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Date: 4 July 2014

## **CONTAMINATED BLOOD: TRANSPARENCY OF THE HISTORICAL RECORD**

### **Purpose**

- To advise you of options for the release of records that relate to contaminated blood between 1986-1995.

### **Recommendations**

1. That you agree to:
  - Write to the MoJ to request that they expedite the normal process for release of documents to TNA, to enable an initial release around the time that Lord Penrose publishes his report.
  - Release of the remaining records at The National Archives (TNA) in June 2015.

### **Timing**

2. Urgent, noting that an early response is needed to meet a release date of September.

### **Standards of Preparation**

3. The preparation of records for release is a time consuming and manual process. The process ensures that the right information is released to the public to avoid challenges and penalties. The Cabinet Office has asked Departments to ensure that information is not unintentionally disclosed, which might open the Department to litigation or penalties.
4. Where the sensitivity review process finds information that should not be released, we must remove it. For small sections of information we make a

- copy, redact the information and show in the original file where it has been removed and why. The original material is kept in a separate file which is transferred to TNA, but not made public until the sensitivity has expired.
5. Records released to the public are kept in perpetuity, which means they need to be prepared in such a way that they will endure for future generations. This includes ensuring that torn pages are repaired and metals such as paperclips are removed.
  6. A record which is likely to contain personal or commercial information would take an experienced team member half a day of effort to complete.

### **Approvals and the role of the Advisory Council**

7. The key limiting factor in releasing documents to TNA is The Advisory Council on National Records and Archives (ACNRA), which has the role of approving the redactions and closures from the records transferring to TNA. It provides independent advice to the Lord Chancellor, but has no executive functions and none of the members are paid.
8. ACNRA meets four times per year, and the remaining meeting for 2014 will take place in November, for which submissions need to be deposited in October. They have a role under the Freedom of Information Act to consider all records before they are deposited at TNA.
9. The submission to ACNRA needs to include an explanation of each individual file, a summary of why the information is sensitive and how long it needs to be kept before release to the public. Given these requirements, a submission cannot be made before the records have been through the sensitivity review process.

### **Initial release of documents**

10. In order to enable a release of documents to TNA at the time Penrose reports, the ACNRA would need to convene an extraordinary meeting. If ACNRA would agree to an extraordinary meeting to meet a September release schedule, they would need to meet in early August in order to consider the case put to them. If ACNRA were to hold this meeting, we would need to have put 130 files through the sensitivity review process for it to consider.
11. A draft letter to request that ACNRA convenes an extraordinary meeting is at annex A.
12. The sensitivity review, listing and preparation process of 130 records would require 65 days of effort for one person. The period of elapsed time between now and an extraordinary meeting of AN CRA would require additional resources. An estimate that the work needed to be completed in two weeks would require an additional six staff at £250 per day, totalling £1500.

13. If ACNRA does not agree to an extraordinary meeting, the 130 files would be ready for it to consider at its November meeting, and would be released to the public at TNA in January 2015. Two additional staff members are being recruited and should be in place during July to take this work forward.

### **Costs and Timescales for Release of the second tranche of documents**

14. There are 471 records which relate to contaminated blood products and have been identified as being relevant. 20 of these records have already been through the sensitivity review process, which leaves a balance of 451 records to complete. The first tranche would consider 130 files, leaving a balance of 321 records.
15. The first meetings of the ACNRA in 2015 are expected to be held in March and May 2015. The team has capacity to deliver the sensitivity review of the records, and prepare a submission of 160 files for each of these meetings.

### **Alternative Approach – Dual Release**

16. The release of records to The National Archives follows a set process which demands considerable resources in which to deliver records open to the public. It is within the gift of the Department to decide to release information to the public by other means, such as publishing on the DH pages of .Gov.
17. We have previously published FOI releases which contained the redacted papers relating to contaminated blood. The process is simpler as it does not need a case to ACNRA, although the records would need to be sensitivity reviewed, redacted where necessary, copied, and scanned.
18. This would provide the flexibility to ensure that the initial release is timed more specifically around the publication of the Penrose Inquiry. The records would still need to be prepared and transferred to The National Archives, but these would be presented to the ACNRA meeting in November. This would not be any detriment to the transparency of the records.

### **Conclusion**

19. We recommend that you write to MoJ to request an extraordinary meeting of ACNRA to meet a release of the records in September. Should they refuse, there are two options
  - To present the case to the ACNRA meeting in November, which will open the records to the public in January 2015
  - To publish the records on the .gov website to coincide with the publication of Lord Penrose's Report.
20. We recommend waiting for the November meeting, but if you feel that would be too long to wait, we would pursue the website publishing option.

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### **THE PENROSE INQUIRY: RELEASE OF DOCUMENTS TO THE NATIONAL ARCHIVE**

In 2010, the Scottish Government convened a public inquiry under the chairmanship of Lord Penrose, to look into the circumstances leading to the infection of patients in Scotland with HIV and hepatitis C as a result of treatment with NHS supplied blood or blood products. The Penrose Inquiry is due to report in the autumn of this year, possibly in late September or October.

Officials are currently working closely with No.10 to prepare the Government's response to the publication of Lord Penrose's report. A key component of that response will be the early release of the remaining files on this issue that the Department holds, into The National Archive.

There are 130 files which need to be considered for release, which are likely to contain information for which a submission to the Advisory Council on National Records and Archives (ACNRA) is required. The records will shortly undergo a sensitivity review process, which will prepare the case for ANCR to consider, but their next scheduled meeting is not until November 2014.

I am seeking your support as Lord Chancellor that ACNRA would be able to review a submission by mid-August to allow the records to be transferred to The National Archives, and there is a commitment to make the records open to the public to coincide with the publication of Lord Penrose's report in September.

**JEREMY HUNT**