

## FIRST WRITTEN STATEMENT OF ANITA MARY JAMES

Witness Name: Anita Mary James

Statement No.: WITN5426001

Exhibits:WITN5426002-

WITN542600343

Dated: 18 May 2022

### INFECTED BLOOD INQUIRY

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I, Anita Mary James, will say as follows: -

### Section 0: Opening remarks

- 0.1. My name is Anita Mary James. I am providing this statement in response to a request from the Inquiry dated 12 January 2021. I am a former Government Legal Service lawyer and worked in the Department of Health and Social Security (DHSS) and its subsequent incarnations.
- 0.2. The Inquiry has asked me about:
  - (1) My brief biographical details;
  - (2) A document I wrote to the Department's Permanent Secretary on 19 June 1995 [WITN4486017]
  - (3) My knowledge of destruction of Departmental documents relating to infected blood matters, with specific reference to a small number of documents.
- 0.3. It will hopefully assist if I give some wider chronological context to the issues raised by the Inquiry. Accordingly, I have referred to a number of further documents made available to me from searches in the electronic disclosure made to the Inquiry.
- 0.4. Although I have some limited recollection of some of the issues raised by the Inquiry, my recollections are obviously seriously affected by the very significant passage of time. I am heavily reliant on the written records. I have done my best to address both the issues raised by the Inquiry and documents made available to me. However, if further records are disclosed to me, I may need to amend and update this statement.

## **Section 1: Biographical Details**

- 1.1. To address the Inquiry's request for my brief biographical details, I was born in 1949 and my address and full date of birth are known to the Inquiry. I graduated in 1973 from the University of Keele with a BA(Hons) in Law and History. I was called to the Bar by the Honourable Society of Middle Temple in Trinity Term 1974. I was made a Bencher in 2005. I practised on the Midland Circuit and then the Northern Circuit between 1974 and 1981. For 12 years during my employment, I also served as a Justice of the Peace in Hammersmith & Fulham and Kensington & Chelsea and on the Bar Council.
- 1.2. In 1981 I joined the Government Legal Service and was assigned to the then Department of Health and the Department of Social Security (DHSS).
- 1.3. As the Inquiry is aware, the DHSS split in 1988 into the separate Departments of Health (DH) and Social Security (DSS). Those of us who had been DHSS lawyers were employed by the DSS, but continued to act for the Department of Health. Therefore, I continued working on DH legal matters until May 1996.
- 1.4. On 7 May 1996, I transferred to the Department of the Environment where I worked for three years.
- 1.5. In March 1999, I returned to DSS as Head of Civil Litigation for both Departments. My Office had responsibility for the conduct of all types of litigation against both departments.
- 1.6. I continued in that role until December 2005. In January 2006 I became Head of Employment Law.
- 1.7. I then retired from the Civil Service on 31 May 2007.



## **Section 2: Involvement as a DHSS Solicitor in Branch B4 (Late 1994 – 4 May 1996)**

- 2.1. By late 1994, I was working in Solicitor's Division B, in Branch B4 which had responsibility for all litigation relating to the Departments of Health and Social Security and for the Office of Population Censuses and Surveys. The head of the branch (a grade 5, assistant solicitor) was Mr Charles Blake. The most senior lawyer – the solicitor to both Departments (grade 2) – was Mr Peter Thompson.
- 2.2. In 1995, my branch was involved in threatened and then issued litigation in relation to those who had been infected with Hepatitis C. To give some context to this, I note that in a Ministerial Submission dated 22 December 1994, Mr Roger Scofield had given advice on what action should be taken by the Department to assist those who had been infected with Hepatitis C as a result of blood transfusion or the use of blood products for the treatment of haemophilia. The submission was to the Parliamentary Under Secretary of State, Mr Thomas Sackville [WITN5426002]. My grade 5, Mr Blake, was one of the long list of copy recipients. In the section addressing the legal position, Mr Scofield set out at paragraph 7 that:
- “...The Department's lawyers have not yet taken Counsel's advice on whether any case exists for negligence. Officials have taken the line throughout that everything has been done that could have been and that they acted on the advice of the Advisory Committee for Virological Safety of Blood (ACVSB - the predecessor of the MSBT) which was set up specifically in order to provide Ministers with advice on blood safety. It is planned to assemble the key documents and to seek Counsel's opinion in the New Year. Meanwhile action is in hand to ensure that any writs taken out against any component part of the transfusion service are co-ordinated by the NBA centrally...”*
- 2.3. On 7 February 1995, Mr Scofield sent a minute to Mr Kelly, Dr Rejman and Mr Burrage discussing a meeting Dr Metters had with the Health Ministers Mr Sackville and Baroness Cumberlege (Parliamentary Under Secretary of State for Health in the House of Lords) [WITN5426003] regarding liability for negligence for those injured by Hepatitis C. Under the heading of *“Hepatitis C – Claims for Negligence”* Mr Scofield noted:

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*"I understand from Dr Metters that he met with PS(H) and PS(L) this morning to discuss the position on claims for a payment scheme for those injured by Hep C. Everyone is agin [against] it; but they all feel a bit vulnerable.*

*The matter will be raised again at tomorrow's TOTO meeting.*

*Jeremy Metters has asked that we turn up the ACVSB papers to see if at any time an estimate was made of the numbers of people who might have been saved from infection.*

*He had also been speaking to Dr Robinson over the week end and she had said that there was a calculation which suggested that the total might have been as low as 10. Could Tom follow this up please.*

*Dr Metters would like some answers by COP today.*

*Roger"*

- 2.4. Following on from this, on 10 February 1995 Mr Scofield minuted Mr Blake [WITN5426004]. He explained that:

*"This paper seeks to set in motion a process of discovery of relevant papers and records in order to ascertain whether the Department, the National Blood Authority (NBA) or any other party has acted negligently as regards the safety of the blood supply and in caring for the interests of patients who may have been inadvertently infected with Hepatitis C virus through blood or blood products. It seeks advice on the general vulnerability of the parties concerned to such claims and specific advice on a number of issues arising from the Hepatitis C lookback exercise"*

- 2.5. Mr Scofield's paper referred to the lookback exercise and the BBC Panorama programme on Hepatitis C which had aired on 16 January 1995, and the response to that programme. Mr Scofield noted that some writs had already been served on some individual Regional Transfusion centres. At §§ 21 and 22 [WITN5426005], Mr Scofield addressed the discovery of papers, noting that he had asked Tom Kelly in Corporate Affairs - Operational Policy Unit (CA-OPU) and Dr Rejman to draw up a sequence of events and to assemble papers, including the records of the ACVSB and MSBT.

- 2.6. On 7 March 1995, Dr Rejman sent a minute to Mr Blake [WITN5426006], enclosing a letter [WITN5426007] from Dr Colvin (the then Chairman of the United Kingdom Haemophilia Centre Directors Organisation). Dr Colvin had sought Dr Rejman's advice on a request for disclosure of minutes of the organisation he chaired, and Dr Rejman was passing this on for legal advice

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from Mr Blake. It is apparent Mr Blake had asked me to deal with this matter and I replied to Dr Rejman on 6 April [WITN5426008]. I set out that I understood from Dr Rejman's minute that he did not want to have the papers disclosed: I advised that confidentiality was the strongest argument and that this would likely have to be fought out in court. I noted that the Royal Hospitals NHS Trust's lawyers were of the same view.

2.7. I can see from two further minutes (one on 9 March 1995 from Mr Scofield to Mr Burrage, Mr Kelly, Dr Rejman and Ms Pamela Goodrich [WITN5426009] and the second the following day on 10 March 1995 from Mr Burrage to Mr Scofield [WITN5426010] that a meeting was arranged between me, Mr Scofield and Dr Rejman on 13 March 1995, to go over matters relating to the look back exercise.

2.8. On 31 March 1995, I minuted Dr Rejman on Mr Blake's behalf [WITN5426011], seeking a chronology of events in order to assess the Department of Health's potential liability. I said that:

*"... we are in some difficulty about that because the papers we have do not assist us in that regard. What we think we need is a chronology of events (or a medical history if you pardon me misusing the expression). I seem to recall you did something similar in relation to HIV. Unless we have that we will not be a position to assist. Any such history should be backed up with supporting evidence where possible."*

2.9. Dr Rejman replied the same day [WITN5426012]. He provided copies of summary papers he had prepared just before Christmas as sent to Mr Scofield. His minute explained that while he would be happy to prepare the comprehensive analysis I had requested, this would require a significant expenditure of time (potentially reduced by administrative support from Mr Burrage). Dr Rejman indicated that to proceed, agreement would be required with his parent division and with others with whom he had Service Level Agreements.

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2.10. To assist me with the background on Hepatitis C and transmission by blood and blood products, Dr Rejman provided me with two notes he had written and sent to Mr Scofield on 23 November 1994 [WITN5426013]. They had been copied at the time to Dr Metters, Mr Kelly and Mr Burrage.

2.11. On 12 April 1995, Mr. Scofield minuted Dr Rejman [WITN5426014] copying in Mr Blake, me, Mr Kelly and Mr Burrage. The minute thanked Dr Rejman for re-sending a paper he had prepared on 22 December, recorded that Mr Scofield and Dr Rejman had spoken and had agreed that there was a need to agree between SolB4, CA-OPU and Dr Rejman "...the "rules" for "discovering" relevant papers". Mr. Scofield went on to say that:

*"It seems to me that, as in many other areas, the law of diminishing returns applies; it is more important to spend a few days pulling out the most important papers, than to embark upon a task which may last many weeks and only add limited additional material. There is clearly a real urgency for us to come up with some advice on the strength of our overall position. Secretary of State [Virginia Bottomley] has read my submission over the weekend and commented that we must be sure to keep No 10 and the PM involved as this matter develops. No doubt she is feeling particularly sensitive at the moment after the reaction to the London closures and wants to make sure that anything she does, or the Department does, has the PM's and Cabinet's backing. This may make the agreement of the right way forward even more difficult than before." (§4)*

2.12. At §5-12 Mr Scofield addressed the potential actions against the Department in negligence in relation to those infected with HCV, both from blood products and blood transfusions. At §10, he stated:

*"10. As I understand it, our worry is as much about what might come out in the course of a court action as the actual verdict and I suggest therefore that any examination of documents should be addressed as much to their presentational significance as to the case for negligence itself. There is no doubt in my mind that there are a number of documents which would show that the process of deciding whether or not to test took account of cost and the impact on the blood supply and stocks etc. There are also the ethical problems over what you tell those who are found to be positive. But looking at all of this from the point of view of the recipient who is now in end stage liver failure, or perhaps the father of a child who was infected in this way, one can see that these explanations and defenses would seem pretty irrelevant, compared to the fact that tests could have been carried out and were not."*

2.13. On the subject of testing roll-out in other countries, Mr Scofield noted:

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*"11. Another whole area of vulnerability is the action by other countries in introducing Hep C tests. Whilst it would be understandable that one or two countries might jump the gun and go ahead before the tests were really of any great value, we are actually asked to believe that pretty well every major blood transfusion service in the world, apart from the UK, decided to go ahead with such useless tests a year or more earlier than we did. On the face of it, this sounds as if either they were all a bunch of clowns or we must have had particularly good reasons for hanging back.*

*12. Again, we know how long it takes to carry these things through Committees and to undertake additional tests and to ensure that every RTC is at the same stage as the others, so that the procedure can be introduced on a UK-wide basis - but when we put all these things together, the story sounds as if there was an inordinate administrative or bureaucratic delay."*

Mr Scofield explained that he was:

*"...drawing out these uncomfortable areas because, if any one of them can be used to establish a case to be answered, then we may be dragged all the way to the court" (§13)*

- 2.14. Mr. Scofield identified that it was a priority to look for the papers for, and records of, meetings of the ACVSB (including any special sub-committees) and any official groups within the blood service would seem to be the priority, Further that:

*"We should be looking for papers which either relate to possible claims for negligence (judged from the perspective of the recipient and not from our own) and also for papers which, if exposed in public, might be used to ridicule the way in which the service is managed or decisions on safety are taken."* (§14)

- 2.15. Mr Scofield concluded that he had discussed with Dr Rejman the need to review the workings of the ACVSB and MSBT and their previous decisions and that he would welcome further discussion relating to the discovery exercise with Mr Blake and me. He pressed that the impossibility of doing a perfect three-month exercise should not keep us from the necessity of the sort of two-day investigation which might be sufficient for the present.

- 2.16. The following day, 13 April 1995, Dr Rejman sent two replies to Mr Scofield's minute.

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- 2.17. Dr Rejman's first (shorter) reply with wider distribution was copied to Dr Bourdillon, Mr Podger, Mr Blake, Ms Fletcher-Cole, me, and Mr Burrage [WITN5426015]. Dr Rejman agreed with the desirability of agreeing the 'rules' for discovery of the relevant papers. However, he doubted that the work required could be done within two days and suggested a meeting of the interested parties to discuss and suggested that an instruction from the 'Top of the Office' would be helpful as to how much of the work was still necessary.
- 2.18. Dr Rejman's second (longer) reply to Mr. Scofield was copied to Mr Blake, me, Mr Kelly and Mr Burrage [WITN5426016]. Dr Rejman commented on his view on the legal vulnerability of the Department regarding the period between Autumn 1989 and September 1991. He said:

*"2. I believe a fundamental difference exists between legal vulnerability for the period autumn 1989 to September 1991, the so called "window period" where some very poor tests were available, and the ACVSB advised that HCV screening should not be introduced in the UK. I will not rehearse all the various arguments, but suffice to say that donor interests, availability of blood, public perception etc are all relevant in the UK, and we are aware that in other countries these may well have been disregarded for political reasons.*

*3. The situation with the haemophiliacs is entirely different since there was no hepatitis C test available prior to late 1985, when all the blood products both for haemophilia A and haemophilia B were being heat-treated. The arguments about hepatitis in respect of haemophilia were presented in the HIV haemophilia litigation. The impression I have obtained, though I stress I am not a lawyer, is that legal aid might be extremely difficult to obtain if the plaintiffs had to show the Legal Aid Board the expert witness reports in respect of hepatitis that were submitted for the HIV haemophilia litigation..."*

He stated that the paper he had prepared on 22 December (as mentioned at §2.11, above) had taken a full day of going through ACVSB files concentrating primarily on minutes of meetings with the most important papers as background to them. He expressed reluctance to engage in further analysis which would take longer than the two days suggested by Mr Scofield and would be loath to do so without formal instruction from Dr Metters.

- 2.19. On 26 April 1995, Dr Metters minuted Dr Rejman [WITN5426017]. Dr Metters gave Dr Rejman the formal instruction which he had requested. He stressed

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that the discovery work was urgent and that it should be treated by Dr Rejman as his top priority for the immediate future.

2.20. On 19 May 1995, Dr Rejman minuted me copying in Dr Metters, Mr Scofield and Mr Blake [WITN5426018]. He updated me on his progress, namely that in this first phase of discovery (1989-1991) he had listed 600 documents. He told me that having completed looking through his own files, he was now looking at files held by Mr Burrage and hoped to complete that part of the exercise by the end of the following week (or early the week after).

2.21. On 7 June 1995, Dr Rejman minuted me enclosing a list of documents from 1989-1991 [DHSC0200022\_002] [WITN5426019]. The minute (but not the list) was also copied to Dr Metters, Mr Blake and Mr Scofield. The minute said as follows:

### *"HCV LITIGATION - DISCOVERY*

*1. I am sending you by hand the list of documents I have discovered in relation to the period 1989-1991. I have gone through all my files, and have gone through the files made available to me by Mr Burrage, GEB vols 1-14. Unfortunately vol 4 for part of 1989 has apparently been destroyed. Mr Burrage has asked for the individuals responsible to write to him formally confirming this.*

*2. I have not gone through files held by the Medical Devices Agency (previously PD) although some papers to and from them are included in my listing. I have also not gone to other parts of the Department such as those with primary responsibility for hepatitis C (HP) or MCA.*

*3. I would be grateful for your advice on how to proceed further, please see my earlier minute of 19 May.*

*4. In the meantime I shall try to prepare some papers in respect of hepatitis C and haemophilia." [emphasis added]*

2.22. As regards the destruction of documents, the Inquiry has asked me when and how I first became aware that Department of Health documents relevant to contaminated blood had been destroyed. From the documents available, this would appear to be when I was first put on notice about the destruction of a volume of these papers.

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2.23. Also on 7 June 1995, there was a Ministerial meeting to discuss Hepatitis C, attended by the Minister of State, Gerald Malone. A summary of the meeting was circulated by Mr Malone's Assistant Private Secretary [DHSC0003552\_155]. I was not present at the meeting, but Mr Blake and Mr Thompson probably were, and they were certainly included in the circulation list of the summary of the meeting.

2.24. From reading the minute of the meeting with the Minister, I can see that it was concluded that the Department's weakest position was assessed to be in relation to those infected between 1990 and 1991. This was because:

*"... At that time a test for the virus was in existence and was being used in a number of countries, notably Belgium. However, the expert committee advising ministers on these matters did not consider that the test was sufficiently reliable to justify using it to test blood donations. At the time some experts were urging the introduction of testing. Testing was eventually introduced in April 1991 in response to the introduction of a second, more reliable, version of the test. There was some concern that blood and blood products could be judged to come within the jurisdiction of the Consumer Protection Act 1988, under which the onus of proof that these products were safe would lie with the Department, potentially making the case more difficult to defend." (§3)*

2.25. The minute went on to assess that the Department's case for defending allegations stemming from the early 1980s was very strong as there had been no test for the virus at that time. It drew a comparison with the question of whether to settle litigation from those suffering from CJD as a result of treatment with Human Growth Hormone. The minute noted that the conclusion of the meeting had been that:

*"... there was a need for ministers to obtain a robust view of the Department's ability to defend any litigation. More work needed to be done on this. However, all those present were agreed that it would be desirable to maintain the status quo and not to extend the principle of no-fault compensation either to those infected with Hepatitis C or CJD. The precedent of payments to those infected with HIV/AIDS through blood and blood products was not helpful in this context but it was agreed that a justifiable distinction could be drawn between HIV/AIDS and other viruses." (§6)*



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- 2.26. On 19 June 1995, I minuted Mr Andrew Hollebon (Mr Sackville's Private Secretary) to provide the Minister with an update following the 7 June meeting [WITN4486017] [WITN5426020]. I explained that:

*"Following the meeting with M(H) on 7 June, the Solicitor asked me to take the matter forward. This involves looking at the years 1989, 1990 and 1991 separately and instructing counsel to advise us. I have not yet done anything in relation to that. However, Dr Rejman has sent me a list of documents covering the three years. They run into some 14 volumes. I need to look at those. I have some papers which take the form of submissions to ministers but what I need is a medical history of the matter which together with my own legal research I can put before counsel. There is therefore no "latest legal advice" although I hope to put the matter to counsel before the second week in July."*

- 2.27. The Inquiry has asked me for further information about my references in this minute to a "list of documents covering the three years" and "14 volumes". Save in very general terms, I have little recollection of these events of 1995. I believe that the 14 volumes noted in my minute would have referred to 14 files. I assume therefore that there were 14 files to be consulted but, I regret, I cannot recall if 14 files were ever provided to me. The minute from Dr Rejman of 23 June 1995 (see §2.31 below) suggests that only extracts, and not the full 14 files, were sent to me at that stage.
- 2.28. As noted, above, my minute noted that I had *"some papers which take the form of submissions to ministers ..."*. The Inquiry asks where the papers had been obtained from and where they were stored, by whom and when. I do not now remember where the papers came from, my assumption is that, as they were at hand, they were in the Solicitor's Office.
- 2.29. Any files that were provided should have been put on registered files and stored in the office. Once those files ceased to be active, they would have been given a date for review or destruction and sent to the remote storage facility at Heywood Stores, via our post room. In Section 6 of the statement I will come back to some points about document management (see §6.39 below).

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2.30. On the same day, 19 June 1995, I was minuted by the Solicitor, Mr Thompson [WITN5426021]. He asked me to do two things:

*"... (1) seek Counsel's advice on whether natural blood, and its transfusion, comes within the definition of "product" within s1(2) of the Consumer Protection Act 1987 and*

*(2) take a proof of evidence from Dr Metters who chaired the relevant advisory group of experts at the material times..."*

2.31. On 23 June 1995, Dr Rejman minuted me, copying Dr Metters, Mr Blake and Mr Pudlo to confirm that he was sending over some papers [WITN5426022]. The text of his minute was as follows:

*"HCV DISCOVERY - HAEMOPHILIA*

*1. As promised I am sending papers relating to the above, by hand. These all relate to HCV and haemophilia and although they do not have any direct bearing on blood transfusion between 1989 and 1991 it is worth noting that they were available to DH at the relevant time.*

*2. The papers are from the HIV Haemophilia litigation. As agreed, I do not intend to go through the full discovery list which we prepared at that time but have restricted myself to papers surrounding that litigation. I list below the papers I am sending you. If any copy recipients wish to see any particular papers will they contact me.*

*Relevant extracts - Main Statement of Claim*

*Counsel's Advice on Liability*

*Relevant extracts - Draft Defence of First Central Defendants*

*Expert witness reports (for DH and some for HAs):*

*Dr Gunson (extracts pp 26-38)*

*Dr Rizza (extracts pp 50-68, 133-147, 151-156)*

*Dr Holland (extracts pp 20-21, 29-32, 43-51)*

*Dr Ludlam (extracts pp 9-10)*

*Prof Mannucci (extracts pp 1-8)*

*Dr Mayne (extracts pp 13-19, 25-30, 39)*

*Dr Perry*

*Dr Tyrrell*

*Dr Williams (2 letters)*

*Prof Bloom (extracts pp 39-41, 43-77, 190-193, 197-199, 212-213)*

*3. I shall wait for further instructions in respect of both the HCV and haemophilia discovery and the HCV and blood transfusion discovery."*

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2.32. As I have noted above, it looks as if at this stage, only these select documents were provided to me and not the entirety of the files mentioned in Dr Rejman's minute and list of 7 June 1995.

2.33. On 27 June 1995, Mr Pudlo minuted Dr Rejman, Dr Nicholas and me, copying Dr Metters [WITN5426023]. Mr Pudlo attached a seven page summary in response to requests for information made by the Secretary of State (Mrs Bottomley) at a meeting the week before [WITN5426024]. He sought feedback from the recipients on the content of the summary and noted [ WITN5426023]:

*"In particular SofS wanted:-*

- all the arguments for distinguishing HCV from HIV*
- the international position including territorials*
- a fallback position if we had to concede*
- further legal advice on vulnerability" (§2)*

2.34. I made some manuscript annotations on the document with minor suggested changes including noting that we have not yet sought Counsel's advice . I then noted at the end of the document themes for what appears to be my proposed instruction to Counsel to advise in writing [WITN5426025].

2.35. On 28 June 1995, Dr Nicholas replied to Mr Pudlo's minute of 27 June [WITN5426026]. Dr Nicholas commented on the suggested summary (in particular upon the comparison between those suffering with HCV and HIV). He also noted that any move to compensate those infected with HCV would make it difficult to resist calls for those infected with other viruses in the future, including as yet unknown blood borne viruses.

2.36. On 29 June 1995, Dr Metters replied to Mr Pudlo [WITN5426027]. This appears to have been in follow up to a telephone call. Dr Metters made what he described as "...*One immediate comment...*" on the proposed summary paper:

*"Two sections refer to DH action to introduce routine testing of blood for HCV and DH action for HCV infected patients. For both of these sections it is*

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*important to emphasise that uniform action was taken across the UK with all four Health Departments involved. ACVSB and more recently MSBT have advised all HDs. The look-back was also designed with the support of Ministers in the Territorial Departments. They were signed up in advance of the January announcement."*

- 2.37. On 3 July 1995, Mr Pudlo minuted the Secretary of State's Private Office, copying in a long list of officials (including me) [WITN5426028]. He attached a final version of the summary detailed in the minutes noted above [WITN5426029], with the title, "*Compensation for patients infected with Hepatitis C through blood and blood products*". A copy of the 3 July 1995 minute bears a manuscript note from Ms Ann Towner stating:

*"PO rang 5/7. SoS has seen & noted. No further action needed at present Ann Tow"* [WITN5426030]

- 2.38. Mr Sackville's Private Secretary minuted Mrs Bottomley's Private Office on 5 July 1995 to confirm that the Minister had seen and noted Mr Pudlo's summary [WITN5426031].

- 2.39. On 6 July 1995, I instructed Mr Nigel Fleming QC and Mr Steven Kovats of 39 Essex Street Chambers to advise on whether the Consumer Protection Act 1987 applied to human blood taken from donors and given in transfusions [WITN5426032] [WITN5426033]. Their opinion was provided on 12 July 1995 [WITN5426034]. They favoured (with some caution) the view that Blood was a 'product' within the meaning of the Act.

- 2.40. On 19 July 1995 (in my absence on annual leave) a colleague forwarded Counsel's opinion to Dr Rejman [WITN5426035]. The covering minute noted that Counsel's conclusions were contrary to Dr Rejman's own and sought his observations.

- 2.41. Dr Rejman responded on 3 August 1995 [WITN5426036]. In broad terms, Dr Rejman disagreed with Counsel's view, made a case for differentiation between

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whole blood and fractionated blood products and suggested that they may not have had all of the information they needed in order to come up with their opinion. I believe I can recognise the manuscript annotations on this document as belonging to Mrs Angela Main Thompson (to whom the minute was addressed).

2.42. Upon my return from annual leave on 3 August 1995, I minuted Mr. Thompson, Dr Metters, Mr Nilsson, Mr. Blake, Mr. Scofield, Dr Rejman and Mr Pudlo forwarding Counsel's opinion [WITN5426037]. On 22 August 1995, Dr Metters had annotated my minute asking Dr Rejman and Mr Pudlo the question: "*Where do we go from here?*"

2.43. On 22 August 1995, Dr Rejman responded to this same group, enclosing a copy of his minute of 3 August 1995 [WITN5426038]. Dr Rejman stated that he had:

*"... serious reservations about some of the contents of Counsel's opinion, which I think primarily relate to lack of full understanding of the differences between blood and fractionated blood products"*

2.44. On 21 August 1995, Mr Leonard Levy minuted Ms Ann Towner and me [WITN5426039]. The minute sought legal advice on a Private Office case regarding payments made by the Macfarlane Trust and a distinction between the terms under which specific payments were made. In the minute at §3, he said:

*"Unfortunately, our policy files giving the reason for the distinction appear to have been destroyed. I would therefore be grateful for any light you could shed on the reason that the £2000 payment was not made available to non-litigants. Also, could you advise me if we can help with legal costs in action began but later abandoned?"*

2.45. On 24 August 1995, Ms Towner responded to Mr Levy [WITN5426040]. Her response included the comment:

*"And are you sure that earlier files in that series have been destroyed? To my reading the dockets only indicate that they have been sent to DRO for*

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*destruction after 25 years, which would not of course be yet. Perhaps you would let me know if they have in fact already been destroyed. We may need to think of reconstructing papers eg from what Dr Rejman and other hold."*

- 2.46. On 24 August 1995, Dr Rejman replied to Dr Metters' query of 22 August (see §2.42 above) [WITN5426041]. Dr Rejman suggested waiting for my Division's response to his comments on Counsel's opinion. He said it was a pity that they had not been involved in drawing up the instructions to Counsel. On the same date, Dr Metters annotated the same minute, and said:

*"... Thank you – I agree it was a mistake that we were not asked about the instructions to Counsel..."*

- 2.47. On 25 August 1995, I minuted Mr Pudlo [WITN5426042]. I confirmed that the Department had been served a writ as the second defendant in a case involving a haemophiliac and that I had filed an acknowledgment of service. I commented that it appeared to me that the solicitors (J Keith Park) had described the writ as a protective one and that I was not convinced that they knew what their case was. I confirmed that I would write to the solicitors acting for the health authority.

- 2.48. On 31 August 1995, Ms Ann Towner minuted the Secretary of State (by then Mr Stephen Dorrell) [WITN5426043] with copies to Mr Sackville, Dr Metters, Mr Luxton, Dr Rejman, Mr Pudlo, me and Mr Levy. The minute notified the Secretary of State of the case against the North Staffordshire Health Authority in which the Secretary of State was the second defendant and gave a brief analysis of the prospects of the claim. On the topic of testing, Ms Towner said:

*"Screening of blood donations for Hepatitis C was introduced in September 1991 when the Advisory Committee on the Virological Safety of Blood advised that satisfactory kits and confirmatory tests had become available. Although the first tests became available in 1989, expert advice was that they should not be introduced at that stage because of a number of deficiencies." (§5)*

- 2.49. On 1 September 1995, Baroness Cumberlege wrote to Mr Douglas Hoyle MP [DHSC0006504\_096]. She set out the settlement terms for those involved in the HIV litigation and explained that a specific category of payment (that of

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£2,000 in recognition of the stress related to litigation available to families of those not infected with HIV but involved in the litigation), was not extended to non-litigants.

2.50. On 4 September 1995, I minuted Mr Thompson, Dr Metters, Mr Nilson, Mr Blake, Mr Luxton, Dr Rejman and Mr Pudlo [WITN5426044]. I explained that I had arranged a conference with Counsel at 39 Essex Street with Dr Rejman, for Monday 25 September 1995 to discuss Counsel's advice (see §2.39 above and §2.41 above). I invited participation from anyone minded to attend.

2.51. On 12 September 1995, Dr Metters replied to me [WITN5426045]. He expressed regret that he was unable to join the conference but hoped that Dr Rejman would be available, as Dr Metters felt that one or other of them should be there.

2.52. I wrote to Mr Fleming QC and Mr Kovats on 20 September 1995 [WITN5426046]. I enclosed Dr Rejman's comments on their advice ahead of the conference on 25 September 1995 and confirmed that Dr Rejman and Mr Pudlo would be attending with me. In respect of Dr Rejman's involvement, I commented:

*"I attach his comments and the enclosures he sent me. I am sure Dr Rejman will not mind me saying that while we defer to him on scientific matters, his forays into the law are not always welcome! In the circumstances, I thought it best if we brought him to see you and I have arranged a conference for 4:30 on 25 September."*

2.53. On 26 September 1995, I sent a note of the conference with Counsel to Dr Rejman (copying in Dr Metters, Mr Pudlo and Miss Phelan) [WITN5426047].

2.54. Dr Rejman responded on 28 September 1995 [WITN5426048]. Dr Rejman raised one matter in relation to my summary of the conference. He noted that,

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whilst he had chosen not to pursue the matter with Counsel in conference, he did not agree with Counsel in relation to Counsel's interpretation of the EC Directive on Product Liability, Article 7 para (d). In this regard, Dr Rejman referred back to §11 of his minute of 3 August 1995: see §2.41, above. Dr Rejman suggested that no further action from Counsel needed to be taken for the time being. I note Dr Rejman's penultimate paragraph [Page 3 WITN5426048]:

*"From the above, you will see that my understanding is that the only relevance of the consideration of product liability is in respect of recipients of blood and not haemophiliacs for the period between end 1989 when test kits for HCV became available and September 1991 when the UK introduced testing. In this respect the Product Liability Directive, para 7 (e) would be relevant. The NBA and others would presumably use the ACVSB and other scientific papers as evidence of the lack of scientific performance of the kits."*

2.55. On 15 January 1996, Ms Towner minuted Dr Rejman, Mr Pudlo and me [WITN5426049]. She sought comment / guidance on a reply she was composing to solicitors acting on behalf of a Health Authority. The authority had sought copies of any independent advice the Department had obtained, and Ms Towner was concerned about sending the whole of the July 1995 opinion to them and suggested only sending the conclusions (mentioning again the disagreement expressed by Dr Rejman with Counsel's conclusions).

2.56. Dr Rejman responded to Ms Towner on 17 January 1996 (copying the same recipients) [WITN5426050]. He gave his view that he did not think that including any extract from Counsel's opinion was appropriate or helpful and concluded by inviting my input on the third paragraph of the proposed and amended draft letter [WITN5426051]:

*"3. Counsel's opinion was requested related to whether the Department might be vulnerable in respect of a delay in introduction of hepatitis C screening between 1989-1991. I think everyone is agreed that fractionated blood products are a product for the purposes of the Consumer Protection Act. However, the haemophiliacs were infected before 1985, and the Consumer Protection Act became law in 1987 and so is not relevant."*



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*4. I think it must also be understood that Counsel's opinion was given on the basis of briefing which did not include any medical or scientific contribution. This became clear during our discussion with Counsel following that opinion, and so there must be some doubt as to the value of Counsel's opinion, not being aware of all the facts.*

*5. However, I think it would be worthwhile stressing the fact that in the HIV haemophilia litigation hepatitis was considered, and also that in the present campaign, neither MPs nor the Haemophilia Society are claiming negligence. The fact that Graham Ross is trying to suggest that there may have been some negligence, mainly of a twisted version of events, does not change this situation..."*

- 2.57. On 26 January 1996, I wrote to Dr Metters, Dr Rejman and Mr Pudlo to let them know that a statement of claim had now been received in the case of Stephen Selby v Department of Health [WITN5426052]. I noted that the case was to proceed only against the Department of Health and that the Claimant's solicitors:

*"...appear to be saying that we did not run the Blood Transfusion Service properly, and during the 1970s failed to restrict the size of donor pools and introduce the use of heat treatment. Looking at the claim superficially, without benefit of advice it seems to me from the brief information I have that we can see them off in relation to the 1970s and in relation to the other claims against us. What they have not focused on is that window of time between 1989 and 1991 which we considered we were vulnerable on but they will see those papers on discovery and no doubt amend their claim accordingly. We now have to urgently consider the matter with Ministers and get some instructions to Counsel. Please give this your urgent attention."*

- 2.58. On 29 January 1996, J. Keith Park & Co solicitors wrote to me to notify me that in relation to the claim mentioned at §2.47 above, their client was no longer pursuing a claim against the Department of Health [WITN5426053]. They asked if I would agree to the matter being discontinued with 'no order for costs'. I replied on 31 January 1996 and confirmed that this approach was acceptable to the Department [WITN5426054].
- 2.59. On 31 January 1996, Dr Metters minuted Dr Rejman and Mr Pudlo, responding to my minute of 26 January 1996 on the case of Stephen Selby v Department of Health [WITN5426055].

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2.60. The next day, 1 February 1996, Dr Rejman responded to the same minute [WITN5426056]. He set out the cross over between the statement of claim in the Stephen Selby re-amended statement of claim in the HIV and haemophilia litigation. He sought guidance from Dr Metters on how much further time he should devote to the case. On the subject of the file on the HIV haemophilia litigation, he said:

*"... You should have a copy of this in your files, if not I can ask my secretary to copy you the relevant papers..." (§3)*

2.61. On 5 February 1996, Mr Guinness minuted Mr Dyson (PS(Perm Sec)) copied to me and others [WITN5426057]. He provided a draft submission to PS(H) (by now Mr John Horam) on the topic of a potential compensation scheme for haemophiliacs living with Hepatitis C. This was for Sir Graham Hart (the Permanent Secretary) to review [WITN5426058].

2.62. On 6 February 1996, Mr Guinness followed up his minute of the previous day with an email to Mr Dyson [WITN5426059] (copied again to me and others) providing an additional document from colleagues in Finance, which appears to have been a version of the table at [WITN5426060].

2.63. On the same day, Mr Dyson replied to Mr Guinness (with the same list of copied recipients) [WITN5426061]. He confirmed that Sir Graham Hart had seen the draft submission and had only a couple of points to raise on it which were noted in the minute.

2.64. Mr Dobson minuted Mr Dyson the same day [WITN5426062] (6 February 1996) attaching the table [WITN5426060] which he explained was designed to be a pilot of a semi-standardised way to present key points and appraise options in submissions to Ministers.

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2.65. I minuted Ms Towner on 7 February 1996 [WITN5426063], referring back to her minute of 15 January 1996 and Dr Rejman's of 17 January 1996 (see §0 and §2.56, above). I gave my view that it would be wrong to provide any part of Counsel's advice to those outside the organisation.

2.66. On 8 February 1996, Dr Metters replied to Dr Rejman's minute of 1 February [WITN5426064]. He noted that he was reassured by the cross over between the current case (Stephen Selby v Department of Health) and the HIV haemophilia litigation. In respect of the use of Dr Rejman's time, he said that he would need to see what my Division's answer was first.

2.67. On 9 February 1996, Mr Guinness sent the final version of the Ministerial Submission to Mrs Weatherseed, the Private Secretary to John Horam [WITN5426065]. The conclusions of the submission were as follows:

- *"A scheme, which would be contrary to general Government policy on no-fault compensation, could not be confined to haemophiliacs.*
- *The options considered here for compensation for infection with hepatitis C would cost in the order of £72 million to £360 million, with regular payments costing perhaps an additional £280 million over the years (though not all this latter cost would come from the public purse).*
- *Early indications are that only the most expensive scheme would be acceptable to the Haemophilia Society, but we shall know more when their own proposals are received.*
- *A scheme based on infection alone would be heavily front loaded.*
- *There would be incalculable repercussions for the future. The newly discovered hepatitis C virus alone could multiply the cost of compensating people infected through blood transfusion by 10 (giving a range of £400 million to £2,000 million for the lump sum options).*
- *The costs of this and future schemes would reduce the amount of money available for patient care."*

2.68. On 20 February 1996, I minuted Mr Levy with a draft letter to Mr Ross of Ross Park Partnership Solicitors [WITN5426066]. In the letter, I explained:

- that the Department had no plans for a compensation scheme;

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- that now that the Department and Mr Ross' client are in litigation I was unable to comment further; and that
- I did not see any useful purpose in his requested meeting with the Secretary of State.

2.69. On 23 February 1996, Mr Levy wrote to me [WITN5426067]. He asked for help with a draft letter to Mr Jim Cousins MP regarding his constituent Ms C A Grayson and noted that he had already sought advice from Dr Rejman. I responded on 7 March 1996 by way of manuscript annotation, confirming that I was content with his draft and apologising for the delay in replying [page 1 WITN5426067]. As I shall return to in the conclusions section of this statement, there was a great deal of pressure on me and my section at this time, which accounts for why responses were taking longer than would have been desirable.

2.70. On 28 February 1996, Mrs Weatherseed (PS/PS(H)) minuted Mr Guinness in response to his Submission of 9 February (see §2.67 above) [WITN5426068]. Her minute summarised Mr Horam's response to the submission. She noted that the Minister wanted to carefully consider the options and wanted to hear from the Haemophilia Society before he started to form any firm views. He sought further information from Mr Guinness on the projected costs of a compensation scheme proposed by Mr John Marshall MP which would involve payments only to those who develop cirrhosis.

2.71. On 29 February 1996, Mr Dyson minuted Mrs Weatherseed to note that the Permanent Secretary (Sir Graham Hart) had seen her minute the day before and would be interested to see Mr Guinness's reply [WITN5426069]. He noted that Sir Graham has urged "...*extreme caution*..." in dealing with Mr Marshall's proposal on compensation on the basis that payment to some was likely to increase pressure to extend it to more. He said:

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*"...this is a very slippery slope. Our present stance is uncomfortable, but any movement from it, however slight, is likely to start something we won't be able to stop..."*

- 2.72. On 5 March 1996, Mrs Weatherseed replied to Mr Dyson confirming that Mr Horam has seen the Permanent Secretary's comments, had noted them and would bear them in mind [WITN5426070].
- 2.73. On 11 March 1996, Dr Rejman minuted Mr Guinness copying me in [WITN5426071]. He made some suggested amendments to a proposed submission on compensation for those who have developed cirrhosis and invited me to contribute a form of words to explain the difference with the HIV blood transfusion compensation scheme.
- 2.74. On 18 March 1996, I minuted Ms Ruth McEwen to transfer conduct of the various matters relating to Hepatitis C to her, ahead of my leaving the Department in May (finalising the details of my move took, in the end, a few months) [WITN5426072]. At that stage I see from my minute that there were eleven letters before action and three writs, one of which (Stephen Selby v Department of Health) was active.
- 2.75. I outlined to Ms McEwen the background of the cases in the following way:

*"...Our clients are in the Department of Health. It is said by J Keith Park that the Department has been negligent principally in not providing adequate tests for Hepatitis C. Hepatitis C is carried in blood. Hepatitis C was identified relatively late in the history of hepatitis. Hepatitis A and B have been identifiable for some time but as I understand it although "non-A/non-B hepatitis" was noted in patients following blood transfusion it did not actually become identified as Hepatitis C until the late 60s. It was not until 1989 that tests became available for Hepatitis C in blood and it was not until 1991 that the Department approved these tests as a matter of routine for blood that was to be transfused. Apart from blood transfusion, the spread of Hepatitis C is associated with "lifestyle" - particularly drug addiction and shared needles. In 1985, tests were available for HIV and the routine screening of blood for that began. This screening may well have reduced the incidence of Hepatitis C in transfused blood. The Department's vulnerability is in the period between 1989 and 1991. It should be noted that unlike HIV which almost inevitably leads to full blown AIDS and death, Hepatitis C does not*

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*follow this path although in some cases it may well result in cirrhosis of the liver. In others, only jaundice occurs but as I understand it in all cases the sufferers are carriers of the disease which is a problem since it is sexually transmittable. The irony in all this is that seriously ill patients were given life saving transfusions and haemophiliacs, blood products in good faith but the outcome has been Hepatitis C."*

2.76. I tasked Ms McEwen with instructing Counsel (I suggested again using Mr Nigel Fleming QC and Mr Steven Kovats) to draft a defence in the case of Stephen Selby and to liaise with J Keith Park solicitors on the timescale for the delivery of it.

2.77. I further set out for Ms McEwen the background to the possibility of a compensation scheme and a list of people involved that she needed to know about:

*"5. You will see from the general file, that there is some discussion of setting up a compensation scheme. We have had two schemes in the past - the first was in the context of litigation. We were sued by haemophiliacs infected with HIV through their treatment. That matter settled at the door of the Court and a scheme was set up to compensate them. The Department was then under pressure to compensate those infected with HIV through blood transfusion and tissue transplant. Many of those (in both categories) were represented by J Keith Park and to some extent, the letters before action are designed to make us do the same in relation to Hepatitis C. I have to say that to date J Keith Park have not proved to be very good lawyers but they are political with a small 'p'. You should also note that in taking money under earlier schemes, beneficiaries had to sign an undertaking not to bring any further proceedings. There may be an over lap between those making the Hepatitis claims and those who were compensated under the scheme for haemophiliacs so that needs to be explored.*

*6. The people you need to know about - besides me (I have had a lot of input into the HIV Blood Tissue Scheme) are:-*

*Ronald Powell, SOL B3, who handled the haemophilia litigation and whose branch have all the files;*

*Dr Jeremy Metters, Deputy Chief Medical Officer, who chaired the Committee on testing for Hepatitis C;*

*Branch CA OPU2 at the Department of Health:-*

*Dr Rejman, CA OPU2's doctor and haematologist;*

*Mr Pudlo, the Grade 7 in CA OPU2, who is responsible for the policy.*

*Dr Rejman is the only person who has been involved with the matter from the very beginning."*

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- 2.78. Two days later (on 20 March 1996), I can see from the papers provided to me that Ms McEwen minuted Mr Ronald Powell asking him to provide the papers from the HIV haemophilia litigation as soon as possible and seeking a discussion with him about the Hepatitis C litigation [WITN5426073].
- 2.79. On 4 April 1996, I was copied into a minute from Mr Pudlo to Mrs Weatherseed, Private Secretary to Mr John Horam [WITN5426074]. The minute followed the submissions of Mr Guinness of 12 February and 11 March and the meeting held between Mr Horam and the Haemophillia Society on 26 March 1996. It informed Mr Horam of discussions held with Mr Graham Barker from The Haemophilia Society the day before. The Society had provided some indication of their view on compensation payments that they believed might be acceptable to their membership. It noted that The Society would seek a scheme that included compensating those who had waived their legal rights to further action against a Government Department resulting from their Hepatitis infection and that one alternative considered attractive by The Society would be the Irish scheme (which would be very much more expensive). The minute sought instruction from Mr Horam on any further work he wanted carrying out at this point.
- 2.80. On 16 April 1996, Ms McEwen minuted me (copying in Ms Sue Edwards) and enclosed draft instructions to Counsel Mr Justin Fenwick QC and Ms Fiona Sinclair [WITN5426075] [WITN5426076]. My manuscript annotation shows that I approved the instructions subject to some minor amendments [WITN5426076].
- 2.81. On 17 April 1996, Ms McEwen minuted Mrs Kerrigan enclosing the instructions to Counsel to draft the defence [WITN5426077]. She noted that there was no policy lawyer involved and anticipated the need for one to be involved and updated on the case.

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- 2.82. On 19 April 1996, Ms Towner minuted Ms Murie (the Diary Secretary to the Secretary of State, Mr Stephen Dorrell) with copy recipients [WITN5426078]. She provided a revised briefing pack for a meeting with John Marshall MP to be held on 29 April 1996 and confirmed that Mr Pudlo would be the official attending the meeting [WITN5426079].
- 2.83. On 26 April 1996, Mr John Holden (Assistant Private Secretary to the Secretary of State) minuted Ms Towner copying in me and several others [WITN5426080]. He provided a note of the meeting that had been held on 24 April between the Secretary of State and Mr John Marshall [WITN5426081]. It noted that whilst very sympathetic to haemophiliacs with Hepatitis C, the Secretary of State had outlined that he did not consider that no-fault compensation was an appropriate use of health resources. It was noted by Mr Marshall that there were compensation schemes in the US which were funded by pharmaceutical companies. Mr Dorrell foresaw difficulties in persuading private sector companies to pay for no fault compensation but would ask officials to investigate this (with Mr Pudlo being tasked with the action). I believe that the manuscript annotation on [WITN5426080] records that PS(H) would like a "scape route".
- 2.84. On 1 May 1996, Mr Pudlo responded to Mr Holden's minute of 26 April 1996 confirming that he had looked into the issue and could find no evidence of schemes funded by the private sector that would have any bearing on the situation here [WITN5426082]. One US firm was involved in negotiating a settlement of litigation and Japanese pharmaceutical companies were known to be involved in a Government settlement to patients.
- 2.85. I can see from the available records that in my very last week at the DHSS (I left on Friday 3 May 1996), there were some relevant developments in terms of missing documents.



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2.86. First, on 2 May 1996, Ms McEwen minuted Dr Rejman and Mr Pudlo copying in The Solicitor and Mr Milledge (SOLC2) [WITN5426083]. The minute said:

*“RE: STEPHEN SELBY: HEPC DISCOVERY*

*1. I would be grateful for your urgent assistance. I regret that despite a locksmith breaking into a large number of filing cabinets in the basement at New Court we have only been able to locate half of the HIV discovery documents. We have files 21-43 and 45 onwards. We are therefore missing files 1-21 and 44. I believe that the administrators have a copy of the discovery documents. Please could attempts to locate these files begin immediately. If they are located I will arrange for SOLB4 to transport the files to New Court. It is obviously vital that we do find these files as it will save us repeating the discovery process and save many months of work.*

*2. The files that we do have are copy documents. Do we know where the originals are?*

*3. I regret that I have not managed to locate the reports of Dr Perry and Dr Williams that you sent to SOLB4 in June 1995. They are certainly not in our files. I will continue to search for them but I would be grateful for copies of the relevant medical reports that you do have.*

*4. I have not managed to locate copies of the publications that are listed and attached to the statement of Claim. Do you have copies of them?*

*5. I am again sorry to burden you.”*

2.87. The following day (3 May 1996), Dr Rejman replied to Ms McEwen, copying The Solicitor, Dr Metters, Mr Milledge and Mr Pudlo [WITN5426084]. He said:

*“1. Thank you for your minute of 2 May. I have checked with administrative colleagues and we have identified files 1-30. In each case we have the originals and one duplicate set. It is likely that the rest of the files are in a cabinet close by. We are currently trying to find the keys or alternatively we will arrange for the lock to be broken.*

*2. SOL can have the duplicate set of papers. You will understand our reluctance to pass on the originals, in view of previous papers having been mislaid. When the originals are required, we would ask that these are exchanged for a duplicate set, or alternatively duplicates are made at that time. We must ensure at all times that a set is available on at least two different DH sites.*

*3. I would urge you most strongly to try to locate the reports from Dr Perry and Dr Williams which I sent to Anita James in June 1995. Unfortunately at that time I did not make a duplicate set, and I contacted her a few days later to ask for a return of the originals. This was promised but did not happen. I have an earlier draft of the report from Dr Perry, but I do not have any earlier draft of the paper from Dr Williams. His report is important as it is the only report we have from a hepatologist on this matter. It may be that Counsel still has a copy of the original reports dating back to 1990.*

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4. *I am about to go on business abroad, and when I return late next week I shall arrange for copies of the other relevant medical reports.*

5. *In respect of the publications listed and attached to the main statement of claim, I seem to recall being asked by SOL to send these on to them, during the later stages of the litigation but before the settlement. SOL should therefore still have these. Otherwise, presumably one can ask Graham Ross to supply these, since they do in fact form part of the MSC. Otherwise you may wish to check to see whether Counsel has retained them. Incidentally, you may not be aware that at the time of the litigation TSOL was acting for the Department. It may be that they have some of the relevant papers."*

2.88. The minute bears a manuscript annotation from Dr Metters, saying:

*"Dr Rejman*

*Am I right in thinking that Sol have lost some of the original papers you sent them some months ago?*

*JSM.*

*P.S. A phone call reply will suffice!"*

2.89. A further manuscript annotation, in handwriting belonging to Dr Rejman, states:

*"Message left [with] Yvonne [Dr Metters' secretary] Yes this is the case"*

2.90. With reference to Dr Rejman's comment about the reports of Dr Perry and Dr Williams at his paragraph 3, above, I can see that they are mentioned in his minute of 23 June 1995 (see §2.31 above). I do not now recall Dr Rejman asking for those reports back, nor my promising to return them. I cannot see from the available papers any minute that corresponds with his suggested requested return of the reports, though this may have been done verbally.

2.91. Although I cannot see from the available documents whether in fact the reports were found at the time (that is to say, in 1996), I am informed that the e-disclosure given to this Inquiry includes five relevant documents:

- First, an annotated version of Dr Perry's Report date 11 April 1990 [WITN5426085]. The manuscript annotation on this document states it is both "*original*" and "*superseded*", this suggests to me that it may be the "*earlier draft*" referred to by Dr Rejman at his paragraph 3, above.

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- Second, a version of Dr Perry's Report with the later date of 13 September 1990 [WITN5426086].
- Third, a report of Dr Williams, sent to Dr Rejman by letter dated 10 April 1990 [WITN5426087].
- Fourth, a report of Dr Williams, sent to Dr Rejman by letter dated 10 July 1990 [WITN5426088].
- Fifth, a minute from Dr Rejman to Mr Powell, dated 20 July 1990, enclosing the 10 July 1990 report and referring to it as the second preliminary report [WITN5426089].

Whilst I do not recall the documents that Dr Rejman states he sent to me and cannot therefore say with a degree of certainty that they are the same, it appears that either the versions sent to me, or other versions, have at some stage been recovered. Dr Rejman's minute of 13 May 1996 (see §3.3 below) suggested that he had only an early draft of Dr Perry's report and no copy of Dr William's report. So the second, third and fourth documents (listed above) do therefore appear to be the documents that could not be found by Ms McEwen at the time. This is further supported by the mention in Dr Rejman's minute of 23 June 1995, of him (Dr Williams) sending 'two letters'.

### **Section 3: Limited involvement as a Solicitor in the Department of the Environment (7 May 1996 – 22 March 1999)**

3.1. This is the period when I had transferred to the Department of the Environment. For the most part, the Solicitor's Division involvement in this period will need to be addressed by those directly involved. However, in order to try to assist the Inquiry I have referred to some documents from this period even though I was not personally involved.

3.2. 7 May 1996 was the Tuesday after the May Bank Holiday weekend and my first day at the Department of Environment. Miss McEwen minuted Dr Rejman, Mr Pudlo and Mr Milledge (copying The Solicitor and Dr Metters) [WITN5426090]. She enclosed a letter before action which was the first claim to involve the transmission of Hepatitis C through the mechanism of blood transfusion. It fell within the identified window of vulnerability (from 1989 to 1991). She sought clarity and information on a matter of which she states she was unaware - namely what the Claimant's solicitors described as:

*"...a generic investigation ongoing relating to all those who contracted Hepatitis C as a result of blood transfusions..."*

3.3. On 13 May 1996, Dr Rejman minuted Miss McEwen [WITN5426091]. He attached a photocopy of a minute he stated he sent to me last year (which I assume was the minute of 23 June 1995). He stated again that he did not have the final version of Dr Perry's expert witness report, nor the report of Dr Williams as he stated the originals of these went to me and were not returned.

3.4. On 5 June 1996, Mr Mark Wilson called me at the Department of Environment. Mr Wilson was a DHSS lawyer who I think at that time was still working in SOLB4. I do not believe that he was dealing with the question of missing

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documents – he was simply acting as messenger as he had my contact details. We were friends and so he had the number on which to contact me. He left a message and I called him back. I have some recollection of this call. I have a two page note in my rough notebook including what I assume to be a note of files that were missing [WITN5426092]. The first page of my note of this call read as follows:

"5 – 6 – 96

Message

Mark

--- wage slip

Jayne's report"

- 3.5. From the second page of my notebook [WITN5426092], I have noted the records missing from the HIV litigation files in the following way:

*"LGR 027 / - / 001 / 00108 (1) (2) (3) (4)*

*LGR 027 / - / 001 / 00109 / P (1) (2)*

*LGR 027 / - / 001 / 00110 (1)*

*LGR 027 / - / 001 / 00111 (1)*

*(2)*

*LGR 027 / - / 002 / 00001 (1)*

*LGR 027 / - / 006 / 00013 (1)*

*14 (1)*

*15 (1)*

*16 (1)*

*17 (1)"*

- 3.6. I note that somewhat over two years later, on 10 July 1998, Mr Wilson emailed Mr Robin Dormer and others within the Department [WITN5426093]. He attached a minute from Mr David Dunleavy to Mr Dormer and others (of the same date) on the topic of whether blood and blood products are "Products" for the purposes of the Consumer Protection Act 1987 [ DHSC0041813\_024].

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- 3.7. Mr Wilson stated that he had spoken to me that morning and – at least as recorded by Mr Wilson, I had told him that Mr Nigel Fleming QC and Mr Steven Kovats had advised that blood and blood products did not fall within the Act, though it noted that I did not recall getting a written opinion from Counsel. As I have addressed in Section 2 above, we had obtained a written opinion from Counsel who had advised that blood and blood products were likely to fall within the Act. Unless Mr Wilson and I were at cross-purposes in our discussion, it may simply be that I had misremembered matters, it being some three years since I had received the advice and for most of which period I had been working in a different department.
- 3.8. On 20 July 1998, Ms McEwen minuted Mr Dunleavy [WITN5426094]. She pointed him in the direction of the advice from Mr Nigel Fleming QC and Mr Steven Kovats and recalled that Dr Rejman had expressed his misgivings about the accuracy of it, believing (as he did) that blood was not a product with the meaning of the Act.

## Section 4: Involvement as DH Head of Litigation (March 1999 – end 2001)

4.1. I returned to the Department of Health on 22 March 1999 as the Head of Litigation, responsible for all civil litigation from personal injury cases to Judicial Reviews and House of Lords cases. These were for the Department of Health, Department for Work and Pensions, Food Standards Agency and the Office of Population Censuses and Surveys. I managed a team of approximately 24 personnel and had a budget of just under one million pounds.

4.2. On 11 June 1999, Mr David Dunleavy of SolC2 emailed Ms Trish Fretten, Ms Gwen Skinner and me on the topic of Hepatitis C and compensation [WITN5426095]. He identified Mr Canavan as the administrator who had dealt with the HIV compensation scheme and recalled that Dr Roger Moore and Mr Charles Dobson had also been involved. He suggested speaking to them. He commented:

*“Perhaps it was the case that we thought we were on weak legal ground in the HIV case and we feel on safer legal ground now ( or at least haven't been pushed that far yet - I just don't know and we in solc2 don't have any papers). I believe that solc4 have huge litigation files relating to HIV but they might not deal with what was said publicly.*

*When it comes down to what was or may have been said publicly I suspect that it is difficult to find any difference in the merits of the groups themselves ie between then and now.”*

4.3. Towards the end of July 1999, Mr Lister produced a draft submission to Lord Hunt (the Health Minister in the Lords) on the background to the Hepatitis C litigation and proposals made to the National Blood Authority by the NHS Litigation Authority for an out of court settlement [WITN5426096]. It set out the pros and cons of settlement and sought permission from Lord Hunt for the NBA to take forward arrangements for settlement.

4.4. On 26 July 1999, Mr Lister faxed Trowers & Hamlins solicitors, as one of the Board Members of the National Blood Authority was a solicitor at that firm [WITN5426097]. He attached a paper from Mr Simon Pearl (Davies Arnold

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Cooper, Solicitors for the National Blood Authority) on the topic of possible approaches to settlement [WITN5426098]. Mr Lister confirmed the Department's preference for Option A (as set out in the note).

- 4.5. On the same day, Mr Lister sent me a fax attaching the paper from Mr Pearl [WITN5426099], [WITN5426098]. He thanked me for agreeing to attend a meeting the following day with members of the NBA Board and sought my advice on the wider policy implications of a settlement, which would need to be addressed in a note to Ministers.
- 4.6. I faxed Mr Lister the following day, 27 July 1999, with manuscript comments on the updated submission to Ministers on the NBA Hepatitis C Litigation [WITN5426100].
- 4.7. On 30 July 1999, Mr Lister emailed the draft submission to Dr Mike McGovern (copied to Mr David Hewlett, me and Ms Gwen Skinner) [WITN5426101]. I emailed Mr Lister on 2 August 1999 and provided an additional comment (that "beyond doubt" rather than "reasonable doubt" was a more appropriate expression in the context used) [WITN5426102].
- 4.8. There appears in the papers a handwritten note dated 9 September 1999 from 'AC' (Alison Chubb, my then Grade 6) to me on the topic of the Hepatitis C litigation [WITN5426103].
- 4.9. On 29 September 1999, I received an email from Mr Lister seeking advice on a number of papers which he attached [WITN5426104] [WITN5426105]. I replied to Mr Lister on 1 October 1999 [WITN5426106]. I considered that the claimants' solicitors (Deas Mullen Souter (DMS) were using the possible referral to the ECJ of the question of body parts being a "product" for the purposes of the Consumer Protection Act 1988 as a 'bargaining tool'. My own view was that it was unlikely that the Court would make such a referral and I



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gave my reasons for this view. I expected the Department would need to take its own advice if such a referral were made. I expressed some concern that Solicitor's Division had not been involved in the conference where this had been considered, and noted the desirability of finding out what advice DAC had received on this issue. I concluded by agreeing that we should recommend settlement of the litigation to Ministers and I offered my help, if needed.

- 4.10. On 4 October 1999, Mr Lister responded to my minute [WITN5426107]. He mentioned that Mr Pearl had confirmed that no concession had been made that body parts are a "product" within the meaning of the CPA (although he remained of the view that a court would find that they were). He added, that he hoped to have further data from Mr Pearl by the end of the week to help us to cost the provisional settlement of the litigation.
- 4.11. Mr Lister minuted Dr McGovern on 12 October 1999 [WITN5426108]. He mentioned that he had concerns about the proposal to settle the litigation for those infected between December 1989 and September 1991 while ignoring those infected in this period who were non-litigants. He set out that he had spoken to me and that I was of the view that Ministers could be criticised if the settlement terms, in effect, required people to sue in order to come within its confines. He concluded by inviting Dr McGovern to discuss the matter further.
- 4.12. On 13 October 1999, Ms Emma de Zoete from the Transplant Team minuted Ms Sue Ryan of SolC3 (copying me and several others) [WITN5426109]. She sought advice on the position regarding body parts and whether they could, or should, be conceded as "products" under the Act. She sought clarity on the legal arguments and sight of the advice from Mr Justin Fenwick QC on the topic.
- 4.13. On 14 October 1999, Ms Ryan replied to Ms de Zoete [WITN5426110]. She explained that she had discussed the matter with me and confirmed that I would need to speak to DAC about the matters raised and would seek Mr Lister's

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agreement to my speaking to them directly. A manuscript annotation dated 15 October 1999 noted that DAC accepted instruction from me not to concede on body parts.

- 4.14. On 15 October 1999, Mr Pearl wrote to me confirming that an application had been made for an Order referring questions to the ECJ (in particular the question of body parts as “products”) [WITN5426111]. He asked again for a copy of Mr Justin Fenwick QC’s opinion.
- 4.15. On the same day, Ms Ryan minuted Ms de Zoete. She confirmed that she had again discussed it with me and set out answers to the questions she had posed in her minute of 13 October 1999 (see §4.12 above). In a manuscript annotation, I asked the question whether it was worth risking the referral to the ECJ or if it was better to simply concede the point about body parts as products ‘for the purposes of this litigation’ [WITN5426112].
- 4.16. On 19 October 1999, Ms de Zoete wrote to Ms Ryan [WITN5426113]. She attached a draft letter from me to Mr Pearl on the topic of body parts as “products” in the context of the referral to the ECJ and asked her to check that she was happy with the content [WITN5426114].
- 4.17. On 28 October 1999, Mr Pearl wrote to Ms Ryan copying me in [WITN5426115]. He confirmed that the Judge had refused the claimants’ application for a preliminary reference to the ECJ.
- 4.18. On 11 November 1999, Ms Ann Willins minuted Dr Troop, Mr Lister, me (and others) [WITN5426116]. She attached a letter from Graham Ross of Ross & Co to Mr Milburn, the newly appointed Secretary of State [WITN5426117].

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- 4.19. The day after, Dr McGovern e-mailed Dr Troop, Mr Hewlett, Mr Lister, Ms Ryan, me and others [WITN5426118]. The email sought comments on a draft minute to Lord Hunt [WITN5426119], and a draft response to the letter from Mr Ross [WITN5426120].
- 4.20. On 16 November 1999, Sue Ryan responded to Dr McGovern with my comments [WITN5426121].
- 4.21. It is apparent from later documents (see §4.26, and §4.29 below) that on 17 November 1999, DMS wrote to me. There was a draft application dated 17 November 1999 for an order for third party disclosure of documents from the Department of Health to the Claimants in the Hepatitis C litigation [WITN5426122] [WITN5426123]. The application was for:
- “ a - all documents, letters, reports, internal memoranda and other documentation relevant to the introduction of surrogate or routine anti HCV screening generated during the period 1.3.1988 to 1.9.1991.*
- b - Minutes of the meetings of the Advisory Committee on Hepatitis.*
- c - Minutes of the meetings of the National Blood Transfusion Service/National Institute of Biological Standards and Controls Liaison Committee”*
- 4.22. DMS also provided documents in support of the application, namely: a dramatis personae [WITN5426124]; statement of Mr Anthony Mallen of DMS [WITN5426125]; and a chronology [WITN5426126].
- 4.23. On 18 November 1999, Mr Pearl wrote to me [WITN5426127]. He confirmed that he had received a copy of the letter from DMS and the application for third party disclosure and asked me to keep him advised as to our intended response to it.
- 4.24. On 22 November 1999, I was copied into the final version of Dr McGovern's submission to Lord Hunt, providing the suggested response to Mr Graham Ross

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(as cleared by my division and policy divisions) [WITN5426128]  
[WITN5426129].

4.25. I wrote to DMS on 22 November 1999 to acknowledge receipt of their letter of 17 November and enclosed pleadings [WITN5426130].

4.26. On the same date I faxed Mr Lister [WITN5426131]. I explained that I had received a letter from DMS seeking voluntary disclosure of the Department's papers, failing which they would seek an order, and I asked to discuss this with him.

4.27. On 22 November 1999, Ms Ryan emailed me with an update on where I might contact Dr Metters (no doubt in response to my asking her the same with a view to locating documents) [WITN5426132].

4.28. The next day (23 November) I minuted Dr Metters [WITN5426133]. The body of my minute read as follows:

*"Re: Hepatitis C Litigation*

*1. I do not have skeletons in my cupboards just old files. One has come back to haunt me - Hepatitis C.*

*2. The Department is not actually being sued but Deas Mallen Souter on behalf of their claimants intend to apply for disclosure of the Department's records for a period between 1<sup>st</sup> March 1988 and 1<sup>st</sup> September 1991. Rather than risk the inevitable order for costs, we are going to consent to the application. I understand from Yvonne de Sampayo that she has no records on the subject beyond 1997. I wondered if you, by chance, had kept any of the records yourself. Even if you have not kept the documents if there are no suitable copies in HSD under the rules, I have to specify the documents which are no longer in the Department's control."*

4.29. On the same day (23 November 1999), I minuted Mr Lister regarding a discussion we had had about DMS' letter of 17 November [WITN5426134]. I confirmed that we had agreed that in the circumstances the Department would make voluntary disclosure of the documents sought. I note in the minute that I

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had spoken to Dr Metters' former secretary (Mrs Yvonne de Sampayo) who had informed me that:

*"...she has no documents before 1997 so it is down to what the Solicitor's Office and HSD have. We also have to list documents which were but are no longer in our control..."*

4.30. I note that there appears to be a discrepancy between my two minutes - the first stating that Mrs de Sampayo had no records before 1997 and the second that she had no records *before* 1997. I believe that the second (no records *before* 1997) is correct as this would explain why copy documents from the 1995-1997 period were not available from Dr Metters' office (see §4.108 below).

4.31. On 25 November 1999, Mr Lister emailed Ms Gina Radford, Dr Pat Troop, me and others with a revised ministerial 'line to take' on the matter of haemophiliacs with Hepatitis C and the campaign for compensation [WITN5426135].

4.32. On 25 November 1999, Dr Metters replied to my minute of 23 November (see §4.28 above) [WITN5426136]. He said:

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

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

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

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*I am sorry that I cannot be of more help myself.  
Jeremy Metters"*

4.33. On 26 November 1999, I wrote by post and fax to DMS Solicitors with a blind copy to be sent to Mr Lister [WITN5426137]. I confirmed that the Department would consent to the disclosure of its documents (in line with DMS' draft application notice). I suggested 31 March 2000 as the deadline for such disclosure. They replied the same day and proposed 31 January 2000 as an alternative deadline for disclosure [WITN5426138].

4.34. On 29 November 1999, I faxed Mr Lister to seek his thoughts on the proposed deadline of 31 January 2000 [WITN5426139]. In that communication, I noted:

*"... Dr Metters says he left all his papers with his successor. It would appear that they have been shredded because they represented an inconvenience. If you can replicate them I [won't] hold a post mortem."*

4.35. On 1 December 1999, Mr Lister responded to me, with copies to Dr McGovern and Ms Gwen Skinner [WITN5426140]. He said:

*"Anita*

*I've found 5 volumes of relevant papers from an earlier discovery exercise, labelled Vols 1-4 and Vol 6, so at least one volume has still to be found.*

*These contain papers from January 1987 to November 91, with some earlier and later material. There is a gap in the record between June 1988 and April 1989 which may be included in the missing volume. On the basis of a quick read through, there are clearly some papers missing from 1990/1991 – most notably, records of discussions at the Advisory Committee on Virological Safety of Blood. Otherwise, what we have tells a fairly complete story.*

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

*Charles"*

4.36. The following day, Dr McGovern responded to Mr Lister, with a copy to both Ms Skinner and me [WITN5426141]. He said that "Mallin Souter" have the Committee papers for the period as he had gone through them for Ms Sarah Campbell. He noted:

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*"... It was a complete set stamped with NBS – all in a very large folder. So I am sure it is a copy held by SOL..."*

4.37. On 7 December 1999, Mr Lister emailed me [WITN5426142]. He sought my agreement to extend the deadline for claims for payments from the Macfarlane Special Payments Trust II from 31 December 1999 to 31 December 2004, as a new claimant had emerged and that might indicate that there could be still further undiagnosed potential claimants. I replied the same day and confirmed that I was happy with the extension [WITN5426143].

4.38. On 8 December 1999, I emailed Mr Lister [WITN5426144]. I said:

*"Thank you for letting me see the records! We agreed that you will [see] if there are any more records covering the gap. I suggested you might inquire if there is a basement at Eileen House where documents might be. You also told me that John Canavan was still around so he may know what might be where. You agreed to recall certain old files from remote storage and speak to Mike McGovern about the files I brought over. I said I would like the papers sent over here. Do you think you could get them here for 22 December at the latest? I will then catalogue [catalogue] them myself or more likely get someone else to do it. In addition, I will write to DMS and ask if I can have until Friday 4<sup>th</sup> February. I shall be going to Sunningdale on the 6<sup>th</sup> for two weeks so that would seem a good cut off date. I will do that next."*

4.39. Mr Lister replied to me later that afternoon [WITN5426145]. He confirmed that he would send all of the papers over to me by 22 December along with a note of what was missing. He also said:

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

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- 4.40. I then wrote to DMS, also on 8 December 1999 [WITN5426146]. I asked them to agree a disclosure deadline of 4 February 2000 (a week later than their proposed date). I noted in the letter to them that I was not sure of the status of the Advisory Committee on Hepatitis but that we had minutes of the Virological Safety Committee which would be relevant. I also explained that the Department had never had the minutes they sought at point (iii) of their draft application (namely minutes of meetings of the National Blood Transfusion Service / National Institute of Biological Standards and Controls Liaison Committee) and I suggested they seek those from the National Blood Transfusion Service.
- 4.41. DMS wrote on 9 December 1999 and agreed to my proposed extension [WITN5426147]. They enclosed an Application Notice and Consent Order in draft form [WITN5426148] and noted that they were content to give an express undertaking as to the use of the documents (which was written into the Draft Order).
- 4.42. I signed the Draft Order and returned it by fax on the same date (9 December) [WITN5426149]. On 13 December 1999, DMS wrote again and enclosed the signed order [WITN5426150].
- 4.43. On 16 December 1999, Mr Pearl (of DAC) wrote to me [WITN5426151]. He asked for permission for DAC to inspect and take copies of the documents listed in the Order. He confirmed that they too would give an undertaking as to the use of the documents.
- 4.44. I responded to Mr Pearl on 21 December 1999 [WITN5426152]. I referred to his fax of 15 December 1999 (which I assume was a typographical error, as the contents of my letter appear to me to refer to his letter of 16 December 1999). I confirmed that I was content for DAC to inspect and take copies of the



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documents and further confirmed that I would require the undertaking he mentioned in his letter.

4.45. Mr Pearl then wrote again on 22 December 1999 [WITN5426153]. He confirmed that he considered his letter to serve as the undertaking mentioned and enquired whether this was sufficient. He asked whether we were preparing a list of documents for DMS and, if so, whether we would provide it to his firm also. On 29 December 1999, I replied and confirmed that I was content with the undertaking [WITN5426154]. I wrote that I would be prepared to let DAC have a copy of the list of documents for DMS, once the list had been prepared.

4.46. I emailed Mr Lister on 6 January 2000 noting that I had gone through the files he had provided between Christmas and New Year and that whilst they looked to be reasonably complete, there were some gaps [WITN5426155]. I said:

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

4.47. On 12 January 2000, Mr Mallen of DMS wrote to me [WITN5426156]. He confirmed that they would be happy to accept disclosure on a ‘drip feed’ basis if that would assist the Department and would prefer to receive copies (for which they would reimburse the photocopying charges) rather than having to attend the Department’s offices.

4.48. On 13 January 2000, Ms Skinner sent me a fax in which she sought advice on the discovery process [WITN5426157]. She said:

*“I should be grateful for clarification of the full extent of what we need to do in the discovery of files/papers for the HCV litigation. We have ordered all the files which belonged to the blood section between January 1989 and*

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*September 1991 and which seem possibly relevant, plus the files on the manuscript list drawn up in 1997 which you have seen.*

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

*Can you advise please?..."*

- 4.49. I responded to Ms Skinner on the same day by fax [WITN5426158]. I advised her to concentrate on the list she had for the time being and explained that:

*"If I can be put in a position to explain why the files are missing and it is for a good reason I can argue that it would be disproportionate to pursue the matter further..."*

- 4.50. On 19 January 2000, I replied to Mr Mallen's letter of 12 January [WITN5426159]. I explained that I had two ring binders of 15 meetings of the Advisory Committee on the Virological Safety of Blood which I was arranging to have copied and sent to him that week. I further set out that I had four ring binders of papers in various states, on various hues of paper and with some highlighting which would be difficult to successfully copy. I therefore invited his views on having someone attend to inspect those documents.

- 4.51. On the same date (19 January) I sent an email to Mr Lister (copying in Dr McGovern) [WITN5426160]. I expressed my growing concerns about the state of the papers that had been provided to me in the disclosure exercise:

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

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*the files on your list? We are under a duty to make a reasonable search. I think the lapse of time is against us."*

- 4.52. I faxed Mr Lister again on 19 January 2000 a couple of hours after my email, above [WITN5426161]. My reference to a point that Mr Lister had made may mean that he had made a contribution on this following my email. However, I have been informed that at present such a contribution has not been located in the electronic disclosure. I said:

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

- 4.53. On 20 January 2000, I wrote to DMS [WITN5426162]. I enclosed minutes of the UK Advisory Committee on the Virological Safety of Blood, comprising 15 meetings spanning from 4 April 1989 through to 9 February 1993. They were divided into two parts, with the first part containing meetings 1 to 7 and the second meetings 8 to 15. I explained that the 13<sup>th</sup> meeting had occurred in July 1992 and not June 1992 as seemed to be indicated by the papers. Mr Mallen replied the following day [WITN5426163]. He thanked me and confirmed receipt of the minutes sent.

- 4.54. On 21 January 2000, I faxed Mr Canavan [WITN5426164]. I explained that I had meant to get in touch with him sooner but that it had slipped my mind. I explained the nature of the disclosure exercise and asked him to provide me with the minutes on the Advisory Group on Hepatitis between 1 March 1988 and 1 September 1991.

- 4.55. On 24 January 2000, Mr Mallen wrote again [WITN5426165]. He confirmed that Mr Deas of DMS would be in touch to arrange inspection of the four ring binders mentioned in my letter of 19 January 2000 (see §4.50 above) and he recalled that I would be away from the office from 4 February 2000.

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- 4.56. Mr Canavan replied to me on 24 January 2000 [WITN5426166]. He confirmed that they were obtaining the necessary files from Nelson (a document storage facility) and hoped to let me have the AGH minutes in the middle of that week. He further commented that they might contain little if anything about Hepatitis C in the blood supply, as that matter had come within the remit of the ACVSB from 1989.
- 4.57. On 26 January 2000, I replied to Mr Mallen's letter of 24 January [WITN5426167]. I confirmed that I would be away for two weeks from 4 February 2000 and provided details for alternative contacts. I also passed on that I was awaiting the minutes of the meetings of the Advisory Committee on Hepatitis but that (as Mr Caravan had told me) there would be little on Hepatitis C as this remit had been with the ACVSB.
- 4.58. On 26 January 2000, I wrote to the Clerks at 11 Kings Bench Walk Chambers with instructions to Counsel to put the documents within the four ring binders provided into a chronological order (if possible paginated) and to make a list of them [ WITN5426168]. I requested completion of this instruction by 5pm on Tuesday 1 February 2000 [WITN5426169].
- 4.59. On 27 January 2000, I received a letter from DAC asking for copies of the disclosure sent, thus far, to DMS [WITN5426170].
- 4.60. On 27 January 2000, I received a letter from DMS which set out their comments on the disclosure of the minutes of the UK Advisory Committee on the Virological Safety of Blood provided to them [WITN5426171] and [WITN5426172]. They identified a number of enclosures, annexes and pages missing from the documents (as set out in list form in the letter). There are manuscript annotations on the pages (I am afraid I do not recognise the

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handwriting), including the words “Welsh office – destroyed” on the first page [WITN5426171].

4.61. On 31 January 2000, I wrote again to the Clerks at 11 Kings Bench Walk Chambers to correct an error I had made in relation to the date range of the documents, in my instructions to Counsel [WITN5426173].

4.62. This is followed in the file by a handwritten and undated note to me from Mr Canavan [WITN5426174]. Mr Canavan stated that he was enclosing copies of the AGH minutes for meetings between 1 March 1988 and 1 September 1991 and notes again that there are few references to Hepatitis C:

*“... but this is only to be expected as it was for the ACVSB to consider the major issue at the time, i e screening of blood donations.”*

4.63. He confirmed that he would hold onto the files for a while before returning them to storage in case I required anything further. On 1 February 2000, I replied to Mr Canavan [WITN5426175]. I thanked him and confirmed that I would revert to him if I required anything further.

4.64. On 1 February 2000, I then wrote to DMS [WITN5426176]. I enclosed copies of the minutes of the Advisory Group on Hepatitis as provided to me by Mr Canavan.

4.65. I replied to DMS' letter of 27 January 2000 on 1 February 2000 [WITN5426177]. I apologised for the omissions in the disclosure provided and confirmed that I was chasing the matter up with my clients and would get back to them with a time estimate as soon as possible.

4.66. Also on 1 February 2000, I replied to DAC's letter of 27 January 2000 [WITN5426178]. I pointed out that they had previously sought a list rather than

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copies of documents (and I noted that their letter was silent as to payment for photocopies they were requesting).

4.67. Again, on 1 February 2000, Ms McCafferty of 11 King's Bench Walk Chambers sent me a note [WITN5426179]. She confirmed that she had completed the instruction and enclosed a chronological list of the documents. I am informed that the chronological list itself has not been located within the electronic disclosure.

4.68. Finally on 1 February 2000, I minuted Mr Lister [WITN5426180]. I provided him with a copy of the letter from DMS of 27 January 2000, and said:

*"Re: Hepatitis C*

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

4.69. On 2 February 2000, DAC replied to my letter of the previous day [WITN5426181]. They confirmed that they would like a list of the documents and that they would then select from the list the documents they would like copies of (and pay reasonable photocopying charges, accordingly). They confirmed that they would arrange a convenient time to attend to inspect the ACVSB minutes against their own copy.

4.70. I wrote again to DAC on 2 February 2000 [WITN5426182]. I enclosed copies of the minutes of the Advisory Group on Hepatitis (as provided to DMS) and confirmed that I would be able to provide a list within the next day or so.

4.71. On 4 February 2000, Mr Lister replied to my minute of 1 February [WITN5426183]. He said:

*"...Thanks for copying me the letter from DMS with their depressingly long list of requests for ACVSB documents. We'll do our best to find them and, if*

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*we can't to explain why not. I'll keep Mark Gidden in touch with progress whilst you're away..."*

- 4.72. On 7 February 2000 (in my absence, but sent on my behalf) two letters went out, one to DAC [WITN5426184] and the second to DMS [WITN5426185]. The letters provided them with the list of documents for disclosure.
- 4.73. On 7 February 2000, DMS wrote to me providing comments on the minutes of the Advisory Group on Hepatitis I had sent to them under cover of letter of 1 February 2000, with some consequential requests for further documents and seeking clarification on a number of points [WITN5426186].
- 4.74. On 8 February 2000, DAC replied to the letter of 7 February 2000 [WITN5426187]. They asked for copies of every document listed.
- 4.75. On 9 February 2000, Mr Mallen replied acknowledging receipt of the list [WITN5426188].
- 4.76. On 11 February 2000, in my absence, Mark Gidden minuted Mr Canavan. He provided a copy of the letter from DMS of 7 February 2000 [WITN5426189]. He asked if Mr Canavan could assist with the papers referred to, namely minutes for a meeting of the AGH on 1 March 1988 and copies of two papers from the 7 February 1989 meeting (listed by DMS as missing) (see [WITN5426186]).
- 4.77. On 15 February 2000, DAC sent me a chaser letter to their letter of 8 February 2000 (in which they had sought copies of all of the documents on the disclosure list) [WITN5426190].
- 4.78. On 17 February 2000, Mr Gidden noted a telephone call from Mr Canavan [WITN5426191]. The call was in response to Mr Gidden's minute of 11 February 2000. Mr Gidden noted the responses to the queries raised by DMS as follows:

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*"No meeting took place in March 1988 and notes from the 1989 bear this out. He will send us copies of the Zuckerman reports etc but believes these may not relate to Hep C in any event and asks us to consider. DMS are correct & HAV should read HCV."*

- 4.79. On the same date, Mr Canavan minuted Mr Gidden [WITN5426192]. He noted their call and enclosed copies of the two papers said to relate to Hepatitis A and B (not to Hepatitis C). He set out the following:

*"...There was no AGH meeting on 1 March 1988. As can be seen from agenda item 2 of the minutes for 7 February, the AGH approved the minutes of their previous meeting that took place on 28 July 1987. As far as I can see, the only significance of 1 March 1988 is that DMS gave it as the start date of the period for which they are interested in receiving copies of AGH minutes.*

*I enclose copies of the meeting papers that DMS asked to see. However, Professor Zuckerman's two papers and Dr Contreras' paper are about hepatitis A or B and will be of no relevance to the hepatitis C litigation. I don't know how you will wish to play this, the papers are innocuous enough but do you simply tell DMS that they are irrelevant to the case?*

*Finally, DMS are correct in their understanding that the reference to anti-HAV in the minutes of 12 March 1991 is a typo. Other versions on file refer to anti-HCV..."*

- 4.80. On 23 February 2000, I wrote to DAC [WITN5426193]. I thanked them for a letter of 18 February 2000 (which I had seen on my return). I enclosed a copy of document number 37 on the list and confirmed that there was no missing document in the list, it was simply a mistake in the numbering of the list.
- 4.81. On the same date (23 February) I also wrote to DMS [WITN5426194]. I passed on what Mr Canavan had confirmed in his minute of 17 February 2000. I also disclosed the papers of Professor Zuckerman and Dr Contreras even though they were not strictly relevant. Although we were struggling with some missing documents, I note that we were erring on the side of disclosure even if material was seemingly not relevant.
- 4.82. DMS wrote to me on 23 February 2000 [WITN5426195]. They referred to their letter of 27 January 2000 (see §4.60 above) and my reply to them of 1 February



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2000 (see §4.65 above) and asked that the documents requested now be provided.

4.83. On 25 February 2000 I replied to DMS [WITN5426196]. I acknowledged receipt of their letter and informed them that I would chase the matter up once more.

4.84. I did so on the same day, by way of a minute to Mr Lister with a copy to Dr McGovern [ WITN5426197]:

*"... I refer to my minute dated 1<sup>st</sup> February 2000 about a letter from Deas Mallen Souter dated 27<sup>th</sup> January 2000. I have received a reminder from them. Have you made any further progress? In spite of the fact we are near settling I think I do need to be reassured that some active efforts are being made on this."*

4.85. On 25 February, Mr Lister minuted me [WITN5426198]. He wrote:

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

4.86. On 28 February 2000, Mr Lister minuted again [WITN5426199]. He said:

*"... I have now found around two thirds of the documents requested in DMS's letter of 27 January (courtesy of Prof Zuckerman). I'm continuing to look for other sources..."*

4.87. On 28 February 2000 (delivered on 29 February 2000), Mr Lister faxed Ms Sandra Falconer (copying me in) [WITN5426200]. He asked her if she could help track down any of the missing ACVSB minutes. He said:

*"Sandra,*

*Thanks for agreeing to help with this. I've obtained a number of the missing papers from Prof Zuckerman, but his record is incomplete and does not include either the 4<sup>th</sup> or 14<sup>th</sup> minutes (which you were looking for). Sadly, we can't help with these either - our copy of the 4th meeting minutes has pages missing and we don't have the 14th at all. If I can track them down, I [will] let you have a copy.*

*The other papers I still need to find are:*

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ACVSB 3/1

ACVSB 5/2, 6 & 10

ACVSB 6/3, 4, 5 & 7

*All papers for the 7<sup>th</sup> meeting (we have copies but they are missing the page numbers)*

ACVSB 9/5

ACVSB 10/6 & 8

*It would be enormously helpful if you can track down any of these from your file. I'm out tomorrow morning, but perhaps we can speak in the afternoon..."*

- 4.88. On 2 March 2000, Ms Falconer replied to Mr Lister (see papers and e-mail chain . She confirmed that she had copies of ACVSB 5/2, 5/10, 6/3, 10/6 and 10/8. Mr Lister forwarded that on to me the same day [page 1 WITN5426201]. He mentioned that he was also now in touch with Mr Bob Perry (a member of the ACVSB) to see if he could provide the other documents.
- 4.89. On 2 March 2000, Mr Lister emailed Ms Brenda Pheely of the Scottish National Blood Transfusion Service . He sought her assistance with the minutes and papers of the ACVSB that were still outstanding. Ms Pheely replied the next day and confirmed that she had spoken to Mr Perry and had located the files, which she hoped would contain the final missing ACVSB minutes. She stated that she would be looking through those files later that morning to see what they contained [WITN5426202].
- 4.90. At around this time, Mr Lister was working on a submission to Lord Hunt a draft of which was copied to me among many other officials [WITN5426203]. The submission was to recommend that Lord Hunt support the National Blood Authority Board's proposal to take the NHS Litigation Authority's advice and settle the Hepatitis C litigation out of court.
- 4.91. On 3 March 2000, I minuted The Solicitor, Mrs Marilynne Morgan, following a meeting with Mr Lister and Mr Justin Fenwick QC about the missing documents

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[WITN5426204]. I included a draft minute to Mr Chris Kelly the Permanent Secretary [WITN5426205].

- 4.92. The draft minute to the Permanent Secretary set out what had happened to date in relation to discovering that documents were missing and the advice of Justin Fenwick QC on setting up an internal investigation into the destruction of the documents. Under the heading of "The Disclosure process", it said:

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

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

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

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

- 4.93. Under the heading of "Counsel's advice", the draft minute to the Permanent Secretary continued:

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

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

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

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

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

4.94. On the same day, 3 March 2000, Mr Lister emailed me. He attached a minute setting out which documents highlighted as missing from the disclosure to DMS had now been found (and from what sources) and which documents were still outstanding [WITN5426206], [WITN5426207].

4.95. Also on the same day, Mr Lister emailed me asking for comments on a draft minute to Dr Pat Troop which explained the situation regarding the missing documents [WITN5426208], [WITN5426209]. He wanted Dr Troop to be told

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about the discovery situation ahead of Mrs Morgan raising the issue with the Permanent Secretary the following Monday. From the final paragraph of the note to Dr Troop, it was apparent that one reason for involving her was to alert her to the fact that mention would be made of the destruction of Dr Metters' 'personal papers' on the ACVSB after his retirement which, while they were not on registered files, may imply that it had been ill advised.

- 4.96. On 6 March 2000, I wrote a substantive reply to DMS' letter of 27 January 2000 [WITN5426210]. In it, I explained that, in light of their comments regarding gaps in the documents, we had discovered that some of those appeared to have been destroyed. I said:

*"... The documents we have disclosed as relevant were selected by a doctor, Dr Rejman, who had extensive experience of discovery procedures. When the Department of Health first received a threat of litigation, he was asked to extract relevant documents from the files. It is those documents I have disclosed. In the light of your helpful comments it is clear there are a number of gaps. We are experiencing real difficulty in locating some of the source documents. They appear to have been destroyed. This is unusual and unsatisfactory.*

*The Department has consulted Justin Fenwick QC. On his advice and with his assistance, the Department is trying to locate the documents you require and to discover precisely what happened and why. As a result, the Department is not in a position to fill all the gaps completely. We thought it necessary to disclose this to you at an early opportunity. When I come to complete the disclosure list, Schedule 2 will, of necessity, have to be in broad terms until we can be more specific. If you are in a position to tell us what else you think you want, we will endeavour to find them.*

*I would like to take this opportunity to say that as a result of a thorough search in this office, I have found a number of documents spanning the period which you specified. They were originally thought to attract public interest immunity. They include submissions to Ministers about HCV screening, I include a list and the documents themselves with the hard copy of this letter..."*

- 4.97. Also on 6 March 2000, I was copied into a letter from Mr Pearl at DAC to Ms Sue Bloomfield at the National Health Service Litigation Authority, attaching a copy of an updated opinion on liability from Mr Nicholas Underhill [WITN5426211], [ WITN5426212]. The summary was that Mr Underhill's view was that it was very unlikely that Claimants infected before January 1990 would succeed, but there was a risk that they might and that must be factored in when considering settlement proposals.

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4.98. On 7 March 2000, Mrs Morgan minuted me [WITN5426213]. She provided suggested changes to my draft submission to the Permanent Secretary. She asked for my views on a number of points, including:

“... ”

- *are we happy to name names here (ie. the wretched PES?) rather than leave it impersonal? Should we not perhaps say that the papers seem to have been destroyed?*
- *are we happy with the recommendation? I'm not sure that I've made it clear enough as to why we think an investigation is necessary. Would it reveal anything about the content of the papers? (The labyrinthine mind of Dr Metters may be sparked into action.) Can we say what the consequences if not having an inquiry are? Or what alternatives there are? I've added one thought in square brackets in the final para. ...”*

4.99. “PES” in this context means personal secretary. I recall that I had used the phrase “the wretched PES” to Mrs Morgan as a reference to Mrs Yvonne de Sampayo, Dr Metters’ personal secretary.

4.100. On 7 March 2000, Dr Troop emailed Mr Lister (and he then forwarded her email on to me) [WITN5426214]. Dr Troop said:

*“...Thank you for alerting me to this. As you say, they were Dr Metters private papers, so there should not really be an issue.”*

4.101. Also on 7 March 2000, DMS replied to my letter of 6 March 2000 which had explained the destruction of some documents and the steps we were taking [WITN5426215]. They said:

*“...Thank you for your letter of 6th March 2000. Whilst we appreciate your frankness, the indication that certain of the source documents have been destroyed is, on any view, deeply troubling.*

*We accept unreservedly that having taken advice from Justin Fenwick QC so Mrs James is taking all proper steps to locate the missing documents. That said, the general tenor of her letter suggests that a number of documents (as yet unidentified) are irretrievably lost. We shall reserve further comment until such time as you have identified the documents which have been destroyed and explained the circumstances in which, as you put it ...What happened and why?*

*Time is now very short. We need a much fuller understanding of the Department's position **no later than 4.00 pm on 14th March 2000.***

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*We suggest you provide that understanding in the form of a Supplemental List which:-*

*1 Discloses and produces such of the documents called for in our letter of 27th January 2000 as are available.*

*2 Identifies those documents which appear to have been destroyed and provides as full an explanation as is possible **at this stage as to what happened, when and why.***

*If, following the service of your Supplemental List, the Department succeeds in locating documents thought to have been destroyed that will be a bonus and we will take no point on late production"... (original emphasis retained)*

4.102. On 8 March 2000, DAC wrote to DMS [WITN5426216]. The letter was to update them on issues relating to the Advisory Committee on the Virological Safety of Blood (ACVSB) and Advisory Committee on Transfusion Transmitted Diseases (ACTTD) minutes [WITN5426216]. It said:

*"...We write to notify you of information which has come to our attention. Following disclosure of the Department of Health's list of documents, a representative of this firm attended at the Department to inspect the Minutes of the ACVSB and ACTTD to establish whether these were more complete than those retained by the National Blood Authority. This examination revealed that in fact the Minutes held by the Department of Health, and disclosed by way of their list, are photocopies supplied by this firm to the Department of Health in 1997. This is clear since the Minutes contained an index prepared by a para-legal at this firm, and had been paginated in our house style.*

*A review of correspondence from 1997 reveals that the Department indicated to us that they did not have their Minutes to hand and would be grateful if we were able to supply them with a copy for ease of reference at that time."*

4.103. Also on 8 March 2000, I replied to Mrs Morgan's minute of 7 March 2000 [WITN5426217]. I said:

*"... 2. Dealing with the points in your minute:-*

- I have no views about naming names except it puts the matter in context.*
- I am happy with the recommendation. Justin Fenwick thought an investigation should be held to get a clearer picture of what happened and to ensure, so far as is possible, that it did not happen again. If we do not have an inquiry, we will be exposed to criticism by the court and the public. I should make it clear Justin was not advising that we go public but that we have it to hand if and when we need to offer an explanation.*

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- *The papers in paragraph 2 are those which Dr Rejman put together from his branch's files (He worked with John Canavan who you may remember).*
- *The files in paragraph 4 are the minutes of the meetings of Advisory Committee on the Virological Safety of Blood.*
- *In view of her apparent inability to distinguish between personal papers and those kept as a result of one's office, I suggest Pat Troop is included. She is also Dr Metters' successor.*
- *Probably, it ought to have a "restricted" marking.*

### *3. Dealing with the points on your draft:*

- *Timing – perhaps "urgent".*
- *Paragraph 2 – Dr Rejman was the medical advisor to the branch which dealt with the policy on blood.*
- *Paragraph 5. DMS have now replied. Please see a copy of their letter attached to this minute. They are very concerned but reasonable. I am going to complete the list before I go away.*
- *Davis, Arnold, Cooper (DAC) represent the National Blood Authority.*
- *As to Ministers being informed, I wonder if it should come from Charles Lister on our advice with us copied in.*

*4. I am seeing DAC and the National Blood Authority this morning. I will of course keep you posted."*

4.104. Mrs Morgan incorporated my points into her draft submission to the Permanent Secretary, which she sent to him on 8 March 2000, with copies to me, Mr Lister and Dr Troop [WITN5426218].

4.105. On 8 March 2000, Dr Metters replied to Mr Lister's email of 3 March to Dr Troop (the draft of which I mentioned at §4.95 above) [WITN5426219]. Dr Metters thanked Mr Lister for copying him into the email and said:

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

*Other people who might still have copies of the missing documents include Dr Gunson, Professor Zuckermann, and Dr Rejman. A number of other*



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*members of ACSVB are still around, in particular, Dr Mortimer at PHMS, Dr Minor at IBMSC and Professor Richard Tedder at the Middlesex Hospital.*

*I can shred [shed] no light on why the Registered Files were sent for discussion [destruction] [the original text reads 'shred' and 'discussion', these are obvious errors] in 1993. I do not recall being asked about this at the time."*

4.106. I also spoke to Mrs De Sampayo again on 8 March 2000 and asked her to clarify why she had destroyed the documents in Dr Metters' Office. She informed me that she had a clear out when Dr Metters left and destroyed the files given that they were not registered files. I have a record of this in my diary from the time which reads as follows:

*"ACBS after 2<sup>nd</sup> meeting. Subsequent clearout when Dr Metters left given not registered files."* [WITN5426220]

4.107. On 9 March 2000, the Private Secretary to the Permanent Secretary replied [WITN5426221]. She said:

*"...Many thanks for your note of 8 March. Perm Sec has copied the papers on to David Clark and Flora Goldhill saying that it sounds like we should take your advice, asking them if they're content, and, if so, asking David Clark to get his internal audit people to take forward..."*

I am informed that the Civil Service Yearbooks suggest that at this time David Clark was the Head of the Resource Management and Finance Division (to whom Bill Burleigh reported) while Flora Goldhill was the Director (Grade 3) of the Personnel Services Division.

4.108. Also on 9 March 2000, I wrote again to DMS [WITN5426222]. I attached a list of documents [WITN5426223]. I said:

*"I am writing in respect of your letter of 7th March 2000 which came by fax. May I thank you for the reasonableness of its tone in all the circumstances.*

*I am able to supply you with some of the papers which you called for in your letter dated 27th January 2000. A list of those documents and the documents themselves is attached. I cannot yet supply the documents listed in Annex A. It is difficult for me to offer anything other than a fairly bald statement as to what happened and why at this stage. As you may know, all departmental documents are kept on registered files. Once these files are no longer current they are sent to remote storage. In the Department of Health's case this is at Nelson Lancashire. Before any documents go to Nelson, they are*

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*given a destruction or review date. I generally mark my files (bearing in mind they are generally completed cases) with a ten year destruction date. Policy files, I understand, generally have a twenty year destruction date. In the case of the registered files containing the minutes of the Advisory Committee on the Virological Safety of Blood (ACVSB) for reasons which we do not yet know they were given an early destruction date and destroyed, as I understand it between 1995 and 1997. We thought there were back up documents held by the Chairman of the ACVSB. However, when he retired in the summer of 1999 there was a clear out of his papers given that they were not registered files. We are seriously contemplating making a more detailed investigation into this matter.*

*I note what you say about the late production of documents thought to be destroyed. We are still looking..."*

4.109. It is apparent that around this time mid-late March 2000, I was on a period of leave and my colleague Mr Mark Gidden helped on the Hepatitis C litigation while I was away.

4.110. On 13 March 2000, Mr Gidden was left a handwritten note [WITN5426224]. The note asked him to ring Mrs De Sampayo, as apparently she had found some papers. On the same date, he annotated the note with a short reply confirming that he had called her. The note is hard to make out but appears to read:

*"Telephoned Y de S*

*Everything should be with [Reg'd]? office. She was Dr Metters secretary – she emphasises that she does not have the totality of papers ? just a few selected items which she could copy & send to us."*

4.111. On 13 March 2000, Mr Bill Burleigh faxed the Private Secretary to the Permanent Secretary, with copies to Mrs Morgan, Mr Lister, Dr Troop, me, Mr Clark and Ms Goldhill [WITN5426225]. Mr Burleigh said:

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

4.112. During March and April 2000, there was various correspondence between my division and DAC in regard to copies of documents sent to DMS which they (DAC) had not received. For example, letters from them on: 13 March 2000 [

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WITN5426226]; 3 April 2000 [WITN5426227]; 12 April 2000 [WITN5426228] and the letter from me to them on 05 April 2000 [WITN5426229].

4.113. On 14 March 2000, DMS replied to my letter of 9 March 2000 [WITN5426230].

They asked me to confirm that an investigation into the missing documents was going ahead and they queried firstly, what test (as a non-lawyer) Dr Rejman had applied in completing the discovery process and, secondly, how much time the search would take. Mr Gidden replied to them on 17 March 2000 [WITN5426231]. He confirmed that the investigation was underway, that Dr Rejman was no longer with the Department and would not be completing a disclosure statement in any event and that the expected time frame was a month. He also confirmed that the Department had received some further documents from Mrs De Sampayo (as secretary to the chairman of the ACVSB) and he enclosed an index and copies of the documents [WITN5426232].

4.114. On 16 March 2000, Mr Fenwick QC of 4 New Square Chambers faxed me [WITN5426233]. He confirmed that he had spoken to Claimants' Counsel Mr Michael Brooke (who he described as being quite sensible about the issues) and he asked for an update from me before he spoke to Mr Nicholas Underhill.

4.115. On 16 March 2000, Mr Gidden had a telephone call with Mr Laurence George (the appointed auditor) [WITN5426234]. He minuted the call as follows:

*"... Telephone call to Lawrence [Laurence] George ... at DH Internal Audit @ [Quarry] House who wished to garner some further background information for the investigation he has been tasked with. I explained what I knew of the case in relation to the non-party disclosure involving DMA & DAC and earlier litigation in which we are directly involved as defendants. I did indicate however that in some respects I was perhaps a poor substitute for Anita since her knowledge of matters was extensive and she had in fact identified other sources from which relevant documents may be forthcoming.*

*He was keen to have some guidance on developing terms of reference for his investigation. He wanted to know the type of difficulties the Department were likely to encounter if further documents were not uncovered and I explained what I saw as the likely legal and political consequences although I emphasised we had not previously encountered such a situation. I suggested we were looking for something that was not a witch hunt but identified crucial shortcomings and fairly addressed these in a constructive*

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*way that revealed our own depth of concern. He seemed keen to discuss some of the finer detail but I was reluctant to refer him to Charles Lister who was the only other person who had been privy to the discussions with Justin Fenwick on 3/3/00.*

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

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

*He is going to discuss further with Bill Burleigh his head of branch and said he would contact me again next week if there were any further matters I could assist with.*

*16/3/00*

*MRG"*

4.116. On the same day (16 March 2000), Mr Gidden noted a call to Mrs De Sampayo (Dr Metters' former secretary) [WITN5426235]. He wrote:

*"... Telephone call to Yvonne de Sampayo. She has no other documents and the index of documents is itself not accompanied by any of the documents that are actually listed. She tells me that Dr Rejman left the Dept. 4 or 5 years ago.*

*Reviewed the documents she had sent in. We do not appear to have disclosed any of these judging from the documents listed 1- 259 and 260-299 and from Supplemental list 1-33. I have included the list of documents from Yvonne compiled 7/6/95 in the event that these reveal identity of missing docs..."*

4.117. On the same note, Mr Gidden minuted a call to Ann Willins [WITN5426235]:

*"Telephone call to Ann Willins re her fax of 15<sup>th</sup> – she read the letter from Ross & Co. as I do, namely can a minister @ DH be shown documents belonging to and previously disclosed by his Dept? She can see no reason not to but wished to check with us. I agreed that this seemed rather obvious but I did not particularly trust the firm involved and would like time to consider.*

4.118. The note bears a manuscript annotation to the final sentence:

*" - Anita, this seems obvious but I don't trust Ross & Co one jot – are we missing something?"*

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4.119. On 21 March 2000, DMS replied to Mr Gidden's letter of 17 March 2000 (see §4.113 above) [WITN5426236]. They expressed concern that Dr Rejman was no longer with the Department and would not be completing a disclosure statement and asked the Department to identify who would be doing so. They went on to raise some queries regarding the indexes of documents disclosed and they provided an annotated copy of the 48-page index, with 'H' meaning that they have the document and 'O' meaning that they request the document to be disclosed. Mr Gidden replied the following day [WITN5426237]. He confirmed that the disclosure statement would be completed by someone appropriate and fielded the queries raised on the document lists. He then wrote again on 23 March 2000 enclosing two further documents mistakenly omitted from earlier correspondence [WITN5426238].

4.120. On 22 March 2000, Mr Gidden minuted me on my return from annual leave. [WITN5426239] Along with other points, he said:

*"... Justin Fenwick has returned to us a ring binder of documents which he has uncovered at chambers in the hope that there may be some documents here that have otherwise disappeared. I have not had the opportunity to reconcile these to our lists."*

4.121. On 22 March 2000, Dr Troop minuted Dr McGovern, Dr Metters, Mrs De Sampayo and Mr Lister, with a copy to Mr Burleigh [WITN5426240]. The minute said:

### *"HEPATITIS C LITIGATION: AUDIT INVESTIGATION*

- 1. As you may be aware, there has been an apparent loss of documents needed for the hepatitis C litigation.*
- 2. Bill Burleigh and his colleagues are carrying out an audit to ensure that we learn the lessons from this to avoid a further recurrence.*
- 3. They will be trying to establish what happened and identify the extent to which procedures have not been followed. I have also asked them to review the action that has been taken to retrieve the files.*
- 4. They aim to complete their work by the end of April and report to me in May.*
- 5. The audit will not seek to apportion blame, rather help prevent such things happening again.*

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

*Many thanks..."*

4.122. On 24 March 2000, Mr George sent me a fax [WITN5426241]. He enclosed a copy of the terms of reference for the internal audit (as agreed with Dr Troop) and mentioned that we were due to meet the following Monday [WITN5426242].

4.123. The terms of reference were as follows:

*"RESTRICTED — POLICY  
INTERNAL AUDIT REVIEW — HEPATITIS C LITIGATION  
TERMS OF REFERENCE*

### 1. INTRODUCTION

*1.1 A problem has arisen in relation to the disclosure of documents in the Hepatitis C litigation. There are two types of claim being pursued. In short these are:*

- from haemophiliacs who received blood products and were infected with HIV. Nine outstanding claims are presently stayed. Here, the Department has a duty to the Court not to destroy relevant documents; and,*
- from haemophiliacs who were infected by HIV and Hepatitis C after receiving blood transfusions, for which there are 113 claimants. Here, the Department is not a party to the litigation, but through a process known as non-party discovery, it consented to hand over the papers it had.*

*1.2 Although some documents were extracted from branch files and disclosed to Deas Mallen Souter (solicitors acting for the 113 claimants in the second claim), it became apparent that the documentation was incomplete. On further investigation it was discovered that other relevant documentation had been destroyed, including copy papers and registered files.*

### 2. SCOPE OF INVESTIGATION

*2.1 Broadly, Internal Audit has been asked to;*

- establish what happened;*
- identify the extent to which procedures have not been followed; and,*

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- *make recommendations to prevent such incidents from occurring again.*

*2.2 The extent of the investigation will depend on our initial understanding of the facts, but as a minimum, we will need to talk to the following people, Dr Rejman, Dr Metters and his former secretary, and the person who authorised the destruction of the documents.*

*2.3 We will need to identify the lessons from this case, and the best way to communicate these a) to HSD 1, where we have specific recommendations, and b) to the wider department, where there are recommendations of a general nature.*

*2.4 Internal Audit will not seek to apportion any blame. The purpose of the review is to help prevent such things from happening again.*

### 3. TIMING

*3.1 The investigation will take place in March and April, and our report, including any recommendations, will, in the first instance, be issued to the Deputy Chief Medical Officer, Dr Pat Troop."*

4.124. On 5 April 2000, I replied to DMS' letter of 21 March 2000 (see §4.119 above) [WITN5426243]. I blind copied Mr Lister and Dr McGovern. I said:

*"...Whilst I was away you received numbers 34 to 48 in our supplementary list. I am pleased to say, the Department has now found more documents (namely some of those which I listed in Annex A to my letter dated 9<sup>th</sup> March 2000 as being missing.) I have listed them as number 49 onwards in the supplementary list.*

*I note your anxiety about the disclosure statement. Thus far, you have had everything we have uncovered. Dr Rejman compiled the list at number 34 on the supplementary list and I can assure you he was more than familiar with the discovery process. The conduct of the case has been with this office since 1994. Before 26<sup>th</sup> April 1999 the process would have been under the old rules. I am familiar with the new rules and I will be signing the disclosure statement. The signed list will include all documents in the lists you have seen.*

*Finally, may I thank you for your annotated list. I am taking instructions on that. I should make it clear that the auditors are not looking for papers as such. They are trying to discover what happened and why and making suggestions for improvement. I am hoping that as a result of this, more documents will turn up. I will of course keep you fully informed..."*

4.125. On the same date (5 April 2000), I minuted Mr Lister and Dr McGovern [WITN5426244]. I said:

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*"... 1. I have made a little progress in the third party disclosure process. Justin Fenwick QC returned his papers to me and the minutes of the ACVSB in his papers are more complete. I have therefore been able to fill a few gaps as you will see from my correspondence with DMS.*

*2. I attach a list that was prepared by Dr Rejman in 1995. It came from Dr Troop's office. DMS have annotated it. Where "H" appears DMS have the document in their position [possession]. Where "O" appears, they require disclosure. Can you please look at the list and tell me if you know whether any of the "O" documents exist if they were destroyed. Incidentally, I have looked back through our files and it was recorded that documents were known missing in 1996. It is quite clear that Dr Rejman had a huge number of documents in his possession in 1995 but I cannot work out what happened to them..."*

4.126. On 11 April 2000, Mr George and Mr Burleigh of the Department's Internal Audit team disseminated their nine-page report into the destroyed papers [WITN5426245]. The overall conclusion of the report was as follows:

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

*3.2 We believe the destruction of these files would have been prevented had the person marking files for destruction, been aware of their importance. We have made a number of recommendations to help ensure this type of mistake is not repeated:*

- Improved induction and training procedures to enable the Departmental Records Office (DRO) to instruct all new recruits and existing staff of the importance of good record-keeping;*
- For the Record, the Department's record management guidance, should be updated to include indicative timescales for the retention of different types of documents. This would reflect HSC 1999/053 For the Record, the Department's comprehensive document management guidelines to the NHS, which includes indicative time periods for retaining different types of document;*
- The authorising officer conducting file review should be at IP3 standard level or higher. Currently the level is IP2;*
- the Management of Electronic Documents Strategy (MEDS) team incorporates any improvements they identify as a result of this investigation, into the rollout of MEDS.*

*3.2 These recommendations have been discussed and agreed with DRO, and the Staff Development Unit.*

*3.3 We also acknowledged in this case, that the major organisational changes as a result of the Functions and Manpower Review (FMR), may have contributed directly to the poor decisions taken, through section reorganisation and the muddled allocation of responsibilities. Our understanding of exactly what happened is outlined in the following section..."*



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4.127. On 13 April 2000, Mr Lister minuted Lord Hunt [WITN5426246]. The minute updated the Minister on the Hepatitis C Litigation and recommended that he support the National Blood Authority's wish to settle the matter out of court. The minute set out the terms of the proposed settlement (at Annex B). The Minister's office replied on 27 April 2000 to arrange a meeting to discuss the proposal [WITN5426247].

4.128. On 13 April 2000, I e-mailed Ms Ann Willins [WITN5426248]. I advised her regarding a Private Office case concerning Graham Ross solicitors. On 19 April 2000, Lord Hunt replied to Graham Ross confirming (as per my advice) that whilst there is a convention about papers of a previous administration not being seen by a subsequent one, this did not apply to litigation and as such they would not be in breach of undertakings they had given, in releasing papers to Ministers [WITN5426249].

4.129. On 18 April 2000, Mrs Morgan minuted me asking for my advice on drafts of two minutes arising out the audit [WITN5426250]. The first was a proposed minute to a number of officials within the Department, expressed as a "timely reminder" about the need for good record keeping at times of organisational change against the background of the finding that organisational changes may have contributed to the incident in question. The second minute was to the auditors (Mr Burleigh and Mr George) thanking them and welcoming their recommendations [WITN5426251].

4.130. On 20 April 2000, I wrote to the Permanent Secretary asking permission to disclose the audit report to DMS [WITN5426252]. I wrote:

*"Lawrence George has sent me a copy of the Audit Review's final report. I find its recommendations extremely helpful although it presents us with a salutary lesson. Deas Mallen Souter who, as you know, act for those infected with Hepatitis C know an investigation has taken place and I am obliged to let them know the outcome. It seems to me in all probability they will then wish to see the Report. I have discussed the matter with Marilynne Morgan and she and I take the view that since it is a discoverable document in the*

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*litigation and in the interests of open government it ought to be shown to them in the first instance. Of course I need your permission to do so. Do you agree to its disclosure. Deas Mallen Souter are a respectable firm and will not make cheap capital out of it."*

- 4.131. On 27 April 2000, DAC wrote to my office [WITN5426253]. They enclosed a schedule of missing documents from the minutes of the ACVSB (covering documents from meetings two, five, six, nine and fourteen) [WITN5426254]. They commented on the loss of the Department's copies of the papers, and said:

*"... In these circumstances, given the loss by the Department of its own set of the papers, we would ask you now to confirm that Professor Zuckerman is at liberty to show us the ACVSB minutes and associated papers in his possession, with a view to the use in the litigation (by all parties) of any such papers which go beyond those already disclosed. You will appreciate that the position is now quite different from that at the time of our earlier correspondence, as a result of the discovery order made against the Department in December 1999. There is now no question of the Department being asked voluntarily to compromise the confidentiality of the Committee's deliberations: indeed the order would appear directly to cover the papers held by Professor Zuckerman, since they are (as you have previously asserted) within its control.*

*We should advise you that an application in relation to disclosure is listed before Mr Justice Burton on Friday 19 May 2000. This application does not include specific requests in relation to these minutes, although the fact that a full set has not been made available to the Claimants has contributed to the dispute over the extent of disclosure and has been criticised. It would be extremely helpful to have your response well in advance of that hearing..."*

- 4.132. On 28 April 2000, I wrote to DMS [DHSC0046972\_076]. I enclosed the Internal Audit Review into the missing documents. I confirmed that I did not believe there were any other documents to be discovered and therefore proposed to proceed to the disclosure statement. My letter crossed with a letter from them of the same date which asked for the disclosure statement and for the conclusions of the audit [WITN5426255]. I replied on 3 May 2000 [WITN5426256]. The disclosure statement and supplementary list were then produced [WITN5426257] and signed by Mrs Morgan on the Department's behalf (the list was not it seems signed until 23 May 2000) [WITN5426258].

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*"Volumes 4-17 of "GEB 1" which contained the minutes and background papers which I now cannot identify to the ACVSB (Advisory Committee on Virological Safety of Blood). These documents were destroyed at various stages between July 1994 [and] March 1998. The Department conducted an internal inquiry about why this happened following this application for non party discovery. It concluded that the documents had been destroyed as a result of a decision taken by an inexperienced member of staff at a time when the Department of Health was re-organising itself. Although the investigators said that this decision was arbitrary and unjustified they concluded that the member of staff was unaware of the importance of the documents."*

4.133. On 3 May 2000, I minuted Mr Lister [WITN5426259]. I attached the letter from DAC of 27 April 2000 and a holding response I sent to them (of the same date) [WITN5426260]. I sought Mr Lister's advice on the status of Professor Zuckerman's set of documents and asked that he telephone or email me once he had had a chance to consider the matter.

4.134. On 9 May 2000, under cover of a letter to Deas Mallen Souter [WITN5426261], I served the Department's disclosure list [WITN5426262] and disclosure statement [WITN5426263].

4.135. On 10 May 2000, Mr Lister minuted Lord Hunt [WITN5426264]. He enclosed a draft reply for the Minister's approval, to Ms Susan Deacon MSP on the subject of arranging a meeting between her and the Minister to develop a joint approach between Scottish and English officials on settlement of the Hepatitis C litigation.

4.136. On 11 May 2000, I wrote to DAC [WITN5426265]. I confirmed that I had formally closed the disclosure matter. They replied on 12 May 2000 [WITN5426266]:

*"...We note your comments regarding Professor Zuckerman's papers. We in fact attended a meeting with him this week, when he indicated that the Department had reviewed and photocopied his papers. We are grateful for your confirmation that we may now approach Professor Zuckerman concerning the papers in his possession but as you have already carried out this review then we would be grateful for your confirmation of the following matters. We note that you say his papers are also incomplete and that we have already seen all relevant papers from his set. In order that we may try to avoid disturbing the Professor unnecessarily and also duplicating the work that you have undertaken, please confirm that his papers do not contain the missing documents from the Minutes of the ACVSB as listed in the schedule*

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*that we supplied to you. We note that you state that we have seen **all** relevant papers held by Professor Zuckerman. Please confirm therefore if it is your intention to serve any additional supplemental list as a result of your review of Professor Zuckerman's papers.*

*Turning to your Lists of Documents included in your letter of 11 May, we would be grateful if you would supply us with copies of items 34 and 35 from the Supplemental List. We would also be grateful if you would confirm the source of the ACVSB materials referred to in items 1-33 and 36-48 of the Supplemental List. We are aware that we supplied you with the ACVSB minutes that were then in our possession in 1997 and which were incomplete. Subsequently, we have obtained further, but still incomplete, Minutes of the ACVSB from the headquarters of the NBA in Watford and these have been disclosed to Deas Mallen. Accordingly, while we believe that we have seen all the items contained in 1-33 and 36-48 of your Supplemental List, please let us know from where these were obtained in case there is another source from whom we can seek a complete set. We raise this matter especially as a number of these items did not appear to be available when we inspected your ACVSB Minutes in February of this year.*

4.137. On 12 May 2000, DMS replied to my letter of 9 May 2000 [WITN5426267]. They raised queries on the disclosure statement and list regarding documents marked as 'not for disclosure' as a result of legal professional privilege / public interest.

4.138. Around this time (May 2000) there was correspondence between my office, the Scottish Executive and DAC about disclosure of the opinion of Mr Underhill and the earlier (1997) joint opinion. See [WITN5426268], [WITN5426269], [WITN5426270].

4.139. On 1 June 2000, I wrote to DAC [WITN5426271]. I confirmed (as per the correspondence noted at 4.138 above) that I had provided the 1997 opinion to the Scottish Executive and allowed them to pass both opinions to the Central Legal Office. I also responded to a query raised by DAC about item 34 on the disclosure list:

*"... So far as item 34 is concerned, the list of documents was prepared in 1995 when the Department thought it would be a party to litigation. It was prepared by Dr Rejman who at the time was an officer in the Department. He was the medical advisor to those who had policy responsibility for blood and blood products. It was prepared from his own files and the registered*

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*files "GEB" volumes 1 to 14. The list has been supplied to Deas Mallen. It was supplied as part of the current discovery although it was disclosed to Deas Mallen in 1995.*

*As I mentioned to you when we last met, the Department's records are incomplete - some having been destroyed. The only records left are those which have been disclosed to you as part of this current exercise, There are no other documents...* "

4.140. In June 2000, there was discussion between my Department, Mr Lister and others on a draft submission being prepared for Lord Hunt [WITN5426272] [WITN5426273] [WITN5426274] [WITN5426275]. The submission contained proposals for settlement of the HCV litigation and was drafted for the Minister to submit to the Secretary of State for Health, Mr Alan Milburn.

4.141. On 30 June 2000, Lord Hunt sent the submission to Mr Milburn and the Parliamentary Under Secretary, Ms Gisela Stuart [WITN5426345]. A manuscript annotation on the document (which I assume is from Mr Stephen Waring, Private Secretary to the Secretary of State) reads:

"S of S

*Are you content to follow PS(L)'s advice at para 20. Cost £3m initially  
\*illegible\* over 10-20yrs. Stephen 30/6"*

4.142. Paragraph 20 of the proposal read:

*"... Are you content with my proposal that:*

*(i) A settlement is offered on the following basis:*

***Initial Offer:** compensation paid to claimants infected after 2 May 1990 based on 100% of their claim on condition that the remaining (45) claimants discontinue.*

***Fallback:** compensation paid to claimants infected after 1 January 1990 based on 100% of their claim on condition that the remaining (31) claimants discontinue.*

*(ii) If these offers are rejected, the precondition that the 31 claimants discontinue is removed, and we allow the case to proceed to trial (subject to an assessment by Counsel of the likelihood of these cases being successfully defended)."*

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- 4.143. Following some additional discussion in late July between Mr Lister and Ms Alison Chubb [WITN5426276], on 26 July 2000, Mr Lister wrote to Mr Fogden (Chairman of the National Blood Authority) [WITN5426277]. His letter confirmed that Ministers were content for the settlement offer to be made in the terms of the proposal above and invited him to instruct DAC to proceed on that basis.
- 4.144. On 5 July 2000, Ms Skinner minuted me, with copies to Mr Lister and Mr McGovern [WITN5426278]. She enclosed a draft reply from Lord Hunt to Mr Graham Ross and sought my input on it [WITN5426279]. I replied on 6 July 2000 agreeing with the draft reply to Mr Ross but adding the recommendation that Mr Ross be reminded within the reply that he was still bound by his undertaking in the HIV litigation [WITN5426280]. On 24 July 2000, the letter was sent from Lord Hunt to Mr Ross incorporating my recommendation as its penultimate paragraph [WITN5426281].
- 4.145. On 25 July 2000, Mr Lister emailed Ms Alison Rose of the Foreign & Commonwealth Office [WITN5426282]. The email was copied to me, Mr McGovern and Ms Hewitt. The email asked her to provide assistance in tracking down documentation relating to the Product Liability Directive (85/374/EEC), the technical knowledge defence and the involvement of Professor Hans Taschner and mentioned that he had also asked the Department of Trade and Industry (DTI) for the same. On the same date, Mr Lister e-mailed me with copies to Mr McGovern and Ms Skinner [WITN5426283]. He confirmed that DTI would send over their files and that someone from DAC would need to inspect them and liaise with DTI's lawyers (through me) should they wish to use any of the documents in evidence.
- 4.146. On 26 July 2000, the logistics of this exercise were discussed in emails between Mr Lister and Ms Sarah Payne of DAC, forwarded to me by Mr Lister [WITN5426284].

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4.147. On 14 August 2000, Mr Pearl of DAC wrote to Mr Lister [WITN5426285]. He attached an attendance note, dated 24 July 2000, in which he confirmed that he had made the initial offer to DMS, as per his instructions [WITN5426286]. He confirmed both that he would report back once further discussions with Mr Mallen of DMS had taken place and that he would instruct Mr Nicholas Underhill to prepare a further opinion.

4.148. On 6 September 2000, Mr Lister emailed me [WITN5426287]. He attached a further letter from Mr Pearl and confirmed that he was sending over Counsel's (Mr Nicholas Underhill) latest opinion by hand. Mr Lister outlined that in his letter Mr Pearl had (in Mr Lister's view "unsurprisingly") concluded that a trial was inevitable and set out three options on the assumption that the settlement not be accepted. Mr Lister sought my views in advance of a submission to Ministers he intended to put the following week. The three options set out were:

- "(i) remove the requirement that Group B claimants halt their action enabling a settlement to be made on Group A whilst Group B proceeds to trial:
- (ii) proceed to trial without settling Group A
- (iii) avoid a trial by offering a settlement to all claimants with Group B receiving a lower amount on a sliding scale."

4.149. On 8 September 2000, I replied to Mr Lister [WITN5426288]. I advised:

*"... As I expect you know, this case raises complex issues of policy, what might be characterised as legal policy and law. I anticipate that the costs of going to trial will be substantial even at this late stage. I therefore do not see option (ii) as viable since we are pretty certain they will win. I do not see that option (i) would carry any greater allure for the claimants than the offer presently on the table. I therefore favour the pay to go away option of (iii). I assume the claimants are getting advice about risk so they may see the benefit of this. The trial date coincides with the publication of the Phillips' Report which it is anticipated will put advisory committees in the spot light. I think this will make handling any trial publicity more difficult. I think we should make an effort to resolve matters."*

4.150. On 19 September 2000, Mr Lister sent a submission to Lord Hunt [WITN5426289] [WITN5426290]. In it he noted (at §6) that the Minister had agreed the following settlement strategy:

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*“...Initial offer: compensation paid to claimants infected after 2 May 1990 on condition that the remaining (45) claimants discontinue their legal action.*

*Second offer: compensation paid to claimants infected after 1 January 1990 on condition that the remaining (31) claimants discontinue.*

*Fallback offer: offer compensation to the claimants infected after. 2 May/January 1990 but drop the requirement on the early cases to discontinue their action, allowing the case to proceed to trial...”*

4.151. Mr Lister explained that only the initial offer had been made (and had been rejected). That it was clear that the second offer would be rejected (if made) and that therefore legal advice was that the fallback offer should be considered. He set out two options for the Minister to consider and recommended the first (settlement on claimants infected after May 1990 but as less than 100% of their claim to reflect the evidence that the first generation screening test would not have prevented all infections).

4.152. Between 20 September 2000 and 21 September 2000 there were communications between the Ministerial offices and Mr Lister confirming that the Ministers and the Secretary of State were content to adopt the first option [ WITN5426291, WITN5426292], [ WITN5426293]. On 2 October 2000, Mr Lister emailed me and Mr McGovern [WITN5426294]. He updated us on the settlement offer ahead of the trial which was due to start on 10 October 2000.

4.153. On 6 October 2000, Mr Lister minuted Lord Hunt [WITN5426295]. He updated the Minister on the limited settlement progress and cautioned that there would be considerable media interest in the case:

*“...This is a less satisfactory outcome than we had hoped for and means that the question of whether the screening test could have been introduced sooner will still be aired in court and reported in the media. In this context, DH officials will be severely criticised by the claimant's Counsel...”*

4.154. On 10 October 2000, Dr Sheila Adam (the Deputy Chief Medical Officer) emailed the Permanent Secretary, Mr Kelly [WITN5426296]. She attached the



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minute from Mr Lister to Lord Hunt. She sought the Permanent Secretary's advice on how to handle the potential negative media interest in a number of named individuals as a result of the trial. She said:

*"... I asked Mike McGovern to track back who was involved. We think the following:*

### **ACVSB**

*Jeremy Metters chair (currently HMIA)*

*Andrej Rejman, SMO, secretariat (now working in NHS after taking VER/VES)*

*John Canavan, secretariat (now IP4 in SC2-GAU)*

### **DH POLICY LEADS**

*Mike Malone--Lee G2 (currently with LCD?)*

*Dora Pease G3 (retired)*

*Hilary Pickles PMO (now DPH in Hillingdon HA)*

*Roy Cunningham G5 (retired but still undertakes work for DH) Robert Anderson EOR (still EOR),*

*A number of RHA staff (including me when I was an RDPH) commented on the cost benefits of introducing screening, RHAs at that point managed regional blood transfusion centres*

*With the exception of Robert Anderson, I do not think that any of these people are aware of the imminence of the case nor therefore of the intention of the prosecution to criticise DH. Apparently they do not intend to name individuals. I am particularly concerned that at least two of those associated with this case are also involved in the BSE report (I assume). ..."*

4.155. On 10 October 2000, Mr Martin of the BSE Inquiry Liaison Unit minuted the Secretary of State, Mr Milburn [WITN5426297]. The minute included a briefing on Human Growth Hormone and CJD litigation; a general note on "no-fault" compensation; and a briefing on Hepatitis C and HIV in haemophiliacs. These were sent to the Secretary of State ahead of a meeting scheduled for 11 October 2000 which I (amongst several others) was expected to attend.

4.156. On 14 November 2000, Ms Alison McAdams of DMS emailed me with copies to Mr Lister and Mr Pearl [WITN5426298]. She said:

*"... As part of the ongoing Court proceedings in this case, we are currently hearing the evidence of Professor Zuckerman. Reference had already been made earlier in the trial to the Advisory Group on Hepatitis and Prof Zuckerman has commented upon this as a member of the Group, although his essential contention was that it had no relevance to the present issues.*

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

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

*I understand that you are not in the office today and so I have mentioned the matter to Charles Lister. While neither Prof Zuckerman nor I believe there is anything of relevance, the Court Order obviously takes effect and I wanted you to be aware of this development. In these circumstances, Prof Zuckerman has agreed to provide the papers to me and Charles agreed that it would be best for me to arrange the mechanics of inspection with the Claimants before returning the papers to the Professor. ..."*

- 4.157. Mr Lister forwarded the email to Dr Hugh Nicholas (with copies to Ms Vicki King and Mr Gerry Robb). In turn Dr Nicholas forwarded it to Ms King, Mr Robb, Ms Mary O'Mahony and Ms Agatha Ferrao with the following comment:

*"This could be more work if we have to go through all our papers - I doubt that AGH discussed this much, if at all. It was some years before my time. Let us hope it does not prove necessary as it could take us some time hunting through the various old files. Hugh"*

- 4.158. On 6 December 2000, Mr Lister minuted the Deputy Chief Medical Officer, Dr Adam [WITN5426299]. He updated her on the progress of the HCV litigation and gave an assessment of the likely outcome.

- 4.159. Between January and March 2000 there were several letters between Mr Graham Ross (of Ross & Co Solicitors) and Lord Hunt and related internal communications. These focussed on Mr Ross' desire to be freed from the undertaking he had given in relation to papers (see §§4.128 and 4.144 above) and his desire to obtain a response to his correspondence from the Secretary of State. See, for example [WITN5426300], [WITN5426301], [WITN5426302], [WITN5426303], [WITN5426304], [WITN5426305].

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4.160. On 26 March 2001, Mr Pearl of DAC wrote to the Department [WITN5426306]. He reported that Mr Justice Burton had found for the Claimants on almost all disputed issues of liability, although quantum issues had been decided more favourably for the Defendants.

4.161. On 26 March 2001, Mr Lister provided a submission to Lord Hunt [DHSC0004741\_046]. He informed the Minister of the outcome of the litigation and confirmed that he would be in touch to seek his views on the possibility of appeal after meeting with Counsel, the NHSLA and solicitors the next day. On 3 April 2001, Mr Lister put a further submission to Lord Hunt [WITN5426307]. He confirmed that after careful consideration and on receipt of legal advice, the Minister was advised (as agreed by Counsel, the NHSLA and the National Blood Authority) to agree that an appeal against the Judgement should not be made. It noted that Ms Susan Deacon (Minister for Health & Community Care in the Scottish Executive) was supportive of an appeal. On 5 April 2021, Lord Hunt minuted Ms Deacon [WITN5426308]. He confirmed that the Department would not be appealing the Judgement.

4.162. On 5 April 2001, Mr Lister emailed the Secretary of State's Office [WITN5426309]. He answered the Secretary of State's questions on the costs and process of appealing and on the costs of not doing so.

4.163. On 5 April 2001, the Secretary of State, Mr Milburn minuted the Chief Secretary of the Treasury with copies to the Lord Chancellor, Mr Byers and Sir Richard Wilson [WITN5426310]. He confirmed the Department's decision not to appeal the Judgement and argued that the costs following from the case would have to be met by a claim on the Reserve, as NHS funding was already otherwise committed. The Treasury's response (noted in emails of 6 April 2001) [WITN5426311] was to state that the Secretary of State should not assume that the cost of meeting future claims would be met by the Reserve.

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4.164. On 10 April 2001, Lord Hunt replied to Mr Graham Ross' letter of 12 March 2001 (see §4.159 above) [WITN5426312]. He apologised for the delay in his reply. The Minister confirmed that he had already explained that the Department's files listed in discovery from the HIV litigation would not be placed in the House of Commons Library and the reasons why Mr Ross had not received a personal reply from Mr Milburn. The Minister concluded that he had nothing further to add.

4.165. On 30 April 2001, Mr Ross replied to Lord Hunt [WITN5426313]. He asked the Minister to consider the evidence he had provided which, he asserted, showed:

*"...a catalogue of massive neglect and incompetence in the running of the Blood Laboratory over the years..."*

Mr Ross went on to reference the Judgement and asked the Minister to agree to pay compensation to all those who became infected during the period, notwithstanding any legal impediment to their claim.

4.166. On 30 April 2001, Mr Richard Henderson, a solicitor for the Scottish Executive, wrote to me [WITN5426314]. He sought my comments on why the NBA / Department of Health had decided not to appeal the Judgement and on why the proposition that blood was a product for the purposes of the EU Directive had not been challenged. I responded acknowledging receipt on 18 May 2001 [WITN5426315]. Mr Henderson wrote again on 21 May 2001 [WITN5426316]. He explained that the Scottish Executive had now had Counsel's opinion on the appeal of Burton J's Judgement and therefore he did not require a substantive response to his letter of 30 April 2001, instead he sought my comments on the case handling, at my convenience.

4.167. On 2 May 2001, Ms Taylor minuted me [WITN5426317]. She enclosed a copy of Mr Ross' letter to Lord Hunt (see §4.165 above) and asked for my comments on his request for compensation for all those infected (as opposed to those who had brought the proceedings) and stating that she thought a robust reply was required. I replied the following day [WITN5426318]. I said:

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*"... I think a robust answer is necessary. I don't suppose the minister has read any of the documents but that does not mean he cannot use the information obtained for him by his advisers and lawyers. There is no way the documents can be placed in the Commons Library. They are court documents and that is the end of that. As to the last paragraph, I am sure I have seen a submission from Charles Lister on this point. It is our view that only those who had issued proceedings should be compensated. There is no comparison between the situation that existed in relation to HIV as HIV in those days meant certain death. A very moral decision was made then.*

*I have it from a very reliable source that Mr Ross's franchise from the Legal Services Commission has been withdrawn. I think this has the effect of meaning he has no clients unless they pay him or there is a no win / no fee agreement.*

*Happy to look at the draft when it is ready."*

4.168. On 15 May 2001, Lord Hunt replied to Mr Ross [WITN5426319]. He reiterated the position on the Department's files not being placed in the House of Commons Library and relayed to Mr Ross the Department's position (that only those who had issued proceedings should be compensated).

4.169. Throughout June and July 2001 there was continuing correspondence between Lord Hunt and Mr Ross, with concern raised internally over the tone and wording of some of the letters received by the Department. Mr Ross continued to assert that compensation should be paid to all infected by Hepatitis C contaminated blood products and the Department continued to re-assert its position that payments should only be made to those who had been party to the proceedings, see [WITN5426320].

## Section 5: Involvement as DH Head of Litigation (2002 – December 2005)

- 5.1. On 30 April 2002, the Media Monitoring Unit produced a transcript of an episode of the Radio Four programme 'The World Tonight' aired on 3 April 2002 at 22:30hrs. Lord Owen and Lord Morris were guests on the show. In his comments, Lord Owen said [WITN5426321]:

*"...I asked for my papers as Minister for Health and I was told that they had all been pulped and there is some bizarre ten year rule which struck me as very odd because I, all my papers as Foreign Secretary are available to me. But they were not available. But now I have gone back over a television interview which I gave at the time when I was asked a direct question and I make it quite clear that I was worried about the quality of the blood transfusions and blood products coming from the commercial sector where people have been paid for it. And there are other evidence which makes it clear why I made the decision now in seventy four. And I hope the Ombudsman will re-open the case, make a judgement now that the administration had taken place and get some compensation scheme for people who have got the hepatitis C virus in their blood stream and some people now developing one of the side effects of it, which is cancer of the liver..."*

- 5.2. On 17 April 2002, Mrs Janet Walden the Branch Head of the Investigations & Inquiries Unit minuted Charles Lister (with copies to others, including me) [WITN5426322]. She said:

***"HAEMOPHILIACS AND HEPATITIS C: EVENTS IN THE 1970s AND 1980s***

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

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

- 5.3. On 30 April 2002, Lord Morris was interviewed by Radio Four again, as part of an episode of the "You and Yours" programme (See transcript [WITN5426323]).

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The programme discussed the Irish compensation scheme and interviewed Northern Ireland Health Minister, Mr Michael Martin. In the interview Lord Morris suggested that the British Government should follow the example of the Irish in setting up a wider scheme of compensation.

- 5.4. On 8 May 2002, Mr Lister minuted the then Parliamentary Under Secretary for Public Health, Ms Yvette Cooper [WITN5426324]. The minute was sent in advance of a meeting scheduled to take place on 9 May 2002 to discuss:

*“...handling the haemophilia & hepatitis C compensation/public inquiry issue...”*

The minute set out: at Annex A, a summary of the situation at that time; [WITN5426325] at Annex B, a chronology; [WITN5426326]; and at Annex C, an assessment of the commitment to self-sufficiency [WITN5426327].

- 5.5. On 24 April 2003, Mr Lister e-mailed a number of officials in the Department including Ms Zubeeda Seedat, I was copied in [WITN5426328]. The email referenced an article published in the Guardian newspaper the day before which set out that haemophiliacs in Scotland were seeking criminal prosecution in relation to contaminated blood products being administered in the 1970 and 80s [WITN5426329].

- 5.6. On 5 June 2003, Ms Seedat emailed Mr Lister [WITN5426330]. Ms Seedat sought his input on a Parliamentary Question referring to the “Peter Burgin report” (this was the informal name sometimes given to what became the Department’s 2006 report, ‘Self-Sufficiency in Blood Products in England and Wales’). The PQ was as follows:

*“... The Lord Clement Jones – To ask Her Majesty’s Government what review has been carried out of the circumstances in which files relating to the liability for the supply of blood products, which were compiled when Lord Owen was Health Minister, went missing; and what has been the outcome. (HL3208)...”*

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5.7. On 10 June 2003, Mr Lister replied to Ms Seedat [WITN5426331]. Mr Lister wrote:

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

- how the Department implemented the policy of UK self sufficiency in blood products begun in 1973 (Lord Owen has said publicly that officials did not carry out his wishes);*
- to chart the developing understanding of the seriousness of non A/no B hepatitis (later identified as hepatitis C);*
- to examine the extent to which problems at BPL delayed the achievement of self sufficiency;*
- whether the achievement of self sufficiency would have led to fewer cases of hepatitis C in haemophilia patients.*

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

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

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

*Peter Burgin's report nonetheless contains some useful stuff..."*

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

*'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'.*

*Hope this is helpful..."*

5.8. In 2005, there were several Freedom of Information Act requests made of a similar nature, seeking access to papers referring to the management and



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collection of blood and blood products. I exchanged a number of emails with colleagues regarding the requests.

5.9. On 21 February 2005, Ms Seedat emailed me [WITN5426332]. She said:

*"Anita,*

*I spoke to you last week about a letter I am dealing with following a request under Freedom of Information. The correspondent would like access to papers which we had sought to withhold following a claim for public interest immunity during the HIV litigation in 1990.*

*I have prepared a background note on the HIV litigation and the issue of disclosure at the time. I would be very grateful for your comments on this note which I intend to put up to my Division head when submitting the draft reply.*

*With regards to the draft reply we send, for now I have given two reasons (using the standard template provided) for being unable to make the documents available: destruction of documents and unable to locate these documents.*

*I should be grateful if you could let me have any comments on the attached as soon as possible..."*

5.10. On 22 February 2005, I replied to Ms Seedat [WITN5426332]. I said:

*"... I have looked at the drafts. I have three comments. Firstly in the background note, under HIV Litigation you should say "and the then [rather than present] Conservative government. It was during a look for papers in the Hepatitis C case which did not involve the Department of Health that it was discovered that the papers had been destroyed. Charles Lister and I came to that conclusion and we had an audit done. If you send me your room number and building, I will pass a copy to you. In paragraph 7 you should refer to the discovery process on the Hepatitis C litigation rather than HIV litigation. Also I would say "by a junior official at the Department of health who no longer works there". (He took early retirement to look after his small holding). Secondly, in the letter, I don't think you can say "has been destroyed in accordance with best records management" when the documents were destroyed in the worst records management! I would just say "has been destroyed". Anita"*

5.11. I have been asked by the Inquiry who the junior official was that I referred to in the above e-mail. The person I was referring to was Mr Dave Burrage. However, I now realise that this was a mistaken belief and that it was not he who had been responsible for the destruction dates applied to the documents. I had previously understood that Mr Burrage was the last person to leave his section

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on voluntary early retirement and as such would have been the person setting the destruction date on the documents before he left. However, I now understand that it was not Mr Burrage. The reason I now realise that Mr Burrage was not the person responsible is the minute from Dr Rejman sent to me on 7 June 1995 [DHSC0200022\_002] in which he noted:

*"... Mr Burrage has asked for the individuals responsible to write to him formally confirming this [that documents had been destroyed]..."* [§1]

In addition, in an email of 1 October 1996 from Mrs Jackson-Roberts to Ruth McEwen, she noted [WITN5426333]:

*"...I have spoken to David Burrage who asserts that when he left CA-OPU a year or so ago all relevant files were located together in one filing cabinet. So if any is now missing he cannot account for either why that should be or the possible location..."*

- 5.12. On 24 March 2005, Ms Seedat emailed the Freedom of Information Team [WITN5426334]. She attached a response to the Freedom of Information Act request which she stated had been cleared by her Head of Division, Mr Gerard Hetherington [WITN5426335]. It said:

*"...Dear Mr GRO-A*

***Freedom of Information Request - Papers referring to the management and the collection of blood and blood products, in particular the import of blood and blood products from the USA.***

*Thank you for your letter of 15 March to the Department of Health in which you request information, under the Freedom of information Act, about papers referring to the management and the collection of blood and blood products, in particular the import of blood and blood products from the USA.*

*You have asked a series of questions about imported plasma in the early 1970's. It may be helpful if I explain that to answer these questions, officials would need to undertake a lengthy examination of the files for that period, and consult with external organisations who were involved with the provision of imported plasma. The Freedom of Information Act provides for public authorities to reject requests for information where the cost involved would exceed £600 for central government. Your request falls into this category.*

*With regards to your request for documents which were subject to a Court of Appeal Hearing on 20 September 1990 in relation to the HIV litigation. 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.*

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*I hope this information is helpful but if you are unhappy with the decisions made in relation to your request from this Department you may ask for an internal review. You should contact the FOI Unit, 360c Skipton House, 80 London Road, London, SE1 6LH if you wish to complain.*

*If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at..."*

- 5.13. On 29 March 2005, Mr Timmins of the Freedom of Information Team emailed Ms Haywood and Mr Connon of the General Health Protection Team [WITN5426336]. He said:

*"I have been asked to look at your response from an Fol perspective.*

*I am concerned that the answer put forward by Zubeda (see below) would be difficult for Mr [GRO-A] to accept given this was a discovery claim to support an extensive litigation case, May I suggest that you contact SOL to see whether they have the records (the documents which were provided for the judge and the appeal court). It may be a good idea to clear your answer with them also.*

*If SOL do not have the documents, can we be sure that some, if not all, are not on archive either at Nelson, the National Archive or with the Department Records Office? If you do find the documents, it may be that the £600 limit would be breached in redacting them, if that is the case, please let me know und we can discuss how to handle.*

*I understand that there are two similar Fol requests relating to the importation of blood plasma products from the US: a PO case from Micheal Spicer (our ref 265): and a Fol case from Caroline Grayson (our ref 354), Two of these cases appear to be initiated by representative groups and the third is through an opposition MP, therefore it is important to ensure that our responses are consistent as they may go wider in the public domain..."*

- 5.14. On 1 April 2005, Ms Haywood forwarded Mr Timmins's email to Ms Hurst in the Solicitor's Litigation team [WITN5426337] [WITN5426338]. In turn, on 4 April 2005 Ms Hurst sent the email chain on to me [WITN5426337]. On 5 April 2005 I replied to Ms Haywood [WITN5426337], I said:

*"Michelle, 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 date. I would take out the "do not appear" stuff. There are no records."*

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5.15. I have been asked by the Inquiry in relation to the above e-mail, to comment on the following matters:

- *Which documents I was referring to (including the date and type of documents); and*
- *What evidence I relied on when making the statement that Department of Health records (as opposed to ours) 'were...inadvertently destroyed in the early nineties as the HEO working in the branch gave them a ridiculously short destruction date'.*

5.16. In response to this I would say as follows:

- Regarding the *litigation files* that I looked for in relation to another case and having been unable to retrieve them because they were destroyed, this was a reference to my team's efforts to find the HIV litigation files around 1996 when we needed them for the threatened Hepatitis C litigation. The discovery that we did not have all of the HIV litigation papers straddled my move to the Department of the Environment in May 1996. It is reflected in Ms Ruth McEwen's minute of 2 May 1996 to which I have referred at §2.86, above. Essentially the issue was that when we went to retrieve the HIV litigation disclosure documents, a number of them were missing. Although I cannot speak to this from personal knowledge, I understand that these documents (or at least many of them) were subsequently retrieved through a combination of copies retained by the Claimants' solicitors and documents being later found on unregistered files: see the later, May 2007, Departmental report "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)"
- The reference to "*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 date*" was a reference to the destruction of some volumes of GEB 1 which I have addressed in Section 4 of this statement and which was investigated by the audit report. The reference to the HEO was to Mr Burrage because I think I was mis-remembering that it was Mr Burrage himself who had marked

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the destruction dates. I would here have been relying on my recollection of what had happened some five years earlier and the audit report from that time.

5.17. On 5 April 2005, Ms Haywood forwarded my comments on to Ms Seedat [WITN5426337].

5.18. On 22 November 2005, Ms Seedat emailed me again referring back to my email of some nine months earlier on 22 February 2005 (see §5.10 above) [WITN5426339]. She said:

*“... Can you please send me ASAP a copy of the audit report that you mention in your response below.*

*We have two issues at present. Lord Jenkin (was was SoS for DHSS) wants to meet with Sir Nigel Crisp about why we no longer have files on the issue of contaminated blood products and we are about to publish a report on a review of papers on self sufficiency in blood products, a key criticism will be that we conducted this review without having all the paperwork.*

*We have now moved to Wellington House*

*Can you please arrange for the report to be faxed to me if it is short on GRO-C or send a copy through internal post. I'm in room 530 Wellington House...”*

5.19. On 23 November 2005, I faxed Ms Seedat a copy of the audit report [WITN5426340].

5.20. As I have set out in my brief biographical details, I left Civil Litigation to become DH's Head of Employment Law in December 2005, taking up the new post in January 2006

5.21. On 26 January 2006, Ms Seedat emailed me [WITN5426341]. She sought advice on an email received from Ms Carol Grayson of Haemophilia Action UK [WITN5426342]. Ms Seedat forwarded the email on to Ms Anne Mihailovic a few minutes later. Ms Mihailovic responded on 7 February 2006 [

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WITN5426343]. Ms Mihailovic and Mr Scott were jointly caretaking the role of Head of Civil Litigation for the Department following my departure in December 2005.

## **Section 6: Commentary and response to the issues raised by the inquiry**

- 6.1. As I explained in my opening remarks, I have set out in quite some detail the flow of minutes and other information, rather than limiting this statement to the relatively few documents which the Inquiry specifically asks me to comment upon. I have done so because I hope that it provides both context and detail in relation to the issues which the Inquiry has raised with me. I can now turn to those specific questions.

### **My minute of 19 June 1995 (Inquiry's question 2)**

- 6.2. I have addressed my minute of 19 June 1995 [WITN4486017] [WITN5426020] in Section 2 of this statement. The meeting to which that minute referred was the meeting involving the Minister of State, Gerald Malone on 7 June 1995, see §2.23, above.
- 6.3. The Inquiry asks what this meeting was about. I was not at the meeting, but the summary provided by Mr Malone's Assistant Private Secretary (Mr Abrahams) sets out a summary of what was discussed. The summary notes that the discussion had concentrated on whether the Department would be able successfully to defend a charge of negligence brought on behalf of those who had been infected with the Hepatitis C virus through contaminated blood or blood products [DHSC0003552\_155].
- 6.4. As to who attended the meeting, I cannot be sure, as I did not myself attend. It is likely the copy list to Mr Abrahams's summary of the meeting is the best guide. From the Solicitor's Division, it is likely that the attendees were my line manager, Mr Blake, and The Solicitor, Mr Thompson, both of whom were on the copy list for the summary of the meeting.

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- 6.5. As to whether a minute was taken, again – not having been present – I cannot say definitively. From my general Civil Service experience, I would expect that handwritten notes would probably have been taken at the meeting, but Mr Abrahams' minute summarising what had been discussed may well have been intended to stand as the formal record.

### **Dr Rejman's list of documents (Inquiry's question 3)**

- 6.6. The Inquiry also asks about the list of documents sent to me by Dr Rejman to which my minute of 19 June 1995 had also referred [WITN4486017] [WITN5426020].
- 6.7. As I have explained in §2.27, above, in referring to "*a list of documents covering the three years. They run into some 14 volumes*" I believe that the 14 volumes would have referred to 14 files. This may in turn have been drawing on what Dr Rejman said he had received from Mr Burrage (GEB Vols 1 – 14), albeit that volume 4 had been destroyed (see Dr Rejman's minute of 7 June) [DHSC0200022\_002].
- 6.8. Furthermore, from the available records, it looks as if key extracts from the files (rather than all of the documents) were provided to me at that stage. See Dr Rejman's minute of 23 June 1995 and §§2.31-2.32, above.
- 6.9. As to the reference in my minute of 19 June 1995 to my having "... *some papers which take the form of submissions to ministers* ...", I have addressed this in §2.28, above. As mentioned there, I can no longer remember where these papers were from, or where they were stored – it seems logical that they were in The Solicitor's office, as they were to hand and available to me.



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**When I first became aware that Department of Health documents relevant to contaminated blood had been destroyed (Inquiry's question 4)**

- 6.10. As regards the destruction of documents, the Inquiry has asked me when and how I first became aware that Department of Health documents relevant to contaminated blood had been destroyed. From the available records, it looks as if I was first alerted to this in the minute from Dr Rejman of 7 June 1995, as I have addressed in §§2.21-2.22, above.

**What documents I discovered were destroyed; steps taken after I had discovered they had been destroyed; and whether I know who was responsible (Inquiry's questions 5 - 8)**

- 6.11. I am asked to explain which documents I discovered had been destroyed (by date, type and title of these documents or files). I am also asked what steps I took after I discovered documents had been destroyed and whether I knew the identity of the person responsible. I am asked to set these matters out separately if I am aware of more than one incidence of document destruction.

- 6.12. I will address separately:

- The early information I received about the destruction of Volume 4 of GEB (1995).
- Discovering that old HIV litigation files were missing (1996).
- Later discovery that more files from the GEB series had been destroyed (2000).

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### **The early information I received about the destruction of Volume 4 of GEB (1995).**

- 6.13. As noted in §2.21 above, on 7 June 1995, in his minute reporting to me on the documents relevant to Hepatitis claims, Dr Rejman mentioned to me that Volume 4 of GEB for part of 1989 had apparently been destroyed. He further said that Mr Burrage had asked for the individuals responsible to write to him formally confirming this.
- 6.14. In terms of answering the Inquiry's detailed questions about this, I have the difficulty that I simply have no recollection now of receiving this minute nor as to what I did in response. Looking at it now, I would have these comments:
- (1) It was sensible for Mr Burrage to be getting written confirmation of what had happened from those who were responsible for destroying the file / marking it for early destruction.
  - (2) I am clear that, between us, we *should have* ensured that a clear message was delivered that such files should obviously be retained / marked for lengthier retention. This was principally a matter that the policy team who had control of the registered files should have made clear. However, looking back now, I would like to think that (if others had not made it sufficiently clear already) I would have added weight to that message from the standpoint of the Department's Solicitor's Division.
  - (3) The available materials do not include any *written* record of such a message being given. I would like to think that it would have occurred to all of us to make it clear that the records needed to be retained. After such a long time, I am not able to say whether that message was given in writing (but has not been retained); was delivered verbally at the time; or we omitted to make it clear. But plainly we should have got that message across.
  - (4) I return at the end of this statement to give some further context to my work at this time. However, I accept that having been told that one file

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had been destroyed, between the teams involved (Policy, medical and legal) a clear message certainly should have been delivered to the effect: 'make sure no more are destroyed'.

### **Discovering that old HIV litigation files were missing (1996).**

- 6.15. As I have set out at §2.74 above, on 18 March 1996 I minuted Ms McEwen, transferring conduct of the Hepatitis C litigation files to her (ahead of my leaving the Department, that May). As the Inquiry can see from Section 2 of my statement, Ms McEwen's work on the litigation involved her trying to access the litigation files in relation to the previously settled HIV litigation.
- 6.16. The discovery that old HIV litigation files were missing from the Solicitor's Division records appears to have arisen in the few days before my transfer to the Department of the Environment.
- 6.17. As I have explained in §2.86, the main issue was that Ms McEwen had (with the assistance of a locksmith) broken into filing cabinets in the basement of New Court to discover that files 1-21 and 44 of the HIV Discovery documents were missing. Going over my contemporaneous records and Dr Rejman's reply, he appeared to have copies of the majority of the litigation files that were missing (files 1-30). (see §§2.86-2.87, above).
- 6.18. A secondary matter, was that Dr Rejman was concerned that, at least to his recollection, I had failed to return his originals of the reports of Dr Perry and Dr Williams that had been sent to me in June 1995 (see §2.87 above).
- 6.19. I have noted my recollections in relation to Dr Rejman's assertion, at §2.90, above. In short: I do not recall the documents nor remember receiving them, nor do I have any recollection of Dr Rejman stating that the originals had not been returned. There does not appear to be any minute from that time recording

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his requested return of the documents, though this may have been done verbally.

6.20. In addition, as I have set out in §3.4, after I had moved to the Department of the Environment, Mr Wilson contacted me on 5 June 1996 in relation to missing HIV litigation documents. As mentioned, I made a note of the documents he said were missing.

6.21. From the above, to the best of my knowledge based on the available records:

(1) The documents that appeared to be missing at this time were:

(a) From my notebook entry of Mr Wilson's call (see §3.4, above), some HIV litigation documents, which appear to have been as follows:

*"LGR 027 / - / 001 / 00108 (1) (2) (3) (4)*

*LGR 027 / - / 001 / 00109 / P (1) (2)*

*LGR 027 / - / 001 / 00110 (1)*

*LGR 027 / - / 001 / 00111 (1) (2)*

*LGR 027 / - / 002 / 00001 (1)*

*LGR 027 / - / 006 / 00013 (1)*

*14 (1)*

*15 (1)*

*16 (1)*

*17 (1)"*

(b) The reports of Dr Perry and Dr Williams (based on the recorded comments of of Dr Rejman (see §§2.87 to 2.91 above))

(2) In terms of action taken by me:

(a) I do not think that I would have taken any action in respect of the missing HIV litigation files. That is because by this stage, Ms McEwen

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had taken over the Hepatitis C litigation and no doubt she would have been involved in trying to obtain any that remained missing.

(b) In relation to the reports of Dr Perry and Dr Williams, which it was suggested I had failed to return, as I do not recall the reports (as mentioned previously) I am unsure what if any action I may have taken. As I note below, I am reassured they are not lost, as they are available in the disclosure provided to the Inquiry.

(3) In terms of who was responsible for the documents going missing:

(a) I cannot assist with the missing HIV litigation files, I cannot assist with where responsibility for this lay. They should have been properly archived at the end of the HIV litigation. I did not have conduct of that litigation.

(b) In relation to the reports of Dr Perry and Dr Williams, assuming that Dr Rejman was correct that these documents had been sent to me and not returned, this was my responsibility. As referred to in §2.91, the documents do appear to have been located because, I am informed, they are contained in the electronic disclosure provided by DHSC to the Inquiry.

### **Later discovery that more files from the GEB 1 series had been destroyed (1999 - 2000)**

6.22. In November 1999, Deas Mallen Souter served the Department with a notice of third party disclosure, see §4.21, above. Although materials had been collated in the 1995 – 1996 period, with colleagues (particularly Mr Charles Lister), I had to try to draw together as good a set of disclosure materials as possible, ensure that a proportionate search had been conducted, disclose those records found and list those that had been in the Department's possession but were no longer held. To answer the Inquiry's question as to when I discovered that this material was missing (the further files from the GEB series), it was during the course of this exercise.

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- 6.23. As I have set out in Section 4 of this statement, one of the early steps I took was to contact Mrs Yvonne de Sampayo (who had been Dr Metters' secretary) and then Dr Metters himself, in the hope that they would be able to assist with locating relevant records. Mrs de Sampayo had informed me that she had no records before 1997. See §§4.28,4.29,4.30 and §4.32, §4.34, above.
- 6.24. I have also set out in Section 4 of this statement the flurry of activity in January and February 2000 as – through various officials whom we thought might be able to assist or hold copies – we sought to obtain copies where gaps in the records had emerged and / or been pointed out by the Claimants' solicitors.
- 6.25. While we succeeded in finding some copy documents, there remained gaps and, after Charles Lister had sought to obtain the original Registered Files, it seemed that some of the documents had been destroyed.
- 6.26. In answer to the Inquiry's question as to what the missing documents were, they were Volumes 4 – 17 of GEB1 as set out in the Disclosure statement signed by Mrs Marilynne Morgan and dated 23 May 2000 (see §4.132 & 4.134 above).
- 6.27. As I have explained, on 3 March 2000, I went to see Mr Justin Fenwick QC in his Chambers. He advised that an internal inquiry should be undertaken. I recall that it was decided (with Mrs Morgan and the Permanent Secretary, Mr Chris Kelly) that this should be conducted by Mr Laurence George of the Internal Audit Team at the Department. The minute from Mrs Morgan to Mr Kelly of 8 March 2000 set out what we hoped to achieve by this. (See §4.103 & §4.104 above). I did also have further contact with Mrs De Sampayo on 8 March as recorded in my desk diary, see §4.106 above. There was some further contact with Mrs De Sampayo because she did find some further documents, see §4.110, §4.113 & §4.116, above.

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- 6.28. I (and Mr Gidden on my behalf) kept the Claimants' solicitors informed about the missing documents, providing such information as I could, and advising them of the internal investigation, see §4.96, §4.108 & §4.113 above. In due course, I sought – and obtained – permission from the Permanent Secretary to disclose the audit report to the Claimants' solicitors: §4.130, §4.132.
- 6.29. The above was the principal action that I myself took. From this stage onwards, the assessment of what had happened in relation to the missing documents was to be handled by the audit team investigation.
- 6.30. The report from Internal Audit (on 11 April 2000) concluded that short destruction dates had been placed on documents by a junior official, before being sent to remote storage and that this had brought about their untimely destruction. (See their conclusions at §4.126). I do remember receiving the audit report on completion because I can remember being slightly surprised by its lay-out which I assumed to be the audit team's house style. The audit report was presented to those more senior to me (Mrs Morgan and the Permanent Secretary). The audit had made recommendations which seemed sensible. I have set out at §4.129 the minute which Mrs Morgan was preparing to circulate as a reminder about the need for good record keeping at times of organisational change. In light of the conclusions of the Internal Audit report and the investigation they had conducted, I did not take any further steps to try to discover who was responsible for the destruction of the documents, nor did this appear to be necessary at the time.
- 6.31. I am asked whether I knew the identity of the individual responsible for the destruction of the documents and, if so, to provide their full name.
- (1) I am afraid that I do not know who it was who actually signed the destruction authorisation.
  - (2) The draft submission to the Permanent Secretary which I had prepared on 3 March 2000, made reference to *'the person at DH who signed the*

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*destruction authorisation (whom we know to still be at DH)'. At that time, from what I can remember now, I think I was referring here to Mr Burrage. I was not aware (or had forgotten) then, though I am aware now, that he in fact had left the Department by the time of the submission to the Permanent Secretary.*

- (3) When this matter came up again some five years later, I said in my email of 22 May 2005 to Ms Zubeeda Seedat that the person responsible *"took early retirement to look after his small holding"*. I was there describing Mr Burrage. By this time, I think I was mistakenly thinking that Mr Burrage has signed the destruction slip. However, from the audit report it would seem that it was someone more junior who had done so (see §5.11 above).

- 6.32. There is a further matter which I should address here which I stress is only apparent to me now on reviewing all these papers. When the fact that files were missing emerged in early 2000, I am quite sure that I had entirely forgotten that there had been a minute nearly five years earlier from Dr Rejman that had mentioned the destruction of the first of those folders. Looking at it now, I can see from the audit report that some of the volumes were destroyed after June 1995, that is to say after Mr Burrage, Dr Rejman and I had been alerted to the destruction of volume 4. That is why I have made clear at §6.14(2) above, that between us we *should have* ensured that a clear message was delivered that such files should obviously be retained / marked for lengthier retention. While I cannot now say whether I did say anything to that effect at the time, I very much regret that between us we did not act so as make sure that other files which had been marked for destruction were not in fact destroyed.

### **My Email of 5 April 2005 (Inquiry's question 9)**

- 6.33. I am asked to explain a reference within an email dated 5 April 2005 to Ms Zubeeda Seedat where I stated that records *'were...inadvertently destroyed in the early nineties as the HEO working in the branch gave them a ridiculously short destruction date'*.



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- 6.34. I have addressed this email in §5.15 - 5.16, above. I was referring here to the same files from the GEB 1 series. The reference to *“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 date”* was a reference to the destruction of same volumes of GEB 1 which I have addressed in Section 4 of this statement, and which was investigated by the audit report. The reference to the HEO was to Mr Burrage because I think that in 2005 I was mis-remembering that it was Mr Burrage himself who had marked the destruction dates. I would here have been relying on my recollection of what had happened some five years earlier and the audit report from that time.
- 6.35. For the sake of clarity: The Rule 9 request of 12 January 2021, identifies the email [DHSC0200072] as having the date ‘5 April 2000’ and having been sent by me to Ms Zubeda Seedat. This is in fact an error: the email in question was dated 5 April 2005 and was sent by me to Michelle Haywood of the General Health Protection Team (see §5.14) who in turn forwarded it to Ms Seedat, on the same date (see §5.17).

### Further observations

- 6.36. Naturally, the Inquiry expects candid responses to the issues it raises. I also understand that it encourages reflective observations, including on structural or organisational issues that may have contributed to where things went wrong.
- 6.37. In that spirit, I would wish to make a few further observations which I would not have done if I were just tendering a witness statement as a Department lawyer explaining, for example, delay in meeting a procedural deadline. I do so, not to excuse where mistakes were made, but to give some context.

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- 6.38. First, I should make clear that I was never aware of any suggestion or evidence that documents had been destroyed deliberately, in the sense of them being destroyed improperly or with malign intent.
- 6.39. Second, I have to say that I do recall that within the Solicitor's Division B4, at that time, our file keeping was haphazard. Files were kept in rooms. Papers were not put on registered files. I recall one colleague was dealing with Human Growth Hormone cases in 1995/6 and she had boxes and boxes of papers which she sent via UPS to an expert in America. As a team under pressure (see below), our processes were just not as tight as they should have been.
- 6.40. Third, it is important not to look at the records on the Hepatitis C litigation in isolation. We were dealing with very large volumes of difficult litigation in a number of areas, and inevitably litigation around blood products was ongoing amongst many other pressures.
- 6.41. My fourth more general comment is more personal. Insofar as I may not have responded to matters in 1995-1996 as well as I might have done, I should mention that this one of the most difficult and unhappy periods of my career. To this end, I have included the following paragraphs by way of context for the Inquiry.
- 6.42. Prior to his departure in late 1995, my professional relationship with my line manager at that time (Mr Charles Blake) was very difficult. Viewed by some as eccentric or maverick but with a degree of charm, he engaged in behaviour that even for the time was very questionable and certainly by today's standards was bullying and clearly inappropriate. He then left the Department suddenly as a result of a disciplinary matter (the nature of which is not I believe relevant but which I can disclose to the inquiry if necessary). I was temporarily promoted into his role (from September 1995 to February 1996). I recall having to try to sort out issues left by Mr Blake (whose files were massively disorganised),

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manage staff cuts and draft a branch plan. I was afforded no support from the then Solicitor, Mr Thompson. Indeed, he then announced a new Head of Litigation in front of me (without prior notice to me) and then proceeded to undermine me in front of her. I doubt that further details of these events are necessary or relevant to the Inquiry. It suffices to say that I was both under huge pressures of work (in terms of the responsibilities and volume of work I was carrying) and having to endure a working environment which by today's standards would be viewed as entirely unacceptable.

6.43. I recall finding it difficult even simply to go to work. I was, unsurprisingly, considering my position and future at the Department. By good fortune I had lunch with Mrs Marilynne Morgan and I explained to her what had been going on. She was able to find me a position at the Department of Environment hence my transfer. My later promotion was following a competitive selection board allowing me to return to DH/DSS as Head of Litigation in 1999.

6.44. It is not in my nature to volunteer information such as this in legal proceedings, but I do so having regard to the inquisitorial nature of these proceedings and to put events into some context.

### Statement of Truth

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

Signed

GRO-C

Dated

18th May 2022