

Witness Name: Zubeda Seedat

Statement No.: WITN4912001

Exhibits: WITN4912002-  
WITN4912089

Dated: 23 August 2022

## **INFECTED BLOOD INQUIRY**

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### **FIRST WRITTEN STATEMENT OF ZUBEDA SEEDAT**

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I, ZUBEDA SEEDAT, will say as follows: -

#### **Section 1: Introduction**

#### **PART A: INTRODUCTION**

1. I am currently a Senior Executive Officer (SEO) working as a Public Appointments Manager in the Public Appointments Team for the Department of Health and Social Care. My date of birth and home address are known to the Inquiry.
2. I am providing this statement in response to a request from the Inquiry dated 16 April 2020. The request supplied four documents about which specific questions were asked, as well as some more general questions concerning the earlier destruction of departmental records relating to blood products.

#### **PART B: DRAFT PRELIMINARY NATURE OF THIS STATEMENT**

3. At the time of first providing this statement in draft in 2020, the disclosure process between the Department of Health and Social Care ("DHSC") and the Inquiry was not complete. I have done my best to answer the questions raised in the Inquiry's request from a combination of my memory and the documents that were

available to me. I have also added some updates to this statement based on the further documentation that was provided to me for the purpose of my second statement. While I do remember some details and my memory has been jogged by considering the documents, the Inquiry is asking about events about some 15 years ago. Further, I have provided some opening comments on dealing with the large amount of documents that have been provided to me more recently, in my second statement.

4. I am providing this statement to the best of my ability, with the materials provided and to the best of my recollection. I have referred the Inquiry to my second statement where appropriate.

#### **PART C: BACKGROUND / CAREER**

5. I joined the Civil Service as an Administrative Assistant in 1988 as I was a non-graduate. My career in outline from then has been as follows (I have highlighted my time in the Blood Policy team):

- 5.1 1988-1990 - Research Management Division: Administrative Assistant.**

Key duties included arranging meetings, copying and distributing papers, filing, and processing applications for AIDS research. I provided administrative support to the Chief Scientist and Director of Research Management.

- 5.2 1990-1993 - Social Services Inspectorate: Administrative Officer.**

Key duties included providing administrative support to the Executive Officer, the Assistant Chief Inspector in the Child Care Group, and inspection team looking at facilities for mothers and babies in prison. This period included Temporary Promotion to Executive Officer and short-term management of a member of staff.

- 5.3 1993-1998 - Health Aspects of the Environment & Food: Executive**

**Officer.** Key duties included line management responsibility, secretariat work, budgetary responsibility, drafting Ministerial correspondence (Private Office

cases signed by Ministers & 'Treat Official' cases signed by officials), and some briefings.

5.4 **1998–1998 - Independent Inquiry into Inequalities in Health: Assistant Secretary.** Supporting the Chairman (a former Chief Medical Officer) and the Secretariat on administrative matters. Key duties included secretariat work, managing the written expert evidence, and publication of the Inquiry report.

5.5 **1998–2002 - Public Health Division: Policy Officer, IP2 Standard, Promoted to IP3 October 1999.** Key duties included budgetary responsibilities, line management and secretariat work. Support work on the abolition of the Health Education Authority (HEA) and establishment of the Health Development Agency (HDA). I led on a major exercise to recruit non-executive members to the Board of the HEA and later the HDA.

5.6 **Dec 2002 – 2008 - Blood Policy: Policy Officer (Higher Executive Officer)**

Key duties included:

- Management of parliamentary work (Parliamentary Questions including written and oral questions, briefings, and Ministerial correspondence).
- Responding to press queries.
- Responding to FOI cases.
- Assisting with the roll out of recombinant treatment for haemophilia patients.
- Working towards the completion and publication of the report on Self Sufficiency in Blood Products.
- Secretariat to the expert committee on the Microbiological Safety of Blood Tissues and Organs (MSBTO), and the National Commissioning Group (NCG).
- Assisting with the sponsorship of NHS Blood and Transplant (NHSBT) including managing the formal Accountability Review process and preparing departmental returns on the performance of NHSBT.
- Line management responsibilities.

5.7 **2008 – 2014 - Obesity Unit: Policy Manager (SEO)**

- Management of parliamentary work, including media queries.
- Provided Secretariat to Obesity Review Group (Chaired by Minister) and weekly obesity Ministerial stocktake meetings. Developing the agenda, and providing weekly updates on progress.
- Drafted the Government's submission to the House of Lords Select Committee on Science and Technology Inquiry on Behaviour Change. Production of comprehensive briefing pack for senior officials who gave evidence, and drafted the Government response to the Select Committee report.
- Produced best practice guidance to improve the commissioning of weight management services in collaboration with key stakeholders.

#### **5.8 2014 – 2020 Seasonal Flu Immunisation Team: Policy Manager (SEO)**

- Management of parliamentary work, including media requests.
- Producing high level assurance reports / briefings on the delivery of the seasonal flu immunisation programme for the Chief Medical Officer and Ministers.
- Collaboration with Public Health England (PHE) on communication material for schools and GP practices to encourage flu vaccine uptake, including production of the Annual Flu letter.
- Collaboration with PHE and NHS England and Improvement to increase flu vaccine uptake rates in at risk groups, resolving issues on the delivery of the flu vaccine.
- Developing policy on flu vaccination for health and social care workers.
- Implementation of the WHO Global Action Plan III on wild poliovirus containment.
- Appointment of members of the Joint Committee on Vaccination and Immunisation (JCVI). Including leading on monthly meetings between the Chairman of JCVI and the Deputy Chief Medical Officer.
- Led on all international briefing requests on immunisation policy. Including lead on the DHSC response to the EU proposal for a Council recommendation on strengthened cooperation against vaccine preventable diseases.

- Review of policy on porcine gelatine and the Fluenz vaccine, including production of the Equality Analysis for the childhood flu immunisation programme in 2015 and 2016; and delivering a major workshop to consider policy on Fluenz vaccine.
- Previous support to the Childhood Flu Immunisation Programme Board and the Major Projects Authority review on the childhood flu programme.
- Stakeholder engagement on the roll out of the childhood flu programme

**5.9 Dec 2020 – June 2021. NHS COVID-App Policy Team Policy Manager (SEO) (six-month secondment)**

- Development work on options to use the COVID-App to record vaccination status
- Review and updates to the symptoms checker function on the COVID-App
- Review options and development on the pause contact tracing function on the App

**5.10 June 2021 – Present. Public Appointments Team: Public Appointments Manager (SEO)**

- Lead on a range of Chair and non-executive public appointments to public bodies including:
  - Patient Safety Commissioner
  - Human Tissue Authority,
  - NHS Blood and Transplant
  - Food Standards Agency
  - NHS Resolution
  - NICE
  - NHS Digital
- Work with the relevant stakeholders (PM Appointments Team in No10, Cabinet Officer, the Chair of relevant Arms Length Bodies, Policy/Sponsor Teams, and the Commissioner for Public Appointments) to ensure that their views are reflected during the appointments process,

and to ensure compliance with the Governance Code for Public Appointments

- Provide regular updates to the PM Appointments Team in No10, and Cabinet Officer on key campaigns and progress.

6. I joined the Blood Policy team on 16 December 2002 on a temporary basis to gain policy experience. The opportunity arose as the then policy holder, Robert Finch, was asked to work in Private Office and the team required immediate support.
7. My posting in Blood Policy was confirmed on 3 February 2003.
8. I was the HEO in the team, which also included two members of staff who provided administrative support in the team. They mainly arranged meetings and helped with correspondence. For the Inquiry's benefit the grades below HEO were Executive Officer, Administrative Officer and Administrative Assistant.
9. At the level immediately above me, Jill Taylor was the Senior Executive Officer who I worked for when I joined the team. When she left, she was not replaced and I took on her responsibilities. We did not have a Grade 7 in the team. As the HEO, I reported to the Grade 6. I think it would be fair to say that this inevitably meant both that there was increased pressure on the team and that I was probably carrying more responsibilities than many HEO posts.
10. During my time as HEO, my Grade 6 bosses on the team were, respectively: Charles Lister, Richard Gutowski and William Connon. Above them, at SCS grades, the Branch heads were Vicki King, then Ailsa Wight. The Heads of Division were Gerard Hetherington, then Liz Woodeson. The Director General for most of the period was Dr David Harper.
11. I remember that the Blood team was incredibly busy. The team received a huge volume of PQs and correspondence. The team was in contact with the

haemophilia interest groups, and affected and interested individuals on a wide variety of subjects. Those subjects included: requests for a compensation scheme for people infected with Hepatitis C, the establishment of the Skipton Fund, issues such as the call for a public inquiry, and accusations of a deliberate cover up because previous papers had been destroyed. It also coincided with the announcement of funding so that haemophilia patients could be treated with recombinant products. This led to the roll out of recombinant products in which I had some involvement. In addition, the Freedom of Information ("FOI") Act came fully into force at the start of 2005 and I was immediately involved in dealing with numerous FOI requests relating to blood, blood products and contaminated blood. The volume of work involved in this was significant because of the understandable and increasing profile of contaminated blood issues, and the increasing requests that this entailed. Alongside this, I was also working on issues relating to blood safety and supply. I recall that despite working very hard, I struggled to meet deadlines set for responses. It was not uncommon to see that emails had been sent to my line manager or others in the team chasing for responses; but it was a major task to keep up with the draft responses and other input required.

12. Within the documents currently available, there are indications of the pressure that the team was under. In the context of Parliamentary Questions in May 2006, William Connon noted in an email to me that he would be raising the question of resources to handle the volume of requests with which the team was grappling. He said:

*"Apologies for this as I know you are currently snowed under with FOI requests and other PQ's etc. The planned meeting for this evening with both ministers will go ahead and I will raise the question of resources to handle all of this (again!)" (24 May 2006) [DHSC0200023].*

13. I raise this as an introductory remark simply to give some context to the documentary record, in particular for when I (or others in the team) can be seen to have received follow up or chasing requests. It was a busy and challenging post and this was recognised in comments such as William Connon's, above. Following this comment about resources, in I think the summer of 2006, the

Branch Head recruited two people to go through all the further papers that were involved so that we could make them publicly available. A Grade 6, Linda Page, was tasked with writing the Review of Documentation Relating to the Safety of Blood Products 1970 – 1985, released in May 2007 [DHSC0015740\_001].

14. Ministers agreed to set up the Skipton Fund for those infected with Hepatitis C while I was in the Blood Policy team. However, for the most part, I was not primarily involved in establishing the scheme as a new team member, David Reay, was recruited to take this forward.
15. I was also involved in supporting the expert Committee on Microbiological Safety of Blood and Tissues. This committee was later refocused and became the Advisory Committee on the Safety of Blood, Tissues and Organs (“SaBTO”). A new person with a science background was later recruited as the Secretariat to SaBTO.
16. I recall supporting the National Commissioning Group which met to agree the price charged to the NHS for blood components. I also supported the team with the sponsorship of NHS Blood and Transplant.
17. I recall working closely with lawyers, officials in Scotland, National Blood Service, (later NHSBT), and the UKHCDO.

#### **PART D: CHRONOLOGICAL OUTLINE FROM CURRENTLY AVAILABLE DOCUMENTS**

18. Before turning to the specific questions raised by the inquiry, I have set out below a chronology of my involvement based on the currently available documents, to try to give the context to the issues raised by the Inquiry’s request.
19. As I have set out above, I started work in the Blood Policy Team in December 2002.



20. When I read the Inquiry's request for a statement and read the documents provided by the Inquiry, I was not able to recollect a specific time, meeting or event when I became aware that earlier records from the Department were missing or destroyed. My general recollection, however, is that I had become aware of this earlier than the 2005 period to which the documents raised by the Inquiry principally relate. Although my recollections of this are not clear, I have some recollection that the team was already aware that some documents from the 1970s and 1980s were believed to have been destroyed. I also have a vague memory of this being connected with the solicitors involved in earlier litigation.
21. The fact that the team was already aware that some documents from the 1970s and 1980s were believed to have been destroyed is borne-out by some of the documents made available to me to help answer the Inquiry's questions. On 5 June 2003, I forwarded to Charles Lister one of a series of Parliamentary Questions (PQs) from Lord Clement Jones **[DHSC0200024]**. The PQ asked, *"...what review has been carried out of the circumstances in which files relating to liability for the supply of blood products, which were compiled while Lord Owen was Health Minister, went missing; and what has been the outcome"*. The reference to a review was to the report that had been commissioned by Yvette Cooper into self-sufficiency in blood products from 1973-1985. Peter Burgin had completed a draft of that report but it had not yet been published.
22. Charles Lister replied to me on **10 June 2003 [DHSC0020720\_081]**. He made clear that the remit for the self-sufficiency report did not include the destruction of papers from Lord Owen's period in office. And he went on to explain what was then understood about the circumstances of missing documents:

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

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

23. I am unable to say whether this was the first time that this had been explained to me. However, this explanation is consistent with my recollection that the fact that the documents were believed to have been destroyed was already known by the team before I started working there, and was understood to relate to the handling of documents by the department's solicitors.
24. In October 2003, an article was published in the Scotland on Sunday that related to issues around self-sufficiency and alleged that the government were aware that the risk of infection from commercial products was greater than from NHS blood products. I drafted a response to a question from Lord Morris as a result of the article. On **17 October 2003**, Bob Stock provided input on the draft response in an email to me noting additional responses to the article [**SCGV0000262\_116**].
25. The issue of the self-sufficiency review and the destruction of Lord Owen's papers arose again with respect to the drafting of a response to a letter received from Lord Owen on the subject. I sent an email to Robert Finch, one of the assistant private secretaries of Melanie Johnson, the Parliamentary Under Secretary, on **2 December 2003** chasing a response to Lord Owen's letter. The original email to Robert Finch from Jill Taylor of 5 November 2003 had sought a steer on whether the response to Lord Owen should be from Melanie Johnson or John Hutton, the Minister of State for Health, it being noted that John Hutton had requested a full explanation on Lord Owen's accusation of the destruction of his papers. [**DHSC0004555\_235**].
26. The aforementioned understanding relating to the handling of documents by the department's solicitors was also reflected in a submission dated **15 December**

**2003** from Richard Gutowski regarding correspondence from Lord Owen [LDOW0000350] [LDOW0000138]. Richard Gutowski explained that,

*"1. MS(H) [John Hutton] has asked for a full background note on the review of internal papers between 1973 and 1985 and comments by Lord Owen about the destruction of papers from his Private Office at the time.*

*2. Lord Owen has publicly stated that the Department of Health had failed to honour the commitment he made in the 1970s to make the UK self-sufficient in clotting factors for haemophiliacs. However, the fact that self-sufficiency was not achieved appears to have been linked to the massive increase in demand for clotting factors at the time, not to any failure to implement Ministerial initiatives.*

*3. In 2002, Yvette Cooper originally agreed to an internal trawl of papers after lobbying initially by Lord Morris and later Michael Connarty, Chair of the All Party Parliamentary Group on Haemophilia.*

*4. A DH official was asked to undertake a detailed review of the surviving papers between, roughly, 1973 and 1985 and put together a chronology of events. Without this it is difficult to answer any detailed accusations levelled against the Department by Lord Owen and others. The remit for the work was to review surviving documents from 1973 to 1985 to address a number of issues, chiefly:*

- how the Department implemented the policy of UK self-sufficiency in blood products begun in 1973;*
- to chart the developing understanding of the seriousness of non A non B hepatitis (later identified as hepatitis C);*
- to examine the extent to which problems at Bio Products Laboratory delayed the achievement of self-sufficiency;*
- whether the achievement of self-sufficiency would have led to fewer cases of hepatitis C in haemophilia patients.*

*5. It was not set up to address Lord Owen's comments, dating from the late 80s, that the papers from his period as a Minister had been "pulped". Unfortunately, none of the key submissions to Ministers about self-sufficiency from the 70s/early 80s appear to have survived. A search of relevant surviving files from the time failed to find any. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have since been destroyed in a clear out by SOL. This would have happened at some time in the mid-90s.*

6. A report was submitted to officials in the blood policy team earlier this year, however there are a number of outstanding issues which need to be resolved before the report can be finalised and submitted to Ministers.

7. PS(PH) [Melanie Johnson] is aware of the background to this review. Earlier this year, officials agreed to conclude the review as soon as practicable. Unfortunately, we have been unable to make any progress during the year."

27. Some time later, on **6 May 2004**, Richard Gutowski emailed Gerard Heatherington to outline progress on the self-sufficiency report commissioned by Yvette Cooper. He stated:

*"When we last met Melanie Johnson she gave us three months to sort out the problem of accusations of self-sufficiency of blood and the shredding of Lord Owen's papers. We have a report produced - the Burgin Report - but it is not in form to be published or conclusions drawn from it. We agreed I should pursue appointing a medical writer to redraft the Report in a more robust form. I am meeting Adam Jacobs from a medical consultancy next Friday to see whether they are able to take on the work. Ideally, I would have liked Hugh Nicholas to get involved in assessing whether the decisions made at the time stand up in the light of the knowledge at the time and the information available. Unfortunately, he is tied up with work on the Hep C Strategy and the Hep C Payment Scheme Application Form. If the Consultancy Firm feel that they are able to do the work the same question then applies, have we the money".*  
**[DHSC5336358].**

28. Although I am not sure of the precise context, there is also an email chain from June 2004, which details a request for files made by Joan Planter to the Departmental Records Office. Joan Planter provided administrative support to the team. Her request references a prior understanding, which was held by members of the team, that some of the documents had been destroyed  
**[WITN4912002].**

29. As I will mention further below, somewhat later, in April 2005, Anita James from the solicitor's division gave me further detail on this explanation of how the documents were believed to have been lost/destroyed.

30. I have also been referred to an email chain dated 4 June 2004 between David Daley, David Reay, Richard Gutowski, and Sandra Falconer concerning the line that had been taken in response to the Sunday Herald and the proposed line about requests for release of further documents. I am not sure now of the wider context of this email chain [SCGV0000046\_088].
31. On 15 September 2004, the Health Protection Divisional Update recorded the following in relation to the self-sufficiency review:
- “Following our meeting with PS(PH), the consultant has now produced a first draft of the report, which concludes that the Department acted reasonably at the time in terms of known infectivity of blood. This reinforces our position that a public enquiry is not warranted.”*  
[DHSC5349579].
32. Picking up matters in late 2004 and into 2005 (the period covered by most of the documents to which the Inquiry has referred me), the issue of missing DHSC documents arose in a number of overlapping contexts. Lord Jenkin asked DHSC for access to the papers from his time in office as Secretary of State for Health. Separately, the issue was raised in PQs, correspondence and FOI requests. Also, work was continuing on the Department’s self-sufficiency report.
33. On **21 October 2004**, Sandra Falconer (from the Health Department of the Scottish Executive) emailed Richard Gutowski and I regarding correspondence the Scottish Health Minister had received from [GRO-A] [WITN4912003]. There was then email correspondence between Richard Gutowski and Bob Stock in the Scottish Executive over Mr [GRO-A]’s request, which they were treating as a test case for how FOI requests would need to be responded to once the Act came into force [DHSC0038529\_072]. Richard Gutowski provided information about the National Blood Authority records and previous requests that Mr [GRO-A] was thought to have made. Referring to the ‘secret report’ requested by Mr [GRO-A], Richard Gutowski said that he did not know what this referred to but would check his papers. He updated Bob Stock on the Department’s self-sufficiency report. I was tasked to get a colleague to look for the earlier requests and correspondence from Mr [GRO-A]. On **1 November 2004**, Sandra Falconer sent Richard Gutowski

the proposed response from the Scottish Executive and sought his comments [DHSC0200030].

34. There was then an exchange of correspondence between Mrs Falconer and Mr [GRO-A] in **late November 2004/early December 2004**. A further response to Mr [GRO-A] dated **3 December 2004** was forwarded to our Department. It referred Mr [GRO-A] to the report of the Haemophilia Centre Directors' Hepatitis Working Party for the year 1980/1981. This was thought to be the 'secret report' that Mr [GRO-A] had been seeking [WITN4912004].
35. On **14 December 2004**, Lord Jenkin wrote to Lord Warner, the then Parliamentary Under-Secretary of State for Health in the Lords [WITN4912005]. Lord Jenkin attached correspondence that he had exchanged with Mr [GRO-A] [WITN4912006]. Mr [GRO-A] was seeking copies of documents from Lord Jenkin's time in office including '*... a so-called secret Westminster funded report into Haemophilia and Hepatitis non A non B between 1979 and 1982*' which he had been seeking from the Scottish Executive.
36. On **30 December 2004**, Victoria Lindsay from the Customer Service Centre emailed me seeking a contribution to the draft response to Lord Jenkin [WITN4912007].
37. On **5 January 2005**, Sandra Falconer emailed me the responses to Mr [GRO-A] from the Scottish Executive, and also faxed a copy of the report of the Haemophilia Centre Directors' Hepatitis Working Party for the year 1980/1981 [WITN4912008].
38. During this time, on 25 January 2005, Sandra Falconer emailed William Connon (copied to me) and alerted him to further media coverage in Scotland where there was a campaign to launch a public inquiry. Although it appears from the emails that it was not under active consideration by Scottish Ministers at that time [DHSC0041332\_038].

39. I composed a draft reply for Lord Warner to send to Lord Jenkin, as per Victoria Lindsay's request [WITN4912009]. The final letter was sent on **27 January 2005** [WITN3996005].
40. Lord Warner's reply noted that officials had carried out a search of the relevant files but could find no trace of information relating to the 'secret Westminster-funded report' being referred to. A further copy of the report of the Haemophilia Centre Directors' Hepatitis Working Party for the year 1980/1981 was provided, which had previously been sent by the Scottish Executive in answer to the similar query of them from Mr [GRO-A].
41. Very shortly after this, on **29 January 2005**, Mr [GRO-A] emailed Melanie Johnson, the Parliamentary Under Secretary of State for Public Health. Blood products and safety were part of Melanie Johnson's portfolio of Ministerial responsibilities. Mr [GRO-A] made an FOI request for the documents from the HIV litigation which had been subject to public interest immunity ("PII"), and also referred to the Department's review of the self-sufficiency issue [WITN4912010]. There had been earlier correspondence from Mr [GRO-A] on this and related issues in 2004.
42. From the documents that I have been able to review, Mr [GRO-A]'s FOI request was the first of a number of FOI requests at around this time raising the issue of documents from the HIV litigation and the material that had been subject to PII; others came from Mr [GRO-A] and Ms Carol Grayson of Haemophilia Action UK.
43. At some stage before **9 February 2005**, Lord Jenkin called the office of Sir Nigel Crisp, the Permanent Secretary of the Department and Chief Executive of the NHS. Lord Jenkin had spoken to Shaun Gallagher, the Private Secretary to Sir Nigel. Lord Jenkin was concerned that the 27 January 2005 [WITN3996005] reply from Lord Warner gave the impression that the Department held no relevant records on the subject and Lord Jenkin wanted to take up the issue of the Department's filing and document management. Shaun Gallagher had raised this with me and with Frances Smethurst, the Private Secretary to Lord Warner. I

suggested a follow-up letter to Lord Jenkin. On 9 February 2005, Shaun Gallagher emailed me asking me to take forward that suggestion. I was requested to provide a draft by 16 February 2005 and to clear it with Anna Norris, Private Secretary to Melanie Johnson, as the Minister with responsibility for this subject [WITN4912011]. There were then exchanges between the Private Offices of Lord Warner and Melanie Johnson regarding the timing for approving the further letter to Lord Jenkin, since Lord Warner was abroad [WITN4912012].

44. On **10 February 2005**, Mr [GRO-A]'s request was forwarded to me and William Connon and the Department's FOI team [DHSC0200041].
45. From the replies that were given at the time, I can see that I was then involved in trying to find the documents requested by Mr [GRO-A]. This involved registered files being looked at (for example, there are requests for files made on **15, 17 and 18 February 2005**) [WITN4912013] and consulting with the solicitor's Division and with Charles Lister, the previous Head of the Blood Policy Team. There are also some handwritten annotations, in my writing on one copy of the 11 February 2005 email that references various queries that were chased up. For example, there is a note of the name "Ron Powell" who was the DH solicitor involved in the litigation; and a note "Justice Burton minute to Pat Troop 3/3" [DHSC0200043].
46. By **21 February 2005**, I had prepared a response to Mr [GRO-A]'s FOI request together with a background note [WITN4912014]. The records show that I forwarded these to Anita James of the solicitor's Division for her comment [WITN4912015]. I commented to Anita that, using the standard template provided for FOI requests, I had given two reasons for being unable to make the documents available; the destruction of documents and being unable to locate them. Clearly, therefore, by this time I was already aware that the PII documents from the litigation could not be located.
47. The template to which I have referred [WITN4912016] provided the following standard lines for responses:



*"I am writing to advise you that following a search of our paper and electronic records, I have established that the information you requested is*

*[not held by this Department]*

*or*

*[can not be located]*

*or*

*[has been destroyed in accordance with best records management practice]"*.

48. Anita James replied to me the following day, **22 February 2005**, commenting on both my draft reply to Mr. **GRO-A** and the background note which I had prepared **[DHSC0038529\_063]**. Anita James' response indicated that it was during a search for papers in the Hepatitis C litigation (which she stated did not involve the Department of Health) that it was discovered that papers had been destroyed. She said that she and Charles Lister had discovered this and had an audit done. Anita James offered to send me a copy of the audit. She said that the standard line provided by the template that the records had been destroyed in accordance with best records management practice could not be used, because *"...the records were destroyed in the worst records management"*. She suggested using the words, *"has been destroyed"*.
49. On **1 March 2005** I provided a draft further letter for Lord Warner to send to Lord Jenkin together with a background note **[DHSC0200048]**.
50. I can see that on **2 March 2005**, I contacted Ronald Powell from the solicitor's Division about Mr. **GRO-A**'s FOI request. I sent him an updated draft of the background note with some drafting notes on which I was seeking his assistance **[WITN4912017]**. I apologised for contacting him about events that were some 14 years ago but stressed that the response to the FOI request was now overdue because I had been awaiting his return from leave. The background note I drafted indicated that a further search of files would exceed the 3.5 day limit allowed under the FOI Act.
51. On **4 March 2005** I received a response from Mike Patrick from the commercial branch of the solicitor's Division **[WITN4912018]**. He suggested that the response could indicate that the Department believed that the documents no

longer exist and cite as justification, the fact that it would not be unreasonable to have destroyed the documents with reference to the six year limitation period under the Limitation Act 1980.

52. The file then contains a further draft of the background note and draft response to Mr [GRO-A] [WITN4912019].

53. On **7 March 2005**, I put the draft response and background note up to Gerard Hetherington for clearance, copying it to William Connon and to Marcus Giddy from the Customer Service Centre [WITN4912020]. On 10 March 2005, I was told that Gerard Hetherington had cleared the response to Mr [GRO-A] [WITN4912021].

54. The substantive part of the final response to Mr [GRO-A] was as follows:

*"Thank you for your e-mail of 29 January to Melanie Johnson in which you request information, under the Freedom of Information Act, about documents which were subject to a Court of Appeal Hearing on 20 September 1990 in relation to the HIV litigation.*

*I am writing to advise you that following an extensive search of our records, we do not appear to have retained the documentation. Given that the litigation was settled nearly 15 years ago, it would appear that the documents have been destroyed.*

*You also refer to the review of internal papers commissioned in 2002 about the issue of self-sufficiency in blood products. I regret that it has not yet been finalised due to other pressures. In view of the time which has passed, since the report was commissioned, officials have been asked to ensure that it is now completed as a priority. We will of course, let you know when the report has been completed."*

55. The background note stated as follows:

*"HIV Litigation*

*1. In 1989, around 770 haemophilia patients who were infected with HIV through contaminated blood products, and 190 of their partners and close relatives took legal action against the Department, Welsh Office, the Medicines Licensing Authority and Committee on Safety of Medicines to claim compensation for damages, alleging negligence. The Government denied liability.*

## *Disclosure of documents*

2. During the HIV litigation, the DH made available a very large number of documents for inspection by the plaintiff's lawyers. Other documents that were wanted by the plaintiff's lawyers were withheld. These papers related to the inner workings of Government and were subject to a Public Interest Immunity (PII) claim by the Department.

3. Initially the High Court ruled against disclosure of the majority of the documents. However, on appeal on 20 September 1990, the Court of Appeal Judge ruled that certain documents should be disclosed. There is a paper on file dated 10 October 1990 which says "that the judge is now inspecting the documents to see which meet the criteria for disclosure".

4. We would need to conduct a further search of the files to establish the outcome of the inspection of these documents. However, a further search would take us to the 3.5 days limit that we have.

5. At the same time DH were considering proposals for a settlement. A settlement was reached and details were announced on 11 December 1990.

## *Request from Mr. GRO-A*

6. Mr. GRO-A is requesting copies of documents which DH had claimed PII, which were the subject of the Court of Appeal Hearing on 20 September. We believe that Mr. GRO-A would like access to these papers as part of an on-going campaign calling into a public inquiry into why so many patients were infected with HIV and Hepatitis C through contaminated blood and blood products.

## *Search for papers requested under FOI*

7. We have two cabinets of papers (about 60 folders) which we understand were sent to our solicitors at the time of the litigation. However, it is not clear which of these papers (if any) would have been made available to the plaintiff's lawyers during discovery.

8. We have also looked at a number of registered files to locate the papers. We have found a minute dated 6 September 1990 which refers to documents identified under the PII claim and which were sent to Sol.

*There is also a list of documents marked "PII claim category 2" (vol 17). In addition, we have consulted with Sol Division. However, we have been unable to establish what happened to these documents.*

*9. It is also our understanding, having spoken to the previous head of the blood team that an earlier search for some papers (about self-sufficiency into blood products) from the 70's/early 80's could not be found. One explanation for this is that papers marked for public interest immunity during the discovery process on the HIV litigation have been destroyed in error at some time in the mid 1990's.*

*Blood Policy Team*

*March 2005"*

56. An early excel spreadsheet of FOI responses on blood issues was being maintained in early 2005, and I can see that for Mr **GRO-A**'s request, the decision was summarised as *"Unable to provide papers. Papers have been destroyed"* and the comments added were *"Consulted with Sol and Charles Lister, previous Head of Blood Team"* **[WITN4912022]**.

57. Also, on **7 March 2005**, Anna Norris indicated that her Minister, Melanie Johnson, was content with the further letter to Lord Jenkin that I had drafted. This was confirmed to Lord Warner's Private Secretary **[WITN3996006]**. Lord Warner then sent the further response to Lord Jenkin on **10 March 2005 [WITN4912023]** **[ARCH0002570]**. The letter read as follows:

*"I have been advised that you recently contacted Sir Nigel's office about my letter dated 27 January. I understand that you expressed concern about the Department's filing and record management systems.*

*I would firstly like to correct the impression I may have given that we hold no records on the treatment of haemophilia patients, blood safety and related issues. The Department of Health has a Departmental Records Office (DRO) that holds closed files on these areas. These files have been subject to a branch review.*

*Clearly, keeping good records is fundamental to the day to day running of the Department. We recognise that much of the work we do has long term consequences and accurate records are essential if future users are to be able to see why certain decisions were made, or why certain things*

*did or did not happen. This is a message that is regularly communicated and reinforced to staff.*

*Mr GRO-A refers to what he calls a secret Westminster report. Officials have established that this refers to the document entitled "Haemophilia Centre Directors' Hepatitis Working Party Report for year 1980-81". A copy was attached to the letter I sent you. The paper indicates the existence of non-A and non-B hepatitis (NANBH), and that in the 1970's treatment with blood clotting factor concentrates carried a risk of infection with NANBH (what we now know as hepatitis C).*

*Unfortunately, in the 1970s and early 1980's, before effective viral inactivation procedures had been developed, many patients with haemophilia were inadvertently infected with hepatitis C from contaminated blood products.*

*The prevailing opinion among clinicians at the time was that NANBH caused a mild and often asymptomatic illness. The more serious consequences of hepatitis C, which may take 20-30 years to develop, only became apparent after full characterisation of the virus in 1989 and the development of tests for its recognition.*

*The paper does not show that anyone acted wrongly in the light of the facts and measures that were available to them at the time. I believe that Mr GRO-A has been campaigning for a public inquiry. However, as previously stated, the Government does not accept that any wrongful practices were employed at the time and does not consider that a public inquiry can be justified.*

*Mr GRO-A has requested copies of minutes from the National Blood Authority (NBA) and Haemophilia Centre Directors Hepatitis Working Party. I would like to suggest that Mr GRO-A contacts the NBA and United Kingdom Haemophilia Centre Directors Organisation directly. They are deemed to be the "holders" of these minutes.*

*With regards to the reference to minutes of the NBTS. Officials have identified files on the Advisory Committee on the National Blood Transfusion Service which was established in 1980. The first meeting was held on 1 December 1980. It would be helpful if Mr GRO-A could confirm firstly if it is the papers for this Advisory Committee that he would like to see and secondly if he could be specific about the period and issues that he is interested in, before officials make an assessment on the release of documents. Mr GRO-A should contact William Cannon who is based at Skipton House, 80 London Road, London SE1 6LH should he wish to pursue his enquiries."*

58. It later transpired that Lord Jenkin was also sent, in error, the background note which I had drafted [WITN3996007]. At some stage in the week following the 10 March 2005 letter, Lord Jenkin called the Department asking to have a meeting with Sir Nigel as Permanent Secretary [WITN4912024]. Lord Jenkin told Lord Warner that he felt that he was being denied access to papers which related to his time in office.

59. Following the FOI response sent to him, Mr [GRO-A] sought further clarification [DHSC0038529\_020]. On **16 March 2005**, I was asked to contribute to a further response to send to him. I provided a contribution the next day, 17 March 2005. [WITN4912025] indicating that,

*“As mentioned in my previous e-mail, a search of the papers you requested indicated that they have been destroyed.*

*In previous correspondence, we have referred to the review of internal papers commissioned by Ministers; this aims to clarify the facts surrounding the drive for UK self-sufficiency in blood products in the 1970's and 1980's. The review is based on papers available from the time.”*

60. As set out above, I had already asked for file searches to be done in response to Mr [GRO-A]'s letter and Mr [GRO-A]'s correspondence. The documents available to me show that at around this time, **March – April 2005**, I was involved in making a number of requests for further files. It is difficult now to piece together precisely to which FOI requests / correspondence / PQs, or combination of requests / correspondence / PQs, these related. There was an overlap between the information being sought by correspondents such as Mr [GRO-A], the FOI requests of Mr [GRO-A] and others such as Mr [GRO-A] and Ms Grayson, and the request by Lord Jenkin to see his papers. In addition, work was continuing on the Department's report into self-sufficiency and I may have been requesting document searches in that context also. By way of example, the documents show that I was involved in requesting the following searches at around this time:

- On **1 March 2005**, I made a specific request for a file on the Central Committee for the National Blood Transfusion and was told by the

Departmental Records Office that it had been destroyed in September 2003 [WITN4912026].

- On **18 March 2005**, I asked whether it was possible to carry out a search using the key words ‘Study of non-A non-B hepatitis in haemophiliacs 1979 – 1982’ [WITN4912027]. That day I received an email from Mr Proctor (an Operations supervisor in the Iron Mountain Storage team) saying that the best that could be provided was a list of files with hepatitis in the title [WITN4912028].
- On **6 April 2005**, there is an email to me from Mr Proctor, providing two spreadsheets of files whose titles included, respectively, “blood” and “haemophilia” and which were opened up to 1982 [WITN4912029].
- On **15 April 2005**, I asked Mr Proctor if it was possible to narrow the list of hepatitis files that had been supplied on 18 March to the period 1979-1981, and he supplied a refined list the same day [WITN4912030].
- Also, on **15 April 2005**, expressly in the context of servicing Lord Jenkin’s access to papers, I asked the Departmental Records Officer for lists of files for “5. Plasma; 6. BPL; 7. Transfusion” between 1979 and 1981, noting that I had already sought lists for, “1. Haemophilia; 2. Hepatitis; 3. Blood 4. AIDS and Blood”. I also asked them to check whether files had been sent to the National Archives with any of these keywords [WITN4912031].
- There are also print outs of file lists from the National Archive dated **15 April 2005** in response to my requests [WITN4912032]. On **19 April** I requested the files that appeared to be relevant to be recalled for the purposes of providing them to Lord Jenkin [WITN4912033].
- There is also an Access Work Order for **20/21 April 2005** with a list of files I had ordered [WITN4912034].

61. From **17 March 2005 – 5 April 2005**, I was involved in dealing with an FOI request which had been made by Mr [GRO-A] on 15 March 2005. The request included a similar one to Mr [GRO-A]’s earlier request. There was an exchange of emails about the draft response to this request which provides

further information on the circumstances in which earlier papers were understood to have been destroyed:

- (1) Having been sent Mr [GRO-A] FOI request on 17 March 2005, I provided a draft response on 24 March 2005 indicating that it had been cleared by our Head of Division, Gerard Hetherington [WITN4912035].
- (2) On 29 March 2005, Chris Timmins from the FOI team commented on my draft reply in an email to William Connon and Michelle Heywood (General Health Protection Team). He indicated that he had been asked to look at my draft response from an FOI perspective. He raised the concern that the response would be difficult for Mr [GRO-A] to accept, given that the material had been subject to a discovery exercise in an extensive litigation case. He suggested that the solicitor's Division should be contacted [WITN4912036].
- (3) This in turn was then forwarded to Anita James. Anita James replied on 5 April 2005 stating:

*“... My colleague Ronald Powell had conduct of the litigation all those years ago. **Once the litigation was finished the files were sent to remote storage. About six years ago I looked for them in relation to another case we had and was unable to retrieve them because they had been destroyed. Department of Health records (as opposed to ours) were inadvertently destroyed in the early nineties as the HEO working in the branch had given them a ridiculously short destruction time. I would take out the “do not appear” stuff. There are no records”** (emphasis added) [WITN4912037].*

- (4) I was on leave when Chris Timmins sent his email. On my return, I emailed Brendan Sheehy on 5 April 2005 as follows:

*“Further to the comments by Chris, I can confirm that we did contact colleagues in Sol about this case. It is both our understanding and theirs that the papers that were subject to a public interest immunity claim have been destroyed. Sol confirmed that about six years ago they looked for these papers in relation to another litigation case they had and were unable to locate the papers because they have been destroyed.*

*The reply we used in this case is the same as the one we used in FOI case 209 [Mr [GRO-A]'s request] which was cleared by the FOI team (the same information was requested). I am attaching a background note that I drafted when dealing with case 209 which I hope you find helpful.*



*With regards to the files that Roseanne Pratt identified. I have already been through these files in respect of other FOI cases but the files do not help with this particular case. I hope that you are now able to clear this case” [WITN4912038].*

62. On **31 March 2005**, Shaun Gallagher emailed William Connon and me indicating that Sir Nigel Crisp would be holding a meeting with Lord Jenkin on 13 April 2005. We were asked to provide a briefing for the meeting by 11 April; for one person to attend the meeting; and for Linda Wishart or someone from her team to provide briefing on records management/filing in the Department, as Lord Jenkin believed the Department had not kept proper records **[WITN3996009]** **[DHSC0200074]**.

63. On **11 April 2005**, I provided Shaun Gallagher with William Connon’s briefing for Sir Nigel’s meeting with Lord Jenkin **[WITN4912039 and WITN3996010]**. Although this briefing was sent by William Connon as the head of the team, I would have drafted the initial briefing as this is commonly how policy teams operate. The briefing from William Connon included copies of the earlier correspondence at Annexes I and II; a note on the ongoing department report on self-sufficiency at Annex III; and further background briefing on contaminated blood products and the record management system at DHSC. The records management part of the briefing would have come from Linda Wishart’s team. On the destruction of papers, William Connon’s covering briefing noted that,

*“Many key papers from the 1970s and 1980s have been destroyed. During the HIV litigation in 1990 many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s.*

*We have been in touch with Departmental Records Office to check which files related to the treatment of haemophilia patients and blood safety are still in existence for the period between 1979 –1981. We have obtained a list of some files from this period. However, at first glance it is not clear about the extent to which these files will hold papers that Lord Jenkin will have handled. It would require significant staff resource to go through these files to identify papers that Lord Jenkin handled at the time.*

*We have not sought to deny Lord Jenkin access to any official papers. The reply from PS(L) [Lord Warner] focused on addressing some very*

*serious comments from Mr [GRO-A] about blood safety and the transmission of Hepatitis C.*

*We are aware of the Civil Service Guidance on access to official papers by former Ministers, produced by the Cabinet Office. If Lord Jenkin is able to be more specific about the subject matter or documentation that he would like to see [then] we can undertake a search for specific papers."*

64. On **12 April 2005**, I faxed a copy of the Haemophilia Centre Directors' Hepatitis Working Party Report for 1980-1981 to Shaun Gallagher ahead of the meeting on 13 April 2005 [WITN4912040].
65. On **13 April 2005**, I attended the meeting between Sir Nigel and Lord Jenkin with Shaun Gallagher. There is an email from Shaun Gallagher to me following that meeting with his note of what was agreed [WITN3996011] [DHSC0200058]. I do recollect this meeting taking place. I remember it mainly because I was quite nervous. It was the first time that I had been the sole policy team representative at a meeting with people as senior as the Permanent Secretary and a former Secretary of State. However, I do not recollect the discussion in detail.
66. In Shaun Gallagher's email to me, he asked for a draft letter to Lord Jenkin about taking forward the arrangements for giving him access to his surviving papers. He commented that the first letter to Lord Jenkin had not been a bad response though it had not addressed his main point. However, the second letter, by mistakenly including my background note, had given away to Lord Jenkin that the first response had relied on standard lines, and this was what had offended Lord Jenkin.
67. On **15 April 2005**, the Private Secretary to Melanie Johnson indicated that the Minister was concerned about the length of time it was taking to complete the review of internal papers on self-sufficiency in blood products [WITN4912041]. This was in the context of the response to a different FOI request (from Mrs Colette Wintle (PO5010825)).

68. On **19 April 2005**, I provided Shaun Gallagher with a minute that attached the draft letter for Lord Jenkin on arrangements for him to have access to his papers **[WITN4912042] [DHSC0200082]**.

69. In **early May 2005**, William Connon and I were involved in seeking comments on the Department's draft report on self-sufficiency (for example, **[WITN4912043]**. On **20 July 2005**, William Connon put a submission to Caroline Flint (who was by then the Parliamentary Under Secretary of State for Public Health) on the outcome of the self-sufficiency review **[WITN4912044]**. The submission recognised the long delay in the finalisation of the report. His recommendations were as follows:

*"15. We recommend that this report is made public, and that we aim to publish the report when you return from recess. It is likely to generate media interest and will need careful handling. We will liaise with COMMS appropriately and provide more detailed briefing nearer the time.*

*16. We would also recommend that a copy of the report is sent to Members of Parliament and Peers, including Lord Owen, and pressure groups who have expressed an interest in the outcome of the review. In addition, a copy to be placed in the library of the House of Commons.*

*17. The report contains a number of references to not only published scientific papers but also to internal documents. We see no reason why the latter cannot be released on request but for reasons of sheer volume would resist supplying a complete set of documents.*

*18. Are you content for officials to proceed with arrangement to make public the report?"*

70. In the exchanges around gathering papers for Lord Jenkin, there is a reference to the hope that he would come into the Department in the week of **25 April 2005** **[WITN4912045]**. However, there is a file note dated **23 June 2005** briefly summarising the action taken to retrieve papers for Lord Jenkin which suggests that he had not yet attended **[WITN4912046]**. The note read as follows:

*"We contacted Departmental Records Office and National Archives Office to obtain a list of files which are held which have the following key words:*

*Blood*

*Plasma*

*BPL*

*Transfusion*

*Hepatitis*

*We further narrowed down the files to the period 1979- 1981. We have about 20 files from this period.*

*Guidance from the Propriety and Ethics Team at the Cabinet office have advised us that Lord Jenkin can have access to the full registered files so long as they relate to his period in office (this is 4 May 1979 - 14 September 1981). Where we have files which include papers either before or after his term in office we have put a pink sheet to indicate papers which do not cover his period in office. The other option was to extract papers which would be resource intensive.*

*I have had a quick look through some of the files to see whether I could identify papers which Lord Jenkin says would have passed his desk when he was SofS. However, it does not look too hopeful and you may want to warn him. Obviously, we cannot be responsible for the record keeping during this period.*

*Because of his interest in the whole issue of haemophilia patients infected with contaminated blood products, you may want to mention the report on the review of papers into self-sufficiency in blood products and that we will send him a copy of the report when it is finalised."*

71. There is a later email from me to William Connon dated **5 September 2005** noting that Lord Jenkin was due to come to the Department on 13 September 2005 to "...complete his search of the files" **[WITN4912047]**. So, it may be that Lord Jenkin came in twice to view the papers that we had been able to assemble for him.
72. Having viewed the surviving papers we had been able to find, Lord Jenkin requested a copy of them, including a copy that he could send on to Mr GRO-A. That involved redacting the documents as we would have done if the papers were being released pursuant to a FOI request. There was a complication in relation to some papers that, even if redacted, would point to their author who – on being consulted – had concerns including for their personal safety. I understood this to stem from their involvement in animal research. Lord Jenkin

agreed that he would not disclose the papers in that category. There are two letters emerging from this process. The first was from me to Lord Jenkin dated 6 October 2005 [WITN3996013]. The second was from William Connon to Lord Jenkin dated 19 October 2005, sending two sets of documents [WITN3996014]. One of the sets of documents was for Lord Jenkin and the other was redacted for him to be able to send on to Mr [GRO-A]. In his letter of 19 October 2005, William Connon noted as follows,

*"I understand that you have concerns about the fact that there were limited files available to you. As you know we requested all files relating to your period in office, dealing with haemophilia patients who were infected with contaminated blood products. A number of files from the 1970's and 1980's have in fact been destroyed but we have made available to you all those which are currently held. I trust you will find the enclosed papers helpful."*

73. Lord Jenkin replied to William Connon on **25 October 2005** [WITN3996015]. On the papers that were missing, he said as follows:

*"With regard to the missing files, Sir Nigel warned me when I saw him earlier in the year that a number of files dealing with contaminated blood had been destroyed after the settlement of all the HIV claims. While this may in fact represent what happened, I find it difficult to believe that this was an appropriate cull. I intend to make a further appointment to see Sir Nigel with a view to seeking an explanation of why this happened. The Department must have known that there were many more outstanding cases of people who claimed to have been infected by contaminated blood, and indeed, many of the present generation of haemophiliacs fall into this category. However, that is not a matter for you and I will pursue it with Sir Nigel.*

*I would, however, like to place on record, yet again, how very helpful Zubeeda Seedat has been in making available to me the many files that do remain. I am most grateful to her and to yourself." (original emphasis)"*

74. Lord Jenkin wrote to Sir Nigel the same day, **25 October 2005** raising his concern [WITN3996016]. He wrote,

*"It is some months since you and I met to discuss my request to examine certain files which related to my period as Secretary of State for Health - 1979-81. Though it has taken rather longer than I had hoped (partly due to the move of offices) I have in fact now been sent copies of the many papers that I flagged in the files which I inspected. Some of the papers*

*cannot be sent on to those who asked me to undertake this search for reasons which have been explained to me.*

*However, as you indicated at the outset, all the files which would have borne upon the subject of contaminated blood products no longer exist. I have to say that I find this extremely surprising given that the Government must have known that there were many further cases of people suffering from contaminated blood, notably haemophiliacs, some of whom have contracted various forms of Hepatitis.*

*I would very much like to come and discuss this with you and to explore why it was thought right to destroy these files. They represent, by any standards, a most unhappy chapter in the Department's history and I would be very distressed indeed if this was felt to be an adequate reason for their destruction.*

*Perhaps your Private Secretary would be kind enough to telephone me with a view to making an appointment."*

75. There was media coverage concerning the missing documents in the following week with, for example, an article in the Times for **3 November 2005** [WITN4912048]. This referred to Lord Jenkin's astonishment at files having been destroyed and his request for a meeting with Sir Nigel. It commented that the destruction of files had provoked accusations of an "official cover up".
76. On **7 November 2005**, Billy Reid of the Blood Transfusion and Rehabilitation Branch, Health Planning and Quality Division, Health and Social Care Directorate of the Scottish Executive emailed William Connon. He had just started in the Division and was seeking input on behalf of Sylvia Shearer as to what might be said in reply to three Parliamentary Questions they had received. William Connon passed this on to me for reply [WITN4912049].
77. This was the context for the undated text contained in document **DHSC0046961\_058**, which is one of the documents the Inquiry has asked me to address.
78. A better version of the same document is at [WITN4912050]. It can be seen that I was replying to Billy Reid on **9 November 2005** stating,

*"Billy,*

*It is likely that these questions have been asked following recent dealings that we had with Lord Jenkin of Roding.*

*In December last year we received correspondence from Lord Patrick Jenkin who asked for access to papers going back to the period when he was Secretary of State for the DHSS (May 1979 - Sept 1981) on the issue of haemophilia patients infected with Hepatitis C through contaminated blood products. This letter was prompted by a letter Lord Jenkin received from [GRO-A]. Under Civil Service Guidance, former Ministers are allowed reasonable access to the papers of the papers of the period then they were in office.*

*Following a meeting with Sir Nigel Crisp (our Permanent Secretary) we were asked to identify files on this issue so that Lord Jenkin could go through the papers. We contacted both the Departmental Records Office and the National Archives to retrieve files for the period 1979 - 1981. There were a limited number of files going back to this period, unfortunately many of the files from that period have been destroyed. However, we made available those files which were held, and agreed to releasing some documents which Lord Jenkin indicated that he would like to make available to [GRO-A]*

*Lord Jenkin has now released these documents to [GRO-A], but has notified him about the fact that a number of files have been destroyed. This has generated some media interest. See attached link to an article in TIMES ONLINE:*

*...*

*Lord Jenkin has also indicated to us that he intends to pursue with Sir Nigel Crisp why papers were destroyed. To the best of our knowledge: Many key papers from the 1970's and 1980's have been destroyed. During the HIV litigation in the 1990's many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990's.*

*With regards to PQ20360, this refers to the informal review to clarify the facts surrounding the drive for UK self-sufficiency in blood products in the 1970's and 1980's. This review was commissioned in 2002, there has been a long delay in finalising the report which we aim to publish shortly. The review focusses in Self-sufficiency in blood products in England and Wales and is based on papers available from that period.*

*Hope this helps. Please let me know if you have any queries."*

79. The Scottish Parliamentary Questions to which the request referred were as follows:

*"Question S2W-20358: Carolyn Leckie, Central Scotland, Scottish Socialist Party, Date Lodged: 04/11/2005*

*To ask the Scottish Executive how it can accurately answer questions on the infection of haemophiliacs with blood products, given the statement by the UK Government that some relevant documents have been destroyed.*

*Answered by Andy Kerr (15/11/2005): The documents relevant to this issue were retained by the then Scottish Home and Health Department. The files covering the period in question are currently being reviewed under the Freedom of Information legislation and documents will be released in due course.*

*It should be noted that because the production of plasma products was different north and south of the border, the issues are not the same and that therefore the relevant documents for Scotland are Scottish documents.*

*Question S2W-20359: Carolyn Leckie, Central Scotland, Scottish Socialist Party, Date Lodged: 04/11/2005*

*To ask the Scottish Executive how it will reassure itself of the accuracy of information from the Scottish National Blood Transfusion Service on the infection of haemophiliacs, given the statement by the UK Government in respect of the destruction of documents.*

*Answered by Andy Kerr (15/11/2005): The Scottish National Blood Transfusion Service has confirmed that all relevant documents were held in Scotland and is not aware of any lost documents. If any Scottish documents held by the Department of Health in London were subsequently destroyed, it would only have been their copies which were destroyed*

*Question S2W-20360: Carolyn Leckie, Central Scotland, Scottish Socialist Party, Date Lodged: 04/11/2005*

*To ask the Scottish Executive what data or documents it has provided to the Department of Health's internal review in respect of haemophilia blood products and whether it has been able to provide sufficient documentation to that review, given the statement by the department that some documents have been destroyed.*

*Answered by Andy Kerr (15/11/2005): The Department of Health*



*commissioned a review in 2002 to clarify the facts surrounding the drive for UK self-sufficiency in blood products in the 1970's and 1980's. If requested, the Executive provided copies of all relevant documents which it holds. However, were any Scottish documents held by the Department of Health subsequently destroyed, it would only have been their copies which were destroyed."*

80. Later in the month, Billy Reid emailed me back (on **29 November 2005**) with copies of the proposed replies to these Parliamentary Questions. I forwarded these to William Connon, noting that the Department had now received correspondence (a Private Office case) on the same issue from Mr [GRO-A] [WITN4912051].
81. On **22 November 2005**, I emailed Anita James of the Solicitor's Division [WITN3996017]. I requested a copy of the audit report which she had referred to earlier in the year on 22 February 2005 when commenting on the early draft of my response to Mr [GRO-A]'s FOI request. It would seem from this that I could not have seen the audit report until this stage. In emailing Anita James, I commented that two issues the Blood Policy Team were dealing with were (i) Lord Jenkin's request to meet Sir Nigel about why the Department no longer held relevant files; and (ii) the publication of the self-sufficiency report and the likelihood that a key criticism of the report would be that the review was conducted without having all the paperwork.
82. Anita James faxed me a copy of the internal audit review on **23 November 2005**, as I had requested [WITN4912052].
83. The internal audit review [DHSC0046961\_056] is another of the documents upon which the Inquiry has specifically asked me to comment. It is dated April 2000 and therefore pre-dates my time in the Blood Policy Team. The leading paragraphs of the overall conclusion states,

*"3.1 We concluded that an arbitrary and unjustified decision, most likely taken by an inexperienced member of staff, was responsible for the destruction of a series of files containing the minutes and background papers of the Advisory Committee on the Virological Safety of Blood (ACSVB).*

*3.2 We believe the destruction of these files would have been prevented had the person marking files for destruction, been aware of their importance.”*

84. The detailed findings section, stated as follows:

*“Establishing What Happened*

*4.1 There is little documentary evidence to establish exactly why volumes 4 - 17 of GEB 1, which contained the minutes and background papers to the ACVSB between May 1989 - Feb 1992, were destroyed. However, the original file dockets still exist, and the annotations on these provide a reasonable audit trail, so that we can, with some certainty, piece the story together. DRO also have their own record of when the files were destroyed. We interviewed staff members from the relevant section, but their memories of events up to 8 years ago were hazy at best, and added little to the evidence we had elsewhere.*

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

- in February and March 1993, the files were closed, retained in the section, and marked for review 5 years from the date of the last document on each file. This part of the process followed normally accepted procedures;*
- before any of the volumes reached their specified review date however, in July 1993 the files were marked for destruction and sent to DRO. Volume 4 for example, had been marked for review in July 1995.*

*4.3 This second decision effectively overrode the previous closure and review process. Marking the files for destruction was plainly wrong, and a bad decision was made worse by the short destruction dates assigned, which varied between 1 - 4 ½ years. It was not possible to determine why different destruction periods were assigned.*

*4.4 The files were destroyed, according to instruction, at various stages between July 1994 and March 1998.*

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

- a delegation of responsibilities without proper instruction; or,
- an assumption of responsibility without proper authorisation.

*4.6 Either occurrence, likely given the organisational context, is the most probable explanation for the decision to mark the files for destruction, and the short destruction dates assigned.*

*4.7 Two questions remain unanswered from our review:*

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

85. I should point out that there was a correction made to the internal audit report identified in March 2007, with a clarification made to the second bullet point at paragraph 4.7, page 6, cited above. It was amended to read that *"although volumes 4-17 were destroyed, volumes 1-3 survived"* [WITN4912053].
86. On **29 November 2005**, I provided a submission to Sir Nigel on Lord Jenkin's request for a meeting. This is the note that the Inquiry has asked me to provide detail on [DHSC0046961\_009]. This was copied, amongst others, to Gerard Hetherington (Head of Health Protection Division) and to Ailsa Wight (Branch Head/Head of Programme, Health Protection Branch) and William Connon (the G6 for General Health Protection, and the Head of Blood Policy).
87. Under the sub-heading, "Destruction of papers", the submission summarised the position (as I then understood it) on both the inadequate archiving of materials following the HIV litigation and the separate destruction of papers and minutes of the Advisory Committee on the Virological Safety of Blood ("ACVSB"):

*"4. At your meeting with Lord Jenkin and his two visits to the Department to inspect the files, we made clear that many key papers from the 1970's and 1980's have been destroyed. These events took place a long time ago. However, our understanding is that during the HIV litigation in the 1990's many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990's.*

*5. In addition, we have established that many other important documents, mostly papers and minutes of the Advisory Committee on Virological Safety of Blood were destroyed in the 1990's. This should not have happened. During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that many files were missing. A low key internal investigation was undertaken, by colleagues in Internal Audit, to establish why files were destroyed. We have managed to obtain the report by Internal Audit. This concludes*

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

- a delegation of responsibilities without proper instruction, or*
- an assumption of responsibility without proper authorisation.*

*Either occurrence, likely given the organisational context, is the most probable explanation for the decision to mark the files for destruction, and the short destruction dates assigned".*

*6. The report by Internal Audit made recommendations about the importance of record keeping and the need to train new recruits. In a letter from PS(L) to Lord Jenkin on 10 March 2005 - see Annex C, PS(L) set out the Department's commitment to good record keeping."*

88. The submission ended with the advice that Sir Nigel should not meet with Lord Jenkin (since "...He was informed from the outset that papers from the 1970s and 1980's were missing ...") but instead to provide a letter "...which explains in detail our understanding about why papers were destroyed". Attached to the submission were a suggested draft response; The Times article of 3 November; and Lord Warner's earlier letter of 10 March 2005 which had made a commitment to good record keeping.

89. Sir Nigel wrote to Lord Jenkin on **1 December 2005** in the terms suggested in the annex to my submission **[WITN3996019 pages 7-8]**. The letter explained,

*"When we met in April I explained that certain papers dating back to the 1970's and 1980's had been destroyed. I appreciate that you would like to discuss this further, however I thought it would be helpful to write to you about this issue instead. Naturally, I am concerned that important files from this period no longer exist. Although these events took place a long time ago, my officials have undertaken to explore why important documents were destroyed.*

*As previously mentioned, it is our understanding that during the HIV litigation in the 1990's many papers from that period were recalled for the purpose of the litigation. We understand that papers were not adequately archived and were subsequently destroyed in error in the early 1990's.*

*Officials have also established that a number of files were marked for destruction in the 1990's. Clearly, this should not have happened. When the discovery was made that files had been destroyed, an internal review was undertaken by officials. I understand that a decision, most probably made by an inexperienced member of staff, was responsible for the destruction of a number of files. The decision to mark the files for destruction was not a deliberate attempt to destroy documentation. It is very unfortunate that the staff member at the time was not fully aware of the significance of the files and the possibility of future litigation."*

90. Lord Jenkin replied to Sir Nigel on **14 December 2005 [WITN3996020]**. He made clear that he viewed the issue as a very serious case of maladministration by the Department of Health, and was considering reporting it to the Parliamentary Ombudsman for the Health Service. Lord Jenkin sought an update on the self-sufficiency report but repeated a comment that he had made to me, that he could not see '*... how the review could possibly be completed with the crucial files having been destroyed*'. Lord Jenkin took issue with the explanation of the destruction of papers asserting that at the meeting on 13 April, Sir Nigel had caused him to believe that the destruction was the result of a decision, not "an administrative cock-up". Regrettably, so far as I can tell, a formal note of the meeting was not drafted, although the key actions were recorded in the e-mail from Shaun Gallagher to me dated **13 April 2005 [WITN3996011]**.

91. At about the same time as this correspondence, William Connon was alerting Ministers to the release of Hepatitis C documents by the Scottish Executive – see his submission to Caroline Flint of **8 December 2005 [DHSC0200103]**. In doing so, he explained the team’s understanding about documents that had been destroyed:

*“3. Since the Freedom of Information Act came into force we have had numerous requests for the release of papers dating back to the 1970s/early 80s relating to the issue of haemophilia patients infected with HVC. Unfortunately, many of our papers dating back to this period have been destroyed. Our understanding is that during the HIV litigation in the 1990s many papers were recalled. We understand that papers were not adequately archived and were destroyed in the early 1990s. In addition, we have established that many papers on HVC infection were destroyed in error in the mid-1990s. In response to various FOI requests we have had to own up to this fact.”*

92. Related to this, William Connon responded to a query about the release of these papers between **12 December 2005** and **20 December 2005**. The emails concerned the handling and implications of the release of papers by the Scottish Executive. Jacky Buchan, from the Private Office, explained that questions had been raised by the Parliamentary Under Secretary (Public Health), Caroline Flint, about: when DH’s copies had been destroyed; whether it was acknowledged, when the related FOI requests had been received by DH, that the Scottish executive may hold copies of the same; and what was known to be in the papers. William Connon responded to Jacky Buchan stating that no specific of destruction was known, but that the papers were believed to have been destroyed in the 1990s; that responses to an English FOI would address the position of England and not Scotland; and whilst the contents of the documents had not been examined, it was not expected that they would contain facts which were previously unknown. Jacky Buchan then responded that Caroline Flint had no further comment in response to this further information **[DHSC6275275]**. I have been asked by the inquiry about further issues relating to this exchange which I have addressed in my second statement.
93. On **14 December 2005**, Charles Clarke MP sent a letter to the Secretary of State, Patricia Hewitt. He raised questions from a constituent regarding the destruction

of files held by DH and sought the certificate of destruction of the ACVSB documents [DHSC6548565].

94. On **3 January 2006**, I emailed Chris Gilson, from the DH Customer Service Centre, with a draft response to Charles Clarke [DHSC6548564]. I also subsequently engaged in an email discussion with him and Roseanne Pratt, Records and Information Services Manager, about obtaining the certificate of destruction. Roseanne explained that such certificates included little useful information (such as the weight of documentation collected and the dates of collection, receipt by the recyclers and destruction) [DHSC0200107]. The Secretary of State for Health, Patricia Hewitt, replied to Charles Clarke MP on **9 February 2006** [WITN3996023]. Her reply included the following:

*"Mr [Colyer] asks specifically why an inexperienced member of staff was allowed to make decisions to destroy important papers. The plain answer is that we do not know enough about what happened to answer that question. Clearly, the papers should not have been destroyed. I am very sorry that they were.*

*When the records in question were destroyed, the general guidance on records management was broadly the same as it is today. Departments are obliged under the terms of the Public Records Act 1958 to identify records needing long-term retention, while destroying most of their records as soon as their administrative value ends. Decisions on retention and destruction of records should always be made by individuals with knowledge of the content and likely future importance of the records.*

*The guidance current when the records were transferred to the Departmental Record Office stated that decisions on retention or destruction of Departmental files should be made by an officer of at least Executive Officer grade, who was "appointed by senior officers who are satisfied that the officer is sufficiently aware of the administrative needs of the section to be able to make the decisions". A decision to destroy a file was appropriate when files either had:*

- no further administrative value at all; or*
- only a short term administrative need.*

*Files marked for destruction would have been destroyed by the Departmental Record Office either two or five years after the date of the last paper on the file.*

*The appropriate decision for the records we are discussing would have been to retain the records for review after 25 years when a further decision would be made, whether to destroy or retain the files. After 25 years, we would only retain files if they had historical or continuing administrative value.*

*These particular records were destroyed between 1994 and 1998, in line with instructions written on the file by a member of the policy team when the records were transferred to the archive three or four years before. Sir Nigel's letter made it clear that the records should not have been destroyed. I do not believe we can go further in examining the causes of the mistake.*

*Sir Nigel's letter mentioned an internal review undertaken by officials when they discovered that the files had been destroyed. This review led to recommendations for a number of records management improvements, including:*

- production of the retention schedule I recently provided;*
- building protection against inappropriate destruction into the Department's electronic records system;*
- ensuring that retention decisions are only made by staff at a higher level of seniority or with sufficient knowledge and experience to make such decisions; and*
- raising the emphasis given to records management in induction for new staff.*

*These recommendations have been put in place, and with guidance already in use should help prevent such errors in future. We are making every effort to provide staff with good guidance and prevent mistakes.*

*Mr [Colyer] also mentions article 14.7.1 of the Department's retention and disposal schedule, and asks to see a certificate confirming destruction. As I mentioned above, although the schedule and destruction certificates were not available in the 1990s when the records were destroyed, the guidance outlined above should have ensured that the right decision was taken.*

*May I say again how very sorry I am that these processing errors occurred."*



95. On **3 February 2006**, I responded to a request for advice from Jacky Buchan (Assistant Private Secretary to Caroline Flint) [WITN4912054]. The Manor House Group had asked for a meeting with the Secretary of State. Jacky Buchan had emailed for advice on 18 January 2006 [DHSC0200104]. My advice was against the Secretary of State or the Public Health Minister meeting the group at that stage. I noted the assessment that Ministers would not have anything to add to what had already been said in recent statements. The meeting had been requested to discuss why the Department had been unable to provide papers under the FOIA. I explained that,

*"We have had 6 FOI requests from individuals involved with haemophilia lobby groups. In general, we have been unable to meet these requests for a number of reasons:*

- i) We established that in some cases papers have been destroyed.*
- ii) DH are not the holders of some of the documents requested.*
- iii) Some of the requests would exceed the £600 limit applied to cases.*

*We have been able to provide papers relating to a research project and a copy of a Medicines Control Agency Inspection Report on Blood Products Laboratory.*

*Following requests under FOI and enquiries by Lord Jenkin it has emerged that many of our past papers have been destroyed. This has prompted accusations that the Department deliberately destroyed papers."*

96. On **6 February 2006** I provided a further submission to Sir Nigel, this time addressing Lord Jenkin's further letter of 1 December [DHSC0046961\_004]. In the background section, I noted as follows:

*"3. Lord Jenkin was informed that, many papers from the 1970's and 1980's were destroyed. During the HIV litigation in 1990 many papers from that period were recalled. Our understanding is that some of these papers were not adequately archived and were unfortunately destroyed in the early 1990's.*

*4. Following Lord Jenkin's enquiries, we established that a number of files, mostly papers and minutes of the Advisory Committee on Virological Safety of Blood were destroyed in the 1990's. During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that a number of files were missing. A low key investigation was undertaken, by colleagues in Internal Audit to establish why files were destroyed. We managed to*

*obtain a copy of the Internal Audit Report from colleagues in Solicitor's Division.*

*5. In the reply to Lord Jenkin dated 1 December at Annex B, we made reference to the fact that, officials have discovered that further papers were destroyed. Lord Jenkin has passed this letter onto members of the haemophilia community. This has prompted accusations that the Department deliberately destroyed documents.*

*6. Lord Jenkin refers to the report on Self-Sufficiency in Blood Products in England and Wales. This relates to an informal review to clarify the facts surrounding the drive for UK Self Sufficiency in blood products in the 1970's and 1980's. This was commissioned in 2002. It has taken some time to complete this report, which is based on a review of papers that we do hold. The report will be published on 27 February."*

97. I cannot recollect our response at the time to the letter from Lord Jenkin. However, I would have discussed our proposed response with William Connon as the head of the Blood Policy Team. The annotated comment I made on the letter from Lord Jenkin at page 1 of **[WITN3996020]** indicated that there were two separate issues that Lord Jenkin was referring to. The first issue was around the destruction of papers dating back from the 1970's and 1980's which we had briefed Sir Nigel Crisp about for his meeting with Lord Jenkin. The second issue was around the destruction of papers relating to the Advisory Committee on Virological Safety of Blood (ACVSB) which were destroyed in the 1990's. This issue would not have been mentioned at the meeting between Sir Nigel Crisp and Lord Jenkin. At the time they met we had not seen the Audit Report on the destruction ACVSB papers. This additional information was provided in the responses to Lord Jenkin **[DHSC0046961\_005 and WITN3996019 pages 7-8]**.
98. The submission annexed a draft reply to Lord Jenkin **[WITN3996022 page 3]**. It read as follows:

*"Thank you for your letter of 14 December.*

*When we met in April I explained that certain papers dating back to the 1970's and 1980's had been destroyed following the HIV litigation. Following your enquiries, officials established that a number of other files*

*were also marked for destruction. As I said in my previous reply, I am very sorry that many papers have been destroyed.*

*You have asked about the publication date for the review of papers on Self Sufficiency in Blood Products. This review is based on documents that we do hold. I understand, that you have been informed that the report will be published at the end of February. Officials will of course ensure that you are sent a copy."*

99. Lord Jenkin had shared Sir Nigel's letter of 1 December 2005 with others campaigning for the victims of infection from contaminated blood. By this time – early 2006 – the Department was therefore receiving other correspondence and FOI requests relating to the destroyed papers. For example, the letter from Charles Clarke MP which I referred to above at paragraph 94.

100. As I discuss further in my second statement, I think as a result of these requests, by 8 February 2006 I sought assistance from Steve Wells, from the Freedom of Information records and Data Protection team, to determine which files the department held that were not destroyed [DHSC5402137].

101. There were also Parliamentary Questions about the destruction of documents [WITN4912056]. For example, Lord Morris tabled the question:

*"Further to the answer by the Lord Warner on 12 January ... about documents dealing with contaminated National Health Service blood products that were destroyed in error by the Department of Health in the early 1990s, on what date or dates they were destroyed; by whose decision they were destroyed; and whether it is only documents on these products that have been destroyed in error by the department"*

Lord Warner's reply on **27 February 2006** was:

*"My noble friend is aware that during the HIV litigation many papers were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s. My noble friend is also aware that further documents were destroyed in the 1990s. Officials at the Department of Health have established that these documents related to the minutes and papers of the Advisory Committee on the Virological Safety of Blood between 1989 and 1992. These papers were destroyed between July 1994 and March 1998. A decision, most probably made by*

*an inexperienced member of staff, was responsible for the destruction of these files."*

102. Further, in January 2006 DH was contacted by Carol Grayson, under the Freedom of Information Act, who sought DH's agreement to the disclosure of Departmental Records held externally by solicitors involved in the HIV and Hepatitis C litigation. I had been asked to contribute to the response to Ms Grayson [DHSC6697600]. As explained in a briefing note prepared in response to a question from Lord Jenkin on 23 May 2006, DH replied to Ms Grayson to the effect that DH could not agree to the release of those documents without first a clear understanding of their content, DH suggested Ms Grayson contact the solicitors concerned to request the papers were returned to DH [DHSC0015839 at pg.31].
103. Very shortly before the planned release of the Department's self-sufficiency review, on **21 February 2006**, I was contacted by Stephen Castello in the Litigation Branch of Solicitor's Division to inform me that Blackett, Hart and Pratt solicitors, who had been involved in the HIV litigation had contacted the Department concerning papers from the litigation which they had retained. I confirmed that we wanted the Solicitor's Division to arrange for these papers to be returned from the firm to the Solicitor's Division [WITN4912057]. Subsequently, papers were also returned from other Claimants' firms (J Keith Park and Ross & Co).
104. The Department's report "Self-sufficiency in blood products in England and Wales. A chronology from 1973 to 1991" was published on **27 February 2006** [DHSC0200111]. A submission to Caroline Flint on communications around its release had been provided on 23 February by Sophie Coppell of the Communications team [DHSC0200112].
105. Following the publication of this report:
- a. There was challenge to the reliability/accuracy of the report in Parliamentary Questions and correspondence, in part based upon the fact that some of the relevant documents had been destroyed;

- b. There was continued scrutiny of the circumstances in which papers had been destroyed; and
- c. The return of documents from the HIV litigation by some of the Claimants' firms meant that there were calls for the release of those documents, as well as the documents underpinning the self-sufficiency report. For example, Mr. **GRO-A** made a prompt request on 27 February 2006 for all of the documents used in connection with the report **[WITN4912058]**. Hence the volume of work under FOI requests increased further.

106. An example of the above can be seen in the starred question which Lord Jenkin tabled in the House of Lords in March 2006, asking “...*whether the Department of Health’s report Self-Sufficiency in Blood Products in England and Wales, published on 27<sup>th</sup> February, is a complete account of the circumstances leading to the infection of National Health Service patients with HIV and hepatitis C due to contaminated blood products*” **[WITN4912059]**. William Cannon approved the suggested reply to this question on 12 April 2006, which I had composed:

*“The scope of the report published on 27 February was to examine key issues around self-sufficiency in blood products in the 1970’s and early 1980’s. The review was commissioned following comments about the failure to implement the policy on self-sufficiency in blood products during this period”* **[WITN4912060] [DHSC0041198\_088]**.

Following discussion with Ministers, the suggested reply was later developed to read:

*“The report published on 27 February examined key issues around self-sufficiency in blood products in the 1970’s and early 1980’s. The review was commissioned following suggestions that implementation of the ... self-sufficiency policy in blood products in this period might have avoided haemophiliacs being treated with infected blood products. The report makes clear that it was based on surviving documents from 1973 but that self-sufficiency would not have prevented infection of haemophiliacs with Hepatitis C”* **[WITN4912061]**.

107. There was an extensive briefing pack provided for Lord Warner in relation to likely supplementary questions and background **[WITN4912062]** (original draft) **[WITN4912063]** (updated version to take account of Ministers’ questions and

observations)]. The background briefing included a section briefly summarising the background of Lord Jenkin's request for documents from December 2004 (see pages 441 and 488). On potential supplementary questions on the destruction of documents, the briefing read as follows:

*"DESTRUCTION OF DOCUMENTS*

*How can the report have any credibility, when you have admitted that papers have been destroyed?*

*We have always stated that the review is based on surviving papers. The report was commissioned to establish the facts around the achievement of self-sufficiency in blood products, based on available papers.*

*You deliberately destroyed documents.*

*We regret that papers have been destroyed in error. There has been no deliberate attempt to destroy past papers.*

*Officials have established that, during the HIV litigation in the early 1990's many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed following the litigation.*

*Officials have also established that a number of files on the Advisory Committee on the Virological Safety of Blood (ACVSB) between May 1989 - February 1992 were unfortunately destroyed in error. These papers were destroyed between July 1994 and March 1998.*

*Release of papers in Scotland*

*We are aware that before Christmas the Scottish Executive released many documents concerning haemophilia patients infected with Hepatitis C through contaminated blood and blood products in the 1970s and 1980s. The decision by the Scottish Executive to release information is supported by the Department.*

*Why won't you release documents in response to requests made under the FOI Act?*

*Since the Freedom of Information Act came into force we have had several requests under the Act. We have been unable to meet most requests for a number of reasons. In most cases DH are not the holders of the documents requested; and some of the requests would exceed the £600 limit applied to cases.*

*We have been able to provide papers relating to a research project and a copy of a Medicines Control Agency Inspection Report on Blood Products Laboratory.*

*What doesn't the report address the issue of Lord Owen's papers that were shredded?*

*The review was never intended to consider why papers from Lord Owen's private office were destroyed. Papers kept by Ministerial Private Offices are not kept after a change of Government.*

*If pressed: They are either shredded or handed back to the relevant policy section*

*[In the final version of the briefing, following the query mentioned below, this section was amended to read:*

*The review was never intended to consider why papers from Lord Owen's private office were destroyed.*

*It is standard practice that papers kept by Ministerial Private Offices are not retained but are routinely returned to departmental officials for retention or destruction.]”*

108. At around this time, as noted in an update of 21 March 2006, William Connon met with members of the Haemophilia Society who put across their concerns about the report **[HSOC0009208]**.

109. On receiving this briefing on **13 April 2006**, Jacky Buchan raised a query about the information provided on destruction of Private Office papers in the context of Lord Owen **[WITN4912064]**. She stated that her understanding (and what her office had done during the previous election) was that Private Office would file all documents to be sent to the DRO at Nelson, though she accepted that practice may have changed. I replied the same day, explaining that,

*“It may be practice for Private Offices to send papers to DRO. However, my understanding is that at that time papers kept by Private Office were either destroyed or returned to the policy section after a change of Government. The line to take is based on enquiries that the previous*

*head of the blood team made following a statement from Lord Owen about the destruction of papers from his Private Office.*

110. Cabinet Office (Propriety & Ethics Team) has also confirmed that they are unaware of any guidance about the retention/destruction of papers in Ministerial Private Offices once there is a change in Government”.

111. Both Caroline Flint and Lord Warner had questions arising from the briefing; see: **[WITN4912065]**. The documents show that William Connon attended a briefing meeting on **18 April 2006**. In a follow up email, his response to the questions asked by Caroline Flint about the destruction of documents included the following:

*“Q: Why didn't we check what papers the Devolved Administrations held when we found out we had destroyed some files?*

*A: I don't know and there is no way of establishing the facts now. It appears that no-one did think to check with DA's which I agree was remiss.*

*...*

*Q: Finally, PS(PH) is not convinced by the argument about destruction of documents from Lord Owen's private office. She said there surely must have been guidance from Cabinet Office - isn't there guidance now?*

*A: Private offices are not required to hold papers. All papers should be routinely either returned to officials in the department or destroyed. Cabinet Office have never issued guidance for that reason.”*

112. In response to the original briefing, Lord Warner stated that he would like to announce in the House of Lords that in principle the Government was not against the release of documents used in the self-sufficiency review (once they were anonymised) so as to put the Department in the same position as the Scottish Executive **[WITN4912066]**. He raised this for Caroline Flint's comment (Lord Warner would be answering the question and supplementary questions in the Lords, but Caroline Flint held the issues in her portfolio of responsibilities).

113. In relation to this, William Connon raised a concern based on the practicalities of resourcing the release of the documents, stating to Lord Warner's Private Secretary,



*"I remain concerned at the minister's intention to announce in the house tomorrow that in principle we are not against the release/realising of documents used in the Self Suff Review. As I mentioned this morning this may well open the flood gates and that would have a significant impact of our already stretched resources. The current FOI case has already been very time consuming and is not yet completed. I am also concerned that it will encourage similar requests which are not covered by the FOI provisions. When Scotland issued all the documents they released I am told they had to employ additional staff at significant cost.*

*I will be in the box tomorrow with Dr Denise O'Shaunnesey and Zubeda Seedat".*

114. On **19 April 2006**, Jacky Buchan conveyed Caroline Flint's view to Lord Warner's Private Secretary that she saw no reason why the Department should not release the documents referenced in the Self Sufficiency Report once they had been anonymised [DHSC0200122].

115. The oral question and supplementary questions were answered that afternoon, **19 April 2006**, by Lord Warner (see Hansard Column 1054):

***"Lord Jenkin of Roding** asked Her Majesty's Government: Whether the Department of Health's report self-sufficiency in Blood Products in England and Wales, published on 27 February, is a complete account of the circumstances leading to the infection of National Health Service patients with HIV and hepatitis C due to contaminated blood products.*

***The Minister of State, Department of Health (Lord Warner):** My Lords, the report published on 27 February examined key issues around self-sufficiency in blood products in the 1970s and early 1980s. The review was commissioned following suggestions that implementation of what was called the "self-sufficiency policy" in blood products in this period might have avoided haemophiliacs being treated with infected blood products. The report makes it clear that it was based on surviving documents from 1973, but that self-sufficiency would not have prevented infection of haemophiliacs with hepatitis C.*

***Lord Jenkin of Roding:** My Lords, that is all very well, but is the Minister aware that this report, internally produced by his own department, has been roundly condemned by many, including the Haemophilia Society? The society said that the report was, "a blatant attempt to gloss over the details of the events of the time and even to lay blame at the door of the patients themselves". Bearing in mind that the department "inadvertently", as the Minister said in response to me in an earlier Question, destroyed all its own files on contaminated blood products and that much new information has recently come to light in the United States,*

Canada, Ireland and Scotland, is there not now an unanswerable case for a full and impartial public inquiry into what really has been one of the major medical disasters in the National Health Service?

**Lord Warner:** My Lords, I do not accept any of those remarks. We regret that the papers were destroyed in error, which was, I think, explained to the noble Lord in a meeting with the former Permanent Secretary to the Department of Health. I think that it has been explained to him on a number of occasions that there was no deliberate attempt to destroy past papers. We understand that many of the papers were, unfortunately, destroyed, but I have to say that that did not take place under this Government. I understand the way in which parts of the report may have been interpreted by people from the haemophilia world, and I have enormous sympathy with the circumstances that they face. It is regrettable if it has had that impact on them, but it is a fair and accurate report on what it was asked to do.... to identify many of the events and chronology in that period, which were quite complex, and the extent to which the, policy of self-sufficiency would have avoided contaminated blood being used by haemophiliacs. The report makes it very clear that the self-sufficiency policy would not have achieved that objective.

**Lord Snape:** My Lords, before we line the pockets of the lawyers in a public inquiry, will the Minister accept that this is a human not a political problem? Did he see the BBC "Breakfast" programme this morning in which a young man was interviewed who had been infected by contaminated blood at the age of five, had been told by his parents at the age of 12 that he had a limited life expectancy, developed full-blown AIDS as a teenager and is still alive in his early twenties after a lifetime of pain and suffering, having been paid only £21,000 in compensation? Will the Government look again at such cases and, regardless of the necessity for a public inquiry, pay adequate compensation to those affected through no fault of their own?

**Lord Warner:** My Lords, I always sympathise with individual cases described by noble Lords. I remind the House that the Government established a hepatitis C ex gratia payment scheme, which has the underlying principle that it is targeted to help alleviate the suffering of people living with inadvertent hepatitis C infection. The reason why we have not gone in for a public inquiry is that there is no evidence of wrongful action on the part of people, which is a different situation from that found in Canada and Ireland. We are continuing to make payments under that scheme. To be fair, the previous government also set up a similar scheme called the Macfarlane Trust in relation to HIV infections through contaminated blood. Both governments have tried to respond to those concerns over the periods that they were in office.

**Baroness Barker:** My Lords, does the Minister accept that the report, which contains no information about what patients were advised at the time and no information about what government policy was on blood donations from high-risk groups, is an unsatisfactory report and will not help to move this policy or this practice forward nor will it give any help to individuals such as the one mentioned by the noble Lord, Lord Snape?

**Lord Warner:** *My Lords, the document is helpful in setting out the chronology and the changes in scientific understanding during this period, which had a considerable impact on policy under successive governments on blood products and their use with haemophiliacs. There was a lot of clinical uncertainty in the early days in identifying hepatitis C. The document sets out clearly those clinical and scientific uncertainties. It gives an extensive 158 references to other documents on which it relied, and we will be looking at a freedom of information request that has been made for putting more of those documents in the public arena. We will look sympathetically at that FOI request.*

**Lord Morris of Manchester:** *My Lords, I have an interest to declare, not a pecuniary one, as president of the Haemophilia Society. Is my noble friend aware that this in-house inquiry began four years ago with a ministerial prediction that it would report within six months? Do not its errors and omissions - failing even to provide accurate figures on the numbers of patients infected or to acknowledge the 1,240 deaths caused— now totally vindicate the Haemophilia Society's call for an independent public inquiry into the worst-ever treatment disaster in the history of the NHS? Why does the report fail even to mention Mr Justice Burton's landmark High Court ruling on the legal duty to provide clean blood?*

**Lord Warner:** *My Lords, I accept that the document will not have satisfied everyone, but as I said, it was set up with the main purpose that Yvette Cooper, the Minister who set up the review, described - to identify whether the policy of self-sufficiency in blood products would have prevented the infection of haemophiliacs with hepatitis C through contaminated blood. It deals with that issue along with setting out clearly the chronology, which is complex, as I have said. I recognise the concerns that have been expressed, but we do not believe that a public inquiry is appropriate. There is no evidence of wrongdoing. The report makes that clear, and it gives a set of 158 references in full on which it relied. As I said, we will look sympathetically at placing more of those in the public arena in response to the FOI request that has been made."*

116. On **17 May 2006**, I was notified by Anne Mihailovic, from DH's solicitors branch, that papers from the HIV litigation had been received from the external solicitors. I notified William Connon stating that we would need to discuss how to take this forward. In his response to me, William Connon highlighted that the need for additional resources to look at this "*whole area of work...[would] be discussed with ministers next week*" **[DHSC5412535]**. On 19 May, Vicky Wyatt from DH's press office, emailed William Connon, copying me in, notifying us of press interest in the receipt of the papers. I responded to Vicky outlining some details of what had been received and explaining that an internal meeting had been arranged to discuss a way forward **[DHSC0015834]**.

117. There was also a later starred Lords question from Lord Jenkin asking whether the papers returned from the Claimants' solicitors, "*...provide evidence to support the claims of haemophiliacs that their infection with hepatitis was caused by [contaminated] blood products*". This was for answer on **24 May 2006**. As with Lord Jenkin's earlier question, I was involved in providing the briefing for Lord Warner [WITN4912067] [DHSC0015839].
118. Against the combination of the factors I have mentioned at paragraph 105 above, there were further moves towards clarifying - as much as possible - which documents survived and which had been destroyed, and to have further scrutiny of any surviving documents (such as the papers returned by the Claimants' solicitors) which had not been considered by the self-sufficiency report. In due course, this became the project undertaken by a Grade 6 Linda Page, and the report she wrote, "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)", May 2007 (see paragraph 156, below).
119. There was a meeting on **24 May 2006** at which the attendees included Lord Warner, Caroline Flint, William Connon, and Gerard Hetherington. Briefing for the meeting was provided by Steve Wells (Information Services) on **11 May 2006** [WITN4912068].
120. Following this meeting of the Ministers of State, an email from William Connon to Gerard Hetherington on **25 May 2006** suggested, amongst other things, that:
- We should aim to release redacted versions of the documents from the self-sufficiency report by 20 June 2006;
  - That in relation to destroyed documents, it would be helpful to compile a definitive list of all the sets of documents which have been destroyed, the circumstances and timing of the destruction, and the likelihood that the documents returned by the Claimants' firm of solicitors were copies of some of the destroyed documents. He commented about the destroyed documents that "*... there are two sets and we know more about one than the other*".

- That in relation to the documents that had been returned, *“Ministers suggested that we could ask an independent legal expert to examine the returned documents and provide an initial analysis of what they contain. I think it was on this point that it was suggested that we could invite the Information Commissioner to look into this and we need to discuss this. We also need to stress to Sol the importance of ensuring these documents are held securely”* [WITN4912069] [DHSC0200125].

121. An email from Ailsa Wight to Anne Mihailovic later that day, **25 May 2006**, records agreement to instructing a member of the Attorney General’s panel of Counsel to carry out an independent review of the documents that had been returned [WITN4912070]. Instructions to carry out an initial assessment of the documents were accordingly sent to Leigh-Ann Mulcahy on 8 June 2006 [WITN4912071].

122. Lord Warner’s APS (Rebecca Spavin) provided a list of action points to Gerard Hetherington and William Connon on **26 May 2006**, commenting that, *“Whilst sympathetic to the fact that you were not the officials that caused this problem and that resources are an issue both MS(PH) [Caroline Flint] and MS(R) [Lord Warner] were [insistent] that more proactive measures are taken to appease the Lords that are campaigning on this issue”* [WITN4912072] [DHSC5286062].

123. Gerard Hetherington then sent Lord Warner’s APS a submission in reply setting out what was being done in response to the main action points [DHSC0041159\_205].

124. My recollection is that additional officials were recruited some time after this to deal with the growing workload, including the documents that had been returned to the Department. The project to consider the documents was led by the Grade 6, Linda Page. At this stage I was less involved with the documentation. I remained copied in to some of the submissions and minutes that referred to progress on her project but I was less directly involved. However, from the documents currently available, some of the main developments over subsequent months were as follows.

125. One of the action points agreed after the Ministers' May meeting was an updating note which was originally requested by 16 June 2006. Gerard Hetherington provided a revised updating note on **26 June 2006** [DHSC0041159\_204]. On the documents issues, this stated as follows:

*"Documents*

*a) Handling of documents returned by solicitors. SOL have arranged for independent Counsel to list the recently returned documents and undertake an initial evaluation of their contents as set out in the letter of 8 June 06 from Ministers to Lord Jenkins. A report from Counsel is expected imminently.*

*b) Other documents, including those destroyed. Following HIV and hepatitis C litigation procedures in the 1990s, we know that various papers were destroyed in error, following an internal audit of events surrounding this loss of papers. We have identified an additional member of staff who is expected to start work next week, to identify and analyse all the papers currently available, including the very large number recently released in Scotland. We anticipate that preparing a comprehensive inventory and report of all the papers may take up to six months (a recent similar, incomplete, exercise in Scotland took nine months)."*

126. Also, on **26 June 2006**, Counsel (Leigh-Ann Mulcahy) provided a log with comments on the papers that had been returned by the Claimants' firms of solicitors [WITN4912073].

127. On **3 July 2006**, a project plan was formulated for Linda Page to review documents regarding government policy in relation to the safety of blood products. This plan was revised with a final version produced on 27 July 2006, the purpose of the review was stated as '*...to identify and assess documents relating to previous Government policy on the safe use of imported and domestic blood products and advise Ministers accordingly.*' [DHSC0004232\_030].

128. On **6 July 2006**, Clare Walsh sought a contribution from me to a response to a private office letter which suggested there should be an independent investigation into the destruction of papers [DHSC6548517]. I have addressed this point further in my second statement.

In June and July 2006, I was involved in a request from Mr [GRO-A] for a review of the Department's response to his FOI request for release of the documents that had been returned by the Claimants' firms. On **12 July 2006**, I minuted Jill Moorcroft, Head of the FOI Team on the response to Mr [GRO-A]'s request for a review of the initial decision. I explained that working through the 12 lever arch files of papers would exceed the FOI time limit, but that Ministers were sympathetic to their release. Following Leigh-Ann Mulcahy's initial assessment of the documents, the aim was to release as many of the documents as we could under FOI [DHSC0200132].

129. In email exchanges between Linda Page and Colin McDonald, of the Customer Service Centre, between **16-17 August 2006**, arising from a request for Linda Page's contribution to an FOI request, Linda Page clarified, regarding the papers received from external solicitors: *'We are looking to release as many as possible [and were] processing them in line (but not under) the [Freedom of Information Act]'*. She also provided an estimated completion date of mid-September or October [DHSC5429552].
130. A further development in this period was that the Department realised that a number of relevant files at Wellington House were not properly filed on registered departmental files. There was further publicity surrounding this (see, for example, the article in the Sunday Herald of **27 August 2006** [DHSC0004232\_025 pages 2-3]. It was later assessed that the documents included some that had earlier been assessed as destroyed after the HIV litigation (see the references below to Linda Page's final report). At around that time, following a further request for my contribution to an FOI request of 06 September 2006, on **12 September 2006**, Linda Page emailed me and William Connon to state that reference in the article to the finding of 45 boxes of documents at Wellington House was incorrect [DHSC0004232\_029].
131. On **27 September 2006**, Sophie Longbottom, APS to the Minister of State for Reform, Andy Burnham, emailed Linda Page stating that Lord Jenkin had called to say he had received a letter from an official referring to the '47 boxes of files'

[DHSC5435884]. Linda Page provided a written response to Lord Jenkin in response on the work she was doing in relation to analysing the returned documents [WITN4912074]. This also included a reference to the unregistered files. She wrote:

*"You contacted the Department regarding a number of files held at this office relating to the safety of blood products files. I am undertaking work on these files in order to clarify the position in relation to files held by the Department of Health on this matter.*

*My work has included the review of documents returned to the Department by a firm of solicitors and this work is now complete. These documents are currently being processed for release in line with FOI, which we are aiming to do in late October.*

*With reference to the 47 files you mentioned, these are not newly discovered but have always been held by the Department.*

*One outcome of the work completed to date is that the documents referred to in the report 'Self Sufficiency in Blood Products in England and Wales A Chronology from 1973 - 1991' have been released in line with FOI. Once my work has been completed, hopefully at the end of the year, I will ensure that you are sent an account of the results of my analysis."*

132. On **29 September 2006**, Lord Jenkin called Linda Page. Linda subsequently emailed William Connon a brief outline detailing the conversation she had with Lord Jenkin, noting that she had also briefed me. She stated that Lord Jenkin had wanted confirmation of whether the 47 files from Wellington House were the same as those he went through when he last visited DH, and that Linda had agreed to check with William Connon and me. She also highlighted generally the need to consider the approach to those files. [DHSC5435079].

133. On **5 October 2006**, Jacky Buchan asked for an urgent submission for the Minister of State for Public Health (MS(PH)), Caroline Flint, and the Minister of State for Reform (MS(R)), Andy Burnham, in relation to the 47 files which were recovered, querying in particular whether they had been considered as part of the report on self-sufficiency. William Connon responded suggesting he would



aim to provide one by 11 October 2006, noting the difficulties of dealing with the issue in the absence of Linda Page who was on leave [DHSC5435884].

134. On **9 October 2006** William Connon emailed Elizabeth Woodeson in relation to the 47 files which were discovered, and stated the area was far from straightforward and needed the return of Linda Page to tackle it. He noted he was not certain whether the 47 files were included in the self-sufficiency report and that he'd been told they were not shown to Lord Jenkin either, the reason being that *"they are not actually registered files but folders of papers which were simply found in a cupboard in the office"*. He again highlighted the need for a careful response. [DHSC5154769].

135. On the same day, William Connon provided a submission to Lord Warner updating him on progress on the examination and analysis of the blood products documents [DHSC0200135]. Under the heading, "project brief", he explained that:

*"The brief is to review all the documents held by the Department in order to assess the approach to issues in relation to the self-sufficiency of blood, specifically the inactivation of blood products, by those involved during the period 1970 - 1985. There are three sets of documents held by the Department*

*1. Wellington House files, these have always been in the possession of DH and held at Wellington House, including the unpublished references to the report 'Self-Sufficiency in Blood Products A Chronology from 1973 -1991' This includes the 47 lever arch files which Lord Jenkin refers to, which were not properly filed on registered departmental files.*

*2. Documents that have been returned to DH by a firm of solicitors in the North East following press articles on lost documents.*

*3. Files recalled from Departmental Record Office (DRO) Nelson, these files were recalled as part of the 'look back' exercise and a subsequent search for relevant files."*

Under the heading "Progress to Date", William Connon noted as follows:

*"An inventory has been completed for all the documents held at Wellington House on registered files, those returned by a firm of solicitors, the documents recalled from DRO and the 47 lever arch files.*

*Unpublished references to the report 'Self-Sufficiency in Blood Products in England and Wales A Chronology from 1973 to 1991' were released in line with the Freedom of Information Act (FOIA) on the 24 August 2006.*

*The documents returned by the firm of solicitors have been reviewed and are now being prepared and processed for release in line with, but not under, FOIA It is anticipated that this work will be complete in October 2006.*

*Documents held at Wellington House (including the 47 lever arch files) and those recalled from DRO Nelson are being reviewed. It is anticipated that this review will complete in November.*

*A final report on the project is planned for December.”*

The conclusion to William Connon's submission was as follows,

*“The 47 files have only recently been examined as part of this review when it became clear that they contain relevant documents. We are confident that they were included in the analysis for the self-sufficiency report, as colleagues who were present at that time recall seeing the consultants working on documents from the cupboard where the files were held. But we cannot be certain and I have therefore not included this in the reply to Lord Jenkin.*

*However, they were not made available to Lord Jenkin when he came to examine the registered files. This was simply because as they are not registered files we were not aware that they contained relevant information. You may now wish to invite Lord Jenkin to come into the department and examine any papers contained in these files, which are relevant to his period in office”.*

136. In **November 2006**, the vast majority of the documents returned by the Claimants' solicitors were released under FOI. Further work was done in 2007 to release those that were still withheld at this stage. See para 139 below.

137. On **16 January 2007** a meeting of the project board for the review conducted by Linda Page was held with Linda Page, Ailsa Wight, William Connon, and Hugh Nicholas present. The minutes noted an internal review had been requested by the Haemophilia Action Group with regard to the release of documents that had been returned by the external solicitors. 19 documents from that set had been

withheld from disclosure and the minutes noted the internal review concluded that six of the documents could be released with a further one being considered for release subject to further legal advice [DHSC0004232\_031].

138. On **1 February 2007**, Linda Page submitted a final draft of the report on the internal review of Documents Relating to the Safety of Blood Products, 1970 - 1985 for comment by the relevant officials, including by the health departments in Scotland, Wales and Northern Ireland [WITN4912075]. She sought comments by 16 February 2007 before the report was submitted to Ministers. At the same time, she provided a draft submission to Ministers.

139. On **6 February 2007**, Linda Page emailed me with an update on the release of the documents returned to the Department by Claimants' firms. She said that,

*"623 documents were returned by solicitors. Indep[en]dent Counsel reviewed all documents returned prior to forwarding them to DH, Of the 623 documents returned, 604 were released in November 2006, 19 withheld. An internal review was requested by Carol Grayson and as a result it was determined that nine of the nineteen originally withheld could be released, these have not yet been sent out, Stephen Fay will be advising Carol Grayson, who asked for the internal review of the result and will be sending the nine papers to all who received the original release in November. Therefore, once these have been sent out, of the 623 documents returned, 613 have now been released with 10 withheld"* [WITN4912076] [ DHSC0103399\_065 ].

She further explained that Counsel's own review of the documents had not been released because it was legal advice.

140. There was also a further exchange of correspondence with Lord Jenkin in **January – February 2007**. On **8 January 2007**, Lord Jenkin wrote to Lord Hunt who had succeeded Lord Warner as the Minister of State in the Lords [WITN4912077]. Lord Hunt replied on **16 February 2007** [DHSC0046961\_003]. Lord Hunt updated Lord Jenkin on the work being done by Linda Page and the associated work to make the documents available. There was then a telephone call and further note from Lord Jenkin (26 February 2007) [WITN4912078].

141. On **23 April 2007**, I was copied in to an email from William Connon querying the legal position regarding lost or destruction of the Macfarlane Trust waivers **[DHSC5468582]**. The issue arose as a result of PQs 04540, 04541 and 04542 on legal waivers **[DHSC5468584]** and the drafting of suggested replies for those questions. I have addressed my response on my knowledge of these issues in my second statement.

142. On **24 April 2007**, Liz Woodeson put a submission to Ministers on the report drafted by Linda Page **[WITN4912079] [DHSC0041193\_026]**.

143. Introducing the issue, Liz Woodeson noted,

*“As you know, we have commissioned our own internal review of all officially held papers on this policy between 1970 and 1985. The review is now complete and the report is attached. The report concludes that the documents provide no new information that challenges the Department’s position. The papers reviewed support the view in the 1970s and early 1980s that NANBH (hepatitis C) was a mild disease, a view widely shared at the time, CMO has commended the report’s rigorous analysis and agreed its conclusions.”*

144. Within the background section of this submission, Liz Woodeson set out that,

*“4. Following pressure from the Haemophilia Society and others for an official government backed inquiry a submission to Ministers on the 26 June 2006 identified the need to examine thoroughly all documents and to assess the DH approach to the emerging evidence in relation to NANBH and blood products during the period between 1970 and 1985, In 1985 heat-treated product for treatment of haemophilia was introduced, reducing the risk of NANBH.*

*5. This was agreed and a member of DH staff was allocated to the task and has spent the last nine months identifying, reading, cataloguing and filing all the relevant papers. The sources of all papers reviewed are at Annex A. During the review process a large group of documents previously considered mislaid were located. It is therefore presumed that the documents reviewed comprise the majority of the documents from 1970 to 1985. However, we can see from references in the documents we do have that there remain a number of documents which we cannot account for and we need to acknowledge this fact.”*

Under the heading way forward, Liz Woodeson said,

*“8. We recommend that the attached report should now be released to Lords Archer, Morris, Turnberg and Jenkin, the Haemophilia society and all other interested parties.*

*9. In addition we recommend that we should release the documents reviewed in line with FOI principles. Overall, there are around 4,500 of these documents so this will be a major task. It is estimated that the preparation and processing of the documents will take approximately four to five months. To achieve this timescale will require a member of staff to be dedicated to the task with some administrative support. The cost is estimated to be at least £40,000. Nevertheless, we recommend this approach, as release of the documents may go a considerable way to support our line that a public inquiry is not required as all the information is in the public domain, this includes fifty-eight previously unpublished documents specifically referenced in the current report, which we would treat as a priority.*

*10. Based on previous experience we expect that approximately 12% of documents overall would be withheld, the majority under section 35 of the FOI Act as they relate to Ministerial submissions or formulation of government policy. However clearly the more we can release the better, so we would take further advice from solicitors about this and report back to you during the preparation of the documents. Some of the documents also cover BPL and Aids, as well as self- sufficiency, so there may be concerns about releasing them - again, we will come back to you during the preparation of the documents if we think this might be a problem.”*

The concluding recommendations of the submission were as follows:

*“12. Lord Warner previously agreed to release the attached report to Lord Jenkin of Roding and SofS has agreed to provide it to Lord Archer. Do you agree that the report should now be released to all interested parties? If so, we will provide letters for you or Lord Hunt to send out to peers attaching the report.*

*13. Do you also agree that we should begin work on processing the documents reviewed in order to release them in line with FOI principles, at a cost of around £40,000?”*

145. On **8 May 2007**, Lord Hunt provided comments on the report through his Assistant Private Secretary, Rebecca Lloyd [WITN4912080].

146. On the same day, Linda Page emailed Bradley Smythe with respect to formulating a media handling plan and lines to take for the release of the report, though noting that ministerial sign-off was pending [DHSC5471137].

147. The report, "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)" was released on **22 May 2007 [PRSE0000642]**.<sup>1</sup> The internal audit report was also released in redacted form at the same time, along with 56 documents directly relating to Hepatitis C. Other documents were cleared for FOI release over subsequent months.

148. On missing files, the report stated,

*"103. There were two instances of documents relating to blood products being mislaid or destroyed. This loss of documents was the subject of an internal report commissioned in February 2000.*

*104. In the first instance, documents were removed from their registered files and passed to solicitors for use in the HIV litigation in 1990. The trial folders were returned to the DH, but when a subsequent request for disclosure of records was made in January 2005, the DH was unable to retrieve some of the records requested.*

*105. In the second instance, between September 1994 and March 1998, a number of files recording the work of the Advisory Committee on the Virological Safety of Blood between May 1989 and February 1992 were inadvertently destroyed.*

*106. From the review of documents, an assessment is made that there is little duplication between the documents returned to the DH by a firm of solicitors and those already held at Wellington House. The documents returned by the firm of solicitors are believed therefore to be some of the documents previously thought to be mislaid.*

*107. Similarly, from the inventory and review of documents, those documents now held at Wellington House in 102 registered files are thought to be those removed from registered files for use in the HIV litigation in 1989 (paragraph 105 above) and previously thought to be destroyed or mislaid. It is suggested that the nature of these files was not subsequently appreciated as they were no longer stored in registered files and staff and location had changed over time.*

*108. 24 of these 102 registered files contain documents that, at that time, were subject to a Public Interest Immunity (PII) claim by the DH that they*

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<sup>1</sup> Although the documents show that a copy was placed in the Commons Library of the prematurely on 11 May – see the briefing document for Prime Ministers Questions dated 21 May 2007 [WITN4912081].

*should not be disclosed in civil litigation on the grounds of public interest. These documents relate to Ministerial correspondence and submissions to Ministers and briefing notes and draft replies to letters. An earlier request (paragraph 104) for the release of these documents under FOIA could not be met, the documents being presumed lost. The report therefore concludes that these documents are those previously considered missing.*

*109. It is not possible to state that all documents, previously recorded as missing, have been located but a very substantial number relating to the time in question have been and are included in the inventory and, if related to NANBH, in the review. These documents include those that were subject to a PII claim during the HIV litigation. The ACVSB files that were destroyed relate to the post 1985 period.*

*110. During the review process, two sets of documents were released into the public domain in line with FOIA (paragraph 21). These were firstly, the documents referenced in the report 'Self-Sufficiency in Blood Products in England and Wales and Chronology from 1973 to 1991' and released in August 2006 and secondly, the documents returned to the DH by the firm of solicitors were released in November 2006."*

149. The conclusion of the report was as follows:

*"111. This report and the previously unpublished documents reviewed that relate to NANBH should be released, in line with FOIA, into the public domain.*

*112. It is presumed that the majority of documents previously considered missing, with the exception of the Advisory Committee on the Virological Safety of Blood (ACVSB) files, have now been located.*

*113. The ACVSB files destroyed were post 1985. This Committee did not come into existence until after the heat-treatment of plasma products was introduced in September 1985.*

*114. A number of the documents, subject to a Public Interest Immunity (PII) claim by the DH that they should not be disclosed in civil litigation on the grounds of public interest, were identified. These had previously been considered missing (paragraph 108). FOIA gives a right to request information from the documents, subject to exemptions. Many exemptions require a consideration of the public interest. (This consideration has begun).*

*115. The predominant subjects covered in the documents are HIV/AIDS, self-sufficiency and the redevelopment of BPL. The treatment of NANBH in the correspondence and notes of meetings gives no indication that NANBH was considered a life-threatening disease over the period to which this review relates i.e. 1970 to 1985.*

*116. Since the confirmation that papers had been destroyed existing papers have been reviewed and a number of documents released in line with, but not under, FOIA. The documents referenced in the report 'Self-Sufficiency in Blood Products in England and Wales' were released in August 2006 and the papers returned by the firm of solicitors were released in November 2006.*

*117. The BPL heat-treated Factor 8Y product was introduced for evaluation in July 1985 with general issue across the NHS in England and Wales in September 1985. A series of studies in 1989, 1992 and 1998 demonstrated that the BPL Factor 8Y product appeared to have prevented transmission of both hepatitis C and HIV.*

*118. This review of documents summarises the information and advice on NANBH in relation to the safety of blood products available to the Department during 1970 to 1985."*

150. Finally, since it specifically relates to the destruction of documents, I would add that in **June 2007**, I was involved in contributions to the response to PQs laid by Jenny Willott MP and correspondence from her. There had been a number of earlier PQs from Jenny Willott including one requesting the release of the internal audit report from 2000. However, in June 2007, Jenny Willott specifically requested the audit certificates and dockets for the files on the ACVSB that had been destroyed.

151. In the first instance, Jenny Willott asked the following PQ which was answered on 7 June 2007 (see Hansard Column 647W):

*"**Jenny Willott:** To ask the Secretary of State for Health (1) if her Department will release the audit certificates for files containing documents mistakenly destroyed by the Department in the 1990s and which were the subject of an Internal Audit Report in April 2000 before the end of the inquiry chaired by Lord Archer into contaminated blood and blood products; and if she will make a statement;*



*(2) what records her Department holds on the work of the Advisory Committee on the Virological Safety of Blood relating to the years 1989 to 1993; and if she will make a statement.*

**Caroline Flint:** *The Department holds seven files on the work of the Advisory Committee on the Virological Safety of Blood for the period 1989-93.*

*I regret that some volumes were destroyed in the 1990s, and this was the subject of an internal review and report in 2000 which is now in the public domain. The internal audit report clearly sets out the sequence of events which led to the destruction of files."*

The background provided with the draft written answer was as follows:

*"Background*

*1 These are two of 12 PQs from Jenny Willott. Most of the PQs are about DH cooperation with the Archer inquiry and past papers on blood policy.*

*2. Seven volumes of files on the ACSVB (vol 1-3 and 18-21) remain. The majority of files were destroyed in error (vol 4-17).*

*3. We are unclear about the reference to audit certificates in the question. We do however, have file dockets for the files that were destroyed. Local dockets held by the policy Branch state the file and file number and the branch review decision for each file which is registered. Similar dockets held by the Departmental Record Office record the date of destruction of each file. The actual instructions to destroy the files would have been written on the covers of the files, and consequently destroyed with the rest of each file. The audit report refers to file dockets and sets out the sequence of events which led to the destruction of files" [WITN4912082].*

152. Then, in a letter of 21 June 2007, Jenny Willott asked for the release of the dockets under FOIA [WITN4912083]. In that context, on **13 July 2007**, Steve Wells (Head of Information Management and Governance) sent me the destruction dockets which he had been able to locate (GEB/1 volume 7\*-15 (\*his email said 5-15 but it appears to be 7-15 that were sent to me). He also sent a computer print-out of the destruction records for volumes 16 and 18 of GEB/1 [WITN4912084]. The dockets for GEB1/4-6 and GEB/1 16-17 were located [WITN4912085]. I can see that I then forwarded a draft reply to Jenny Willott for clearance by Ailsa Wight to which all the relevant dockets were to be attached [WITN4912086]. This read:

*"Thank you for your letter of 21 June requesting audit certificates and dockets for files on the Advisory Committee on the Virological Safety of Blood that were destroyed in error.*

*As you know this was the subject of an internal review and report in 2000 which is now in the public domain. The Internal Audit report dearly sets out the sequence of events which led to the destruction of files. As requested copies of the docket slips for file GEB/I (volume 4-17) are enclosed, Similar slips created at the Department's file store in Nelson, Lancashire, record the destruction of the files. Copies of these docket slips are also enclosed. We do not hold any other documents that might be described as audit certificates for these files."*

This form of words was then sent as the response to Jenny Willett's FOI request on 19 July 2007 by Colin McDonald of the DH FOI team [WITN4912087].

153. Subsequently, in April 2008, Lord Jenkin asked whether the self-sufficiency report was a complete account of the circumstances leading to the infection of patients due to contaminated blood products, I have addressed this matter further in my second statement. The suggested response to the question was:

*'The scope of the report published on 27 February was to examine key issues around self-sufficiency in blood products in the 1970's and early 1980's. The review was commissioned following comments about the failure to implement the policy on self-sufficiency in blood products during this period. [DHSC0041198\_088].*

154. On **28 April 2008**, Liz Woodeson wrote to Kenneth Clarke MP to advise that the department proposed to release correspondence which related to his time as Secretary of State for Health and HIV litigation relating to that period [DHSC6407940]. Mr Clarke responded on the same day, indicating that he believed that advice to Ministers from officials was expressly exempt from release under the FOIA [DHSC5042275].

155. On **6 May 2008**, commenting on my draft response to Mr Clarke MP, William Cannon outlined his strong view that the relevant document should be disclosed [DHSC6700836].

156. On **26 June 2008** Laura Kennedy, the PA to Liz Woodeson, emailed Patrick Hennessy, a project manager in the Health Protection Division, copying me in, with respect to the response to a Parliamentary Question regarding the release of the papers received from the external solicitors. The proposed response, in light of a review of a note of one of Linda Page's project board meetings, noted that initially 19 documents were withheld when the documents were released in late 2006. Following a challenge, this was reviewed and 18 of the 19 documents were released. It also noted the final unreleased document was a CV which was withheld as personal data and that the vast majority of documents had been provided to the Archer inquiry. **[DHSC5528801]**.
157. On **18 July 2008** I was copied into an email from Patrick Hennessy to William Connon regarding further litigation files that were found in Wellington House. Patrick explained that a cross check and inventory would need to be prepared for those 41 folders of documents. **[DHSC5533007]**.
158. On **21 August 2008** Laura Kennedy emailed William Connon and updated him with the inventory of these folders, she highlighted that her review so far had found five documents that did not appear to have been previously published. Subsequent emails with Ailsa Wight noted that they included some significant documents that provided Lord Owen's views on the issue of self-sufficiency **[DHSC5061894]**.
159. On **26 September 2008**, there was a further exchange between Veronica Fraser and Laura Kennedy about the status of Lord Owen's papers which had been discovered. The email chain considered whether they were exempt from release under the FOI **[DHSC5544778]**.
160. On **8 October 2008**, William Connon wrote to Lord Archer confirming that a small number of Lord Owen's papers had been discovered and that the department was committed to releasing them in line with the requirements of the FOIA **[DHSC6700949]**.

## **PART E: QUESTIONS ASKED OF ME BY THE INQUIRY**

161. I have set out the chronology above in some detail because I hope that it is helpful in giving greater context to the individual documents on which the Inquiry is asking me to comment.

### **Section 2: The Destruction of Papers Relating to Contaminated Blood and Blood Products**

162. The Inquiry asks '*...what steps [I] took, if any, to discover how Department of Health papers relating to contaminated blood and blood products or the risks of using blood and blood products from the 1970s and 1980s had been destroyed.*' (request, paragraph 3) and '*... what steps if any [I] took, to discover why Department of Health papers relating to contaminated blood and blood products or the risks of using blood and blood products from the 1970s and 1980s had been destroyed*' (request, paragraph 4).

163. As I have set out, at least by June 2003, I had been told by Charles Lister (then my Grade 6) that the Solicitor's Division had confirmed that papers from the 1970s/1980s had been 'destroyed in a clear out [by the Solicitor's Division]' and that this happened at some time in the mid-1990s. It was not suggested that there had been any impropriety or improper motive in this (see paragraph 22, above).

164. Through my work on various correspondence, FOI requests and PQs, I (and those more senior in the Blood Policy Team) learnt more detail about this in the course of 2005.

165. First, in relation to the archiving issue concerning the Solicitor's Division, Anita James had explained that her colleague Ronald Powell had held conduct of the HIV litigation. Furthermore, that once the litigation was finished the files were sent to remote storage. She said that about six years earlier (i.e. in roughly 1999) she looked for them in relation to another case and was unable to retrieve them because they had been destroyed.

166. Second, I learnt that there was a separate issue concerning the destruction of some of the papers of the ACSVB. From the papers currently available, it looks as if the audit report in relation to this may first have been mentioned to me by Anita James on 22 February 2005, but without (at that stage) any reference to the ACVSB. Later in 2005, in dealing with the further correspondence from Lord Jenkin, I asked for a copy of the audit report. The audit report was then used to inform responses on the circumstances in which the ACVSB papers had been destroyed.
167. Therefore, from the information my team had been able to glean, the position as at 2005 appeared to be that papers from the 1970s/1980s were believed to have been destroyed in the context of poor archiving of the papers after the HIV litigation. Separately, papers relating to the ACVSB from May 1989 – February 1992 had been destroyed between July 1994 and March 1998 because they had been given inappropriately short destruction times on their dockets. This was described as '*...an arbitrary unjustified decision, most likely taken by an inexperienced member of staff*'. The audit found that their destruction would have been avoided if the person marking the file for destruction had been aware of the importance of the documents.
168. After the release of the Department's Self Sufficiency Report in February 2006, in the circumstances I have sought to outline above, and in the context of the additional documents that were returned, and discussion about making these papers public, more resources were given. I was, by that stage, less involved in the detail because it was being examined as part of Linda Page's report, although I continued to be involved in related FOI requests and PQs. Linda Page's report concluded that documents in unregistered files comprised some of those previously believed to have been destroyed following the HIV litigation.
169. The Inquiry has specifically asked '*what steps, if any, I took to discover why papers relating to the Central Committee for the National Blood Transfusion Service were destroyed in 2003*.' This relates to the request I had made, and

response I had received on 1 March 2005 which was one of a large number of file requests that I made at around that time (see paragraph 60).

170. I cannot recall the specific request which made me enquire in March 2005, about the papers for the Central Committee for the National Blood Transfusion Service, or my reaction to being told that the file had been destroyed in September 2003. Furthermore, I cannot recall whether or not I took steps to establish why the file was destroyed. Assuming that I did not do this, this would have been because of a combination of reasons, including my focus on responding to FOI requests, so my lines of enquiry were around locating surviving papers, and the pressures the team were under. I can see from the documents that on another occasion, I specifically instructed that a file that had been marked for destruction, should not be destroyed, but should be retained because of the interest from the haemophilia lobby groups, and sensitivities around the destruction of past papers **[WITN4912088, DHSC0038710\_032 and WITN4912089]**.

171. The Inquiry asks me about how I formed the understanding that papers from the 1970s and 1980s were 'not adequately archived' and had been 'unfortunately destroyed'. The Inquiry has asked me about that in the context of the briefing note to Sir Nigel on 29 November 2005 (see paragraph 86, above) and my email to Billy Reid of 9 November 2005 (see paragraph 78, above).

- a. In relation to the materials from the 1970s and 1980s, I was relying on what I had been told by Charles Lister and Anita James as detailed earlier in this statement.
- b. The Inquiry asks who "Billy" was and why I was sending him the document. I have addressed this in paragraphs 76 - 78, above. "Billy" was Billy Reid, who at the time was a newly arrived official in the Blood Transfusion and Rehabilitation Branch, Health Planning and Quality Division, Health and Social Care Directorate of the Scottish Executive. My email to him arose from his request for input on questions laid in the Scottish Parliament.

### **Section 3: The Destruction of Papers Relating to the Advisory Committee on Virological Safety of Blood**

172. The Inquiry asks me to “... *provide details of what steps [I] took to discover why Advisory Committee on Virological Safety of Blood...papers were destroyed*” and to “... *provide details on any steps taken to identify or trace those responsible for marking Advisory Committee papers for destruction. Please also provide details on any steps take to trace Dr Rejman or [discover] why Advisory Committee papers still held by the Department Record Office prior to destruction were not recalled when the Department of Heath became aware it had to collect relevant information in 1994*”.

173. When the audit report was first mentioned to me by Anita James in February 2005 in the context of Mr. **GRO-A**'s FOI request, I may not have originally picked up on its significance. Additionally, I would have been dealing with a number of competing priorities and it appears that I overlooked following up the audit report which I should have obtained sooner. However, I asked for a copy of the audit report on 22 November 2005 in the context of Lord Jenkin's request for a further meeting with Sir Nigel, and the forthcoming self-sufficiency report.

174. The Internal Audit Report was commissioned in 2000, to establish the circumstances around why the ACVSB papers were destroyed between 1994-1998. The investigation, and official audit report, predate the time I joined the Blood Policy team. So far as I can recall, no discussions took place while I was in the team to further investigate why the ACVSB papers were destroyed, or follow up the circumstances around the destruction of papers. I (and I believe the wider team, more senior officials, and our solicitors) relied upon the findings of the audit report which provided an explanation on why the ACVSB papers were destroyed.

### **Section 4-Meeting with Lord Jenkin**

175. The Inquiry asks me to “... *set out in full why [I] advised Sir Nigel Crisp not to meet with Lord Jenkin to discuss the destruction of Department of Health papers*”. This refers to my submission to Sir Nigel dated 29 November 2005 (see paragraph 86, above).
176. I would have discussed this point (advice against a further meeting) with William Connon, as Head of the Blood Policy Team.
177. There are always a range of factors to take into account when advising Ministers or the most senior officials like the Department’s Permanent Secretary, whether to accept requests for a meeting or attendance at an event. While very many such requests are deserving, there are inevitably too many calls on their time to accept all such requests. In a situation like this, I would have taken into account Lord Jenkin’s seniority; the fact that he was a former Secretary of State of the Department; and that he was raising an issue of significant concern. However other factors weighed in the opposite direction. First, Sir Nigel had already met Lord Jenkin on this issue (the 13 April 2005 meeting). So, this was not advice against meeting Lord Jenkin at all, but advice against a further meeting. More significantly, however, was the fact that there was little if anything that Sir Nigel was going to be able to add to what had already been said on the issue previously, when taken together with the further written response which was drafted. Since William Connon’s submission of 11 April, I had obtained a copy of the internal audit but that was going to be explained in the further written response. As I have indicated, this request would have been discussed and agreed with officials more senior than me.
178. Our assessment was that Sir Nigel would not really be able to go any further or say anything more than could be set out in a written response. This was clearly alluded to in the submission of 29 November itself, where I said in the advice section that Lord Jenkin, “... *was informed from the outset that papers from the 1970s and 1980’s were missing and the draft attached explains in detail our understanding about why papers were destroyed*”.



179. I would regard this as very much a standard piece of advice when officials have to try to weigh up the pros and cons of accepting a request for a meeting or, in this case, a further meeting. In the different context of the request for a meeting from the Manor House Group, the assessment that Ministers would not be able to add anything to previous statements was, similarly, a factor in the advice given to decline that invitation.
180. Whilst I would accept responsibility for the advice given, I would also note that the chain of more senior officials copied into this submission included William Connon, Ailsa Wight, and Gerard Hetherington all of whom would not have hesitated to say if they had disagreed with the advice. Ultimately, of course, this was also advice going to the most senior Civil Servant in the Department. Sir Nigel, as Permanent Secretary, was entirely free to accept or reject the advice we had offered. He would have exercised his own judgement on this, with the benefit of the advice offered and the reasons we had given.

#### **Section 5-The Ten Year Rule**

181. The inquiry asks whether, "... to the best of my knowledge, ... the Department of Health has ever operated a 'ten year rule' or routinely destroyed documents after ten years.
182. I am not aware of any specific rule about routinely destroying documents after ten years.
183. I vaguely recall that there were various options in relation to record keeping. It's possible that the 10 year rule may have been one of the options available for selection when choosing when a file should next be reviewed.

#### **Statement of Truth**

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

Signed GRO-C

Dated ..... 23 August 2022, .....