by and the reasons for him saying "*As you can see I want to keep this short and hold a robust line on this matter*" **[DHSC6323081]**?
- 3.4. Further to the above the Inquiry asks if William Connon was strongly against DH being involved in the Archer Inquiry, and if the advice he gave to Caroline Flint was his own or collective advice on behalf of others in DH.
- 3.5. The Inquiry sets out its understanding that, following a meeting between Caroline Flint and Patricia Hewitt, and a subsequent meeting with Hugh Taylor, ministers agreed to be more cooperative with the Archer Inquiry **[DHSC5463411, DHSC5463720, DHSC0041193\_054, DHSC0041307 \_142, DHSC5046267, DHSC6326158, DHSC0041193\_048 and WITN4736001]**. The Inquiry goes on to ask:
- (1) Why William Connon considered that there was "*considerable scope for embarrassment for the Department if officials are asked to appear...*" **[DHSC0041193\_054]**



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- (2) Was the “*potential for criticism or embarrassment of former ministers and senior officials*” referred to the same as the examples set out in Elizabeth Woodeson’s submission to Hugh Taylor [DHSC5046267]?
  - (3) Why did William Connon believe that no witnesses from DH should give evidence to the Archer Inquiry? Who was ultimately responsible for this decision?
- 3.6. The Inquiry then asks for details of three private meetings that took place respectively on 25 April 2007, 19 September 2007 and 12 June 2008 between the Archer Inquiry panel and DH representatives. William Connon is asked:
  - (1) Who attended the meetings on behalf of DH and why were they selected?
  - (2) What conditions were attached to these meetings and who requested these conditions?
  - (3) Why was there no written record kept of these meetings and who took this decision?
  - (4) Whether he recalls any details of these meetings.
- 3.7. Finally, the Inquiry asks for William Connon’s understanding as to why Shibani Rahulan, in her email to Simon Rogers [DHSC6701136], stated that DH said it would be difficult to provide the Archer Inquiry with witnesses given it concerned historic events.

**Chronology in relation to questions 38 to 41 and 43 to 45 of section 3 of the Rule 9 request.**

- 3.8. Sylvia Shearer, a Scottish official, emailed William Connon on 19 February 2007 requesting further details on the press announcement that there was to be an independent inquiry into blood transfusions in the rest of the UK, noting that such an inquiry had been agreed by the Scottish government [DHSC5457905]. William Connon emailed Andrew Macleod in the Scottish offices on the same day: [DHSC5457916] in the following terms:

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*"I have spoken briefly to Sylvia and explained that no Inquiry has been announced by the UK Government or DH into this issue. From a quick scan of the press coverage it looks to me to be something the Haemophilia Society are undertaking themselves with the help of Lord Archer."*

- 3.9. On 19 February 2007, Jacky Buchan from Caroline Flint's private office sent William Connon and others an email requesting an urgent briefing following a media announcement that there was to be an independent public inquiry into the supply of contaminated blood products [DHSC5255332], asking *"where did this announcement come from and what are our lines to take please?"*
- 3.10. William Connon emailed Jacky Buchan on 19 February 2007, providing Caroline Flint with *"some lines to take and background info"* [DHSC5238049]. Jacky Buchan confirmed receipt of the submissions to Bradley Smythe, with William copied into the email [DHSC5255332].
- 3.11. William Connon's submission to Caroline Flint and Lord Hunt provided lines to take as follows [DHSC5457976]:

*"Lines to take*

- *The Government has not announced an independent public inquiry into the supply of contaminated NHS blood.*
- *The Government has great sympathy for those infected with Hepatitis C and HIV and have considered the call for a public inquiry very carefully. However, the Government of the day acted in good faith, relying on the technology available at the time and therefore we do not feel that a public inquiry would provide any real benefit to those affected.*
- *The Government understands that haemophiliacs infected with hepatitis C want to know how it happened and why it could not have been prevented, however, all the information is in the public domain and the Government does not believe that anyone's interest would be best served by a public inquiry. Since the introduction of the Freedom of Information Act we have released numerous documents which are now in the public domain.*
- *Donor screening for Hepatitis C was introduced in the UK in 1991 and this marked a major advance in microbiological technology, which could not have been implanted before this time."*

- 3.12. On 19 February 2007, DH received Lord Archer's letter to the Secretary of State, Patricia Hewitt, dated 16 February 2007, which declared Lord Archer's

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intention of chairing an independent inquiry into the circumstances surrounding the supply to patients of contaminated NHS blood and blood products [DHSC0041193\_056]. Lord Archer stated:

*"It will be much appreciated if someone from the Department can be available, on a mutually agreed date, to say what its position has been and is; and to lay before us any further facts."*

This letter appears to have been received by DH after William Connon had provided Caroline Flint with the submissions referred to at 3.11, above, on the announcement of the Archer Inquiry.

3.13. On 19 February 2007, Michelle Lucas from Caroline Flint's private office emailed William Connon asking for advice and a draft reply to Lord Archer's letter by 21 February 2007 [DHSC6698143].

3.14. On 20 February 2007, William Connon emailed various officials seeking advice and expressing uncertainty on how to respond to Lord Archer's letter [DHSC6700786]. He wrote:

*"...I am not at all clear how I should respond, given that this is not an independent inquiry in the normal sense and we are therefore, I assume, not obliged to take any part in the proceedings. However, the department would not wish to appear uncooperative, for obvious reasons. In his letter Lord Archer appears to be requesting that a DH representative appears before his inquiry. Can you advise on what actions we should take, if any, and provide a form of words which I could use when replying to Lord Archer?"*

*Wendy- is this something your branch can advise on? Have there been any precedents for inquiries such as the one proposed?*

*...*

*Copy Recipients- I would be grateful for any advice anyone may have. It is clearly important that we cooperate where possible however, we do need to be very careful and ensure that we do not become involved in an inquiry "through the back door" given that ministers across the UK have consistently declined requests for an inquiry.*

*I will copy yesterday's lines to take and briefing on this to those who did not receive it"*

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3.15. On 20 February 2007, Jonathan Stopes-Roe, Head of Strategy & Legislation at DH on 20 February 2007 replied to William Connon's email, sharing his thoughts on the letter from Lord Archer as follows **[DHSC6698143]**:

*"Here are few thoughts from me*

- *we should not be bounced into an over-hasty reply – unless someone can see a tactical advantage in replying tomorrow*
- *we should treat this, and any further requests for information, in the same way as an Fol request – swiftly (within 20 days), efficiently, and within reasonable costs limits*
- *check for precedents and elephant traps with DCA – the owners of Fol and wider legal, constitutional and "inquiry" issues*
- *MS(PH) should offer to meet Lord Archer in due course, if he would care to call*
- *Lord Archer may wish to put in Fol requests*
- *no-one from DH should attend as a "witness"*
- *consider whether a DH official should observe proceedings from the public gallery."*

3.16. On 20 February 2007 William Connon replied **[DHSC6698143]**:

*"I cannot see how we can become involved given the stance DH, on behalf of successive Governments has taken in stating that an inquiry is not justified. Given that position it would be difficult to justify becoming involved in any form of inquiry. I thought about offering a written statement however I again feel that this could simply open the door for further involvement."*

3.17. On 20 February 2007 Joe Neenan emailed William Connon **[DHSC6700786]**:

*"2. I can confirm that the Inquiries & Investigation Unit has no locus here, as "The Independent Public Inquiry" is not an official DH or government Inquiry.*

*3. We cannot advise about DH involvement in the inquiry- this would be a matter for the relevant policy branch."*

3.18. Karen Arnold, a government lawyer, emailed William Connon on 20 February 2007 suggesting that DH should send a *"holding reply"* to Lord Archer. She also asked if there would be a submission to accompany the reply to Lord Archer and advised that she should see the submission **[DHSC5458311]**.

3.19. William Connon emailed Jacky Buchan on 20 February 2007, in which he expressed his concerns **[DHSC5152770]**:

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*"No we have no idea at present and the whole situation is very unclear. I am concerned that if we enter into a dialogue about the details with either Lord Archer or the Haemophilia Society (HS) then we will simply become implicated in the Inquiry. I have therefore decided not to do this."*

- 3.20. William Connon replied to Karen Arnold 20 February 2007, in response to her suggestion to send a holding reply **[DHSC5458364]**:

*"I am not keen to send a holding reply as I feel that all the issues have been debated in the past and are, as you say all in the public domain. Sol have been involved previously and I am sure that the relevant documents must be in your records."*

*The essential message I want to get across is simply that the Government does not feel an Inquiry is [sic] justified and that ministers do not support the current proposal."*

- 3.21. William Connon emailed various recipients on 20 February 2007 **[DHSC6323081]**:

*"Many thanks to those of you who have commented on this draft reply, particularly Karen in Sol with whom I have discussed, and agreed this revised draft."*

*As you can see I want to keep this short and hold a robust line on this matter."*

- 3.22. Greg Hartwell, from Hugh Taylor's private office, emailed William Connon on 21 February 2007, indicating that Hugh Taylor, then the DH Permanent Secretary, had made some "small changes" to the draft letter to Lord Archer **[DHSC6323081]**.

- 3.23. William Connon emailed Jacky Buchan on 21 February 2007, attaching the draft letter to Lord Archer and providing some advice as follows **[DHSC5460426]**:

*"The advice is that we should not become involved in Lord Archer's Inquiry at all. The attached draft, which has been cleared by Perm Sec and Sol, takes a fairly robust line."*

...

*The main points are:*

- 1. It is recommended that no DH officials appear before this informal inquiry*

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2. *The Inquiry is being launched by Lords Archer, Morris and Turnbull.*
3. *I am told that the inquiry is not directly linked to the Haemophilia Society, although Lord Morris is the President of the Society.*
4. *I have no specific information about the terms of reference, location, funding or what form exactly the inquiry will take.*
5. *I would not advise that we make any contact with those launching the inquiry to request further details.*
6. *The draft does offer to provide Lord Archer with a copy of the report currently being compiled on all the documentation available to DH. You will be receiving a submission on this in the next few weeks. The report should be ready by the end of March*
7. *I will continue to monitor the situation and keep everyone fully informed of any developments.*

..."

3.24. On 21 February 2007 William Connon and Dr Aileen Keel, Deputy Chief Medical Officer, exchanged emails regarding the draft letter to Lord Archer **[DHSC5458735]**.

3.25. On 6 March 2007, Jacky Buchan emailed William Connon an update regarding the letter **[DHSC5460426]**:

*"MS(PH) is meeting with SofS and Special Advisers to discuss the issue before a reply is sent and I am pushing for a meeting date sooner rather than later."*

3.26. Jacky Buchan emailed William Connon on 21 March 2007, confirming that Caroline Flint and Patricia Hewitt had met to discuss Lord Archer's letter; and Patricia Hewitt had also met Hugh Taylor. Following these meetings Jacky Buchan informed William Connon that a more cooperative approach should be taken with the Archer Inquiry **[DHSC5463411]**:

*"MS(PH) has met with SofS to discuss our response to Lord Archer's request and SofS subsequently had a discussion with Hugh Taylor.*

*It has been agreed that the response needs to be more cooperative regarding the inquiry and officials should give evidence and papers should be made available.*

*Can you please redraft the reply taking this into account.*

..."

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3.27. On 23 March 2007 Zebeda Seedat emailed Ros Pyne, copying in William Connon. She confirmed that William Connon provided a draft submission to Elizabeth Woodeson the day before, regarding the reply to Lord Archer **[DHSC5463720]**. The original email from William Connon to Elizabeth Woodeson has not been located.

3.28. There are two submissions dated 23 March 2007 from Elizabeth Woodeson to Hugh Taylor. Both submissions concern the redrafted letter to Lord Archer **[DHSC5046267 and DHSC5857854]**. It appears, although we cannot confirm, that the first submission **[DHSC5046267]** is a draft only. In it, Elizabeth Woodeson noted:

*“...However there remain a number of questions and concerns amongst the team here regarding departmental involvement in this inquiry, which I would just like to flag up to you. They mainly arise from the suggestion that officials should agree to appear as witnesses:*

- There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985). Nevertheless, given the subsequent destruction and loss of a number of files there is considerable scope for embarrassment for the department if officials are asked to appear before the inquiry.*

*...”*

3.29. In the second version of the submission from Elizabeth Woodeson, she expands on her reasons for concern at the potential embarrassment for DH which might result from its participation in the Archer Inquiry as follows **[DHSC5857854]**:

*“We will inevitably be pressed to release documents without any redaction — and to release submissions. While none of these policy documents gives rise to any real concerns over liability, some are sensitive in respect of potential for criticism or embarrassment. Examples are:*

- Internal Minute where the view of MS(H) was cited ‘he has strong views on spending money on the blood test for HTLV III. He felt that to spend around £2m was not cost effective when there were so few AIDS cases and that the money could be better spent elsewhere’.*
- Internal minute between officials on cost implications of AIDS ‘Of course the maintenance of the life of a haemophiliac is itself*

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*expensive, and I am very much afraid that those who are already doomed will generate savings which more than cover the costs of testing blood donations'. (5 March 1985)*

- *Minute from Kenneth Clarke to CMO on AIDS testing 'Before we panic further, it is presumably the case that the ending of the collection of blood from homosexuals greatly reduces the risk from blood collected in this country? Also, as only haemophiliacs have died and they may have had Fact VIII from American blood, is it the case that we have not had one AIDS fatality from blood donated in this country yet? Do we need this and heat treatment of the blood?' (22 January 1985)."*

The submission went on to say:

*"Given the time which has elapsed, it is not clear exactly what "evidence" officials would be able to provide in person, beyond rehearsing the documents which are already in the public domain."*

- 3.30. On 26 March 2007, William Connon and various government lawyers exchanged emails regarding the Archer Inquiry **[DHSC5264766]**

Michael Evans wrote:

*"...Others here may also have views, but my only concern (in the absence of any information about the background to this or what correspondence has gone before) is in the phrase in the letter: "However, we remain of the view that the Government of the day acted in good faith at the time and there is no evidence of any negligence or wrong doing." I suspect that this will provoke a request for the evidence to support that statement. Would it not be better to say that, having considered carefully the request for a public inquiry, we are of the view that an inquiry is not justified because [time, cost, distance in the past, systems have now changed so nothing to be gained... etc - Colin Philips in IIU can give you some wording).*

*As the inquiry will not have any powers, civil servants could not be forced to provide evidence. But if the suggestion was made that they could, then no doubt the inquiry would draw adverse inferences from any refusal to do so. What legal advice would be available to DH officials who did attend if Ministers said they should? If officials made any statement that suggested negligence or even criminal liability, what indemnity would be available for them? Likewise statements that could be defamatory. There are rules about all this: depending on the circumstances Treasury approval may be required if liability could exceed £100k (in damages and costs of defending an action). I would also be concerned about the precedent that may be set here. But Colin can advise further."*



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Vicky Fox wrote:

*"I would just add a comment that if DH take part in the inquiry, it will give the inquiry some status and would make it difficult for DH to distance itself from the outcome."*

3.31. On 26 March 2007, William Connon emailed Jacky Buchan with a note and draft letter to go to Caroline Flint. The note and draft letter attached have not been located **[DHSC6326158]**.

3.32. On 27 March 2007, William Connon emailed Jacky Buchan again to clarify his submissions from the day before **[DHSC5064241]**:

*"Sorry to come back again on this but I have received a couple of comments on the advice in the submission and draft letter, regarding the appropriateness of offering to meet Lord Archer's team.*

*I included in my submission the fact that Sol have advised against meeting with the review team for the reasons outlined. This remains Sol's advice. However, given that SofS has indicated that she wishes the department to be as cooperative as possible, and suggested that we do offer to meet, I decided to leave this in the draft reply. You will see that I have modified the offer of a meeting to make it clear that we will only meet to discuss timing or our impending report and to clarify the precise extent of DH involvement, which will be very limited.*

*I hope this clarifies the position for MS(PH)."*

3.33. On 27 March 2007, Jacky Buchan forwarded the email from William Connon dated 26 March 2007 to Dani Lee in the Secretary of State's private office. It appears William Connon's email dated 27 March 2007 was also forwarded. In the email to Dani Lee, Jacky Buchan stated **[DHSC6326158]**:

*"I understand Sol have more comments on this yet but can you please let me know if SofS would be agreeable to the proposition of a meeting with officials rather than them formally giving evidence at the inquiry-if SofS would not be content, can you please go back to William to say so as soon as possible (please copy in all the cc list myself) so that a further reply can be drafted today.*

*I'll forward on a second, later email which relates to this."*

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3.34. On 28 March 2007 William Connon sent up a submission to Caroline Flint in response to the request that officials should re-draft the response letter to Lord Archer. William Connon expressed the collective concerns of officials about DH's involvement with the Archer Inquiry as follows [DHSC0041307\_142]:

*"...there remain a number of questions and concerns amongst the team here regarding departmental involvement in this inquiry, which I would just like to flag up to you. They mainly arise from the suggestion that officials should agree to appear as witnesses:*

- There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985). Nevertheless, given the subsequent destruction and loss of a number of files there is considerable scope for embarrassment for the department if officials are asked to appear before the inquiry.*
- With official Government Inquiries there is a clear legal framework under which to operate in the case of an inquiry under the Inquiries Act 2005 and in the case of non-statutory inquiries there are established principles and guidelines. These would not apply to a non-government inquiry such as Lord Archer's one and it is unclear exactly what departmental involvement may entail. For example, would officials be asked to attend?*

*..."*

This submission included a handwritten note from Dani Lee to Patricia Hewitt:

*"SOL's advice, which Hugh agrees with, is that we should avoid becoming in any way directly involved. We could offer a meeting between Lord Archer's team and DH officials to explain our review of all the documentation + the level of assistance we could provide to his Inquiry"*

3.35. On 30 March 2007 Patricia Hewitt responded to Lord Archer's letter dated 16 February 2007 [DHSC0041193\_048]. The letter stated:

*"the Department is willing to assist you as far as we can; and an early meeting between officials here and yours might be helpful in this respect. In particular we are, of course, willing to cooperate with your team by sharing the results of our own review. Work has been underway within the Department, over the past few months to identify and review all the documents held relating to the safety of blood products between 1970 and 1985".*

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3.36. On 12 April 2007, Vijay Mehan, Secretary to the Archer Inquiry, emailed DH requesting that officials at DH contact him to arrange the meeting in line with Patricia Hewitt's letter dated 30 March 2007 **[DHSC5193222]**.

3.37. On 16 April 2007, William Connon emailed Elizabeth Woodeson requesting advice on the Archer Inquiry's request for a meeting **[DHSC5193222]**:

*"I would appreciate your advice, and that of others, as to who we should field for this meeting. We will need to have a representative from Sol and also perhaps someone from Colin's team to advise on investigations. I am keen that we should be properly represented however I do not want to appear to be overly defensive by having too many people at the meeting."*

3.38. On 16 April 2007 William Connon wrote to Vijay Mehan **[DHSC5467483]**:

*"Thank you for returning my call following the telephone message I left on your answerphone [sic]. We agreed that I would send you a list of possible dates for next week, for the meeting you have requested following the Secretary of State's letter to Lord Archer. It would also be helpful to have confirmation of who will be attending the meeting, from your team: you suggested that Lord Archer and Lord Turnberg may attend with you.*

...

*The purpose of the meeting will be to examine ways in which the Department could assist your inquiry in the process of identifying any information which the inquiry may wish to consider and which is not already in the public arena. You said that you would let me have a list of proposed topics for discussion, in advance of the meeting, which you would like to put forward."*

3.39. William Connon emailed Vijay Mehan on 19 April 2007 confirming details of the first meeting between DH officials and the Archer panel **[DHSC5468141]**:

*"I can confirm that we will come to the House of Lords, Peers Entrance next Wednesday 25<sup>th</sup> April at 2pm for the meeting. Just to confirm the DH team will be:*

*Myself (Head of Blood Policy)*

*Ms Liz Woodeson (Head of General Health Protection Division)*

*Ms Shibani Rahulan (Departmental solicitor) and most probably also*

*Dr Hugh Nicholas (DH Consultant Hepatologist)."*

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- 3.40. On 24 April 2007, Elizabeth Woodeson emailed Dr Ailsa Wight, inviting her to attend the meeting with Lord Archer's team [DHSC5468879]. William Connon was copied. She wrote:

*"We discussed this morning. I would like you to come to this meeting as well please...Hugh is not coming from our side after all..."*

- 3.41. William Connon responded to Elizabeth Woodeson's email on the same day, expressing concern at the number of DH officials attending the meeting [DHSC5468879]:

*"I was not aware that Hugh is no longer attending and there were always to be two peers from their side. I am informed that the inquiry team will be Archer, Turnberg, Willetts and Mehan so I do feel that 5 DH reps could be viewed as excessive, not least given the level of involvement we intend to provide to the inquiry proceedings."*

- 3.42. On 24 April 2007, Elizabeth Woodeson sent submissions to Caroline Flint and Lord Hunt which included the recommendation that documents from the review of papers from 1970 to 1985 should be provided to the Archer Inquiry [DHSC0041193\_026]. William Connon was copied into the submissions. She wrote:

*"The way forward*

*8. We recommend that the attached report should now be released to Lords Archer, Morris, Turnberg and Jenkin, the Haemophilia society and all other interested parties.*

*9. In addition we recommend that we should release the documents reviewed in line with FOI principles. Overall, there are around 4,500 of these documents so this will be a major task. It is estimated that the preparation and processing of the documents will take approximately four to five months. To achieve this timescale will require a member of staff to be dedicated to the task with some administrative support. The cost is estimated to be at least £40,000. Nevertheless, we recommend this approach, as release of the documents may go a considerable way to support our line that a public inquiry is not required as all the information is in the public domain. This includes fifty-eight previously unpublished documents specifically referenced in the current report, which we would treat as a priority."*

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The submission had a handwritten note:

*"Caroline*

*Are you content for the report to be released and for the documents to be prepared for release?*

*Seen and agreed by Hugh Taylor"*

3.43. Documents indicate the planned second meeting took place on 25 April 2007  
**[DHSC5469319]**.

3.44. On 25 April 2007, following the meeting, Ailsa Wight emailed William Connon with follow-up actions **[DHSC5469319]**:

*"William*

*We spoke on the way back and thought we should ask NHSBT, with MHRA as necessary, to put together a note on the safety regulatory framework, that is requirements and practice in relation to testing for hepatitis and HIV viruses, for;*

*-whole blood*

*-UK produced plasma prods*

*-Imported plasma prods*

*to provide firstly a picture of the situation now, and secondly, a chronology of the situation as it was pre-Directive as far as possible."*

3.45. On 26 April 2007, William Connon emailed Terry Male at NHSBT requesting assistance **[DHSC5469319]**:

*"We were asked by SofS to meet with Lords Archer and Turnberg (plus others from the inquiry team) to discuss how the department could assist them with their inquiry. We did this yesterday and the meeting went well. It has not been agreed that DH will appear before the inquiry but ministers are keen that we are as helpful as possible, without actually participating in the inquiry. As you can see Ailsa offered to provide them with a background note (chronology really) on safety procedures and also timelines on testing for both Hep A, B & C and HIV ie when tests were actually introduced.*

*It was clear at yesterday's meeting that their knowledge of the blood service is understandably not extensive either historically or contemporaneously. If it is possible to provide them with a short brief on how the service is configured both now and back in the 70's and 80's that would be very helpful. They are very interested in BPL and in the commercial market for blood products. They have expressed an interest*

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*in whether or not commercial companies would have (and do) tested as well and also whether plasma imported by BPL, or other companies, for fractionalisation, is also tested. We need to remember that they are investigating what happened some 25/30 odd years ago.*

*We did stress that lessons have been learned and that safety measures for blood products have improved greatly eg leucodepletion, NAT testing etc. If there is an easily accessible note of current safety measures then that too would be helpful. As Ailsa sates they are also interested in the timing of the introduction of the Blood safety Directive and also what legislative provisions were in place prior to that.*

*Happy to discuss, if more context would help, if this is clear but I would be grateful if you could arrange for someone to provide the information required (liaising with MHRA as necessary)."*

3.46. On 28 April 2007, Caroline Flint confirmed by ticking next to a handwritten note by Elizabeth Woodeson that she was content with Ms Woodeson's advice to release the report and documents **[DHSC0041193\_026]**.

3.47. On 9 May 2007, Shibani Rahulan emailed Simon Rogers to feed back on the first meeting with the Archer panel **[DHSC6701136]**:

*"Also, I omitted to mention in my previous email that DH, although they are cooperating with the inquiry, so far have no intention of sending along witnesses to the inquiry. DH is aware that the inquiry could request civil servants and Ministers to attend but that, as a non-statutory inquiry, it would have no powers of compulsion.*

*When the inquiry asked DH about DH witnesses at the meeting, DH said that they would struggle to find appropriate people because the events are historic and consequently there is hardly anyone around who would have first-hand knowledge of the events"*

3.48. On 23 May 2007, William Connon emailed Dani Lee and others regarding the disclosure of documents to the Archer Inquiry **[DHSC5084337]**;

*"Just to confirm that the Review of Document Relating to the safety of Blood Products 1970-1985 (Non-A. Non-B Hepatitis) was released yesterday 22nd May, following a written ministerial statement from MS(PH).*

*Copies were issued to:*

*Lord Morris, Archer, Jenkin and Betty Williams MP (Chair of the All Party Haemophilia Group), Mr Mehan (secretary to the Archer Inquiry) and Mr Morris, Chair of the Haemophilia Society..."*

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- 3.49. On 3 July 2007, Linda Page provided a *“Note on the Safety of Blood Products (1970 to 1985)”* dated 3 July 2007 in which she outlined the progress on the documents being prepared and released to the Archer Inquiry **[DHSC5479534]**:

“ ...

*3. The letter accompanying the Review advised that the remaining (4,000 odd) papers are being prepared in line with FOIA and will be released in batches.*

...”

- 3.50. On 9 July 2007 Patrick Hennessy emailed Jacky Buchan (now working in Dawn Primarolo’s private office), providing an update and continuing: **[DHSC5284704]**:

*“8. Thus far there has been no reaction from the first tranche of papers issued last month, and there is no particular reason to suppose that this further release of papers will require any immediate response.”*

- 3.51. On 17 July 2007 William Connon emailed Vijay Mehan seeking an update from the Archer panel **[DHSC5481409]**:

*“I did left [sic] a message on your answering machine last week suggesting that it might be helpful to have a brief telephone conversation to update each other on where things stand regarding the timing of your inquiry, the documentation we have sent to you so far and subsequent documents. I think it would be helpful to touch base on these points.”*

- 3.52. On 19 July 2007 Linda Page provided a submission to Beth Foster and Marjorie Palmer, regarding Patricia Hewitt attending a Select Committee on Health on 25 July 2007 **[DHSC5011228]**. William Connon was copied into the submission. The submission included:

*“...A full judicial inquiry would be a major, costly and time-consuming exercise that would depend on the recollections of witnesses about events that took place twenty or more years ago. This would make it difficult to construct a clear and detailed picture of what took place.”*

...

*Lord Archer’s Non-Governmental Public Inquiry*

...

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*20. The Department is co-operating with the inquiry. Officials met with Lord Archer and colleagues on 25th April 2007 and a further offer to meet has been made.*

*21. Around 1,600 papers, identified during the internal review (paras 11 to 15 above) have already been released to the inquiry; the remainder will be released as soon as they have been prepared. It is our intent to release as many of these papers as possible, including submissions to Ministers and policy formulation.*

*...*

- 3.53. On 30 July 2007, William Connon emailed Vijay Mehan proposing a discussion **[ARCH0002053\_007]**:

*"Given that parliament has now risen for the summer recess it would be helpful to have a discussion with you regarding the planned timetable for the Lord Archer's conclusions, from his inquiry and also to discuss if there is anything further the department could do to assist the inquiry team. I have left previous telephone messages and sent you an email regarding this but have not yet received any response, as I am sure you have been extremely busy with the inquiry."*

- 3.54. On 16 August 2007, Chris Hartley from NHSBT emailed Peter Garwood, NHSBT Director of Strategic Supply & Special Services and others regarding the Archer Inquiry **[DHSC5265951]**:

*"I had a call yesterday from Vijay Mehan of Fenton Solicitors. Mr Mehan is acting as secretary to the inquiry and wanted to know if the NBS would give evidence to the inquiry...He had also tried to contact BPL yesterday, but the message was passed to me as well..."*

*I spoke to William Connon this morning and his advice was that NHSBT should not give evidence to the inquiry because:*

- a) those involved at the time have left the service*
- b) it is not a formal 'public' inquiry, so has no legal standing*
- c) by giving evidence, NHSBT will be opening themselves up to cross examination from any (and every) angle.*

*William suggested that we offer to meet the inquiry team in private and to give them any documentation they request. This course of action would follow how the DH have responded."*



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- 3.55. On 23 August 2007, Peter Garwood emailed William Connon and others, confirming he had accepted a meeting request from the Archer panel **[DHSC5485698]**:

*"May I please advise you that NHSBT has accepted a request to participate in a confidential meeting with Lord Archer's team at a date yet to be determined, and that the primary addressees in this email (Tim, Patricia, Clive, William and me) will attend on behalf of NHSBT. I hope this doesn't come as too much of a surprise or shock to any of you."*

- 3.56. On 7 September 2007, Chris Hartley emailed Peter Garwood to say that Vijay Mehan had contacted him regarding the possible date for the second meeting **[DHSC5487727]**:

*"Have spoken to Mr Mehan at the Archer Inquiry today and he understands it is short notice, but was wondering if we could meet him on 19th Sept at 4pm - 5.30pm at House of Lords. Can you let me know if this is possible – I have committed to responding to him by Monday."*

- 3.57. On 7 September 2007, there was a meeting about blood and organ donations attended by DH, the health departments of the other devolved administrations and Scottish government lawyers. At the meeting, the following points were raised regarding the Archer Inquiry **[DHSC5490830]**:

*"1. William advised that he had been in touch with the Secretary to the Archer Inquiry about the timescale in producing its report and was told that it would be the end of the year at the earliest. DH had met with the inquiry team but had not offered to give evidence – the discussion had not been recorded. There had been no formal approach from the Archer Inquiry asking DH to give evidence. The inquiry team's meeting with DH was considered to be a fact finding exercise.*

*2. NHSBT had now agreed to meet with the inquiry team and William proposed to be in attendance as an observer. However, given that that the Archer inquiry had no legal framework it was not considered appropriate that NHSBT give evidence to the inquiry. It was confirmed that NHSBT had its own lawyers."*

- 3.58. On 12 September 2007, Vijay Mehan emailed Judith Willetts confirming that the second meeting had been scheduled **[ARCH0001026]**:

*"I have arranged a meeting for next Wednesday 19th September at 4:00pm - 5:30pm, at a venue to be decided with:*

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*Tim Wallington - Acting Head of the NHS Blood and Transplant Service  
Dr Patricia Hewitt - Consultant haematologist*

*Peter Garwood- Group Director of Blood Policy Unit - over 25 years of experience.*

*It has also been put to me that William Connon - Head of Blood Policy, also wishes to attend. I have tried to put them off inviting him along, as he probably is the clog in the wheels.*

*Dr Jones, we have met with Mr Connon before and although he did not come across as particularly obstructive, he was not exactly forthcoming with offers of help. We have also had some rather poor comments made about him by others and it further appears he might have had a hand in suggesting to the Minister for Health that we have refused to have a meeting with him, when no such meeting has ever been asked for or arranged.*

*In any event, the NHSBTS, do seem keen to have Mr Connon at the meeting, I might not be able to pursue them otherwise."*

- 3.59. On 17 September 2007, Chris Hartley emailed Peter Garwood regarding the meeting on 19 September 2007 [DHSC5487364]:

*"This meeting will be strictly private - no information used in this meeting will be sued [sic] publicly...*

*...*

*Here are some questions that will be raised by the Archer Inquiry team, which we need to be prepared to respond to:*

- (1) Would they describe their present procedures for ensuring that donated blood is not obtained from sources with an increased risk of bearing transmissible diseases?*
- (2) Are there any improvements they would like to see in these procedures?*
- (3) Do they have any views on what went wrong in the 1970s and 1980s?"*

- 3.60. Peter Garwood prepared lines to take in advance of the meeting on 19 September 2007, in response to the questions provided by Chris Hartley [DHSC5487727].

- 3.61. Documents indicate the planned meeting took place on 19 September 2007 [ARCH0000787].

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- 3.62. On 20 September 2007, William Connon emailed Lord Archer to clarify the points raised at the meeting of 19 September 2007 **[ARCH0000787]**:

*“Following our meeting yesterday afternoon I agreed to clarify the position regarding Government policy and funding of the initiative to become self-sufficient in blood products in the 1970's. I did mention the DH report Self-Sufficiency in Blood Products in England and Wales – A chronology from 1973 to 1991 and I have looked at that report again. I do think that the most helpful advice I can give is to refer you to that report which provides the most detailed account available of the history on this issue.*

*...*

*The report generally provides background on the approach taken by the Government and the department and rather than add to your already huge mountain of papers I think the more sensible approach is to refer you to that report. I know that report has already been sent to the inquiry, but if you have any difficulty tracing it then please let me know and I will forward another hard copy. Unfortunately, I do not have the review available electronically although it is on the DH website.”*

- 3.63. On the same day, and apparently arising from William Connon's email, Vijay Mehan emailed members of the Archer panel **[ARCH0000787]**:

*“Helpful as ever, Mr Connon, rather than plainly setting out the information we are seeking, refers us to the reports, which was the same response he gave following our first meeting.”*

- 3.64. On 9 October 2007, Patrick Hennessy provided submission to Julia Scott, Private Secretary to Lord Darzi. The submission was prepared to assist Lord Darzi's appearance at a Select Committee on Health on 25 October 2007. William Connon was copied into the submission **[DHSC5059194]**. The submission included:

*“It is not felt that there would be any benefit in officials giving evidence at the inquiry hearings. None of those currently responsible has any direct knowledge of events 20-30 years ago. The evidence held by the Department is documentary, and this is being released into the public domain.”*

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3.65. On 10 October 2007 Patrick Hennessy emailed Morvan Smith about the disclosure of documents to Archer Inquiry **[DHSC6548634]**. William Connon was copied into the email.

3.66. On 23 October 2007, Patrick Hennessy emailed Jacky Buchan to update Dawn Primarolo about the disclosure of documents **[DHSC5242277]**. William was copied into the email. Patrick Hennessy explained:

*"1. As you know, it was agreed to issue relevant papers on blood safety from 1970 to the mid-1980s to Lord Archer's independent inquiry into contaminated blood and blood products. This minute is to advise you that the fifth and final tranche of papers has been prepared for release, and is for information only.*

*2. We plan to issue the papers to Lord Archer's team on Friday 26 October. This will fulfil our commitment to Lord Archer to issue all of the 'rediscovered' documents in monthly stages starting in June. Documents have been issued previously on 15 June, 10 July, 1 August and 7 September."*

3.67. On 5 March 2008, Patrick Hennessy provided Dawn Primarolo submissions on Scotland's intention to announce a public inquiry **[DHSC0038592\_080]**. William Connon was copied into the submissions. Patrick Hennessy also noted:

*"6. While DH officials have not appeared before the Inquiry we have cooperated and met with the Inquiry team and made all relevant information available. This has included releasing some 18,000 pages of official documents to Lord Archer, and then placing them on the Department's website."*

3.68. On 8 May 2008, William Connon emailed Patrick Hennessy, Elizabeth Woodeson and Ailsa Wight about Lord Archer's request for another meeting **[DHSC5518489]**. He also copied in Vijay Mehan. William Connon wrote:

*"Patrick/Liz/Aisla*

*Just to let you know that I have just spoken to Mr Vijay Mehan (Secretary to the Inquiry) who tells me that Lord Archer would like to meet with the department and NHSBT, once more before publishing his final report. I agreed that this would be a good idea and a formal invite will follow but the meeting is likely to be on 16th May, at the House of Lords.*

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*Lord Archer has a list of questions, which he would like to put to the department/NHSBT, before finalising his report. I suggested that it would be helpful if these could be sent to the department in advance, simply to allow us time to consider them fully. Mr Mehan agreed to do this.*

*As neither Patrick or I will be in the office again until Monday I wanted to forewarn everyone so you could check your calendars."*

- 3.69. On the same day Vijay Mehan replied to William Connon email **[DHSC5518489]**:

*"Unfortunately, further to the telephone conversation today, Lord Archer cannot make a meeting for the 16th May.*

*The dates we do have available are mornings of 2 & 3rd June 2008 between 10am-12pm. I will be able to confirm a venue as soon as a date has been agreed .*

*If you are able to suggest any other dates prior to the 2nd and or 3rd June, could you please let me know.*

*I do have a list of questions prepared by Lord Archer, which I intend to send you all once a date has been agreed.*

*I do now look forward to hearing from you and am grateful in advance for the co-operation provided by all in this matter."*

- 3.70. William Connon emailed Vijay Mehan regarding proposed meeting dates **[DHSC5518489]**:

*"As In explained on the telephone, I will be on leave from the 21st May until 9th June incl therefore I cannot make either of your revised dates. However, I also explained that Patrick Hennessey's attendance is probably more important than mine, as Patrick has been handling the day to day work in this area and is more familiar with the details. I am therefore content that the meeting goes ahead without me."*

- 3.71. Peter Garwood replied to the same email **[DHSC5518489]**:

*"May I please suggest that Dr Tim Wallington, NHSBT Assistant Medical Director, is included as Tim was also at the original meeting in September along with Dr Hewitt and me. I have copied this email to Tim.*

*Please also remember that it was originally intended to have Dr Clive Dash (BPL) participate in the meeting but Clive was unavailable on the day. Particularly if there are a number of BPL related questions that Lord Archer would like dealt with at the meeting, it may be appropriate to include Clive. Again, I've included Clive in this email response."*

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- 3.72. On 12 May 2008, William Connon emailed Ailsa Wight and Elizabeth Woodeson about Peter Garwood's email **[DHSC5518489]**:

*"Whilst it is not for me to draw up the "attendee list" for this meeting I do feel that we should try and discourage the Archer Team from entering into further, detailed discussions about the issues, at this late stage (eg BPL). There are clearly some questions outstanding and I have already asked Mr Mehan to submit these questions, in advance of the meeting. This should minimise detailed discussions about minutiae, on the day and allow for a more structured discussion on "where next, when and the impact of the Scottish Inquiry".*

*I'm less sure about the NHSBT "wisdom" here, as I feel that NHSBT risks opening up further detailed discussion by suggesting Clive Ronaldson as a further attendee and display a lack of "political thinking". Quite apart from anything else Clive is not currently CE or MD of BPL. The previous meeting, referred to, was specifically set up to allow NHSBT to respond to detailed questions from the Inquiry (with DH attendance, as observers). This final meeting with the Archer Team is quite different and it should be led by DH and not NHSBT, in my view."*

- 3.73. On 9 June 2008, Patrick Hennessy emailed William Connon and Zubeda Seedat about the Archer panels' questions **[DHSC5524730]**:

*"I have attempted to answer these questions 'to the best of my knowledge', without diving into the original documents. I will now start to do that to firm up on these answers. However, it may not be possible to give definitive answers by Thursday! This is a long and detailed list requiring delving back a long way."*

- 3.74. On 10 June 2008 William Connon replied to Patrick Hennessy **[DHSC5524730]**:

*"Thanks for this. I find it an astonishing list of questions, at this stage in the inquiry process. I really do wonder what exactly they have been doing! Your responses are sensible but I do think that we need to be very cautious about making subjective or judgmental comments, which may end up in the final report and be attributed to the department or the Government. It is for the Archer Team, who have received almost all the documentation, to analyse the facts and draw their own conclusions.*

*... I see that we are meeting the Archer Team, following the a final and unexpected (?) public hearing on Thursday this week. Who is attending the meeting from our side? I do not think we should attempt to answer the above questions before Thursday and I am inclined to consider*

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*answering as many as we can verbally on Thursday, rather than sending a written reply. What do others think of this idea?"*

- 3.75. On 10 June 2008, Patrick Hennessy emailed Vijay Mehan confirming the attendees at the third meeting **[DHSC5524941]**:

*"This is to let you know that the DH/NHSBT attendance at the meeting on Thursday 12 June, 2pm at the House of Lords, will be:*

*William Connon, Head of blood policy, Infectious Diseases and Blood Policy Branch, DH*

*Patrick Hennessy, Project manager, Infectious Diseases and Blood Policy Branch, DH*

*Dr. Tim Wallington, Assistant Medical Director, NHS Blood and Transplant*

*Dr. Pat Hewitt, Consultant in Transfusion Microbiology"*

- 3.76. Documents indicate the planned third meeting took place on 12 June 2008 **[DHSC5526400]**.

- 3.77. On 17 June 2008, William Connon updated Elizabeth Woodeson and Ailsa Wight **[DHSC5526400]**:

*"...Last week's meeting with Archer was fine and there was only query, which we could not resolve at the meeting hence Patrick's email below.*

*The questions asked, and the subsequent discussions last week, highlighted a fairly surprising lack of understanding of a number of significant issues, on the part of the inquiry team. We were all surprised that they did not seem to have a greater knowledge of certain fundamentals, by this stage in the process. That view was shared by our NHSBT colleagues.*

*I did ask about timescale for their report and they were none too specific, saying initially that they hoped to report by the end of June! This was then revised to "the summer". I said that we would be happy to receive and comment on a draft copy, if that would be helpful but they declined on the basis that the public and the haemophilia lobby would almost certainly see this as some form of compromise. I told them that this was not the intention but that would be happy to check for factual accuracy etc. I also suggested that if it made things more transparent we could include any others in this process of commenting on the draft. However, Lord Archer declined to take up on this offer."*

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- 3.78. On 8 September 2008, William Connon emailed Vijay Mehan regarding Lord Archer's report **[DHSC5541074]**:

*"I am currently planning resources, for the next few months, and I wonder if you are in a position to give me an idea of when Lord Archer's report is likely to be issued. I did leave a message on your ansaphone [sic] machine last week but as I have not heard back from you I thought an email might be more helpful as you may well be on holiday, during the parliamentary recess."*

- 3.79. On 16 October 2008, Lord Archer wrote to William Connon **[ARCH0001555]**:

*"Many thanks for sending me the documents recently located relating to Lord Owen's self-sufficiency policy."*

- 3.80. The Inquiry may also be assisted by considering page 9 of the Archer report dated 23 February 2009 and Judith Willetts' witness statement dated 5 January 2021, as follows **[ARCH0000001 and WITN4736001]**.

Page 9 of the Archer report:

*"The Department of Health maintained its view that the Inquiry was unnecessary, and declined to provide witnesses to give evidence in public, but they supplied documents which we requested, responded to questions from us and sent representatives to three private, informal and unminuted meetings."*

Page 7 of Judith Willetts' statement:

*"Lord Archer informed us that the DoH would not be providing evidence or taking part in the Inquiry, but that the Department would agree to sending representatives to meet us on a private, informal, unrecorded basis. While this was felt to be unsatisfactory and disappointing, we had no recourse to force engagement. It also meant nothing that was said in the meeting could be included in our report"*

### **Correspondence with Dr Hay (Chairman of UKHCDO)**

- 3.81. The Inquiry has referred William Connon to email correspondence between him, Dr Hay and Christopher Ludlam dated 26 and 27 February 2007 **[DHSC5459487 and DHSC5459533]**. The Inquiry has asked why William Connon warned Dr Hay to be cautious about how he expresses his views about the Archer Inquiry via email.



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- 3.82. On 26 February 2007 Dr Hay, copying in William Connon emailed Christopher Ludlam about the Archer Inquiry [DHSC5459487]:

*"...I would need some persuasion that it will be truly independent. After all, we know who is pulling Lord Morris' strings and all the participants are giving their time because they believe it is important to have an enquiry, hardly a neutral position".*

- 3.83. On 27 February 2007 William Connon replied to Dr Hay's email explaining that he should be cautious in his emails [DHSC5459533]:

*"Whilst I share a number of the concerns being expressed and views on the proposed inquiry, I feel that we should be cautious about how we express them via emails etc*

*With the prospect of the Inquiry and the ever present requirements of the FOI we need to consider that these views may enter the public arena, at some point. I don't mean to be at all critical but we do need to remember that we may at some stage be required to substantiate some or all of our views. I am mindful of the fact that I have been told that the Haemophilia Society (HS) are not involved with the proposed Inquiry. I would not wish to give the impression that the department or the Government does not accept this or that the involvement or otherwise of the HS in any way affects our position."*

- 3.84. Dr Hay replied to William Connon the same day [DHSC5459533]:

*"I take your point. It is one of my weaknesses.*

*We are planning to discuss this at our next advisory committee on 13/4/07, by which time the enquiry group will have met and decided its remit. It is difficult to form a definitive view before their remit has been announced..."*

**Letter to Mrs [GRO-A] dated 14 August 2007**

- 3.85. The Inquiry has referred William Connon to a series of documents concerning a letter sent to Mrs [GRO-A] [DHSC0006211\_085, HSOC0013877, ARCH0000139\_002, ARCH0000139\_001, ARCH0001628, ARCH0001626 and ARCH0001625]. The Inquiry asks:

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- (1) Would the letter to Mrs **GRO-A** dated 14 August 2007 have been sent to William Connon for clearance?
- (2) Why the erroneous information, i.e. that the Archer panel had failed to respond to requests for meetings from DH, was given to members of the public?

3.86. On 9 July 2007 Mrs **GRO-A** sent a letter to the then Secretary of State for Health, Alan Johnson, about the Archer Inquiry **[DHSC0006211\_085]**:

*"I would like your assurance that the Department of Health will appear before the Archer Enquiry and that you,yourself,will [sic] offer your positive and unambiguous support towards a resolution of this tragedy.*

*My husband was a Haemophiliac and with great stoicism he worked until the day he collapsed, eleven weeks later he was dead.He had been knowingly infected with HepatitisC in the course of his treatment.He had a long and distinguished career but was left to die."*  
*[sic]*

3.87. On 14 August 2007 Morven Smith from the DH Customer Service Centre sent a reply to Mrs **GRO-A** **[HSOC0013877]**:

*"As you are aware there is a non-Governmental inquiry underway, which is chaired by Lord Archer of Sandwell. Department of Health officials met with members of the inquiry team on 25 April to discuss how the Department may assist. In the months since April, the Department has suggested further meetings with the inquiry team, but as yet Lord Archer's team has not arranged to meet again."*

3.88. On 3 September 2007 Norman Lamb MP wrote to Lord Archer querying the reply to Mrs **GRO-A** **[ARCH0000139\_002]**:

*"I also enclose a copy of Mrs **GRO-A** letter to me and I refer you to her final paragraph. You will note that Morven Smith of the Department of Health is stating that the Department has made requests for meetings with the Inquiry team, but "as yet, Lord Archer's team have not arranged to meet again".*

*Is this an accurate reflection of the position?"*

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- 3.89. On 4 September 2007, Lord Archer wrote to William Connon to provide an update on the Archer Inquiry and to raise the matter of Mrs [GRO-A] letter [ARCH0001628]:

*"In response to your question as to a possible date for the conclusion of our Inquiry, it is now clear-that our initial estimate, of a report by the end of the summer, was considerably over-optimistic. We are still hoping that it may be possible to report early in the New Year.*

*If I may trouble you with one further matter, our attention has been called to a letter written by someone in the Department to Mrs [GRO-A] (reference T000000224816). The third paragraph has occasioned some consternation, since it appears to imply that the Department has been requesting further meetings since April, and that these have been ignored by the Inquiry. However the misconception may have arisen, it is clearly misleading, and I would be grateful if you could take steps to ensure that it is not repeated in any future correspondence.*

*As you may imagine, we have received a great deal of oral evidence, and a very substantial amount of documentary information. I understand that shortly the Department intends to release some 4,600 official documents under the Freedom of Information Act, and perhaps we could discuss a convenient way in which they could be made available to us. We have endeavoured not to trouble you before the issues become clear, but in due course I would be grateful if we could indeed have a further meeting."*

- 3.90. On 7 September 2007, Lord Archer responded to Norman Lamb's letter dated 4 September 2007 [ARCH0000139\_001]:

*"I am wholly mystified by it. Our Inquiry has so far enjoyed a cordial relationship with officials in the DHSS. We met a group of them on 25 April, in order to explore the assistance which they could offer the Inquiry, and they were commendably forthcoming. At the end of the meeting, each side extended an invitation to the other to request a further meeting if and when the need arose. Since then, neither side has suggested such a meeting, although we had it in mind to request one when we had proceeded a little further with our inquiries. We have been informed that they are about to provide us with a substantial number of documents in the near future."*

- 3.91. On 17 September 2007, William Connon wrote to Mrs [GRO-A] in reply to her further letter dated 22 August 2007<sup>3</sup> [ARCH0001626]. This reply included:

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<sup>3</sup> Letter dated 22 August 2007 has not been located.

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*"Thank you for your further letter of 22 August requesting information on the dates the Department wrote to Lord Archer's inquiry team suggesting a meeting. We are treating your letter as a request under the Freedom of Information Act. Your letter has been passed to me for reply.*

*I am sorry if our reply of 14 August to your letter of 9 July to Alan Johnson was misleading in this respect. For your information, I attach two e-mails between the inquiry team and the Department suggesting a meeting once the inquiry team has had an opportunity to hear all the evidence and review relevant documentation which we are making available. No criticism of the inquiry team was intended and I apologise for the unfortunate wording of the previous letter.*

*As you know, officials met with the inquiry team on 25 April. We appreciate that the inquiry team is currently occupied in hearing evidence, and will no doubt contact the Department once it has completed this process."*

- 3.92. On 18 September 2007, William Connon emailed Lord Archer in response to his letter dated 4 September 2007 [ARCH0001625]:

*"The department's initial response to Mrs [GRO-A] was written by our customer service centre and they have written again to Mrs [GRO-A] (copy attached) apologising for the misleading impression they gave that your inquiry team had ignored our offer of a further meeting. I apologise that the erroneous impression was given, in the original letter, that your team had ignored our offer: this is not the case and I too was concerned when I saw the initial reply to Mrs [GRO-A]*

*We would of course be very happy to meet with your team, in due course and at your convenience. In the meantime I believe that my colleague Patrick Hennessey has been arranging the dispatch of all documents to Mr Mehan and I am sure Patrick will be in contact with Mr Mehan in the near future to make suitable arrangements for the release of any further documents.*

*I understand that I will be attending a meeting with you and your team tomorrow afternoon when NHSBT are meeting you to discuss matters relevant to the inquiry. I look forward to seing [sic] you again then."*

- 3.93. On the same date Vijay Mehan forwarded the email from William Connon to Judith Willetts and Norman Jones [ARCH0001627]:

*"It appears to me that Mr Connon is someone who uses his words very carefully, allowing them to be ambiguous."*

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3.94. Judith Willetts replied to Vijay Mehan's email:

*"I think we need to tread carefully tomorrow...It would be wise to take some time, perhaps over lunch, to talk things through."*

This reply appears to reference the planned third meeting the Archer panel had with DH.

3.95. On 18 December 2007, Lord Jenkin raised the issues with the letter to Mrs **GRO-A** in the House of Lords **[HSOC0002259]**:

*"Further to the Written Answer by Lord Darzi of Denham on 23 October, how they reconcile its claim that "no criticism of the Archer inquiry team was intended" with the assertion in the Department of Health's letter of 14 August, prepared "using information supplied by the department's blood policy team", to Mrs **GRO-A**"*

3.96. Parliamentary Under-Secretary for Health (House of Lords), Lord Darzi responded to Lord Jenkins **[HSOC0002259]**:

*"As I said in my earlier reply of 23 October, I am very sorry that the department's letter of 14 August to Mrs **GRO-A** was open to misinterpretation, and an apology has been sent to Mrs Bullock copied to the Archer inquiry team. However, to avoid any possible misunderstanding, I can assure the noble Lord that at no time did anyone in the department claim Lord Archer of Sandwell had "ignored the department's offer of a meeting with the inquiry".*

...

*Officials have traced 11 pieces of correspondence in July and August that used the same information. These were received and replied to before we were aware of any possible misunderstandings from the wording used. A follow-up letter has been sent to clarify our position and prevent any further misunderstanding."*

3.97. On 14 January 2008, Patrick Hennessy emailed William Connon and others regarding "another Lords PQ about the 14 August letter to Mrs **GRO-A**", and he noted the following **[DHSC5503210]**:

*"2. Mrs **GRO-A** reply to the Department to our letter of 14 August, received on 24 August, was treated as a Freedom of Information Act case and referred to the FOI team. Mrs. **GRO-A** letter was copied to the head of the blood policy section on 29 August.*

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*3. Replies to other correspondents using similar wording were sent on 16 August, 20 August, 21 August, 23 August (5 replies), 24 August and 30 August (2 replies)."*

3.98. The Inquiry has further asked William Connon for his recollection of Dawn Primarolo making similar statements to MPs and members of the public. To assist, William Connon has been referred to the Hansard extract referenced above at paragraphs 3.95 and 3.96, and the email from Vijay Mehan dated 19 December 2007 **[ARCH0001217]**. Unfortunately, neither of these documents reference Dawn Primarolo.

**Witness Statement of Judith Willetts**

3.99. The Inquiry has referred William Connon to the witness statement of Judith Willetts dated 9 October 2020. At pages 6-7 of that statement she says **[WITN4736001]**:

*"One of the key barriers was the difficulty in establishing exactly what relevant documentation existed and could therefore be requested. As we did not know what the Department had, we did not know what to ask for! We experienced no willingness to co-operate with this dilemma from the DoH. Had there been any desire to identify a range of key documents that would be useful, we might have saved days of work. My abiding sense was that the individuals we had contact with simply did not want to help."*

3.100. William Connon is then asked by the Inquiry:

- (1) To detail his recollection of DH's document disclosure process to the Archer Inquiry.
- (2) Whether he considered that there was an unwillingness of DH to help the Archer Inquiry.

3.101. The Inquiry has directed William Connon to documents to assist **[DHSC5084337, DHSC5479534 and DHSC5284704]**. These documents have been considered above at paragraphs 3.48-3.50 and paragraph 3.60.

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3.102. On 18 February 2008 during a meeting between the Archer panel and Scottish officials, Lord Archer commented **[DHSC6698143]**:

*"Lord Archer replied that DH had been very helpful in releasing documents, given that the DH position was that his inquiry was unnecessary. However, there was a huge amount of paper, and the inquiry did not have the resources to handle it all in detail. Much will not have been read. They have used the documents to explore issues that have been brought to their attention. There could therefore be scope for the Scottish Inquiry to have a more systematic look at the documents. SG asked whether Lord Archer was satisfied with the DH review of the documents on hepatitis C. The general view seemed to be 'not fundamentally dissatisfied', the main complaint being that the review had not covered HIV/AIDS."*

3.103. On 16 June 2008 Sunil Peck from Disability Now emailed Ashley Rogers, Press Officer at DH **[DHSC5526371]**. Sunil Peck asked:

*"...please could you let me have a DH response to why government representatives failed to appear at the public inquiry chaired by Lord Archer into the contamination of haemophiliacs with NHS blood. Also, would you accept that government's absence reflects a failure to take the plight of the victims seriously?"*

3.104. On the same day Ashley Rogers requested a response from William Connon **[DHSC5526371]**.

3.105. William Connon responded to Ashley Rogers' stating **[DHSC5526371]**:

*"Lord Archer is chair of a non-governmental public inquiry into contaminated blood and blood products..."*

*Successive Secretaries of State have resisted calls for a government backed public inquiry into how patients became infected with hepatitis C following NHS treatment with blood and blood products prior to the introduction of heat treatment to eliminate the hepatitis C virus, on the following grounds:*

- A full judicial inquiry would be a major, costly and time-consuming exercise that would depend on the recollections of the remaining witnesses about events that took place over twenty years ago.*
- There is no evidence that any wrongful practices were employed. The release of a significant number of papers, with a minimal number withheld on confidentiality grounds, can provide much of the information sought by interested parties.*

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- *A public inquiry could undermine public confidence and affect the donor population, thus putting at risk the supply of blood to the NHS.*

...

- *In addition, the Department has released copies of all documentation for the period in question (1970-85) to the inquiry team...*

*The Department is fully co-operating with the Archer inquiry. Officials have met with Lord Archer and colleagues..."*



## Section 4: Other Inquiries

4.1. The Inquiry has asked about the extent of William Connon's communications with health officials in the devolved nations on the issue of a public inquiry.

4.2. On 25 January 2005, Liz Reynolds, NHSBT Director of Communication and Corporate Affairs sent an email to William Connon which stated [DHSC0006235\_038]:

*"William,*

*I tried to contact you today about the developing situation in Scotland. You may be aware already from your DA links. However, it looks as though the Haemophilia Society in Scotland is pushing for a Public Enquiry into blood and infectious diseases (HIV, Hep B & C and I guess vCJD) contracted via blood transfusions. The latest manifestation of this is in the press article in the Herald in Scotland yesterday about collecting blood from prisoners and the infectious risks. It is likely that if a public enquiry is granted (and SNBTS believe that the new Minister in Scotland responsible for this area is minded to say yes) that it will spill over into England. There has been much pressure over many years for public enquiries but the DH/Ministers have always been robust in refusing. You may want to compare notes with your Scottish colleagues in order to brief Ministers to avoid any surprises. Of course, should we learn more we will let you know."*

4.3. On the same date, William Connon emailed Scottish officials to ask whether there was any more information on reports that the Haemophilia Society in Scotland was pushing for a public inquiry. Sylvia Shearer replied in the same email chain and stated:

*"At present there is no indication that the Minister is considering a public enquiry. I don't know where SNBTS got that from. Attached are the lines we have taken...Give me a ring if you need more."*

4.4. On 2 March 2005, in response to a request from Scottish officials, William Connon sent Sylvia Shearer an email providing background on the UK government's decision not to hold a public inquiry [DHSC0041217\_056]. It stated:

*"You asked for some background on the UK Government's decision not to hold a public enquiry on hepatitis C, which I attach. Zubeda states*

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*that we have answered a number of PQ's on this and the ministerial line has consistently been that a public enquiry is not justified.*

*I think that if there was to be any question of this issue being raised in Scotland at ministerial level you would need to brief your ministers on the line which has previously been taken by the Secretary of State."*

- 4.5. The email also forwarded an email from Zubeda Seedat which stated:

*"I attach a couple of links to debates in the HofL which refers to the issue of a public Inquiry. I've been here since Dec 03 and can't recall it coming up in Parliament. We have however answered numerous POs. Below is the standard line PS(PH) likes to use...*

*Public Inquiry*

*I am aware that some people would like the Government to set up a public inquiry into this issue. We have great sympathy for those infected with hepatitis C and have considered the call for a public inquiry very carefully.*

*However, as previously stated, the Government does not accept that any wrongful practices were employed and does not consider that a public inquiry is justified. Donor screening for hepatitis C was introduced in the UK in 1991 and the development of this test marked a major advance in microbiological technology, which could not have been implemented before this time.*

*It is important to stress that despite the Department of Health's decision to make ex gratia payments, the position with regards to accepting liability has not changed. The Government does not accept that any wrongful practices were employed and does not consider a public inquiry justified. Donor screening for hepatitis C was introduced in the UK in 1991 and the development of this test marked a major advance in microbial technology, which could not have been implemented before this time."*

- 4.6. A ministerial submission from William Connon to Caroline Flint, dated 8 December 2005, set out that the Scottish Executive would shortly release material under the FOI Act [DHSC0200103]. On the issue of a public inquiry, the submission said:

*"2. The Scottish Executive deadline for release of papers is 12 December 2005. This may result in parliamentary and media interest, and renewed calls from the haemophilia community for a public inquiry.*

*[...]*

*4. There has been considerable lobbying for a public inquiry in the Scottish Parliament by haemophilia lobby groups. The Scottish*

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*Executive plan to release a significant volume of material which, they believe, will allow their Minister to say that he has met a commitment he made to Scottish representatives of the Haemophilia Society, when he appears before the Scottish Parliament's Health Committee in January 2006 to explain why he still does not wish to hold a public inquiry."*

- 4.7. On 19 April 2006, Sylvia Shearer emailed William Connon, Caroline Lewis and Gerry Dorrian **[DHSC5293683]**. The email included the following:

*"You will no doubt be aware that the Health Committee of the Scottish Parliament yesterday voted (casting vote by the Chair after 4 "for" and 4 "against") recommending to the Minister that he hold a Public Inquiry into the issue of contaminated blood and blood products from NHS treatment resulting in Hep C infection.*

*The official line from the Executive at the moment is:*

*"We will carefully consider the rationale, deliberations and recommendations of the Committee before responding substantively to their call for a public inquiry."*

*There is also some concern as to the protocol of a Chair using a casting vote against the status quo which is being investigated.*

*[...]*

*The Minister is keen that we advise whether we think we can still robustly claim there is no new evidence and therefore no need for a public inquiry. Having talked to Andrew, Deputy CMO Dr Aileen Keel and SNBTS we are of the view we can retain that line.*

*Hope this is helpful."*

- 4.8. On 20 April 2006 William Connon sent Sylvia Shearer's email on to Rebecca Spavin, copied to a number of other officials and to Caroline Flint's private office **[DHSC5293683]**. The email stated that it would be very difficult for DH to *"hold the line that there are no grounds for a public enquiry in England if the Scots were to hold an enquiry. This is not least because this all happened pre-devolution, therefore the papers, people and issues would inevitably have to be sourced through this department or at least they would all relate directly to DH"*

- 4.9. The email also stated:

*"I am reassured that the [Scottish] Executive seems to be taking the line that they will resist this request for an enquiry, but I am unclear as to the legal position regarding the committee's advice, assuming that it stands*

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*given the questions which the executive posed regarding procedures. I am due to meet with Scots officials at the end of next week, on a separate matter, but would suggest that I also raise this with them. I will then come back to you early in the week commencing 1 May, assuming that fits with the Scottish timetable. Subject to the outcome of my discussions with officials it may be helpful if our ministers either write to or speak to Scottish ministers regarding the potential difficulties, if different positions are adopted."*

- 4.10. Jacky Buchan from Caroline Flint's private office sent William Connon an email dated 10 May 2006 which said **[DHSC5293683]**:

*"MS(PH) has asked if Scotland have moved forward on this [the proposed hepatitis C Public Inquiry] please. She is reluctant to sign off letters saying we do not consider an inquiry is justified if we are going to have to change this position because Scotland do allow an inquiry."*

- 4.11. On 25 May 2006 William Connon sent an email to Gerard Hetherington, and copied Zubeda Seedat, in which he wrote **[DHSC5413925]**:

*"...Essentially, the Scots have not yet put up advice to ministers as they have been discussing a draft between officials and lawyers. Officials want a very strong letter against an inquiry and are winning that battle. The letter should go to ministers soon. In the meantime Aileen promised to let as [sic] know as soon as any decision has been reached and also give us amply prior warning if the decision went against the advice and an inquiry was proposed, which she thinks is unlikely."*

- 4.12. A submission dated 21 June 2006 from Gerard Hetherington to Rebecca Spavin and Caroline Flint's private office, copied to William Connon included a section on the demand for a public inquiry with the Scottish Minister for Health rejecting calls for a public inquiry **[DHSC5420643]**.

- 4.13. In an email dated 30 May 2007 to Linda Page which forwarded an email about a public inquiry in Scotland, William Connon stated **[DHSC0006259\_018]**:

*"Will you follow this up with Sylvia Shearer GRO-C in the Scottish Executive and find out what the current position is please? It is really important that we keep our minister informed if Scotland decide to have an inquiry as it will inevitably have significant repercussions for DH"*

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- 4.14. An email dated 4 June 2007 from Linda Page to Caroline Flint's private office, copied to William Connon and others confirmed that a public inquiry was a commitment in the SNP manifesto and the SNP position was to wait until the Lord Archer Inquiry had concluded. **[DHSC5475476]**
- 4.15. An email dated 27 June 2007 from Sylvia Shearer to Linda Page, about Scottish participation in the Archer Inquiry, was copied to William Connon. **[DHSC5478603]** A further email dated 29 June 2007 from Linda Page to Elizabeth Woodeson, was copied to William Connon in respect of the Scottish Government providing papers to the Archer Inquiry. **[DHSC5478985]**
- 4.16. A submission dated 19 July 2007 from Linda Page to Beth Foster and Marjorie Palmer, was copied to William Connon and others in relation to calls for a public inquiry and the Scottish Government's new position in favour, due to the new administration. **[DHSC5011228]**
- 4.17. On 20 August 2007 Sylvia Shearer emailed William Connon and noted that the Scottish Cabinet Secretary for Health, Nicola Sturgeon, had met with Philip Dolan and others **[DHSC5486274]**. Sylvia Shearer asked whether DH and DH Ministers "*would be willing to participate in any way, along similar lines to the Holyrood Inquiry for example*".
- 4.18. On the same date, William Connon forwarded Sylvia's email to Patrick Hennessy, another DH official. He then emailed Shiblani Rahulan, a government solicitor **[DHSC5486274]**. His email included the following:
- "As you know, there is an independent inquiry under way unto the issue of blood safety. You have previously advised us that neither Ministers nor officials should give evidence, and that we should stick to the DH line that there is no compelling case for convening a public inquiry on these matters. (I attach a copy of the latest briefing to Ministers, following your advice.) This remains our view. However, I am forwarding a note of a meeting between the Scottish Cabinet Secretary for Health*

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*and haemophilia representatives, at which the Scottish minister confirmed that there would be a public inquiry in Scotland. This is bound to lead to questions to our Ministers whether they will cooperate with a Scottish inquiry and whether they would agree to widen its scope to the UK.*

*The meeting note makes the following points about a Scottish inquiry into blood safety:*

*- it is a manifesto commitment and there will be an inquiry. This is not dependent on any other proceedings. (para 3)*

*[...]*

*We are asked by Scottish officials what our Ministers' view may be on co-operating with the public inquiry. As we have a meeting with Scottish officials on 7 September, I will welcome your early view on what can be said, and on the advice we should offer our own Ministers. I recognise that this may be limited, as the scope of the Scottish inquiry remains to be discussed. However, we now know that the position of our Ministers - that there is no compelling case for a public inquiry - is definitely at variance with that of Scottish health ministers."*

4.19. A submission dated 4 September 2007 from Shibani Rahulan to Patrick Hennessey was copied to William Connon and others, setting out issues for DH in relation to the Scottish inquiry. **[DHSC5071912]**

4.20. A minute dated 7 September 2007 of the Four Countries' Meeting to which William Connon was in attendance, together with representatives from the Scottish Government, the Welsh Assembly and the NI Assembly provided an update on the Archer Independent Inquiry / the Scottish Public Inquiry. **[DHSC5490830]**

4.21. A submission from Andrew Macleod, a Scottish official, to the Cabinet Secretary for Health and Wellbeing, dated 26 February 2008 **[DHSC5015521]** contained recommendations on establishing a Scottish Inquiry.

4.22. The minutes of a meeting of the Archer Inquiry and Scottish Government Officials dated 18 February 2008, to which Patrick Hennessey attended from

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DH, records that an informal exchange of views took place on the inquiry's progress. **[DHSC6698143]**

- 4.23. On 26 February 2008, William Connon emailed Sylvia Shearer and stated **[DHSC5508756]**:

*"Sylvia,*

*Thank you for informing me that you have now put a submission to your minister with advice on the proposed inquiry in Scotland. You also told me that your lawyers have put up a separate submission, on the same issue. I understand that you are proposing an inquiry covering Hep C and HIV and that your minister wants to establish the Inquiry panel immediately – I think you mentioned within one month.*

*As I said on the telephone, I think it is unfortunate that the other administrations in the UK did not have an opportunity to see and comment on your submissions, before they were sent to your minister. That would have enabled us to form a joint UK position, which I feel would have been helpful to all concerned, not least our ministers. However, you said that you were being pressed by your minister and that you simply did not have time to consult with us before proceeding. I understand that in your submissions you have stated that the UK Government position, and that of DH, remains unchanged, in the light of the recent events in Scotland.*

*I am not sure this is entirely accurate as we have not taken either our ministers view on developments nor indeed have we publicly formed any departmental decision. We have been awaiting further details of what you propose to do in Scotland before deciding how and when to consult ministers, and other departmental colleagues. I asked if you could let us have sight of your submissions at an early opportunity along with an outline of how you are proposing to establish and set up any inquiry (including remit), as soon as possible. It would be extremely helpful if you could also set out any issues, which specifically relate to the other countries of the UK and what assistance we can offer in ensuring that any inquiry is conducted in a manner which most benefits the UK as a whole. Perhaps once we have seen your proposals we should meet and consider the implications and likely costs involved. As always, will you please ensure that you include Patrick in your response, as he is leading on this issue."*

- 4.24. On 28 February 2008, Sylvia Shearer emailed William Connon and other officials, and confirmed that the Scottish Cabinet Secretary was content with the proposals in the submission **[DHSC5508756]**. Sylvia Shearer wrote that the Cabinet Secretary wanted *"communication to be maintained with DoH"*.

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She also requested a meeting between the four devolved administrations to explore the way forward. She wanted to understand whether the devolved administrations were “cooperating” with the Scottish inquiry.

4.25. On the same day, Dr Ailsa Wight asked Patrick Hennessy to prepare a note for Ministers/ the Permanent Secretary to address the issues raised in Sylvia Shearer’s email.

4.26. On 29 February 2008, Zubeda Seedat contacted Shibani Rahulan to see if she could attend the meeting with Scottish officials and the other devolved administrations.

4.27. On 5 March 2008, William Connon was copied to a ministerial submission to MS(PH), who was then Dawn Primarolo, from Patrick Hennessy. A handwritten comment on the first page stated **[DHSC0038592\_080]**:

*“For info*

*A further submission with legal advice will follow – however Scotland’s decision could significantly weaken our lines, which may be coupled with the imminent publication of Lord Archer’s review.*

*Officials have advised that we would have a good legal case for not joining the inquiry – however they are concerned re handling implications/risks re highlighting devolution tensions and are concerned this may become politically sensitive – and as such are seeking an initial steer as to whether you are still minded to retain our current position. Your initial views are being sought by Friday.”*

4.28. In an email from William Connon to Patrick Hennessy on 11 March 2008, he thanked him for handling the submission, and suggested that the submission be copied to **[DHSC6700850]**:

*“the DA’s now as there is no reason not to. If they feel that we are withholding information or advice to our ministers, then I fear this could affect future relations. The fact that they did not share their submissions with us should not influence our judgement and there is nothing in the submission which I would not wish to share on Friday. Furthermore, the DA’s know that we have answered a PQ, on this topic and the*



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*submission is mentioned in the background note, which has gone to Wales at least."*

- 4.29. An email from William Connon to Patrick Hennessy, copied to Dr Ailsa Wight on 12 March 2008, to which Ailsa replied the same day **[DHSC5510424]** stated:

*"Patrick,*

*I think Ian [PS to Dawn Primarolo] may not have grasped the potential implications of this issue. I am sure it has not come up on ministers' radars yet but the whole point of flagging it up with him was so that he could ensure it gets onto their radar screens, sooner rather than later. Has MS(PH) seen the submission of 5th March and if so did she have any comment?*

*Ian's proposal that we should stick to the Departmental line that we see no need for an inquiry covering England and Wales, for the reasons given many times in PQs and correspondence, requires ministers' ratification, in the light of the Scottish developments. It may be that ministers do wish to maintain this line but they need to know that they are doing so in the face of changed circumstances and, I suspect, considerable pressure from Scotland, and possibly the other DA's. I doubt very much that they will be able to maintain this position without responding to developments for very long.*

*Ailsa - you may wish to raise this with Liz and ask if she wishes to speak to Pr Off or Hugh Taylor."*

- 4.30. Dr Wright replied:

*"I had a chat with Ian. He says he'll try and get a steer from MS(PH) - he acknowledges the risks but indicated the 'guiding principle' in so far as there is one is that the SG do what they do, and ditto for us, meaning we don't have to go where they lead, which I think is helpful. I said we'd play it neutrally on Friday."*

- 4.31. On 13 March 2008, Ian Bishop sent an email to Patrick Hennessy, to which William Connon was copied, which set out Dawn Primarolo's position **[DHSC5510515]**:

*"Patrick,*

*As discussed, MS(PH) has seen your note of 5th March and has commented that she wants to hold our current position, and that we are not to join the Scottish Inquiry. She asked if you could keep events*

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*under close scrutiny, and report back regularly so that she can keep our current position under review.”*

4.32. On 16 April 2008, Zubeda Seedat emailed Karen Arnold and Tamlyn Edmonds at DH Legal Services making them aware of that a Scottish inquiry was due to be announced on 23 April 2008 [DHSC5514241]. William Connon was copied into this email.

4.33. An email chain dated 21 April 2008 between William Connon and Patrick Hennessy related to sharing of a submission to the DAs. [DHSC6700851]<sup>4</sup> (C1001). The last email in the chain reads:

*“William - I let Shibani know we planned to send the latest submission to DAs, in view of previous (fruitless) correspondence with Scottish lawyers about sharing advice. Shibani is content for the submission to go with the summary of her advice, but is registering some concern about the possible impact of the submission itself. I thought you should see this before I send the submission around. I imagine we will go ahead anyway. – Patrick”*

4.34. An email dated 22 April 2008 from William Connon to Patrick Hennessy confirmed that the Scottish Minister would not share her statement before it was presented to the Scottish Parliament, including other Ministers and officials in the other countries of the UK. William Connon stated in the email [DHSC5515250]:

*“I suggest therefore that you tell SofS's office that the Scottish minister has decided that she wishes to tell her Parliamentary colleagues about her intentions before telling anyone outside the Scottish Parliament.*

*We will need to take this matter up a [sic] it does have wider implications for working relations across the UK.”*

4.35. On 23 April 2008, the Scottish inquiry was announced by the Scottish Government [DHSC5515495].

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<sup>4</sup> Submission from Patrick Hennessey to Hugh Taylor and MS(PH) dated 27 March 2008, copied to William Connon and others, in relation to the upcoming announcement on 23 April of a public inquiry in Scotland which included pros/cons of the UK Government participating in the Scottish Inquiry and also attached a legal opinion [DHSC0038592\_075]

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4.36. On 9 July 2008, Patrick Hennessy emailed Karen Arnold regarding possibly consulting with colleagues in the Scottish government regarding some issues about the Scottish inquiry [DHSC5531936]. William Connon was copied into this email.

4.37. On 10 July 2008 William Connon emailed Patrick Hennessy [DHSC5531225]:

*"I agree that we will need to consult with colleagues in the Scottish Health Directorates, concerning the legal status of the Cosgrove Inquiry and whether or not it is indeed it is a public authority and/or it is part of the department which is sponsoring it or indeed forms part of the Scottish Government ( the latter seems highly unlikely to me).*

*Perhaps it would be sensible to make initial enquiries of Scottish colleagues just to establish the legal status of the Inquiry, which should be possible in advance of agreement of the terms of reference etc."*

4.38. On 5 August 2008, Zubeda Seedat emailed Ailsa Wight seeking advice on the Scottish Government's request for documents [DHSC5540198]. William Connon was copied into this email.

4.39. On 2 October 2008 Leah Griffiths emailed William Connon requesting a note on questions posed by Neil MacLeod from the Office of the Solicitor to the Advocate General for Scotland [DHSC6705395]. An undated draft note from Leah Griffiths was copied to William Connon and others [DHSC5546370].

4.40. On 13 October 2008, Andrew Macloed emailed William Connon seeking assistance on questions related to the Scottish inquiry [DHSC6700983]:

*"\* you understand the legal need for an inquiry in Scotland but that this does not apply to England*

*\* you will, as with the Archer inquiry, aim to be helpful by supplying documentary evidence where you can do so and will be as*

*helpful as possible with any official documents you may have and which have not already been published.*

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*\* as the Scottish inquiry must be confined to Scottish matters, it cannot summon UK Government Ministers or anyone speaking on behalf of the UK Government, which would include officials of DH, NHS Blood and Transplant (NHSBT), and any other NHS body performing delegated functions on behalf of the Secretary of State. It would be a matter of policy decision whether anyone should attend or give evidence on behalf of the UK Government. This suggests that you have at this stage not ruled out DH or other English public bodies giving evidence if requested. Is this correct, or is it your position that Ministers, civil servants and public officials will definitely not give evidence?*

*Also, there is the issue of former Ministers and retired officials - either government officials or those of NHS bodies. Some former Ministers did give evidence to Archer. Would it be your understanding that they, and others, would be free to do so again for this Scottish Inquiry if requested and if they wished to do so. In relation to retired officials, is it your understanding that they would be able to give evidence if they wish to the Inquiry, or would they require the permission of their previous employer? If the latter, does this mean they are effectively in the same position as serving officials in relation to the Inquiry?"*

- 4.41. On 15 October 2008 Leah Griffiths emailed Andrew Macloed following his earlier request to William Connon **[DHSC5547434]**.
- 4.42. On 14 November 2008 Graham Kent from DH Legal Services emailed Patrick Hennessy to make them aware of attempts for the Advocate General (as a representative of the UK Government) to become involved in the Scottish inquiry **[DHSC5551181]**. William Connon was copied to this email.
- 4.43. A ministerial submission dated 7 February 2009 from Patrick Hennessy to Dawn Primarolo entitled "Lord Archer's Independent Inquiry into contaminated blood and blood products", was copied to William Connon and others. **[DHSC0038592\_082]**. The submission stated that:
- "This is to advise you that we have just found out that Lord Archer will be meeting representatives of the Scottish Executive on 18 February. It has been agreed that the Department may send an observer. This minute is for information only, and no action is required."*

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It is unclear why William Connon was copied into this submission as he had left DH in November 2008.

4.44. The Inquiry has asked to what extent financial implications, both in terms of the cost of the public inquiry and the potential compensation to victims, influenced William Connon's advice to Ministers in respect of whether to hold a public inquiry. The Inquiry has not referred to any particular documents in relation to this question. The below chronology may assist.

4.45. An email from Jacky Buchan to Ailsa Wight dated 22 June 2006 specifically asked for costings on behalf of MS(PH) [DHSC5421192]:

*"Thank you for this submission.*

*At the meeting MS(PH) and MS(R) asked for a draft note for them to send to SofS which, among other things, discusses the possibility of conducting a Public inquiry. On the inquiry issue this just says "DH officials have advised an inquiry would be disproportionate and not justified in the circumstances". There is no argument, no pros and cons and no costings. Both MS(R) and MS(PH) will expect to see an argument for this decision and the pros and cons of having a public inquiry which would presumably include the cost. There is nothing in here about the steps that would have to be taken and nothing about the consultation with the Patient Safety and Investigations Branch that Gerard referred to in his note of 26 May. Can you please provide a redrafted note for MS(PH) and MS(R)'s consideration, which takes account of the above points as soon as possible and no later than close on Monday 26 June."*

4.46. There followed a submission from Gerard Hetherington to Jacky Buchan dated 26 June 2006 which provided detailed pros and cons of holding a public inquiry. William Connon was copied to this submission. The cost of holding a public inquiry are listed, along with many other factors [DHSC0041159\_204]:

*"Pros*

*It would show a high level of response to calls from affected parties and often the general public that the issue is being dealt with seriously.*

*Interested parties and pressure groups view it as an appropriate and adequate response. It affords them the chance to submit evidence in the full glare of public scrutiny and to see the evidence of others.*

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*Experience suggests that the haemophilia groups are unlikely to be satisfied simply by offering increased payouts through the Skipton Fund set up in 2004 to provide ex gratia payments to hepatitis C sufferers.*

*It ensures transparency.*

*It minimises the risks of a Judicial review of whatever other action the Department might take and avoids the impression that would create of being dragged in to a "proper" investigation. If some sort of investigation is appropriate, this is the gold standard and is seen to be that.*

*It is considered as independent and impartial if properly constituted and with satisfactory terms of reference.*

*It (usually) diminishes calls for other scrutiny from MPs, the Press and interested parties.*

*If article 2, the Right to Life, of the European Convention on Human Rights 2001 is thought to be engaged, then it is an appropriate and adequate response. It pre-empts any Court petition by families of the deceased and gives them a fair hearing. (Arguably this could be engaged as a number of haemophiliacs infected with hepatitis C may have died as a result of the infection, although further legal advice would be required in view of the time periods involved.)*

*It creates a statutory framework under the Inquiries Act 2005 and the proceedings will follow the requirements of that Act, and thus will meet Parliament's standard of being comprehensive where issues of public concern are involved.*

*It enables the Chair to compel witnesses to attend and for evidence to be provided.*

**Cons**

*A Public Inquiry under the Inquiries Act is an expensive, time consuming and labour intensive undertaking. Costs are difficult to assess in advance and fully control. Examples of the costs of past Inquiries include: Bloody Sunday – eight years to far at an estimated cost of over £120 million; Stephen Lawrence – two years, over £4million; BIR – 3 years, over £14 million; Shipman over 4 years at a cost of £21 million; Alder Hey 14 months at a cost of £3.5million; Victoria Climbié 2 years at a cost of £3.8 million.*

*It takes time to plan and set up and is not a quick response to a problem it examines.*

*Public Inquiries often raise expectations for interested parties that cannot be met. They can be seen at the outset as the vehicle to provide all the answers and settle the worries of those concerned with the issues; they rarely manage to do this.*

*It raised the profile of the problem it seeks to address significantly. It engages the Press and Public interest at the highest level. Parliament also becomes engaged as the establishment of the Inquiry has to be notified to Parliament, and a Report on its conclusions laid before Parliament.*

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*It creates a perception that there is a national problem that needs to be addressed, and one that has not been, or cannot be, addressed by local action. The key period in relation to hepatitis c was the 1980's – there is not an ongoing issue. The Skipton Fund has already been established, in 2004, to make ex gratia payments to sufferers.*

*It would set a precedent: DH is regularly being pressed to hold Public Inquiries, for example by Sarah Harman and Ann Alexander on issues which they regard as arising from dangerous and untoward incidents.*

*If Article 2 of the Human Rights Act is not engaged in making the case for the Inquiries it is an overreaction not a proportionate response.*

*It uses valuable resources in terms of workforce (those servicing the Inquiry and giving evidence) that is removed from normal duties.*

*We do not consider the UK was negligent or at fault in its handling of the introduction of hepatitis C safety screening measures.*

*Parallels between the UK experience and the position in Ireland, where a large compensation settlement was made, are not valid because there was evidence of negligence by the Irish Blood Service (delaying introduction of the screening tests).*

*DH did have the power to conduct an Inquiry such as in Ayling, Neale and Kerr/Haslam – which became known as a “modified form of private inquiry”. Such an Inquiry can still be established under section 2 of the 1977 NHS Act, but the Secretary of State can no longer delegate powers of compulsion to the Chair, as the Inquiries Act 2005 repealed section 84 of the 1977 Act that created those powers. This could be seen by interested parties as undermining the value.*

*Early release of all the relevant papers (See Documents a) and b) above) under Fol could provide much of the information sought by interested parties.*

*On balance therefore, we consider an inquiry to be disproportionate and not justified in the circumstances. This is in line with the views of the Scottish Ministers, and we will continue to keep in close touch with officials in the Devolved Administrations, including Scotland.”*

- 4.47. A submission from Caroline Flint to Secretary of State dated 24 July 2006 considered the pressure for a public inquiry, in the following terms [DHSC0103399\_003]:

*“Demand for a Public Inquiry*

*The requests for a Public Inquiry have become more vocal Haemophilia patient groups have pressed for higher levels of compensation, and believe an Inquiry could help to achieve this by demonstrating the Department was culpable. They are supported by Lord Morris and others in the House of Lords. In addition, the Scottish Parliament Health Committee decided in April this year to call for a full judicial inquiry.*

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*We have received a copy of the response to the SP Health Committee from the Scottish Minister for Health. This firmly rejects the call for an Inquiry.*

*While an Inquiry would ensure transparency, and be viewed by interested parties as an appropriate and independent response, as well as minimise the risks of judicial review, it would on the other hand only be costly and resource intensive to run but also significantly raise the profile of the issue and expectations of interested parties that cannot be met. Importantly, it would also set a precedent, especially for an issue where we do not consider the UK was at fault.*

*Officials have therefore on balance advised that an Inquiry would be disproportionate and not justified the circumstances, in line with the views of the Scottish Minister.*

*As an alternative we have explored the possibility of commissioning an independent review and commentary on all the papers. With regard to the relevant statutory powers, this could be done under the MIS Act 1977, as something incidental to your duty as SoS to continue to promote a comprehensive health service designed to secure improvement in treatment of illness, and to provide services required for treatment, as it would amongst other things be a way of passing information to the public about these issues. It would provide additional reassurance and information to the public, and would build on the steps officials are already taking to review all the existing papers. It would however not provide powers to compel witnesses to give evidence or produce documents, and we would need to draw the terms of reference accordingly."*

The Secretary of State was invited to note the current position and the proposed line to take against the need for an Inquiry.

4.48. The Inquiry has asked to what extent the findings of inquiries in other countries, such as Canada, France and Ireland, influenced William Connon's advice to Ministers on holding a public inquiry. The Inquiry has not referred to any particular documents in relation to this question. The following document may assist.

4.49. A note from Linda Page to Beth Foster and Marjorie Palmer dated 19 July 2007, to which William Connon was copied, stated as follows  
**[DHSC5011228]:**



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*"18. There are a number of examples of countries such as France, Ireland and Canada where trials/inquiries have led to large compensation amounts. The circumstances are different as fault was determined, though the lobby groups do not make that distinction."*

## Section 5: Trust and Schemes.

### Macfarlane and Eileen Trusts

#### Reasons for Department's Response to Trusts' 2005 Business Case

- 5.1. The Inquiry has asked about DH's response to the business case entitled "*Funding long-term survival*" (the 'Business Case') that the Macfarlane Trust and Eileen Trust submitted to DH at the end of 2005, which sought increased funding for each Trust [MACF0000177\_017]. Specifically, the Inquiry has asked:
- (1) For William Connon's understanding of the reasons DH rejected this bid for additional funding;
  - (2) Whether there was anything the Trusts could have done during William Connon's tenure to substantially increase their funding;
  - (3) Whether William Connon was aware that the Macfarlane and Eileen Trust trustees considered the Trusts to be underfunded. The Inquiry has referred to documents at [ARCH0002992, ARCH0002213, MACF0000016\_039, and MACF0000016\_056] and asked for William Connon's response to this information.
- 5.2. The Business Case, dated November 2005, states that there was a 3 year package of capital funding in place for the Macfarlane Trust over the period 2003/2004, 2004/2005 and 2005/2006 [MACF0000177\_017]. The Business Case was therefore submitted towards the end of that 3 year package.
- 5.3. By letter dated 24 November 2005, Peter Stevens then Chair of the Macfarlane and Eileen Trusts, wrote to the Parliamentary Under-Secretary for Public Health, Caroline Flint. He submitted the Business Case and requested a review of the funding of the Macfarlane Trust's funding [DHSC0041198\_162].

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5.4. The Inquiry has referred to a letter from Martin Harvey to William Connon, dated 25 January 2006, in which Mr Harvey expresses unhappiness that neither the Minister nor DH had responded to the Business Case, and asking for a meeting with the Minister **[HSOC0029628\_004]**. The letter refers to a meeting in December where “*strong representations were made...that a delegation from the Macfarlane Trust should be granted an audience with the minister to explain the case for increased funding...*”. The letter says that there had been a previous commitment (the date of which is not stated) that the Macfarlane Trust’s funding would be kept under constant review and in line with the needs of the registrants.

5.5. It appears that Peter Stevens’ November 2005 letter sending the Business Case did not reach Caroline Flint’s private office and this was identified in mid-January 2006 **[DHSC6278301]**. Once this was discovered Caroline Flint wrote to Peter Stevens by letter dated 26 January 2006 **[DHSC0041198\_159]**.

5.6. On 19 April 2006 William Connon emailed Jacky Buchan who was in Caroline Flint’s private office **[WITN6887012]**. It appears this was in relation to the Macfarlane and Eileen Trust Business Case. He wrote:

*“It is the same request for additional funding which was submitted at the end of last year. We have sent an interim reply stating that we are considering the request but have not yet formally responded. It has however been made clear to them that this request is unlikely to be successful, given the current financial climate and the nature of the request.”*

5.7. There is what appears to be a draft submission dated May 2006 from Brian Bradley to the Caroline Flint (who was Minister of State for Public Health by this time) **[DHSC5011529]**. The date on the document is incomplete suggesting it is a draft only and document searches have not demonstrated that this submission was sent to Ministers. Brian Bradley was an official in the Health Protection Strategy and Legislation branch. This draft submission sets out a number of options for responding to the Business Case, one of which amounted to a “*partial acceptance*” which could include a substantial single

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payment, accompanied by either no or a small recurrent increase. The draft submission says that current provisional budgets for 2006/7 would allow DH to settle a single payment of “[**DN check**] £9m on the Macfarlane Trust and [**DN**] £1m on the Eileen Trust, with no change to the recurrent funding level for each of the bodies...” (“DN” in original). There is a further drafting note which states:

*“[**DN Gerard** [Hetherington] This is rather more than we briefly discussed but it is still affordable within the current figures and would leave room for other contingencies, such as the Skipton fund, which we have been advised will continue to be funded from provisions. You may however wish to present Minister with a smaller single payment, say £5m, across both bodies for, say 3 years.]”*

5.8. By email dated 17 May 2006 Brian Bradley sent a draft submission on funding for the Macfarlane and Eileen Trusts to Gerard Hetherington and Jonathan Stopes-Roe, two senior DH officials [**DHSC5011528**]. William Connon was not copied in. The email refers to potentially making a single payment of £10 million and refers to this being contained in drafting notes in the attached draft submission. However, the attachment itself is not available to view with this email.

5.9. On 8 June 2006 Brian Bradley emailed Gerard Hetherington in relation to the draft submission on the funding of the Trusts [**DHSC6294575**]. William Connon was not copied in. Brian Bradley wrote:

*“...Jonathan [Stopes-Roe] and I have been redrafting this over the last couple of days and feel that the £400k is reasonable – but would be grateful for your confirmation (or otherwise?) that it is affordable in the current budget planning. It is, of course, much less than they are asking for and it may be helpful for MS(PH) to have some negotiating room on this figure if this is possible...”*

5.10. There is a draft submission, dated June 2006, prepared by Brian Bradley. It contains some drafting notes [**DHSC6340821**]. The draft submission recommends that funding for the Macfarlane and Eileen Trusts should be increased by £400,000.

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- 5.11. On 9 June 2006 Jonathan Stopes-Roe emailed William Connon and Ailsa Wight [WITN6887013]. The email included:

*"As you know, MFT/ET have made a pitch for substantially increased funding. MS(PH) will (at last!) meet Peter Stevens (MFT/ET Chairman) on 12 July. Brian is preparing a submission which comprehensively deals with funding past and present, now that central budgets are (almost!) settled. He will run it by you shortly, in case you can spot any points for tweaking..."*

- 5.12. There is then a submission dated 13 June 2006 on funding for the Trusts, prepared by Brian Bradley [WITN6887013]. That submission recommended increased funding of £400,000 across both Trusts and that the meeting with Peter Stevens would be a good chance to hear his arguments before coming to a final decision on the level of funding. It appears that submission was sent to Jacky Buchan on 13 June 2006 [DHSC6021763]. It appears it was also sent to Ailsa Wight (Deputy Director of Infectious Diseases and Blood Policy) and Mark Thomas on the same date for their attention. William Connon was copied in.

- 5.13. On the morning of 14 June 2006 William Connon emailed Brian Bradley as follows [DHSC6021763]:

*"Thanks for sight of this.*

*Given the compelling arguments in your para 9 I feel that we should recommend a nil increase to ministers. Beneficiaries are already receiving substantial assistance and in the current financial climate I feel any increase cannot be justified. Neither the MFT or ET will be happy with your proposed increases, which are substantially less than requested therefore I do not think a partial or "token" increase is going to make the pill any less bitter for them.*

*Clearly minister may take a different view for political reasons but I do not feel any increase is justified at present, on grounds of need.*

*Happy to discuss."*

- 5.14. Around noon on 14 June 2006 Brian Bradley then sent a further submission to Jacky Buchan on the issue of funding for the Trusts, for the attention of

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Caroline Flint **[WITN6887014]**. William Connon and others were copied in. The submission itself appears to be an amended version of the earlier submission, dated 13 June 2006. It invited the Minister “to consider the options for continued funding of the Macfarlane and Eileen Trusts” **[DHSC0041159\_207]**. The timing was urgent on the basis that “[t]his financial year is well under way and central finance are on the point of confirming the available budget levels for this year.”

- 5.15. The 14 June 2006 submission included information for the Minister about previous funding and continued:

*“5. Up to now, Ministers’ position on funding the Trusts has been that the Department has provided a settlement and a steady flow of income which was sufficient for the identified needs of claimants at the time. We have kept an open view on changing future needs....*

*6. The chair of the Macfarlane Trust, Peter Stevens, wrote to MS(PH) in November 2005 making a case for increasing the funding of the MFT to £7m per year for the next 5 years and for doubling the funding of the ET. This case is based on the position that the surviving registrants are living longer than was expected in the original settlement and they have a significant life expectation. Their living costs and needs are therefore substantially different (and greater). Many of them, however, have very little prospect of earning a realistic income and they (and their families) are dependent on a combination of welfare benefits and this income. A paper copy of the case has been forwarded separately...*

*7. Mr Stevens asked in the same letter for a meeting with MS(PH). The reply was sent on 26 January offering a meeting in “April or May” once clarity had been reached on the central budgets. That meeting was pencilled in your diary for 12 July...*

***Financial position***

*8. As you know, DH has faced acute pressure on NHS funds and (as a consequence) on the raft of central budgets from which MFT and ET are funded. Major ALBs are being required to make challenging cuts in expenditure, to the point of ‘thinking the unthinkable’ about service reductions. The upshot of the prolonged review is, quite simply, that an extra £4m for MFT and £137k for the ET is not available. The most that could be found, within the budgets now available to us, might allow for growth of around 10% or £400k across both Trusts. Officials have so far informally advised the Trust to plan on the basis of ‘flat cash’ funding for 2006/7...”*

- 5.16. The submission then set out 3 options for the Minister, namely:

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- (1) “*Outright refusal*” of the Business Case, i.e. “*flat cash funding*”. The submission said this:

*“may be justified on the grounds that payments to the relatively small number of surviving registrants have increased substantially in the last 5 years, as the level of funding has not declined in parallel with the decline in registrant numbers...Blood policy colleagues have commented that they do not consider any increase in overall funding is justified.”* [This final sentence was not in the submission dated 13 June 2006].

- (2) “*Full acceptance*” of the Business Case. The submission stated that this seemed “*neither affordable nor justifiable*”

- (3) “*Partial acceptance*” of the Business Case. The submission stated that might:

*“be justifiable as it would indicate that the Department is indeed able and willing to renew its commitment to supporting those infected by contaminated blood products, while living within our reasonable resource limits. While the historical data show that average annual payments increased significantly in 2001, the MFT’s case still makes some valid points in support of a further increase – albeit not on the scale requested. A recurrent increase of up to £400k across both of the Trusts would be affordable. This would represent a further step increase of slightly more than 10% in the overall funding, including administration costs.”*

5.17. The conclusion of this submission from Brian Bradley was:

*“14. On balance, we feel that the justification for an increase is not strong. There is, however, a lot of pressure from the Trust and registrants, and MS(PH) would consider increasing the funding for the Macfarlane and Eileen Trusts by £400k (£350k for the MFT and £50k for the ET). The split could be adjusted on the advice of the Chairman.”* [The wording of this paragraph was different from the submission dated 13 June 2006].

5.18. In advance of a meeting between Caroline Flint and the Trusts, Brian Bradley prepared a written briefing for the Minister, dated 7 July 2006 [WITN6887015]. That written briefing indicated that a briefing meeting with officials was planned for 11 July 2006.

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- 5.19. On 12 July 2006 Caroline Flint met with representatives from the Macfarlane and Eileen Trusts in relation to the funding bid. There are two notes of that meeting – [GLEW0000357] which appear to have been prepared by a representative of the Trusts and [DHSC0006259\_046] which appears to have been prepared by DH. Neither document lists William Connon as having been present at the meeting.
- 5.20. It appears officials drafted a note for Caroline Flint to send to the Secretary of State on the issue of funding for the Trusts. Further information on this is set out in Caroline Flint's witness statement, dated 22 May 2022, and includes communications from Jonathan Stopes-Roe [DHSC0006259\_044]. Because of this the detail is not repeated in this chronology. These documents do not indicate significant (or possibly any) involvement on the part of William Connon at this point. In brief summary, Caroline Flint's note to the Secretary of State stated that the pressure on central budgets did not provide for the level of increase sought by the Trusts (from around £3 million to over £7 million a year) and she was not convinced that the case was strong enough. The note presented three options: first, to make no funding increase; secondly, to offer "*a modest increase of say £400k across the two Trusts (which can be found within the tight central budget settlement)*"; and thirdly, to combine option one or two with "*a DH/ Trusts working group to consider more fully the role of the Trusts and their responsibilities to registrants.*"
- 5.21. Brian Bradley prepared a further submission for the Minister, dated 27 July 2006 [DHSC5026529]. William Connon was copied in. This submission stated that the Minister had discussed the issue of funding for the Macfarlane and Eileen Trusts with the Secretary of State and decided that DH would increase the "*funding of both Trusts by a combined total of £400k. Ministers are also minded to carry out a review of the Trusts.*" The submission invited the Minister to write to the Chair of the Trusts with her funding decision and to "*consider the implications of a further review of the Eileen and Macfarlane Trusts.*" Brian Bradley's submission attached a draft letter to send.



5.22. On the possibility of a review, Brian Bradley wrote, *“having thought through the suggestion of a review and discussed the implications with Gerard Hetherington [Head of Health Protection Division] we invite Ministers to consider the following points”* and he then listed factors against conducting such a review. These related to lack of resources, lack of funding to actually increase the allocation to the Trusts, and a concern about creating a precedent.

5.23. On 28 July 2006 Caroline Flint wrote to Peter Stevens to respond to the Business Case **[HSOC0005411]**. This letter stated that the Minister was:

*“...satisfied that an increase of £400,000, approximately 11%, to the Trust’ funding will maintain an appropriate level of support to their remaining registrants and is within the current level of Government funding available...”*

#### **Awareness of Trustee View that Trusts Were Underfunded**

5.24. The Inquiry has referred William Connon to the following documents:

- (1) Correspondence in February and March 2007 between Jonathan Stopes-Roe and Martin Harvey on 2007-2008 funding for the Macfarlane Trust. As part of this correspondence Martin Harvey stated the funding allocation was *“totally unacceptable”* **[MACF0000016\_056]**. William Connon, who was Head of Blood Policy at this time, was copied into Jonathan Stopes-Roe’s letter dated 15 February 2007. Martin Harvey’s reply was not addressed or copied to William Connon.
- (2) A letter dated 5 July 2007 from Christopher Fitzgerald, Chair of the Macfarlane Trust, to the Minister for Public Health, Dawn Primarolo, stating that increased funding was needed **[MACF0000016\_039]**. William Connon was not the recipient of this letter. He was Head of Blood Policy at this time.
- (3) Evidence submitted by Peter Stevens as Chair of the Eileen Trust, to the Archer Inquiry, dated 23 May 2007 **[ARCH0002992]**.

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- (4) Undated evidence submitted by the Macfarlane Trust to the Archer Inquiry **[ARCH0002213]**.

5.25. Christopher Fitzgerald, the Chair of the Macfarlane Trust, wrote to the new Minister of State for Public Health, Dawn Primarolo, on 5 July 2007 **[MACF0000016\_039]**. He explained the Trust's unhappiness with the funding decision made by the previous Minister in July 2006 and stated the Trust's intention to submit a "*re-statement of our beneficiaries' needs*". By letter date stamped 25 July 2007, the Minister replied **[DHSC0004109\_016]**. That letter referred to Peter Stevens' meeting with Caroline Flint in July 2006 and that there had been "*an increase of £400,000 for both the Macfarlane and Eileen Trusts.*". The letter continued:

*"..I am advised that the Trust is presently provided with Departmental funding of just over £3.7 million per year to meet the needs of its registrants. I am sorry that you consider this level of funding to be insufficient but as I appreciate you are aware, Departmental budgets have to take into account a range of competing factors.*

*I will be pleased to consider a revised case from the Trust on behalf of registrants in due course."*

It has not been established who actually drafted this reply.

5.26. As set out above, William Connon was aware of the Trusts' Business Case which sought significantly increased funding.

### **Assisted Conception**

5.27. William Connon is asked about correspondence between him and the Macfarlane Trust in early 2005 on the issue of the Trust proposing to provide financial support to the direct costs of assisted conception. William Connon is asked to explain his response and to explain whether, with the benefit of hindsight, he had concerns about him expressing a view on "*such policy issues*" given that the Macfarlane Trust was a charity.

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5.28. As explained above, William Connon became Head of Blood in December 2004, so shortly before the correspondence referred to.

5.29. By letter dated 31 January 2005 Martin Harvey wrote to William Connon on the subject of assisted conception, which had been discussed by Trustees on 24 January [MACF0000014\_049]. The letter explained:

*"Hitherto, the [Macfarlane] Trust has provided assistance to registrants to meet ancillary costs arising from treatment programmes such as travel but has never sought to fund, either in part or in full, the direct costs that form part of the assisted conception process.*

*The Board of Trustees were asked to consider a recommendation from the Trust's National Support Services Committee that a degree of financial support would be available to registrants seeking to start a family. A financial maximum, with caveats, was agreed but before any decision was to be ratified, the Trustees felt the views of the Department should be sought. There was particular concern that the range of options available in undergoing assisted conception varied within the NHS. The minute reads as follows:-*

*"After a lengthy debate, it was resolved in the first instance to write to ask the [DH] what their attitude was to the difficulties caused by the apparent post-code lottery that seemed to exist within the current NHS provision and to seek approval from the Department that the Trust was proposing to support registrants in their attempts to advance conception by assisted means."*

*May I ask the Department to respond to the points raised within the minute?"*

5.30. On 9 February 2005 William Connon replied [MACF0000014\_054]:

*"Thank you for your letter dated 31 January.*

*Having taken up this post fairly recently, I am still familiarising myself with the various aspects of the job, including the detailed terms under which the Macfarlane Trust was established and set up. I hope you will therefore forgive the slight delay in replying.*

*...*

*The Government has also recognised that the provision of NHS fertility services has been uneven, and in 2001, it commissioned the National Institute for Clinical Excellence to produce a clinical guideline. The guideline was published in February last year...In welcoming the guideline, the Secretary of State said that the Department would be looking to primary care trusts that provide no IVF treatment to meet a minimum national level of provision of one cycle of IVF by April 2005,*

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*and to make progress to full implementation of the guideline in the longer term. He also advised that the priority is to help those in greatest need – which must mean couples with no children living with them. We recognise that the NHS already makes a number of treatments other than IVF available.*

*I do not therefore feel that providing additional assistance for registrants of the Macfarlane Trust, to undertake treatment programmes for assisted conception, would be appropriate.”*

## **Skipton Fund**

### **Delay in Signing Agency Agreement and Email Dated 29 June 2005**

- 5.31. William Connon is asked why the agency agreement ('AA') between DH and the Skipton Fund was only settled in May 2007 [SKIP0000033\_066]. He is asked what impact the delay had, from DH's perspective, on the operation of the Skipton Fund.
- 5.32. William Connon is also asked about an email he wrote on 29 June 2005 in which he stated that the Skipton Fund "*continues to cause me a great deal of unease*" [DHSC0006798\_031]. He is asked what he meant by this and why he considered a review would be of assistance. He is asked if a review took place, and if not, why not.
- 5.33. For work done on the Skipton Fund and the AA before William Connon was in post, please see the evidence of Richard Gutowski.
- 5.34. The AA, as between the Secretary of State for Health and the Skipton Fund, was signed on 22 May 2007. Alongside the AA was a service level agreement ('SLA') between the Secretary of State and the devolved administrations. Clause C of the AA stated [SKIP0000033\_066]:

*"The Secretary of State for Health and the Devolved Administrations have entered into a service level agreement by which the Department of Health (DH) acts on behalf of the Devolved Administrations in relation to*

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*Skipton and the parties contribute their proportionate shares to the funds distributed."*

- 5.35. The AA and SLA were signed at around the same time in 2007. Representatives of the devolved administrations signed the SLA on various dates from early April to early May 2007 [DHSC0011684]. The SLA formally gave DH authority to enter into the AA with the Skipton Fund. The SLA also set out DH's responsibilities and that the devolved administrations were responsible for contributing to funding of the Skipton Fund. Schedule 1 of the SLA contained the detailed agreement on funding.
- 5.36. The terms of the SLA had to be agreed between the devolved administrations (to include DH). The documents suggest the terms of the AA were discussed and agreed with the devolved administrations. Documents suggest there were also discussions between DH lawyers and lawyers acting for the Skipton Fund on the terms of the AA (e.g. emails at the end of January 2005 [DHSC0041217\_124].
- 5.37. On 21 January 2005 William Connon sent an email to officials from the devolved administrations attaching drafts of the SLA and AA and saying that DH was very keen to finalise them in the next week, if possible [DHSC0006798\_049]. One of the issues to be agreed was the split of funding. Mike Burns, a government lawyer, also sent an email on this date about the draft SLA and outstanding issues [DHSC0006798\_050].
- 5.38. On 21 January 2005 William Connon emailed Sandra Falconer, a Scottish official [DHSC0004193\_015]. She had asked for information on the Skipton Fund Appeals Panel and William Connon told her no progress had been made on that as he had been concentrating on trying to finalise the SLA and AA.

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5.39. Thereafter, there were a series of emails with comments from other devolved administrations about the terms of the AA and SLA.<sup>5</sup>

5.40. On 10 March 2005 William Connon sent a note to Martin Cantrell, a government lawyer, about amendments to the draft AA [DHSC0003454\_002]. It was copied to others, including officials from the devolved administrations. The note referred to a recent meeting in Edinburgh with colleagues. William Connon wrote:

*"...As I have explained, I had hoped that we could simply sign this agreement off, given the history, and I wanted to avoid major change, in the pursuit of speedy resolution. However, in the light of recent developments, I have had to look at the agreement in more detail and I feel there are a number of deficiencies."*

5.41. He also set out a list of comments or proposed changes to the AA. He wrote that Scottish officials would be sending their proposed amendments and Welsh and Northern Irish officials may do the same. He asked for a re-draft of the AA for discussion at a meeting on 17 March 2005. The Inquiry has referred to another version of William Connon's note to Martin Cantrell [DHSC0041217\_127]. That version has visible track changes on it. It is not clear who made them.

5.42. On 22 March 2005 William Connon sent Martin Cantrell comments from the Scottish, Welsh and Northern Irish executives on the AA and wrote [DHSC0003463\_007]:

*"I would be very grateful if you would have a look at these and prepare a redrafted version of the Agency Agreement, which incorporates these comments. We are now all broadly in agreement and I would hope that the next draft will be cleared by officials quickly on the various administrations. I think that we should focus on getting this agreement signed and then finalising our SLA following that...."*

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<sup>5</sup> See for example: [DHSC0006798\_049], [DHSC0006888\_058], [DHNI0000004\_099], [WITN6887016], [WITN6887017], [DHSC0004520\_038], [SCGV0001067\_075], [DHSC0003464\_002], [DHSC0004520\_043]

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*I suggest that the next draft, which you kindly agreed to circulate by the 8 April at the latest, is sent to the Skipton Fund's lawyers at the same time asking them to agree it as early as possible..." [sic].*

5.43. William Connon also asked Martin Cantrell for his view on whether the "Appeals Service" could be used for Skipton Fund appeals.

5.44. On 29 March 2005 Gerard Hetherington prepared a note for the Secretary of State with an update on the Skipton Fund [DHSC5123255]. William Connon was copied in. The note included that:

*"DH officials have attended meetings in Edinburgh twice so far this year, with the other devolved administrations, in order to finalise details of the scheme. There are still some issues to be resolved, such as the appeals procedure, which is being developed urgently with a view to being in place as soon as possible.*

*...*

*We are working as quickly as possible to finalise the legal and administrative arrangements for the scheme and this is being done with the full co-operation of officials in the DA's. We are currently exploring the possibility of using the Appeals Service to hear these appeals and will ensure that DA's are in full agreement before any decisions are taken...."*

5.45. An email dated 28 April 2005 from Jan Marshall (believed to be a lawyer in the Scottish administration) to Martin Cantrell said that Joy Hosie, a Scottish official, had been working with William Connon on the draft SLA and "agreement with Skipton" [DHSC0003460\_005]. By this point Scottish officials were working on Scottish legislation to put the Skipton Fund on a statutory footing. Potential policy issues arising from drafting of this legislation were being brought to the attention of DH.

5.46. By email dated 4 May 2005 William Connon sought advice from government lawyers [DHSC0003459\_003]:

*"Martin/ Karen – any advice Sol can provide on the Scottish query regarding secondary infection would be appreciated. I remain*

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*concerned that provisions are being written into Scottish legislation without due reference to yourselves...”*

- 5.47. By email dated 5 May 2005 William Connon wrote to Sandra Falconer about the “*legislative approach being taken in Scotland*” [DHSC0003458\_002]. He set out a series of questions and concerns about some aspects of that approach, including in relation to defining who would be a qualifying person for the purposes of the Scottish legislation. He advised he was planning to set up a meeting between lawyers to resolve these kinds of issues and “*also pave the way for finalising the [AA], the SLA and also the Appeals Procedure...I am planning to circulate the latest version of the AA and SLA separately to everyone so that at the proposed meeting we can finally agree them and get them signed...*”.
- 5.48. There were further communications between the devolved administrations about the Scottish legislative process and widening the ‘cut off’ date for eligibility for the Skipton Fund (e.g. see [DHSC0003468\_003]).
- 5.49. An email from Martin Cantrell, dated 16 May 2005, states that a meeting between the devolved administrations was planned for 18 May 2005 [DHSC0003455\_005]. Martin Cantrell wrote that William Connon had said he would probably need legal advice on “*the consequences for England and Wales [and I assume Northern Ireland] of the new Scottish legislation....in relation to a possible appeals system he said Lord Warner has set a deadline for an appeals system that we will now all have to work to that*”. An agenda for that meeting was proposed [WITN6887018].
- 5.50. On 17 May 2005 Karen Arnold emailed Shibani Rahulan (both government lawyers) seeking her advice on a “*devolution matter*” [DHSC0003453\_005]. The email said that Scotland intended to enact primary legislation to put the scheme operated by the Skipton Fund on a statutory footing. By contrast Counsel had advised that, in England and Wales, the scheme could operate



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under section 2 of the NHS Act 1977 and no further legislation was needed.

Karen Arnold wrote that:

*"The problem that arises now is that the scheme being put into legislation by Scotland is not the same as that in England and Wales. The Scottish scheme does not make payments to secondary infectees (persons infected by the person infected by NHS treatment) and while it pays out for persons infected by the NHS in any part of the UK it will only do so if the person's sole or main residence at the time of the claim is in Scotland (or if their main residence was in Scotland when they died). The England and Wales scheme will pay out wherever the person was when infected, so long as infected by NHS blood products, even if for example, treated by NHS blood products by the British arm abroad and also to secondary infectees..."*

- 5.51. On 14 June 2005 William Connon prepared a note for James Ewing in relation to *"recent developments in Scotland on the Hepatitis C ex-gratia payment scheme"* [DHSC0006888\_056]. He wrote that the Scottish Minister for Health, Andy Kerr, was very concerned about amendments proposed by the SNP which would have the effect of extending the eligibility criteria to the widows and dependents of people who contracted Hepatitis C through contaminated blood and blood products and who have died. He wrote that *"[t]his latest turn of events has serious implications for the existing scheme..."*
- 5.52. On 16 June 2005 William Connon emailed Martin Cantrell saying that he was hoping to circulate a further draft of the AA and SLA to DH colleagues and the devolved administrations the following week [DHSC003467\_006].
- 5.53. At around this time there was a large amount of correspondence between the devolved administrations in relation to the proposed Scottish legislation. Issues included: the definition of a secondary infectee, how to determine which devolved administration should make a payment to certain applicants (particularly those in the armed forces and visitors), and the implications of

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Scotland diverging from the rest of the U.K. in how the Skipton Fund operated, including putting an appeals process on a legislative basis.<sup>6</sup>

- 5.54. On 20 June 2005 William Connon emailed Brenda Iron-Roberts (a DH press officer) in response to a letter from Andy Kerr [DHSC0003467\_001]. William Connon wrote that:

*“...DH officials are closely involved in the developments in Scotland and, as Mr Kerr’s letter dates, there are very real potential implications for the other UK administrations if these amendments are passed. We would have to consider whether the Skipton Fund could continue to operate on behalf of all four administrations. As things stand DH ministers do not have any plans to change the existing arrangements regarding the date of eligibility for claiming from the Skipton Fund.”*

- 5.55. On 22 June 2005 William Connon sent the latest drafts of the AA and SLA to the devolved administrations. He also sent a paper on the appeals procedure (see below). The Inquiry has referred to two copies of this email, one timed at 07.47 and one at 09.00 [DHSC0006798\_038] and [DHSC003480\_001]. It is not clear why there are two copies sent at different times. The later email does not refer to there being a problem with the earlier email. The content appears to be the same. It appears there had been further comments from the devolved administrations on the AA and SLA. William Connon wrote that both he and Hugh Nicholas had tried to ensure the various comments were incorporated into the amended versions. William Connon wrote that he hoped the AA could be agreed and submitted the AA to the Skipton Fund and asked for comments by 1 July 2005. Searches demonstrate that Dr Hugh Nicholas was a consultant hepatologist in DH.

- 5.56. In this email William Connon also wrote that:

*“This is all subject to the outcome of the Scottish Health Committee hearing on the 30<sup>th</sup> June at which amendments are being considered which could result in proposals for a different scheme being operated in*

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<sup>6</sup> See e.g. [WITN6887019], [WITN6887020], [DHSC0003473\_004], [WITN6887021], [DHSC0003472\_006], [DHSC0003470\_007], [DHSC0003469\_001], [DHSC0003469\_002], [DHSC0003469\_003], [DHSC0006798\_045], [WITN6887021].

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*Scotland. In the event of this happening we would clearly have to reconsider the AA and consult with ministers to consider the implications of this. In the meantime I think we should proceed as proposed above so that we can move things forward as soon as we know the outcome of the Scottish proposals."*

5.57. On 23 June 2005 William Connon emailed Sylvia Shearer in relation to the potential Scottish legislation, which would lead to divergence with how the Skipton Fund operated in the rest of the UK [DHSC0003475\_001]. He sought further information/ clarity on aspects of the Scottish Bill.

5.58. The changes subsequently made by Scotland (and later DH) are briefly addressed later in this chronology. In summary, the Scottish Health Committee was considering changes to who would be entitled to payments from the Skipton Fund (by wishing to change 'cut-off' dates that were in place).

5.59. On 24 June 2005 Karen Arnold emailed William Connon about the Skipton Fund *"appeals process and the powers to provide the payments to primary and secondary infectees and persons infected outside of the England and Wales"* [DHSC0006888\_039]. She advised that Counsel's advice should be sought on, first, whether the Secretary of State had power under the NHS Act 1977 to make payments to secondary infectees and people treated outside of England, Wales and Scotland; and secondly, the power to run and fund an appeals scheme.

5.60. On 29 June 2005 William Connon emailed Hugh Nicholas, Gerard Hetherington and Ailsa Wight. It appears this email was prompted by Karen Arnold's email, dated 24 June 2005. William Connon wrote:

*"We will need to respond to Sol [solicitors] on the points raised and I would appreciate any thoughts you may have. This is not particularly helpful and may well delay things yet again.*

*Secondary infectees – sol is going to ask for counsel's advice.*

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*Armed forces – I will ask the NBA [National Blood Authority] for information on the basis on which they supply blood to the AF.*

*Appeals – I don't suppose the appeals system has ever been costed, not least because we have not agreed on the precise format of the appeals system. I take it from the email that Sol are going to seek advice on whether or not we have the power to run and fund appeals. In the meantime **Geoff** do you have any knowledge of the £900k limit? Is it still the same amount and do we have any departmental guide as to the cost of running an appeals system?*

*Court proceedings – does anyone have any recollection concerning the original instructions on the possibility of people with Hep C taking court action? On what basis did we instruct Sol that there was no risk of court action?*

*I apologise for this brief email but time is very limited and I simply wanted to ask for your views on the points raised and to alert you to the possibility of further delay. The Skipton Fund continues to cause me a great deal of unease. It would I think benefit from a thorough review which would require additional resources.*

*Can you let me have any comments by close Friday 1<sup>st</sup> July please?"*

- 5.61. William Connon's email does not explain further what was causing his a great deal of unease. Searches have not identified that a review took place.
- 5.62. Counsel subsequently advised (end of July 2005) that the Secretary of State had sufficient powers under the NHS Act 1977 to make payments to secondary infectees and to establish an appeals system **[DHSC0006798\_028]**. In light of this, Karen Arnold confirmed that the proposed appeal system, sent with an email dated 7 July together with copies of the draft SLA and AA, was suitable subject to previous comments about independence of the appeal panel and informing applicants of their right to appeal.
- 5.63. Gerard Hetherington prepared a note for the Secretary of State, dated 29 June 2005, in relation to correspondence from the Scottish Minister, Andy Kerr, about the progress of Scottish legislation on the payment scheme for people infected with hepatitis C **[DHSC5012983]**. William Connon was copied. He pointed out that the changes proposed in Scotland would be a

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*“major policy change and would inevitably lead to further requests for further extensions to the existing scheme” but also said there were “a number of unknown factors which make it very difficult to assess the impact of the proposal”.*

- 5.64. On 1 July 2005 Sylvia Shearer emailed William Connon and officials from the other devolved administrations **[DHSC6701598]**. Sylvia Shearer explained that the Scottish Parliament had passed changes to the ‘cut-off’ date for eligibility for Skipton Fund payments so that payments would be made in respect of people who died after 5 July 2004. A further extension which would have made payments in respect of people who died before 29 August 2003 was not passed. She asked whether DH and the Welsh and Northern Irish departments would be willing *“to make this concession and amending the scheme...”*. On 5 July 2005 William Connon replied, asking for further details of the amendment that had been passed and how it would work in practice.
- 5.65. On 27 July 2005 William Connon also emailed Martin Cantrell (a government lawyer about both the Skipton Fund appeals system and the AA/SLA **[DHSC0006798\_028]**. On the latter, he intended to send to Martin Cantrell further comments from Scottish and Welsh officials.
- 5.66. On 27 July 2005 William Connon also emailed Neil Buffin to apologise that some comments had not been incorporated fully into working versions of the Skipton Fund agreements **[DHSC0006798\_029]**. William Connon also wrote that there had been *“significant resource issues at this end and Hugh Nicholas is now leading on the details of the AA.”*
- 5.67. The Inquiry has referred to a *“Skipton Fund Administrators Report July 2005”* **[SKIP0000030\_173]**. This says that William Connon had been invited to the Skipton Fund board meeting as three issues were unresolved, namely the AA, the appeal process and the Scottish amendments.

5.68. The chronology below explains what Ministers did in relation to the changes made in Scotland. On 18 August 2005 Gerard Hetherington sent a submission on the changes to the private offices of the Secretary of State and Caroline Flint [DHSC0041162\_096]. The submission stated that DH did not know precisely how the changes passed by Scottish Parliament would be implemented and hence could not gauge the precise impact if the same change was made by DH. Ministers were asked if they were content to amend the Skipton Fund rules to reflect the Scottish amendment and advised that if not, there would be different schemes operating in different parts of the UK.

5.69. On 8 December 2005 William Connon sent up a submission for the Secretary of State and Caroline Flint [DHSC0041162\_016]. This recommended that the Secretary of State should agree to change the Skipton Fund eligibility so it matched that in Scotland. Paragraph 9 stated:

*“There remains the issue of how this change should be expressed in the Agency Agreement, to instruct the Skipton Fund how to deal with this matter. The current text may not be appropriate, but this should be resolved at the next officials meeting, with legal advice where appropriate.”*

5.70. On 20 December 2005 Hugh Nicholas sent William Connon the latest version of the draft SLA, taking account of comments to date [DHSC0004510\_032]. This version assumed that the Skipton Fund scheme would be extended for everyone in line with the Scottish changes. He wrote that this version would need to be sent to the devolved administrations for agreement or further comment. Hugh Nicholas wrote that he would *“try and get to the same stage with the agency agreement next, but there are still some outstanding problems/ concerns.”*

5.71. On 12 January 2006 Lord Warner announced that the Secretary of State and counterparts in the devolved administrations had agreed to extend the period when claims to the Skipton Fund could be made on behalf of the deceased by

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relatives of dependents **[ARCH0000428 at p5-6]**. Relatives or dependents of a person who died after 5 July 2004 would be eligible to make a claim.

- 5.72. Minutes of the meeting of the Skipton Fund board of directors on 8 May 2006 record, in relation to the AA **[SKIP0000030\_146]**:

*“Agency Agreement – Martin Harvey (MH) had been told by Jonathan Stopes-Roe at the DoH to expect an update on the agency agreement by today. This was not received.”*

- 5.73. As stated the SLA was signed in April/ May 2007 and the AA was signed on 22 May 2007. Document searches focusing on William Connon’s involvement in drafting of the AA have not identified documents to explain the reasons for the further time lag in the document being signed. The documents above indicate that Hugh Nicholas and possibly Jonathan Stopes-Roe had become involved in work on the AA.

**Impact of Delay in Signing the AA**

- 5.74. William Connon is asked what impact the delay in signing the AA had on the operation of the Skipton Fund from the perspective of DH.
- 5.75. The Skipton Fund became operational in July 2004 and therefore operated for almost 3 years without an AA in place, making payments and, from late 2006, hearing appeals.
- 5.76. Document searches suggest some delay in DH paying funds to Skipton Fund because the AA had not been signed off.
- 5.77. On 25 January 2005 Zubeda Seedat emailed Alan Salter to say she needed to arrange *“fairly urgent payment to the Skipton Fund for £20m”* **[DHSC0004730\_025]**

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5.78. On 2 February 2005 Martin Harvey emailed William Connon to say he had been told that £20m that had been agreed for transfer to the Skipton Fund had been held back because William Connon had insisted that *"the money be held over pending the agency agreement being signed off"* [DHSC0041217\_114]. The chronology about indicates William Connon hoped the AA would be signed off promptly in early 2005. Martin Harvey pointed out in his email that it was not the Skipton Fund causing this delay. His email said:

*"The arrangement with your predecessor always way:-*

*"That a float of £10m be retained to cover management costs from interest accrued. Below 20m, it becomes tight and there is a risk that MFT will have to meet any shortfall which it cannot legally do. Below 9m, that becomes a certainty".*

*The consequences are:-*

*"Forms will start backing up, by the end of this week we would wish to pay out 2/3m...."*

5.79. A reply to this email has not been located. On 8 February 2005 Martin Harvey emailed William Connon to say that the £20 million *"we had talked about last week"* had not yet been received [DHSC0041217\_113]. Martin Harvey wanted an indication of when the money would arrive.

5.80. Minutes from the Skipton Fund board of directors' meeting on 25 April 2005 record [SKIP0000030\_035]:

*"In the absence of the Agency Agreement being in place the funds bank deposits were not at £1m. With little likelihood of funds being made available in the short term the directors agreed that the bank account balance must not fall below £250k to ensure that sufficient funds are held to cover fixed costs and other liabilities of the Skipton Fund..."*

5.81. On 10 May 2005 Keith Foster emailed William Connon about Skipton Fund funding [DHSC0004213\_008]. He wrote that the Skipton Fund had 41 stage 1 approved applications and 21 stage 2 approved applications awaiting payment. After releasing the stage 2 payments the Skipton Fund's balance would be £250,000. He wrote that:



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*"Until the agency agreement is settled this figure is the directors believe the minimum needed to cover their statutory responsibilities including liabilities to MFT together with anticipated expenses. A deliberate policy decision has been made by the fund to concentrate out limited funds on these more seriously ill claimants many of whom have only either a short life expectancy or are suffering a seriously limited life..."*

- 5.82. On 19 May 2005 William Connon emailed Ailsa Wight and others **[DHSC0006798\_048]**. He forwarded Keith Foster's email dated 10 May 2005. William Connon wrote that had had discussed with Ailsa Wight the issue of *"authorising a further payment to the Skipton Trust to enable them to pay outstanding claims"* and continued:

*"Since I took up this post I have not authorised any additional payments to the Skipton Fund pending agreement of these issues. However the Fund is now running out of money and will not be able to make the necessary cash payments to people who have registered and are entitled to payments, without further central funding from DH. You therefore agreed that a further payment of £5 million should be authorised to avoid the situation where claimants do not receive their ex-gratia payments due to lack of funding. I very much hope that this will be sufficient to cover claims until such time as we finalise the policy and administrative issues..."*

- 5.83. On 10 June 2005 Martin Cantrell sent to William Connon a letter from Berwin Leighton Paisner who, it is believed, were the Skipton Fund's lawyers **[DHSC0003467\_006]**. On 16 June William Connon replied saying that he was hoping to circulate a further draft of the AA and SLA today and that he personally saw *"little benefit in agreeing an "interim operating agreement" at this late stage."* He asked for Martin Cantrell's view on the merits of this. A reply has not been located.

- 5.84. Minutes from the Skipton Fund board of directors' meeting on 18 July 2005 record **[SKIP0000030\_033]**:

*"Mr William Connon (WC) had been invited to attend the meeting to verbally brief the board regarding developments.*

**Agency Agreement:** *...the short form agreement to underpin our operations had also not been forthcoming. WC indicated that with the change in Ministerial responsibilities and the forthcoming Parliamentary*

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*recess we could reasonably expect a draft agreement shortly. In the meantime WC verbally confirmed the Departments wish for payments to continue and that if funds were required to forward an invoice for a further £5m."*

**Publicising the Skipton Fund**

5.85. William Connon is asked what steps, if any, DH took to publicise the Skipton Fund to potentially eligible beneficiaries. Documents identified in searches do not greatly assist in answering this in relation to William Connon's time in post.

5.86. A Skipton Fund Administrator's Report, dated April 2005 states [SKIP0000030\_178]:

***"Applications***

*We have seen of late an increase in initial requests for registration forms from potential claimants. This may have been due to publicity regarding Hepatitis C in the NHS Hep C awareness campaign...It does confirm my thinking that further more targeted publicity is required. (our mention on the Face It website [www.hepc.nhs.uk](http://www.hepc.nhs.uk) is tucked away on a sub page of the web site headed Financial)".*

5.87. There is a draft briefing pack for a PQ in May 2005 which states [DHSC6269087]:

***"Identification of potential claimants***

*The Department published its Hepatitis C Action Plan England in June 2004, which set out key actions for Government, the NHS and others to improve the prevention, diagnosis and treatment of hepatitis C. One of the focuses of the plan is on increasing the diagnosis of people at current and past risk of infection. This should help to identify people who are not aware that they have been infected with hepatitis C following a blood transfusion.*

*We will also work with the Haemophilia Society and United Kingdom Haemophilia Centre Doctors Organisation to raise awareness of the scheme amongst those people with haemophilia.*

*Many of those who are aware of their infection contacted the Department prior to the launch of the scheme."*

**Exclusion of Natural Clearers from Skipton Fund Eligibility**

5.88. William Connon is asked about his involvement in the decision to exclude those who had naturally cleared HCV during the acute phase from being eligible for the Skipton Fund. He is asked for his understanding of the reasons for this and whether he thought it was fair. He is asked to explain his response to this issue when it was raised by Peter Stevens and Professor Hill in February 2005. He is also asked whether this criteria was strictly applied, to his knowledge, by the Skipton Fund.

5.89. “*Natural clearers*” in this chronology refers to people infected with hepatitis C but who cleared the infection spontaneously in the acute phase which was usually in the first 6 months after infection.

5.90. The documents reviewed suggest this decision had been made when the scheme was set up and before William Connon was in post (please see the written evidence of Richard Gutowski). A memo dated 19 November 2004 from Richard Gutowski to Alison Langley (DH Comms) appears to give an overview of the rationale for this decision **[DHSC0006798\_072]**:

*“1. When the Hepatitis C Payment Scheme was introduced last year the four Health Ministers in announcing the Scheme detailed the eligibility criteria for payment. One of the criteria of the Scheme has been that those patients who were infected with Hepatitis C by infected NHS Blood, but who cleared the disease spontaneously in the acute phase (usually the first six months of infection) were not eligible for payment. Statistics indicated that 20% of all people infected with Hepatitis C clear the virus in the ‘acute’ phase without long-term physical damage. The policy adopted by all four Health Administrations from the outset has been that no account would be taken of any pain, discomfort, loss of earnings etc incurred in the past, or of psychological damage or social disadvantage continuing after they cleared the virus.”*

5.91. Richard Gutowski’s memo, dated 19 November 2004, continued:

*“2. More recently it has transpired that a very small numbers of people clear the virus after the infection continuing beyond the 6-month period i.e. in the ‘chronic phase’. It was decided to include these people within the scope of the scheme. People who clear the virus in the chronic*

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*phase as the result of treatment were already included (following advice from DWP).*

*3. All the above decisions were made following submissions to the four Health Ministers and the criteria made public. Even so a number of claimants (about 90) have made claims (knowingly or mistakenly) outside the stated eligibility criteria of the Scheme. Unknown to us the Skipton Fund...have held on to these claim forms rather than reject them on receipt. They asked for further clarification of the situation and have now been instructed to send out the rejection letters, which are going out today....*

*4. We believe the instruction we have given is reasonable and entirely consistent with the principles underpinning scheme that have been stated from the outset. By the same token, it would be unreasonable use of public money to pay out where there was no evidence on offer. However in holding onto the application forms, and saying advice is being sought from the Departments, the Skipton Fund have given people a hope that their applications may well be successful even though they do not fulfil the criteria of the Scheme..." [sic].*

5.92. Documents show William Connon had a meeting with Peter Stevens and Martin Harvey on 10 January 2005, at which the issue of natural clearers being excluded from receiving Skipton Fund payments was discussed [HCDO0000242\_051].

5.93. On 3 February 2005 Peter Stevens emailed Professor Frank Hill on the subject of natural clearers [HCDO0000242\_101]. He referred to a forthcoming meeting with William Connon, as the "*the new man at the DoH with responsibility for blood issues*" and said William Connon had asked to "*talk over the natural clearers' issue.*" Peter Stevens said both Sylvia Shearer (also new in post in Scotland) and William Connon were willing to talk about this matter and the door seemed to be "*open to get the matter re-considered.*" Peter Stevens asked Professor Hill and/ or Dr Mark Winter to send a letter to DH to improve the case he wanted to make to DH.

5.94. On 8 February 2005 Professor Hill, the Chairman of UKHCDO, wrote to William Connon [HCDO0000242\_049]. He wrote that the Comprehensive Care Centre Directors were aware that a number of patients who were

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hepatitis C antibody positive and persistently PCR negative (and therefore not eligible under the Skipton Fund criteria) had applied to the Fund whereas many patients in a similar situation had not. He suggested that, given this, all patients who were hepatitis C antibody positive should be offered the stage 1 payment, as otherwise the scheme would be “*divisive and unfair*.”

5.95. William Connon passed this email on to Hugh Nicholas and asked him to draft a reply to Professor Hill. Hugh Nicholas’ reply to William Connon, on 8 February 2005, stated “*I understand from Richard [Gutowski] that in the beginning a small number of patients who were PCR negative were paid by the fund but this was outwith the scheme and was stopped*” [DHSC0004520\_054].

5.96. On 14 February 2005 Professor Christine A. Lee, Professor of Haemophilia at the Royal Free Hospital, wrote to William Connon [DHSC0004520\_006]. She referred to natural clearers and wrote that the initial infection of hepatitis C was almost universally asymptomatic “*and therefore for the most part such individuals have not to date received any payment*.” She said that there was, however, “*no doubt that due to the inexperience in the field of hepatitis C of many of my medical colleagues there have been individuals who have received payment although in actual fact they are natural clearers. It seems to be that the fairest thing would be that any individual who was infected with hepatitis C should receive payment...*”.

5.97. On 21 February 2005 Peter Stevens sent William Connon a detailed email on the subject of natural clearers and asked for a meeting “*in light of the messages from UKHCDO and Christine Lee*” [DHSC0011283]. His email cross-referred to the Skipton Fund application form. He said he wished to discuss a change to the Skipton Fund policy on natural clearers and said that decision making in the Skipton Fund was not consistent.

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5.98. On 24 February 2005 William Connon replied to Professor Hill's email dated 8 February 2005 [HCDO0000242\_046]. His reply was based on Hugh Nicholas' email advice, dated 8 February and referred to above. He wrote that significant work had gone into ensuring the Skipton Fund was "*fair, inclusive and successful*" and that the establishment of the scheme "*was not taken lightly*". He stated that DH had consulted with a "*wide range of groups and sought expert advice on all aspects of the scheme...*". Hugh Nicholas had told William Connon that Professor Hill was "*somewhat mistaken about who is eligible for payment.*" William Connon wrote that:

*"...patients who are hepatitis C antibody positive but PCR negative, in general, will not be eligible for payment, whether or not they have abnormal liver function tests from whatever cause, unless of course they fit into the two additional groups described above [above in the letter]."*

5.99. William Connon explained that DH was aware that some people who were not eligible for stage one payments were applying to the fund but "*they should not receive payments unless they meet the stated criteria.*" He said therefore that patients who chose not to apply (i.e. because they recognise they would not, as natural clearers, be eligible) should not be left at a disadvantage, "*because those who do apply should have their applications turned down.*"

5.100. The Inquiry has referred to two further copies of William Connon's letter dated 24 February 2005 [DHSC0004520\_007] and [DHSC0004520\_055]. These appear to be identical save that only one has a date stamp.

5.101. On 27 April 2005 Graham Whitehead, Chief Executive of the Haemophilia Society, wrote to William Connon on behalf of a number of the Society's members who had had applications for stage one payments declined as a result of being natural clearers [HSOC0009254\_003]. He said that, for many of these people, there had been periods when they had exhibited "*specific and non-specific symptoms of the virus*". He asked DH to reconsider its position on natural clearers.

5.102. On 7 July 2005 William Connon replied to this letter **[DHSC0041237\_002]**.

His reply set out the parameters of natural clearers being excluded from the scheme. He wrote that where evidence existed which suggested an individual had had chronic infection, then it was appropriate that an application to the Skipton Fund should be made. He confirmed that DH had no plans to “*amend the current position with regard to individual “natural clearers” who have eliminated the virus in the acute phase*”.

5.103. The documents reviewed do not indicate whether William Connon thought the policy on natural clearers was fair or not.

#### **Extent of DH Oversight of Skipton Fund**

5.104. William Connon is asked about DH's oversight of the decision making of the Skipton Fund. He is asked what information was reported back to DH and what investigations DH carried out to satisfy itself as to how the Skipton Fund was performing.

5.105. The AA (although only signed in May 2007) contained provisions setting out what information the Skipton Fund should report back to DH, and how frequently and provisions in relation to how frequently meetings between the Fund and DH should take place **[SKIP0000033\_066]** (see, e.g. clause 4.5, clause 8.6 and schedule 1).

5.106. The Skipton Fund produced an annual report and financial statements which were sent to DH (examples at **[SKIP0000057\_069]** and **[DHSC0006798\_015]**).

5.107. As stated above minutes from the Skipton Fund board of directors' meeting on 18 July 2005 indicate that William Connon had been invited to attend the

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meeting to update the board on certain matters, including progress on the AA  
[SKIP0000030\_033].

5.108. Other documents identified in searches demonstrate information that was being reported by the Skipton Fund to DH, e.g.:

- (1) A report, dated 6 December 2004, of what appears to be weekly figures about the number of application forms sent out by the Skipton Fund; the number of payments made, broken down according to the relevant devolved administration; the number of applications declined and deferred; the number of applications with queries; and the total number of completed applications received [WITN6887022].
- (2) An email from Zubeda Seedat to Martin Harvey and copying William Connor, dated 9 December 2004 [DHSC0006798\_060]. Zubeda Seedat's email says that under the SLA the devolved administrations will pay for the operating costs of the Skipton Fund in equal proportions and will contribute costs for "*applications made within their regional area.*" She says that DH has been providing the Skipton Fund with funding and in turn DH should invoice each devolved health administration to recoup the money it owed DH. Zubeda asked Martin Harvey to provide a breakdown of the Skipton Fund's operational costs to date, an estimate of costs for the remainder of the financial year, and for the latest breakdown of how many payments had been made to claimants in Scotland, NI and Wales to date.
- (3) A report from the Skipton Fund for the weekend ending 17 December 2004 [DHSC0006798\_055]. This report sets out the number and value of stage one and stage two payments made, broken down according to devolved administration. The report also included a forecast of applications and included the number of payments made to Macfarlane Trust registrants.
- (4) An email, dated 14 January 2005, from Peter Stevens to William Connor and officials from the other devolved administrations attaching an update on application numbers, progress on dealing with



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applications and funds paid [DHSC0006798\_066]. The email also states that all *“rejected application forms are returned to the applicants so they can see the reasons for rejection and take such steps as they deem appropriate to counter them”*.

- (5) Information about the Skipton Fund’s actual or estimated (it is not clear which) expenditure in 2004-2005 [DHSC0006798\_016].

5.109. This information was provided before the AA had been signed off.

5.110. On 10 March 2005 William Connon sent a note to Martin Cantrell on possible amendments to the draft AA, suggesting that the AA should make clear that the Skipton Fund was not *“tasked to propose policy changes”* [DHSC0003454\_002]. The signed AA contained a clause that the Skipton Fund may only alert DH to operational issues and may not make proposals to amend Government policy.

5.111. On 25 January 2006 Martin Harvey wrote to William Connon informing him that it was believed Keith Foster, the Skipton Fund’s administrator, has committed a fraud on the Fund [DHSC0041198\_156]. He offered to speak with William Connon.

5.112. On 26 January 2006 William Connon passed this information on to Caroline Flint’s private office and a long list of others [DHSC0041198\_155]. He reported that Keith Foster was not employed by DH and that at that time, he did not intend on taking any further action. He wrote:

*“The alleged offence does not directly relate to any departmental action or misdeed but it will be potentially embarrassing if this gets into the public domain. It is too early to come to any conclusions but if the allegations are substantiated then it would seem to me that Skipton Fund will have to urgently examine the procedures on how claims to the Fund are processes, verified and authorised. As the letter states Mr Foster has been suspended and he has been temporarily replaced by his deputy.*

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*If asked the DH line is:*

***“Whilst the department is very concerned to hear about any allegation concerning the misappropriation of public funds, this is a matter for the police and the Skipton Fund to deal with under due legal process.”*** (bold in original)

5.113. On 8 June 2006 there was a meeting between NHS Counter Fraud and Security Management Services ('CFSMS') and the Skipton Fund. DH officials did not attend [SKIP0000025\_102]. The note of the meeting records steps to recover money that had been fraudulently taken. Nick Fish, the Skipton Fund's new administrator, described measures the Skipton Fund had been taken to *“tighten up the administrative procedures since the discovery of the misappropriated funds.”* The meeting note records discussion about implementing CFSMS suggestions.

**Impact of Decision in Scotland on Qualifying Dates on Rest of Skipton Fund**

5.114. William Connon is asked what impact the decision in Scotland to *“strike out the qualifying dates for a Skipton Fund payment”* had on the rest of the scheme.

5.115. Some information about Scotland's proposed changes to the operation of the Skipton Fund is set out above. On 18 August 2005 Gerard Hetherington sent a submission to the private offices of the Secretary of State and Caroline Flint on this subject [DHSC5005001]. The submission stated that infected people who died between 29 August 2003 (when the Skipton Fund was announced) and 5 July 2004 (when the Skipton Fund was launched), who had made an application before 5 July 2004, were eligible for payments with the money being paid to the deceased's estate. The submissions stated that Scottish Ministers had *“conceded that relatives and dependents could make claims on behalf of those who had died **after 5 July 2004**”* (bold in original) regardless of whether or not the *“infected person had applied to the Skipton Fund before they died (i.e. for anyone who died after the scheme was first announced on*

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29 August 2003).” A second amendment had been proposed in Scotland, to make payments to “*relatives and dependents in respect of infected persons who had died before 29 August 2003.*” That had not been passed and so not all “*qualifying dates*” had been removed in Scotland (as the Inquiry’s question appears to suggest).

5.116. Before 18 August 2005 (i.e. the date of Gerard Hetherington’s submission [DHSC5005001]) there had been communications between Andy Kerr, Minister for Health for Scotland, and the Secretary of State; and also between officials. DH Ministers needed to decide how they would respond to whatever changes that Scotland might make.

5.117. On 14 June 2005 William Connon prepared a note for James Ewing [DHSC0006888\_056]. This said that Andy Kerr was very concerned about amendments proposed by the SNP which would have the effect of extending the eligibility criteria of the Skipton Fund to the widows and dependents of those infected with hepatitis C who had died. William Connon wrote:

*“3. This latest turn of events has serious implications for the existing scheme and once again, we find ourselves in a position where events in Scotland may put Ministers here under increased pressure to follow the Scots. In addition, there is concern that if the amendments are agreed then this will set a precedent for other cases. The whole basis on which the payment scheme was set up was to provide financial support to people living with the virus. These ex-gratia payments are designed to alleviate suffering of those living with the hepatitis C and do not infer that the NHS is liable.*

*4. Officials in the Scottish Executive have been asked to work out the potential cost of the amendments which we have not yet seen. We have not sought to provide any calculations because, we are, at present, unclear as to the extent of the Scottish amendments and because we don’t know the number of dependents of people who have died.*

*5. We do not consider a formal reply at this stage is necessary [to a letter from Andy Kerr]. The SofS may wish to speak with Andy Kerr on this matter. We would be grateful to have SofS views on the current structure of the payments scheme and whether we should continue to hold the line that widows and dependents should continue to be excluded from the payment scheme.”*

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5.118. The Inquiry has referred William Connon to an email he wrote, dated 20 June 2005 [DHSC0003467\_001]. It appears he had been sent a letter written by Andy Kerr and that letter set out *“the impacts in Scotland and the potential implications for the rest of the UK”* (the letter has not been provided). William Connon wrote that DH officials were closely involved in the developments in Scotland and:

*“as Mr Kerr’s letter states, there are very real potential implications for the other UK administrations if these amendments are passed. We would have to consider whether the Skipton Fund could continue to operate on behalf of all four administrations. As things stand DH ministers do not have any plans to change the existing arrangements regarding the date of eligibility for claiming from the Skipton Fund.”*

5.119. However, as stated above, on 18 August 2005 Gerard Hetherington sent a submission on further correspondence from Andy Kerr to the Secretary of State [DHSC5005001]. William Connon was copied into this submission. By this point, one proposed amendment had been passed in Scotland and one had been defeated. DH Ministers were asked if they were *“content to amend the Skipton Fund rules to reflect the Scottish amendment.”* Gerard Hetherington’s submission continued:

*“If you do not agree to this then there will be different schemes operating in different parts of the UK, which could be done but would be hard to justify. There is a risk of setting a precedent and raising expectations of further requests for change but nevertheless, we can see little prospect of being able to hold our line. It is suggested that before making a final decision about any changes to our scheme, you seek further information in writing from Andy Kerr clarifying the precise operation of the Scottish amendment. This is necessary to avoid any differences of interpretation in the future, and to allow us to take advice on any legal issues that may arise from the Scottish legislation.”*

5.120. The Inquiry has referred to an email from Anna Norris (in Caroline Flint’s private office) to Gerard Hetherington, dated 19 August 2005 [DHSC0004193\_011]. William Connon was copied. Caroline Flint was not content for Gerard Hetherington’s submission (which included a draft letter from the Secretary of State to Andy Kerr) to be sent to the Secretary of State.

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A list of questions were set out. It appears Gerard Hetherington replied on 8 September 2005 **[DHSC0041162\_094]**. William Connon was copied.

5.121. On 8 December 2005 William Connon sent a submission to the Secretary of State and Caroline Flint recommending that the Secretary of State should agree to make the same change to the Skipton Fund eligibility as had been made in Scotland **[DHSC0041162\_016]**. The submission stated that the Secretary of State had written to Andy Kerr on 21 October 2005, indicating that she was minded to make the same change but seeking information from the Scottish Executive *“as to the exact interpretation of the Scottish law with regard to nature of any payments made to relatives and dependents, and how the amendment would be implemented in Scotland.”* Andy Kerr had provided information in response.

5.122. William Connon's submission stated that the estimated costs of the Skipton Fund had been based on estimates of the numbers of infected patients thought to be alive when the scheme was announced in August 2003 and no deductions had been made for those who subsequently died but did not claim. Therefore the payments resulting from a change to the scheme should already have been included in the original costs but that *“the monies will still have to be found”*. As set out above William Connon commented on the need to consider how this change would be expressed in the AA.

5.123. The Secretary of State agreed to the proposed change so that the scheme operating in England was the same as in Scotland. Northern Ireland and Wales made the change **[ARCH0000428 at p5-6]**. The change in qualifying dates in Scotland led to the same change in the rest of the U.K.

## **Skipton Fund Appeals Process**

### **Role in Establishing the Skipton Fund Appeals Process**

5.124. William Connon is asked to explain his role in the establishment of the Skipton Fund Appeals panel ('SFAP'). He is asked why it took until January 2007 for the SFAP to be established. He is also asked for his role in setting the powers and ambit of the SFAP and its procedure.

5.125. It is understood that the SFAP held its first meeting on 3 October 2006 and dealt with appeals then (rather than January 2007 as in the Inquiry's question) [see **SKIP0000030\_027**].

5.126. On 21 January 2005 William Connon sent an email to officials in the devolved administrations on the AA and SLA [**DHSC0006798\_049**]. In that email he said I would get in touch about the SFAP but that felt the AA and SLA should be finalised first.

5.127. In March and April 2005 William Connon exchanged emails with Martin Cantrell about the Skipton Fund [**DHSC0003463\_007**]. On 22 March 2005 he wrote to Martin that it had been suggested at a recent meeting in Scotland that the "Appeals Service" could be used to hear appeals. William Connon asked Martin for a steer on whether that might be a viable option. Martin Cantrell wanted to get input from another lawyer on this.

5.128. At the end of April 2005 William Connon was asked by the Ministers' private office to give a time frame for when the SFAP would be up and running [**DHSC0003461\_002**]. In response he wrote:

*"I am very sorry but without detailed discussions with lawyers I just don't think it is sensible to put a time on this. It is indeed regrettable that these procedures have not been in place before now and I am trying to rectify this urgently, but resources are thin on the ground. Unfortunately, I have come to this anew as have all of the lawyers dealing with it so*

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*none of us have much background knowledge on a number of issues, which doesn't help.*

*If PS(L) insists on a timescale then I would suggest he says "by the end of the year" but I would advise against this as I just don't know for sure how long the establishment process may take in the absence of legal advice and consideration of the issues. I had hoped we could use the services of the Appeals Service but initial advice is that this may not be possible. Establishing a new, independent body may take some time."*

5.129. Lord Warner then asked for a submission setting out the reasons why the appeal system could not be in place by the end of May 2005. A submission in response has not been located. The email chain says that the resource issues were both in blood policy and in getting legal advice and William Connon stated that it would not be possible to have the SFAP operating by the end of May.

5.130. On 11 May 2005 William Connon emailed Martin Cantrell and updated him on *"a recent meeting with Lord Warner, who has insisted that we establish the appeals system by the end of July..."* [DHSC0003456\_007].

5.131. On 20 May 2005 Martin Cantrell emailed William Connon and expressed the view that *"an appeal mechanism does not have to have a legislative base. It needs to be independent and potential appellants need to be reminded of their right to appeal. The system of appointing members, as described in the paper circulated, seems to be on the right lines"* [DHSC0003471\_002].

5.132. On 24 May 2005 William Connon emailed Martin Cantrell again [DHSC0003470\_003]. He had discussed appeals with the Skipton Fund Chair who agreed there was no need for a legislative body, providing the SFAP was seen to be independent.

5.133. As described above, at the end of May and in June 2005 there were discussions with Scottish officials about the need for legislation for an appeals

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panel and, if Scottish legislation was to provide for appeals, what decisions should be appealable (see eg **[DHSC0003469\_001]** and **[DHSC0003476\_001]**).

5.134. The Inquiry has referred to an email chain between Scottish officials in June 2006 **[DHSC0003465\_001]**. DH officials were copied into some but not all of these emails. It appears that Scottish officials were trying to finalise wording on appeals from Skipton Fund decisions to include in Scottish legislation. An email from Joanna Keating (Scottish official), dated 21 June 2005, said that William Connon was on leave. The email chain dt Scottish legislation but concluded that there should be a right to appeal against a refusal to make a stage one or stage two payment. It also set out “*the intended appeal process*”.

5.135. On 22 June 2005 William Connon emailed officials from the devolved administrations (and others) about the AA, the SLA and the SFAP **[DHSC0003480\_001]**. He attached a “*paper on the appeals procedure which Joy Hosie kindly prepared from an earlier version which had been widely circulated and accepted.*” It is believed Joy Hosie was a Scottish official. That paper on the appeals procedure has not been identified to date. However, there is an undated note from Joy Hosie to William Connon which appears to date from around this time and which refers to a draft structure for the SFAP and advised that contact should be made with the “*Public Appointments Organisation*” **[DHSC0004185\_019]**. She also suggested that the process of drafting the “*rules of procedure for the Tribunal*” should be commenced and offered her assistance in doing this.

5.136. William Connon’s email, dated 22 June 2005, said that the attached paper on the appeals procedure had been circulated late in 2004, Joy Hosie had updated it and it had the:

*“real advantage of being largely acceptable (at that time) to the various interested parties and where comments were made we have included these.*



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*I understand that it was agreed that a haematologist should be added to the list of panel members...We now need to contact the Public Appointments Organisation in order that adverts can be drafted and placed and I am grateful to Joy for progressing this, subject to time constraints, which we will discuss (Joy, I will call you).*

*The process for public appointments will inevitably take some time and there will also require to be a period of training...*

*In the interim, the process of drafting the Rules of Procedure for the Tribunal needs to be started and I will speak to Joy separately about this. If others wish to be directly involved then please let me know. I think this should be done in close consultation with the Skipton Fund Trustees."*

5.137. William Connon asked for comments on the attached documents but said this was all subject to the outcome of the Scottish Health Committee hearing on 30 June 2005.

5.138. Karen Arnold, a government lawyer, obtained advice from counsel on establishing the SFAP. On 26 July 2005 she sent this to William Connon [DHSC0006798\_028]. Counsel had advised that DH had the power to establish an appeal system. William Connon then sought further legal advice from Martin Cantrell about who should establish the SFAP (Counsel had advised either DH or the Skipton Fund could establish it). William Connon also wanted to know if the NHS Appointments Commission could recruit SFAP members as the Skipton Fund was not an NHS body.

5.139. On 3 August 2005 Sylvia Shearer emailed William Connon and others. A meeting was planned between officials on setting up the SFAP [SKIP0000031\_231]. Sylvia Shearer expressed her concern that the Skipton Fund might set up the SFAP. The Scottish Minister wanted DH to set up the SFAP with input from the "*Public Appointments units of the administrations*". Her email also said:

*"As far as I am aware, the proposals for the setting up of an Appeals Panel which were circulated in October 2004 were, in the main, agreed to by the Haemophilia Society at that time and to deviate greatly from those proposals is likely to cause our Minister difficulties..."*

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5.140. On 4 August 2005 Joy Hosie emailed Sylvia Shearer and copied William Connon [WITN6887023]. She expressed the view that the Skipton Fund should not take on the role of appointing and running the SFAP, however DH could since *"in the nature of it the public appointments commission would be advertising and selecting independent panel members to form an independent tribunal."* Her view was that the Public Appointments Commission could appoint panel members.

5.141. On 5 August 2005, Martin Cantrell replied to William Connon's email dated 27 July 2005 [DHSC0006888\_037]. He agreed with the Scottish view that the NHS Appointments Commission should be asked to help DH establish the appeals procedure.

5.142. As set out earlier in this chronology, around this time changes to the eligibility for Skipton Fund payments were being considered and made in Scotland and the other administrations were considering whether to do the same.

5.143. On 11 October 2005 William Connon sent a note to Dani Lee (in the Secretary of State's private office) in relation to the Secretary of State's meeting with Lord Morris the following day [DHSC0041306\_044]. The attached briefing stated that, *"[w]e have now established and agreed appeals procures and are in the process of implementing these"* [sic]

5.144. On 8 November 2005 William Connon sent a note to Caroline Flint's private secretary, setting out the background to establishing the SFAP [DHSC0041162\_058]. This included:

- *"A consultation exercise was undertaken with key stakeholders on the composition of the [SFAP] including with the DA's"*
- *This exercise was not completed until Spring 2005.*

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- *The initial focus was on making payments and finalising the Agency Agreement before putting the appeals procedures in place*
- *Very limited departmental resources have delayed completion of the appeals process.”*

5.145. On appointments to the SFAP the document says:

- *“It has still not been confirmed that the NHS Appointments Commission will be able to take on this work.*
- *The main question is whether they can take on the Skipton Fund as decisions made by the Trustees and not the SofS for Health.*
- *If the Appointments Commission cannot handle the appointments then we will have to identify a suitable external agency.*
- *Whoever handles the appointments, it is likely to be some month before the panel members are appointed and in post.*
- *The job descriptions will have to agreed, adverts placed and people interviewed and appointed, which we anticipate could take several months.*
- *Again limited staff resources have hindered the development of the appeals procedures.”*

5.146. The Inquiry has referred to other two versions of this note which, as they do not have full dates, may be drafts **[DHSC0015572]** and **[DHSC0041198\_152]**.

5.147. The Inquiry has referred to an email exchange between Hugh Nicholas and Ted Goff, from the DH Strategy and Legislation branch, dated January 2006 **[DHSC0007101]**. William Connon was copied in. Hugh Nicholas’ email says that the proposal was that SFAP should consider appeals from appellants across the whole of the UK and so would function on a UK wide basis.

5.148. On 27 January 2006 Ted Goff put up a submission to Caroline Flint on the SFAP **[DHSC0007056]**. William Connon was copied. It notified the Minister of progress towards setting up the SFAP and sought her approval of the proposed remuneration for SFAP members. It stated that that NHS Appointments Commission had confirmed it was willing and able to take on

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recruitment and appointments of SFAP members. The submission stated that the SFAP's terms of reference were:

*"to reconsider the cases of any claimants who appeal against individual decisions made by Skipton Fund Limited. The Panel will look at how the decision was reached and examine all available evidence, or request further evidence where necessary, in order to either confirm or change the Skipton Fund's decision."*

5.149. The submission stated that the SFAP would be wholly independent of the Skipton Fund and the Skipton Fund would provide SFAP with a secretariat. It continued:

*"As with the Skipton Fund Limited, the Panel will be working on behalf of all four UK administrations, and the costs, both of payments and of administration, will be shared in proportion to the total of applications from each country" [sic].*

5.150. The Inquiry has referred to another copy of this submission with handwriting on it **[DHSC0041198\_151]**.

5.151. At the end of January/ into February 2006 there were emails between a government lawyer and Ted Goff (with others copied in) on the wording of directions to the NHS Appointments Commission for the SFAP **[DHSC0007087]**. An email in this chain from Ted Goff, dated 28 February 2006, stated that advertisements for the SFAP would be published in the next week or so.

5.152. On 3 March 2006 Ted Goff emailed a government lawyer, in response to her going on leave for 10 days, to say:

*"We hope to place the adverts for the posts in the next week or so, and providing we have the directions in place at the time when the NHSAC are in a position to make the appointments that will be fine."*  
**[WITN6887024]**

5.153. On 7 March 2006 Ted Goff emailed various officials, including in the devolved administrations, about the SFAP advertisements, panel members and NHS

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Appointments Commissions directions [DHSC0007081]. Another email that day said that the posts would not be published until the next week or possibly week after. On 14 March 2006 a government solicitor wrote that she would submit the directions “for final SOL clearance.”

5.154. On 6 April 2006 the Haemophilia Society sent William Connon a letter on the SFAP [HSOC0009241\_004]. The letter said that advertisements for SFAP members had been put out by this point. The Haemophilia Society made a number of comments about the SFAP, including asking why the SFAP would include a GP, whether appellants could attend appeals in person, whether legal representation would be funded, and whether the SFAP legal panel member would have knowledge of both Scottish and English law.

5.155. The Inquiry has provided a draft reply to this letter [DHSC0020871\_022]. The final version of this letter appears to be dated 9 May 2006 (William Connon to Margaret Unwin) [HSOC0009240]. That letter stated it was William Connon’s belief that the Haemophilia Society had been involved in discussions with DH about the SFAP in 2004 and that the Haemophilia Society was included in the consultation exercise on the appeals panel and comments received were considered and reflected in the finalised proposals. William Connon wrote, *[i]n terms of composition of the Panel, I think it is important that the Panel should include both haematological and hepatological expertise. The addition of the general practitioner followed the consultation exercise. The view was expressed that the GP would bring a broader perspective that could throw light on the effects of other factors that could lead to liver disease...* It is not clear who expressed that view.<sup>7</sup>

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<sup>7</sup> There is an email from John Morris of the Haemophilia Society to Michael Brannan, DH, dated 15 October 2004 (i.e. before William Connon was in post) in which the Haemophilia Society suggested the appeals panel “would benefit by replacing the GP with a secondary care consultant... Our preference therefore would be for a haemophilia consultant with considerable experience of managing hepatitis C... This person would partner the hepatologist whom you suggest. Similarly or at least alternatively, the expert sub-panel would benefit by having input from a haematology consultant who specialises in hepatitis C...” [DHSC0041217\_047].

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5.156. William Connon's letter also explained that the SFAP was never intended to allow for the attendance of the appellant or a legal representative and that detailed knowledge of the different legal systems in England and Scotland was not needed because of the nature of the appeal.

5.157. Minutes of the meeting of the Skipton Fund board of directors on 8 May 2006 record, in relation to the SFAP:

*"Appeals Panel – It is expected that the starting date of 1<sup>st</sup> July for the appeals panel will need to be put back due to difficulties the DoH are having with recruiting a haematologist and a hepatologist."*  
**[SKIP0000030\_146]**

5.158. As stated above, the SFAP met and reviewed cases for the first time on 3 October 2006 **[SKIP0000030\_027]**.<sup>8</sup>

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<sup>8</sup> This document records that the Skipton Fund board members were not satisfied the SFAP had met without a hepatologist present and this concern would be communicated to the Chair of the SFAP.

## Section 6: vCJD

### How vCJD was managed in the Blood Policy Team

6.1. The Inquiry has asked William Connon to explain his role and responsibilities while head of the Blood Policy Unit for vCJD, and how vCJD was managed by the Unit.

6.2. A *"CJD Project Highlight Report"* dated 29 March 2005 lists the followings leads:

(1) Project Lead/Executive- Eileen Lawrence

(2) Project Manager – Darren Hughes

(3) Programme Manager – Ailsa Wight

**[DHSC5001001]**

6.3. In the same document under "Issues" the *"funding for Prion reduction technology is not clear [Deliverable 008]"*, William Connon is listed as responsible for *"clarifying funding issues regarding Prion reduction technology."*

6.4. In the same report dated 17 August 2005 by action points specified for William Connon were under the heading "Other Project Issues – SEAC":

*"WC to contact Peter Garwood about anything NBS want considered by SEAC. Specifically if they want SEAC to consider Prion Filtration."*

**[DHSC5027023]**

6.5. The Spongiform Encephalopathy Advisory Committee ("SEAC") was an advisory committee established in 1990, sponsored jointly by DEFRA, the DH

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and the Food Standards Agency (FSA) to provide independent expert scientific advice to government on BSE, CJD and scrapie.<sup>9</sup>

- 6.6. William Connon was one of 5 representatives from General Health Protection at SEAC alongside Ailsa Wight, Rowena Jecock, Gerry Robb and Darren Hughes.
- 6.7. The Microbiological Safety of Blood and Tissues/Bone for Transplantation (“MSBT”) looked at measures to reduce the potential risk of vCJD transmission via bone, tissue or organ transplantation.<sup>10</sup>
- 6.8. A letter dated 25 August 2005 to William Connon from Dr Angela Robinson and Dr Marc Turner as Medical Director and Chair, SACTTI vCJD subgroup respectively [NHBT0008349]<sup>11</sup>. The title of the letter was “*Request for SEAC to review of risk of vCJD transmission from blood transfusion*”. The letter stated that the authors understood that formal requests for advice from SEAC should be directed via William Connon and they asked that SEAC review the current level of risk of transmission of vCJD by blood transfusion.
- 6.9. William Connon emailed Ailsa Wight on 20 November 2006, responding to Ailsa Wight’s request for comments on her draft objectives. William Connon pointed out that vCJD was not specifically mentioned [DHSC5442726].
- 6.10. In what appear to be Ailsa Wight’s finalised objectives vCJD appears in the first numbered point [WITN6887026]:

*Specific Objectives*

*1. CJD*

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<sup>9</sup> See background document contained within the email chain between Eileen Lawrence and Ailsa Wight re: VCJD in West Wales [WITN6887025]

<sup>10</sup> See Summary of SEAC’s agenda items for meeting on 21 April 2005 [WITN6887027]

<sup>11</sup> The Inquiry also refers me to document [DHSC0041223\_082] which appears to be a duplicate of the letter dated 24 August 2005.



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- *Ensure necessary measures to minimise potential for secondary spread of infection, specifically in relation to dentistry and highly transfused patients*
- *Maintain robust surveillance mechanisms*
- *With HPA, ensure good practice in relation to follow up of at risk patients*
- *Progress prevalence study work with HPA with a view to preliminary assessment mid-year*
- *Prepare for evaluation and introduction of screening/diagnostic tests*
- *Review research programme priorities in line with policy needs*

6.11. William Connon sent an email to Ailsa Wight and others dated 21 November 2006 with subject line "AW objectives", suggesting that "normalising of vCJD" be discussed at the next Portfolio managers meeting "as I am not clear what our policy is on handling this is" [DHSC5442890]. The email continued by saying:

*"I thought Mark's post was advertised as policy lead on vCJD so how does this sit with normalisation? vCJD is not going to go away and the lack of a proper home for it has in my view led to confusion and delay in progressing a number of issues, such as how to manage highly transfused donors. I think it is important that we are all clear on how it is to be handled.*

*What do others think?"*

6.12. A later exchange of emails on the same subject in which William Connon stated [DHSC5444918]:

*"Happy for vCJD to go on the agenda for next week's Portfolio Managers meeting. I agree vCJD "cuts across" a number of teams (as indeed does blood) but it is crucial that vCJD is managed and lead as a distinct issue. If it doesn't have a policy home then there is a real danger that things won't progress as they should. Grateful if this could go on the agenda for next week and will be interested in the views of others."*

6.13. Ailsa Wight responded to that chain, primarily to Mark Noterman, who was unable to attend the next section heads meeting:

*"Mark,*

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*Sorry you can't make it on Monday. You and I have spoken. Your responsibility is very much to 'hold the ring' on CJD, and lead on overall policy development for just the reasons William identifies. Happy to chat with you and William further about any specific CJD issues. I agree the highly transfused is essentially a public health issue, rather than a blood safety and supply one, and you have kindly agreed to take that forward.*

*TB, on which Ro leads, is another area where we manage work in a similar way to CJD, and I think it could still be useful if we have time on Monday to have a brief discussion about general principles, and clarify understandings, perhaps linked to business planning and resource issues."*

- 6.14. On 1 March 2007 there was a further email exchange between William Connon, Ailsa Wight and others about where the vCJD work sat within the DH [DHSC6359021]:

*"Ailsa - I will take this task forward, as it is clearly urgent and important that this issue is dealt with. However, this confirms my view that there is an apparent lack of a clarity about where the policy lead on vCJD rests. Developing handling, coordinating and managing policy on vCJD is extremely important yet there is confusion about where responsibility for this rests. I have made this point several times previously and touched on it in my recent response to the proposals for restructuring of the Division. This is primarily a vCDJ policy issue, which requires the input from the blood team and NHSBT. Since Eileen's departure I have observed the team has been described as the "vCJD Policy Team" the "Branch Coordination and vCJD Policy Team" and in the latest set of restructuring proposals, it is referred to as the "Project Management and Risk Team". As we have never had an effective project management system in place, and I am not aware of any plans to re-introduce one, then I am perplexed by the latest name change. I am more concerned at the disappearance of any reference to vCJD policy. As you know I am already fully stretched on the Blood Team. This increasing creep towards handling vCJD issues, such as this is not helpful. Inevitably it has a negative impact on other areas of equally important work, on blood. For example, Neil appears to be at a meeting this morning of the vCJD Prevalence Studies Project Board (not part of his current role) when I need to discuss an urgent MSBTO paper, which is required for David Harper on Monday. Given the importance of vCJD policy I am concerned that insufficient attention is being given to developing, progressing and managing work generally on vCJD. This is not an issue about flexibility but one about clear policy lead and responsibility on a very significant policy issue. Some clarification and consistency would be greatly appreciated."*

- 6.15. Ailsa Wight replied to William Connon and others the same day:

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*"I'm sorry if you feel there remains confusion about handling of CJD and blood issues, particularly because as you say of the importance of both blood policy and CJD. I hope the following may help: First, Mark's team is 'Branch co-ordination and CJD', as in the summary paper that was tabled at Liz's recent meeting with the Grade 6/7s and in the up to date organograms - you are right that this the organograms that were circulated with the consultation pack show the old nomenclature, and I must apologise for that. Secondly, the role of Mark's post is to lead on general public health and evidence base issues, and to co-ordinate overall DH interests in, and activity on, CJD. This means that through the CJD stocktake group, and the project management arrangements - essentially an issues log with outcomes and identified task leads (put in place while Eileen was in post) - the holder of that post has responsibility for making sure that all necessary work on CJD is taken forward and cross branch, divisional and indeed cross departmental work is properly co-ordinated\_ This does not necessarily mean that Mark's team (and as you know because of pressures elsewhere in the division, Ben has not been able to join the team at present) carry out all the work. Other teams will, within the overall co-ordination arrangements, have responsibility for dealing with certain areas and tasks as appropriate: good cases in point are the work of Rowena's team on CJD diagnostics; Gerry's team on CJD surveillance; and Sally's team on instrument decontamination. This makes sense given the very wide scope of the CJD work and the branch and other resources available to deal with it. I believe that managing the overall CJD programme in this flexible way has been demonstrated to work well. In this context I would expect that for blood safety policy in relation to CJD, your team would take the lead in the day to day handling, and this would include for example issues around the screening of blood donors, or other measures introduced to protect the blood supply. I hope this clarifies arrangements and I am always very happy to discuss further with you and your team, or indeed more widely at a portfolio managers meeting, perhaps next Monday?"*

6.16. William Connon's final reply:

*"Ailsa,*

*Thank you for this. I suggest that this is indeed discussed at the Portfolio managers meeting as I would dispute your statement that "managing the overall CJD programme in this flexible way has been demonstrated to work well." Given past experiences, I would be interested to hear the views of others."*

6.17. A draft structure chart suggests that Eileen Lawrence was the lead for CJD reporting to Ailsa Wight as Branch Lead **[DHSC6011120]**.

### **Surveillance of vCJD in donor and patient populations**

- 6.18. The Inquiry has asked what role, in broad terms, the DH played in the surveillance of vCJD in donor and patient populations.
- 6.19. An email from Pat Mann to Alisa Wight was forwarded by William Connon to Zubeda Seedat on 16 June 2005 with the subject "Letter from Professor Frank Hill". William Connon proposed that some of the underspend from the recombinant roll out could be used for UKHCDO funding. William Connon asked Zubeda Seedat to find out how much money was needed. **[DHSC5372998]**.
- 6.20. An email dated 21 June 2005 from Charles Hay to Pat Mann stated that Dr Hay would like to participate in a meeting with Ailsa Wight **[HCDO0000243\_002]**.
- 6.21. William Connon wrote to Dr Hay on 10 October 2005 and confirmed that £232,280 would be paid to the UKHCDO to support development costs for the National Haemophilia Database and the work to support the assessment of vCJD risk in haemophilia patients. **[DHSC0003525\_014]**. The letter stated that further years of funding could not be guaranteed.
- 6.22. Dr Hay replied on 9 November 2005, and thanked William Connon, as a representative of DH, for the funding. **[DHSC0033299]**

### **Exercises to notify patients of their 'at risk for public health status of vCJD'**

- 6.23. The Inquiry has asked William Connon to describe his role in any exercises to notify patients of their 'at risk for public health status of vCJD'.

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6.24. In an email dated 17 December 2004 from Pat Mann to William Connon, Noel Gill (HPA Centre for Infections) and Don Jeffries [HCDO0000242\_088], Professor Hill's concerns are stated as follows:

*"...(1) Refusal to endoscope patients with haemophilia.*

*(2) Suggestion that contaminated endoscopes are hired and used for haemophilia patients as they are infected with vCJD rather than in a potential at risk group.*

*(3) Endoscopy services for everyone are affected and units are running out of endoscopes for investigating anyone.*

*(4) Difficulties in obtaining/making available funds to purchase new instruments.*

*There does appear to be in some of the Trusts with Haemophillia Centres to be a reluctance on the part of the Infection Control Teams to engage and take on the responsibilities that are rightly theirs.*

*There is an urgent need for central discussion, agreed actions and funding, otherwise current Health Protection advice cannot be instituted without causing risk to haemophilia patients and to all other patients requiring endoscopy services" [HCDO0000242\_088]*

6.25. An email dated 17 December 2004 from Don Jeffries to Noel Gill, William Connon and Pat Mann included a draft response to Professor Hill [HCDO0000242\_088].

6.26. An email dated 17 December 2004 from Noel Gill to Don Jeffries and Michael Painter copied Dr Kate Soldan (CJD Section Head, HPA) and Harvey Gamble, asking for advice on how to respond [HCDO0000242\_088].

6.27. On 20 December 2004, William Connon forwarded Professor Hill's email to Hugh Nicholas and stated that a chat would be helpful [WITN6887028].

6.28. On 8 April 2005 Rowena Jecock forwarded to William Connon legal advice on whether the NBS could continue to accept donations from vCJD infected donors and asked William Connon to cover her absence the following week [DHSC5236307].

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6.29. On 20 April 2005, Rowena Jecock then copied William Connon to an email to Dr Alisa Wight which asked Zubeda Seedat to do a note for Gerard Hetherington in relation to a probable vCJD case in an individual who had donated blood. The latest email in the chain stated **[DHSC5366406]**:

*“... we have mechanisms in place to identify and deal with this – and to ensure that “at risk” patients will be contacted through their GPs...”*

6.30. On 20 June 2005, Rowena Jecock sent a submission to CMO, PS(PH) and the Secretary of State titled *“Secondary Transmission of variant CJD: Recommendations for further public health precautions”* to which William Connon was one of a number copied. It anticipated that the two expert committees - CJD Incidents Panel (“CJDIP”) and Committee on Microbiological Safety of Blood, Tissues and Organs (“MSBTO”) - would recommend that the donors at risk and their clinicians should be informed of their risk status **[DHSC0041306\_069]**.

6.31. On 22 June 2005, William Connon emailed the DAs and confirmed that joint recommendations would be forthcoming from the Committee on MSBTO and CJDIP in relation to measures to reduce the risk of secondary infection transmission of vCJD in order for their respective Ministers and blood authorities to be advised **[DHN10000033\_043]**.

6.32. On 10 October 2005, Dr Alisa Wight copied William Connon and others to a submission to the CMO with recommendations from the CJDIP. It sought agreement for a communications exercise to involve NHS Trusts (to confirm patient records), and subsequently, individuals, their GPs and other healthcare staff in relation to notifying donors and recipients **[DHN10000039\_007]<sup>12</sup>**.

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<sup>12</sup> **[DHSC6270353]** appears to be a duplicate of this document.

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- 6.33. On 8 December 2005, William Connon sent a Ministerial briefing note to PS(PH) and MS(HS) which responded to a request for information on issues surrounding vCJD and precautionary measures being taken by NHS Blood and Transplant (NHSBT) [DHSC0041162\_033]. The submission confirmed that DH took the decision to notify all patients in the UK who had received plasma products from the implicated batches that were assessed as 'at risk'.
- 6.34. Notification from Jan Mackenzie dated 12 October 2006 to the UK Blood Transfusion Services. [DHIN0000032\_005].
- 6.35. Between 23 April 2007 – 26 April 2007, William Connon was included in some but not all emails following a meeting on vCJD regarding a note from NHSBT and tracking patients in the 'multiple transfusions group'. Email from William Connon to Elizabeth Woodeson noted [DHSC5469597]:

*"...It is not entirely clear who is leading on this sub-group from DH (CJDIP falls within Mark's team) but I would suggest that whoever is, ensures that this is placed on the agenda for the May meeting and that the urgency is emphasised..."*

### **Blood traceability**

- 6.36. The Inquiry has stated that William Connon was informed of problems with blood traceability in February 2006. It asks what steps, if any, did William Connon or the Blood Policy Unit take in response.
- 6.37. An email dated 22 February 2006 from Nicky Connor, Consultant Epidemiologist, Head of CJD Section to Rowena Jecock and Ailsa Wight [DHSC6709365] stated:

*"Dear Rowena and Ailsa, I have recently been informed about a patient with vCJD who donated plasma that was used to manufacture two batches of albumin 4.5%. These batches were not part of the 2004 plasma products patient notification. This donation was made in 1987 and the batch expiry dates were in 1990. A total of 4,333 vials of albumin 4.5% were produced using this implicated plasma donation. BPL have supplied the HPA with manufacturing data for these batches, and we have now completed our calculations*

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*to estimate product batch infectivity. Of note, the donor also made two donations of whole blood in 1984. The UKBTS are unable to trace these donations. The incident will now be brought to the CJD Incident Panel for consideration of whether a look back investigation should be carried out to identify recipients who may have received sufficient amounts of implicated albumin 4.5% to put them 'at risk of vCJD for public health purposes'. I will keep you informed of progress in this incident."*

- 6.38. The same day Rowena Jecock, forwarded that email to William Connon and Eileen Lawrence with the addition of:

*"Eileen/William, for info.*

*The CJDIP will do what's necessary on this, so no action for us at present.*

*William - Unfortunate that UKBTS cannot trace the fate of the whole blood donations - this does highlight the problem of blood traceability. Scotland appears to be much better at it than we are, and I think it's something we need to address. Do you want to raise with Lindsey?"*

- 6.39. An email dated 7 March 2006 from Rowena Jecock to Alisa Wight, Eileen Lawrence, Nicky Connor and William Connon referenced the likely need to invoke the Gateway mechanism to alert the NHS and ask them to identify patients who had received albumin, and requested the issue be placed on the agenda for a meeting with HPA CJD colleagues on 29 March **[DHSC5404150]**.