

SECOND WRITTEN STATEMENT OF LORD PHILIP HUNT OF KINGS HEATH OBE
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Witness Name: Lord Philip Alexander Hunt

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INFECTED BLOOD INQUIRY

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OF KINGS HEATH OBE

I, Philip Hunt, will say as follows: -

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Section 0: Preface

- 0.1. My name is Lord Philip Alexander Hunt. I was born on GRO-C 1949. My address can be made available to the Inquiry. I make this statement pursuant to the Rule 9 request from the Inquiry dated 4 October 2022. This is my second statement to the Inquiry. The first was made on the 11 September 2020, pursuant to a Rule 13 warning letter I received.
- 0.2. I am a former Parliamentary-Under-Secretary of State (“PUSS”) at the Department of Health. To correct an error in the Inquiry’s Rule 9 letter, I should make clear that I was in this role from 29 July 1999 – 17 March 2003. Throughout this witness statement, in response to the Inquiry’s questions relating to my role, I will principally be referring to this time period.
- 0.3. I was also Minister of State (Quality) in the House of Lords for the Department of Health from January 2007 until July 2007. I believe that term in office may also be of some relevance to the questions in this Rule 9 request given the dates referred to in certain questions, however it was obviously a relatively short period of time.
- 0.4. I have set out this statement following the Inquiry’s section headings and question numbering in the Rule 9 request.

Opening Comments

- 0.5. I would like to begin my witness statement by making a few brief opening comments.
- 0.6. I would like to thank the Inquiry for giving me the opportunity to contribute a statement to this Inquiry. I have reviewed all the documents made available to

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me. They cover events which occurred over 20 years ago and therefore I do not have a full recollection of all the specific events and issues and I am reliant to a large extent on the documentary record.

- 0.7. I found the lack of sufficient financial support for people with haemophilia infected with HCV by blood products to be one of the most difficult policy matters with which I had to deal in my 10 years as a government minister. There was a clear tension between the policy line that successive governments held to, that compensation or financial help is only given when the NHS or individuals working in it have been at fault, and the very real needs of people with haemophilia and their families who had been so grievously affected through infection with HCV.
- 0.8. My meetings with the Haemophilia Society, other groups and with patients and their families were troubling and vividly brought home to me their suffering and the need to help them as much as possible. I looked for ways to do that, but it is a matter of great regret that it took so long for successive Governments to achieve this.

Section 1: Introduction

1.1. I have been asked to set out my professional qualifications which are relevant to the duties I discharged whilst I was a PUSS in the Department. I graduated from the University of Leeds in 1970 with a Bachelor of Arts degree in political studies. Before entering Parliament, I worked in health administration, and I am a former Chief Executive of the NHS Confederation.

1.2. The following table outlines my employment history:

Table 1 – Employment History

Date	Role and responsibilities
1972-1974	Works study officer for the Oxford Regional Hospital Board
1974-1975	Hospital administrator Nuffield Orthopaedic Centre
1975-1978	Edgware Hendon Community Health Secretary
1978-1979	Assistant Secretary National Association of Health Authorities
1979-1984	Assistant Director National Association of Health Authorities
1984-1990	Director of the National Association of Health Authorities
1990-1997	Director of the National Association of Health Authorities and Trusts Chief Executive of the NHS Confederation
July 1997	Appointed as a Labour party life peer in the Lords, with the title Baron Hunt of Kings Heath, of Birmingham in the County of West Midlands, taking the Labour whip
1998-1999	Appointed as a Government Whip in the House of Lords covering health and education issues
29 July 1999-17 March 2003	Parliamentary-Under-Secretary of State for the Department of Health

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May 2005 – January 2007	Parliamentary-Under-Secretary of State for the Department of Work and Pensions
January 2007 – July 2007	Minister of State (Lords) in the Department of Health
2 July 2007 – 5 October 2008	Parliamentary Under Secretary of State for Justice
October 2008 – June 2009	Appointed as Deputy leader of the House of Lords and Minister of State for Sustainable Development, Climate Change Adaptation and Air Quality at both the Department for Environment, Food and Rural Affairs (DEFRA) and the newly created Department of Energy and Climate Change (DECC)
June 2009	Member of Privy Council and left DEFRA to solely work at DECC
October 2008 - 2010	Minister of State at the Department of Energy and Climate Change from 2008 to 2010.
September 2012 – May 2018	House of Lords Opposition spokesperson for Health (later Health and Social Care)

1.3. There were sometimes changes in the areas for which the individual ministers were responsible, including in relation to blood policy (see further below). However, a summary of areas of ministerial responsibility for Mr Milburn's time as Secretary of State shows that as PUSS in the Department of Health I had responsibility for the following:

- Health services development;
- Renal Services;
- NSF for Diabetes;
- Pharmaceutical industry (incl PPRS);
- Community Pharmacy;
- Pharmaceutical services including prescribing and drugs bill;
- Medicines; Medical devices (incl licensing);

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- Transplants;
- Blood Research & Development;
- Procurement & NHS Supplies Authority;
- Spreading Good Practice;
- General Dental Services;
- General Optical Services;
- Counter-Fraud Services;
- Nursing strategy (incl. recruitment & retention);
- Professions Allied to Medicine;
- Defence Medical Services;
- Prison Health Care;
- Contingency planning (civil defence);
- Departmental management (incl. agencies);
- Regional NHS casework for Eastern and North West.

[WITN6942003]

In addition to the above, by virtue of being the only Health Minister in the Lords, I was responsible for Lords Parliamentary Business, including covering for the whole department.

1.4. After the 2001 election, I lost some of my responsibilities for blood and blood products. I detail who took these over below¹.

1.5. The following table outlines the members of Parliament with ministerial roles in the Department of Health ("DH") for the period when I was the PUSS:

¹ Paragraphs 1.5-1.9

Table 2 – Members of Parliament in DH during 1999-2003

Date	Name	Role
03 May 1997 – 10 October 1999	Frank Dobson	Secretary of State for Health
11 October 1999 – 12 June 2003	Alan Milburn	Secretary of State for Health
00 December 1998 – 00 June 2001	John Denham	Minister of State for Health Services
00 June 2001 – 00 June 2003	Jacqui Smith	Minister of State for Health Services
11 October 1999 – 00 June 2003	John Hutton	Minister of State for Health
03 June 1997 – 00 October 1999	Tessa Jowell	Minister of State for Public Health
29 July 1999-08 June 2001	Gisela Stuart	Parliamentary Under-Secretary of State for Health
11 June 2001– 28 May 2002	Hazel Blears	Parliamentary-Under-Secretary of State for Health
29 May 2002 – 13 June 2003	David Lammy	Parliamentary Under-Secretary of State for Health
11 October 1999 – 28 May 2002	Yvette Cooper	Parliamentary Under-Secretary of State for Public Health
28 May 2002 - 13 June 2003	Hazel Blears	Parliamentary Under-Secretary of State for Public Health
29 July 1999 – 17 March 2003	Myself	Parliamentary Under-Secretary of State for Health in the Lords My predecessor was Baroness Hayman and my successor was Lord Warner

- 1.6. I have been asked to outline the ministers with involvement in decisions relating to the various issues in the Rule 9 request.

- 1.7. After the June 2001 election, responsibility for blood products including the related issues of financial support were transferred to Yvette Cooper. As I was the only Health Minister in the Lords, I continued to address these issues when they arose in questions and debates there, but Yvette now held the policy brief. When Yvette was later GRO-C leave, blood issues were principally handled by John Hutton.
- 1.8. The transfer of the policy area to Yvette after June 2001 is illustrated by the following:
- (1) A briefing was provided to Yvette on the question of a payment scheme for haemophiliacs infected with HCV by blood products on 2 July 2001, and there was a request from Charles Lister to “PSPHTemp” (which appears to be a temporary secretary for Yvette at this time) dated 13 February 2003 which asked for a steer on this compensation scheme, and suggestions of how to respond to the Haemophilia Society’s proposal [DHSC0041379_177]; [DHSC0042275_127]. Related to this was the Scottish decision surrounding a payment scheme. It would again appear that Yvette had taken over responsibility for this. In an email from Charles Lister to “PSPHTemp” dated 29 January 2003, he outlined that she should be aware of the Scottish ministers’ announcement of A financial assistance scheme [DHSC0046315_070].
 - (2) In an email from Jane Colman to Charles Lister dated 13 November 2001, it was confirmed that Jacqui Smith agreed the recommendation from Charles Lister to hold the Government’s policy line on not providing payment [WITN4680009]. This was when Yvette was on GRO-C leave, and it was Jacqui Smith rather than John Hutton on this occasion making the decision.
 - (3) When I was answering questions in the Lords, Yvette would now be involved in considering the draft responses. This is reflected in a document which outlined a response to Lord Morris’s oral parliamentary question

(“PQ”) for answer on the 13 January 2003. Yvette amended my suggested response to Lord Morris [WITN4680010].

- (4) A minute sent to Yvette Cooper by Charles Lister dated 17 January 2003 also recorded that she was meeting with the chairman of the Macfarlane Trust and set out the likely issues he would touch upon in respect of this Trust and the Eileen Trust, namely continued Government funding support for them [DHSC0003280_007].

1.9. After the June 2001 election, when infected blood related issues arose in the Lords, I would be provided with the line to take and background information. My understanding of the area was helped by the fact that I had previously held the policy responsibility. However, the responsibility for formation of policy in this area was no longer in my portfolio. I would therefore expect the information being provided to me (and draft answers) to have been agreed with the Public Health Minister (Yvette Cooper then Hazel Blears) who carried the issue in their portfolio. While it was open to me to query the line (as any minister could do) it was a matter of practicalities and workload generally to accept that this was an area for which a different minister was now in the lead. As the Lords Minister I covered the whole of the DH's business, whilst I believe there were up to five Commons Ministers for the Department. Nevertheless, I would always check through the briefs and ask officials for clarification where I felt that this was necessary.

1.10. I have been asked to identify by name the civil servants during this time who were involved in decisions about blood and blood products, the assessment of the risks of infection arising from blood and blood products, and the response to such risks (including the provision of financial assistance to those infected), and in providing advice to ministers in relation to such issues.

1.11. The senior civil servants during this time were:

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- Chris Kelly, who held the role of Permanent Secretary from 11 October 1999 to 5 November 2000.
- Nigel Crisp, who held the role of Permanent Secretary and Chief Executive of the NHS from November 2000 – March 2006.
- Professor Liam Donaldson was the Chief Medical Officer from 1 January 1998 to 31 May 2010.
- Mike McGovern in the Health Services Directorate.
- Charles Lister, who was Head of Blood Policy reporting to Dr McGovern

1.12. I have been asked to set out any memberships of any other committees, associations, parties, societies, or groups relevant to the Inquiry's Terms of Reference.

1.13. I have been a member of the General Medical Council since 2018, and whilst my term ends with this Council at the end of this year, I am eligible for reappointment. I am also a member of a number of All Party Parliamentary Groups, the most relevant of which to this Inquiry is the First Do No Harm group.

1.14. I have been asked to confirm whether I have provided evidence to or been involved in any inquiries, investigations or criminal or civil litigation in relation to human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products. To the best of my recollection, I have not been involved in any of the above relating to HIV, Hepatitis B, or vCJD. I have been involved in litigation surrounding HCV, however I did not provide any evidence in this litigation. I address my involvement in more detail at Section 3.

Section 2: The provision of financial assistance to people infected by blood or blood products

- 2.1. I have been asked to detail my briefings about the circumstances in which individuals were infected with HIV/HCV through contaminated blood products, and on the Macfarlane and Eileen Trusts, when I first took office.
- 2.2. Whilst I cannot recall the exact detail of the briefing I was given when I first took office, I recall that I was given an extensive briefing bundle on my appointment. This was followed up by a range of introductory meetings with officials covering my areas of responsibility. It is very likely that I was given an explanation of the general circumstances as the Department understood them to be in which haemophiliacs, transplant patients, and others had come to be infected through blood products and transfusions, and also a briefing on the Macfarlane and Eileen Trusts.
- 2.3. I believe I was given my first briefing on the Macfarlane Trust on 2 August 1999, which outlined my predecessor's (Lady Hayman) most recent interactions with them, which I would now have to resolve given I had taken over her position. The Macfarlane Trust had asked for an additional grant to cover the costs of new IT equipment, and the note outlined that MS(H) had decided that the DH was not able to consider this additional grant given the pressures on the s.64 scheme budget, and also due to other expenditure pressures [DHSC0038637_029]; [WITN4680012].
- 2.4. I cannot recall any briefings regarding the Eileen Trust, and there has been no underlying documentation discovered to provide me with any further information about this. I do believe, however, that it is unlikely I was not given a briefing.

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- 2.5. The contact I had with the beneficiaries of these Trusts was on an ad hoc basis, mainly through officials. For example, their Chief Executive wrote to Ann Willins on 19 November 1999 requesting a payment increase for the beneficiaries of the Macfarlane Trust in line with the cost of living and notified Ann that the Chairman would be seeking a meeting with me to discuss this [DHSC0003208_019]. Members of Parliament (“MPs”) also wrote regarding their constituents who had written to them about the Trust. For example, a letter was sent to Alan Milburn by Kelly Pollard MP dated 9 November 1999 which I responded to, which detailed the concerns one of her constituents had surrounding the funding of the Macfarlane Trust [DHSC0038695_192]; [DHSC0038695_194].
- 2.6. I do however recall at least one meeting directly with some of the beneficiaries of the Macfarlane Trust, one of whom lived quite close to my home in Birmingham. I recall being very moved by this meeting upon hearing about the challenges they and their families faced.
- 2.7. I do not remember if there was any contact with the beneficiaries of the Eileen Trust through official channels as there was with the Macfarlane Trust.
- 2.8. The face-to-face meeting with beneficiaries to which I have referred stuck with me, but my knowledge and understanding of the needs of the beneficiaries of these Trusts came mainly through briefings from civil servants and contact directly with their trustees. In 1999 for example, following a ten-year review of the Macfarlane Trust, the concluding report identified that the new needs of the beneficiaries would be arising from treatment with combination therapies, and living with co-infection [DHSC0003232_008]. I also granted the additional request for one-off funding² on 28 February 2000 [WITN4505360]; [DHSC0029328].

² As outlined at 2.3

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- 2.9. A briefing from Charles Lister on 10 February 2000 outlined a proposed meeting between the Trust and me to discuss *“funding which the Trust feel is needed to meet the current health needs of their registrants, particularly those who are co-infected with HIV and Hepatitis C”* [DHSC0003232_005]. Further requests for funding due to the increased need of the beneficiaries were made throughout my time in office. The further requests for funding were set out in a submission from Charles Lister to me on the 14 April 2000 in advance of meeting with the Macfarlane Trust, in the minutes of the meeting which then took place on the 18 April 2000, and again in later in the year in a submission which I was copied in to from Charles Lister for the Secretary of State (“SoS”, who at this time was Alan Milburn) dated 26 October 2000 [DHSC0003487_005]; [WITN4505341]; [WITN4680012].
- 2.10. The decision not to provide financial assistance to those infected with HCV as a result of treatment with infected blood or blood products was a long standing one before I had come to office. A year prior to my appointment in July 1998, and after another period of review, Frank Dobson (who at the time of the announcement was the SoS) reaffirmed the decision made by previous governments that there would be no financial assistance awarded to those infected with HCV.
- 2.11. The Inquiry asks about the apparent position that I held the departmental line against a payment scheme for those infected with HCV. For example, the Inquiry points to a Hansard excerpt dated 13 October 1999 and the debate that day in which, in responding to Lord Morris, I said that the refusal for such a scheme was on the basis that *“compensation or other financial help to patients is given only when the National Health Service or individuals working in it have been at fault”* [DHSC0032341_053]. I have also been referred by the Inquiry to several other documents pertaining to this.
- 2.12. A letter from Lord Morris to Karen Pappenheim (who at this time was Chief Executive of the Haemophilia Society), dated 11 November 1999, enclosed a

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response I had sent to Lord Morris. In this response I had outlined the general policy that *“compensation or other financial help to patients is only given when the NHS or individuals working in it have been at fault. This formed the main basis of the decision made by Ministers in 1998”* [HSOC0014590].

- 2.13. A draft response to Graham Ross & Co solicitors dated November 1999, again repeated the policy against no-fault compensation. The draft response to this letter was provided by Dr McGovern [BPLL0009192]. Dr McGovern outlined that the draft response:

“...expresses sympathy for the plight of this unfortunate group of patients, repeats the Government's policy not to provide compensation, and rejects a claim of negligence on the part of the NHS.”

- 2.14. On 25 November 1999 I held a meeting with the Haemophilia Society, the minutes of which noted *“Lord Hunt said that he was not in a position to depart from the decision not to introduce a special payment scheme”* [HSSG0000124_073].

- 2.15. I addressed this matter in another House of Lords Debate in response to Lord Morris dated 30 March 2000 [HSOC0011775]. Lord Morris had tabled a question querying what further help the Government was considering for people infected with HCV. Whilst I outlined the Government's commitment to providing practical help to those with haemophilia who were inadvertently infected with HCV, I once again reiterated the Government's position that it would not be appropriate to establish a special payment scheme.

- 2.16. In a further House of Lords debate, on 18 December 2000 [DHSC0042298_047], Lord Morris asked what recent new help the Government had given to those infected with HCV, and again queried why those infected could not have financial assistance. In response I detailed that those patients suffering from moderate or severe hepatitis C were to be given

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the combination therapy, Alpha Interferon with Ribavirin, and funding for counselling. On financial support I noted:

“Our decision was that an exception could not be made to the general rule that compensation or financial help is only given when the NHS or individuals working in it have been at fault.”

There was also a detailed briefing with draft text, background, and suggested answers to supplementaries ahead of this debate. [DHSC0006168_095].

2.17. On 2 May 2001 I wrote to Paul Goggins MP, reiterating the decision not to introduce a special payment scheme in 1997 [DHSC0006562_156].

2.18. In a further House of Lords debate on 26 February 2003, I again spoke in reply to Lord Morris on the decision not to award compensation to those infected:

“My Lords, I cannot pretend that it was an easy decision for the Government to make. We gave the matter careful consideration and, in the end, felt that the decision taken by the previous Conservative government was right” [HSOC0012672].

2.19. On 21 July 2000, Jane Verity in the Health Services Directorate minuted Leslie Urie (who was my acting diary secretary at this time) enclosing briefing papers for a meeting arranged with other MPs and officials to discuss Hepatitis C [DHSC0020784_101]; [DHSC0014956_042]. A number of Labour MPs attended, including Doug Naysmith and Hazel Blears (who was not yet a minister and was attending in her constituency capacity as a backbencher). The line to take on compensation was outlined in the briefing papers, which stated that all issues surrounding compensation had been considered and that the decision reached was that the policy should remain unchanged [[DHSC0020784_101]; [DHSC0014956_042].

2.20. A PQ put to me by Lord Morris dated 15 October 2001 queried what consideration had been given to a public inquiry. The draft written answer provided a background briefing on this matter, including on compensation, and

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noted that *“this sets out the position as stated by Ministers on numerous occasions over the past 4 years.”* [WITN4680013].

2.21. I accept that I did hold this departmental line, however this was not a line I held alone, rather one which all ministers held on this matter. I return to the reasons why the line was held below.

2.22. I have been referred to a note that I prepared for the SoS (who at this time was Alan Milburn) dated 30 June 2000 in relation to the settlement of the HCV litigation [DHSC5297720]. In this I stated:

“The main plank of our argument for refusing payment to haemophiliacs has been that heat treatment to eliminate HCV from blood products was introduced as soon as the technology was available. This is not true for the introduction of the screening test for HCV, and a financial settlement can be justified on that basis.”

I have been asked several questions about this note by the Inquiry, which I will now address.

2.23. I believe that this document with its acceptance that the screening test could have been introduced sooner reflected that the government had now received legal advice that it was vulnerable to the argument that consumers could reasonably have expected the tests to have been introduced sooner. Based on advice from officials (and the legal advice received), my note explained that:

“One of the questions the Court will need to decide is by what date screening ought reasonably to have been introduced by the NBA. It is almost certain that the Court will arrive at an earlier date than September 1991”

And that,

“the UK was, by some way, the last of the major developed countries to introduce universal screening for HCV in blood. The US licensed the new test and introduced screening in May 1990, and most European countries began screening the same year. Although there were good reasons for the delay in the UK - discussions on the cost/benefits of the new test, followed by trials - legal advice is that these are unlikely to stand up to serious scrutiny in court” [DHSC5297720].

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As my note to Mr Milburn made clear, the legal advice we had received was that the Government was very vulnerable to the argument that HCV testing could reasonably have been introduced sooner.

2.24. The public position held by the government at this time was that there was no wrongdoing as no negligence on the part of the NHS had been established. The established policy against no-fault compensation was long held, and it was only at this time that the timing of the introduction of screening was being challenged in the courts. I do not believe it would have been appropriate to comment publicly on claims which had not yet actually been settled or ruled upon by the Court. There was also the complication that the litigation was a product liability case, rather than a claim in negligence. The document shows that the DH was in contemplation of all the litigation options following on from our counsel's advice.

2.25. I did not have any concerns at the time about this, nor do I have any now with the benefit of hindsight about the government's position. As I outlined in my previous answer, I understood that this matter was being contemplated in private but there was not yet an agreed position. It is often the case that government receives legal advice that a position taken, or past events, may be vulnerable to challenge; it does not in my view amount to a lack of candour, while government is considering its position, to maintain the existing line. That is particularly the case where, as here, government had been acting on the basis of the advice of an expert advisory committee who had felt that there were good reasons not to introduce the testing earlier.

2.26. I have been referred to an earlier draft of the note I sent the SoS dated June 2000, which included the following paragraph:

*"My concern has been around the terms of such a settlement. I want to ensure that there is a clear and defensible distinction between settlement of this litigation and our continued, **and justified** [emphasis added], refusal to compensate haemophiliacs infected with HCV through blood products." [DHSC0046938_058].*

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The Inquiry draws my attention to the fact that in the final version of the note³, the word justified was removed. The Inquiry asks if this reflected a view on my part that the refusal of a payments scheme to those infected with HCV was not justified.

2.27. I note from Mr Milburn's oral evidence given to the Infected Blood Inquiry on 14 July 2022 that he did not believe I drafted this note. He believed it may have been a senior civil servant, namely Charles Lister, who redrafted it. This type of note (from a junior minister to the Secretary of State) would indeed have been drafted by officials, typically when a position had been agreed with the junior minister but then needed to be cleared at Secretary of State level. Officials would provide a draft for the junior minister to send to the Secretary of State to explain the rationale for the intended action.

2.28. In this case, from the available documents, the amendment seems to have been communicated in revised version sent by email from Charles Lister to Sue Cartwright (in my Private Office) dated 23 June 2000 [SCGV0000240_051]. This email stated:

"Sue

I've made a slight change to para 19 of the draft submission. Grateful if you could substitute this version for the one sent earlier.

Charles"

2.29. The wording of that email suggests that Mr Lister (or his team) had made the amendment and were seeking to have the revised version substituted for the one previously sent to my Private Office, and in all likelihood, this would have been before I had seen the draft. Certainly, Mr Lister was not indicating to Sue Cartwright that the amendment had been made at my request.

³ The final note sent is referred to at 2.23 [DHSC5297720].

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2.30. I do not believe, therefore, that I made or requested this amendment. Rather the amended draft was substituted and simply provided to me. I cannot comment as to why it was removed as it is evidently not my redraft.

2.31. I have been referred to a communication from Christine Dora to Sandra Falconer and others dated 19 February 2001 within the Scottish Health Department [SCGV0000174_068]. This referred to information conveyed to that Department by Charles Lister to the effect that I had agreed to meet with the president of the Haemophilia Society to revisit the idea of compensation for Hepatitis C positive haemophiliacs. Christine Dora noted that:

"I also however understand that Lord Hunt inclines naturally towards sympathy for the plight of the affected haemophiliacs. Officials' advice has not changed, but they have been asked to put together costings for various options and to offer an assessment of the extent of any precedent which might be created".

2.32. Further emails were sent in a chain following on from this initial email [SCGV0000174_066]. On 21 February 2001 Sandra Falconer said that:

"Lord Hunt made it clear to Lord Morris and Eddie O'Hara MP that the Government had decided against compensating haemophiliacs with HCV when Frank Dobson held his review and that the subject is now closed."

2.33. It is accurate to say that I was naturally sympathetic to the plight of haemophiliacs infected with Hepatitis C. Throughout my tenure, I tried to find ways to further help those infected. For example, I requested information on counselling services the Government could provide to them, and a costing of a hardship fund, the details of which are provided in a minute to me from Gwen Skinner dated 27 March 2000 [DHSC0004033_003].

2.34. On 25 October 2000, a minute from Jane Verity and Charles Lister to my assistant private secretary ("APS") detailed that I had asked for *"a package of care to be worked up for all patients infected with HCV"* [WITN4680014]. On 26 October 2000, a further minute was sent to my APS, which included a minute

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for me to send the SoS asking him to agree to a statement announcing funding for these services [DHSC0020784_008].

2.35. The package of care that I had scoped out was then drafted to be put forward to the SoS [WITN4680014]; [DHSC0004294_019]. The final version of this document has unfortunately not been found and I cannot recall any discussions with him on this matter. I would however be surprised if this was not put to him.

2.36. I did continue to establish this policy setting out what was going to be done to improve the care and treatment of patients with Hepatitis C in a debate in the House of Lords on 1 November 2000, in response to Earl Howe's question [WITN4680015]. While, at this time, our position remained against a payments scheme, I wanted the Department to be proactive and improve treatment and care for all those infected with HCV. In the debate I said:

"HCV infection

4. I do not pretend to be an expert on the complex viral mechanisms. But I do know the facts:

- HCV is now the biggest cause of chronic liver disease in the United Kingdom*

- Although incredibly difficult to estimate, as many as 250,000 people in England may be infected by it*

- In the majority of patients, the virus manifests itself as a chronic illness, which will have life-long implications*

- All too often, patients with HCV are some of the most vulnerable members of society*

- And currently, in addition to counselling and support services, there are just two drug therapies licensed for the treatment of HCV.*

5. These are some facts that we and the NHS health services cannot ignore. With little chance of a vaccination being developed for HCV to prevent infection in the near future, the number of people with HCV is likely to continue to rise. But provision of first class services for these people is

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not something we are content to simply pencil into our future planning strategies. This is a 'live' issue and more and more people, who became infected, many years ago without realising it, are now presenting with liver disease. It is not hard to imagine the shock caused by such a diagnosis."
[WITN4680015].

- 2.37. I had asked for and received a briefing on the options for increasing support, focussing on counselling provision, to haemophiliacs infected with Hepatitis C. On 27 March 2000 Ms Skinner prepared a detailed submission to me about the options for counselling support [DHSC0004033_003]. The submission also addressed the issue of a hardship fund but noted that it would be likely to be unacceptable and too far away from the HIV scheme.
- 2.38. Throughout my time in office, I worked to improve services for patients suffering from Hepatitis C or haemophilia by seeking to ensure there was funding for universal provision of recombinant clotting factors for haemophilia patients [DHSC0042291_003]; [DHSC0041379_179].
- 2.39. Additionally, the Department sought to ensure targeted funding for interferon treatment for Hepatitis C, which appeared to have a higher success rate than combination therapy. This was included in NICE's work programme in February 2002 [DHSC0032036_004].
- 2.40. Therefore, the Department, as I saw it, was doing what it could to improve the lives of those infected with Hepatitis C and it remained very much a 'live' issue throughout my period in office.
- 2.41. I have been referred to a PQ by Lord Morris querying how many haemophilia patients at that time had died after infection with HIV by contaminated National Health Service blood products [DHSC0020742_038]. I responded outlining that there were 821 patients who had died from this infection.

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- 2.42. I have been asked to provide my view on the distinction drawn by the Government to award payment to those inadvertently infected with HIV and not those infected with HCV.
- 2.43. I would like to outline the landscape at the time when this payment scheme was awarded. At the time that the HIV support payments had been introduced, HIV was considered to be a death sentence, and an infection from which the fatal outcome would come quite quickly. HCV infection was very serious for many, and fatal over time for some, but not seen to be in the same quite exceptional category as HIV. We recognised, however, that over time the distinction had become narrower.
- 2.44. Nonetheless, I still felt uncomfortable at the distinction drawn between the awarding of one group of people payment who were suffering from a disease through contaminated blood product, and not the other.
- 2.45. I have also been asked to provide my opinion on how convincing I found the distinction drawn by the Government between those infected with vCJD who were granted a payment scheme through the vCJD Trust, and those infected with HCV who were not awarded such a scheme. I have been referred to a number of documents which I will now address.
- 2.46. On 24 October 2000 Sue Cartwright my Private Secretary emailed Jane Verity, Charles Lister, and others in the lead up to an unstarred question on HCV that had been tabled in the House of Lords on HCV [DHSC0038536_074]. This requested a note be prepared for the SoS on how we could differentiate between awarding compensation on vCJD and HCV. In this email, Sue asked:

"Can you let me have a draft note for SoS for Lord Hunt to clear 5pm on Thursday 26 / 10. Then if Lord Hunt agrees the draft I will sent it to SoS on Friday for his consideration over the weekend. I know that you have previously set out a package of care (rather than cash compensation) for HCV, but I think Lord Hunt is hoping to convince SoS that there is little

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difference really between the 2 types of case and to seek his permission to work up something more for HCV."

- 2.47. Charles Lister replied later that same day, 24 October 2000 [DHSC0038536_075]. Mr Lister outlined the difficulty with only awarding payments to those infected from blood/blood products (and not, for example, healthcare workers infected through other routes of transmission). He raised whether it might be better to come up with a package of care for all people infected with HCV on the grounds that to single out one or other group of HCV patients risked creating a two-tier system. He considered it would be difficult to differentiate between compensation for people with HCV and the vCJD compensation package until officials had details of what the latter package was going to be, and he sought early sight of the Government's proposed announcement on vCJD for that reason.
- 2.48. A final email from Sue Cartwright to Charles Lister dated 25 October 2000 outlined that I wanted the note to the SoS to be set out as a package of care for all HCV sufferers (*"Run with a non-restricted approach and see where we get to"*) [DHSC0020784_029].
- 2.49. I am referred to a PQ from Lord Morris of Manchester dated 15 October 2001 who had asked what further consideration the Government was giving to the Haemophilia Society's call for a public inquiry [DHSC0020742_093].
- 2.50. A suggested reply and background briefing dated 15 October 2001 responded to Lord Morris's question on the calls for a public inquiry⁴ [SCGV0000247_045]. This document outlined the Government's response that it did not believe a public inquiry was appropriate. The background briefing also outlined a suggested response in respect of the issue of compensation for vCJD. The paper noted that whilst the decision to not compensate hepatitis C sufferers

⁴ As outlined at paragraph 2.32.

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stemmed from the no fault compensation policy, a distinction was made in the case of those suffering from vCJD as it was:

"...incurable, inevitably fatal and devastating in its impact on sufferers and their families alike. Furthermore, many of its victims are young people with most of their adult lives before them. The Government considers - even though we are advised that we are unlikely to be legally liable - that it is right to make payment to the victims and their families in recognition of their wholly exceptional situation and the fact that the Government is their last resort for help." [SCGV0000247_045].

2.51. I understood that there were improvements that could be made to the care and treatment of those dealing with HCV. A House of Lords unstarred question from the Earl Howe dated 1 November 2000 asked what plans the Government had to improve care and treatment of patients with Hepatitis C [WITN4680015]. The background briefing provided details around how we were able to care for patients and manage treatment for this disease, such as providing co-ordinated counselling and support services, as well as drug treatment therapy [WITN4680015].

2.52. A related email from Charles Lister to Sue Cartwright, also dated 1 November 2000, provided amendments to the answer to this question [WITN4505014]. In contrast to HCV, there was no similar treatment available to those infected with vCJD, and the amendments note that there was:

"Total absence of effective treatment, certain and rapid decline into death, the personality changes, the horrifying nature of the disease, the fact that it so often affects the young, the degree of impact on families. This is the dreadful story that the relatives of patients have to grapple with, and which fundamentally sets variant CJD apart." [[WITN4505014].

2.53. Despite the difficulties those with vCJD faced if they were suffering from this terrible disease, I again felt uncomfortable at the distinction being drawn between the two diseases as a rationale for granting payment to one group and not the other.

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- 2.54. I have been asked to outline how extensively I liaised with the Scottish ministers on the matter of a payment scheme for those infected with HCV. There was an agreed stance of a common approach throughout the UK on this matter, and that was consistently kept throughout our communications with Scotland. In an email from Mike McGovern to Charles Lister, dated 9 September 1999, he outlined the importance that there should be a *"joined up UK policy"*, and that I should therefore write to Susan Deacon MSP in the Scottish Executive prior to her meeting with the Haemophilia Society or before any statement was made on the issue of compensation [DHSC0006801_089].
- 2.55. I wrote to Susan Deacon in March 2000 proposing that we meet in the near future to discuss issues of common interest on blood, which included the Scottish review of the circumstances surrounding the heat treatment of blood in the 1980s. I suggested that we discuss how to handle publication of this report, including any public statements on the compensation issue once this review had concluded [DHSC0041330_024].
- 2.56. On 13 March 2000 Charles Lister minuted me with advice regarding the review of blood products manufacturing, noting that since November 1999 they had *"been in close touch with Scottish Executive officials ... to discuss handling the review and Susan Deacon is aware of this"* [DHSC0041330_023].
- 2.57. In a letter to Susan Deacon dated 15 May 2000, I outlined my concern about the impact settlement of the Hepatitis C litigation would have on our stance for compensation for haemophiliacs infected with hepatitis C through blood products [SCGV0000240_085]. I again reiterated the need for a common approach on this area. We wanted co-operation on this front, and due to the ongoing related issues of the Scottish review into compensation for those infected with HCV, the ongoing campaign in England for this, and the ongoing HCV civil litigation, our communication was necessarily quite frequent.

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- 2.58. I do recall that it was of great importance that we received parity across all four nations on the issue of a payment scheme to those infected with HCV from blood and blood products.
- 2.59. It was thought throughout government that once one of the four nations awarded a payment scheme, it would be difficult for the other nations not to do so. An email from Christine Dora to Sandra Falconer and others dated 19 February 2001 detailed my proposed meeting. This email noted that *"if one of the 4 administrations should crack, it becomes presentationally much more difficult for the others not to"* [SCGV0000174_068]. On this document there are a number of handwritten notes (I am unable to determine who has written these notes, one name is redacted by the Inquiry) which outline that should one of the four administrations crack on this matter, it was an *"UNDERSTATEMENT"* that it would be difficult for the other three to continue not to have a similar scheme. The note carried on that this meeting gave them *"enormous concern"* and they requested urgent contact with my office in order to reiterate concern that movement from the previous position without discussion with the other nations would be *"quite unacceptable"*. It is apparent that the Scottish administration's concern here was that they had withstood pressure on the payments scheme, and they were seeking to ensure that my office understood the imperative to hold to the common position.
- 2.60. I have been referred to two reports, the first is the preliminary report dated September 2002 and the second is the final report dated March 2003, both by Lord Ross who was chairing the Scottish Expert Group on Financial and Other Support [HSOC0020367]; [HSOC0003349]. These reports considered the possibility of compensation for individuals infected with HCV via blood or blood products in Scotland.
- 2.61. I have been asked to outline if any recommendations from the report were considered by the DH, and what my role was in that process.

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- 2.62. Whilst I was made aware peripherally of the recommendations of this report through briefings and emails, I was not involved in the detail – these were reports to the Scottish Executive. A background briefing dated 26 February 2002 sets out a chronology which provided information on what this report covered, and Charles Lister also emailed Mr Milburn's Private Office, Hazel Blears' Private Office, and my own with a *Scotsman* article on 30 January 2003, but this appears to have been the extent of my involvement [WITN4680016]; [WITN4680017]. Given the date of these reports and the correspondence, this all occurred after responsibility for this policy issue had transferred to Yvette Cooper and – after her – Hazel Blears, and I therefore had no involvement in any detailed consideration of Lord Ross' reports.
- 2.63. I have also been asked to comment on why DH took a different approach to that suggested by Lord Ross in his report. For the reasons already explained, I am not best placed to answer this as I was no longer the Minister with the issue in my portfolio of responsibilities.
- 2.64. I have been provided with a copy of a newspaper article from *The Scotsman* dated 30 January 2003, which reported that "*the Department of Health is expected to obstruct payments in Scotland*" [DHSC5110387].
- 2.65. I do not believe I am best placed to answer this for the same reasons as explained above⁵.
- 2.66. I have been asked to provide information on what consideration I gave to the Hepatitis C compensation scheme in the Republic of Ireland ("ROI"), or in any other countries when DH was considering a similar scheme.

⁵ At paragraph 2.62.

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2.67. The scheme in the ROI was brought to my attention by an MPs' constituent's letter [WITN4680018]. I did give the scheme in ROI consideration following on from this, and queried why the ROI had taken a different approach to compensation for Hepatitis C. An email from Gwen Skinner to Helen Bartlett and others dated 15 March 2000 outlined why this was [WITN4680018]. They noted that:

"In the Republic of Ireland the hepatitis C Compensation Tribunal Act 1997 sets up a compensation tribunal for "certain persons who have contracted hepatitis C from Anti D immunoglobulin, other blood products or blood transfusion." It is not, therefore, restricted to people with haemophilia or who have received blood transfusions. We understand that in the Irish Republic about 700 Rhesus negative women were given Anti D intravenously in the 1970s whereas the rest of the world used the product intramuscularly. (The Anti D is given postnatally when the child is Rhesus positive.)

In 1994 the women were found to be hepatitis C positive.

Anti D given intramuscularly, as in the UK, has never been associated with hepatitis C viral transmission, and Anti D is not virally inactivated as other blood products are."

2.68. There were schemes in other countries which were brought to our attention, for example Chris Hodgson, Chairman of the Haemophilia Society, wrote to me on 11 August 1999 detailing that other countries such as Ireland, Italy and Canada were addressing the issues surrounding HCV infection [HSOC0014593].

2.69. As I have referred to at paragraph 2.19, above Jane Verity minuted my acting diary secretary on 21 July 2000, enclosing briefing papers for a meeting arranged with other MPs and officials to discuss Hepatitis C [DHSC0020784_101]; [DHSC0014956_042]. The topic of other countries' compensation schemes was addressed in the background briefing to this, noting that the suggested line to take in this meeting in relation to these countries such as Canada, who had a compensation scheme, was that:

"Some other countries have compensation schemes - eg Canada. This is a matter for them, circumstances differ in individual countries."
[DHSC0020784_101]; [DHSC0014956_042].

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2.70. Whilst I obviously asked for detail and considered other countries' approaches on this matter, I recall that we did not believe they were comparable with the UK. For example, the circumstances in the Republic of Ireland as outlined at paragraph 2.67 were understood to be different to our own. Beyond that, when there were schemes in other countries, we took the view that this was their decision and that different countries with different governments and policies would inevitably take a range of approaches.

2.71. I have referred a number of times in the paragraphs above to the real sympathy I felt for those infected with HCV; to the fact that the question of a payment scheme was exceptionally difficult, and to the fact that I did have a sense of discomfort about the arguments used to distinguish HIV from HCV. I felt that was a difference between the infections, but it was a difference that had narrowed. Ultimately, however, our position did remain against having an HCV payments scheme and that was not reversed until the decision taken by John Reid later in 2003. I say "our position" because this was a significant issue that involved the Secretaries of State and not just the junior ministers (from Margaret Jay through to Hazel Blears, including me for the period 1999 - 2001) who had delegated policy responsibility for the issue.

2.72. I do now regret that we did not change the position sooner. Reflecting on the reasons, I can only make clear to this Inquiry that our reasons for not agreeing to an HCV payments scheme were not because of a want of sympathy for those infected nor (I believe) a lack of understanding about the impact of the infection. As the Inquiry will be aware, health ministers inevitably have to make very difficult decisions about the allocation of finite resources. Here, we were faced with calls for payments where – on the information we had received – there had not been fault on the part of the government of the day. That brought the proposal for a HCV payments scheme right up against the precedent concerns that surrounded no-fault compensation. The costs implications were not just the costs of the scheme itself but the wider implications of eating away at the policy against no-fault compensation. And the context is important. All of this was

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taking place against the pressing need to tackle very significant treatment issues across the NHS, particularly wholly unacceptable waiting lists. When I reflect on this matter now, I had no difficulty in upholding the no compensation line when the NHS had not been at fault as a general principle. But the fact that government departed from this in relation to HIV indicated that there were quite legitimate circumstances when the principle can be broken. That it took till 2003 for this to be done for those infected with HCV is a matter of great regret.

Section 3: Settlement of the HCV litigation

- 3.1. I am asked about my role in the HCV litigation and in particular on the issue of whether settlement should be attempted.
- 3.2. I have been referred to a draft submission from Charles Lister dated July 1999 requesting my permission for the National Blood Authority (NBA) to take forward arrangements for a settlement [DHSC0014954_101].
- 3.3. On 13 April 2000, Charles Lister provided me with a submission on the proposed settlement for the HCV litigation, explaining the NBA Board wished to take the NHSLA's advice and settle out of court and the ways that settlement could be worked out [DHSC0006333_068]. He recommended settlement of the litigation in terms set out in his submission to me [WITN5426246]. He listed various pros and cons of settling the litigation, commenting on the wider impact and the cost implications. I believe this was sent to me under cover of an email to my Private Secretary on 17 April 2000 [DHSC0006333_067].
- 3.4. According to minutes of a meeting, likely of the NBA, dated 27 April 2000, a meeting scheduled between myself and officials to discuss the litigation and HCV issues in general on 18 May 2000 [NHBT0015400_001]. In the minutes of 25 May 2000, it is recorded that at this meeting:

"The minister had accepted the need to settle out of court and they had discussed the type of settlement that might be offered. The haemophilia lobby was a major concern. The minister had not favoured Davies Arnold Cooper's advice to make a global settlement and had asked the DoH to propose an effective date such as the month in which the test was first available in another European country or in the USA. Mr Lister had pointed out that for a settlement to be acceptable it would need to benefit a substantial number of claimants. Furthermore he understood that DAC considered that ministers would need to be prepared to provide global settlement as a fall-back position.

Mr Lister said that Lord Hunt wished to clear his decision with the Secretary of State. Additionally, Susan Deacon, the Scottish Health

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Minister, and the Welsh Health Minister also wanted to be party to the decision. ...” [NHBT0015404].

- 3.5. Throughout June 2000 there appear to have been a number of discussions and exchanges about the draft of a further submission to me which I would not have been directly aware of at the time [WITN4680019]. I have been referred to a draft note dated June 2000 which was prepared for me to send to Alan Milburn and Gisela Stuart on the matter of settlement [DHSC0046972_059]. The note included proposals for the settlement of litigation including an *“Initial Offer: £3m initially (3 of the Group A cases would recover damages on the basis of serious liver disease at this stage) with a further £1.1m needed over the next 10-20 years”*. The fallback position included:

“Option 1: settle with Group A (the stronger cases) without the precondition that Group B discontinue and be prepared to counter the arguments set out at para 6 (i) & (ii) above when the case comes to trial. This would make it easier to defend our position with the haemophiliacs, but at a price:

- the adverse publicity of the trial would not have been avoided, although it should be mitigated by demonstrating that we have settled the Group A cases. The Haemophilia Society would also inevitably leap on to the band wagon to get their case aired again by the media;*

- the considerable legal costs involved in a trial would not be significantly reduced;*

- there is a real prospect of Group B cases being successfully defended but, given: the uncertainties around interpretation of the Consumer Protection Act, it is possible that the Judge would conclude that blood was defective at some: date prior to 2 May 1990 or conclude that the issue ought to be referred to the ECJ for a determination.*

Option 2:

Extend the scope of the settlement. This could be done in two stages:

Stage 1: Expand Group A so that it includes the 82 claimants infected after 1 January 1990 when the HCV screening test became commercially available. This would leave 31 claimants in Group B (as opposed to 45 in the initial offer) and would lessen the chances of this group continuing

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their legal action. By tying the offer into the availability of the screening test, it would also still preserve the clear distinction between claimants benefiting from this settlement and the haemophiliacs infected with HCV through blood products.

Stage 2: Agree a financial settlement for Group B. This would avoid the considerable downsides of Option 1, but would leave us more exposed with the haemophilia lobby. We could mitigate this exposure to some extent by offering Group B claimants a lower settlement than Group A in recognition that their case is not as strong. This could be worked out on a scale of discount depending on the date of infection, ranging from (say) 75% of the Group A payment for those infected in December 1989 down to a small ex-gratia sum for those infected before May 1988 (before HCV was even formally identified)."

- 3.6. On 19 June 2000, my private secretary wrote to Charles Lister and others about the HCV litigation, requesting a revised draft of the noted taking into account my comments:

"1. I am happy with the initial offer, but not the fall-back position.

Given the likelihood of success in defending Group B cases, I think we should be prepared to be robust and fall back to Stage 1, Option 2.

2. I find Option 2, Stage 2 the least attractive because of the exposure to the haemophilia lobby. In the paper we should include the potential cost if we then similarly settle with the haemophilia lobby."
[SCGV0001034_089].

- 3.7. There appears to have been a further draft circulated before I approved the final version.

- 3.8. On 30 June 2000 I provided Alan Milburn and Gisela Stuart with the final amended note setting out the proposed strategy for settling the litigation [DHSC5297720]. I explained that I had taken account of the need to agree a common UK approach and that settling the litigation would have significant presentational difficulties given that we were refusing financial assistance to haemophiliacs infected with HCV through blood products prior to 1985. I explained I was convinced by the arguments put forward by the NHS Litigation Authority, and the lawyers acting for them, that we should allow the NBA to

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settle the case out of court. I proposed that we ask NBA to offer to settle on all claimants infected after May 1990, the date the screening test was licensed and introduced in the US. This group would receive 100% of their claim. Those infected before that date would receive no payment. I wrote:

"Proposal for an Out of Court Settlement

8. Given this advice, I have been convinced by the arguments put forward by the NHS Litigation Authority, and the lawyers acting for them, that we should allow the NBA to settle this case out of court. This is because:

- if the case comes to Court there is very likely to be a finding of liability against the NBA, at least for those claimants infected after May 1991. There would also be a precedent set by the Court as to the meaning of "defect" under the Consumer Protection Act which could impact on future litigation;*
- a trial (starting October 2000) would involve a good deal of negative publicity; and*
- considerable legal costs would be incurred- approximately £1m per side from now until the end of the trial.*

9. My concern, however, has been around the terms of such a settlement. I want to ensure that there is a clear and defensible distinction between settlement of this litigation and our continued refusal to compensate haemophiliacs infected with HCV through blood products on the basis of non negligent harm.

10. The main plank of our argument for refusing payment to haemophiliacs has been that heat treatment to eliminate HCV from blood products was introduced as soon as the technology was available. This is not true for the introduction of the screening test for HCV, and a financial settlement can be justified on that basis. However, we would start to run into difficulties if we include in the settlement those claimants infected before the screening test became commercially available.

11. I therefore propose that we ask NBA to offer to settle on all claimants infected after May 1990, the date the screening test was licensed and introduced in the US. This group would receive 100% of their claim. Those infected before that date would receive no payment. This would split the group of 113 as follows:

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Group A: 68 claimants transfused subsequent to 2 May 1990 Group B: 45 claimants (including 3 where the date is unknown) - transfused prior to 2 May 1990.

The offer would need to be conditional on the 45 claimants (Group B) halting their action. The proposal would also require the payment of costs.

12. Given the overwhelming arguments in favour of settling, this way forward seems to me to offer the least hostages to fortune. However, we need to agree a fallback position should this offer be rejected.

Fallback Position

13. Given that 40% of the claimants would receive nothing, Group B may well decide that they have nothing to lose by continuing with the trial. If this happens, I propose that we extend the offer so that it includes the 82 claimants infected after 1 January 1990 when the HCV screening test become commercially available. This would leave 31 claimants in Group B (as opposed to 45 in the initial offer) and would lessen the chances of this group continuing their legal action. By tying the offer into the availability of the screening test, it would also still preserve the clear distinction between claimants benefiting from this settlement and the haemophiliacs infected with HCV through blood products. This is crucial.

14. If this offer is rejected and the 31 Group B cases signal their intention of continuing to trial, we have a difficult choice between:

Option 1: settle on the Group B cases as well as Group A, end the threat of legal action but risk exposure to the haemophilia lobby. We could mitigate this exposure to some extent by offering Group B claimants a lower settlement than Group A in recognition that their case is not as strong. This could be worked out on a scale of discount depending on the date of infection, ranging from (say) 75% of the Group A payment for those infected in December 1989 down to a small ex-gratia sum for those infected before May 1988 (before HCV was even formally identified); or

Option 2: settle with Group A without the precondition that Group B discontinue their action and be prepared to counter the arguments set out at para 6 (i) & (ii) above when the case comes to trial."

3.9. The SoS accepted my proposal [WITN4680019].

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- 3.10. On 19 September 2000 Charles Lister wrote to me confirming the rejection of the initial settlement offer [WITN5426290]; [SCGV0000240_013]. I agreed to a further settlement offer.
- 3.11. On 6 October 2000 I was informed of the developments in the litigation and provided with a media briefing by Charles Lister [DHSC0040917]; [MHRA0025038]; [WITN5426296]. He explained that:
- “Only 4 of the 43 claimants infected between 2 May 1990 and 31 March 1991 have accepted the proposed settlement (based on 65% of their claim) and half of them have positively rejected the offer. The claimants' solicitors have said that they would only be prepared to recommend an offer to this group of 85 % for those infected between 1 January and 31 March 1991 and 80% for those infected between 2 May 1990 and 31 December 1990. The NHSLA and the solicitors acting for them have advised against a settlement.....until they are prepared to discuss an offer lower than 85 %”.*
- 3.12. On 26 March 2001, Mr Lister provided me with a submission summarising the Court's decision [WITN4680020].
- 3.13. On 3 April 2001, Mr Lister sent me a submission requesting a decision on whether to appeal the judgment of the Court on the claim. [DHSC0004054_012]. I recommended that the decision should not be appealed, and this was accepted by the SoS [DHSC0004741_017].
- 3.14. I have been asked to explain what involvement the Scottish Executive had in the decisions about settlement.
- 3.15. On 24 March 2000 a Scottish official, Christine Dora, provided input to the draft submission to me for Mr Lister's consideration [SCGV0000240_121]. Whilst I have now viewed this document, I do not believe I would have been aware of it at the time, but it does show the liaison that was ongoing.

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- 3.16. On 13 April 2000, Susan Deacon wrote to me to request to discuss a common approach on the issue. The same day, the submission from Charles Lister to me⁶ had copied to Scottish officials, with Mr Lister making clear that:

"This submission is ... being copied to colleagues in Scotland, Wales and Northern Ireland who may wish to consult their Ministers. The Scottish Executive in particular have expressed concern at the implications for litigation pending on HCV in Scotland. They have therefore asked that Susan Deacon be fully involved in the decision making process" [DHSC0006333_068].

- 3.17. On 15 May 2000, I responded to Susan Deacon to suggest a meeting on the matter [SCGV0000240_085]. I believe this letter would have been drafted by my Private Office. I have also been referred to a draft of this letter [WITN5426264].

- 3.18. I have been referred to a submission from Gwen Skinner to Joanne Willows regarding the proposed topics for discussion at the proposed meeting between myself and the Scottish Ministers [DHSC0004294_022].

- 3.19. On 6 April 2000 a minute from Mrs Dora, NHS Management Executive to PS/Minister for Health and Social Care suggested:

"that the Minister write to the DH Minister, Lord Hunt, asking him to recognise the Scottish implications which would arise from any decision to settle in England, asking him not to make a decision without involving her, and suggesting a meeting might be useful". On that minute there are handwritten annotations where has written "agree a meeting is sensible – will be difficult to convince DofH to change mind if legal advice is definitive" [SCGV0000240_103].

Mrs Dora wrote:

"If a settlement is reached in England as proposed, Ministers will come under huge pressure in Scotland to settle in similar terms".

- 3.20. I have been referred to a submission from Scottish officials to their Ministers which suggests our meeting would be held on 5 June 2000

⁶ See paragraph 3.3, above.

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[SCGV0000061_018]. However, I believe it took place later that month, in fact 2 days before I wrote to Alan Milburn and Gisela Stuart.

- 3.21. On 28 June 2000 I met with Susan Deacon with our respective Private Secretaries in attendance [SCGV0000172_104]. The Scottish minute of the meeting records:

“Lord Hunt mentioned raised [sic] the issues of NBA litigation and compensation for transfusion HCV victims. Apparently he has now written to Alan Milburn setting out a proposed settlement, recommending settling with those who were infected after the USA introduced an HCV test but declining to settle with others. Lord Hunt thought that this represented the fairest and most reasonable outcome. Lord Hunt undertook to ensure that Ms Deacon saw a copy of his note to Mr Milburn and was kept in touch with the timing of the announcement”.

- 3.22. On 30 June 2000 my office copied the minute to Susan Deacon who wrote to Alan Milburn on the same day my minute was sent confirming agreement to the approach [SCGV0000240_031].

Section 4: Destruction of Lord Owen's documents and the Self-Sufficiency Review

4.1. I have been asked to detail when and how I was first made aware of how papers from the DH relating to contaminated blood and blood products were destroyed, and who told me this. Whilst I was aware of this matter, I cannot recall any information or discussions about this issue in either of my tenures in the DH.

4.2. During my tenure as Minister of State for Health (Quality) in 2007, this matter was still ongoing. I note that there was a submission sent from William Connon to Caroline Flint MS(PH) on 28 March 2007 [WITN4680021]. This referenced the destruction of documents in the context of Lord Archer's Inquiry:

"There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985). Nevertheless, given the subsequent destruction and loss of a number of files there is considerable scope for embarrassment for the department if officials are asked to appear before the inquiry." [WITN4680021].

4.3. There is a handwritten annotation on this document which noted a meeting that took place between the Secretary of State with Caroline, Philip and Norman. While I was clearly at this meeting, I do not now recall it. The reference to "Norman" being at the meeting is, at first sight, puzzling because I had taken over from Norman Warner. However, amongst the available documents is a note ahead of the meeting which reads in part:

"Patricia,

Caroline has asked to meet you to discuss Lord Archer's inquiry into contaminated blood products (this was reported in the -times, Guardian, Daily Telegraph and Daily Mirror in Feb). Philip and Norman (Caroline wanted him at the meeting because he answered a lot PQs about this issue in the Lords) will also attend the meeting with you tomorrow"

It looks as if Caroline Flint asked Lord Warner along because he had previously had much experience from the PQs he had been answering in the Lords the previous year [WITN5427016].

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- 4.4. In my later tenure, I was informed about the return of documentation previously thought to be missing or destroyed. In a letter dated 8 January 2007, Lord Jenkin wrote to me detailing the two ranges of documentation about contaminated blood which he had arranged with my predecessor to review:

"You will see from the papers that there are two ranges of documentation about contaminated blood, neither of which I was able to inspect when I came to the Department in 2005 to look over the files that must have passed across my desk as Secretary of State between 1979 and 1981. Your files will explain where these further documents have come from and you will see that Norman was perfectly happy that I should make another visit to the Department to inspect them. We left it that I would get in touch, hopefully, when the Department's officials had completed their work on the two sets of documents and the purpose of this letter is to find out whether your people are ready to show these files to me." [ARCH0002573].

- 4.5. In an email Linda Page sent on 23 January 2007 to Zubeda Seedat, she detailed those files relating to his term of office were:

"Files HIM22/1 Vol 69 to 92 are those that were the subject of non-disclosure during the HIV litigation and are marked in bold. I anticipate that Lord Jenkin will probably visit once he has the report from MS(Q) sometime in February/March.

They are marked with a small circle in pencil on the front of the file, bottom right hand side.

HIM 22/1 Volume (previously Wellington House lever arch files) (100 volumes in total)

...

HIM 22/2 Volume (previously documents returned by solicitors) (20 volumes in total)" [DHSC5453092]

- 4.6. On 16 February 2007, I wrote in reply to Lord Jenkin's letter that the files were available for him to examine, that they were subject to an ongoing review known as The Review of Documents relating to Blood Safety between 1970 – 1985 ("The Review"), and that he *"may find it more valuable to examine these after*

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[he had] *received the report*" [WITN4680022]. On 26 February 2007, Lord Jenkin responded to my letter of 16 February, stating:

"Confirming my telephone call, with reference to your letter of the 16th February, it would seem sensible for me to wait until the report to which you refer is available. I look forward to receiving a copy" [WITN4680022].

- 4.7. A submission from Liz Woodeson to Caroline Flint and I dated 20 April 2007 detailed the source of the missing documents for The Review at Annex A:

- Wellington House. These have always been in the possession of the Department and were located at Wellington House in 47 lever arch files.*
- The unpublished references to the report 'Self-Sufficiency in Blood Products A Chronology from 1973 - 1991'. These were in Wellington House in two lever arch files.*
- The documents 'returned by solicitors'. These files were returned to the Department following press articles on documents destroyed in error, and were in 11 lever arch files.*
- Files scanned at DRO Nelson. A scan of files at DRO Nelson identified four documents relating to NANBH.*
- Documents released by the Scottish Executive; 351 documents held on CD.*
- All documents are now in registered files (127 files)" [WITN4680023].*

- 4.8. I have been asked to set out what steps I took to establish how the DH papers relating to contaminated blood and blood products, or the risks of using blood and blood products, came to be destroyed. I think that once I was informed about the loss of these papers that I took this at face value that they simply had been lost. I don't recall whether or not there were any steps taken to identify the civil servants responsible for the destruction of these documents, or their line managers. If there was to be any steps taken to identify them, I would expect this to be the responsibility of, for example, a Permanent Secretary. I have no recollection of the circumstances surrounding the destruction of Lord Owen's papers. I have no knowledge of what papers were destroyed.

- 4.9. I have been referred to a letter from Carol Grayson to Yvette Cooper dated 22 February 2002 [LDOW0000173]. The Inquiry refers to this letter and suggests

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that I had replied to Ms Grayson regarding documents of Lord Morris that had been 'pulped'. In fact, the letter seems to be referring to papers of Lord Owen rather than Lord Morris. When Lord Owen investigated the whereabouts of his documentation, he was informed that they were 'pulped'. Mrs Grayson then wrote to Lord Morris detailing this, who then contacted me. The letter states:

"As I am sure you are aware he [Lord Owen] was eventually told his files had been "pulped". I wrote to Lord Morris (a long-time supporter of the HIV/hepatitis C campaign for justice) on this issue who recently received a reply from Lord Hunt and I understand that this matter is now being investigated."

- 4.10. On reviewing the correspondence for this period and earlier, I note that I wrote to Lord Morris on 12 November 2001 regarding a number of issues that had been raised by Lord Owen and referred to the fact that officials were looking into the documentation [LDOW0000118]. I do not believe I wrote specifically upon the matter of documents being 'pulped' but I would be happy to comment on any further documents provided to me if that were not the case. Certainly, if I had indicated the matters raised were being reviewed by officials then it would have been my understanding this was being done. Unfortunately, I cannot recall the detail of any investigation into destroyed documents at this time and that may be because there was no further update that I needed to be briefed upon.
- 4.11. On 25 July 2001, I wrote to Ms Grayson upon the various matters that were discussed at a meeting between us on 9 May 2001 [ARCH0002527]. I did not write specifically upon the issue of document destruction. Responsibility for this health area by this time had passed to Yvette Cooper and I ensured the handover of information by copying Jim Cousins MP while Yvette Cooper was on leave.
- 4.12. A PQ asked by Lord Morris of Manchester, dated 7 June 2007, queries why the DH audit review of the alleged shredding of documents had not been published, and whether a copy of this would be made available [ARCH0002895_001]. The written answer that I provided outlined that:

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"The Review of Documentation Relating to the Safety of Blood Products 1970-1985 (Non-A/ Non-B Hepatitis was issued on 22 May, together with referenced documents. The referenced documents made available include the internal audit report carried out by the Department in 2000. These documents have been placed in the Library and made available to the independent public inquiry."

- 4.13. The Inquiry asks why there was "a delay in the audit review of shredding by civil servants of documents relating to supply of infected blood clotting products". I am not clear to what delay the Inquiry is here referring. The audit report was carried out in the Spring of 2000 and I understand that it was disclosed to the Claimants' solicitors in the HCV litigation at the time. If the delay to which the Inquiry is referring is the delay in the publication of the audit report, I do not believe that I had responsibility for this area in 2007 and my assumption is that this written answer was approved by another minister who did have responsibility for it. The written reply indicates that the report was released in line with other documents from the Department's report, 'The Review of Documentation Relating to the Safety of Blood Products 1970-1985 (Non-A/Non-B Hepatitis), which had been issued on 22 May 2007.

Other documents

- 4.14. On 8 December 1999, my APS emailed Ruth Wetterstad (Private Secretary to the Permanent Secretary, Chris Kelly), regarding disclosure of historical documentation relating to the Bio Products Laboratory ("BPL"). The issue was a request for documentation notwithstanding the FOI was not yet enacted and the documents would not have been in time for the planned FOI provisions. My APS set out that I had commented that:

"I understand Chris' [Kelly's] comments but suspect that Lord Lester may be using this PQ for ammunition on freedom of information. If freedom of information was in law and the papers were 'in time ' would we have published them? Even though we can claim exemption is there any hard reason for not releasing them?" [DHSC0004033_170].

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- 4.15. Whilst I am not aware of a direct response on this matter, advice was given by David Hewlett, as outlined below⁷, to the Permanent Secretary, and I imagine this was relayed to me by Chris Kelly.
- 4.16. I think it is fair to say that I was not satisfied with this response, and I have addressed this further below.
- 4.17. I have been referred to a document which outlines the advice provided by David Hewlett to the Permanent Secretary Chris Kelly dated 9 December 1999 following my APS's query the previous day [DHSC0041341_013]. The overview of this advice was that documents should not be released under the principles of the planned FOI, even those that would not be deemed sensitive such as the request for BPL documents, as this would create a precedent for the release of further documents. The setting of a precedent on this was seen as a concern as it was envisaged requests would then be made under FOI for documents relating to Hepatis C (or on other issues) and it was as yet unclear how the FOI Bill might be amended in Parliament.
- 4.18. The advice provided was therefore that I should stick to the original advice and send a letter to Lord Lester summarising the content of the documents.
- 4.19. I did not agree to this advice at the time. A minute from Charles Lister to me on 17 December 1999 outlined that I asked for a draft letter to Lord Lester, who had raised a PQ about this matter [WITN4680024]; [DHSC0004033_160]. The draft letter drafted outlined why I was not able to reply immediately to the PQ requesting disclosure of two documents referred to in the Observer article:

"One of the documents is a letter about manufacturing practice dated 2 May 1979 from Dr Richard Lane, then Director of the Blood Products Laboratory... I am happy to make this document public and will do so by placing a copy in the Library when I reply to your question."

⁷ At paragraph 4.20

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The other document has been less easy to identify from the information given in the article, but the closest match is a submission written by officials in December 1979 advising Ministers on options for the future of the Blood Products Laboratory. I would also like to disclose this document but, as I explained, there is a long established convention that Ministers are not permitted to see advice given to a previous administration unless that advice is over 30 years old...My officials will therefore be writing to the former Ministerial team...to seek their agreement to the submission being disclosed to me prior to it being placed in the library."

- 4.20. During my tenure I was not aware of any policies relating to the storage or destruction of ministerial papers. In common I expect with all ministers, I was aware of the obligation on the Department to keep proper records, but this was not something with which I was directly involved; it would have been addressed by officials in particular the Departmental Records Officer.
- 4.21. I have been asked to recall to the best of my knowledge whether I received any training or government-wide instructions regarding the storage and destruction of departmental papers when I became PUSS. Given this was over 23 years ago, I unfortunately cannot recall any exact training or instructions on this matter. As above, however, it was officials and not ministers who administered the storage/retention of papers that needed to be maintained and the destruction of those that did not.
- 4.22. I am not aware of a rule in the Department of Health, nor do I have any knowledge of the routine destruction of documents, after a 10-year point. My comments as above apply, in my experience Ministers were not involved in the arrangements for Departmental record keeping.

Self-sufficiency review

4.23. An internal review was commissioned in 2002 to look into the history of the Department of Health's original commitment to self-sufficiency. I have been referred to a number of documents which detail this review to assist me. I will deal with each in turn below:

- (1) A guide for records managers and review officers dated 8 March 1996 [WITN3996002]. This guide set out in detail policies and procedures for the appropriate retention of records.
- (2) A letter from Yvette Cooper to Paul Goggins dated 11 February 2002 [ARCH0002964_002]. This explained that officials were looking into the points raised by Lord Owen about the commitment he had made in the 1970s to achieving self-sufficiency, and the allocation of finances to achieve this. It suggested that the preliminary understanding was that the promised resources were allocated resulting in the improved production target having been met, but that there had been the rapid growth in demand meant that self-sufficiency had not been achieved. The response stated that, *"If the UK had achieved self-sufficiency in the 1970s as Lord Owen intended blood products would still have transmitted hepatitis C because the virus was in the donor population and as I am sure you know the technology to treat pooled plasma was not available until 1985"*.
- (3) A minute from Jill Taylor to Yvette Cooper and others dated 23 March 2002, relaying advice about a requested meeting with Carol Grayson of the Haemophilia Action UK group [DHSC0042461_064]. Mrs Grayson had requested this meeting to discuss issues concerning haemophiliacs who were infected with hepatitis C and HIV from NHS blood products. A handwritten note at the top of this minute noted that the Haemophilia Action UK group were alleging a conspiracy in the 1970s relating to self-sufficiency. It was noted that Mrs Grayson had met with me in the previous year in May 2001, discussing all of these issues. It was recommended that the meeting should be declined. The minute

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explained that Officials had been looking at the files from the 1970s/80s to establish how the money allocated by Lord Owen had been spent, but that given pressures on time and resources they had not yet looked in detail and the decisions made in that period. Ms Taylor said it was recognised this was not a sustainable position and that further advice would follow. A handwritten note – which seems in context to be from Yvette Cooper - appears to read,

“yes it is unsustainable are they going to look into this or not. Seems they have to. And where are the Owen documents?”

- (4) A minute from Janet Walden (Investigations and Inquiries Unit) to Charles Lister dated 17 April 2002 [DHSC0041379_023]. Ms Walden noted that she thought it was important Mr Lister locate whatever papers were in existence relating to haemophiliacs with HCV from the 1970s and 1980s, and to ask someone experienced to gather a chronology of events on this matter in order to respond to Lord Owen's accusations. She noted 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. 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.”

- (5) A minute from Charles Lister to Hazel Blears (who by then had taken over as PS(PH)) dated 8 May 2002 [DHSC0041379_025]. This outlined various handling issues relating to haemophiliacs suffering with hepatitis C, who were calling for compensation and a public inquiry. This minute was together with:

- (a) Annex A to the minute detailing the current situation relating to haemophiliacs suffering with HCV, and Lord Owen's allegation [DHSC0041305_050].
- (b) Annex B to the same minute, detailing a chronology of *“Compensation for Haemophiliacs & Hepatitis C”* [DHSC0042461_030].

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- (c) Annex C to the minute (it would appear this is erroneously noted in the minute as Annex D) detailing lines to take in response to Lord Owen's accusation and relevant background information on the commitment to and attempted implementation of self-sufficiency [DHSC0042461_031].
- (6) Minutes of a meeting which Yvette Cooper and Charles Lister attended along with the Haemophilia Action Group UK, the Manor House Group, two MPs and others at the NHS in London dated 15 May 2002 [HSOC0010634_093]. This discussed the Lord Owen papers and the self-sufficiency issue. In the meeting the issue of compensation was raised, as was a request for a public inquiry.
- (7) A minute from Robert Finch to Hazel Blears regarding an upcoming meeting with Lord Owen, Lord Morris, and Michael Connarty in respect of self-sufficiency in blood products dated 27 June 2002 [DHSC0041305_030]. The meeting was scheduled to take place on 1 July 2002 to discuss Lord Owen's claim that officials failed to honour his pledge to Parliament in the mid-1970s to make the UK self-sufficient in blood plasma products.
- (8) Minutes of the meeting subsequently held on 1 July 2002 with Hazel Blears, Lord Morris, and Michael Connarty MP; Lord Owen had been invited but was unable to attend [DHSC0003606_083]. The meeting discussed Lord Owen's claim that the Department of Health had failed to honour his mid-1970s pledge to Parliament to make the UK self-sufficient in plasma products. Lord Morris outlined:
- "...concerns that it looked like the policy on plasma products had been altered without notifying Parliament... He relayed Lord Owen's concerns that papers from his Private Office had been destroyed..."*
- (9) A parliamentary question from Brian Cotter dated 23 October 2002, which queried whether the findings of the Department's inquiry relating to Lord Owen's period as a minister which related to blood products used for transfusion would be made available to the House

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[DHSC0041332_038]. A written answer provided by Hazel Blears dated 28 October 2002 outlined that she had,

"...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."

(10) A letter from Hazel Blears to Sylvia Heal dated 21 January 2003 [DHSC0004029_231]. This response outlined an update on a number of topics, most relevantly here on the internal review of papers relating to self-sufficiency in the 1970s on blood products.

(11) An email from Charles Lister to Zubeda Seedat and others dated 10 June 2003 [DHSC0020720_081]. This discussed a response to a PQ from Lord Clement-Jones, relating to files which had gone missing on blood products. Mr Lister outlined the remit for the internal review (referred to here as the Peter Burgin report), noting that it was not set up to address Lord Owen's allegation that his ministerial papers has been "pulped". The suggested reply from Mr Lister was:

"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."

(12) An email from Bob Stock to Zubeda Seedat dated 17 October 2003 [SCGV0000262_116]. This discussed a draft response to Lord Morris, again on the issue of self-sufficiency.

(13) An email chain between Zubeda Seedat, Robert Finch, Jill Taylor and Richard Gutowski dated 2 December 2003 [DHSC0004555_235]. They discussed a letter from Lord Owen on the internal investigation on self-sufficiency which was being treated as a Private Office case i.e., one requiring a Ministerial response. A response drafted had been rejected by John Hutton, who asked for a full explanation of Lord Owen's accusation. Jill Taylor noted:

"We could go back to him and explain that Lord Owen's alleges that his papers, when he was Health Minister, were "pulped" and provide him with a copy of the meeting note between Connarty, Morris (Owen failed to attend) and Hazel Blears in July 2002

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(attached) where the matter was discussed, however all of this highlights the issue that the "Burgin" report has not been published and he may well raise this with PS(PH)".

- (14) A submission from Richard Gutowski to the Minister of State for Health John Hutton, dated 15 December 2003 [LDOW0000138]. This outlined background information on the review of internal papers in the 1970s and 1980s, and comments by Lord Owen about destruction of his ministerial papers.
- (15) An email from David Reay to Sandra Falconer dated 8 June 2004 [SCGV0000046_088]. This email enclosed the line to take in response to a request to release documentation which it had been alleged was "covered up" by the government. The line to take outlined that the DH awaited the completion of the internal review, first commissioned in 2002.
- (16) An email chain between Zubeda Seedat and Jacky Buchan with William Connon in copy, dated 3 February 2006, which enclosed a minute with advice relating to whether the Secretary of State or Parliamentary Under-Secretary of State for Public Health (who at this time were Patricia Hewitt and Caroline Flint respectively) should meet with the Manor House Group [DHSC0200104].
- (17) A PQ from Lord Jenkin of Roding dated 21 March 2006 asking whether the report on self-sufficiency in blood products was a complete account of the circumstances in which individuals were infected with contaminated blood and blood products [DHSC0041198_088].
- (18) A further PQ from Lord Jenkin dated 22 May 2006 [DHSC0015839]. He queried whether:

"...the files of papers about contaminated blood products which have recently come to light, some of which have been returned to the Department of Health, provide evidence to support the claims of haemophiliacs that their infection with hepatitis was caused by such blood products."

The response noted that documents previously disclosed in HIV litigation were held by a firm of solicitors and had since been returned. It said that

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the Government accepted that haemophilia patients were infected with HIV and or Hepatitis C through contaminated blood products.

4.24. I do not believe that I had any involvement in the self-sufficiency review. As previously outlined, after the June 2001 election, the ministerial responsibilities were re-organised, so that as this issue developed it was initially Yvette Cooper and then Hazel Blears who had responsibility for the review.

4.25. The Inquiry refers me to Hansard for 12 March 2002 and the debate on that day where Lord Morris asked what new help the Government was considering for haemophiliacs infected with HCV. During the course of the debate Lord Morris referenced the letter I had sent on 12 November 2001, stating:

"In a letter sent to me on 12th November last, the noble Lord, Lord Hunt, admitted that failure to inform Parliament of this important change of policy in regard to self-sufficiency was never considered by his department's in-house inquiry. Surely that admission alone justifies the call for an independent further inquiry" [LDOW0000107]

4.26. A letter from Lord Owen to Lord Morris, was also raised by Lord Morris. Lord Morris raised Lord Owen's concern that the failure to secure self-sufficiency was not reported to Parliament and his allegation that the moneys announced had not been used for their agreed purpose.

4.27. In my first witness statement, I addressed the part of my letter of 12 November 2001 in which I said that:

"If the UK had achieved self- sufficiency [in] the 1970s as Lord Owen intended blood products would still have transmitted hepatitis C, because the virus was in the donor population and as you know the technology to treat pooled plasma was not available until 1985."

(Letter: [LDOW0000118], my first statement [WITN4680001]).

4.28. The Inquiry's Rule 9 request now asks the further following point about my letter of 12 November 2001, drawing on this 12 March 2002 debate:

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"In a letter of 12 November 2002 [LDOW0000107] referenced here in Hansard (Subheading: 12 March 2002, Column 766, final paragraph), you stated that an in-house inquiry failed to admit to parliament certain changes in policy relating to self-sufficiency. What were those changes in policy? Should they in your view have been reported to parliament?"

I would wish to point out that both Lord Morris and the Inquiry are wrong to suggest that my letter 12 November 2001 had stated that an in-house inquiry failed to admit to parliament certain changes in policy relating to self-sufficiency. Relevant to the current context, the letter of 12 November 2001 made two points:

- (1) First, that officials were looking into Lord Owen's allegations about the failure to achieve self-sufficiency, but that the preliminary understanding was that the promised resources were allocated resulting in the improved production target having been met, but that there had been the rapid growth in demand meant that self-sufficiency had not been achieved. It stated that self-sufficiency continued to be the aim of Ministers for a number of years, and NHS production of concentrate continued to increase, but the rapidly rising demand for clotting factors at that time meant that commercial products continued to be imported. On this aspect, my letter did not assert that there had been a failure to admit to Parliament changes in policy [LDOW0000118].
- (2) Second, my letter addressed the separate question of the review of the compensation issue which had been carried out shortly before my time as a Health Minister by the former Secretary of State Frank Dobson. As to that, my letter said:

"In your letter you have asked whether the failure to achieve self sufficiency was considered by Frank Dobson in his 1997 review, which looked at compensation for haemophiliacs infected with hepatitis C. I have been advised that this was not considered as part of that review. I understand the evidence clearly shows that considerable efforts were made to achieve self-sufficiency in clotting factors in the 1970s. The fact that this was not achieved appears to be linked with the massive increase in demand for clotting factors at the time and not to any failure to implement Lord Owen's initiatives".

- 4.29. Given that there had been a funding commitment announced in Parliament intended to achieve self-sufficiency, I do believe that progress made towards self-sufficiency should have been reported to Parliament. While I understand that the Inquiry will be looking at the totality of the reporting to Parliament in this regard and whether it was sufficient, I understand that the failure to achieve self-sufficiency and the continuing use of imported products was referred to in December 1980 by Sir George Young.
- 4.30. The Inquiry asks why the internal review did not seek to address Lord Owen's concerns about the destruction of ministerial papers or wider issues of how and when department documents were destroyed. I can see from the available papers that its focus was on what the surviving documentary records showed about the attempts to achieve self-sufficiency, but I was not involved in considering its remit as the report was commissioned about a year after the Minister for Public Health had taken over responsibility for this area.
- 4.31. As I left my role as PUSS in March 2003, I have no knowledge of why the internal review commissioned in 2002 was not published until 2006.
- 4.32. I cannot comment as to what part this internal review played in the government's decision not to hold a public inquiry as I was not involved with this.

Section 5: Calls for a Public Inquiry

- 5.1. During my time in office, I recall that I gave consideration to calls for a public inquiry on a number of occasions. However, this was generally resisted in Government. I discuss this reasoning below⁸.
- 5.2. I have been referred to three letters sent by Carol Grayson to me, dated 9 April 2000, 2 January 2003, and 18 January 2003, which were calling for a public inquiry [ARCH0002927]; [HSOC0010634_099]; [MACK0000539_002].
- 5.3. Whilst I have been unable to find a response to each of the letters referred to above directly, I note that I wrote to Ms Grayson on 25 July 2001 following a meeting we had on the 9 May that year [ARCH0002527]. This is discussed in more detail below⁹.
- 5.4. The Government's response was to resist these calls for a public inquiry. The briefing to me for Lord Morris' Oral PQ of 15 October 2001 set out the understanding of why self-sufficiency had not been attained, and the reasons why a public inquiry was not felt to be warranted [WITN4680013]. The briefing included a background information section on public inquiries generally [WITN4680013]. It was my understanding that the default position in government was to resist the many calls for various public inquiries unless there were compelling reasons to do so. On this specific matter, while a breach of Lord Owen's commitment to self-sufficiency was said by the campaign and interest groups to justify an inquiry, the information officials were providing to us suggested that the funds allocated for this had been properly invested in self-sufficiency; that the revised production target had been met, and that the problem was that demand had risen much further than anticipated when the funds had been allocated. This was summarised at internal page 10 of this

⁸ At paragraph 5.4

⁹ At paragraph 5.12

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briefing [001.001.346.0469]. I understand that the internal review was subsequently set up to look into this in greater detail but as I have explained, that was after the re-organisation of minister responsibilities.

5.5. I have been asked to outline my recollection of the Carpet of Lilies campaign, the impact it made on the DH, and any response made by the DH to the campaign.

5.6. In consideration of this question, the Inquiry has referred me to the following:

- (1) The Chairman of The Haemophilia Society (Chris Hodgson's) letter to Tony Blair of 23 November 1999 [HSOC0014517]. Mr Hodgson referred to the presentation that had been made to the Prime Minister that day of 113 white lilies in memory of those with haemophilia that had died from HCV.
- (2) A letter to Mr Milburn of 18 July 2001 from the daughter of a man infected with HCV regarding the Carpet of Lilies campaign, encouraging Mr Milburn to support the campaign [DHSC0020811_238].
- (3) A minute from Jill Taylor to Hazel Blears dated 10 June 2002 in advance of her meeting with the Haemophilia Society and Michael Connarty MP which was due to take place on 12 June 2002. The Haemophilia Society were to put costed proposals for a HCV financial assistance scheme to Hazel Blears, and a copy of their report had been provided to the Department on 31 May [DHSC5307583].

5.7. I recall personally that I found this to be a very moving campaign, and again highlighted the lack of financial support to those suffering with this disease, which I found discomforting. I cannot say what impact the Carpet of Lilies campaign had on the Department as a whole.

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5.8. The Prime Minister Tony Blair wrote to Lord Morris on 23 June 1999 outlining his view that he did not think that a public inquiry would provide *“greater insight into the problem or pave the way for any further improvements in the safety controls which are now in place”* [HSOC0002041].

5.9. I have also been referred to a letter from Lord Morris to Karin Pappenheim dated 16 August 1999, which enclosed correspondence from the Prime Minister dated 6 August 1999, which again refused the call for a public inquiry [HSOC0002123].

5.10. I have been referred to a further but undated (possibly draft) letter from the Prime Minister to Philip Dolan, (who was chairman of the Haemophilia society) [DHSC6548384]. It noted that while there is a great deal of sympathy for haemophiliacs suffering from HCV, the Government did not consider that a public inquiry was justified:

“The Government does not accept that the infection of haemophiliacs with contaminated blood was as a result of any wrongful practices. The Government of the day acted in good faith, relying on the technology available at the time. In light of the substantial numbers of documents and reports available under the Freedom of Information Act, the current Government does not consider that a public inquiry is justified.”

5.11. I do not believe I had any discussions regarding calls for a public inquiry with the Prime Minister.

5.12. I sent a letter to Carol Grayson on 25 July 2001 [ARCH0002527]. In this I outlined the government line on this matter was:

“Whilst the Government has great sympathy for those infected with hepatitis C and has considered the call for a public inquiry very carefully, they do not think it is the way to go forward”.

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5.13. Whilst I considered a public inquiry into this matter, and as I have outlined, felt a great deal of sympathy for those affected with this disease, in light of the information I had at the time I did not believe it was necessary. As previously discussed, there was a general consensus throughout government to resist calls for public inquiries unless there were compelling reasons for one to be held. As I have set out, the key plank of calls for a public inquiry at this state was the assertion that there had been a breach of Lord Owen's commitment to self-sufficiency. In that regard, the information and advice we had received was that the funds allocated had been appropriately invested but that massive growth in demand had meant that self-sufficiency had still not been achieved, even though the production target had been met. Now, with the benefit of hindsight and more fulsome information and knowing something of the many strands being investigated by the current Inquiry, I do believe the calls for a public inquiry were justified.

5.14. I do not believe that the establishment and findings of inquiries in other countries influenced the government's response on whether to hold a public inquiry.

Section 6: Other issues

6.1. I have been asked to comment on why I was unhappy with a line to take referring to public inquiries in other countries. I have been referred to an email from Margaret Ghلامي to Tony Hill dated 8 May 2001 which outlined this, and it was noted there was agreement to delete this sentence [DHSC0006562_025].

6.2 There is file note that appears to be related to this which reads:

“Charles,

I have had the above letter returned for a redraft and PS(L) has asked for particular sentences not to be used in future letters and they are as follows:

In the one from the last para ‘A number of other countries have held public inquiries into a similar situation and have offered compensation to those infected. These are, however, matters for those countries to decide taking into account their own particular circumstances.’ [DHSC0006562_024].

6.2. Without sight of the actual underlying letter and the context, I cannot assist with why I was unhappy with the inclusion of these two sentences. It could simply have been that I did not believe it read very well in the context of the rest of the line, or that I was unhappy with the reference generally, but I do not wish to speculate and cannot comment as to why this was.

6.3. I have been asked to provide my view on a statement from Andy Burnham which he made in the House of Commons on 15 January 2015 [RLIT0000771]. 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.”

- 6.4. I think it is over-simplistic to blame civil service resistance. The principle that compensation or financial help is only given when the NHS or individuals working in it have been at fault is a reasonable one and no government is likely to depart from it due to the open-ended costs that would entail. It is noticeable that no fault schemes in the NHS have been proposed many times but never accepted. The principle has been departed from on compassionate grounds on a number of occasions and for me the question is why it took so long for governments to do so in this case.
- 6.5. I have also been referred to similar comments made by Charles Lister in his third witness statement, which describe a collective viewpoint or group thinking from the civil service on this matter which may have resulted in resistance to any change in decision making on whether to not to hold a public inquiry [WITN4505389].
- 6.6. I do agree to some extent with Mr Lister's comments and have alluded to them earlier in my answers¹⁰. I do consider that there was a collective thinking across Government in relation to public inquiries, and that it is that they were to be generally resisted. I do however believe that there are legitimate reasons to be cautious about agreeing to inquiries, for example, and as already outlined due to the cost, due to the lengthy time they take, which because of the time lapse, may impede the effectiveness of implementing the recommendations.
- 6.7. This was one of the most difficult issues that I dealt with as a Minister. The plight of those affected were passionately described by Lord Morris of Manchester in his impressive and tireless work on behalf of people with haemophilia infected with Hep C. His many interventions in the Lords were a constant alert to me to reflect on the Department's approach. I sought to find ways to provide more support to the people so affected by this tragedy and their families.

¹⁰ At paragraphs 5.4 and 5.13

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- 6.8. I have explained earlier that the Department's consistent policy in regard to compensation which was held over many decades was not in itself unreasonable. It is unlikely that any government could agree to a no-fault compensation approach because of the open-ended nature of the cost.
- 6.9. But there are circumstances where specific help ought to be given to a group of patients who suffered as a result of their treatment. The experience of people with haemophilia infected with Hepatitis C is a most obvious case in point. I very much regret we did not do more to help them and hope that lessons will be learnt to encourage a more sympathetic response in the future.

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Statement of Truth

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

Signed.....

GRO-C

Dated... 25/11/2022