

Witness Name: Susan Catherine Deacon CBE
Statement No: WITN4436_001
Exhibits: WITN4436_002-07
Dated: 20 April 2022

INFECTED BLOOD INQUIRY

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 16th February 2021. I adopt the paragraph numbering in the Rule 9 request for ease of reference.

I, Susan Deacon, will say as follows: -

Section 1: Introduction

Question 1: Please set out your name, address, date of birth and professional qualifications.

1. My name is Susan Catherine Deacon. I live in Scotland and my address is known to the Inquiry. My date of birth is GRO-C 1964. I have an MA in Social Policy and Politics and an MBA. I am a Professorial Fellow of the University of Edinburgh; Fellow of the Institute of Directors; Fellow of the Royal Society of Arts; and Companion of the Chartered Management Institute.

Question 2: Please set out the positions you have held as a professional, the organisations in which you held these positions and your role and responsibilities in these positions.

2. Over the last 35 years I have held a number of positions across a range of organisations and sectors, the detail of which is set out in my CV [WITN4436_002]. Much of my work has focused on organisational

development, leadership and governance, and in building collaborative approaches to change. I have a longstanding interest and involvement in the public policy process, and in the design and delivery of public services.

3. In summary, after graduating in 1987 I worked for seven years in local government management and administration before moving into management education and training, initially in the private sector and then in higher education.
4. I was elected as a Member of the Scottish Parliament in 1999 and served as Minister for Health and Community Care in the Scottish Executive from 1999 until 2001. I stood down from elected office, and ceased all involvement in party political activity, in 2007.
5. Since then, I have worked on a portfolio basis, undertaking a range of roles and projects and combining part-time employment, self-employment and voluntary activity. This has included academic appointments; non-executive directorships; charity trusteeships and advisory roles. I have held one Scottish Government public appointment during this period, as Chair of the Scottish Police Authority from 2017 until 2019.

Question 3: Please set out your membership, past or present, of any committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference.

6. I have not been a member, past or present, of any committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference.
7. I have had some previous involvement with organisations, and in policy development work, with an interest in the prevalence and impact of blood-borne viruses, including HCV and HIV, but this has not included any involvement in matters involving infected blood and blood products through NHS treatment.

Question 4: Please confirm whether you have provided any evidence to, or been involved, in any other inquiries, investigations or criminal or civil litigation in relation to human immunodeficiency virus ('HIV') and/or hepatitis B virus ('HBV') and/or hepatitis C virus ('HCV') and/or variant Creutzfeldt-Jakob disease ('vCJD') in blood and blood products. If you have please provide details of your involvement and copies of any statements which you provided.

8. As Scottish Minister for Health and Community Care, I gave oral evidence to the Scottish Parliament's Health and Community Care Committee on 25 October 2000 and 23 May 2001 as part of their Inquiry on Hepatitis C. A verbatim record of these proceedings is contained in the Scottish Parliament's Official Report.
9. I have not provided evidence to, or been involved in, any other inquiries, investigations, criminal or civil litigation on these matters and I was not involved in, or invited to give evidence to, the Penrose Inquiry.

Section 2: Scottish Minister for Health and Community Care 1999-2001

Question 5: Please detail your involvement, as Scottish Minister for Health and Community Care from 1999 to 2001, in any matter involving blood/blood products infected with HIV, HBV, HCV and vCJD.

10. As Scottish Minister for Health and Community Care I was a member of the Scottish Cabinet and had portfolio responsibility for the NHS, public health and community care in Scotland, which together accounted for more than one third of the Scottish budget.
11. During my time in office, I was involved in a range of matters involving Scotland's blood services and supply. This included consideration of issues resulting from the past use of infected blood and blood products in NHS treatment, in particular the impact on haemophiliacs who had been infected with hepatitis C; as well as measures to ensure the future safety and security

of Scotland's blood supply, a particular focus at that time being the potential risks of vCJD. I was also involved in a range of other policy development and resource allocation decisions regarding the screening, diagnosis, prevention and treatment of blood-borne viruses. In answering this question, I have focused on those areas of involvement which are most directly relevant to the Inquiry's Terms of Reference.

12. I served as Scottish Minister for Health and Community Care from May 1999 until November 2001 and was the first person to hold this office following devolution. My involvement in the matters of interest to the Inquiry therefore took place during the early formative years of the new Scottish Parliament and the transition to devolved Scottish government. This was an unprecedented period of change in the governance of Scotland, during which time new institutions were established and ways of thinking and working developed and evolved rapidly. As other witnesses to the Inquiry have noted, the introduction of devolution changed the context within which the issues involving NHS treatment with infected blood and blood products were considered across the four nations of the UK. In detailing my own involvement in these matters, I have therefore also provided relevant contextual information.

13. The questions in this section relate to events which took place more than 20 years ago. Given the passage of time, and the volume and intensity of activity during this period, I am unable to recall in detail my involvement in these matters. I have, however, made every effort to answer the questions asked of me to the best of my ability and, to aid me in doing so, have carefully reviewed a substantial range of material. This has included documents provided to me by the Inquiry and by the Scottish Government as well as information in the public domain, notably records of Parliamentary proceedings and media reports, insofar as they remain available from a time when the internet was in its infancy. Unfortunately, my Ministerial diary could not be located and so I have been unable to draw upon this as a source to check meeting dates and chronological detail.

14. As I have detailed further in paragraphs 18 and 19, issues relating to infected blood and blood products were first raised formally with me in my capacity as Scottish Health Minister around mid-July 1999. I was, however, aware of the Haemophilia Society's campaign for compensation for haemophiliacs who had been infected with hepatitis C through NHS treatment, prior to my election as an MSP and subsequent appointment as Health Minister.
15. By way of background, in the period leading up to the creation of the Scottish Parliament, and particularly during the election campaign, there was extensive public discourse and civic engagement on how the Parliament would operate and the issues it might address. A large and diverse array of campaign and interest groups were active during this period. Hopes and expectations were high, and a wealth of issues were raised – from new policies and ideas through to longstanding issues and concerns. The Haemophilia Society campaigned actively during this pre-election period.
16. The first Scottish Parliament elections took place on 6th May 1999 and, in the weeks that followed, the Parliament was convened; MSPs were sworn in; Ministers were appointed; and Parliamentary Committees were set up. The powers previously exercised by the UK Government and the Secretary of State for Scotland did not transfer to Scottish Ministers until 1st July 1999, and much of the Parliament's business during May and June 1999 was focused on procedural matters.
17. During these early weeks, as I recall, the Haemophilia Society carried out various campaigning and lobbying activity directed towards MSPs, including a high-profile protest event at the Scottish Parliament in early July 1999. The Society did not, to my knowledge, make any direct approach to the Scottish Executive, or to me as Health Minister. Several MSPs did, however, speak informally to me about the campaign and at least one indicated publicly that they intended to raise these issues in Parliament.

18. As far as I can establish from the records I have seen, the first time I was asked formally to consider matters involving infected blood or infected blood products was in response to correspondence from an MSP. I have not been provided with a copy of the original letter or of any draft reply, but I have seen a submission to me from Health Department officials, dated 15th July 1999 and headed 'Compensation for Haemophiliacs Infected with Hepatitis C' [SCGV0000176_118].

19. The submission provided a brief outline of the background and issues involving infected blood and blood products and noted that the Haemophilia Society "has been campaigning since 1995 for financial compensation for haemophiliacs infected with Hepatitis C." It summarised the actions and decisions taken by the "previous administration" (i.e. the UK Government, including Scottish Office Ministers) in the period prior to devolution and noted that the UK Secretary of State for Health had announced in July 1998 that "the government would not grant compensation to this group of patients" and that "It would instead proceed on the well-established basis that compensation or other financial help to particular patients or groups of patients should only be paid where the NHS or individuals working in it have been at fault."

20. The submission further noted that "this issue has been treated as an UK-wide matter on which the four territorial Health Departments should adopt a consistent line" and concluded with the following recommendation:-

"In light of the fact that the Department of Health have rigorously examined this issue twice in recent years and that the Haemophilia Society have not produced fresh evidence to support their claim for financial assistance, we advise that a further examination of this issue would only draw the same conclusions previously reached. We therefore recommend that the Minister endorses the decision taken by her predecessor and signs the attached reply."

21. In reading this document more than 20 years on, I was reminded of some of the challenges of transitioning to devolved government and of the

prevailing culture of the time. The new Scottish Executive was not a territorial department, or even simply a new administration, we were part of an entirely new system of governance and accountability and this was uncharted terrain. Unlike Scottish Office Ministers prior to devolution, and I think it took some time for the civil service to adapt to this new reality, as Scottish Executive Ministers we were now accountable to a new Parliament elected directly by the Scottish people. Our actions and decisions, especially in these early days, would be subject to a degree of Parliamentary and media scrutiny which had not previously existed. There was also an expectation, and a commitment, that devolved government would be more open, transparent and inclusive and that we would use the powers devolved to us to develop distinctive policy solutions for Scotland where these were required.

22. In that context, and bearing in mind this submission came to me just weeks after we had assumed our new devolved powers, I did not feel it was adequate or appropriate for a new Health Minister, as part of a new devolved Scottish Executive, to simply “endorse” the position previously taken by the UK Government on this complex and sensitive issue. I was mindful that any comment from me at this point would be a *de facto* policy statement on behalf of the Executive and did not consider it appropriate to take a position on this matter when there had been no opportunity for the new Scottish Executive, or the new Scottish Parliament, to give it proper consideration.

23. I understood, and was supportive of, the long-established general principle that the NHS should award compensation only where there was found to be fault or negligence and did not want to say or do anything precipitously which might undermine that general approach. And while I was keen to assert and utilise our new devolved powers, I was also mindful of the need to establish constructive and cooperative intergovernmental working within a newly devolved UK as this would be vital to the effective operation of devolution.

24. I think I am correct in saying that I held back in responding to the submission of 15th July, and to the MSP correspondence, in order to give further thought to these matters and to take soundings from colleagues and advisers.

25. As far as I can see from the records available to me, the next submission I received from officials on matters involving infected blood and blood products was dated 5th August 1999 and headed 'Compensation for Haemophiliacs Infected with Hepatitis C: BBC Enquiry' [WITN4436_004] The submission advised that the BBC was seeking comment from the Executive on a story they planned to run the following day based on information from the Haemophilia Society regarding the introduction of heat treatment of blood products in Scotland in the 1980's, the suggestion being that the Scottish National Blood Transfusion Service (SNBTS) had introduced the required heat treatment to eliminate the hepatitis C virus more than a year later than had been the case in England.

26. The Haemophilia Society appeared to be claiming negligence on the part of the NHS in Scotland on the basis that sufferers in Scotland were exposed to risks for longer than those in England and was calling for this matter to be raised in the Scottish Parliament. In reviewing the papers provided to me I have also seen a press release from the Haemophilia Society dated 6th August 1999 which called "*on the Scottish Parliament and Scottish Executive for an urgent inquiry into worrying new evidence that Scotland appears to have been behind the rest of the UK in having adequately heat treated blood products used in haemophilia treatment to inactivate Hepatitis C.*"

27. The submission from Health Department officials set out briefly the chronology of events, and the measures taken by SNBTS at the time in question, while noting that officials would "investigate these events with SNBTS more thoroughly in the next few weeks to confirm for ourselves that the correct action was taken." Meantime, however, the submission proposed that the following line be given in response to the enquiries from the BBC:

“The action taken by the NHS in Scotland in the 1980’s to ensure the safety of blood and blood products administered to haemophiliacs do not suggest that there was any negligence on the part of the health services, given the state of knowledge at that time about protection against Hepatitis C and the practical difficulties of introducing a Hepatitis C-safe product any sooner in Scotland.

This suggests that compensation for this set of patients, tragic as their case may be, would not be appropriate, as compensation should only be paid where the NHS or individuals working in it have been at fault.

Of course it is open to the Scottish Parliament to discuss the matter and the Executive would have no objection to these issues being aired in debate if Members so wish.”

28. I recall that I had a number of concerns with the suggested approach and was not willing to approve the proposed media comment. I felt that in all conscience I could not make a definitive statement on the issues surrounding the suggested disparity between Scotland and England in relation to the introduction of heat treatment based on the limited information provided to me and before there had been further examination. Also, as in the case of the submission from 15th July [SCGV0000176_118], I did not want to stray into making more general comment about compensation for haemophiliacs infected with hepatitis C without proper consideration of the issues. Furthermore, I did not consider it appropriate for the Executive to say that we had “no objection” to the Scottish Parliament discussing this matter when such a decision would be for MSPs and the Parliament itself. In any case, while the Parliament was at that point in recess, there was no doubt in my mind that I would in due course face questions on this issue from MSPs and so it would be important to establish the facts.

29. I should note also, and I return to this matter in my response to Question 16, that the submission of 5th August 1999 also brought to my attention for the first time a separate set of issues surrounding claims made by non-

haemophilic patients infected through blood transfusions which were under consideration by the Department of Health in England, and which could have implications for policy on these matters. This did not require any response from me at that point, but it did serve to reinforce to me the complexity of the issues involved and the extent to which developments and actions on these matters in different parts of the UK were interconnected.

30. I was continuing at that time to wrestle with the question of how best to respond to the calls for compensation for haemophiliacs infected with hepatitis C within the new context of devolution in Scotland and alongside many competing demands for attention and resource. It was clear to me that there was a long and complex history to these issues and a significant UK dimension, which extended beyond the responsibilities, capacity and resource of the Scottish Executive. I did, however, believe that as an incoming Health Minister in a new devolved Executive it was incumbent upon me to consider matters that pertained directly to Scotland and that devolution presented an opportunity for some fresh thinking and examination of these issues.

31. The matter which had been raised regarding the timing of the introduction of heat treatment in Scotland, as distinct from many of the wider issues involving infected blood and blood products, related specifically to Scotland and so fell within the ambit of our new devolved powers and responsibilities. It also raised the possibility that, if there was found to be evidence of negligence on the part of the NHS in Scotland, this could provide grounds for compensation for some individuals under the existing 'fault-based' approach, which in turn could have implications for the wider debate surrounding compensation or financial assistance for people who had been infected and affected. I therefore believed that this was a matter which the Scottish Executive could and should examine further and that, in doing so, it would also provide a starting point for informed consideration of some of the wider issues.

32. Taking all the above considerations into account, I therefore resolved, ahead of the BBC report, to take a different approach to that which had been recommended to me by officials. This involved two distinct but related actions.

33. Firstly, on the specific issue of the suggested disparity between Scotland and England on the introduction of heat treatment in blood products, I asked Health Department officials to carry out a fact-finding exercise to bring together the background and evidence on this matter which could be reported to me and made publicly available. Establishing and sharing the facts was, in my view, a necessary pre-requisite for any further consideration of this matter.

34. Secondly, I extended an invitation to the Haemophilia Society to meet with me so that I could hear their views and experiences directly. My hope was that it might be possible to open up a dialogue between the Executive and the Haemophilia Society rather than communicating through the media and MSPs as had been the case to date.

35. I also made the following public statement, I think initially to the BBC, which was subsequently widely reported:-

"I am sensitive to the tragic circumstances surrounding these cases and the strong feelings this issue evokes. I want fully to understand the history and the issues involved here and to take a fresh and open look at this. As a first step I will be meeting with the Haemophilia Society to hear their representations at first hand."

36. Over the next few days there was extensive coverage of these matters in the Scottish press and media which, as well as reporting on the issues raised by the Haemophilia Society and my own comments and actions, also included comments from representatives of SNBTS and from several MSPs, including the recently appointed Convenor of the Scottish Parliament's Health and Community Care Committee. Two MSPs also submitted parliamentary questions on these matters. Over the next few weeks, as I

have seen from the papers made available to me, I received a range of briefing from officials variously on hepatitis C and the development of Factor VIII; other matters regarding infected blood and blood products; and wider issues relating to Scotland's blood services and supply. I am fairly sure that I would have had some informal conversations with Ministers and MSPs about these matters during this period, but cannot recall this with certainty.

37. My meeting with the Haemophilia Society took place on 14th September 1999. In preparing this statement, I have seen a note which officials took of this meeting and I have submitted this to the Inquiry. [WITN4436_005]. My recollection, reinforced by this record, is that while we were not in agreement on all matters or on the best way forward, there was a constructive and wide-ranging discussion. The meeting provided me with a valuable opportunity to understand better the views, experiences and concerns of those who had been infected and affected by infected blood and blood products and to share some of my own initial thinking directly with representatives of the Society. As is recorded in the meeting note, I explained that I regarded this meeting as "a starting point".

38. This discussion with the Haemophilia Society, which was also attended by Scottish Executive officials, helped to inform and shape the fact-finding exercise I had initiated. For example, the Society raised concerns regarding a lack of information given to patients about the risks of contracting non-A, non-B hepatitis from blood products before 1987, and on delays in informing patients that they had been infected. I gave an assurance that Health Department officials would investigate these matters further with Scottish Haemophilia Centre Directors.

39. There was an exchange of correspondence between the Scottish Executive and the Haemophilia Society following the meeting. The Inquiry has provided me with a copy of **HSOC0011771** which contains two letters to Karin Pappenheim, the Chief Executive of the Haemophilia Society, one from me dated 27th September 1999 and a further letter from my private secretary, sent on my behalf, dated 9th November 1999. The latter was in

response to a letter sent to me by Ms Pappenheim, dated 23rd September 1999, which had crossed with my letter of 27th September 1999, and which is not contained within the document provided to me and I have therefore submitted it to the Inquiry. [WITN4436_006].

40. I remember this exchange of correspondence and can see from the papers provided to me that, together with Health Department officials, I gave some considerable thought as to how we could scope the work that was underway in order to take on board some of the wider issues and concerns the Society had raised, while at the same time setting parameters for the fact-finding exercise and managing expectations. As I recall, it became clear to me very quickly that this was going to be challenging.

41. The issues involved were inherently complex and related to practices and events which had occurred some considerable time prior to devolution, many of which did not relate solely to Scotland. There were also significant other demands for the Executive's attention and resource at that time, not least within the health portfolio, and many of the issues raised by the Haemophilia Society went beyond our devolved responsibilities and resource. I did hope, however, that we could make some tangible and practical progress on understanding and addressing the needs and concerns of those who had been infected and affected by infected blood and blood products in Scotland.

42. Over the months that followed, and I provide further detail on this in response to later questions, a considerable amount of work and discussion took place which informed both the fact-finding exercise and my own consideration of these matters. This included ongoing MSP interest in, and Parliamentary consideration of, matters involving infected blood and blood products which ran concurrently with the Executive's work and continued throughout my time as Health Minister.

43. As previously noted, the first of many parliamentary questions were submitted by MSPs during the summer recess in August 1999 and, when the Scottish Parliament convened for its first full session on 1st September

1999, as I had anticipated, there followed further Parliamentary interest and scrutiny on these matters which required my response as Health Minister. This included correspondence from MSPs, parliamentary questions, Members' motions and, later, an opposition debate.

44. The issues and questions raised by MSPs were wide ranging and referred variously to the matter of possible compensation or financial assistance to haemophiliacs, and non-haemophiliacs, who had been infected or affected by infected blood and blood products; calls for an independent investigation or full public inquiry into these matters; questions regarding the scope and methodology of the Executive's fact-finding exercise on the introduction of heat treatment in blood products; and many other issues, for example, on screening for HCV and on the provision of services and support to haemophiliacs, and to all those infected with hepatitis C.

45. The new Parliamentary procedures were still evolving at this stage and a range of channels were used by MSPs, organisations and individuals to raise these matters. Of particular significance were two petitions which were submitted to the Scottish Parliament's newly established Public Petitions Committee. The first of these, PE45, was submitted by the West of Scotland Haemophilia Group in December 1999 and called *"for the Scottish Parliament to hold an independent inquiry into Hepatitis C and other infections of people with haemophilia."* The second petition, PE 185, submitted in April 2000 by Mr Thomas McKissock, was not confined to haemophiliacs and called *"for the Scottish Parliament [to] take the necessary steps to establish a scheme of compensation to assist people in Scotland who have contracted Hepatitis C infection as a consequence of infected blood transfusions."*

46. The Public Petitions Committee referred both these petitions to the Health and Community Care Committee who, during the course of 2000 and 2001, carried out its own Inquiry and took evidence in public session from a number of witnesses, including the Haemophilia Society, SNBTS and myself. The Haemophilia Society and SNBTS provided written evidence to

the Health and Community Care Committee at its meeting held on 14th March 2001 and this, as well as a verbatim record of all the Committee's proceedings, remains available on the Scottish Parliament website. The Scottish Parliament Information Centre (SPICe) also produced a number of research briefings during this period, including on hepatitis C; infected blood and blood products; and on the ongoing consideration of these matters both within the Scottish and UK Parliaments.

47. The Scottish Executive Report on 'Hepatitis C and Heat Treatment of Blood Products for Haemophiliacs in the Mid 1980's' was published on 24th October 2000 [**GGCL0000010**] and was subsequently considered further by the Health and Community Care Committee which, in turn, published its report on Hepatitis C just under a year later, on 3 October 2001 [**WITN4436_008**]. In short, there was considerable ongoing consideration of matters regarding infected blood and blood products, both by the Scottish Executive and by the Scottish Parliament throughout my time as Scottish Health Minister, and indeed this continued well beyond my time in office. These various strands of work and discussion were significant in shaping post-devolution thinking and subsequent action to address the needs of those infected and affected by infected blood and blood products in Scotland.

48. In response to later questions, I have provided further detail on my involvement in the Scottish Executive Report and on how it developed and evolved, as well as my consideration of matters regarding compensation or financial assistance and on whether there should be an independent investigation or public inquiry. In addition to the matters outlined above, there were other developments in which I was involved during my time as Health Minister which are relevant to certain aspects of the Inquiry's Terms of Reference, and I have summarised two significant examples below.

49. There was a particular focus at that time on the incidence of hepatitis C in Scotland and on how the NHS response to this could be developed and improved. In early 1999, just prior to devolution, the former Scottish Office

had commissioned the Scottish Needs Assessment Programme (SNAP) to establish a working group to *“describe the emerging epidemic of hepatitis C in the Scottish population; collate current knowledge on prevention, investigation and treatment; describe the current status of services to meet the challenge which hepatitis C presents; and make estimated projections for implications in the Scottish population and for services to meet the need.”*

50. A wide range of clinicians and health bodies contributed to this work and the final SNAP report on Hepatitis C was published in September 2000 [WITN4436_003]. The Scottish Executive endorsed this report and actively supported the implementation of its recommendations, including the allocation of additional resource. This work was significant in helping to drive improvements in the care, treatment and prevention of hepatitis C across the NHS in Scotland, including improvements in the support and services offered to haemophiliacs, and others, who had been infected with hepatitis C through NHS treatment.

51. A further significant focus of attention at that time was on the actual and potential impact of vCJD. The medical and scientific knowledge was still at a relatively early stage and I recall there being real concern, not least given the incidence of BSE in the UK and the long incubation period of the vCJD virus, that we could be facing a significant number of cases in the future. As Scottish Health Minister, I took a close interest in this and was involved in a range of actions and decisions. For example, the ‘beef on the bone ban’ had been in place since 1997 and, following devolution, I faced pressure from some quarters to lift the ban in Scotland, ahead of the rest of the UK, as this now fell within our devolved powers. In the event, I did later lift the ban but only once the medical advice was that it was safe to do so. I also led for the Scottish Executive on its response to the Phillips Report on BSE which was published in October 2000. My full response is contained in an answer to Scottish Parliamentary Question S1W-10623 issued on 26th October 2000.

52. There were obviously concerns about the potential risk of vCJD being transmitted through the blood supply, which as I recall was both heightened

and informed by what was by then understood to have occurred in relation to HCV and HIV. In preparing this statement, I have seen a number of submissions made to me during my time in office regarding measures to ensure the current and future safety of Scotland's blood supply and to mitigate what was then described as the "hypothetical risk" of transmission of blood-borne vCJD through, for example, blood donation and surgical procedures. I recall having several discussions with the Chief Medical Officer and other advisers about these matters and there being a concerted effort to adopt a precautionary approach. This included a high degree of liaison and cooperation across the UK.

Question 6: Please describe your role with regard to the Scottish Executive report ('the report') published in October 2000 titled 'Hepatitis C and Heat Treatment of Blood Products for Haemophiliacs in the Mid 1980's' (attached as document GGCL0000010). Please include a description of

- a) Your role in determining the scope of the report's investigations;**
- b) Your role in deciding who was to investigate the matters to be addressed by the report;**
- c) The extent of the documentation made available to those who investigated the issues;**
- d) Any instructions you may have given with regard to the report's methodology and investigations.**

53. The report on 'Hepatitis C and Heat Treatment of Blood Products for Haemophiliacs in the Mid 1980's' [GGCL0000010] was the output of the fact-finding exercise I asked Health Department Officials to undertake to establish the facts regarding the introduction of heat treatment of blood products in Scotland in the 1980's, in direct response to the issue raised by the Haemophilia Society in August 1999 regarding the difference in timing between Scotland and England, as set out in paragraphs 25 and 26.

54. In answering this and subsequent questions on the report I have read through a considerable number of documents provided to me by the Scottish Government which has enabled me to piece together a clearer picture and recollection of how the report, and the work surrounding it, evolved and developed. I have attempted to capture these insights in my answers.

(a) *My role in determining the scope of the investigations*

55. It was my decision to ask officials to establish and document the facts surrounding the introduction of heat treatment in blood products in Scotland in the 1980's and, in particular, the discrepancy between developments in England and Scotland. My expectation was that officials would carry out such investigations and enquiries as were necessary to bring forward that information as fully and accurately as possible. My recollection, which is confirmed in the papers provided to me, is that officials kept me informed of their investigations as they developed and I provided comments, questions and feedback at various stages as this work progressed.

56. The scope of the investigations was informed by, and further developed, following the meeting with the Haemophilia Society on 14th September 1999, in particular in response to questions raised regarding information which had been provided to patients, and I refer to the record of that meeting and subsequent exchange of correspondence referred to in paragraphs 37 to 39.

57. I have seen a submission I received from Health Department officials dated 21st January 2000 which provided me with a summary of the investigations which had been done since this work was initiated in August 1999 and of the various communications which had taken place with the Haemophilia Society, SNBTS and Scottish Haemophilia Directors, as well as inputs from a number of individual haemophiliacs.

58. The submission explained how this had affected the timescale for the preparation and publication of the report and sought my agreement to capture the remit of this work as follows:

- *To examine evidence about the introduction of heat treatment in Scotland for Factor VIII in the mid 1980's, to assess whether patients in Scotland with haemophilia were exposed to the risks of hepatitis C virus longer than they should have been, given the state of knowledge at the time;*
- *To examine evidence about the information given to patients with haemophilia in the 1980's about the risks of contracting the hepatitis C virus from blood products.*

59. This remit, which I agreed, reflected the contents of the letter which had been sent on my behalf by my private secretary to the Haemophilia Society dated 9 November 1999 [HSOC0011771] which is referred to in paragraph 39.

60. Having read a range of documents provided to me by the Scottish Government, it is clear to me that although the agreed remit did not subsequently change, the scope of the investigations evolved and expanded quite considerably as this work progressed. For example, new lines of inquiry were identified and efforts were made to address issues and questions which were raised by the Haemophilia Society and by MSPs at various stages. I also received regular updates from, and had discussions with, officials as this work progressed and provided comments, questions and suggestions at various points.

(b) My role in deciding who was to investigate

61. I asked Health Department officials to carry out this work as I would have done, at least in the first instance, on any issue where I required further information or investigation. This was a fact-finding exercise on a focused issue and did not preclude further future work, investigation or inquiry on this specific issue nor indeed on wider matters involving infected blood and

blood products. My judgement was that asking officials to compile facts and evidence which would be put in the public domain would inform further consideration of these matters - whether that be by Ministers, MSPs, other bodies or subsequent inquiries. This was in my view an appropriate and proportionate way to carry out an initial examination of the specific issues relating to Scotland which had been brought to my attention and was an important first step to allow fresh thinking to develop within the context of the new devolved arrangements.

(c) Extent of documentation made available

62. I do not know the extent of the documentation which was made available to the officials who investigated these matters, but I am not aware of there being any restrictions placed on this. My expectation was that officials would access such documentation as they required in order to fulfil the remit. My recollection is, and this is reinforced by the various documents I have read, that the officials carrying out this work made considerable efforts to locate relevant documentation both from within the Scottish Executive, i.e. the former Scottish Office; the NHS, including SNBTS and Scottish Haemophilia Directors; and from the UK Department of Health. As the report states, some documents were no longer in existence or could not be found.

(d) Instructions regarding the report's methodology and investigations

63. I was clear when initiating the fact-finding exercise that there should be discussions with relevant parties, including the Haemophilia Society, and I gave a commitment that the findings would be made public, and shared with the Haemophilia Society and the Scottish Parliament's Health and Community Care Committee. I was keen to try and establish an evidence base which could inform my own and others' consideration of these matters. I input a range of views, questions and comments in response to various submissions and on drafts of the report as it developed, seeking clarification and additional information where required.

Question 7: Please confirm whether the report considered the role of any relevant public health organisations(s). This may include the Scottish Centre for Infections and Environmental Control ('SCIEH'), the Communicable Disease and Environmental Health (Scotland) Unit ('CDEH(S)U') and/or the Communicable Diseases (Scotland) Unit ('CD(S)U'), as well as Public Health Scotland.

64. The report focussed primarily on the actions and decisions of the Scottish National Blood Transfusion Service (SNBTS) and Scottish Haemophilia Centre Directors, rather than the public health bodies referred to in this question. I would note also that there has been significant reorganisation of Scotland's public health bodies since devolution and that, for example, Public Health Scotland did not come into existence until 2020.

Question 8: In paragraph 6 of the report, it is stated that some files 'had been destroyed' presumably during routine procedures for the review and disposal of files.' Please explain what efforts were made to identify these files or to confirm that they were destroyed, and if they were, whether they were destroyed in accordance with a particular destruction and retention policy and provide details of the policy in question.

65. I am aware of the paragraph in the report to which this question refers. In reviewing the various documents provided to me, I can see that I queried the wording of this section when commenting on an early draft of the report but my comment was more to do with clarification and interpretation than any substantive question or concern. As far as I was aware, officials had made significant efforts to search for relevant documentation both within the Scottish Executive and its agencies and through the UK Department of Health. I do not know how far they went in exploring which files had been destroyed and, if they were, whether this was done in accordance with a particular destruction or retention policy.

Question 9: Please respond to the Haemophilia Society's criticism of the Scottish Executive report (attached as document HSOC0009390). In

particular, please address the criticism that the report's scope was too limited, that the report reached its conclusions about the information given to patients without talking to patients themselves, and that the report's process was 'flawed' and 'not open and transparent'. I attach document HSOC0011771 to assist you in responding to this question.

66. My overarching response to this question would be that the initial fact-finding exercise I commissioned was a genuine attempt to establish the facts surrounding the introduction of heat treatment of blood products in Scotland in the 1980's in response to the issues the Haemophilia Society had raised with the BBC in August 1999, and to do so in a way that was more open and inclusive than might otherwise have been the case. In saying this, I also fully recognise that the Haemophilia Society wanted me to go further and that they raised a range of wider issues, as well as calls for various other forms of investigation and inquiry, both during and after the completion of the report.

67. For example, the Society's submission to the Scottish Executive in December 1999 [PRSE0001404], which was entitled "Response to the Scottish investigation into hepatitis C infection via contaminated blood within the haemophilia community", went considerably beyond the remit of the work the Executive was undertaking and raised several matters which were the responsibility of the UK Government. I understood why the Haemophilia Society took the opportunity to raise these wider views and concerns but am sure they would have recognised that not all could be addressed by the Scottish Executive. The two letters contained in HSOC0011771 set out how the Executive's approach and the scope of the work being undertaken was communicated to the Haemophilia Society.

68. Within the parameters set for the fact-finding exercise, there was a genuine attempt to be transparent and to seek input from the Haemophilia Society and from patients themselves. For example, the Society was offered an opportunity to meet with SNBTS, which they took up, and this meeting took place on 25 November 1999. Individual haemophiliacs were also given an

opportunity to share their views and experiences, and many did so. I also gave a clear commitment that the report would be put in the public domain and made available to the Haemophilia Society and to the Health and Community Care Committee of the Scottish Parliament, which it was.

69. I completely recognise and respect the fact that the Haemophilia Society was critical of the approach taken and of the outcome, as reflected in their response to the report [HSOC0009390]. This does not however detract from the fact that the report examined the issues specific to Scotland which the Haemophilia Society had asked to be investigated and in turn helped to inform deliberations and decisions, both within the Scottish Executive and the Scottish Parliament. I would note also that the report was but one, albeit important, element of the early consideration given to matters involving infected blood and blood products in Scotland following devolution.

Question 10: Please explain why the report was undertaken by officials of the Scottish Executive, rather than by an independent body as recommended by the Haemophilia Society in document PRSE0001404).

70. I refer to my response to question 6. My considered judgement was that asking Health Department officials to undertake this work was an appropriate and proportionate means of carrying out an initial investigation into the specific issue which had been raised by the Society regarding the introduction of heat treatment of blood products in Scotland in the 1980's. It did not preclude further future investigations or discussion on this or wider matters, and in fact helped to inform these.

Question 11: What consideration was given to the Haemophilia Society's recommendation (in PRSE0001404) that an 'independent, expert task force' comprised of patient representatives, as well as medical and scientific experts, be established to 'carry forward the investigation in Scotland'? Why was this recommendation not adopted?

71. The document referred to in this and the previous question [PRSE0001404] was the Haemophilia Society's December 1999 submission to the investigation on the heat treatment of blood products in Scotland in the mid 1980's. This work was at that point at an early stage and I believed it was important to assemble the facts before deciding on how best to further consider or address matters regarding infected blood and blood products within the context of the new devolved arrangements.

72. As the fact-finding exercise progressed, I did give some consideration to whether it might be necessary or appropriate to establish some other form of independent investigation or inquiry following the completion of the Executive's initial report. I concluded not to do so as it had become increasingly clear to me that it was by no means obvious what the precise nature, scope and purpose of such an inquiry might be given the range and complexity of the issues involved and the extent to which many of these matters were not specific to Scotland.

73. By that time I had had some early communications with Health Ministers in the UK and in the devolved administrations and there was a shared view that a common approach would be the best way forward, but there had been limited opportunity to consider what that might mean in practice. Thinking and debate in Scotland was continuing to evolve, not least as the work of the Scottish Parliament's Health and Community Care Committee's developed. At no point during my time in office was there an obvious route, or clear consensus view, as to how best to address these matters within a Scottish context nor on the issue of an independent investigation or public inquiry, the latter of which I refer to further in response to Questions 12 and 13.

74. I would note that the Health and Community Care Committee, in their report published in October 2021, concluded that they were:-

"not persuaded of the case for a further, independent inquiry into all the concerns raised by the Haemophilia Society and others, if that were to focus

on alleged fault. The evidence we have so far considered does not suggest that this is likely to be a fruitful line of inquiry."

75. The Committee did, however, make a number of other recommendations, including on financial support and this subsequently led to the establishment of the financial review led by Lord Ross. I ceased to be Scottish Health Minister in November 2001 and so the Executive's response to the Committee's report and recommendations was taken forward by my successor.

Question 12: In light of your decision to instruct an investigation by the Scottish Executive into 'Hepatitis C and Heat Treatment of Blood Products for Haemophiliacs in the Mid 1980s', what further consideration was given to the possibility of holding a full and independent public inquiry into this issue?

76. I was not of the view, either prior to or following the completion of the report, that a full and independent public inquiry would be the best way forward and I communicated this to the Haemophilia Society when I met with them in September 1999. My focus was on trying to make progress in addressing the needs and concerns of those infected and affected within the powers and processes available to us through Scotland's new devolved arrangements. Any public inquiry would take time to establish, years to report and would incur considerable costs. By its nature a public inquiry would be focused on past events, all of which predated devolution and many of which were UK wide, and I was keen that we should try and move forward.

77. It is worth noting also that, prior to devolution, there had been relatively few Scottish public inquiries and those which had been held, for example on the Dunblane shootings and the Piper Alpha disaster, pertained to events which had taken place wholly within Scotland, as distinct from the events involving infected blood and blood products which had occurred across the UK. I think we were also mindful at that time that, as a new Scottish Executive, our actions and decisions in these early months would set precedents for the

future and that we needed to be equitable and consistent in our approach to the vast array of issues and demands which were being raised with us. I recall that there were other significant issues at that time where campaigners and opposition MSPs were calling for public inquiries and that it was by no means clear how and when public inquiries should best be used in the context of the new devolved arrangements.

78. There was at that time considerable expectation that the new Scottish Parliament and its Committees would provide a vehicle for open examination and enquiry on significant issues, independently from the Executive. I thought it was important to allow the new Parliamentary processes, including the Scottish Parliament's Committee system, to bed in and for the Executive to engage directly with the body which held us to account.

79. As noted above, the Health and Community Care Committee did undertake an inquiry into hepatitis C and that played a significant part in progressing many of the issues raised by the Haemophilia Society and others and in scrutinising the Executive's actions and decisions.

Question 13: Did you, as Scottish Minister for Health and Community Care, or your Department at any time during your tenure consider the case for holding a full and independent public inquiry into infected blood/blood products? If so, please explain the considerations given to this and why this was not instructed.

80. As I recall, the case for a full and independent public inquiry into infected blood and blood products was not actively assessed by either myself or the Health Department during my tenure in office for the reasons outlined above. I would note also that, although the call for a public inquiry was supported by some MSP's, there were a range of views on this matter within the Parliament, as is evidenced in the records of various Parliamentary proceedings both during and following my period as Health Minister.

Question 14: With reference to document HSOC0011995, please confirm whether the findings of the Scottish Executive Report were reported to the press prior to the report's publication in October 2000. If they were, please outline why this was reported to the press prior to publication.

81. To the best of my knowledge and recollection, the Scottish Executive did not share the report's findings with the press prior to its publication on 24th October 2000.

Question 15: Please explain why there was a delay in publishing the report and its findings (document HSOC0011995). Furthermore, and with reference to document SBTS0000353_096, please explain why the report was disclosed to the Scottish Health and Community Care Committee in July 2000, prior to the report's publication in October 2000.

82. The report took some months longer to prepare and publish than I had initially hoped or intended. Having reviewed various records from this time, I conclude that there were a number of reasons for this.

83. At an early stage it became clear that it was going to take longer than anticipated to gather the relevant information, not least given that much of this was of a historical nature and difficult to locate. In addition, the period of time for inputs to the process, including from the Haemophilia Society, SNBTS, Haemophilia Centre Directors and individuals who had been infected or affected, was extended.

84. As the work progressed, various people and organisations input to the process and this led to the identification of new issues and lines of enquiry which required further investigation. Many aspects of the process were iterative and dynamic, for example, additional questions raised by MSPs were explored further. I also offered comments at various stages, including on early drafts of the report. More generally, the range and volume of work which I, the Health Department and the Executive as a whole were dealing with at that time was exceptionally demanding and I can see from the papers

provided to me that this too contributed to it taking longer than anticipated to complete and publish the report.

85. At the latter stages of the process, it is clear that I intended to publish the report in early July 2000, prior to the Parliament's summer recess, and I made several public commitments to that effect. In the event, although I received the final report within that timescale, I was unable to give it my full consideration and to make an announcement before the Parliament went into recess because of other developments and pressures at that time.

86. Following the Parliament's return in September 2000, and I can see this from reviewing both internal communications and public records from the time, efforts were made to find a date to publish the report but there was a confluence of factors including scheduling issues; significant exceptional events and other demands on both myself and the Executive which meant that the report was not published until late October 2000.

87. With specific regard to document **SBTS00053_096** which is referred to in the question, I can say with certainty that the report was not disclosed to the Health and Community Care Committee in July 2000 but in October 2000, on the day it was published. I deduce that document **SBTS00053_096** is a draft letter which was not issued. It is undated and unsigned; it refers to a publication date of 6 July which did not happen and, notably, it is marked 'Annex B' which suggests to me that it was provided in draft as an annex to a submission from officials possibly around June 2000. I have found among the documents provided to me a letter dated 24th October which is the letter which was actually issued to the Committee announcing the publication of the report and I have submitted this to the Inquiry. **[WITN4436_007]**.

Question 16: Please describe your role, as Scottish Minister for Health and Community Care, in responding to calls for financial compensation for Scottish haemophiliacs infected with HCV from infected blood products.

88. As set out in my answer to Question 5, the call for compensation for Scottish haemophiliacs who had been infected with HCV by infected blood products was raised with me at an early stage in my tenure and I took time to consider this matter. While I was supportive of the general and long-established principle that NHS compensation be awarded only where there was found to be fault or negligence, I wanted to understand better the circumstances which had led to people being infected as a result of NHS treatment with infected blood and blood products, particularly within Scotland, and to consider further the issues involved, including the calls for financial compensation.

89. I believed it was particularly important for me, as Scottish Health Minister, to examine fully the specific matter which had been raised by the Haemophilia Society regarding the timing of the introduction of heat treatment in blood products in Scotland in the 1980's and to consider any potential implications this might have regarding possible claims for compensation in Scotland.

90. The call for financial compensation was often presented as a clear 'for or against' issue, or moral question, but the reality for me as Health Minister was altogether different. The issues arising from NHS use of infected blood and blood products were inherently complex and very wide ranging, from questions regarding the scientific knowledge and clinical practice from many years earlier, in Scotland and elsewhere in the UK, through to the current and future support needs of those who had been infected and affected. There was ongoing litigation in different parts of the UK which needed to be considered, as well as the wider impacts which any actions or decisions might have on clinical practice and the NHS more generally, or the precedent they might set, particularly in these early days of devolution. There were implications too for professionals and services within the NHS in Scotland, such as Haemophilia Centre Directors, and SNBTS.

91. Also, while responsibility for the NHS and health in Scotland was now devolved to Scottish Ministers, there needed to be consideration of how to

exercise these powers in the best public interest and of how to deal with issues which crossed over into matters still reserved to, or which also involved, the UK government. There was a compelling case, on grounds of fairness, practicality and resource, to have a coordinated approach to these matters across the UK, even post-devolution, but at that time the new intergovernmental relationships and communications were at an embryonic stage. Alongside that, the Scottish Executive, and the Scottish Parliament, were only just becoming established and we were under considerable pressure to deliver at pace and scale on a formidable array of policy and legislation as well as to react and respond to many significant issues in the context of a very dynamic, and at times febrile, environment.

92. It was very clear to me that any decision on NHS compensation needed to be based on consistent principles and I did not consider there were grounds for departing from that approach in respect of those infected and affected by infected blood and blood products in Scotland. The question of other forms of financial support, while perhaps a possible way forward, also raised major questions regarding equity, fairness, scope, eligibility and affordability. For example, while there had been a focus on haemophiliacs who had been affected by hepatitis C, there were other people who had been adversely impacted by the NHS use of infected blood and blood products whose needs and circumstances also had to be addressed.

93. While none of these challenges were a reason not to try and address the issues and concerns which the Haemophilia Society and others had raised, including the calls for financial compensation, they do serve to illustrate just some of the considerations which those of us charged with taking decisions on these matters had to have regard to.

94. Over the months, I had many discussions with officials, medical advisers and Cabinet colleagues about issues involving infected blood and blood products, including the calls for compensation. I also had communications with other Health Ministers in the UK and devolved administrations. I responded to Parliamentary scrutiny and examined very carefully a range

of written material and briefing, including the report from the fact-finding exercise. In short, I deliberated upon these issues carefully before reaching a view. The issue of compensation was also discussed on several occasions by the Scottish Cabinet and I say more about this in paragraphs 97 to 101.

95. The report of the fact-finding exercise was published on 24 October 2000 and I made a statement at that time which included my conclusions regarding compensation. I have quoted the relevant extract below:

“Having studied all the facts, I have concluded that there is no evidence that the relevant authorities did anything other than their best for patients. As a result I do not believe that the NHS should pay compensation for non-negligent harm to those haemophiliacs who contracted Hepatitis C. When I announced this exercise I stressed that we would – as a new Executive – take a fresh look at the evidence. And we have done this. But we have seen no new evidence and nothing to demonstrate that compensation is owed. I fully understand that there will be disappointment at the outcome. However, our decision is based on the facts as they stand before us now – some 20 years on. Medical treatment is always complex and often involves a balance of risks, not least the necessity of using blood products to protect the lives of haemophiliacs. I do not, for one moment, want to underestimate the suffering which occurred in these cases. But the sad fact is that the evidence shows that nothing further could have been done to avoid this unforeseen outcome given the level of scientific knowledge at the time.”

96. While I do feel that more could, and should, have been done to better communicate the outcome of this work and my conclusions more sensitively and directly to those affected and infected, I stand by the decisions I reached which were carefully considered. I note also that the report set out openly and transparently the facts gathered and conclusions reached by Health Department officials and provided important background and insight into past practice and events in Scotland which informed further debate and action both during and after my time in office.

97. Another significant issue involving compensation that I dealt with during my time as Health Minister was separate from, but not unrelated to, the issues regarding Scottish haemophiliacs infected with HCV from infected blood products. This relates to the potential implications of the judgement in a case brought against the National Blood Authority (NBA) in England by 117 recipients who had contracted hepatitis C through transfused blood. As indicated in Paragraph 25 this matter was first brought to my attention in a submission to me dated 5th August 1999. **[WITN4436_004]**
98. The case had been brought under the Consumer Protection Act 1987 and alleged that the blood transfusion was a defective product under the terms of the Act as it carried hepatitis C. It was announced on 26th March 2001 that the NBA had been found liable and should award compensation to those affected. The Department of Health did not appeal the decision.
99. Although this judgement referred to England, it was felt that it could have implications for a number of cases then being considered in the Scottish courts. This was a matter which was considered by myself, Health Department officials and legal advisers and which was subsequently discussed by the Scottish Cabinet alongside other aspects of the calls for compensation for people infected by infected blood and blood products. I can see from the documents provided to me that the Cabinet discussed this matter at its meetings held on 24th April 2001 and 15th June 2001. I note that partial extracts from the record of the first of these meetings were the basis of a press article in January 2017 following the release of papers under the 15 year rule. I mention this as it has been raised by a witness to the Inquiry and I touch on this in para 109.
100. The Executive's initial position on this matter was set out during a debate in the Scottish Parliament on 26th April 2001 and, in response to a Parliamentary Question [S1W-17748] on this issue, I gave the following answer on 19th June 2001:-

“as indicated by the Deputy Minister for Health and Community Care during the debate on 26th April and again during my appearance before the Health and Community Care Committee on 23rd May, the Executive is considering constructively the implications of the recent English High Court ruling in the case brought under the Consumer Protection Act 1987. This is a complex issue and is being progressed as urgently as possible. An announcement will be made at the earliest possible date.”

101. Subsequently, in response to a further Parliamentary Question [S1W-17807] on 29th August 2001, I provided the following answer:

“The Scottish Executive has instructed NHSScotland to enter into discussions with the legal representatives of any person who has raised an action of the same kind as the decision in the English High Court. These would be actions under the Consumer Protection Act 1987 where people have been infected with hepatitis C as a result of receiving blood from the Scottish National Blood Transfusion Service after 1 March 1988. These discussions will be with a view to reaching a settlement of those actions which are legally competent and the relevant facts can be proved.”

Question 17. Please discuss any other matter concerning the report that may be relevant to the Inquiry’s Terms of Reference.

102. I have no further comments regarding the report.

Section 3: Role as Chair of the Scottish Police Authority

Question 18: Please describe your role, functions and responsibilities as Chair of the Scottish Police Authority (‘SPA’) from 2017-2019

103. I served as Chair of the Scottish Police Authority (SPA) from December 2017 until December 2019. The SPA comprises a Chair and up to 14 other Members, all of whom are appointed by Scottish Ministers. The Chair is

accountable to the Cabinet Secretary for Justice and to the Scottish Parliament for ensuring that the Authority effectively carries out its functions. Meetings of the Authority, at which the Chief Constable is held to account, are held in public.

104. The SPA was established as a national public body under the Police and Fire Reform (Scotland) Act 2012 which was the founding legislation for the creation of a single national police service for Scotland. The Police Service of Scotland (PSOS), generally referred to as Police Scotland, replaced eight regional forces. The Act also established a new body, the Police Investigations and Review Commissioner (PIRC), and gave additional responsibilities to Her Majesty's Inspectorate of Constabulary Scotland (HMICS).
105. The SPA was created to provide strong governance arrangements and clear accountability for the police service; to provide a clear separation between Scottish Ministers and the police service; and to ensure that the Chief Constable is free from undue political influence in making decisions about the investigation of crime.
106. Its main statutory functions, as set out in the 2012 Act are to maintain the Police Service of Scotland; promote the statutory policing principles; promote and support continuous improvement in the policing of Scotland; keep the policing of Scotland under review; and hold the Chief Constable to account for the policing of Scotland. The SPA is also responsible for the appointment of the Chief Constable, subject to the approval of the Cabinet Secretary for Justice, and for the appointment of all other Chief Officers. It is also responsible for handling complaints about Chief Officers.
107. With regard to my role, functions and responsibilities as Chair, in addition to undertaking and developing the core functions outlined above, the main focus of my attention during my time in that role was on addressing significant issues affecting the leadership and governance of policing in Scotland which had arisen both in Police Scotland and in the Scottish Police

Authority. This involved, among other things, the appointment of a new Chief Constable and several Deputy and Assistant Chief Constables; the appointment of new SPA Board members and changes in the governance and decision making of the Authority, including improvements in reporting and transparency. Other areas of focus during this time included the monitoring of policing performance; the implementation and review of the 10-year strategy for policing in Scotland; and issues regarding the resourcing of policing.

Question 19: In 2003 and in response to a complaint made by [GRO-A] [GRO-A] Strathclyde Police undertook an enquiry to establish whether any crime may have been committed regarding the supply of blood products to haemophiliacs in Scotland. Please detail any knowledge you may have of this enquiry including any knowledge of the decision made not to hold a full criminal investigation into these allegations.

108. I was unaware that this complaint had been raised and have no knowledge of any decisions regarding how or if it would be investigated.

Question 20: In December 2007, campaigners [GRO-A] and [GRO-A] [GRO-A] made an allegation against Professor Christopher Ludlam, Director of the Royal Infirmary of Edinburgh Haemophilia Centre, that they were knowingly infected with HIV through infected blood products. Please outline any knowledge you may have of this police investigation, including any knowledge of the decision taken not to issue proceedings against Professor Ludlam.

109. I have no knowledge of this police investigation or of the decision taken not to issue proceedings.

Question 21: Please detail any involvement you have had with police investigations, or the review thereof, regarding allegations concerning the infection of patients with infected blood/blood products whilst in position as Chair of the SPA.

110. I had no involvement in police investigations, or the review thereof, regarding allegations concerning the infection of patients with infected blood/blood products whilst in position as Chair of the SPA. I would note that the Chief Constable has operational responsibility for the policing of Scotland and that the SPA is not involved in decisions regarding the investigation of crime.

Question 22: Please detail any other knowledge you have of investigations undertaken by Scottish Police into allegations of infected blood/blood products, whether during your tenure as Scottish Minister for Health and Community Care, as a Member of the Scottish Parliament, or whilst in position as Chair of the SPA. If relevant, please include any involvement you may have had in the instruction of, and/or decision-making, surrounding these Police investigations.

111. I have no other knowledge of any police investigations into allegations of infected blood/blood products during my tenure as Scottish Minister for Health, as a Member of the Scottish Parliament or whilst in position as Chair of the SPA. The SPA Chair would, in any case, not be involved in instructing the police or in decision making on specific police investigations.

Question 23: Please explain, to the best of your knowledge, the relationship between Police Scotland and the Crown Office and Procurator Fiscal Service ('COPFS'). Please discuss the influence that the COPFS has on police investigations in Scotland, including their authority to determine whether a full criminal investigation should be instigated into criminal allegations.

112. The relationship between the Police and the COPFS is underpinned by various statutory provisions and protocols, some relating to the handling of specific types of crime. As Chair of the Scottish Police Authority, while I was required to have some awareness and understanding of these matters, they did not fall within my remit and responsibilities and the Authority was

expressly not involved in decisions regarding the investigation or prosecution of crime. I therefore do not feel it is appropriate for me to offer further comment.

113. I note that I have made a number of public statements on other aspects of the governance and accountability of policing in Scotland, but these were on issues quite distinct from the questions asked of me here.

Section 4: Other Issues

Question 24: Please identify any documentation you may hold pertaining to the matters discussed in this letter, and the Inquiry's Terms of Reference.

114. I do not hold any documentation beyond that which has been made available to me by the Inquiry and by the Scottish Government for the purposes of preparing this statement.

Question 25: Please address any further matter(s) that may be relevant to the Inquiry's Terms of Reference

115. In preparing this statement I have reflected a great deal both on my own personal experience and involvement in this issue and the wider circumstances which have led to this Inquiry at this time. I hope I might be permitted to offer comment on two significant systemic issues which stand out for me and which I hope the Inquiry will consider.

116. First, by any objective measure, the fact that the issues arising from the use of infected blood and blood products in the 1970's and 80's, and the question of how individuals who have been infected and affected are supported, remains unresolved after several decades is clear evidence of the failure of an entire system and of many different people and organisations. I firmly believe, and my experience tells me, that there can and must be ways of resolving such matters at an earlier stage. This

requires a degree of enquiry, learning, reflection, trust and openness which is hard to achieve, especially given the blame culture which prevails in our society. I do, however, believe that more can and should be done to develop the systems, culture and practices which would enable people to work together, seek compromise and develop solutions to challenging, sensitive and significant issues at an early stage. Sadly, this has not been achieved in this case and a great many people have suffered as a consequence.

117. Second, on the issue of devolution, many of the matters which the Inquiry is considering, like the more recent experience of the response to Covid-19, have brought into sharp focus the challenges of securing a coordinated approach across the UK in a post-devolution era. There can and should, in my view, be better governance arrangements, frameworks and protocols to deal with such issues and I believe it is a matter of concern that after more than two decades of devolution this still has not been achieved.

Response to Criticism Raised by an Inquiry Witness (Ref No. W2287)

118. I received a Rule 13 letter from the Inquiry dated 21 July 2021 regarding criticisms made of me by a witness to the Inquiry in relation to his involvement in campaigning on haemophilia and contaminated blood. I am grateful for the opportunity to respond to these criticisms but, in doing so, would wish to stress that I respect the witness's views and acknowledge that they are sincerely held.

(1) At page 21 line 14 of the transcript witness W2287 states that you were "saying no, an absolute no" to the petition for an independent inquiry into contaminated blood.

119. I respectfully disagree with this characterisation of my position which was significantly more open and reflective than this comment suggests. There were many different views expressed during this period as to how or whether some form of independent inquiry, or a full public inquiry, be established. For my part, I gave a great deal of thought to how the various issues, questions and demands raised by campaigners could best be

examined and progressed. At each stage, as I have explained in my statement, I weighed up a wide range of factors, reached a considered view and answered to Parliament for my actions and decisions.

(2) At page 22 line 15 of the transcript witness W2287 states that you refused to meet him after he wrote to you for a meeting.

120. The Inquiry has provided me with a copy of the letter the witness received from a Health Department official on my behalf dated 29th September 1999 in response to his letter of 10th September requesting a meeting. **[WITN2287_024]** As the letter states, I had at that time recently met with representatives of the Haemophilia Society, including Scottish campaigners, and my diary commitments prevented me from meeting with him personally. I appreciate that the witness has interpreted this as an active "refusal" on my part to meet with him, but, as Health Minister, I could not possibly have managed to meet personally with every individual and organisation who asked me to do so, the volume of which was exceptionally high during the early months of devolution. I did in fact make considerable efforts during my time as Minister to meet directly with as wide a range of organisations as I possibly could, and to visit and engage directly with staff and patients across the NHS and in communities across Scotland.

(3) At page 39 line 24 to page 40 line 7 of the transcript witness W2287 makes comments which are critical of the party whip period from 1999 to 2000 with direct reference to you.

121. Having read this section of the transcript, it is not clear to me what exactly the witness means by "the party whip period" and of what his specific criticisms are of me in this context. I therefore do not feel able to comment any further on these remarks other than to acknowledge that the witness is very critical of me and is much more positive about other politicians from the time. I accept and respect the fact that these are his opinions.

(4) At page 74 lines 22 to 25 and at page 198 line 21 to 24 of the transcript witness W2287 makes critical comments about your approach to the issue of contaminated blood using the phrase “force them to the courts. Let’s force them to the courts; we’re not interested in morals, let’s go the courts” and ”Let’s do everything we can to stop this.”

122. I do not accept this characterisation of my position and strenuously object to the suggestion that I, or my colleagues, were not interested in morals. I at no time expressed or held the views the witness has attributed to me. From reading this section of the transcript, I see that the witness has extrapolated and made assertions based on a short press article which was published in January 2017 [WITN2287_029] following the release of Scottish Cabinet papers under the 15 year rule. The article contained a partial, and somewhat confusing, account of a Cabinet discussion which considered the implications for Scotland of on an English Court ruling in respect of cases brought under the 1987 Consumer Protection Act, which I refer to in my answer to Question 16. It is entirely normal, and necessary, practice for Government to give consideration as to how to respond to litigation and legal rulings and to make a considered assessment as to whether cases should be settled or contested.

(5) At page 152 line 14 to page 153 line 13 of the transcript witness W2287 states that it took 15 years to get compensated properly and makes reference to your ‘attitude’ as a reason for this.

123. I do not feel it would be appropriate for me to comment on the Witness’s view of my ‘attitude’ which is his opinion, although I would note, as he has stated elsewhere, that we have never actually met. As outlined in my statement I made a number of efforts to examine and act on the issues and concerns raised by the Haemophilia Society and others during my time as Minister. While it is right that I be held to account for my actions during this time I do not feel it is reasonable to hold me responsible for actions, decisions or delays which occurred over the decade and more after I had left office.

(6) At page 159 line 2 to page 160 line 24 of the transcript witness W2287 makes comments which are critical of the way in which the look back exercise was conducted in Scotland with reference to you.

124. I have read the relevant section of the transcript and have struggled to understand the point which is being made here. If the look back exercise to which I think the witness is referring is the one which took place between 1995 and 1997 then this predates devolution and my appointment as Scottish Health Minister. I see the witness also refers to a decision taken by the Central Legal Office in February 2000, but I am not clear as to what this refers.

Statement of Truth

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

Signed

GRO-C

Dated

20/4/22

Table of exhibits:

Date	Notes/Description	Exhibit Number
April 2022	Susan Deacon – CV	WITN4436_002
August 2000	Scottish Needs Assessment Programme: Hepatitis C report	WITN4436_003
5 August 1999	Health Department Submission to Minister for Health and Community Care on 'Compensation for Haemophiliacs Infected with Hepatitis C: BBC Enquiry'	WITN4436_004
14 September 1999	Record of Meeting between the Minister for Health and Community Care and Representatives of the Haemophilia Society	WITN4436_005
23 September 1999	Letter from Karin Pappenheim, Chief Executive, Haemophilia Society to Minister for Health and Community Care	WITN4436_006
24 October 2000	Letter to Clerk to the Scottish Parliament Health and Community Care Committee from the Health Department regarding publication of the Scottish Executive Report on 'Hepatitis C and Heat Treatment of Blood Products for Haemophiliacs in the Mid 1980's'	WITN4436_007
3 October 2001	Scottish Parliament Health and Community Care Committee - 17th Report 2001: Report on Hepatitis C	WITN4436_008