

Witness Name: Richard Gutowski
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INFECTED BLOOD INQUIRY

FIRST WITNESS STATEMENT OF RICHARD GUTOWSKI

I, RICHARD GUTOWSKI, will say as follows: -

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Section 1: Introduction

1. I am a retired Civil Servant. My date of birth and home address are known to the Inquiry.
2. I am providing this statement in response to a Rule 9 Request from the Inquiry dated 29 January 2021 (“the request”). The request supplied four documents about which specific questions were asked, as well as some more general questions relating to the destruction of departmental records pertaining to self-sufficiency, contaminated blood and blood products.

Section 2: Comments on Nature of this Statement

3. I have done my best to answer the questions raised in the request from both my memory and the documents that are currently available to me. Before I address the detail of the Inquiry’s request, I wish to highlight two limitations on this statement. The first relates to the documents that are currently available to me at the time of providing this statement. The second relates to my recollection of the relevant events.
4. As regards the issue of disclosure of documents, I have been provided by the Inquiry and the Department of Health and Social Care (“DHSC”) with a range of documents from both hard copy records and electronic records. However, the volume of documents overall means that there may be relevant documents to which I’ve not been referred and if I’m referred to further documents, I may need to add to or amend my answers to the issues raised. I have, of course, done my best with the documents made available to me.
5. My memory has been jogged by considering the documents and I do remember some details. However, the Inquiry is asking about events some 15 years ago. Our main effort was concentrated on the many substantive policy issues of the day, in what was a busy team.

6. The matters with which the Inquiry's request is concerned (past destruction of documents) was not our main focus. As a result of both of these factors, my memory of the specific matters contained in the Inquiry's request is particularly limited.

Section 3: Background/Career

7. I joined the then Department of Health and Social Security as a direct entrant Executive Officer in October 1973. I retired from the Civil Service in October 2011 as a Grade 6. During my career I held a number of different positions within the Department. I cannot recall the exact dates when I moved; my recollection is that this was approximately every two to three years in the early stages of my career with some exceptions¹. Generally, I moved between Divisions on promotion, although in some instances I occupied different levels of seniority within the same Division.

8. The following is a chronology of the various positions I held throughout my career. The dates are approximations.

8.1 1973-1976 – Hospital Building Division: Executive Officer. Worked on developing ESTMANCODE – a system of planned preventative building maintenance for hospitals.

8.2 1976-1979 – Statistics and Research Division: Executive Officer. Worked on production of statistics on the implementation and uptake of the new Family Income Supplement Support System for low-income families.

8.3 1979-1981 – Nursing and Midwifery Whitley Council: Executive Officer. Worked on producing manpower planning models and projections for the recruitment and retention of NHS midwives.

¹ I never produced a formal written CV at any time in my career in the Civil Service. When I retired from the Civil Service, I did not take any of my personnel or personal files with me, save for those relating to my retirement.

8.4 1981-September 1983 – Establishment and Personnel Branch: Executive Officer. Seconded to help with the Department's response to the Government's initiative to reduce the overall size of the Civil service to 630,000, identifying areas where staff could be saved. Also seconded to Second Permanent Secretary's Office to work on briefing for the Department's appearance before the Public Accounts Committee looking into Civil Service Efficiency.

8.5 September 1983-1991 – Medicines Division: Executive Officer, Higher Executive Officer and Senior Executive Officer. Engaged, as an Executive Officer (a junior administrative role), in reviewing product labelling, medicines advertising and product inserts. This role did not require decision-making as to the contents of the relevant product labels but instead to ensure compliance with relevant legislation. Issues regarding the required contents of labelling or product information as well as non-compliance were dealt with by separate medical assessors or an enforcement team. Subsequently engaged as a Higher Executive Officer (again primarily an administrative role) in setting up a new Litigation Unit for the Medicines Division which became the Medicines Control Agency. As the sole member of this unit, the role required the taking of instructions from senior colleagues, coordinating responses, providing updates, liaising with internal departmental lawyers and acting as a single point of contact on various pieces of litigation in order to assist in the preparation of the Agency's defence in various court cases. As a Senior Executive Officer, negotiated European medicines directives in the Council of Minister's Working Group in Brussels and help transpose into UK law.

8.6 1991-2003 – Medical Devices Directorate: Grade 7 and Grade 6. Negotiated a package of European Medical Devices Directives in the Council of Minister's Working Group in Brussels and transposed into UK law. Developed and set up the UK Competent Authority for medical devices under the new Regulations. Set up the Medical Devices Compliance Unit to ensure only safe medical equipment is placed on the UK market and put into service.

8.7 2003-December 2004 – Blood Policy: Grade 6. See paragraph 11 below.

8.8 December 2004-2011 – Medicines and Healthcare Products Regulatory

Authority: Grade 6. Ran the medical devices compliance unit. Dealt with European policy issues under the medical devices Directives/UK Regulations.

9. I joined the Blood Policy Team as Team Leader (Grade 6); the records suggest that my start date in this role was 9 June 2003. When I arrived, I managed a team with a Senior Executive Officer (Jill Taylor), a Higher Executive Officer (Zubeda Seedat) and an Administrative Assistant. At the level immediately above me was Vicky King who was replaced soon after I joined by Ailsa Wight as Head of Branch, Grade 5. Above them was Gerard Hetherington as Head of Division, Grade 4.
10. The personnel in the team did not remain constant throughout my time in the position. DH was being restructured when I arrived and many positions were being cut. Shortly after my arrival, Jill Taylor took voluntary retirement. As part of the restructuring, her position was left vacant. In addition, the Administrative Assistant job was cut. Accordingly, the Team was reduced to a Higher Executive Officer, Zubeda Seedat, and me as Grade 6. Given the volume of work that we had to deal with, I brought in David Reay (a casual worker at Executive Officer level) specifically to help me set up the Skipton Fund, although he did assist on other matters.
11. During my time in Blood Policy, I recall the main areas of work were as follows (I have not attempted to list these in priority order):
 - Setting up the Skipton Fund in collaboration with the devolved administrations.
 - Introducing the recombinant factor concentrate treatment scheme.
 - Continued transposition of EU blood quality and safety directive into UK law.
 - Setting up the competent authority to regulate blood banks in hospitals, in conjunction with the MCA.
 - Responding to the possible exposure to vCJD by blood transfusion.
 - Continuing to handle the varied infected blood issues, including the report published as “Self-Sufficiency in Blood Products in England and Wales. A

Chronology from 1973 to 1991” (the self-sufficiency report) and enquiries from the press and campaign groups. The strength of feeling and effectiveness of those campaigning on the infected blood issues meant that at one time I was told my team received the highest volume of correspondence in Whitehall. At another time, I held the unenviable record for the longest outstanding Private Office Correspondence; this reflected the lack of team resources to which I have already referred. One aspect of the infected blood issues was Lord Owen’s concerns regarding papers from his time in office.

- I was the Accounting Officer for the National Blood Service.
12. Part of my role was to brief Ministers, in particular Melanie Johnson MP, the Parliamentary Under Secretary of State for Public Health (“PS(PH)”). I recall that there were weekly briefings, dealing with the full scope of my team’s portfolio. I specifically recall that Melanie Johnson required frequent assurances on the level of blood stocks.
 13. My predecessor as Team Leader was Charles Lister and I was succeeded by William Cannon in or around December 2004. I recall that after I left the position, William Cannon occasionally telephoned me for advice. Those conversations, I seem to recall, may have been on issues about the Competent Authority. While I was Blood Policy Team Leader, I had some similar conversations with Charles Lister, whom I had come across at various Department of Health meetings. As I recall the conversations with Charles Lister largely concerned the transposition of the EU blood directive, which he had negotiated in Brussels and transposed into UK law and with which he was consequently more familiar.
 14. Charles Lister would have arranged a handover briefing with me when I took up the position. I have seen some written handover notes drafted by Charles Lister [WITN5292002]; reference to Lord Owen’s papers does not appear in those notes. However, I cannot recall whether or not it was covered in his verbal handover before I took up post. I recall that I was aware of this issue in general terms when I took up the position, but not the specific detail. That may have come from the verbal handover, but equally it is possible that I had read it somewhere on taking up the position.

Section 4: Chronological Outline from Currently Available Documents

15. 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.
16. On 1 July 2002, there had been a meeting on self-sufficiency in blood products between Hazel Blears (then the PS(PH)) and Lord Morris and Michael Connarty MP [DHSC0041305_029]. This meeting took place prior to my arrival and I was not present, however it is a convenient starting point for the events within my period in the team. The meeting had been set up by Yvette Cooper MP, the then PS(PH), but it was Hazel Blears who was the PS(PH) at the time of the meeting. Lord Owen was not able to attend, but the meeting centred on his complaints that (i) self-sufficiency had not been achieved despite his pledge to do so, and (ii) papers from his Private Office had been destroyed without reference to him. There was also discussion of the Haemophilia Society's proposals for compensation for those infected with Hepatitis C.
17. On 5 June 2003, Zubeda Seedat forwarded to Charles Lister a Parliamentary Question from Lord Clement-Jones about any review into files missing from Lord Owen's time as Health Minister [DHSC0200024]. By this time, I had taken over as team leader and Charles Lister had left. It is likely that Zubeda Seedat was forwarding the PQ to Charles Lister because he had been preparing the response, looking into the matter towards the end of his time in post, or was simply more knowledgeable on the issue in terms of getting a prompt draft response together.
18. On 10 June 2003, Charles Lister replied to Zubeda Seedat's email copying me in [DHSC0020720_081]. His reply detailed the remit of the self-sufficiency report and provided an explanation for the missing self-sufficiency papers. The explanation is nearly identical to that contained in the Briefing Note written by me in December 2003 (see further below). Charles Lister's reply read as follows:

"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."

19. The reply concluded by discussing the status of the self-sufficiency report and provided a possible response to the Parliamentary Question:

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

20. Charles Lister's draft response to the PQ provides important context for the Briefing Note I submitted to the Minister of State for Health ("MS(H)"), John Hutton MP, in December 2003.

21. Lord Warner answered the PQ (PQ06314) on 18 June 2003:

"Lord Clement-Jones asked Her Majesty's Government: 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."

Lord Warner: An informal review is being undertaken by the Department of Health to clarify the facts surrounding the drive for United Kingdom self- sufficiency in blood products in the 1970s and 1980s. The review is based on papers available from the time and is not addressing allegations that files from that period went missing."
[DHSC0020829_204]

22. On 8 July 2003, I attended a meeting with PS(PH), then Melanie Johnson MP. Robert Finch, the Assistant Private Secretary to Melanie Johnson, emailed Vicki King and me the following day with a note of what was discussed at the meeting. Copied into that email were Jill Taylor, Zubeda Seedat and Graham Bickler (Head of Communicable Diseases Branch, Grade 6) [WITN5292003]

23. In his note under the heading "*Lord Owen*", Robert Finch stated "*Not a priority*". I cannot recall the context in which this comment was made. It could be simply that it was not a priority at the time, given the other many substantive policy issues with which we were dealing.

24. It appears from subsequent correspondence (paragraph 31 below) that a form of response to letters about Lord Owen's papers was agreed with Melanie Johnson at this meeting, although it is not mentioned in Robert Finch's note and I have no recollection of a discussion about such a response. I would have expected this to have been included in Robert Finch's note of the meeting (in accordance with standard civil service practice), so I cannot explain its omission if an agreement was reached at the meeting.
25. On 18 September 2003, I was forwarded an email from David Daley, a DH Press Officer, regarding an article which was running high on the BBC News website [DHSC0004294_004 and DHSC0004294_005]. It related to the Scottish Health Minister Malcom Chisolm pledging to consider fresh allegations made by people infected with Hepatitis C from contaminated blood and blood products.
26. The following day, 19 September 2003, I forwarded David Daley's email, and the attached article, to Graham Bickler [DHSC0004294_004 and DHSC0004294_005]. I provided some context to the Scottish Health Minister's pledge and the campaigners' argument, noting that they were relying on a document (a meeting of Haemophilia Centre Directors in 1982 at which DH was present) that we had not seen. I also summarised the DH position on the issue; it appears that this summary was taken from an early draft of the self-sufficiency report, which I assume had been provided to the Blood Policy Team around this time. I alerted Graham Bickler to the potential for some embarrassment from the document the Action Group were relying on. I also alerted him to the likelihood that the Scottish reporting would gain traction with the English media, lead to further campaigning and protests (*'I can see marches down Whitehall and protests outside Richmond House on the horizon'*), and the need to ensure that we had the correct information / lines.
27. On 7 October 2003, Lord Owen sent a letter to the then Secretary of State for Health, John Reid MP, following the meeting with Hazel Blears on 1 July 2002 which Lord Owen had been unable to attend. The relevant part read:
- "Hazel Blears told Lord Morris and Michael Connarty MP that your Department had set in train a study of its records going back over the history of the Department's original commitment to self-sufficiency and covering the period of particular interest to me. The study was expected to take several months."*

I was much encouraged by this exercise particularly since when I tried myself to go back over my own Ministerial papers I was extremely surprised to be told that all my papers had been pulped without any reference to me! So I am interested to know what your internal investigation may have revealed if anything and whether it is this study which has led to your announcement.” [LDOW0000142]

28. Once received, correspondence to the Private Offices were allocated to an Action Officer and a deadline set for a reply. Lord Owen’s letter would have undergone this process, although the original allocation is not available to me at the time of providing this statement.
29. On 17 October 2003, I was copied into an email sent by Zubeda Seedat to Bob Stock, (who was essentially my “opposite number” in the Scottish Health Department) regarding a letter received from Lord Morris [SCGV0000262_116]. From the content of the emails, it appears that Lord Morris had asked about allegations made in an article in the Scotsman on Sunday. Bob Stock responded the same day, providing a response which had been sent to the Health Committee on those same allegations in the article. I was copied into this email because it was important that the information provided to the press and campaigners was consistent between Scotland and the rest of the UK.
30. On 5 November 2003, Jill Taylor sent an email to Robert Finch [WITN5292004]. I was copied into this email along with Zubeda Seedat. The email concerns the progress on the response to Lord Owen’s letter dated 7 October 2003.
31. Jill Taylor’s email references the meeting between Melanie Johnson and myself in July 2003, at which Robert Finch had been present. I do not recall anything from this meeting in particular, due to the frequency of meetings with Melanie Johnson throughout my time in the position. As I have noted at paragraph 23 above, Robert Finch’s note of the meeting recorded “*Lord Owen – Not a priority*”. However, Jill Taylor’s email stated that Melanie Johnson had agreed to a response to letters on this subject at that meeting.
32. Jill Taylor’s email explains that it had been hoped that Melanie Johnson would sign off the response, but that the response had been sent to John Hutton instead. Generally, John Hutton and Melanie Johnson had defined and distinct portfolios, and this matter

fell within Melanie Johnson's portfolio. It is probable that the letter was sent to John Hutton because Melanie Johnson had been on leave or otherwise unavailable. The issue would not have been a matter for the Minister of State unless Melanie Johnson had not been available.

33. John Hutton had then rejected the draft response and requested a "*full explanation of Lord Owen's accusation*". It is clear from Jill Taylor's email that John Hutton had not been involved in the issue of missing papers from Lord Owen's time in office nor in the publication of the self-sufficiency report. Jill Taylor sought a steer from Private Office on how to proceed. Zubeda Seedat followed up with Robert Finch around a month later on 2 December 2003, noting that Lord Owen was "*chasing for a reply*" [WITN5292005].
34. On 10 December 2003, Robert Finch responded to Jill Taylor's email requesting a briefing note for Melanie Johnson [WITN5292005]. Tony Sampson, the Private Secretary to MS(H), was copied into Robert Finch's email.
35. On 12 December 2003, Zubeda Seedat emailed Jill Taylor with an updated draft response to Lord Owen as well as the briefing note (also in draft form, under my name) requested by Robert Finch [WITN5292006]. The draft briefing note was addressed to John Hutton, despite Robert Finch's request being for a briefing note for Melanie Johnson. The draft letter was also prepared as if John Hutton would sign it. Accordingly, it is likely that Melanie Johnson was still on leave at this time.
36. Zubeda Seedat's email explained that the draft briefing note she had prepared had been "*mainly lifted from a PQ (06314) we did in June*". This referred to Lord Clement-Jones' PQ from June and the information that had been drawn from Charles Lister's email of 10 June 2003, discussed above. I will deal with this particular point in greater detail in section 5 of this statement.
37. Jill Taylor replied to Zubeda Seedat the same day, stating, "*Thank for you doing this. I think the draft looks good and if Richard is content with the cover note let us send it off. We will certainly have to do something with this paper, Richard said he could do a note for PS(PH) as requested by Robert [Finch]*". [WITN5292006]

38. On 15 December 2003, I minuted John Hutton's Private Secretary using the draft which Zubeda Seedat had supplied [LDOW0000350]. Other than the formalisation of the distribution list, my minute was identical to the draft prepared by Zubeda Seedat.
39. On 13 January 2004, Lord Owen sent a letter to John Reid chasing a reply to his letter dated 7 October 2003 [LDOW0000350]. Over the next week, Zubeda Seedat communicated with Kevyn Austyn, the Head of Correspondence Management, and Clarissa Hudson in John Hutton's Private Office in an attempt to get the response finalised [WITN5292007]. From these exchanges, it looks as though the draft response to Lord Owen had required some redrafting and was resubmitted for approval. Lord Owen's chasing letter was allocated to Zubeda Seedat for a reply, but within the system used for PO correspondence had not yet been 'accepted' by my team because a separate reply to the chasing letter would not be required if the original letter from Lord Owen had been signed and sent.
40. On 2 March 2004, Tony Sampson sent a note to Clarissa Hudson with the original comment of John Hutton from late 2003 on an earlier draft of the response [WITN5292008]. John Hutton had been concerned that the review did not address why Lord Owen's papers were missing; he asked "*why not!?*". Tony Sampson asked that this be actioned. Clarissa Hudson subsequently re-actioned Lord Owen's first letter, requesting a further draft by 3 March 2004 which addressed John Hutton's main concern as to "*why the current review isn't looking into the fact that papers from Lord Owen's office were destroyed.*" [WITN5292009]
41. On 3 March 2004, Zubeda Seedat emailed John Hutton's Private Office, having heard that John Hutton was still not content with the response [WITN5292010]. Zubeda Seedat's email refers to a forthcoming meeting between Melanie Johnson and myself to "*discuss a number of issues, including the review of internal papers which is what the PO is about. Once he has discussed this with PS(PH) we will provide you with a redraft.*" That meeting was fixed for 8 March 2004. Accordingly, it can be assumed that Melanie Johnson was back from leave by this time.

42. On 8 March 2004, the meeting with Melanie Johnson took place. Following that meeting, Zubeda Seedat emailed Robert Finch, chasing confirmation that the response to Lord Owen had been discussed with John Hutton's office [WITN5292010]. Robert Finch responded shortly thereafter, confirming that John Hutton's office were "*happy for PS(PH) to respond*" [WITN5292011]. Melanie Johnson's return and the meeting on 8 March 2004 had therefore resolved the issue of who would respond to Lord Owen's letter. There had also been some discussion at the meeting as to whether a holding reply was necessary before the full response was sent to Lord Owen. That discussion continued in the emails between Robert Finch and Zubeda Seedat.
43. On 9 March 2004, I sent a short note to Melanie Johnson following our meeting the previous day [WITN5292012]. It attached a draft response to Lord Owen and confirmed that Melanie Johnson had agreed to sign the response. In the note I referred to the case being "*now some months old*" and explained that the delay was attributable to (i) the back and forth between John Hutton and my team, and (ii) the case being "*lost in the system*" for a month. I cannot recall when the case was lost in the system, but it is possible that this refers to the period between October 2003 and November 2003, before Jill Taylor had picked it up in her email on 5 November.
44. On 17 March 2004, Melanie Johnson signed the response to Lord Owen [WITN5292013]. It is identical to the draft I had attached to my note on 9 March.
45. Later that year, on 30 August 2004, Bob Stock sent an email to Zubeda Seedat regarding a number of press issues [SCGV0000262_022 (page 2)]. I was copied into this email. The first issue related to Mr Dolan (of the Haemophilia Society in Scotland) and those campaigning for a public inquiry, including Lord Morris. The second issue related to a Sunday Herald article and a document it had referred to. The article itself is not available to me at the time of this statement. It would appear from my subsequent email in this chain that the document referred to in the article was a letter containing an accusation about self-sufficiency and the licensing of the BPL.
46. On 1 September 2004, I forwarded Bob Stock's email to Gerard Hetherington (Grade 4 Division Head) and Ailsa Wight (Grade 5 Branch Head) [SCGV0000262_022 (pages 1-2)]. In my email I stated that:

“There is nothing new here but the timing could be fortuitous in that we have just received the report we commissioned on this whole issue and we could attempt to finally nail this long running saga.”

47. By “*nail this long running saga*” I meant making the public record clear on the policy of self-sufficiency. The publication of the self-sufficiency report offered the opportunity to do that.

48. I also stated that:

“This will also open up the “pulping” of Lord Owen’s papers but we can just admit that they are missing we believed destroyed by mistake by the lawyers following the HIV Litigation. No one will believe this but it is the truth.”

49. I believed the publication of the report would open up the destruction of Lord Owen’s papers because I was aware of Lord Owen’s letter from October 2003 and of the strength of feeling among the various campaign groups. The explanation I provided here was based on my understanding of the position, an understanding which I believed was commonly held among the Health Protection Division. I will discuss this point in greater detail in section 5 of this statement.

50. By the date of this email, I had seen a draft of the self-sufficiency report. I summarised the conclusions of the Report on the policy of self-sufficiency, the risk of infection with Hepatitis C through the 70s and 80s, and the operation of the BPL. This part of my email largely reflects the Executive Summary of the self-sufficiency report [NTH0000053].

51. Towards the end of my email, I stated that:

“All this I believe gives us a strong base to pursue our consistent line that a public enquiry is not warranted. The key is how we take this forward. Do we react to a Lord Morris question or make a proactive move. Do we release the Executive Summary of the Report or just the Conclusions or the Report itself. We will need to engage MHRA because of the licensing issues.

Can we therefore meet to discuss handling. If you agree can one of your PA’s please set up a short, I would say ½ hour meeting. Thanks.”

52. I cannot recall having a meeting on this specific topic. I do recall that my preferred way forward was to place the self-sufficiency report into the Libraries of House of Commons and House of Lords, once it had been agreed by Ministers. To my mind, this was the most appropriate way to proceed, given the level of interest in the report and to ensure

transparency. I understand that the full report was published in February 2006, after I had left the Blood Policy Team. I was not involved in the method of its eventual publication.

53. On 21 October 2004, Sandra Falconer (Scottish Executive Health Department) forwarded a request for information from [GRO-A] (“Mr [GRO-A] request”) asking for advice on the request [DHSC0038529_073]. The request focused on all “*blood bank, centre director and NBA meeting minutes*”.
54. On 26 October 2004, Bob Stock also emailed me in relation to Mr [GRO-A] request [DHSC0038529_072]. He indicated that this request was being treated as a “*test case for what we might face when FOI comes in*”. The context was that the Freedom of Information Act 2000 was due to come into force in January 2005. Bob Stock invited my thoughts generally on Mr [GRO-A] request, and for background information concerning the NBA.
55. In my response of the same day, I gave details on the background to the NBA and the minutes of their Board meetings [DHSC0038529_072]. I also referred to correspondence between Mr [GRO-A] and David Reay. As I stated in my email, I was concerned to ensure that we had a co-ordinated response to Mr [GRO-A] request (avoiding one department releasing papers if the other had refused to do so). I arranged for Zubeda Seedat to look into the correspondence between Mr [GRO-A] and David Reay.
56. Mr [GRO-A] request referred to a “*secret report funded by Westminster*”. I stated I would check my papers on that issue although I had no idea to what Mr [GRO-A] was referring. I cannot recall whether I found anything in particular, however – as I detail below – the Scottish Executive believe they identified the report to which Mr [GRO-A] was referring.
57. My email then deals with Mr [GRO-A] argument for a public inquiry, presumably contained in the same letter as his request for information. As with my previous correspondence with Gerard Hetherington and Ailsa Wight, I considered that the response to Mr [GRO-A] request should be tied to the publication of the self-sufficiency report. I gave a brief summary of the conclusions of the Report as “*In brief it concluded*

that there was no cover up and the Department acted reasonably and in good faith at the time.”

58. Bob Stock replied to me the same day [DHSC0038529_072]. He explained in relation to the “*secret report*”, Mr [GRO-A] would be invited to send relevant information so that the Scottish Minister could make a judgment. On 1 November 2004, I was sent a draft of Sandra Falconer’s response to Mr [GRO-A] following the emails with Bob Stock [WITN5292014].
59. On 26 November 2004, Sandra Falconer replied to Mr [GRO-A] [WITN5292014]. Sandra Falconer’s response dealt with Mr [GRO-A] request for the various minutes. In relation to Mr [GRO-A] comment on “the 1979 Westminster report”, Sandra Falconer stated that:
- “In response to your comment about the 1979 Westminster report, we have made enquiries as well as checking our files and, as far as we can establish, the Executive does not hold a copy of any such report. You indicate you discussed this report with Mr Chisholm and also that a member of your group has a copy. If you are able to confirm that a copy was given to Mr Chisholm in his capacity as Minister for Health and Community Care, we will of course instigate a further search.”*
60. On 30 November 2004, Mr [GRO-A] responded to Sandra Falconer by email. On 3 December 2004, Sandra Falconer sent a response to his email [DHSC0038529_070]. On the issue of the documents supplied to Mr Chisholm which Sandra Falconer had raised on 26 November 2004, the “Haemophilia Centre Directors’ Hepatitis Working Party Report for the year ending 1980-1981” was provided to Mr [GRO-A]. Sandra Falconer indicated that this may be the paper that Mr [GRO-A] was referring to. Accordingly, this may have been the “secret report” which he referenced in his original request.
61. On 5 January 2005, Sandra Falconer emailed her responses to Mr [GRO-A] to Zubeda Seedat [DHSC0046961_054]. Sandra Falconer also faxed the Haemophilia Centre Directors’ Hepatitis Working Party Report for the year ending 1980-1981 to Zubeda Seedat [DHSC0200079].
62. On 21 February 2005, Zubeda Seedat sought clarification from Anita James, from the Solicitor’s Division, as to documents missing from the HIV litigation files

[WITN5292015]. Anita James responded the following day, explaining that an audit had been undertaken into papers missing in the Hepatitis C litigation. I had left the Blood Policy Team in or around December 2004 and did not see this email or the audit itself. Although I did have conversations with the Solicitor Division's during my time in the Blood Policy Team, I do not recall doing so on this issue.

Section 5: Specific Questions contained in the Inquiry's Request

63. 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.

Destruction of Department of Health papers (Inquiry's questions 3 and 4)

64. I have been asked what steps I took to establish how two sets of Department of Health papers had been destroyed, relating to self-sufficiency and to contaminated blood and blood products. In short, I did not personally investigate how Departmental papers had been destroyed in the past. That was for the simple reason that an explanation of the circumstances was available from my predecessor, upon which my team was able to draw.
65. In relation to Departmental papers concerning contaminated blood and blood products, I cannot recall any accusations in relation to these papers. The records I have seen from my time in the Blood Policy Team refer only to papers concerning self-sufficiency or Lord Owen's Ministerial/Private Office papers. Consequently, as I do not believe I was aware of papers relating to contaminated blood and blood products being missing, I would not have taken any steps to establish how they were destroyed.
66. In relation to Departmental papers concerning self-sufficiency, as explained in paragraph 14, I was aware of this issue in general terms when I took up my position in the Blood Policy Team. I believe this issue had become apparent during the preparation of the self-sufficiency report, although this was before my time in the Blood Policy Team. The reason why I did not take any steps to establish how they were destroyed is best answered in the context of the Inquiry's question 5.

Briefing note dated 15 December 2003 (Inquiry's questions 5 and 6)

67. As indicated at paragraph 36 above, the statement in the briefing note from December 2003 was lifted from an earlier response to a Parliamentary Question [DHSC0200024]. That response was written by Charles Lister. It is clear from the documents surrounding this briefing note that Zubeda Seedat played a part in the drafting of the briefing note. In any event, whether by myself or Zubeda Seedat, it was standard practice within the Civil Service to draw on earlier responses in this way. From my experience in the Civil Service, we were not expected to “reinvent the wheel” on any particular issue, given the inevitably heavy workload and pressures of time. By this I mean that we were not expected to investigate issues from scratch each time they were raised. If there was an existing response available on any particular issue, that answer or response could be drawn upon and re-used, provided that nothing had changed since the original response.
68. Therefore, when faced with Robert Finch’s request for a briefing note on missing papers from Lord Owen’s time in office and having been aware of the general issue upon taking up my position, the starting point would have been to go back through the Team’s files to see if an appropriate existing response was available. In this case, that was Charles Lister’s reply to the Parliamentary Question from June 2003.
69. Having found that response, consideration would have been given to whether anything had changed since the date of the original reply. Given that the briefing note is nearly identical, I assume that nothing had in fact changed.
70. I have mentioned that, on some matters, I sought advice from Charles Lister. Having now reviewed his response to the Parliamentary Question, I do not believe this was a matter where I would have sought his advice. Given the clarity of his original response, there would not have been any reason to contact him. It is perhaps also relevant that his original response cites an email from Anita James as the source for his knowledge on this issue. Since Charles Lister had given a source for this information, there would have been even less reason for me to question the information contained in his earlier response. I do not have a recollection of contacting him about this issue.

71. Accordingly, in answering the Inquiry's question 6, I do not believe I took any steps to 'investigate' or 'corroborate' the information contained in the briefing note, nor was there any apparent need to do so. Indeed, I would be surprised if I had made enquiries, given the clarity of the Charles Lister's explanation and the absence of any change in circumstance.
72. Finally, as explained at paragraph 62 above, I was not aware of the audit undertaken by Anita James, nor do I recall any conversations with the Solicitor Division within the Department about the destruction of documents.

Email to Gerard Hetherington and Ailsa Wight dated 1 September 2004 (Inquiry's question 7)

73. I have been asked about my explanation that Lord Owen's papers had been "*destroyed by mistake by lawyers following the HIV Litigation*". This was my understanding of the position regarding Departmental papers relating to self-sufficiency from Lord Owen's time in office. Those were the papers that I meant by "Lord Owen's papers".
74. I would have been aware during my time in the Blood Policy Team of the distinction between Private Office papers and Departmental papers.
75. In the case of the Private Office papers, my understanding was that these would have been recalled upon a change in government, to be archived or destroyed. I do not know precisely what would have happened to Private Office papers, although my understanding at the time was that Private Office papers were routinely destroyed. The basis of this was that the incoming government should not be able to view the briefings or submissions made to previous governments; this is designed to maintain the apolitical nature of the Civil Service.
76. In the case of Departmental papers, these would have been stored within the Department, with destruction dates allocated according to their classification. It was my understanding that these were the documents which were missing, presumed destroyed by lawyers following the HIV litigation.

77. Unlike the background briefing note from December 2003, the wording in this email does not appear to be lifted from a previous note prepared by Charles Lister. However, it is my recollection that this explanation was generally accepted within the Health Protection Division. I cannot recall where I personally learned of this explanation. I may have gained that understanding as part of a handover briefing, or because I saw it written down, for example in Charles Lister's response to the Parliamentary Question in June 2003.
78. Accordingly, in answering the Inquiry's question 7, I cannot provide any specific evidence or documentation on which I relied when giving the explanation in that email.

The Ten Year Rule (Inquiry's question 8)

79. I have been asked whether I was aware of the Department operating a "ten year rule" whereby documents were routinely destroyed after ten years. I have been specifically referred to paragraph 58 of Lord Owen's witness statement to the Inquiry in which he refers to "my Ministerial papers" and a handwritten explanation that those papers had been destroyed as "normal procedure after 10 years".
80. I do not recall any such policy or rule being in operation. I was aware that there were government-wide instructions as to which documents could be destroyed and when. The destruction dates within the instructions hinged on the classification of the records. I cannot recall the exact time periods for the classifications.
81. Generally, files were set for destruction in accordance with those instructions. I recall being involved in the legitimate destruction of documents in accordance with those instructions when I was a junior civil servant, but that is now over 30 years ago. I was not involved in the destruction of documents when I was in the Blood Policy Team.

Statement of Truth

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

GRO-C

Signed _____

Dated _____ 10.05.2022 _____

Exhibit Table for Richard Gutowski's First Witness Statement

Section of the statement	Witness Exhibits	Date	Description
Para 14	WITN5292002	Undated	Blood Policy Handover notes
Para 16	DHSC0041305_029	1 July 2002	Note of meeting on self-sufficiency in blood products
Para 17	DHSC0200024	5 June 2003	Email from Zubeda Seedat to Charles Lister re: PQ
Para 18	DHSC0020720_081	10 June 2003	Email from Charles Lister to Zubeda Seedat re: PQ
Para 21	DHSC0020829_204	18 June 2003	PQ from Lord Clement-Jones answered by Lord Warner on review into Lord Owen's missing files
Para 22	WITN5292003	9 July 2003	Email from Robert Finch to Vicki King and Richard Gutowski
Para 25	DHSC0004294_004 DHSC0004294_005	18 September 2003	Email from David Daley to Vicki King, Richard Gutowski et al attaching a BBC News article entitled 'Chisholm in hepatitis pledge'
Para 26	DHSC0004294_004 DHSC0004294_005	19 September 2003	Email from Richard Gutowski to Graham Bickler forwarding David Daley's email of the day before
Para 27	LDOW0000142	7 October 2003	Letter from Lord Owen to John Reid MP
Para 29	SCGV0000262_116	17 October 2003	Email from Bob Stock to Zubeda Seedat entitled Lord Morris request re: Lord Morris request
Para 30	WITN5292004	5 November 2003	Email from Jill Taylor to Robert Finch cc-ing Richard Gutowski and Zubeda Seedat entitled Lord Owen PO on destruction of papers – John Hutton's comments
Para 33	WITN5292005	2 December 2003	Email from Zubeda Seedat to Robert Finch
Para 34	WITN5292005	10 December 2003	Email from Robert Finch to Zubeda Seedat re: Lord Owen PO on destruction of papers – John Hutton's comments
Para 35	WITN5292006	12 December 2003	Email from Zubeda Seedat to Jill Taylor supplying updated draft response to Lord Owen and briefing note

Para 37	WITN5292006	12 December 2003	Email from Zubeda Seedat to Jill Taylor supplying updated draft response to Lord Owen and briefing note
Para 38	LDOW0000350	15 December 2003	Letter from Lord Owen to John Reid destruction of papers – John Hutton's comments
Para 39	LDOW0000350	15 December 2003	Letter from Lord Owen to John Reid destruction of papers – John Hutton's comments
Para 39	WITN5292007	20 January 2004	Email from Clarissa Hudson to Zubeda Seedat Re: Lord Owen Case
Para 40	WITN5292008	02 March 2004	Letter to Rt Hon Lord Owen from John Hutton
Para 40	WITN5292009	23 October 2003	Redraft Request – Unsatisfactory Reply
Para 41, Para 42	WITN5292010	08 March 2004	Email from Zubeda Seedat to Rebert Finch re: PO01037390 – Lord Owen – redraft requested
Para 42	WITN5292011	08 March 2004	Email from Robert Finch to Zubeda Seedat re: PO01037390 – Lord Owen – redraft requested
Para 43	WITN5292012	09 March 2004	Letter from Richard Gutowski to PS (PH) re: PO01037390 – The Rt Hon The Lord Owen CH
Para 44	WITN5292013	17 March 2004	Letter from Melanie Johnson to the Rt Hon The Lord Owen CH re: Hepatitis C payment scheme
Para 45	SCGV0000262_022	01 September 2004	Email from Stock RG (Bob) to Keel A, Falconer S, Macleod AK re: Latest from Sunday Herald – Lord Mrris implications
Para 46	SCGV0000262_022	01 September 2004	Email from Stock RG (Bob) to Keel A, Falconer S, Macleod AK re: Latest from Sunday Herald – Lord Mrris implications
Para 50	NTHT0000053	Undated	Report on Self-sufficiency in blood products in England and Wales a chronology from 1973 to 1991
Para 53	DHSC0038529_073	21 October 2004	Email from Sandra Falconer to Richard Gutowski, copied to Zubeda Seedat, on ministerial correspondence – GRO-A
Para 54, Para 55, Para 58	DHSC0038529_072	26 October 2004	Email from Bob Stock to Richard Gutowski about FOI and response
Paras 58/59	WITN5292014	26 November 2004	Email from Sandra Falconer to Richard Gutowski – ministerial correspondence – GRO-A attaching letter from Scottish Executive to Mr GRO-A dated 26 November 2004

Para 60	DHSC0038529_070	3 December 2004	Letter from Sandra Falconer Scottish Executive to Mr GRO-A
Para 61	DHSC0046961_054	5 January 2005	Email from Sandra Falconer to Zubeda Seedat re ministerial correspondence – Mr GRO-A
Para 61	DHSC0200079	5 January 2005	Fax from Scottish Executive to Zubeda Seedat - "Haemophilia Centre Directors' Hepatitis Working Party Report for the year ending 1980-1981"
Para 62	WITN5292015	21/22 February 2005	Emails to/from Anita James and Zubeda Seedat on FOI – HIV litigation papers
Para 67	DHSC0200024	5 June 2003	Email from Zubeda Seedat to Charles Lister re: PQ