

THIRD WRITTEN STATEMENT OF CHARLES LISTER OBE

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Witness Name: Charles Lister OBE

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INFECTED BLOOD INQUIRY

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I, Charles Lister, will say as follows: -

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Section 1: Introduction

### **Section 1: Introduction**

- 1.1. I am providing this written statement in response to a request for a written statement under Rule 9(1) and (2) of the Inquiry Rules 2006.
- 1.2. This is the third statement I have provided.
- 1.3. I provided a first statement on 1 March 2020 addressing my various roles with the Caxton Foundation, in relation to which I gave evidence before the Inquiry on 25 and 26 March 2020.
- 1.4. I provided a second statement to the Inquiry in draft in two parts, on 29 October and 19 November 2021, addressing aspects of my work at the Department of Health relevant to the issues to be determined by the Inquiry.
- 1.5. The Inquiry has asked me about:
  - (1) the destruction of the Papers of the Advisory Committee on Virological Safety of Blood (ACVSB);
  - (2) the destruction of Lord Owen's papers; and
  - (3) the government's response to calls for a public inquiry.
- 1.6. I have tried to assist the Inquiry by providing some additional chronological context in my answers and by referring to a number of further relevant documents made available to me from searches of the disclosure made to the Inquiry.
- 1.7. Given the significant passage of time between now and the period in question, I have only very limited recollection of the issues raised. Accordingly, I rely

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### Section 1: Introduction

primarily upon the written records the Inquiry has provided and those it has been possible to locate. Should further records be disclosed, I may need to amend this statement.

## **Section 2: Destruction of the Papers of the Advisory Committee on Virological Safety of Blood**

2.1. I am asked to set out in full the steps I took to establish how the Department of Health (DH) papers relating to contaminated blood had been destroyed, and in particular those of the ACVSB.

2.2. I have tried to set out these steps to the best of my recollection below in chronological order, and in so doing have drawn upon the documents to which I refer.

### **First awareness of the issue**

2.3. Although not a party to the litigation, in 1999 and 2000 DH was involved in the claim in *A and others v The National Blood Authority* regarding those infected by Hepatitis C prior to the introduction of screening in 1991. The Department had a significant interest in whether the litigation was settled; actions of the Department were being scrutinised in the litigation and we agreed to provide third-party disclosure.

2.4. My awareness of the missing ACVSB papers arose during this litigation and as a result of it.

2.5. On 23 November 1999, Anita James in the Solicitor's Division emailed me noting that we had spoken about the request for non-party disclosure that had been made on 17 November and she and I had,

*"...agreed that in the circumstances we should voluntarily agree to disclosure rather than risk having a costs order inevitably made against the Department. We simply cannot resist an order and you accepted my advice on that. I attach a copy of the draft order for you to see. I have spoken to Dr Metters' former secretary and she has no documents before 1997 so it is down to what the Solicitor's Office and HSD have.*

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*We also have to list documents which were but are no longer in our control.” [WITN5426134]*

- 2.6. In the context of our seeking to bring together all the relevant records, on 25 November 1999, Ms James forwarded me a message from Dr Jeremy Metters (the retired DCMO who had chaired the ACVSB) of the same day, in which he had stated [MHRA0024553],

*“Thank you for your minute regarding the legal request for disclosure of papers on Hepatitis C. I no longer have any papers on the subject, as all my files were passed on to Pat Tro[o]p when I retired as DCMO. However as legal action against the Department on Hepatitis had long been regarded as a possibility I retained more papers on this subject than on most topics! These include copies of the minutes of ACVSB, the relevant Advisory committee at the time, and some of the papers that ACVSB had considered. I did not have a full set of the latter.*

*Another two possible DH [sources] of contemporaneous documents are Mike McGovern who will or should have inherited a set of the Committees’ papers when he took over as Medical Secretary of MSBT, the successor committee to ACVSB; or Andrez Rejman who was secretary of first ACVSB and later MSBT. While Andrez is no longer in DH, I think he may have retained some papers as he too anticipated future legal action.*

*Other sources outside DH are Dr Angela Robinson, Medical Director of the NBA or her predecessor Dr Harold Gunson who was national co-ordinator of the NBTS at the relevant time or Professor Arie Zuckermann. I believe both Dr Gunson and Prof Zuckermann kept some of the papers as they have been involved as (?) expert witnesses to some of those who were considering making claims. I suspect you may already have approached Dr Angela Robinson as she has been active on this subject for many months.” [MHRA0024553]*

- 2.7. At this stage I think we would have been trying to bring together the records. The natural starting point would have been the policy files held by Health Services Division. In addition, it is clear that Anita James had already liaised with Dr Metters and established that he had not personally retained papers. I am also now aware from the documents provided to me from the Inquiry that Anita James was aware from correspondence with Dr Rejman in June 1995 that some documents had been destroyed (see §2.61 below).

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2.8. On 29 November 1999, Anita James emailed me saying that the plaintiffs' solicitors wanted us to give disclosure by 31 January 2000, and she commented,

*"What do you think: Dr Metters says he left all his papers with his successor. It would appear that they have been shredded because they represented an inconvenience. If you can replicate them I wont hold a post mortem"* [WITN5426139]

While I do not have much recollection of this, it looks as though I was then being tasked with replicating the set of ACVSB minutes from other sources in order to give disclosure of them.

2.9. On 1 December 1999, I updated Ms James on progress stating,

*"I've found 5 volumes of relevant papers from an earlier discovery exercise labelled 1-4 and Vol 6, so at least one volume has still to be found. These contain papers from January 1987 to November 91, with some earlier and later material. There is a gap in the record between June 1988 and April 1989 which may be included in the missing volume. On the basis of a quick read through, there are clearly some papers missing from 1990/1991 – most notably, records of discussions at the Advisory Committee on Virological Safety of Blood. Otherwise, what we have tells a fairly complete story.*

*On this basis, a deadline of 31 January to complete discovery may be feasible, although I'd like to talk this through with you to get a better idea of the steps we need to take to complete the discovery process before committing ourselves. I'm around the rest of today and all day tomorrow"* [WITN5426140]

This is the first reference I can see from the available documents of my being aware that there were some ACVSB documents that we were unable to find, but at this stage we were still pulling the records together.

2.10. On 8 December 1999, there was an exchange of emails between Anita James and me. She emailed,

*"Thank you for letting me see the records! We agreed that you will [see] if there are any more records covering the gap. I suggested you might inquire if there is a basement at Eileen House where documents might be. You also told me that John Canavan was still around so he may know what might be where. You agreed to recall certain old files from remote storage and speak to Mike McGovern about the files I brought over. I said*

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*I would like the papers sent over here. Do you think you [could] get them here for 22 December at the latest? I will then [catalogue] them myself or more likely get someone else to do it. In addition, I will write to DMS and ask if I can have until Friday 4<sup>th</sup> February. I shall be going to Sunningdale on the 6<sup>th</sup> for two weeks so that would seem a good cut off date. I will do that next.” [WITN5426144]*

I replied,

*“Thanks for your e-mail. I’ll get all the papers over to you by 22 December with a note of what we have not, at that stage, been able to track down.*

*I’ve spoken to John Canavan who turns out – happy coincidence this – to be the person currently responsible for the Hepatitis C Advisory Group. His recollection is that all the relevant discussions about HCV and blood transfusion took place at the ACVSB. I’ll ask him though to check the Hep C Group papers for the March 98 [sic] -September 91 period just in case. But can I first check what papers we need to provide. If there was discussion, I assume we would need to provide copies of any relevant papers presented to the Group and extract from the minutes, rather than a complete set of papers. If there was no discussion, would it be enough for us to explain this to DMS or do we need documentary evidence, eg copies of the agenda for the period?” [WITN5426145]*

- 2.11. Consistent with this exchange, I must have provided Ms James with the best set of materials I had been able to find because on 6 January 2000, she emailed me saying

*“... Between Christmas and New Year I went through the files you sent over and they look reasonably complete. However, there are some gaps. For example in October 1989 there is a hand written request from Graham Hart (then the grade two, I think) asking John James to do some costings on the test for HCV. John recalls asking for the work to be done but not surprisingly what was said. I think the answer must lie in the registered files the list for which you showed me. Can you retrieve the files now? How long does it take to get them back? Nothing is happening in the legal world this week so I will [arrange] for someone to [catalogue] the docs early next week...” [WITN5426155]*

- 2.12. I and my team continued to work on finding the relevant documents. I have seen, for example, an email exchange between Gwen Skinner and Ms James on 13 January 2000 . Gwen Skinner said to Ms James,

*“I should be grateful for clarification of the full extent of what we need to do in the discovery of files/papers for the HCV litigation. We have ordered*



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*all the files which belonged to the blood section between January 1989 and September 1991 and which seem possibly relevant, plus the files on the manuscript list drawn up in 1997 which you have seen.*

*I understand, though, that the manuscript list is only part of a longer list, and we have not been able to trace the remainder. Many of the files on that list belonged to sections other than the blood section, so it is not possible for us to work out the missing files. Do we need to ask the file registry to search their records for all files which might have relevance? The titles are not likely to indicate the detail of the contents in many cases.*

*Can you advise please?" [WITN5426157]*

Ms James replied the same day

*"If I can be put in a position to explain why the files are missing and it for a good reason I can argue that it would be disproportionate to pursue the matter further. At the moment just concentrate on the list you have."*  
[WITN5426158]

2.13. On 19 January 2000, Ms James emailed me saying:

*"I have been through the files you gave me. I am arranging to have the Advisory Committee on the Virological Safety of Blood's papers copied. I will then send them to DMS. Of the rest I clearly have what comes down to given the dates we have MED's papers and three ring binders of John Canavan's old branch papers. In Dr Rejman's "personal" papers I have found two minutes which ominously do not appear elsewhere. There are obviously some gaps. We know Dr Metters' files have gone and I think he had a lot more than just the minutes of the Committee meetings. There must be some Finance Division papers and briefings to ministers. What I find surprising is the fact that we had ring binder after ring binder on HIV but there is so little on HVC. I wonder why this is? Have you made any progress on retrieving the files on your list? We are under a duty to make a reasonable search. I think the lapse of time is against us."*  
[WITN5426160]

There is further email from Ms James of the same date in which she said,

*"Charles, my apologies. I meant to make the point you make about the thoroughness [thoroughness] of the exercise. The ring binders contain loads of original minutes and copies for John Canavan and Dr Rejman which clearly found their way onto the files so I agree with you. I look forward to hearing from you tomorrow."* [WITN5426161]

I have not seen in the available documents what point I had made to Anita James about the thoroughness of the exercise. We would have continued to try to track down all the papers we could find.

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2.14. From the available documents, it looks as if the Plaintiffs' solicitors had agreed to receive the disclosure on a drip feed basis and the ACVSB materials we had found to date were supplied to them in mid-January 2000.

2.15. On 1 February 2000 I received a minute from Ms James on DMS' response to the materials that had by then already been disclosed. She said,

*"Re: Hepatitis C*

*Please see a copy of the letter dated 27th January 2000 from Deas Mallen Souter. I must admit it made my heart sink. Are we able to assist? If not what do I say to them. In my absence on a course which starts on 7th February 2000 and lasts for 2 weeks Mark Gidden will be dealing with this matter."* [WITN4505390]."

2.16. A copy of DMS' letter was enclosed. It set out a number of enclosures, annexures and pages missing from the documents we had by then disclosed [WITN4505391]. The annotations on this are in my handwriting and it seems to show me ticking off the documents we had been able to obtain and making comments in relation to others.

2.17. On 4 February 2000, I emailed Ms James, copying M Gidden, Dr McGovern, Gwen Skinner, and Ann Willins as follows:

*"Thanks for copying me the letter from DMS with their depressingly long list of requests for ACVSB documents. We'll do our best to find them and, if we can't, to explain why not. I'll keep Mark Gidden in touch with progress whilst you're away."* [MHRA0025095]

### **Efforts to locate the missing documents**

2.18. My first priority was to locate as many of the missing documents as possible to facilitate disclosure to DMS. As set out below, I went about this by contacting former ACVSB members to see if they still held copies.

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2.19. I recall going to Professor Zuckerman's office at the Royal Free to search through his old papers. By doing this, I recovered some of the missing documents but not all.

2.20. On 25 February 2000, I received an email from Ms James seeking a progress update:

*"I have received a reminder from them. Have you made any further progress? In spite of the fact we are near settling I think I do need to be reassured that some active efforts are being made on this."*  
[WITN5426197]

2.21. I replied by email the same day stating:

*"There are a couple of existing members of MSBT who were on AVSB in the late 80s/early 90s, including Angela Robinson of NBA. It may be that they've kept copies of old papers, and we're going to check up on this (it'll be embarrassing but not as bad as telling DMS we haven't got them). Meanwhile, I'll find out what I can about the destroyed files."* [DHSC0046972\_133]

2.22. On 28 February 2000, I emailed Ms James, copying Dr McGovern. I explained that I had found "around two thirds" of the documents requested in DMS's letter, which had been provided by Professor Zuckerman, and was continuing to look for other sources [DHSC0046972\_133]

2.23. On 29 February 2000, I emailed Sandra Falconer to see if she could assist with locating the missing documents. I noted that the records of the ACVSB's minutes obtained from Professor Zuckerman were incomplete and did not contain the 4<sup>th</sup> or 14<sup>th</sup> minutes [DHSC00046972\_130]. I also listed the following papers I was still seeking to obtain, as follows:

*ACVSB 3/1  
ACVSB 5/2, 6 & 10  
ACVSB 6/3, 4, 5 & 7*

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*All papers for the 7th meeting (we have copies but they are missing the paper numbers)*

*ACVSB 9/5*

*ACVSB 10/6 & 8*

*It would be enormously helpful if you can track down any of these from your file.” [DHSC00046972\_130]*

2.24. At about this time, later documents show that I received confirmation that a number of the registered files containing ACVSB papers had been sent for destruction. The thrust of the message I received is set out in §2.36 below. I have a vague recollection of receiving this very unwelcome news from the storage facility.

2.25. On 2 March 2000, Sandra Falconer replied stating:

*We have copies of papers ACVSB 5/2, 5/10, 6/3, 10/6, 10/8 but not the others. I understand we were also going to try Bob Perry. Let me know if you want me to provide these papers. [DHSC00046972\_130]*

2.26. Also on 2 March 2000, I emailed Brenda Pheely of the Scottish National Blood Transfusion Service, explaining the situation and requesting specific papers and minutes of the ACVSB that we were still missing [DHSC0046972\_128]. I concluded the email by saying: “*Anything you can find would be much appreciated. Needless to say, we are under pressure to supply these documents to the claimants’ solicitors asap.*” [DHSC0046972\_128].

2.27. Later on 2 March, I forwarded the correspondence described at §2.23–§2.24 above to Ms James, noting that I was now in touch with Mr Perry, who had been a member of ACVSB from day one, to see if he could supply the rest of the papers [DHSC00046972\_130].

2.28. On 3 March 2000, I received a reply from Ms Pheely in response to my email of the previous day [ DHSC0046972\_128]. Ms Pheely advised she had located

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the files she hoped would contain the papers I had requested and would be reviewing them later that morning. Later that day I emailed Ms Pheely again adding a further document to the list of those we were seeking. [DHSC0046972\_117]. She replied on 6 March that she had only been able to locate minutes of the 14th meeting and Paper 10/2 [DHSC0046972\_117].

### Meeting with counsel on 3 March 2000

2.29. I attended a meeting with leading Counsel Justin Fenwick with Ms James on the morning of 3 March 2000. From the available documents, I note that Ms James' instructions to counsel explained the issue as follows:

*"3. A number of documents were found by your instructing solicitor and her administrator, Charles Lister, in Wellington House an Office of the Department of Health. These were duly catalogued by junior counsel at 11 King's Bench Walk. A list was prepared and given to Deas Mallen Souter (DMS) who act for those infected by Hepatitis C from blood transfusions. The documents were requested, copied and released. However it is apparent to anyone reading the documents that they are incomplete.*

*4. The Department of Health was not troubled by the lack of completeness of the documents because there were two other sources of supply. Firstly, the former Deputy Chief Medical Officer to the Department, Dr Jeremy Metters who has now retired, kept records as part of his chairmanship of the Advisory Committee on the Virological Safety of Blood (ACVSB). Your instructing solicitor had seen those, she recalls in 1994, when litigation was first mooted and it was thought that the Department would be sued. Secondly, the Department keeps registered files.*

*5. When DMS first intimated that they were going to seek disclosure, your instructing solicitor approached Dr Metter's former secretary, Yvonne de Sampayo who now works for Dr Pat Troop the current Deputy Chief Medical Officer/public health. Quite to the incredulity of Mrs James, Ms De Sampayo told her that she had destroyed the documents because the BSE disclosure proceed had caused her great difficulty. Dr Metters' records are therefore not available.*

*6. Further, the relevant registered files have been destroyed some time ago. We cannot tell from the report from remote storage in what circumstances this happened or who ordered their destruction. Both these events are causing some embarrassment to the Department.*

*7. Your instructing Solicitors take the view that the fact of their destruction cannot be hidden from DMS or from Davis Arnold Cooper who act for the*

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*National Blood Authority. Does Counsel agree? If so, could he indicate how best the bad news might be given.*

*8. In addition because of all this difficulty, your instructing solicitor has been through the papers she was left in the office and she has discovered a number of papers which it was envisaged would attract PII. However post Scott they plainly won't and your instructing solicitor plans to disclose them. They comprise submissions to Ministers on testing for Hepatitis C.*

*9. It should be said that the Department is actively seeking some of the missing documents from other sources but the registered files are irreplaceable." [DHSC0046972\_131].*

2.30. I have only a vague recollection of the meeting with Mr Fenwick on this issue. I do not recall any of the detail but the nature of the discussion is clear from the documents that follow.

2.31. I have seen a minute from Ms James to Marilynne Morgan (the senior solicitor to the Departments of Health and Social Security) after this conference in which Ms James said,

*"Charles Lister and I had a very useful meeting with Justin Fenwick QC about the missing documents. He drafted a form of words, as requested, for a letter to send to Deas Mallen Souter which I have sent by fax and post this morning. He recommended a course of action which we will need to discuss.*

*I have taken the liberty of drafting something for [you] to send to the Permanent Secretary should you wish to do so.*

*Justin is going to use his good offices to smooth Simon Pearl's feathers (He acts for the National Blood Authority, the Defendants in this matter)." [WITN5426204]*

2.32. The outcome of the meeting that Anita James and I had with leading counsel is also apparent from the minute I wrote on the same day, 3 March, to Dr Troop. [DHSC0046972\_126].

2.33. The context for this minute is set out in my email to Anita James of the same date, copying Dr McGovern, [WITN4505392]. In that email I explained that she and I had agreed that Dr Troop should be told about the discovery situation in

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advance of Ms Morgan's minute to the Permanent Secretary on Monday, and that the only way for me to be able to do that was to write to her with a minute. I noted that it also afforded an opportunity to copy in David Hewlett and Sheila Adam, whom I noted would also need to be made aware of the situation.

2.34. In the minute, I set out the background at paragraphs 1-2. At paragraph 3, I stated:

*"A discovery exercise was undertaken by the Department between 1995 and 1997. These documents have now been indexed and given to DMS. However, some important documents are missing, mostly papers and minutes of the Advisory Committee on Virological Safety of Blood (ACVSB) - MSBT's earlier incarnation. We established a week ago that a number of the Department's registered files containing ACVSB papers were sent for destruction, apparently in 1993 (although the file store tell us that the actual destruction dates were between 1994 and 1998). This should not have happened, and we have not yet got to the bottom of why this decision was taken". [DHSC0046972\_126]*

2.35. I continued:

*"4. SOL Litigation have consulted Counsel today on the best way of handling the situation. Counsel's advice is that:*

- we should own up to the situation with DMS. Counsel has suggested some low key wording for SOL to use;*
- we should undertake a low key internal investigation to try to establish why the files were destroyed. The aim would be to ensure that procedures are in place within the Department to ensure that files are not destroyed in the future where litigation is contemplated and that, when files are destroyed, proper records are kept showing who authorised destruction and why;*
- we should attempt to locate the missing documents from other sources, within the department or externally.*

*I have already begun work on the latter point and, with the help of Professor Zuckerman and colleagues in the Scottish Executive, have so far obtained a number of the missing ACVSB papers.*

*5. SOL Litigation will need to inform DMS of the situation next week. This will be embarrassing for the Department, and DMS could, if they were so minded, make a stink about the destruction of documents vital to their clients' case. We think this is unlikely, but Marilynne Morgan will need to appraise the Permanent Secretary of the situation. I understand that*

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*Marilynne Morgan's minute will also refer to the destruction of Dr Metters' personal papers on ACVSB, which SOL Litigation understand took place shortly after his retirement. Although these papers were not on registered files, the implication may be that their destruction was ill advised."*

- 2.36. The available documents include an early draft minute of the minute from Mrs Morgan to the Permanent Secretary to which I was referring in my minute to Dr Troop [DHSC0046972\_125]. This records the background and advice that we received from Counsel:

#### **"The disclosure process**

3. *At a time in the mid nineteen nineties when the Department thought it was going to be a major party in litigation, counsel, Justin Fenwick QC advised us to be prepared. Dr Rejman who was experienced in other discovery exercises extracted relevant documents from the files. The files were kept in the Department of Health until February 2000 when they were [disclosed] to Deas Mallen Souter (DMS) who act for the claimants. At this point and picked up, I am afraid to say, by DMS it became apparent that the documents were incomplete.*

4. *Anita James, who took over conduct of the case in June 1999, was aware of another source of documents. To that end, she had telephoned Dr Metters' former Secretary (he having retired) to ask for Dr Metters' papers which she had seen when she was previously in Sol Litigation. Ms de Sampayo had had a clearout when Dr Metters retired. Dr Metters had been chairman of the committee which had looked into the adequacy of the tests and given final advice on their introduction in 1991.*

5. *When DMS came back to the Department about the gaps in disclosure, Charles Lister, sought to retrieve the registered files for the period covered by the disclosure (1988-1991). He has been informed by those at remote storage that the files have been destroyed. They were apparently marked for destruction at an early stage.*

6. *Mrs James could see no alternative but to tell DMS what had happened. I said I would be happy for her to write to DMS provided Counsel approved. She therefore went to see Justin Fenwick QC with Charles Lister on 3rd March 2000.*

#### **Counsel's Advice**

7. *Counsel questioned Mrs James and Mr Lister as to how they knew the documents had been destroyed. I gather he was rather incredulous about the matter. He advised that the Department should deal with [the] problem by advising Ministers about what had happened and making sure Davis Arnold Cooper who act for the National Blood Authority do not make a fuss (and in this regard he proposed it be done on a counsel to counsel basis). He also agreed that DMS and the Court be kept informed. The latter can be done in the formal discovery document which Anita*



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*James will sign in due course with a covering letter. The former was accomplished by the letter to DMS. Anita James sent them the letter by post and fax on 6<sup>th</sup> March. It was drafted on Counsel's advice and I attach a copy at Annex A.*

*8. Obviously, what has happened is a potential source of embarrassment. It may well be that DMS will accept the situation. However, the real problem in relation to the stayed litigation. There, the Department has a duty to the Court not to destroy documents. Also, the claimants are represented by J Keith Parke and Graham Ross - a frequent correspondent with the Department. They are not known for their reasonableness and we are all of the view that if they get wind of what has happened, there will be adverse publicity for the Department. Mr Ross uses the newspapers as a means to an end. Counsel's advice in relation to the stayed litigation for which these two firms act is that if necessary the Department will have to settle their claims. In relation to the blood transfusion cases we are negotiating a settlement that the Department is to fund with Davis Arnold Cooper and the National Blood Authority. It may be that if DMS do cause difficulty more money than might otherwise be spent will have to be spent on the settlement.*

*9. Counsel was also of the view that there should be a (small) investigation into the destruction of the documents. He thought it should be done in house and should not by any means take on the characteristics of a public inquiry. The investigator should interview Dr Metters, Ms de Sampayo, the person at DH who signed the destruction authorisation (whom we know to be still at DH) and Dr Rejman. The investigator should then report on that and make recommendations about such matters in the future. Counsel was of the view that as part of the investigation Heywood Stores should be visited. In this way, the Department would have audited what has happened. I suggest we do this and I suggest we appoint XXX to carry out the investigation. He is .....*

*10. May I reassure you that this appears to be a one off case. Sol Litigation has handled three other major writ actions of this kind and will undoubtedly handle others. They have no experience of this happening. Indeed, Mrs James does not recall it happening in any other case.”*  
**[DHSC0046972\_125]**

2.37. Also on 3 March 2000, I wrote to Ms James enclosing a number of the documents requested in DMS's letter of 27 January **[DHSC0046972\_123]**. In that letter, I set out in more detail the documents I had found, from which source, and those still missing. This is explained in more detail below. I concluded the letter by emphasising that I would do my best to complete the searches for the remaining documents by the end of the following week **[DHSC0046972\_123]**.

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- 2.38. On 6 March 2000, I received a reply from Ms Pheely to my email of 3 March (§2.28 above) as follows:

*“All I have been able to track down is Minutes of the 14<sup>th</sup> Meeting and Paper ACVSB 10/2, which I can forward to yourself. I am sorry I have been unable to locate everything.” [DHSC0046972\_117]*

- 2.39. A further draft of the minute from Ms Morgan to Mr Kelly appears to have been dated 7 March 2000, [DHSC0200022\_006].

Also on 7 March 2000, Dr Troop’s office emailed me in reply to my minute of 3 March with a brief note from her which was, *“Thank you for alerting me to this. As you say, they were Dr Metters private papers, so there should not really be an issue.” [WITN5426214]*

- 2.40. On 8 March 2000, I received the following email from Dr Metters:

*“Thank you for copying me your e-mail of 3rd March to Dr Troop.*

*I no longer have any documents relating to HCV. I had, however, retained copies of all the minutes of ACVSB, after I became Chairman in August 1989, and all MSBT minutes in my personal file, when I demitted from my DCMO role on 31st August. I do not know where these are now, but I had retained them because of the expected HCV Litigation. I did not however have copies of all the papers considered by ACVSB.*

*Other people who might still have copies of the missing documents include Dr Gunson, Professor Zuckerman, and Dr Rejman. A number of other members of [ACVSB] are still around, in particular, Dr Mortimer at PHMS, Dr Minor at IBMSC and Professor Richard Tedder at the Middlesex Hospital.*

*I can [shed] no light on why the Registered Files were sent for discussion in 1993. I do not recall being asked about this at the time.” [DHSC0046972\_113]*

- 2.41. Also on 8 March 2000, I was copied into the final version of the submission from Mrs Morgan to the Permanent Secretary [WITN4505393]. Paragraph 7 of the final submission read,

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*"7. In addition Counsel was of the view that there should be a small, and probably in-house investigation into the destruction of the documents. The investigator should interview Dr Metters and his secretary, the person at DH who signed the destruction authorisation {whom we know to be still at DH} and Dr Rejman. This should not be a witch hunt but the investigator should report and make recommendations about such matters in the future. Counsel was of the view that as part of the investigation Heywood Stores should be visited, In this way, the Department would have audited what has happened, It occurs to me that this is a function which could properly be carried out by internal audit."*

Her conclusion included that,

*"8. This does appear to be a one off case. Sol Litigation has handled three other major writ actions of this kind and will undoubtedly handle others. They have no experience of this kind of thing happening before, But equally we cannot be complacent, more importantly in this case we have a duty to the court which I believe we can satisfy only by undertaking a formal audit of what happened. I am also concerned that nothing like this happens in any other litigation we have or may have, in particular of course In the context of BSE. My own recollection is that the only time such a thing has happened before - an issue involving the Lister Institute {no relation} in which vital papers were inadvertently sent to a land reclamation site - an internal investigation was held. My advice, therefore, is that such an investigation is conducted as a matter of urgency."*

2.42. On 9 March, I was copied into the Permanent Secretary's reply sent by his Private Office:

*"Perm Sec has copied the papers on to David Clark, and Flora Goldhill saying that it sounds like we should take your advice, asking them if they're content, and, if so, asking David Clark to get his internal audit people to take forward." [WITN6955030].*

### **Internal audit**

2.43. I recall that an Internal Audit investigation was therefore commissioned into why the documents were destroyed. I would have had some involvement, with SOL, in commissioning this but I have no recollection of the detail.

2.44. On 13 March 2000 I was copied into an email from Bill Burleigh to Sammy Foster, thanking Mr Foster for some papers and stating:

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*"I have assigned Lawrence George, an experienced and qualified auditor, to this task. I agree this review needs to be handled sensitively and with a focus on lessons for the future.*

*Lawrence will report directly to me on this work."* [WITN4505394]

- 2.45. I have seen a file note of 16 March 2000 by Mark Gidden of SOL, recording a telephone call with Mr George. That file note explained that Mr George was keen to get some guidance on developing the terms of reference for his investigation. It also stated that Mr George:

*"... seemed keen to discuss some of the finer detail but I was reluctant to refer him to Charles Lister who was the only other person who had been privy to the discussions with Justin Fenwick on 3/3/00.*

*He asked if we had a clear idea of the exact documents that were missing. I explained the emerging list we had in Annex A to the supplemental list that had recently gone out to DMS and also their assurance that they would soon let us know what else they thought was missing.*

*We discussed the roles of individuals involved such as Charles Lister, Dr Metters and Dr Rejman and he seemed to have a good idea of the extent of the inquiry at hand although I was not able to help with formally identifying file names and references."* [WITN4505395]

- 2.46. I have also seen a file note by Mr Gidden of the same day, which records a telephone call to Yvonne de Sampayo, noting that she had no other documents and Dr Rejman had left DH four or five years prior. [WITN4505395]

- 2.47. I have also seen a file not by Mr Gidden dated 17 March 2000, which records a telephone call with Mr Fenwick. It appears that Mr Fenwick stated he may have had a copy set of the ACVSB papers and would check what he had at chambers and make them available for collection the following week. [WITN4505395]

- 2.48. On 22 March 2000, Dr Troop minuted Dr McGovern, Dr Metters, Mrs de Sampayo and me stating,

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*"1. As you may be aware, there has been an apparent loss of documents needed for the hepatitis C litigation.*

*2. Bill Burleigh and his colleagues are carrying out an audit to ensure that we learn the lessons from this to avoid a further recurrence.*

*3. They will be trying to establish what happened and identify the extent to which procedures have not been followed. I have also asked them to review the action that has been taken to retrieve the files.*

*4. They aim to complete their work by the end of April and report to me in May.*

*5. The audit will not seek to apportion blame, rather help prevent such things happening again.*

*6. I appreciate you are all busy, but please could you make time to see them as soon as possible, and also let them know if there is anyone else they should see." [WITN5426240]*

I note that the internal audit report includes thanks to HSD at the end of its report. I think that probably reflects that Dr McGovern and I would have helped the audit team as they conducted their work.

2.49. I have seen a copy of a minute Mr George faxed Ms James on 24 March 2000, to which he attached a copy of the terms of reference, which he states "*we have agreed with Pat Troop, DCMO*". [WITN4505396]

2.50. On 5 April 2000, Ms James minuted me and Dr McGovern indicating that she had been able to fill some gaps in the missing papers because Mr Fenwick had returned his own copy of papers which had assisted. She sought further assistance on a list that had been annotated by DMS. [WITN5426244]. I think this reflects that although Internal Audit had now been commissioned we were still trying to do all we could to track down the missing papers.

2.51. I have seen a copy of the final nine-page report of the internal audit review, which is stamped 11 April 2000 [NHBT0000193\_137]. The report was carried out by Bill Burleigh and Laurence George. The overall conclusion of the report is as follows:

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- “3.1 We concluded that an arbitrary and unjustified decision, most likely taken by an inexperienced member of staff, was responsible for the destruction of a series of files containing the minutes and background papers of the Advisory Committee on the Virological Safety of Blood (ACSVB).*
- 3.2 We believe the destruction of these files would have been prevented had the person marking files for destruction, been aware of their importance. We have made a number of recommendations to help ensure this type of mistake is not repeated:*
- Improved induction and training procedures to enable the Departmental Records Office (DRO) to instruct all new recruits and existing staff of the importance of good record-keeping;*
  - For the Record, the Department's record management guidance, should be updated to include indicative timescales for the retention of different types of documents. This would reflect HSC 1999/053 For the Record, the Department's comprehensive document management guidelines to the NHS, which includes indicative time periods for retaining different types of document;*
  - The authorising officer conducting file review should be at IP3 standard level or higher. Currently the level is IP2;*
  - the Management of Electronic Documents Strategy (MEDS) team incorporates any improvements they identify as a result of this investigation, into the rollout of MEDS.*
- 3.2 These recommendations have been discussed and agreed with DRO, and the Staff Development Unit.*
- 3.3 We also acknowledged in this case, that the major organisational changes as a result of the Functions and Manpower Review (FMR), may have contributed directly to the poor decisions taken, through section reorganisation and the muddled allocation of responsibilities. Our understanding of exactly what happened is outlined in the following section.” [NHBT0000193\_137]*

2.52. In relation specifically to the destruction of the files, the authors found that:

*“From the dockets it seems clear that a two-stage process led to the destruction of the files:*

*in February and March 1993, the files were closed, retained in the section, and marked for review 5 years from the date of the last document on each file. This part of the process followed normally accepted procedures;*

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*before any of the volumes reached their specified review date however, in July 1993 the files were marked for destruction and sent to DRO. Volume 4 for example, had been marked for review in July 1995.”*  
[NHBT0000193\_137]

2.53. The report went on to acknowledge that this occurred at a time of major organisational change, and to make a number of recommendations for reforms in the key areas of induction and training, file retention periods, authorisation, staff competencies, and a management of electronic documents strategy.

2.54. On 3 May 2000 I received a minute from Ms James, attaching a letter from DAC and a draft response. Ms James stated:

*“2. You will recall when we sent to see Justin Fenwick about the missing documents he mentioned Professor Zuckerman’s position. It is just as Professor Zuckerman mentioned in his letter of two years ago.*

*3. I seem to recall you told me Professor Zuckerman’s set was also incomplete. Am I correct? In the circumstances, I believe Professor Zuckerman’s papers are discoverable and I think we should let DAC have a look at them. However, I suggest we do so on the basis that it is because of the particular circumstances in which we find ourselves and should not be seen as a departure from the general principle relating to the Department’s committee members.”* [WITN5426259]

2.55. On 14 November 2000, I was copied into an email from Alison McAdams of DAC to Ms James, noting that Professor Zuckerman was at that time giving evidence in court. The email stated:

*“He also mentioned that he was in possession of the majority of the Minutes and had briefly reviewed them in order to confirm that there were very few and no substantive references to the decision-making process that led to the introduction of anti-HCV screening. Regardless of this, Counsel for the Claimants are understandably concerned to see these papers.*

*I have a copy of the Consent Order that was agreed to by the Department at the time of the Claimants’ specific disclosure application and this includes these Minutes. However I understand that the Department subsequently was unable to locate these papers.*

*I understand that you are not in the office today and so I have mentioned the matter to Charles Lister. While neither Prof Zuckerman nor I believe*

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*there is anything of relevance, the Court Order obviously takes effect and I wanted you to be aware of this development. In these circumstances, Prof Zuckerman has agreed to provide the papers to me and Charles agreed that it would be best for me to arrange the mechanics of inspection with the Claimants before returning the papers to the Professor.” [WITN5426298].*

### **Which documents were destroyed**

- 2.56. I am asked to set out as fully as I can which documents I discovered had been destroyed, including the date, type and title. I have very limited memory of these circumstances and cannot add to the information in the documents to which I have already referred.
- 2.57. Two documents in particular are relevant and, together, contain the most complete answer I can offer the Inquiry on this issue. The first is the Audit Report discussed at §2.43 above, which states that the documents destroyed were “volumes 4 – 17 of GEB 1, which contained the minutes and background papers to the ACVSB between May 1989 - Feb 1992” [NHBT0000193\_137]. The information the audit team gathered at the time about why the papers were destroyed is contained in the report and set out at §2.52 above. I cannot add anything to the conclusions reached in the report.
- 2.58. Second, and as noted at §2.36 above, my minute to Ms James of 3 March 2000 set out the documents DMS had requested and what had been found at that point in time (though more were found subsequently) [DHSC0046972\_123] for example see §2.36. Relevantly, it read as follows:

*“2. Taking the documents in the order listed in DMS's letter:*

#### *ACVSB 2<sup>nd</sup> Meeting*

*Papers 2/1, 2/5, & 2/8 are from the Department's registered files (the volumes containing papers for the 1<sup>st</sup> and 2<sup>nd</sup> meetings of ACVSB were not destroyed). DMS ask for the enclosures to 2/1. As you'll see there are no enclosures and the paper is in any case not about hepatitis. This may therefore be an error on the part of DMS.*



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*Paper 2/9 is from Prof Zuckerman's personal papers.*

*We have not yet found the questionnaire results and report extract appended to paper 2/7.*

#### 3<sup>rd</sup> Meeting

*We have not yet found the annexes to paper 3/1*

#### 4<sup>th</sup> Meeting

*4/1, 4/2 & 4/5 come from Prof Zuckerman's personal papers.*

*We have not yet found the minutes of the 4<sup>th</sup> meeting.*

#### 5<sup>th</sup> Meeting

*5/1, 5/7, 5/8 & 5/9 come from Prof Zuckerman's personal papers. 5/9 is draft guidance on therapeutic and diagnostic materials used by the UK Blood Transfusion Services and appears to have some pages missing (it's hard to say how many). I'll see if I can find a more complete version.*

*5/2 & 5/10 comes from files held by the Scottish Executive.*

*We have not yet found 5/6.*

#### 6<sup>th</sup> Meeting

*6/6 comes from Prof Zuckerman's personal papers. 6/3 comes from files held by the Scottish Executive. We have not yet found 6/3, 6/4, 6/5 or 6/7.*

*I am not able to answer the questions in paras 9 & 11 of DMS's letter as these refer to indexed documents already disclosed which I don't have. Is it possible to answer the questions from the copies you hold? I have, however, found a copy of paper 6/2 (enclosed) which look to me like the actual Ortho abstracts (as opposed to notes prepared by Dr Rejman).*

#### 7<sup>th</sup> Meeting

*I have not yet found copies of the papers from the 7<sup>th</sup> meeting (apart from 7/3 - enclosed) so can't yet answer DMS's question. However, if need be, we should be able to work this out for ourselves.*

#### 8<sup>th</sup> Meeting

*8/2 comes from Prof Zuckerman's personal papers.*

#### 9<sup>th</sup> Meeting

*9/4, 9/7, 9/8, 9/9, 9/10, 9/12 & 9/13 come from Prof Zuckerman's personal papers.*

#### 10<sup>th</sup> Meeting

*10/5, 10/7, & 10/9 come from Prof Zuckerman's personal papers.*

*10/6 & 10/8 come from files held by the Scottish Executive.*

*Could you let me have copies of the documents referred to at para 15 & 16 of DMS's letter so that I can see what is being referred to.*

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#### 11<sup>th</sup> Meeting

11/1&11/5 come from Prof Zuckerman's personal papers.

We have not yet found the minutes of the 11<sup>th</sup> meeting.

#### 13<sup>th</sup> Meeting

From the agenda of the 13<sup>th</sup> meeting, there would appear to have been just two papers – 13/1 & 13/2 – both circulated in advance (13/2 was on HTLV so is [presumably] not relevant). 13/1 is enclosed and comes from Prof Zuckerman's personal papers.

Item 3 on the agenda was Matters Arising and item 5 would appear to be an oral report.

We have not yet found the minutes of the 13\* meeting.

#### 14<sup>th</sup> Meeting

We have not yet found the minutes of the 14th meeting.

#### Procurement Product Liability

We have not yet found a copy of this circular.

#### Meeting Metters/Gunson – June 1990

We have not yet found a note of this meeting/related papers.”

- 2.59. In preparing this statement, I have seen the disclosure list of 9 May 2000 filed with the High Court in *A v The National Blood Authority*. That list sets out the documents that had been, but were no longer, in DH's control as follows:

*“Volumes 4-17 of “GEB1” which contained the minutes and background papers which I now cannot identify to the ACVSB (Advisory Committee on Virological Safety of Blood). These documents were destroyed at various stages between July 1994 [and] March 1998. The Department conducted an internal inquiry about why this happened following this application for non party discovery. It concluded that the documents had been destroyed as a result of a decision taken by an inexperienced member of staff at a time when the Department of Health was re-organising itself. Although the investigators said that this decision was arbitrary and unjustified they concluded that the member of staff was unaware of the importance of the documents.” [WITN4505397]*

### **Steps to trace those responsible**

- 2.60. I am asked to provide details of any steps taken to identify or trace those responsible for marking the ACVSB papers for destruction.

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2.61. In preparing this statement the Inquiry has provided me with a letter from Dr Rejman to Ms James dated 7 June 1995 (before my time as Head of Blood Policy at DH), in which Dr Rejman stated he was providing a list of the documents he had discovered in relation to the period 1989–1991 [DHSC0200022\_002]. He noted that “[u]nfortunately vol 4 for part of 1989 has apparently been destroyed” [DHSC0200022\_002]. Dr Rejman also stated: “Mr Burrage has asked for the individuals responsible to write to him formally confirming this.” [ DHSC0200022\_002]. I do not know to whom Dr Rejman was referring.

2.62. I note the draft minute referred to at §2.39 above states:

*“In addition Counsel was of the view that there should be a small, and probably in-house, investigation into the destruction of the documents. The investigator should interview Dr Metters, Mrs de Sampayo, the person at DH who signed the destruction authorisation (whom we know to be still at DH) and Dr Rejman. This should not be a witch hunt but the investigator should report and make recommendations about such matters in the future...”* [ DHSC0200022\_006].

2.63. I cannot say now whether I did or did not know the name of the person at the time. If I did know it at the time I certainly cannot recall it now.

2.64. As Head of Blood Policy, it was not my role to identify or trace those responsible for the destruction of these documents. I cannot add anything to the Internal Audit Report completed at the time, which concluded that the decision was “most likely taken by an inexperienced member of staff” [ NHBT0000193\_137] and which stated:

*“The decision to mark the files for destruction was taken at a time of major organisational change in the Department, i.e. the implementation of the FMR, which resulted in two experienced members of staff leaving the relevant section. We believe that the upheavals of the FMR process probably resulted in either:*

- *a delegation of responsibilities without proper instruction; or,*

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- *an assumption of responsibility without proper authorisation.*”  
[NHBT0000193\_137]

The identity of the person concerned would not really have been our focus. The audit report had identified the systems issue where there had been a weakness and a need for more training. As set out in Dr Troop’s minute of 22 March 2000 (referred to at §2.48 above) the audit was not seeking to apportion blame.

2.65. I note the authors of the report “*interviewed staff members from the relevant section, but their memories of events up to 8 years ago were hazy at best, and added little to the evidence we had elsewhere.*” [NHBT0000193\_137]. As noted at §2.53 above, the Internal Audit report made several recommendations to avoid this kind of mistake being repeated in the future.

2.66. The Inquiry has drawn my attention to an email from Ms James to Zubeda Seedat of 22 February 2005 (after my time at DH) [WITN3996017]. In that email, Ms James appears to know the identity of the individual, as she states:

*“Also I would say ‘by a junior official at the Department of health who no longer works there’. (He took early retirement to look after his small holding).”* [WITN3996017]

2.67. I had not seen this email previously and do not know to whom Ms James was referring.

### **Steps to trace Dr Rejman or discover why the ACVSB Papers were not recalled in 1994**

2.68. I am asked to provide details on any steps taken to trace Dr Rejman or to discover why ACVSB papers were not recalled from the DRO in 1994.

2.69. I was not involved in any attempt to trace Dr Rejman. This would have been a matter for Internal Audit. The Internal Audit report states:

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*“Two questions remain unanswered from our review:*

- once the Department was aware it would need to collect relevant documentation together, Dr Rejman, who provided the secretariat role for the ACVSB, and who had previous experience of non-party discovery, began the process of collecting information. This was in 1994. However, Dr Rejman did not recall the ACVSB files from DRO, extracting information instead from other policy files. Some of the ACVSB files were still available, unrecalled, as late as 1997 and 1998 therefore. Dr Rejman retired in 1994 as part of the FMR, and we do not know why the ACVSB files, available at DRO, were not recalled;*
- although volumes 14 — 17 were destroyed, volumes 1 — 3 survive, having been assigned lengthy review periods, for example volumes 2 and 3 are due for 2 11 review, in 2013 and 2014 respectively. These are the sort of review periods all volumes should have had, and it has not been possible to determine why volumes 1 — 3 were treated differently.” [NHBT0000193\_137]*

2.70. I cannot comment on events in 1994, which is five years before I joined the Blood Team at DH. Similarly to the identity of the junior official who had marked the papers for destruction, I do not think that our attention would have been focused on raising further queries with Dr Rejman once the internal audit report had been completed.

### **Contents of the destroyed ACVSB papers**

2.71. Unfortunately it is impossible for me to say what the contents of the destroyed ACVSB papers were. The missing minutes of the ACVSB date from the period between May 1989 and February 1992, long before my time on the Blood Team.

2.72. The Inquiry has referred me to an email from Linda Page to Elizabeth Woodeson, Alisa Wight, William Connon and Alexandra Nicholas dated 8 March 2007, in which Ms Page gave an opinion about the contents of the missing documents, suggesting that they were related to events post 1985 and might well have helped identify the process of introducing the hepatitis C test in

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1991 but would not have covered the 1970-85 period [DHSC6359061]. I can see why that might have been said, but I cannot comment on how accurate an assessment it is.

### **Section 3: Lord Owen's papers and related issues**

#### **My own involvement in noting an absence of Lord Owen's papers and my understanding of how this had arisen**

3.1. I am asked what steps I took, if any, to establish how the DH papers relating to self-sufficiency had been destroyed, and my understanding of the circumstances of the destruction of Lord Owen's papers.

3.2. The background to my involvement in this is set out in a submission to Lord Hunt from Jill Taylor in my team, dated 9 October 2001 on a PQ from Lord Morris [DHSC00004054\_033]. This referred to statements made by Lord Owen on attempts to achieve UK self sufficiency in blood products in the 1970s and informed the Minister that,

*"Lord Morris wrote to the Prime Minister on 22 August (a copy of his letter and the relevant newspaper article containing Lord Owen's public statement is attached) having been asked by the Haemophilia Society, for a Government response to the statements made by Lord Owen. The reply, for DH Ministers response, has not yet been sent, as we have been establishing the facts about what happened at the time."*

3.3. In the course of my team preparing this briefing for Lord Hunt on Lord Morris, I recall reviewing contemporary documents on file to establish the sequence of events set out in the briefing pack for the PQ. [DHSC0020742\_093]. I had expected to find the submissions sent to Lord Owen at time he was Minister of Health and to his successor Roland Moyle but frustratingly these were missing from the file record. My interest in undertaking this exercise was to be as open as possible with the Haemophilia Society and other campaigners.

3.4. I came to the conclusion that the submissions had been extracted from the files and sent to the Solicitor's Division (Ms James or her predecessor) to be submitted to the courts as part of a Public Interest Immunity process in earlier litigation. Frustratingly, no one had thought to take a copy for the files when the

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submissions were bundled up and sent to the Solicitor's Division, and that Division could not locate the submissions either. We ended up concluding that the submissions had gone missing having previously been sent to the Solicitor's Division. I cannot now recall the detail of what led me to this conclusion. I cannot, for example, say whether this was apparent from a note on the policy files or from something that the Solicitor's Division told me themselves. What I do recall is that, having understood that the papers had gone to the Solicitor's Division, I asked them whether they could find the papers, and this drew a blank. I say above that *'[f]rustratingly, no one had thought to take a copy'* because I have a distinct recollection of being frustrated at the time that a copy had not been made for retention on the file, so that there was a copy in addition to that sent to the Solicitor's Division.

- 3.5. About five months later, on 22 March 2002, there was a reference to the work that I had done in trying to look at how Lord Owen's injection of funding into self-sufficiency had been progressed. The context was a letter from Carol Grayson requesting a meeting with Yvette Cooper. Jill Taylor provided a submission to the Minister giving advice on this request. [DHSC0042461\_064]. This included the following:

*"Lord Owen – 'Self sufficiency' in UK plasma*

*10. When Lord Owen was Minister of Health in 1975 he made a commitment to make the UK "self-sufficient" in clotting factors within 18 months. He announced the allocation of special finance of up to £500,000, about half of which would be recurring, in order to increase the existing production of plasma derived clotting factor 8.*

*11. The money was linked to a target of 275,000 blood donations to be used annually for the preparation of Anti-Haemophilic Globulin concentrate and 100,000 donations for cyroprecipitate. This target was achieved within the 2 year timescale envisaged by Lord Owen and, as a direct result, the Bio Products Laboratory increased its production of concentrate from 5 million international units in 1976 to 11 million international units in 1977. However, given the rapid growth in demand for these products (denied by Ms Grayson in her letter) at the time, this was not enough to achieve self sufficiency.*

*12. Self-sufficiency continued to be the aim of Ministers for a number of years and NHS production of concentrate continued to increase. But the*



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*rapidly rising demand for clotting factors at that time meant that commercial products continued to be imported. Failure to achieve self sufficiency was linked to the massive increase in demand for clotting factors at the time not to any failure to implement Ministerial initiatives.*

*13. It is important to note that self sufficiency in blood products would not have prevented haemophiliacs from being infected with hepatitis C. Blood products are made with pooled plasma (around 200,000 donations per pool). Even if the UK had been self sufficient, the prevalence of hepatitis C in the donor population would have been enough to spread the virus throughout the pool. That is why the infection of haemophiliacs with hepatitis C is a world wide problem*

*"14. There are allegations that there has been a secret inquiry, this is not true. Relevant documents containing information about the use of the 'Lord Owen money' have been copied and passed by the Department to the Haemophilia Society. **Copies of these documents are being sent over to you to be sent with the letter from PS(PH) to Ms Grayson.***

#### **Documents referred to in Ms Grayson's letter**

*15. We have concerns that Ms Grayson has evidently obtained Government documents from the 1970s/1980s and is basing some of her arguments on information gleaned from these papers. Officials have looked at some files from that period to establish how the money allocated by Lord Owen was spent, and papers on this issue have been passed to the Haemophilia Society. However, given pressures on time and resources, we have not look in detail at the decisions made during that period, an exercise requiring several weeks of work. We have therefore not responded to the some of the detailed questions in Ms Grayson's letter which are partly based on those documents. We recognise that this is not a sustainable position and will provide further advice on handling shortly." (Original emphasis) [DHSC0042461\_064].*

The minute is annotated by hand, I presume by Yvette Cooper with the words "yes it is unsustainable are they going to look into this or not. Seems they have to. And where are the Owen documents?" [DHSC0042461\_064].

- 3.6. I do not know whether it was at this time (March 2002) or earlier in October 2001 that I had been told that relevant submissions had been extracted and sent to the Solicitor's Division. In any event, my understanding was clearly set out in a later email to Zubeda Seedat dated 10 June 2003. This email was sent very shortly after I had left the Blood Policy Team. I said:

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

*I suspect that Lord Owen's allegation about pulped papers refers to the papers kept by Private Office which are never kept after a change of Government. They are either shredded or handed back to the relevant policy section. However, the fact that we can no longer find any of these documents - so can't say what Ministers did or didn't know about the state of play on self sufficiency - just plays into the hands of the conspiracy theorists." [DHSC5541395].*

I referred here to the fact that there was an email from Anita James to me confirming this understanding. I understand that searches for that email have not identified it. However, I was clear at the time that this had been confirmed to me by Ms James.

3.7. I am asked whether I recall what searches I carried out, how they were conducted, by whom and when. I regret that, apart from what I have set out above, I cannot recall any further detail. I personally read through the files and produced an initial chronology of events. I saw that the files did not include any submissions to ministers, and then made attempts to find them. I wish to be clear that my involvement was limited to looking for submissions from officials to Lord Owen and later Ministers of Health in the late 1970s and early 1980s about the money allocated to achieve self-sufficiency. At the time I was not looking for any papers other than those.

3.8. I used the phrase '*one explanation for this...*' because my understanding was that the files had definitely been provided to the Solicitor's Division but there was a degree of supposition about whether they had been destroyed in a clear out. To be clear, however, I had no other explanation for why the documents

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were no longer available other than what I had been told. By SOL, I would have referred to the branch dealing with litigation, at the time headed by Anita James.

3.9. I do not know what documents were marked for PII. But given the conventions at the time, they would certainly have included all policy submissions from officials to ministers because advice to ministers on policy formulation was – as I understand it – widely claimed to attract PII at that time. I regret I cannot be more specific as to which documents were missing. All I can say with certainty is that I was unable to find copies. I cannot recall any further details about the “clear out by SOL” I mentioned in this email. Again, I think this was a supposition.

3.10. I am asked what I meant by my comment that the fact that we were unable find the documents, and so could not say what ministers did or did not know about the “state of play” on self-sufficiency, just played into the hands of the conspiracy theorists. I was simply lamenting the fact that, due to the presumed destruction of the documents, the DH's inability to determine what ministers did or did not know simply fuelled speculation by those who would suggest there had been wrongdoing or that a deliberate cover-up had taken place. As I've already mentioned in §3.3 above, my hope had been that we could be as open as possible with campaigners about decisions taken on self-sufficiency.

3.11. Ultimately, I believed then, as I do now, that the explanation for the missing documents was to be found in poor administration and not a deliberate attempt to conceal evidence. My view at the time was that the quality of Departmental record keeping was fairly poor and that decisions on closing and reviewing files were often left to junior staff, as seems to have happened with the ACVSB papers. The impetus was often about making space in offices, getting rid of filing cabinets *etc.* This reinforces my belief – then and now - that missing documents were due to poor administration rather than any conspiracy to hide materials.

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- 3.12. The Inquiry refers me to my handover notes to Richard Gutowski [DHSC0041246\_045] and why this did not include reference to Lord Owen's papers or the destruction of documents. I do not recall why this was, and I see that the note did not refer to the internal review by Peter Burgin. I would also have talked through key issues with Richard Gutowski but I cannot say whether I mentioned Lord Owen's documents or the internal review during those conversations. There were very many strands to the work of the team and my handover notes had certainly not comprehensively addressed them all; it may imply that the Burgin report was not foremost in my mind at the time. I cannot recall whether Zubeda Seedat was assisting me in the handover notes.

### **Retention of Ministerial Papers**

- 3.13. The Inquiry asks about my own awareness of policies in place for dealing with the storage or destruction of ministerial papers. All DH officials were expected to be aware of the guidance on records management. I did not receive any training when I became Head of Blood Policy as I was already well aware of the rules from previous roles. However, it was my responsibility to ensure that all members of my team were aware of the requirements and acted on them. At the time I was Head of Blood Policy, the Department was moving to electronic, as opposed to paper, files and we would have received training on that. The Inquiry has provided me a copy of *A guide for Records Managers and Reviewing Officers* [WITN3996002] ("the Guide"), which sets out in detail policies and procedures for storing files but also refers to other guidance. The principles in this guidance are familiar to me from the time.
- 3.14. The Inquiry refers me to what it describes as "*...the understanding held by members of the department at the time that the destruction of private office papers was necessary on the basis of maintaining the apolitical nature of the Civil Service*". There is a long-established convention that incoming ministers do not have access to documents indicating the views expressed by their

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predecessors of a different political party. That was certainly the case in the 1970s and in the period when I was Head of Blood Policy. I don't know whether it still applies.

3.15. For this reason, my experience and understanding was that ministers' private offices would destroy all documents held by them prior to the arrival of ministers from a new administration or return them to the relevant policy branch. I was in Private Office at the time of the change of government in 1974 (from Conservative to Labour) and took part in this at that time.

3.16. However, I should emphasise that my understanding is that this clear out just affected documents held in Private Offices. Officials within the Department should still have a complete record of all key documents in their policy areas and be able to demonstrate a clear audit trail of decisions and why they were made, including the submissions that went to ministers and their responses.

### **Discussion with Janet Walden (Investigation and Inquiries Unit) in April 2002**

3.17. On 17 April 2002, I received a minute from Janet Walden of the Investigations and Inquiries Unit. Mrs Walden's minute stated:

*"Just to confirm our discussion earlier this week that I think it is important that you locate whatever papers are now in existence and ask someone fairly senior and experienced to put together a chronology of events and key background papers. Without that it will be difficult to answer any accusations levelled against the Department by Lord Owen and others.*

*It may of course be the case that papers have been destroyed - in which case the exercise remains useful in that we can be open about being unable to accurately establish what exactly happened in the 1970s and 1980s. Whatever the outcome we should be in a much better position to advise on whether or not a further investigation or inquiry is justified should there be continuing pressure to go down this route."*

**[DHSC0041379\_023]**

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3.18. I do not now recall the discussion with Mrs Walden to which this refers, nor receiving her minute. I have no reason to doubt that Mrs Walden has accurately captured our conversation in this minute but I am afraid I cannot expand on our discussion as I do not remember it. Although it is to some extent a reconstruction, I think it is quite likely that I would have contacted her for advice in relation to the sort of internal review that was in contemplation.

3.19. The Inquiry refers me to Mrs Walden's comment that,

*"It may of course be the case that papers have been destroyed - in which case the exercise remains useful in that we can be open about being unable to accurately establish what exactly happened in the 1970s and 1980s"*

And asks what my knowledge was at the time. I have set out my what my knowledge was of the ACVSB document destruction in Section 2 above and my understanding of the non-availability of Lord Owen's papers earlier in this section of my statement.

3.20. I am asked what view I took of Mrs Walden's suggestion to put together a chronology of events and key background papers, and whether I agreed with this advice. I can only add now that it strikes me as a sensible idea. I had already done some work on this in relation to the October 2001 PQ – see §3.2 - 3.3, above. It is very likely that this ended up merging into (and was related to) the work that was done on the internal review of self-sufficiency (see Section 4, below).

## **Section 4: Calls for a Public Inquiry and the Self-Sufficiency Review**

### **Public Inquiry**

#### **Chronological examples of consideration and line taken on a public inquiry**

- 4.1. The Inquiry asks about the role I played in the Government's decision not to hold a public inquiry and invited me to comment on some example documents.
- 4.2. It is my clear recollection that the established government position when I joined the Blood Policy team was against a financial support scheme for HCV. I also recall that the departmental position was already against a public inquiry although I think it is fair to say that the calls for a public inquiry became much more high profile in subsequent years.
- 4.3. Throughout my time, this issue was raised in Parliament on numerous occasions in parliamentary questions and adjournment dates, with a consistent response from successive ministers. Examples are included in later parts of this statement.
- 4.4. I now turn to the example documents to which the Inquiry has referred me.
- 4.5. I was copied into a minute from Mike McGovern to the CMO dated 25 October 1999 regarding an article that appeared in the Scottish edition of News of the World [**DHSC0006789\_053**]. Dr McGovern stated that the article "picks and chooses" from an answer to a Parliamentary Question put by Lord Morris, in which Lord Hunt had rejected an inquiry into Hepatitis C. The context was a release of a batch inadequately heat treated coagulation factor processed in Scotland. The minute concluded by summarising the article as follows:

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*“The News of the World article is confused and inaccurate. This may be intentional – to exaggerate the scale of the problem, to extent [extend] what is essentially a Scottish issue to the other UK countries and to increase pressure for hepatitis C compensation which Ministers are resisting. Susan Deacon will take a view on the Scottish issue in due course.” [DHSC0006789\_053]*

4.6. The “line to take” provided at the end of the minute was essentially that Ms Deacon and the Scottish Executive were conducting further enquiries in order to determine whether further action was required. I see the minute is annotated here with the comment “Better Line?”. [DHSC0006789\_053] and a further handwritten comment on page three, which is difficult to decipher and which is not my handwriting (if it assists the Inquiry, I think that this is David Hewitt’s handwriting).

4.7. I have seen a draft minute to the Scottish Minister for Health and Community Care, into which I was copied as the relevant DH official, dated 4 April 2000 [SCGV0000171\_077]. The purpose of the minute was described as to:

- *“let and comment on a draft report (Annex A) resulting from the exercise she asked us to carry out to find out the facts behind an apparent difference between the development of heat treated blood products for haemophiliacs in Scotland and England;*
- *seek her approval to publish the report as a draft and send it to the major parties who have contributed separately to the exercise so far, to seek their further contributions to ensure that the exercise has indeed captured the facts as accurately as possible;*
- *to seek her approval at the same time to send as a matter of courtesy a copy of the draft report to the Scottish Parliament’s Health and Community Care Committee;*
- *to seek approval of a holding line for MSPs who have made the plight of haemophiliacs with Hepatitis C the subject of motions, Parliamentary Questions and correspondence;*
- *to take her mind on issues for further action in relation to haemophiliacs infected with the Hepatitis C virus.” [SCGV0000171\_077]*

4.8. The section headed “background” included the following paragraph:



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*“3. The Minister had been very concerned to hear from the Haemophilia Society at their meeting on 14 September, both about the general plight of haemophiliacs who had been infected with the Hepatitis C virus through blood products, and assertions that heat-treated blood products were developed for use more quickly in England than in Scotland (September 1985 as opposed to December 1987). She offered to look into the relevant facts, and this exercise was the result. The Haemophilia Society have made it their mission to seek a public inquiry into the whole issue of infected blood products (not just the difference in heat treatment, and the alleged lack of care by clinicians in not warning of the risks or not offering patient tests, which are the subject of this exercise). This call has been taken up by some MSPs.”*  
[SCGV0000171\_077]

4.9. The minute went on to recommend publishing the draft in a low-key way, and seeks the Minister’s approval of a line to keep interested MSP’s informed. Under the heading “Further Action”, the minute stated that, should the circulation of the draft uncover nothing further, then the issues to be considered would be:

- *“whether the Minister will agree to calls to commission an independent inquiry into the wider issue of HCV infection of haemophiliacs;*
- *the possible provision of financial help to haemophiliacs who have been infected through blood products and/or who develop liver disease as a result;*
- *the availability of treatment for Hepatitis C and whether priority should be given to haemophiliacs who contracted the virus through their NHS treatment;*
- *whether he wishes to convey an apology to people infected through blood products”.* [SCGV0000171\_077]

4.10. The minute then sought the Minister’s agreement that the above were the issues to be considered for a further submission [SCGV0000171\_077].

4.11. The context for this was the slower introduction of heat treatment in Scotland than in England, which had been subject to review by the Scottish Executive.

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Since this was a Scottish issue and had been subject to a review, it would probably not have been seen as a basis for a DH commissioned public inquiry.

- 4.12. On 9 November 2000 the Minister of State, John Denham, said in the debate in the Commons that,

*“Before leaving hepatitis C, I shall deal briefly with the point that the hon. Member for Poole made about a public inquiry. He referred to an inquiry that was held in Scotland. The Scottish investigation was not a general inquiry into the history of hepatitis C and blood products. It specifically considered whether Scottish haemophilia patients were exposed to the risks of hepatitis C longer than they should have been, given the state of knowledge at the time and the fact that Scotland developed successful heat treatment later than England. I do not believe that there is a case on that basis for a similar investigation into circumstances in England.*

*Having considered the report, Scottish Ministers concluded that there was no evidence that the relevant authorities did other than their best for patients and that, consequently, the NHS should not pay compensation for non-negligent harm to the small number of haemophiliacs in Scotland who contracted hepatitis C during the period covered by the report.*

*The events of the 1970s and the 1980s are a complex story. However, all the information is in the public domain, and I do not believe that anyone's interest would be served by a public inquiry.”* [Hansard HC Deb 9 Nov 2000 col.545]

- 4.13. On 21 February 2001 I amongst others with an interest received a BBC news article about Dr Peter Jones, an executive member of the World Federation of Haemophilia, who was calling for a public inquiry into the use of imported blood infected with HIV and hepatitis C, noting that other countries had launched investigations [DHSC6286944]. As the Inquiry will be aware, there had been earlier ministerial statements at various times rejecting calls for a public inquiry. One such example is Baroness Hayman in the Lords in 1999: responding to a question from Lord Morris asking when a response could be expected to the Haemophilia Society's request for a public inquiry:

*“My Lords, I understand the strength of feeling. The campaign that the Haemophilia Society waged was moving and forceful. However, we concluded that a public inquiry was not the way forward and would not help prevention of future transmission. That has been covered by*

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*advances in screening and the ability to make blood products safer. I recognise the belief that there is a comparison with the HIV special payments. But there are also comparisons with large numbers of other patients who have suffered non-negligently as a result of treatment given as the best at the time. It is a difficult area but we do not believe that it would be appropriate to offer special compensation.” [Hansard HL Deb 24 May 1999, vol. 601]*

- 4.14. There was a Westminster Hall Debate held in Parliament on 7 March 2000 in which John Denham spoke for the Government on the matter of a public inquiry [Hansard HC Deb 7 March 2000, col. 138WH]:

*“In preparation for the debate and in discussion with my colleagues, I have seen no evidence that would persuade me of the need for a public inquiry or further examination of the history of the matter. Although it is outside my responsibility, I understand that the Scottish inquiry relates to a specific issue. Officials within the Scottish Executive Health and Community Care Department have been asked to examine the circumstances surrounding the introduction of heat treatment with factor 8 in Scotland in the mid-1980s, with specific reference to an alleged discrepancy between England and Scotland. It is not a general inquiry into the history of the matter but an inquiry into a specific issue of the timing and sequence of events. The Scottish Executive await the outcome of those findings”.*

- 4.15. The Government remained steadfast in their rejection of calls for a public inquiry, when in answer to a Parliamentary Question in the House of Lords by Lord Morris on 15 October 2001 [Hansard HL Deb 15 October 2001, vol. 627, col. 339], Lord Hunt answered:

*“My Lords, the Government have great sympathy with haemophilia patients who were infected with hepatitis C before the means existed to remove the virus from blood products. We have given careful consideration to the call for a public inquiry but do not believe that that is the way forward. The facts have been set out clearly on many occasions in debates in both Houses, in meetings with Ministers from the Department of Health and in correspondence.”*

- 4.16. As referred to by Lord Hunt, the Government’s position was extensively challenged in parliamentary debates, and held consistently in both houses, throughout my tenure as Head of Blood Policy, and indeed following my

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departure from post. Those debates were illustrative of an active consideration amidst mounting political pressure to hold a public inquiry, and often sat alongside considerations of financial compensation.

4.17. I have addressed in my earlier written evidence, in March 2001 the High Court issued its judgment in the HCV litigation, and awarded compensation under the Consumer Protection Act 1987 to a number of patients who had been infected with hepatitis C through blood transfusion between March 1988 and September 1991.

4.18. On 10 April 2001 I received a news article about Haemophiliacs infected with Hepatitis C in Scotland through blood products, who were angry the Scottish executive had refused compensation. [DHSC5429788].

4.19. On 23 April 2001 Lord Burlison said in the Lords that,

*“Noble Lords have called for a public inquiry. I can understand that people infected with hepatitis C want to know how it happened and why it could not have been prevented. But the fact is that this was a global problem linked to developing science and technology. It was not confined to the UK or linked to some local breakdown in blood product development. No public inquiry is likely to provide a satisfactory answer. Our aim now is to move forward to enable people with haemophilia and hepatitis C to get on with their lives and to look constructively at how we can improve their health and well-being here and now.”*

4.20. As I referred to at paragraph [2.43] of my second statement, on 2 July 2001 Briony Enser (who had joined my team on a temporary basis to provide additional support) sent a position paper to Yvette Cooper dated 2 July 2001, which provided the Minister with options “*in light of the recent High Court [judgment]*” [DHSC0041379\_177]. Those five options were set out as follows:

*“i. Do nothing (This, like all the options, entails compliance with the letter of the CPA Judgement and the legal precedents that it sets)*

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- ii. *Public Inquiry, lump sum and hardship fund for all haemophiliacs infected with Hep C by blood*
- iii. *Lump sum and hardship fund for all haemophiliacs infected with Hep C by blood and low key Inquiry,*
- iv. *Lump sum and hardship fund for all or some haemophiliacs infected with Hep C by blood*
- v. *Hardship fund for haemophiliacs infected with Hep C by blood and who have severe liver disease” [DHSC0041379\_177].*

4.21. The attached options paper [DHSC0020756\_025] addressed the option that included a public inquiry as follows:

**Option 2**

<b>Public Inquiry, lump sum and hardship fund for all haemophiliacs infected with Hep C by blood</b>	
<p><b>For:</b></p> <p><i>Discharges legal obligation under CPA</i></p> <p><i>Would satisfy lobby</i></p> <p><i>Would establish all the facts</i></p>	<p><b>Against:</b></p> <p><i>CPA Costs as at Option 1</i></p> <p><i>Prohibitive initial cost and additional costs later (Lump sum for haemophiliacs and widows alone estimate at £200m)</i></p> <p><i>Relevant facts largely established; information in the public domain</i></p> <p><i>Sets no parameters for compensation – all infected receive it, whether people are ill or have suffered harm</i></p> <p><i>Sets new (untenable)</i></p>

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	<p><i>precedent for no fault compensation payment</i></p> <p><i>Lengthy time period for Inquiry to report</i></p> <p><i>Public Inquiry would Raise the profile of potential no fault compensation at a time when litigation in the NHS is an increasing problem.</i></p>
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*Delaying any consideration of compensation until after a full Public Inquiry would share the disadvantages above (Payment to CPA Judgement cases could not be delayed.) In addition, it would not satisfy the lobby who want to see immediate action.*

**Option 3**

<b><i>Lump sum and hardship fund for all haemophiliacs infected with Hep C by blood and low key inquiry</i></b>	
<p><b><i>For:</i></b></p> <p><i>Discharges legal obligation under CPA</i></p> <p><i>Would satisfy lobby to some degree</i></p> <p><i>Lower initial costs for Inquiry</i></p>	<p><b><i>Against:</i></b></p> <p><i>CPA Costs as at Option 1</i></p> <p><i>Expensive; lump sum for haemophiliacs and widows alone estimated at £200m</i></p> <p><i>Relevant facts largely established; information in the public domain</i></p> <p><i>Sets no parameters for compensation – all infected, whether</i></p>

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	<p><i>people are ill or have suffered harm</i></p> <p><i>Sets new (untenable) precedent for no fault compensation payments</i></p> <p><i>Inquiry report would raise the profile of potential no fault compensation when litigation in the NHS is an increasing problem.</i></p>
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**[DHSC0020756\_025]**

I do not recall what was envisaged by a 'low key inquiry' and how this would have translated into 'lower initial costs'.

4.22. I have seen a letter from Hazel Blears to Jim Dobbin MP dated 6 August 2001 **[DHSC0038520\_191]**, in which she responded to Mr Dobbin's comment on the government's decision not to hold a public inquiry. Hazel Blears noted that the facts had been set out clearly on many occasions through debates in both Houses, at meetings with DH ministers and in correspondence. She stated that while the government had great sympathy for those infected with hepatitis C and had considered the call for a public inquiry very carefully, it did not think that was the way to go forward.

4.23. I have referred to Lord Morris' question of 15 October 2001 at §3.2 above. The suggested answer closely mirrored the wording of the above letter of Hazel Blears, and read:

*"We have given careful consideration to the call for a public inquiry but do not believe that this is the way to go forward. The facts have been set*

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*out clearly on many occasions through debates in both Houses, at meetings with Department of Health Ministers and in correspondence. [DHSC0020742\_093].”*

Either I or one of my team would have contributed to the briefing material for this, drawing upon already-established lines.

4.24. I also recall this was an issue in Parliament at this time. On 14 November 2001, I received a Hansard extract for an adjournment debate on hepatitis C, with a request to assist the Minister to ensure all the MPs' questions had been properly answered [ DHSC0032036\_047]. In the debate, Brian Cotter and Neil Gerrard called for a public inquiry.

4.25. On 11 March 2002, I provided a minute in anticipation of the first Ministerial meeting with the newly-formed All Party Group on Haemophilia [DHSC0041379\_081]. Although no agenda information had been provided, I anticipated that the call for a public inquiry may be raised. I did not attend, the meeting, however, and cannot comment whether it was in fact discussed.

4.26. On 12 March 2002 Lord Filkin said in in the House of Lords [Hansard HL Deb 12 March 2001, col. 778] :

*“The noble Lord called for a public inquiry. In essence, the Government's position on that is that there is nothing of fundamental significance that we do not know about a public inquiry that would be brought out by it. The Government did not take part in a whitewash in 1997–98. There was a serious attempt by officials and Ministers to look afresh at the decisions that were taken by the previous government to establish whether they raised anything that required to be considered afresh. That was done fully and carefully. I know that the noble Lord, Lord Morris, regrets the fact that the position was not changed.”*

4.27. The briefing pack attached to the minute dated 9 October 2001, referred at §4.23 above, including the following points:



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- (1) A review of the DH's files for the period during and after Lord Owen's tenure showed that, although self-sufficiency was an aim of ministers for a number of years, and NHS production continued to increase, the rising demand for clotting factors meant that commercial products continued to be imported. There was no evidence suggesting Parliament had been misled or that a public inquiry was warranted [DHSC0020742\_093].
- (2) The evidence was that considerable efforts were made to achieve NHS self-sufficiency in clotting factors in the 1970s, and that the fact this was not achieved was linked to the massive increase in demand for clotting factors at the time, not to any failure to implement Ministerial initiatives. There was no evidence of liability for the infection haemophiliacs with hepatitis C and a public inquiry was not warranted [DHSC0020742\_093]
- (3) The Scottish inquiry looked specifically at whether Scottish haemophilia patients were exposed to the risk of hepatitis C longer than they should have been, given the state of knowledge at the time and that Scotland developed successful heat treatment later than England. There was no case for a similar investigation in England [DHSC0020742\_093]

4.28. A minute from Jill Taylor to Sarah Whewell on 22 March 2002 stated:

*"It is important to note that self sufficiency in blood products would not have prevented haemophiliacs from being infected with hepatitis C. Blood products are made with pooled plasma (around 20,000 donations per pool). Even if the UK had been self sufficient, the prevalence of hepatitis C in the donor population would have been enough to spread the virus throughout the pool. That is why the infection of haemophiliacs with hepatitis C is a world wide problem."* [DHSC0042461\_064]

4.29. On 8 May 2002, I provided Yvette Cooper with a minute entitled "Haemophilia and Hepatitis C: Handling Issues" [DHSC0041379\_025]. In that minute I provided the following update on the self-sufficiency review:

"Lord Owen

*4. We have completed a preliminary look at the surviving papers from the 1970s. These show that the money Lord Owen announced in*

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*Parliament in 1975 was spent as promised. However this, and later drives toward self sufficiency, did not keep pace with the growing demand by patients and clinicians for clotting factors, making imports a necessity. Self sufficiency became a moving target and was never attained. A summary of events is attached at Annex C.*

*5. As far as we know, Lord Owen last wrote to the Department on this issue in 1987 (see Annex A, para11). He has not written to Ministers since this issue resurfaced. To help us take back some of the initiative, you may wish to invite him to a meeting to discuss his concerns, perhaps with Lord Morris and Michael Connarty. This would allow us to explain our preliminary findings and offer him access to relevant papers once officials have completed a more thorough search of the files (see para 6 below).*

*6. We are currently seeking funds to employ an official for a short period to undertake a detailed review of the surviving papers between, roughly, 1973 and 1985 and put together a chronology of events. Without this it will be difficult to answer any detailed accusations levelled against the Department by Lord Owen and others. However, given the need to recruit someone to do this work and the huge volumes of paper to be read and analysed, a complete chronology is unlikely to be ready for at least 2-3 months.*

*7. We have considered whether it would be better to hold the meeting with Lord Owen before or after we have completed our chronology. On balance we think an earlier meeting has several advantages – we would be taking the initiative immediately after the You and Yours programme (broadcast 30 April) by contacting Lord Owen & Lord Morris with a desire to be helpful and open on the self sufficiency issue and hopefully reduce the chances of further comment from them suggesting that the Department has something to hide. Leaving a meeting until we have all the facts at our disposal would only perpetuate the current situation which places us too much on the defensive.” [DHSC0041379\_025].*

4.30. On 15 May 2002, I attended with Yvette Cooper a meeting with Manor House Group, Haemophilia Action UK, and interested members of Parliament. During that meeting, a number of participants including Carol Grayson voiced their dissatisfaction and the Minister stated that there had been an initial investigation which showed that the money promised by Lord Owen had been used correctly [WITN1567015] . I have seen the DH minutes of the meeting which records, that the Minister was due to meet with Lord Owen, Lord Morris and Michael Connarty MP in late June, to discuss the self-sufficiency issue in relation to the funds Lord Owen provided for this purpose [WITN4505398].

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4.31. The unofficial minutes (which I do not recall being shared with me at the time) record Carol Grayson stating that a public inquiry was required, as “*HIV payments forced people to sign a waiver for [the] hepatitis virus.*” [ **WITN1567015**]. The reply from Yvette Cooper was recorded in the minutes as follows:

*“The increase in need for plasma products was the reason for importing concentrates. She was in contact with David Owen checking why papers were pulped. She would check BPL inspectorate records 1976 -80.*

*All papers of David Owen would be reviewed and shared with all party committee and David Owen.*

*Regarding larger pooling of plasma that was taking place here for plasma products not just concentrates.*

*The NHS has always acted on risks known immediately.*

*The government accepts that stigma is connected with hepatitis C and work is being done in this area.*

*This and previous administrations had looked into no fault compensation and had always decided against in this case, this will probably not change. The government is constantly checking what can be done. The NHS has never been negligent as treatment is brought in as the technology allows. On recombinant, the decision to introduce for children was brought in for concern not for known risks in plasma. The issues on shortages in Recombinant were changing constantly and being checked.” [WITN1567015].*

4.32. The Manor House Group’s record of the minutes, is consistent with the Minister’s line of response against calls for a public inquiry. However, I note that the DH minutes, provide useful context to the government’s consideration, which further explains the position:

*“The Minister stated that she was aware of the suffering of the haemophilia community on this issue and was deeply sorry for what had happened, but that the general principles that had been developed whereby compensation is only paid when the health service of an individual within it was negligent was correct and would continue. Compensation would not be paid on a no fault basis.*

*The Minister commented that successive Governments had look [sic] at this issue in detail and decided not to pay compensation.*

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*The MHG stated that they felt warnings provided by some clinicians about the risks of using imported blood products were not taken seriously or acted upon so that the risks of haemophiliacs contracting hepatitis C was greater than it needed to be and that as a result a public inquiry was the best way for all of the knowledge to be aired.*

*The Minister responded by stating that the technology to make blood products free from HIV and hepatitis C, in sufficient quantities to treat all haemophilia patients in the UK was not available until the mid 1980s. Once it was, the NHS introduced it. Therefore, it was not believed that anyone's interest would be best served by a public inquiry"*  
**[WITN4505398]**

- 4.33. In an email from Bob Stock to Aileen Keel and Sandra Falconer on 16 May 2002, Mr Stock referred to a conversation he had had with me **[SCGV0000175\_017]**. He stated:

*"Charles rang to brief on latest developments down there.*

*Apparently Yvette Cooper recently had a meeting with the wing of the Haemophilia Society<sup>1</sup> that is still making an issue of blame and the need for an enquiry. This meeting was more or less unavoidable and as was set up by an MR. Next month she is meeting with David Owen to try to lay to rest his allegations and also with the Haemophilia Society (main wing) to hear their proposals as to what an acceptable Hep C compensation scheme should look like.*

*Charles is attempting to get an additional temporary member of staff with the intention that they will go through all their archive files and put together a proper timeline on what decisions were made when and for what reasons."* **[SCGV0000175\_017]**

- 4.34. A briefing from Jill Taylor to Hazel Blears on 10 June 2002, **[DHSC5307583]** included the following on the compensation schemes in other countries:

**"Compensation schemes in other countries**

*We are aware of four countries with compensation schemes for haemophiliacs*

*infected with HCV through blood:*

- *Canada*

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<sup>1</sup> This is Mr Stock's own language interpreting our conversation. I would not, for example, have referred to either the Manor House Group or Haemophilia Action as a "wing of the Haemophilia Society".

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- *Republic of Ireland*
- *Hungary*
- *Sweden*

*Canada and Ireland set up schemes because patients in both countries were being infected with HCV after it became possible to remove the hepatitis C virus from blood products. We understand that the Canadian scheme is limited to those people infected with HCV after 1987 (in England, action was taken to virally inactivate blood products in 1985).*

*Hungary has a no fault compensation scheme for all people whose health has been damaged as a result of medical treatment. In Sweden, compensation is available from pharmaceutical companies but is limited to the social and psychological suffering the virus has caused, not for the physical damage.*

*None of the situations in these countries offer parallels for the UK.*

#### **Hepatitis C compensation in the Irish Republic**

*Between 1977 and 1994, a large number of women in the Irish Republic were infected with hepatitis C from contaminated Anti-D Immunoglobulin produced by the Irish National Blood Service. Infection with hepatitis C in this way is unique to the Irish Republic.*

*The Irish Government set up their hepatitis C compensation scheme following evidence of negligence by the Irish Blood Service. Compensation is therefore being given in very specific circumstances which do not apply in the UK. It does not create any precedent for us.”*  
**[DHSC5307583]**

4.35. I was copied in to briefing from Robert Finch to Hazel Blears MP on 27 June 2002 in advance of a meeting with Lord Owen, Lord Morris and Michael Connarty MP **[DHSC0041305\_030]**, with annexes **[DHSC0041305\_050]**, **[DHSC0042461\_030]** and **[DHSC0042461\_031]**.

4.36. I did not attend this meeting as Lord Owen had requested officials not be present (in the event, Lord Owen did not attend the meeting either) **[DHSC0041305\_030]**. Under the heading “Further Investigation” the briefing states:

*“When we met Yvette Cooper to discuss handling, we agreed that officials would undertake a detailed review of the surviving papers between, roughly, 1973 and 1985 and put together a chronology of events. Without this it will be difficult to answer any detailed accusations*

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*levelled against the Department by Lord Owen and others. However, given the need to recruit someone to do this work and the huge volumes of paper to be read and analysed, a complete chronology is unlikely to be ready for at least 4-5 months.” [DHSC0041305\_030]*

4.37. I have seen a minute of this meeting dated 1 July 2002 [DHSC0003606\_083].

Relevantly, that minute states:

- “ 3. Hazel Blears explained that on the basis of an initial papers trawl, it did not look like there had been any misappropriation of funds. Rather there had been an exponential growth in the use of clotting factors and the aim of UK self-sufficiency was therefore a moving target which the original allocation had been unable to keep pace with. There had been no misappropriation of the funds but they had proved insufficient. Moreover, following concerns about the possible transmission of vCJD, there had been safety arguments for sourcing from the USA.*
- 4. Ministers had agreed to recruit someone from within the Department of Health to undertake a comprehensive trawl of the papers. As there was a large volume, this was expected to take some 4-5 months.*
- 5. Lord Morris argued that Lord Owen had been enunciating a principle and that if funding had been insufficient, more money should have been found. Moreover, Lord Owen had not been advised that the costs could escalate.*
- 6. Michael Connarty pointed out that the second part of the pledge was about not purchasing blood products from countries where donors were paid. PS(PH) pointed out that it would not have been possible to get enough products if this had been adhered to, but also noted that she had seen no record of any pledge to this effect. Michael Connarty noted that other European countries had achieved self-[sufficiency]. PS(PH) commented that the rationale for this had not been about quality but about saving money and not being held to ransom by suppliers.*
- 7. PS(PH) explained that she needed to get more information on the context in which earlier decisions had been made and that she would be happy to meet with Lord Owen to discuss this further once the official conducting the review had reported the findings to her.” [DHSC0003606\_083]*

4.38. On 23 October 2002, Hazel Blears responded to a written Parliamentary Question asking whether the Secretary of State for Health if he would make available to the House “*the findings of his Department’s inquiry relating to Lord*

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*Owen's period as a minister at the Department in relation to blood products used for transfusion.* [DHSC0041332\_038] Hazel Blears responded:

*"I have now instigated a comprehensive review of papers from the period in question, which is estimated to be completed early in the new year. The findings from the review will be made available to the House."* [DHSC0041332\_038]

4.39. The briefing pack supporting the suggested answer stated:

*"We have now employed an official for a short period to undertake a detailed review of the surviving papers between, roughly, 1973 and 1985 and put together a chronology of events. Without this it will be difficult to answer any detailed accusations levelled against the Department by Lord Owen and others."* [DHSC0041332\_038]

4.40. The Inquiry refers me to a response from Hazel Blears to Greg Pope MP who had written on behalf of a constituent on 24 October 2002. The date of the reply is hard to discern the date stamp but may be in January 2003. Hazel Blears said in the reply that,

*"Your constituent has also asked for a public inquiry into this issue, The facts have been set out clearly on many occasions through debates in both Houses, at meetings with Department of Health Ministers and in correspondence. Whilst the Government has great sympathy for those infected with hepatitis C and has considered the call for a public inquiry very carefully, all the information is in the public domain and we do not think it is the way forward."* [DHSC0004029\_233]

4.41. On 17 January 2003, I received an email from David Daley about a news story reporting that haemophiliacs who had been given infected blood had also been denied access to their medical records. [DHSC0006235\_027] I provided a draft response to the story, in case ministers were asked for comment, as follows:

*"This is the first we've heard of this story. We are not aware of any complaints to the Department about this either from individual patients or from the Haemophilia Society. We would however be happy to look into any complaints if they are raised with us. We do not believe that this is grounds for a public inquiry."* [DHSC5541432]

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4.42. I have seen a letter dated 19 January 2003 from Carol Grayson addressed to Lord Hunt and Hazel Blears. Carol Grayson expressed anger and concern about the treatment of haemophiliacs, and stated:

*"We demand that Government holds a full and open public inquiry into the contamination of haemophiliacs with HIV and hepatitis C and into the medical treatment of haemophilia patients. Haemophiliacs are currently seeking legal advice on treatment as they are alleging medical negligence and professional incompetence on a large scale. In many cases there is a complete breakdown of trust between doctors and patients. Patients are so distressed at their treatment at the hands of the NHS they are afraid to go to hospital and are in fact cancelling appointments. This cannot go on. What more evidence do you need? The Government promised that if new evidence came to light it would hold such an inquiry. Only a full and open public inquiry where mistakes are admitted and addressed will serve to give patients the confidence to return to their haemophilia centres to be treated."* [MACK000539\_002]

4.43. On 20 January 2003, I emailed Jill Taylor with some key points, I presume by way of response to Carol Grayson's letter, including the following:

***"Call for a public inquiry***

*The Government has great sympathy for those infected with hepatitis C and has considered the call for a public inquiry very carefully, but do not think it is the way to go forward."* (emphasis retained from original) [DHSC0004003\_039]

4.44. On 21 January 2003, Hazel Blears wrote to Sylvia Heal MP with an update on the issues discussed at the Manor House meeting of 15 May 2002. In that letter, Hazel Blears wrote:

*"The meeting discussed the failure of the UK to become self sufficient in blood products during the 1970s after the then health Minister David (now Lord) Owen made recurring funds available for this purpose in 1975. It was agreed that there was a need to look at the relevant papers of the time to clearly establish what had taken place.*

*I am pleased to tell you that an official has been appointed to undertake a detailed review of the papers and put together a chronology of events and I will ensure that you are made aware of the outcome of this work.*

*As you know Yvette had also agreed to meet Lord Owen, Lord Morris and Michael Connarty, Chair of the All Party Group on Haemophilia, to discuss this particular issue. Due to ministerial changes, I met Lord Morris and Michael on 1 July (regrettably Lord Owen did not attend). I agreed*



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*that I would ensure that the findings of the review would be reported to them and that I would be happy to meet with Lord Owen to discuss the report when it was available.” [DHSC0004029\_231]*

4.45. On 19 February 2003, I was copied into an email from Jill Taylor to Sandra Falconer regarding a letter from Jim Wallace, which I gather must have requested documents from the government relating to the allegations discussed in §4.40 and §4.42 above. Jill Taylor stated:

*“We spoke about this earlier. I have now had a chat with Charles. It is clear that the Government’s refusal to hold a public inquiry is this force behind this, plus the pressure group ‘Haemophilia Action UK’ (based in Newcastle).” [SCGV0000185\_270]*

4.46. On 19 March 2003, I received an email from Bob Stock of the Scottish Executive attaching a new ‘briX note’ on the call for a public inquiry, which read as follows:

#### *“HEP C FROM BLOOD - CALL FOR A PUBLIC ENQUIRY*

##### *Accusations & Criticisms*

- *There is a government conspiracy to cover up negligent actions by officials and clinicians in the 1980s.*

##### *Rebuttal lines to take*

- *No reason to believe that anyone acted wrongly in the light of the facts that were available to them at the time.*
- *A public enquiry at this stage would achieve little in terms of addressing the current situation of the people affected. Given the passage of time, gathering reliable evidence would be a difficult, lengthy and expensive process.*
- *Some of the key issues petitioners want investigated are likely to involve bodies that are outside Scotland.*

##### *Facts, statistics & background*

- *Prior to the availability of appropriate safety measures, patients were infected with HCV as a result of receiving blood transfusions, tissue or blood products from the NHS (mostly in the 1980s). Once the virus was identified, a test was developed and used to screen all UK blood donations.*
- *Some blood products were imported from the US allegedly carried a much higher risk of HCV. All imported products were licensed by the predecessor of the MCA (Medicines Control Agency).*

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- *Some people also believe that non-specific screening tests should have been used - even though they were fairly unreliable.*
- *Petitions Committee have decided to refer a petition from [redacted] (on behalf of the Scottish Haemophilia Groups Forum) to the Health Committee. It calls for an independent public enquiry and proper compensation (at the level provided in Eire - £200k).*
- *Health Committee convenor has said the Committee is "unanimously sympathetic to the idea of a public enquiry"*
- *Health Committee has already produced its "Report on Hepatitis C" following consideration of two previous petitions calling for compensation and a public enquiry. Their report rejected the call for an enquiry it felt little would be achieved and because of doubts about old evidence. Committee felt more important to provide financial support.*
- *Only issues specific to Scotland are whether screening of donations and heat treatment of blood products were introduced as soon as they could have been. SE carried out an investigation into the Heat Treatment issue which showed no unnecessary delay - conclusion accepted by Committee.*
- *MCA falls within reserved jurisdiction. Any proper enquiry would have to consider the wider UK context and the actions of Whitehall Departments. This would need to be agreed with the UK government.*

#### *Potential Pitfalls and other sensitivities*

- *Do not say donation screening was introduced as soon as possible - just quickly (there was a slight delay)*
- *The issues of compensation and access to medical records link to the call for a public enquiry - see briX 'Compensation For 'Hepatitis C From Blood' Patients" and 'Haemophiliacs - Access to Medical Records'" **[DHSC5541661]***

4.47. The context for this is that, as set out in at §2.80 to §2.95 of my second statement, at around this time I was in frequent correspondence with the Scottish Executive relating to the issue of whether a payments scheme was within Scotland's devolved powers.

4.48. On 3 April 2003, I received an email from Jill Taylor. Jill Taylor referred to a request from the Retained Organs Commission, the correspondence with Carol Grayson, and the correspondence with Lord Morris. Jill Taylor stated:

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*"I don't think we can provide a reply to the Commission(as they are replying to CG) until we sort out our reply to the Lord Morris letter and the CG TOs (she has already started badgering for a response). Could we all sit down and go through this early next week, we need to get this sorted as the next thing will be a PQ or even worse a debate."*  
[DHSC0004074\_032]

4.49. On 7 April 2003, I received an email from Mr Stock advising me that a representative of the Scottish Haemophilia Groups Forum had recently appeared before the Parliamentary Petitions Committee, that the Committee had referred the question of a public inquiry to the Health Committee, who in turn had said it would recommend the proposal to its successor committee. Mr Stock described this as *"a complete U-turn from the opinion they gave in their previous report."* [SCGV0000262\_166]. Mr Stock also provided his preliminary analysis of the papers, which I do not repeat here.

4.50. I have seen an email from Mr Stock to Sandra Falconer, Aileen Keel, and Andrew Macleod dated 14 April 2003. In that email, Mr Stock refers to a conversation with me:

*"Spoke to Charles today about the Hep C thing.*

*He advises that DoH have recently rebuffed the (now rather ancient) proposal from Haemophilia Society for a HCV compensation package - and in so doing emphatically re-stated the DoH view that they would not be providing any sort of compensation under any sort of circumstances.*

*I alerted him to the fact that in the new parliamentary session we were likely to face strong pressure to a) pay more than the offer previously made by Malcolm Chisholm, b) set up a public enquiry - and that our view was that if a Scottish Enquiry was set up, it would be hard to keep it from straying into non- Scottish areas (with consequent potential for constitutionally sticky situations). He will put a notice up to his ministers alerting them to this. I have alerted Colin Miller to this dimension.*

*Charles is leaving his post on May 16 (to go to the Human Fertilisation and Embryology Authority) and there will probably be a 2-4 week gap before a replacement is appointed. In that period we will have to deal with Jill Taylor (who works from home a lot of the time ) or Charles's Unit Head (Vicki King). Vicki knows little about Charles's portfolio area, but he will be providing her with comprehensive briefing before he goes. Pat Troop*

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*(DCMO) has also left, so suddenly corporate knowledge on this area takes a nose dive.” [SCGV0000262\_161]*

Mr Stock then set out a list of some factual points he had gleaned, including that:

*“A public enquiry is a stated aim of the English Haemophilia Soc. but has not been a priority for the cross party parliamentary group up till now. However, Lord Morris is apparently now becoming more aligned with the Newcastle Group (Carol Grayson)” [SCGV0000262\_161]*

4.51. On 16 April 2003, I emailed Peter Thompson, copying a number of others, seeking some advice in relation to compensation and, relevantly, about the prospect of an inquiry as follows:

*“Bob Stock in the Scottish Exec has recently updated me on his perception of likely developments in Scotland after the election. Just prior to the Election the outgoing Parliamentary Health Committee expressed some support for continuing demands from Scottish haemophilia patients with hepatitis C for a public inquiry. Those same demands are being made here. Bob expects these demand to be renewed with some vigour after the election with a good deal of support from the Scottish Parliament. Should Scottish Ministers concede on this under Parliamentary pressure, we will inevitably find ourselves dragged in despite our Ministers determination to resist an inquiry. Any inquiry would focus on events in the 70s and 80s when policy in Scotland was largely determined by Whitehall and by DH in particular. It therefore seems to me that even if an inquiry were set up only in Scotland it would become de facto a UK inquiry. Do you have any advice on what the constitutional position would be in such a situation?” [DHSC5541783]*

4.52. On 23 April 2003, Ms Walden responded by email stating that she thought it would be very difficult to establish a purely Scottish inquiry, and copying my email to David Hill at Cabinet Office [DHSC5541783]. Mr Hill replied on 30 April 2003 as follows:

*I agree with you that it would be very difficult, in practice, to have a purely Scottish inquiry when the events in question relate to the pre-devolution period. However, I am not clear whether it is in the gift of Scottish Executive Ministers to concede an inquiry in these circumstances. I would be grateful for Peter Whitehurst's views on this point and advice on whether any of the statutory powers to set up inquiries have been*

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*devolved. For instance, the Lord Advocate has a role in relation to major accident inquiries, but Little else is defined in the guidance.*

*If Scottish Ministers do have discretion to establish a Scotland only inquiry, yet the particular circumstances are such that any inquiry would cut across UK Govt responsibilities, I assume that the agreement of UK Ministers would be needed before any inquiry could be set up (or public commitments given). Again, I'd be grateful for Peter's views, and whether Peter Thompson is aware of any guidelines on such points in the devolution concordats. [DHSC5541783]*

- 4.53. On 24 April 2003, I received a Guardian news story from Mr Stock regarding calls for a criminal prosecution in Scotland relating to infected blood in the 1970s and 80s. I forwarded this email on to my team, with the following observation:

*To note. We understand from haemophilia [campaigners] that a similar dossier was submitted to the police in this country last year but we have heard nothing about this officially to date.*

*We are not aware of any evidence that could justify criminal proceedings in relation to the infection of haemophiliacs with hepatitis C through blood. However this is likely to add to the growing political pressure for a public inquiry in Scotland. [DHSC5154978].*

- 4.54. There is another chain of emails I exchanged with Mr Thompson between 29 April 2003, when Mr Thompson replied to my email of 16 April 2003, and 1 May 2003. These emails concern the process and timing for seeking legal advice on the ability and limits of the Scottish government's devolved power to conduct an inquiry. In my email to my team of 1 May 2003, I noted that the issue was "... going to drag on for a little while yet."<sup>2</sup> [DHSC5541782]

- 4.55. On 7 May 2003, I was copied into an email from Mr Stock to Ms McFarlane. Among other things, Mr Stock speculated about the veracity of some of the

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<sup>2</sup> This was a reference to the devolution issue being considered by the law officers, which I discussed in my second statement at §2.88 to §2.95.

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allegations made by the patient who had brought the public inquiry issue to the petitions committee, and commented on the prospect of an inquiry as follows:

*"We shall be surprised if either the GMC or the police enquiries reveal anything of major concern, but we do think that the public enquiry could be very damaging - not necessarily because we think its eventual conclusion would be adverse, but because it would consume the time of a lot of senior staff in SNBTS, would inevitably raise questions in people's minds (however unfounded) about the operation of the blood service, could adversely affect blood donations and generally stir up the whole no-fault compensation argument. We think that it would be impossible to conduct a meaningful public enquiry that dealt only with Scotland because most of the substantive allegations relate to the Department of Health or to pre-devolution (UK) bodies. If Scotland was forced into an enquiry it would have major implications for England - with the prospect for instance of the whole Lord Owen 'thing' being put under the microscope.*

*We feel that if the question of compensation could be resolved in the reasonably near future then the public enquiry issue might fade away, but the longer it drags on the higher the risk is that we shall have to face the prospect of a parliamentary call for an enquiry."* [DHSC5541781]

4.56. I can see that on 7 May 2003, Hazel Blears annotated a draft reply to Mark Lazarowicz MP who had written on 5 February on behalf of GRO-A [DHSC0041174\_075]. The draft reply used language very similar to the letter to Mr Pope in January 2003, as addressed above. I note that Hazel Blears annotated the draft reply with the words, "*What about the trawl of correspondence that has been going on for the last 6 months?*". The final reply to this letter appears to have been sent by Melanie Johnson, Hazel Blears' successor after I had left the team (9 July 2003, [DHSC0041174\_061]). This followed a response from Zubeda Seedat to the Minister's query,

*"To: Amanda Craxton*

*MCU*

*The PO below has been returned for redraft following comments from PS(PH) 'what about the trawl of correspondence that has been going on for the last 6 months'.* "

*The review of the surviving papers for the period between 1973 and 1985 has been completed. However, the review did not uncover additional papers for that period. A chronology of events has been put together, which officials have yet to consider.*

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*I attach a re-draft offering to make further enquiries with House of Commons library if Mr [GRO-A] can provide more specific information.”*  
**[WITN4505399]**

- 4.57. On 8 May 2003, I received an email from Jo Tupper of the General Medical Council (GMC) as follows:

*“As discussed, the GMC is confirming we are looking at the issue of haemophiliacs & hepatitis C. Our current line is:*

*‘We have received complaints with regards to the treatment of patients with hepatitis C and we are looking into the actions of doctors responsible for the treatment of blood-borne diseases. We have taken in the substance of the complaint and will be looking at all the issues surrounding it, but as yet no decision has been made.’*

*To avoid complicating matters, it would be useful if you and/or ministers would confirm you are aware we are looking into the issue, but not give out too much further information. Our investigations are at an early stage, and we do not want to run the risk of prejudicing anything.”*  
**[DHSC5541405].**

I forwarded this on to Ms Seedat, and added the following:

*The GMC have confirmed that they are investigating the allegations made by haemophilia patients that they weren't told about positive HCV tests in the early 90s (see below). Could you therefore draft replies to the letters from Lord Morris and Carol Grayson (plus anyone else who has written in on the subject) saying that we are aware that this is now the subject of GMC investigation and that it would therefore be inappropriate for us to comment further. [DHSC5541405]*

- 4.58. I have seen further correspondence on the response to Carol Grayson that occurred subsequent to my departure. However, as I was no longer in the Blood Team I was not privy to these discussions and cannot comment on them further.

### **Questions raised by the Inquiry**

- 4.59. The examples to which the inquiry had drawn my attention set out in the above chronology, reflect my broad recollections of the time. The line that was established when I joined the team was against a public inquiry and that was

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maintained throughout my time as well. While this was the consistent line, it is evident that the option of holding a public inquiry was on occasion specifically raised with ministers, for example in the submission and position paper put to Yvette Cooper on 2 July 2001, though the advice remained against an inquiry.

4.60. The Government's reasons against commissioning an inquiry are set out in the various examples to which I have referred, including that:

- There was no evidence of wrongdoing by the Government or the NHS. [ **DHSC0020742\_093**]
- There was nothing of fundamental significance that was not already known, and the relevant facts were all in the public domain. (Table a at 4.21 above, Lord Filkin at 4.26 above and Mr Denham on 9 November 2000 at 4.12 above)
- There was no evidence Parliament had been misled. [ **DHSC0020742\_093**]
- This was a problem linked to the state of science and technology at the time, rather than an isolated UK problem, and so any inquiry would be unlikely to provide the infected and affected with a satisfactory answer (Lord Burlison at 4.19 above).
- The focus was instead on looking forward and on how to assist the infected and affected with improving their health and wellbeing. An inquiry would not help prevent future transmission (Baroness Hayman at 4.13 above)
- There was concern that a public inquiry would raise the profile of potential no fault compensation at a time when litigation in the NHS was an increasing problem. (table at 4.21 above)
- The time that a public inquiry would take to complete. (table at 4.21 above)



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- The initial trawl of documents had concluded that the reason self-sufficiency had not been achieved was due to increased demand for clotting factors, not a failure to implement Ministerial initiatives. On the contrary, there was evidence significant efforts had been made to achieve self-sufficiency. **[DHSC0020742\_093]**
- Self-sufficiency in blood products would not have prevented haemophiliacs from being infected with hepatitis C. **[DHSC0042461\_064]**.

4.61. Although I have not seen express and detailed reference in the documents I have considered, I think both ministers and officials would have been aware of the cost of a public inquiry. The reference to 'lower initial costs for Inquiry' in the options papers presented to Yvette Cooper on 2 July 2002 (table at §4.21) alludes to this. However, I do not believe that cost was a prime reason for rejecting calls for an inquiry relative to the reasons given above.

4.62. As to findings in other countries, as set out in §4.34 above, I recall we looked at the examples of other countries, including Canada and Ireland, in considering the case for compensation and concluded that they each had specific circumstances that did not apply to the UK.

4.63. The Inquiry asks about my liaison with health officials in the devolved administrations. I regarded it as important to maintain good communication with the devolved administrations to ensure that we were aware of mutual developments. I do not now recall the specifics but there was a good level of co-operation at my working level. Of the devolved administrations, I had most contact with officials on the Scottish executive and that intensified when the devolution issue was raised, as noted at §4.47 above.

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4.64. On at a general level, my overall view is that I essentially maintained the existing government line on the public inquiry issue. I certainly do not recall there being substantive discussion at the time (for example with Branch or Divisional Heads) that we needed to think again and that an inquiry was after-all merited. Nor do I recall ministers voicing concern that an inquiry was the way to go. However, I set out at the end of this statement reflections with the benefit of hindsight, on the risks of collective mindset or “group think”.

### **Internal review on DH’s commitment to self-sufficiency (Burgin report)**

4.65. I have already set out earlier in this statement that in dealing with allegations (in particular that Lord Owen’s undertaking to seek to achieve self-sufficiency had not been achieved) my team had looked at policy files from the time in order to be better informed about the response to those allegations. We had drawn from this that the funds secured by Lord Owen had not be misappropriated; they had been invested and supply had increased, but the rapidly rising demand had significantly outpaced improved supply. It was in this context that I had been aware of the relative lack of Ministerial submissions from the time and the issue of the files that appeared to have gone to the Solicitor’s Division and could not be found. In 2001, this was not in any sense a formal internal review or investigation, it was looking at the past papers in order to be better informed to deal with the issues and allegations being raised and being as open as possible with campaigners.

4.66. In the course of 2002, it was decided that this would become a more formal and detailed internal review and that additional resource would be required to staff it. There is an overlap with the chronology which I set out in respect of Lord Owen’s papers and consideration of a public inquiry in the sub-sections above so I will cross refer rather than repeating the content. By way of an overview of

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the decision to commission the internal review, however, the briefing note for the October 2002 PQ (§4.38 above) gave the following precis:

*"2. Yvette Cooper originally agreed to an internal trawl of papers after lobbying initially by Lord Morris (President of the Haemophilia Society and a tireless campaigner on haemophilia issues) and later Michael Connarty. Chair of the All Party Parliamentary Group of Haemophilia. Lord Owen also re-entered the fray in an article in the Newcastle Journal last summer (the Journal often runs stories reflecting the viewpoint of Haemophilia Action UK). He has since been quoted on the R4 The World Tonight & You and Yours. He was also due to attend a meeting alongside Lord Morris and Michael Connarty with PS(PH) on this issue in July this year but was unable to attend at he last minute". [DHSC0041332\_038]*

4.67. As I have set out at § 3.5 and 4.26 above, Jill Taylor's submission of 22 March 2002 accepted that (given pressure on time and resources) our initial work had not involved looking in detail at the decisions made during the period, which was characterised as "*an exercise requiring several weeks of work*" [DHSC0042461\_064].

4.68. My minute of 8 May 2002 (§ 4.29 above) was in anticipation of a meeting with Yvette Cooper to discuss handling against the background, amongst other things, of the meeting with the Manor House Group on 15 May, [DHSC0041379\_025]. As already set out, paragraph 6 of that minute contained the reference to the fact that we were currently seeking funds to employ an official for a short period to undertaking a detailed review of the surviving papers. At that stage I think that would have been with a view to practicalities (the dedicated time needed to review the files in detail which we simply did not have in our team against other pressures), rather than because it was already viewed as a formal internal review.

4.69. However, it was I think at the handling meeting the next day, 9 May 2002, that Yvette Cooper decided that this should be a more extensive / formal internal review. I think we would have proposed that, and Yvette Cooper would have approved it.

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4.70. The meeting with the Manor House Group was on 15 May 2002 as I have already referred to. As I have set out at § 4.30 above, Yvette Cooper referred at that meeting to the fact that, *“There had been an initial investigation which showed that the money promised, by Lord ... Owen had been used correctly. No documents produced.”*

4.71. As noted at § 4.35 above, Robert Finch’s briefing of 27 June 2002 noted that,

*“When we met Yvette Cooper to discuss handling, we agreed that officials would undertake a detailed review of the surviving papers between, roughly, 1973 and 1985 and put together a chronology of events. Without this it will be difficult to answer any detailed accusations levelled against the Department by Lord Owen and others. However, given the need to recruit someone to do this work and the huge volumes of paper to be read and analysed, a complete chronology is unlikely to be ready for at least 4-5 months.”* [DHSC0041305\_030]

4.72. I have referred to the meeting between Hazel Blears and Lord Morris and Michael Connarty MP on 1 July 2002 at § 4.37 above. Hazel Blears referred to the more comprehensive trawl of the papers that had now been agreed and the fact that the time estimate was 4-5 months.

4.73. As I have already referred to (§ 4.38 and 4.39 above), on 23 October 2002, Hazel Blears also referred to the review in answer to a PQ, giving the estimated completion being “early in the New Year” [DHSC0041332\_038]. The briefing note for the answer indicated that an official had been employed for a short period to undertake a detailed review of the surviving papers between, roughly, 1973 and 1985 and put together a chronology of events. That was a reference to Peter Burgin who by now must I think have been engaged to do the work [DHSC0041332\_038]

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4.74. On 12 December 2002, Peter Burgin emailed providing what looks to have been a draft of the report which he had further edited. He said,

*"I attach an edited version of the draft report. Robert has said that there will be a spare workstation on Tuesday morning ... so I plan to come and use it before my meeting with Mike McGovern in Wellington House at 11.00. If you are around we could talk about the report if you like. I am aiming to finalise it by Monday 23 December since my last working day is 27 December."* [DHSC6700702]

The draft as it stood then was this version [WITN4505400].

4.75. On 24 December 2002, Peter Burgin emailed me a further version of the report [ WITN4505401]. His email stated,

*"I attach my final draft of the report. I agreed with you that, subject to Miles' agreement, I will be available to brief Ministers on this when you are ready. It might be worth checking what I have written with one or two clinicians and perhaps Terry Snape(although as I said he was a bit shaky on dates). If there are any issues on which you want clarification or anything you want changing then again I am sure Miles will allow me to spend a little time on this. Thanks again for the opportunity to work on this - it was very interesting and I hope it is of some use (although since a lot of the papers were pulped I realise it may be more grist to the conspiracy-theory mill! Peter [ WITN4505402]*

4.76. I note that on 8 June 2003, I emailed Zubeda Seedat on the 'Burgin report' forwarding Peter Burgin's email of 24 December 2002 and stating, "Zubeda. This is as far as Philip Burgin got. Charles". I much regret that this tends to indicate that I simply had not been able to progress the work on the substantive drafting of the review because I was sending Peter Burgin's 24 December 2002 version rather than any further developed version. I come back to this at § 4.85 below.

4.77. I have referred already to my 10 June 2003 reply to Zubeda Seedat's shortly after I had left the team (§3.6 above), but it is convenient to set it again the relevant passage:

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*"The remit for the work done by Peter Burgin was to review surviving documents from 1973 to 1985 to address a number of issues, chiefly:*

- how the Department implemented the policy of UK self sufficiency in blood products begun in 1973 (Lord Owen has said publicly that officials did not carry out his wishes);*
- to chart the developing understanding of the seriousness of non A/non B hepatitis (later identified as hepatitis C) ;*
- to examine the extent to which problems at BPL delayed the achievement of self sufficiency;*
- whether the achievement of self sufficiency would have led to fewer cases of hepatitis C in haemophilia patients.*

*It was not set up to address Lord Owen's allegation, dating from the late 80s, that the papers from his period as a Minister had been 'pulped'.*

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

*I suspect that Lord Owen's allegation about pulped papers refers to the papers kept by Private Office which are never kept after a change of Government. They are either shredded or handed back to the relevant policy section. However, the fact that we can no longer find any of these documents - so can't say what Ministers did or didn't know about the state of play on self sufficiency - just plays into the hands of the conspiracy theorists.*

*Peter Burgin's report nonetheless contains some useful stuff. However, before we make it more widely available it needs (I think):*

- An executive summary;*
- References added both to the documents quoted (eg quotes from published articles should be fully referenced) and to back up statements which otherwise remain unsubstantiated, eg paras 5 of page 9 states "at this time [1993] it was felt that there were dangers in absolute self sufficiency leading to a reliance on a sole supplier of blood products". It's no good putting this out unless we can say who felt this and in what context it was said. We should also be able to give Ministers the option of releasing documents that corroborate statements made in the report.*
- you may also wish to consider sending – with Ministers agreement – a final draft to some of the people consulted – eg Frank Hill, Terry Snape, Karin Pappenheim for comments on factual accuracy.*

*As to the PQ, one possible response is to say something like:*

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*'An informal review is being undertaken by the Department of Health to clarify the facts surrounding the drive for UK self sufficiency in blood products in the 1970s and 1980s. The review has been based on papers available from the time but has not addressed allegations that files from that period went missing. The outcome of the review has not yet been presented to Ministers.'* [DHSC0020720\_081]

4.78. The inquiry has also referred me to a number of later documents that post-date my time as Head of Blood Policy, and which I have reviewed but which I do not think are as relevant to my involvement. I note these here for completeness:

- (1) An email chain between Zubeda Seedat, Robert Finch and Jill Taylor between 5 November 2003 and 2 December 2003 regarding the Burgin report [DHSC0004555\_235];
- (2) An annotated, draft minute from Mr Gutowski to Tony Sampson dated 15 December 2003 regarding Lord Owen's papers [LDOW0000138];
- (3) An email chain between David Reay, David Daley, Sandra Falconer and others between 4 June 2004 and 8 June 2004 regarding a draft line to take on the internal review [SCGV0000046\_088];
- (4) An email from Zubeda Seedat to Jacky Buchanan dated 3 February 2006 attaching advice and a draft reply on a meeting request from The Manor House Group [DHSC0200104]; and
- (5) A briefing pack (Notice Paper Date 22 May 2006) regarding a Parliamentary Question from Lord Jenkin about documents that had recently come to light [DHSC0015839].

4.79. Turning to the issues raised by the Inquiry, I would say as follows.

4.80. As to the reasons why the review was commissioned, it started as a less formal exercise to understand what the early policy files said about self-sufficient in order to answer the questions and allegations being raised. The early work that I had done on those files (the initial trawl of the papers) had indicated that as regards Lord's Owen's additional funding, "...it did not look like there had been

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any misappropriation of funds. Rather there had been an exponential growth in the use of clotting factors and the aim of UK self-sufficiency was therefore a moving target which the original allocation had been unable to keep pace with. There had been no misappropriation of the funds but they had proved insufficient". But we recognised – as set out above – that this was not based on a detailed review of all the papers. And the more detailed review was commissioned to carry out that more detailed assessment.

4.81. The documents provided by the Inquiry include a later summary of the aims of the review from around the time of its publication in 2006. The aims were described in the relevant briefing pack as:

*"(i) Review documents held by the Department and for the period 1973 to 1991, identify key documents and produce a chronology of events, interviews with officials, clinicians and others active in this area at the time may be necessary to build up a full picture.*

*(ii) Produce an analysis of the key issues, including:*

*- the development of policy on UK self sufficiency in blood products, the factors that influenced it and the reasons why it was never achieved;*

*- the ability of NHS blood products fractionators to produce the volumes of product required;*

*- the evolving understanding of the viral risks associated with pooled blood products, both domestically produced and imported, and how this influenced policy;*

*- the developing technologies to enable viral inactivation of blood products and the timing of their introduction in the UK.*

*(iii) Summarise these findings in a report for Ministers."*  
**[DHSC0041198\_088]**

That seems to me a fair summary albeit perhaps slightly developed to what I had said to Zubeda Seedat in my email of 10 June 2003 (§ 4.77 above).

4.82. Peter Burgin was – as the Inquiry have raised with me – the initial author of the review. I cannot remember much about how he came to take on the work, though I think it would have been on the basis that it required someone of experience who had the capacity to spend the requisite time. My email of 10



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June reflected that after Peter Burgin's work on the report, there was a need for further work to ensure that the medical articles etc. were all fully and correctly references that the statements in the report were also backed up with clear references to the evidence / context (I gave an example in my email). I was not involved in the appointment of consultants to complete the report, I think that must have been after Richard Gutowski had taken over. The later (2006) briefing pack for publication of the review with which the Inquiry has supplied me confirms that this was done in 2004 [DHSC0041198\_088]

4.83. I am asked why the review did not include consideration of how and when documents from the relevant time period were destroyed. My 10 June 2003 email set out in clear terms that this was my understanding. From my review of the documents, it seems to me that this was the case because:

- (a) The more formal internal review had developed out of the less formal initial trawl of the documents where we were seeking to answer, from the documents that were available, what had become of the additional funds earmarked for self-sufficiency; and
- (b) the focus of the more extensive and formal review thereafter remained was on the question of self-sufficiency, the seriousness of hepatitis C, and the extent to which the issues at BPL had delayed the achievement of self-sufficiency.
- (c) The destruction of ACVSB files had already been investigated and I do not think that this would have been uppermost in our minds (the audit had been about two years earlier). As regards Lord Owen's papers, I do not think we then (nor do I now) had a basis to think that this had involved wrongdoing rather than reflecting poor administration of the records. As I have explained, my understanding was that the papers had been obtained and retained for the HIV litigation but then could not be found by the Solicitor's Division. I felt that I had pursued the search for the submissions as far as it was possible to go.

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- 4.84. With hindsight, I accept that there may have been a case for adding it to the scope of the internal review though it would have changed the nature of the exercise from a review of existing papers, to also encompass a more investigatory audit type review of the kind done in relation to the ACVSB in 2000 where I had already reached a 'dead end'.
- 4.85. The Inquiry has noted that the review was not published until 2006, and I am asked to set out any reasons for the delay in publication. I have already accepted above that it seems that I simply had not been able to take the drafting forward between 24 December 2002 and my departure in May 2003 (see the mail I sent on 8 June 2003). My email of 10 June 2003 indicated the work I had identified needed to be done but I had not myself progressed it. I can offer no justification for the delay, save that the Inquiry will be well aware from the correspondence sent to Nigel Crisp and my second witness statement of the massive pressures on my team. Although there were still many other pressing issues, in the first half of 2003 I was particularly focused at this point in advancing the roll out of recombinant clotting factors. That was a particular priority because it was an important and practical way in which we could actively improve the treatments available to people with haemophilia and their confidence in those treatments.
- 4.86. The Inquiry asks what role this review played in the government's decision not to hold a public inquiry. I do not think that this was central to the decision making in my time. The government's response to calls for a public inquiry was firmly established long before the review was commissioned. However, the fact that there was an internal review ongoing would have been a further factor in rejecting – while it was still ongoing – the calls for an Inquiry. I cannot speak to what role it played once published.

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#### **Suggestion of institutional resistance to inquiry**

4.87. The Inquiry has referred me to, and requests my view on, the comments of former Secretary of State for Health, Andy Burnham, in the House of Commons on 15 January, during which he stated:

*“... I do not detect the failure being caused by Members of Parliament or, indeed, Ministers; I have met many who want to resolve this in the right way. I have to say that in my experience the resistance is found in the civil service within Government. That is often the case in examples such as this; I found the same with Hillsborough too. It is very hard to move that machine to face up to historical injustice.”*

4.88. I cannot comment on events during Andy Burnham’s time as Secretary of State or on his own views. I can only speak of my own experience

4.89. It is an established convention that civil servants advise and ministers decide. The Civil Service Code makes clear that officials must be impartial politically and:

- provide information and advice, including advice to ministers, on the basis of the evidence, and accurately present the options and facts
- take decisions on the merits of the case
- take due account of expert and professional advice

4.90. It is of course, part of the proper function of civil servants to advise about the risks of courses of action and that includes setting precedents that may be difficult for departments and for government more widely, including in relation to overall spending impacts. That is part and parcel of the provision of information and advice.

4.91. I personally aimed to do as the Civil Service Code required. I took these principles seriously and my experience was that colleagues did as well. My experience was that ministers were always prepared to challenge the advice they were given and had ample opportunity to do that. The Civil Service Code

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is clear that civil servants must not “frustrate the implementation of policies once decisions are taken by declining to take, or abstaining from, action which flows from those decisions”.

4.92. When I joined the Blood Team, there was already an established position, agreed between officials and ministers, that there was no case for compensation or a public inquiry. The issue of financial support was revisited with ministers during my time as I have set out in my second statement. At the point I left the role, the position remained substantially unchanged. It was clear to me that ministers in my time were strongly of the view that compensation was not justified. There was no suggestion in my time that ministers were battling the machine. Had ministers wanted to do more, I am sure we would have found a way to do it.

4.93. At the same time, I refer back to paragraphs paras 2.96-2.98 of my second statement. In particular at paragraph 2.98 I raised the question of how much I may have been affected by a collective mindset. I had in mind the concept of ‘Group Think’, and whether officials, experts and ministers alike were affected by group think when addressing this issue. When I now reflect on these issues, it is that concept which I ponder on rather than any sense of resistance from the civil service. It is the sense that when you work closely and collectively together, there is a risk of group mindset developing and the risk that you are not sufficiently open to challenge to the existing group views. It is of course impossible to say how much this impacted on our decision making.

### **Should the inquiry have been established earlier?**

4.94. The Inquiry has referred me to the evidence of Lord Fowler to the effect that the Government should have established a UK-wide public inquiry before now [INQY1000144] [INQY1000145].

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4.95. With the benefit of hindsight, I accept that there is a good argument to say that an earlier UK-wide public inquiry would have been justified.

(1) As I understand it, the only statutory pre-requisite for a statutory public inquiry now is the existence of “public concern” about a particular event or set of events, (before the 2005 Act, it was that both Houses of Parliament had resolved that it was expedient that a tribunal be established for inquiring into a definite matter described in the Resolution as of urgent public importance). Under either test, it seems to me that the Statutory pre-requisite could have been met and it was therefore a question of political judgement whether an Inquiry *should* be held.

(2) At § 4.60 have set out a summary of why – to my understanding – the Government during my time in the Blood Policy Team was not in favour of an inquiry. That assessment was – to the best of my knowledge – genuinely made.

(3) However, judged with hindsight

(a) The measures that were taken (including DH’s internal review and the subsequent report in 2007) and the litigation that was concluded did not dissipate public concern; and

(b) an earlier UK-wide inquiry would have

- have answered campaigners’ questions about what happened sooner, and perhaps achieved much-needed closure
- reduced the stress on campaigners who had to fight for an Inquiry for longer;
- ensured that more campaigners would have lived to see the outcome
- had the opportunity to call on witnesses now too ill or deceased and would have benefited from clearer memories.

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(c) While blood policy and safety had already moved on considerably, the lessons derived from a full inquiry could have been acted upon sooner.

4.96. As so often, these issues are much clearer and easier to identify with hindsight but I certainly accept that the balance would have been better struck in favour of an earlier inquiry.

#### Statement of Truth

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

Signed

GRO-C

Dated

19.05.2022