

**COUNSEL TO THE INQUIRY NOTE ON ARCH0003155 AND LEGAL
PROFESSIONAL PRIVILEGE**

1. The written Closing Statement made on behalf of the Core Participants represented by Collins LLP (“the Collins Closing Statement”) contained reference to **ARCH0003155**. This is a note written by Mr Deas, a lawyer for the Plaintiffs in the HIV Litigation, dated 11 December 1990. It was referred to and quoted at §375-379 and §498 of the written Collins Closing Statement [SUBS0000063]. It was not mentioned or shown in the oral statement made by Steven Snowden KC on 17 January 2023. So far as Counsel to the Inquiry (“CTI”) are able to tell, no other Core Participant has made reference to ARCH0003155 in their written closing statement.
2. ARCH0003155 is a document that would undoubtedly have attracted legal professional privilege when it was created. It was a confidential note by one lawyer (Mr Deas) to other lawyers (solicitors and counsel) with whom he was jointly instructed, giving his view on the prospects of success in the litigation and commenting on the proposal to settle.
3. CTI have provided a number of Notes on legal professional privilege during the course of this Inquiry: see INQY0000445 (“Note by Counsel to the Inquiry on Privilege and the HIV Litigation”, 15 November 2021); INQY0000446 (“Further Note by Counsel to the Inquiry on Privilege and HIV Litigation”, 11 January 2022); INQY0000348 (“Note by CTI on the Status of the Advice on Settlement Given by Counsel to the Plaintiffs in the HIV Litigation”, 2 May 2022); and INQY0000351 (“Further Note by CTI on the Status of the Advice on Settlement Given by Counsel to the Plaintiffs in the HIV Litigation”, 5 May 2022). The responses of Core Participants to INQY0000348 can be found at INQY0000352 to INQY0000356. The legal analysis in those documents is not repeated.
4. The Chair’s Ruling of 24 May 2022 on the Advice by Counsel to the Plaintiffs dated 12 December 1990 is at INQY0000358. The Chair found in respect of that document that confidentiality had been lost, that legal professional privilege could

no longer be claimed, and that the document was disclosable. The document was provided to Core Participants and has been referred to publicly in evidence.

5. ARCH0003155 was disclosed by the Inquiry to Core Participants via Relativity on 30 April 2021. That disclosure was subject to the Inquiry's Confidentiality Undertaking. The document was identified as one to which legal professional privilege might apply in CTI's Note of 11 January 2022 (§16). The document remained on Relativity but has now been removed. It was referred to and partially summarised in the Collins Closing Statement. That statement was disclosed to other Core Participants and was published on the Inquiry's website from 23 December 2022. On 24 January 2023 the sections of the statement dealing with ARCH0003155 were redacted from the version published on the Inquiry's website, pending resolution of this issue. During the period of time during which the unredacted Collins Closing Statement was available online it was downloaded 605 times. 359 of those downloads were identified as being "unique"; in other words, 359 separate devices have downloaded the submissions, and some of those must have done so more than once (hence the higher figure of 605 total downloads).
6. So far as CTI are aware, ARCH0003155 was not referred to in evidence during the Inquiry's hearings. Nor has the document itself been made available to the public via the Inquiry's website. Two short references were made to it in the witness statements provided by Carol Grayson:
 - a. Third statement, 20 April 2021: Ms Grayson described one of the documents that she had provided to this Inquiry as "11/12/1990 – Fax from A D Deas (Deas Mallen Solicitors) to colleagues and counsel, re: HIV litigation." [WITN1055004, p.248].¹ The statement (but not the document) has been published on the Inquiry website.
 - b. Fourth statement, 22 June 2022: Ms Grayson referred briefly to the document at §13 and described raising it with the Secretary to the Archer

¹ Elsewhere in this statement a reference is made to a document dated 11/12/1990 which is described as "*Part of legal document from Deas Mallen Souter Solicitors regarding self-sufficiency*". WITN1055004, p.246. This may be another reference to Mr Deas' note.

Inquiry [WITN1055205, p.5]. This statement has not yet been published on the Inquiry website.

7. As the URN suggests, ARCH0003155 was disclosed to the Inquiry from the archives of the Archer Inquiry. Electronic searches suggest that the document was not referred to in Lord Archer's report.² It is not known whether it was referred to in oral evidence to that inquiry.
8. ARCH00003155 was also referred to (with some reference to the substance of the document) in Collins' Response to CTI's Note on Privilege of 15 November 2021, which was dated 2 December 2021 and is at INQY0000317. INQY0000317 was disclosed to Core Participants on 26 January 2022.
9. The Inquiry is unaware of any other evidence that this document has been placed in the public domain. If Core Participants are aware of any such evidence they are invited to bring this to the Inquiry's attention.
10. It follows that:
 - a. ARCH0003155 was available to at least some of those participating in the Archer Inquiry.
 - b. The document was disclosed to all Core Participants in this Inquiry, and was accessible via Relativity between 30 April 2021 and 24 January 2023. This access and disclosure was subject to a strict confidentiality undertaking.
 - c. A partial summary of the document, and some quotations from it, were made available publicly via the Collins Closing Statement between 23 December 2022 and 24 January 2023.
 - d. The Collins Closing Statement was downloaded 605 times. 359 of those downloads were identified as being unique.

² Search terms used: "Deas", "December", "litigation", "settlement", "Galbraith".

- e. The document itself was not made publicly available at that or any other time by the Inquiry.
- f. The Inquiry does not know of any further instance in which the document or its contents have been made publicly available but invites Core Participants to inform the Inquiry if they are aware of any such instances.

Legal Analysis

- 11. The legal principles set out in CTI's previous submissions apply. It will be a matter for the Chair as to whether the document remains confidential and whether it should be disclosed and used in this Inquiry.

Next Steps

- 12. Core Participants are invited to make submissions, if instructed, on whether ARCH0003155 and the information that it contains should be publicly disclosed by the Inquiry. CTI may make further submissions in response. The Chair will, if necessary, be invited to make a ruling.
- 13. If ARCH0003155 is not disclosed, it is proposed that the redactions currently applied to the Collins Closing Statement should remain in place and the Chair should not consider further the document or any arguments that are made about it.
- 14. If the document is disclosed, then the redactions from the Collins Closing Statement can be removed. The Chair will need to consider whether fairness requires any or all of the following steps:
 - a. ARCH0003155 be provided to Mark Mildred and/or Anthony Mallen, who were solicitors for the Plaintiffs in the HIV Litigation and to whom the document was addressed (among others). Both have provided written statements to this Inquiry. The Inquiry would have provided ARCH0003155 to them when requesting evidence, but for what was then perceived to be its privileged status.

- b. ARCH0003155 be provided to Sir Rupert Jackson KC, who was another of those listed as recipients of the document.
 - c. All Core Participants be given an opportunity to make written submissions about ARCH0003155 and the use made of it in the Collins Closing Statement.
15. It is emphasised that the decision on whether the document is privileged precedes and is entirely independent from any question of what steps should be taken if it is found to be disclosable.

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