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INFECTED BLOOD INQUIRY

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I, Caroline Flint will say as follows:

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Section 0: Preliminary

- 0.1. I am providing this statement in response to a request dated 10 September 2021 under Rule 9 of the Inquiry Rules. The request arises from my roles in the Department of Health ('DH') as Parliamentary Under-Secretary of State for Public Health from 10 May 2005 to 5 May 2006 and Minister of State for Public Health from 5 May 2006 to 28 June 2007.

Opening Comments

Sources Used in Preparing Statement

- 0.2. I have prepared this statement based largely on DH documents which have been made available to me following electronic searches of the scanned versions of DH's hard copy records which have been disclosed to the Inquiry. Parts of the statement are also based on my recollection of the events and

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the issues that I am asked about. However, my recollection, independent of the documents, is fairly limited.

0.3. I understand that from the early 2000s onwards, DH increasingly used electronic rather than hard copy records, and these are now stored on a database called Preservica that the Inquiry has had access to. I understand that these electronic documents have not been reviewed unless they were also retained in hard copy or have been provided to me by the Inquiry. Since I was in role in the second half of the 2000s, i.e. after the move from hard copy to electronic records started, this means some of the relevant documents are likely to be on the Preservica database only.

0.4. The Inquiry has provided me with some Preservica documents. As will be apparent from this statement, it may be that I have not seen other relevant Preservica documents. I think it is important the Inquiry is aware of this and I ask the Inquiry to accept my statement as preliminary and provided to the best of my ability based on the documents I have seen. I am being asked about events more than 15 years ago and I inevitably must heavily rely on documents. If further documents are made available to me I may need to add to or amend this statement.

0.5. Thus, this statement is based on:

- DH documents made available to me following searches of scanned versions of DH's hard copy records (which are likely to be less complete over the years as the 2000's progress);
- A small number of documents sent by the Inquiry alongside the rule 9 request;
- Documents from the Preservica database that have been identified and selected by the Inquiry and then provided to me.

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Comments on Assisting the Inquiry/ Giving Evidence

- 0.6. From first being contacted by the Government Legal Department ('GLD') to advise me that I may be asked to provide evidence to the Inquiry, and then being contacted by the Inquiry itself, I have made every effort to provide evidence which is truthful and sincere in order to assist the Inquiry to reach its conclusions. I was Public Health Minister for two years and, as such, played a direct role in the government's response to the underlying events which predated the administrations I served in. I understand that those events changed the life outcomes of those infected in a profound way, with consequences for their loved ones.
- 0.7. I have had the assistance of the Government Legal Department and Counsel in preparing this statement but wish to make clear I have spent a very considerable amount of time reading and working through the documents so that I can give as full an account as I am able to, and to ensure what I have provided is as accurate as possible based on the documents I have seen and my recollection. In contributing as fully as I can to the Inquiry, I do so willingly in the service of those infected and affected and to inform government policy going forward. I do so in the hope that the passage of time does not prevent the Inquiry from achieving clarity and closure for the infected and their families. It is in that spirit that I willingly assist the Inquiry.

Section 1: Introduction

- 1.1. My full name is the Rt Hon Caroline Louise Flint born on the GRO-C
1961. My address is GRO-C
- 1.2. As explained above, I was Parliamentary Under-Secretary of State for Public Health from May 2005 to May 2006 and then Minister of State for Public Health from May 2006 to June 2007. I do not have professional qualifications

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relevant to my duties in these roles but have set out below my employment and Parliamentary experience both before May 2005 and after June 2007.

Employment History

1.3. The following table outlines my employment history in chronological order:

Table 1 – Employment History

1984 - 1985	On the Greater London Council/ Inner London Education Authority graduate management programme
1985 - 1987	Greater London Council/ Inner London Education Authority Contract Compliance Equalities officer
1988	Head of Women's Unit, National Union of Students
1988 – 1994	London Borough of Lambeth senior Equalities and Staff Development Principal Officer
1994 – 1997	GMB Union National Political Officer and Senior Researcher
May 1997 – Nov 2019	Member of Parliament for Don Valley
1999 – 2002	Parliamentary Private Secretary to Peter Hain MP (now Lord Hain), who was Minister of State (Foreign and Commonwealth Office) and Minister of State (Department of Trade and Industry)
2002 – 2003	Parliamentary Private Secretary to John Reid MP (now Lord Reid of Cardowan), who was Minister without Portfolio and Leader of the House of Commons
June 2003 – May 2005	Parliamentary Under-Secretary of State for Home Affairs
May 2005 – May 2006	Parliamentary Under-Secretary of State for Public Health (in DH)
May 2006 – June 2007	Minister of State for Public Health (in DH)
June 2007 – Jan 2008	Minister of State for Employment and Welfare Reform and Minister of State for Yorkshire and Humber
Jan 2008 – Oct 2008	Minister of State for Housing and Planning
Oct 2008 – June 2009	Minister of State for Europe
Oct 2010 – Oct 2011	Shadow Secretary of State for Communities and Local Government

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Oct 2011 – Sep 2015	Shadow Secretary of State for Energy and Climate Change
Approx. Nov 2020 – ongoing	Chair of Institute for Prosperity's political advisory board
Approx. Mar 2021 - ongoing	Advisor, Hawthorn Advisors (strategic communications consultancy firm)
Sep 2021 - ongoing	Chair of Humber Teaching NHS Foundation Trust
31 Jan 2021- ongoing	Chair of Committee on Fuel Poverty (advisory Non-Departmental Public Body sponsored by the Department for Business, Energy & Industrial Strategy (BEIS))

- 1.4. In addition, I have been a member of the following Parliamentary Select Committees:

Table 2: Parliamentary Select Committees

1997 – 1999	Education and Employment
2015 – 2019	Public Accounts
2017 – 2019	Intelligence and Security

Roles in the Department of Health

- 1.5. In relation to my time in the DH, my recollection is that the scope of my public health portfolio was the same or very similar when I was Parliamentary Under-Secretary and Minister of State for Public Health. To the best of my recollection the portfolio included:

- Smoking, obesity, alcohol, exercise and health inequalities. This required considerable work with local stakeholders in health and local government, particularly around access to service and developing prevention strategies. I was responsible for DH's drug and alcohol strategy;

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- Health protection, including decisions on new vaccines and vaccination programmes and preparedness for new virus outbreaks;
- Being the Ministerial policy lead for those infected and affected by infected blood and blood products. That included, *for example*, the financial support schemes;
- I had some involvement in issues around vCJD and recombinant blood products but cannot now recall if I was the Ministerial lead. Sometimes policy areas overlapped between Ministers;
- Responsibility for contraceptives, reproduction and sexual health. That included access to contraceptives, abortion, infertility treatment, sexually transmitted infections and HIV/ AIDs;
- I had oversight of and/or worked with a number of non-departmental bodies including NHS Blood and Transplant (formed in October 2005), the Food Standards Agency, the Health Protection Agency, the Human Fertilisation and Embryology Authority and the National Treatment Agency;
- Chairing a cross-departmental public health Ministerial board and two Government Office for Science foresight inquiries into obesity and drugs;
- Being joint lead, with my Home Office counterpart, on the National Drug Strategy;
- Leading on all legislation, and responding to Parliamentary scrutiny, on issues falling under my portfolio. I also covered, in the House of Commons, some of Lord Warner's portfolio. Lord Warner would cover my portfolio in the House of Lords.

1.6. In this statement the Inquiry will see that, at times, the Secretary of State became involved in issues falling under my portfolio. The usual practice was that if such issues were directed to the Secretary of State, then her private office would get in touch with my private office and I would become involved. Also, I sometimes sought the input of the Secretary of State, for example on issues that were complicated, controversial, attracting significant political

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and public interest. Two examples are my response to the Macfarlane and Eileen Trust's request for additional funding in 2005/2006 and whether the government should set up a statutory public inquiry.

- 1.7. Other than the roles and responsibilities set out above, I do not recall being on any committees, working parties or groups relevant to the Inquiry's terms of reference.

Other Ministers in the Department of Health

- 1.8. I have been asked to identify other Members of Parliament holding ministerial roles in DH between 2005 and July 2007. In seeking to answer this question comprehensively I have been assisted by DH Departmental reports published between 2005 – 2007.
- 1.9. I can see from the 2005 Departmental report¹ (published in June 2005), so very shortly after I became Parliamentary Under-Secretary, that Rosie Winterton MP was Minister of State for Health Services, Jane Kennedy MP was Minister of State for Quality and Patient Safety, Lord Warner was Minister of State for NHS Delivery and Liam Byrne MP was Parliamentary Under-Secretary of State for Care Services. Lord Warner was a member of the House of Lords. Patricia Hewitt MP was the Secretary of State for Health.
- 1.10. The 2006 Departmental report² (published in May 2006) shows that Rosie Winterton MP continued to be Minister of State for Health Services, Jane Kennedy MP was Minister of State for Delivery and Quality, Lord Warner was Minister of State for NHS Reform and Liam Byrne MP continued to be

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272104/6524.pdf

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/272276/6814.pdf

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Parliamentary Under-Secretary of State for Care Services. Patricia Hewitt MP remained Secretary of State.

- 1.11. The 2007 Departmental report³ (published in May 2007) shows that Rosie Winterton MP continued to be Minister of State for Health Services, Andy Burnham MP was Minister of State for Delivery and Reform, Lord Hunt was Minister of State for Quality and Ivan Lewis MP was Parliamentary Under-Secretary of State for Care Services. Lord Hunt was a member of the House of Lords. Patricia Hewitt MP remained the Secretary of State for Health.

Senior Civil Servants Involved in Policy on Blood and Blood Products

- 1.12. I am asked to identify, during the time I was Minister, senior civil servants involved in decisions about blood and blood products, assessing and responding to the risks of infection arising from blood and blood products, and in providing advice to ministers. I have interpreted this question as also covering the period of time when I was Parliamentary Under-Secretary.
- 1.13. At this juncture it is very difficult for me to independently remember the names of senior civil servants. I recall Brian Bradley and can see from the documents that he worked in the Strategy and Legislation branch. Other than that I am reliant on seeing names in the documents provided to me. The names that appear to be most relevant, along with roles so far as I can tell from the documents are:
- William Connon who, for at least some of my time in post, was Head of Blood Policy;
 - Jonathan Stopes-Roe, Head of Strategy and Legislation in the Health Protection Division;

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/243293/7093.pdf

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- Dr Ailsa Wight, Branch Head, General Health Protection;
- Gerard Hetherington, Director of Health Protection;
- Elizabeth or Liz Woodeson, Director of Health Protection (I think she may have taken over from Gerard Hetherington);
- Professor David Harper was Director General of the Health Protection, International Health and Scientific Development branch. I do not have any particular recollection of him being directly involved in decisions about blood and blood products, dealing with risks on blood and blood products, or advising Ministers on these issues.

1.14. I cannot now say whether each of these officials were in the roles I have specified for all of the period between May 2005 and June 2007. I am also now not able to say the exact responsibility each official had. This is difficult for me to identify from the documents and the Inquiry would be best to seek more specific information from the individuals, if required.

1.15. I can recall that Jacky Buchan was in my private office and was my Assistant Private Secretary ('APS') lead on blood and blood products (in addition to other policy areas). In general terms she, and other members of the private office, would have played an important role in, for example, anticipating and requesting the kind of information I was likely to want to have, or raising and following up on queries with officials. Documents I have seen show her doing that. My review of the documents has reminded me that Anna Norris was also in my private office. I believe she was my Private Secretary ('PS') for part of the time I was a Health Minister.

1.16. To the best of my recollection, when I moved from being Parliamentary Under-Secretary to Minister of State, there was not an increase in staff resources available. For example, I did not have a special advisor.

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**Membership of Committees etc. and Previous
Involvement in Inquiries etc.**

- 1.17. I am asked to specify any membership of other committees, associations, parties, societies or groups that are relevant to the Inquiry's terms of reference. To the best of my recollection I have nothing to add to my evidence above.
- 1.18. I am asked if I have been involved in or provided evidence in any other inquiries, investigations or litigation relevant to the Inquiry. Later in my statement I will explain my role in DH's response to the Archer Inquiry. Other than this, as far as I can recall I do not believe I have been involved in any such inquiries, investigations or litigation.

**Section 2: The Alliance House Organisations
(‘AHOs’)**

General Information

Briefing on AHOs on First Taking Office

- 2.1. I am asked what briefing I was given about the AHOs when I first took office.
- 2.2. When I became Parliamentary Under-Secretary in May 2005 the AHOs in existence were the Macfarlane Trust, the Eileen Trust and the Skipton Fund (which had started to operate in 2004).
- 2.3. Due to the passage of time, I am not able to recall all the oral and written briefing(s) that I received. The documents I have seen do not assist me with this – for example, I have not seen a specific briefing on the AHOs or on the support needs of the infected or affected.

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- 2.4. The Inquiry will see from my employment history that I worked in a number of different departments and my recollection is that different departments approached induction or briefings in different ways. I cannot now recall the approach taken in DH. However, in general terms I would have expected, in relation to each of my areas of responsibility, to have received an overview of the 'topic area' along with more specific briefings on discrete issues. That may have been supplemented by a briefing in person by my private office and an appropriate official, during which I could also ask questions.

AHO-Related Issues for Minister's Attention

- 2.5. I am asked to explain the involvement I had with the AHOs as Minister for Public Health and to explain what issues were brought to me as Minister and what issues were dealt with without my involvement, along with my understanding of how such decisions were made. Again, I have interpreted this question as encompassing my whole period as a Junior Minister in DH.
- 2.6. My recollection is that the main AHO-issue in which I was involved was responding, in 2006, to the Macfarlane and Eileen Trusts' business plan which sought significantly increased funding. I have addressed that in more detail below. On issues like funding it is likely there would have been discussion between representatives of the AHOs and officials before a request for increased funding was submitted to DH (and ongoing discussions after a funding bid was made). In my experience these kinds of discussions had the potential to be useful both for an organisation that was seeking funding, to understand what might be possible, and for officials so they could consider what resources might be requested and available. This could mean that, by the time a funding bid was made, there was a mutual understanding of what might be possible.
- 2.7. I would have dealt with Parliamentary business on financial support for the infected and affected, with input and advice from officials. Proposed answers

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to questions in the House of Lords (i.e. those answered by Lord Warner) would usually have been sent to my office for my view and approval.

- 2.8. In addition, some correspondence on financial support would likely have been seen by me as this was part of my portfolio (such correspondence might have been from MPs on behalf of constituents or sometimes from the infected or affected). Sometimes Parliamentarians would come and speak with me informally to raise issues, to share information or to seek an update on progress in an area. That could be a useful source of information. I cannot now remember if, or how frequently, this happened in relation to financial support. I do not recall being approached by Parliamentarians after my funding decision in July 2006.
- 2.9. Beyond this, I am reliant on the documents I have seen in preparing this statement. I have sought to assist the Inquiry by setting out detailed evidence in this statement on most of these issues and have, in the following paragraphs, provided an overview of other AHO-related issues that were brought to me.
- 2.10. *Skipton Fund appeal panel*: I can see from the documents that officials prepared a submission, dated 27 January 2006, to update me on the progress of the proposed independent appeal panel for the Skipton Fund and to seek my approval of remuneration for the appeal panel members [DHSC0041198_151]. I can see from my handwriting on the submission that I asked for more information about the proposed remuneration and costs of the appeal panel. By email dated 1 February 2006 officials provided that further information [DHSC5154742] and my private office informed officials the same day that I was now content with the proposed rate of remuneration and noted the progress towards setting up the appeal panel [DHSC5030525].

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- 2.11. The 27 January 2006 submission referred to and annexed a previous submission from November 2005. I am not entirely sure what that document is but think it may be part of a briefing prepared for me by officials in advance of a meeting with the All Party Parliamentary Hepatology Group ('APPHG') [DHSC0041162_058]. That briefing set out some background to the appeal panel and explained that limited departmental resources had delayed completion of the appeals process. I am aware there was a delay in the appeal panel starting to determine appeals. I have provided more information on the meeting with the APPHG later in my statement.
- 2.12. *Fraud on Skipton Fund by employee*: the Inquiry is aware that a fraud was committed on the Skipton Fund by an employee, Mr Keith Foster. I can see from the documents that William Connon emailed Jacky Buchan in my private office on 26 January 2006, attaching a letter dated 25 January 2006 from Martin Harvey (Chief Executive of the Macfarlane Trust). Mr Harvey's letter informed William Connon about a possible fraud on the Skipton Fund that was being investigated by Essex Police. I can see that Jacky Buchan drew this to my attention [DHSC0041198_155 and DHSC0041198_156]. I would have been concerned at this time that the criminal investigation should proceed and that funds should, if possible, be recovered. I would have understood at this time that payments available to beneficiaries would not be impacted by the money having been taken by Mr Foster (the Skipton Fund invoiced DH for the lump sum payments it made).
- 2.13. I was subsequently informed that the British Association of Hand Therapists ('BAHT') had agreed to repay money to the Skipton Fund because Mr Foster had taken money from the Skipton Fund and paid it to BAHT.
- 2.14. By a submission dated 23 March 2007 [DHSC0041193_058], Dermid McCausland from the NHS Counter Fraud and Security Management Service ('NHS CFSMS'), informed me about the upcoming sentencing

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hearing for Mr Foster. I was informed that, of the approximately £400,000 Mr Foster stole from the Skipton Fund, just under £225,000 had been recovered from BAHT. The note indicates that police had been able to trace some of the money Mr Foster had stolen from the Skipton Fund to BAHT, although I think I would already have been aware of this. The note also says that NHS CFSMS had reviewed payment procedures at the Skipton Fund and made recommendations for improvement.

- 2.15. A few days later I was informed that Mr Foster had been sentenced to 5 years imprisonment, that inquiries were being made to ascertain if he had any assets left to recover and, if he had, action would be taken to recover the balance of the money he took. On this, I wrote a note saying [DHSC0041193_057]:

"His house/ car. I think every effort should be made to get whatever we can back."

- 2.16. On 4 April 2007 a further submission [DHSC0041193_049] was sent by Dermid McCausland which I saw. It explained *"in more detail the work successfully undertaken to recover funds lost as a result of the fraud"* and that £267,000 had now been recovered and returned to the Skipton Fund. This included £7500 from Mr Foster's bank account and £35,000 that his wife agreed to pay. The note explained that all the agencies involved in the investigation, including the police, were satisfied that Mr Foster had no further assets left to recover.

- 2.17. *Appointment of trustees:* I do not now recall this but the documents show I was asked to approve, on behalf of the Secretary of State, the appointment of trustees for the Macfarlane Trust and for the Eileen Trust. At this time it appears an independent assessor was involved in monitoring the process of selection for Macfarlane Trust trustees and was satisfied its trustee selection procedures were compliant with the Office of Commissioner for Public Appointments ('OCPA') Code of Practice for Public Appointments

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[DHSC0041242_188 and DHSC0041242_188]. I cannot say if the same applied to the Eileen Trust. The documents show that I approved the appointment of Dr Simon Chapman to the Macfarlane Trust in early 2006 and Mr Russell Mischon to the Eileen Trust in January 2007.

- 2.18. *Accessing support through the Skipton Fund:* on 2 May 2007 I answered the following written Parliamentary question ("PQ"):

"To ask the Secretary of State for Health, what estimate she has made of the number of haemophiliacs who were infected with HIV and hepatitis C through blood transfusions when they were children, but are unable to receive hardship funds through the Macfarlane Trust and the Skipton Fund..."

- 2.19. My answer briefly summarised what the Macfarlane Trust and Skipton Fund did, and then said:

"Anyone eligible for payments should have received them. The Department is examining two cases where individuals claim that they have not received payments they may be entitled to."

- 2.20. As the Inquiry will be aware the usual practice was that officials drafted answers to Parliamentary questions (to be approved by the person answering the question), along with background information to assist Ministers in understanding the issues raised by the question. The background note to this question explained that officials were [DHSC0006780_047]:

"aware of a couple of cases where haemophiliacs have contacted the Department to enquire about why they have not received payments which they consider they are entitled to following their infection with HIV through contaminated blood products. In both cases the patients have queried why they have not received a payment of £20k...In both cases the patients were under 18 at the time of infection.

Despite these cases we are not aware of anyone who is eligible for payment who has been denied payment from the Macfarlane Trust or the Skipton Fund. We are seeking to establish the arrangements that were in place in the 1990's to make payments to children under 18 who were infected with HIV, and whether children under 18 were eligible for the payment of £20k. We have approached the Macfarlane Trust, however

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they have been unable to assist. We are making enquiries of staff previously employed by the Trust. Depending on the outcome of these enquiries consideration will be given to the need for payment to be made..." (the background note then included some information about the Macfarlane Trust and lump sum payments agreed in 1989 and 1991).

- 2.21. My view now is that, in the absence of a PQ, officials probably would not have made me aware of this issue as it appears to be about whether individuals were eligible for financial support against previously established criteria, and whether they had received the correct support. From the documents I have seen this issue was not brought to my attention again.
- 2.22. As stated, other AHO-related issues that the documents show were brought to my attention are explained elsewhere in this statement.
- 2.23. I have been asked about how officials decided which AHO-related issues to bring to me as the Minister and which issues could be dealt with without my involvement. In general terms operational matters were typically for officials and not brought to Ministers. It can of course be difficult to delineate what is operational and what is not. However, decisions clearly needed to be made by officials about what to bring to me, not least because of the breadth of my public health portfolio. As a Minister I would have expected to be made aware of issues relating to political strategy, manifesto commitments, policy development and policy decisions. I would expect officials to notify me of significant problems (e.g. the fraud on the Skipton Fund) and Parliamentary business like Parliamentary Questions, legislation and important matters arising from All-Party Parliamentary Groups. Communication and media issues were also often brought to a Minister's attention. I recall being provided with a folder of media cuttings every day that were relevant to my portfolio. My private office 'kept its ear to the ground' and could sometimes notify me about issues emerging and it is likely they did this in relation to the AHOs. After receiving submissions, I would sometimes have informal discussions with members of my Private Office. I seem to recall we had team

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meetings to provide an overview on progress and what was coming up across my portfolio.

Frequency of Meetings with AHOs

- 2.24. I am asked how frequently I met with the chair and trustees of the AHOs during my time as Minister and to explain the rationale for meeting at that frequency.
- 2.25. Again, I do not have a first-hand recollection of this and am reliant on the documents I have seen. My review of the documents suggests that I had only one meeting with Macfarlane and Eileen Trust representatives – on 12 July 2006 – to discuss the Trusts' work and future funding. I address that meeting and how it came about, later in my statement. It is my understanding that this was the first meeting between the Trusts and a Minister since a meeting with Hazel Blears in early 2003.
- 2.26. As explained below, after the meeting on 12 July 2006, I wrote to Peter Stevens (letter dated 28 July 2006) [HSOC0005411] to inform him of an increase in funding for the Macfarlane and Eileen Trusts. In that letter I offered a further meeting with officials and provided my private secretary's contact details. I can see from subsequent documents that there was some discussion about a further meeting with me. As explained later in this statement, that did not happen. However, Peter Stevens met with Liz Woodeson, then Director of Health Protection, towards the end of 2006 [DHSC0041155_123].
- 2.27. There was not a 'programme' of regular meetings between the Trusts and Ministers in place at this time. Rather, meetings appear to have been infrequent and ad hoc. Doing my best now, I think this is likely to have been influenced by whether a meeting was requested by the Trusts and the reasons for requesting a meeting. So, when the Trusts requested a meeting

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to discuss future funding and after submitting the "Funding Long-Term Survival" business case ('the Business Case'), a meeting was arranged (albeit several months later – see below). More generally, the frequency of meetings with any group or organisation would also have been influenced by the numbers of requests for meetings I would have had. However, apart from the requests for a meeting described above, I do not think the Trusts sought another meeting with me and I did not propose a meeting.

- 2.28. In preparing this statement I have been shown a submission, dated 8 November 2002, from an official to the private office of a former Parliamentary Under-Secretary for Public Health (Hazel Blears MP) which proposes that the Parliamentary Under-Secretary should meet with the Macfarlane Trust and says [DHSC0003281_004]:

"The [Macfarlane] Trust has, over the years, met with Ministers on at least a yearly basis and it is longer than that since the last meeting"

- 2.29. I do not think I was aware that, in the past meetings had been "on at least a yearly basis". It is my understanding that was not happening when I came into post. I do not think the Macfarlane or Eileen Trusts asked for an introductory meeting/ conversation with me when I started as Parliamentary Under-Secretary. I met with the Trusts in July 2006 and anticipate that, if I had remained as Minister, I would have met with them again in 2007.

- 2.30. The Skipton Fund, being a limited company, had a board of directors. I do not recall meeting with the directors and the documents I have seen do not suggest I did.

- 2.31. I would have expected there to have been meetings and liaison between officials and the AHOs.

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Contact with Beneficiaries

2.32. I am asked about the contact I had with beneficiaries during my time as Minister.

2.33. I recall meeting a small number of beneficiaries at my meeting with the Macfarlane and Eileen Trusts on 12 July 2006. The briefing that officials prepared for this meeting, dated 7 July 2006, records that Peter Stevens and Martin Harvey planned to speak first at the meeting and then there would be *"a view from each of the registrants present of how their lives have been affected by this infection"* [DHSC5156234]. I have also seen a note of the meeting on 12 July 2006 which states that [DHSC0006259_046]:

"The Trust's representatives [sic] presented an emotive case, describing the impact of their infection on their lives and the need for adequate funding to maintain their dignity and independence."

2.34. The documents suggest I had a meeting with the APPHG on 10 November 2005, although I have not seen a note of the meeting itself. The meeting came about because, during an adjournment debate on 11 July 2005, I had said I was open to meeting with the APPHG. The briefing I was provided before the meeting lists the APPHG attendees as Bob Laxton MP, vice-chair of the APPHG; David Amess MP, chair of the APPHG (subject to his availability); Charles Gore, secretariat to the APPHG and Chief Executive of the Hepatitis C Trust; and Rebecca Moses, also secretariat to the APPHG and from the Hepatitis C Trust. While there were no AHO beneficiaries listed to attend the meeting, there may have been as APPGs are open to the public. The agenda proposed by the APPHG included the Skipton Fund appeals process as an issue. My briefing from officials also provided me with an update on this. That briefing recognised there had been a delay in establishing the appeals panel but said officials had reached an agreed appeals procedure. It continued:

"Having established the procedures for hearing appeals, officials now need to start the process of appointing panel members. As membership of the Appeals Panel will be appointed by public appointments, it may take a couple of months before appeals can be heard."

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I understand that, in fact, it was late 2006 before the Skipton Fund appeals panel held its first meeting.

2.35. I have exhibited the agenda provided by the APPHG [DHSC0041162_056] and my briefing from officials for this meeting [DHSC0041162_063, DHSC0041162_057]. I also received a follow-up briefing on the Skipton Fund appeals panel dated 8 November 2005 [DHSC0041162_058 (page 1 and page 2)].

2.36. While the documents show the meeting was primarily concerned with issues relating to hepatitis C regardless of the route of infection, the Inquiry will see that briefing included general information on the Skipton Fund (and the appeals panel). I cannot now say if the Skipton Fund was discussed at the meeting although I anticipate the Skipton Fund appeals panel was, as that was on the APPHG's proposed agenda. I can see the briefing set out criticisms of the Skipton Fund, including that widows and dependents were excluded and I have addressed this in more detail below.

2.37. The APPHG's proposed agenda for the meeting also refers to a "Q & A session with clinicians and patients". I cannot now say what this relates to, other than by reference to the briefing. My reading of the briefing is that the APPHG was proposing a question and answer session with clinicians and patients, which I would also attend, to discuss hepatitis C healthcare and awareness policies. Officials proposed the following response in their briefing to me:

"I would be willing to consider the Q&A session depending on my other commitments and how we get on in discussing issues at today's meeting. Let's review the need for a further meeting at the end of today's meeting."

2.38. I have not seen evidence in the documents provided to me that this question and answer session took place or that, after the meeting, it was followed up

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by the APPHG. However, I cannot rule either of these things out and also have not seen a note of this meeting with the APPHG. I am happy to reconsider this if provided with further documents.

2.39. Apart from these meetings, I can see I received correspondence from affected people, or MPs acting on their behalf, about the financial support available. I have given some *examples* of this correspondence below.

2.40. By letter dated 7 June 2005 I wrote to Nick Harvey MP, responding to a letter from him to the Secretary of State which passed on concerns of a constituent [DHSC0004213_083]. In preparing this statement I have not seen a copy of Mr Harvey's letter but it clearly expressed disappointment with the scope of the Skipton Fund as my letter acknowledged the:

"disappointment that the ex-gratia financial assistance scheme has not been extended to dependents of those who have died following inadvertent infection with hepatitis C. This was not an easy decision to make, but I think it is important to stress that the underlying principle of the payments is that they should be targeted to help alleviate the suffering of people living with the virus.

The payments are not designed to compensate for bereavement, although I fully appreciate the hardship and pain experienced by families who cared for loved ones who have died. I realise this is little consolation."

2.41. My letter then referred to the scheme being introduced "*within a limited healthcare budget*".

2.42. On 1 August 2006 my private office received an email from a widow of a haemophiliac whose husband and brother-in-law had died as a result of infection from blood products [DHSC0103399_046]. She raised a number of points but, in relation to financial support, she felt DH was "*discriminating against women... by refusing the recompense them in their own right through the Macfarlane and Skipton Funds?...*" and also wanted to know why widows and bereaved partners were unable to get meetings with DH on this issue.

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- 2.43. I think this email was passed to me as I have been a note from Jacky Buchan to me, dated 17 August 2006, attaching officials' draft response to the widow and saying "*although not for your signature I thought you would want to be aware of this one*" [WITN5427002]. I have seen a draft response from DH's Customer Service Directorate [DHSC0041159_073] but I understand from other documents that a response was not received. The draft response explained the reasons for widows and partners not receiving payments from the Skipton Fund in similar terms as my letter to Nick Harvey MP.
- 2.44. On 12 October 2006 the widow who had written on 1 August 2006 emailed my private office again [DHSC5437858]. She had not received a response to her email, dated 1 August 2006. The widow expressed concern that the Macfarlane Trust deed was not being properly fulfilled. Reading the email now I think she was concerned that DH was not providing sufficient funding to allow the Macfarlane Trust trustees to properly support bereaved widows and partners.
- 2.45. Again, I cannot say if I was made aware of this email but think I probably would have been as Jacky Buchan, my then assistant private secretary, replied to this email on 31 October 2006 [DHSC0041159_075]:

"Thank you for your email of 12 October. I am sorry to see that you had not received an acknowledgement or reply to your previous email of 1 August. Unfortunately, the Department's reply was sent to an incomplete email address and the return from the internet service provider was overlooked. Please accept my apologies for this oversight and I now enclose a copy of our earlier reply [I think that must be exhibit DHSC0041159_073].

Turning to your email of 12 October. We have considered your comments about breaches in the Macfarlane Trust deed, but we are satisfied that Trustees are properly discharging the Trust and we do not think that there are any reasons for revising the Trust deed. You may already be aware that the Minister, after carefully considering the Macfarlane Trust's submission for increased funding, advised the Chairman of the Trust of increased funding for 2006/07. It is for the Trustees then to manage the Fund within its available resources...

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As to a possible meeting between the Minister and your MP, no doubt Mr Cousins will get in touch with this office."

2.46. I do not think I would have seen this letter from Jacky Buchan, dated 31 October 2006. I think the reference to Mr Cousins is likely to be to Jim Cousins MP. I have not seen documents that Mr Cousins requested a meeting but again I cannot rule this out.

2.47. I am aware there was further correspondence from this widow in 2007 but it did not relate to financial support from the AHOs.

2.48. By email 17 October 2006 I received correspondence from a widow who asked if the government had plans to change the criteria for applications to the Skipton Fund [DHSC0041155_116]. This lady was not entitled to apply for financial support from the Skipton Fund as her husband had sadly died in 1991. She asked what I was doing to address this. The changes made to the Skipton Fund in 2006 are explained later in my statement but there is a handwritten note on this email saying "*Caroline would like to know what happened to this*" – this indicates I was aware of the email. I think the email must have been sent to my constituency office email address (the recipient is Caroline Flint) and was then forwarded by my constituency office to my private office.

2.49. It appears that the DH Customer Service Centre replied on 25 October 2006 [DHSC0041155_118]. I am not sure if I would have seen this reply. The reply responds to other parts of this lady's email but not her question about eligibility for the Skipton Fund. I have seen a draft follow-up reply from the Customer Services Directorate [D DHSC6483387]. I approved this reply on 19 December 2006 [DHSC0041155_113]. On the Skipton Fund it says:

"Turning to your comments about changing criteria for application to the Skipton Fund, although this matter has been considered, there are currently no plans to change the terms of reference of the Skipton Fund."

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- 2.50. I am not now able to say if officials had other contact or met with AHO beneficiaries or, if they did, whether information and concerns were fed back to me. I certainly would have expected officials to be in contact with the AHOs who would inform officials about the needs and concerns and priorities of beneficiaries.

Knowledge and Understanding of Needs of Beneficiaries

- 2.51. I am asked about my knowledge and understanding of the needs of the beneficiaries of the AHOs while I was Minister, and what the sources of that knowledge and understanding were.
- 2.52. To some degree I have already explained the sources or likely sources of my knowledge and understanding of the needs of beneficiaries. On starting as Parliamentary Under-Secretary, officials may have briefed me on this. I would have gained more information from written briefings or submissions prepared by officials, and sometimes these would have been added to by discussions with officials and my private office. I would also have had discussions with Parliamentarians and, as explained above, had correspondence from MPs and also from those infected and affected. I may have learnt more about the needs of people with hepatitis C at the APPHG meeting in November 2005. I read the Business Case prepared by the Macfarlane and Eileen Trusts (dated November 2005). As explained below I had a written and oral briefing from officials before I met with the Trusts and some beneficiaries on 12 July 2006. Background information provided to me by officials for PQs may have given me more information about the needs of beneficiaries. I would also have read the daily media cuttings that were provided to me.
- 2.53. I can certainly say that, after reading it, I was aware of the information in the Trusts' Business Case. Even before then I would likely have been aware of

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some of this information from other sources. The Business Case explained that longer life expectancies brought increased long term needs and that this had not been envisaged when the Trusts were set up, both for the infected and affected. There was real economic, physical and emotional hardship. The ability to work could be compromised for both the infected and affected. Although the infected were living longer, their health was poor. The Business Case also explained that accessing support via statutory services could be difficult and demoralising. I am acutely aware that this is only a brief summary of some of the issues explored in detail in the Business Case.

2.54. As explained earlier in this statement, I was aware that widows and dependents of people infected with hepatitis C, who were not eligible for payments from the Skipton Fund, expressed financial need and felt the eligibility criteria were unfair and inappropriate.

2.55. Much of my knowledge and understanding of the needs of beneficiaries of the AHOs was 'second-hand' in the sense of not coming directly from beneficiaries, although information from the Trusts would have been based on their interactions and involvement with beneficiaries. As a general principle, Ministers need to be mindful of trying to hear a representative sample of views and concerns, but it appears that the Trusts' Business Case set out themes or problems common to many or some of their beneficiaries, and this would have been helpful to me.

2.56. I am asked if I was aware of tensions between the beneficiary community and any of the AHOs. If I was, I am asked how I became aware of this, what I or DH did in response, and whether these tensions impacted on the ability of the AHOs to discharge their roles.

2.57. I do have a memory that some of the beneficiary community were not content with how the Macfarlane Trust was run. I think this information may have

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come from officials. The role of the Trusts was to administer funds provided to them by DH, and not to provide compensation, and I think that is likely to have contributed to tensions between the AHOs and the beneficiary community. For some there would have been a fundamental discord between how the Trusts were established and operated, and the financial support or compensation they wished. I have already referred to the email sent to me on 12 October 2006 [DHSC5437858]. The writer of the email expressed concern that the Macfarlane Trust deed had been breached, but said:

"...I am not criticising the administrators of the [Macfarlane] Trust...as the administrators admit and are concerned that they are unable to fulfil the original deed without adequate funding from Government."

2.58. I have already set out the response to this email sent by Jacky Buchan [DHSC0041159_075] which said that DH was satisfied the trustees were properly discharging the Trust deed, that there would be increased funding for the Trust and it was for the trustees to operate within the resources available to it.

2.59. I also think officials made me aware that some beneficiaries wanted the Macfarlane and Eileen Trusts to take on a more campaigning role. Otherwise, I cannot now recall the reason or reasons for tensions between the AHOs and beneficiaries.

2.60. Because my memory of this is limited, I am not able to say what DH did in response. I do not think I have seen evidence in the documents that DH took specific action to address or ease any tensions there were between the beneficiary community and the AHOs. Some additional funding was provided from 2006/2007, but that would not have alleviated any tensions that flowed from the Trusts having a finite budget from DH and I am aware some beneficiaries thought the additional funding was entirely insufficient.

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Funding of the AHOs

General: Decisions on AHO Funding Allocation

- 2.61. I am asked to explain my role as Minister in making decisions about the funding allocation to the AHOs and, in particular, to explain my understanding of why in around 2007 funding changed from a three yearly cycle to an annual cycle.
- 2.62. It is my understanding that the outcome of the 2002 spending review was that the Macfarlane Trust was given a commitment to a 3 year package of capital funding. For the Macfarlane Trust this was £3m in 2003/2004, £3m in 2004/2005 and £3.05m in 2005/2006. Therefore, capital funding for the Macfarlane Trust was due to be revisited from 2006/2007 onwards. In light of this, the Macfarlane Trust (and Eileen Trust) submitted a Business Case in November 2005[MACF0000177_017]. I have set out in detail below the response to that Business Case which resulted in a small increase in funding in 2006/2007 for the Macfarlane Trust. Prior to this I did not take any decisions on capital funding for the Macfarlane Trust.
- 2.63. The Macfarlane Trust received £3.754m from DH in 2006/2007, 2007/2008 and 2008/2009. I have not seen documents to explain why funding would have changed from a three yearly cycle to an annual cycle in about 2007.
- 2.64. More generally, it is my recollection that there was a central budget which was separate from the budget for delivery of the NHS and funding for the AHOs came from the central budget.
- 2.65. I have been shown a submission, dated 15 December 2004, which seeks the then-Parliamentary Under-Secretary's agreement to 2005/2006 expenditure plans for section 64 general grants [DHSC0038526_012 and WITN5427003]. At that time s64 general grants (under s64 of the Health

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Services and Public Health Act 1968) were used by DH to provide funding for the running or administrative costs of the Macfarlane and Eileen Trusts (and other voluntary organisations).

2.66. I understand the Parliamentary Under-Secretary's response to this submission has not been located. However I think the recommendations in the submission are relevant to funding for administrative costs. I stress that these decisions on s64 grants for 2005/2006 were taken before I was in post.

2.67. I can see from the submission that the Macfarlane Trust had applied for the following s64 grant funding:

- £298,000 in 2005/2006;
- £304,000 in 2006/2007; and
- £315,000 in 2007/2008.

2.68. I can see from the Annexes to the submission that the funding applied for by the Macfarlane Trust was much higher than other organisations and officials recommended to the then Parliamentary Under-Secretary that this application should be rejected, but that funding should be provided from another source. The reason given was:

"There is insufficient funding in Section 64 to provide for this application. However, this is a Government initiated Trust and its aims and objectives are those set by the Government in the Trust Deed of 1998. Policy officials will be ensuring that funding is given from an alternative source."

2.69. In preparing this statement I have seen a copy of the Macfarlane Trust's annual report and accounts for 2005/2006 [MACF0000045_011] which records that the Trust received a s64 grant of £294,000 in 2005/2006. Given the submission, dated 15 December 2004, I cannot say if the funding for 2005/2006 was in fact provided under s64 or from another source. I think that would have been decided before I was Parliamentary Under-Secretary

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but am very happy to review any additional documents the Inquiry can provide.

2.70. In 2006/2007 the Macfarlane Trust did not receive a separate s64 grant. Instead its running costs were included in the overall funding amount. Other than the submission dated 15 December 2004, I have not seen documents to explain why that happened.

2.71. I understand that the Eileen Trust received a 'top-up' capital payment towards the end of the financial year 2001/2002. The Eileen Trust's expenditure was low and, in the following years up to and including 2005/2006, it did not receive annual payments.

2.72. The Business Case sought additional funding for the Eileen Trust. I have read the Business Case again in preparing this statement and I am not entirely sure what was being proposed for the Eileen Trust. I think it was £250,000/ year on the basis that the "*revised estimated need*" is stated to be £7.25m/ year and £7m is requested for the Macfarlane Trust. That would represent an approximate doubling of the Eileen Trust's disbursements in previous years (based on Appendix J to the Business Case). That is consistent with a statement in the Eileen Trust's annual report and accounts for year end 31 March 2008 [EILN0000016_038].

2.73. I can see that, following the Business Case, the Eileen Trust began to receive annual capital funding. This was £177,000 in 2006/2007 and £178,000 in 2007/2008.

2.74. The submission on s64 grant applications to the then-Parliamentary Under-Secretary, dated 15 December 2004, recommended the Eileen Trust should receive s64 grants over the following three years at the level requested by the Trust. [DHSC0038526_012 and WITN5427003]. This was:

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- £36,000 in 2005/2006;
- £37,000 in 2006/2007; and
- £38,000 in 2007/2008.

2.75. I can see from the Eileen Trust annual report and accounts from those years that these s64 grants were paid by DH, i.e. the Eileen Trust received a separate s64 grant in 2006/2007 and 2007/2008 following my decision on funding allocation in July 2006 (dealt with in more detail below). I am aware that my letter to Peter Stevens, dated 28 July 2006, says that the funding of £177,000 for the Eileen Trust in 2006/2007 included provision for administration costs. That was wrong. As a matter of fact the s64 grants, which were existing DH commitments, were paid. I can only say now that my letter to Peter Stevens appears to be incorrect. I have addressed this in more detail later in my statement.

2.76. It appears from the documents I have seen, that I did not take any decisions on the Eileen Trust's s64 funding (although I am happy to review this if further documents are provided). On 18 April 2006, officials provided me with a submission on s64 grants which explained that the proposed s64 budget for 2006/2007 had been set at a reduced level to that originally proposed [DHSC0041198_043 and DHSC0041198_043]. However, the Eileen Trust's s64 funding for 2006/2007 to 2007/2008 was an existing commitment so I made no decision on it. This submission refers to an earlier submission dated 15 December 2005 but I am told this has not been located.

2.77. The Inquiry has provided me with an email, dated 13 March 2007, from Brian Bradley to Liz Woodeson and Jonathan Stopes-Roe (all officials) which sent a draft submission for me about the Macfarlane Trust's dissatisfaction with its funding allocation for 2007/2008, dated March 2007 [DHSC6343917]. The email has a number of attachments but I believe only one has been provided to me.

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- 2.78. The submission attached to that email dated 13 March 2007 is a draft submission, dated only March 2007 [DHSC6343918]. I cannot say if a final submission was ever sent to me. But I have no recollection of this and have not seen a final submission or a response from me to the final submission. As these are documents from 2007 I understand this is well into the period of Preservica documents.
- 2.79. I can see now that the draft submission contains a table setting out the recent funding of the Macfarlane and Eileen Trusts and *"their indicative future funding"*. In this table funding for the Macfarlane Trust for 2006/2007, 2007/2008 and 2008/2009 is listed as £3.778m per annum. That is £24,000 more than the allocation of £3.754m and I think that difference may be explained by providing for possible lump sum payments for new registrants with the Trust. However, I am not sure of this as §7d of the submission also refers to providing an extra £100,000 to the Macfarlane Trust for new registrants, with the Macfarlane Trust to keep any sums not paid out (see §7d of the draft submission). I also note that the Macfarlane Trust accounts for 2007/2008 suggest, I think, that DH made 2 payments of £23,500 to new registrants (at page 17) [MACF0000045_009].
- 2.80. Unfortunately, I do not think I am in a position to comment more on this submission or my response to it without the assistance of further documents, as I do not have a recollection of this being drawn to my attention. Of course, I am happy to consider this further if more documents become available.
- 2.81. The Inquiry has also provided me with a document prepared in January 2009 by the Macfarlane Trust [DHSC5231767]. That document states that, in April 2006 and without consultation with the Macfarlane Trust, DH changed from providing annual funding in one lump sum at the start of each financial year,

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to asking the Trust to invoice the Department quarterly in advance. I have not seen other documents relating to this. My recollection is that this kind of change to payments would not necessarily have been a decision that came to me as a Minister. The draft submission dated March 2007 [DHSC6343918] says at §7b that it was "*standard Government practice to provide funding as the need to spend arises*". If it was standard government practice then I may well not have been asked to make any decision about a change to how/ when the payments were made. However, I am happy to reconsider this if other documents are made available to me.

- 2.82. Finally, when preparing this statement I have not seen any documents showing that I took any specific decisions on funding for the Skipton Fund. I think that makes sense based on how the Skipton Fund operated.

Meeting with Trusts on 12 July 2006

- 2.83. I am asked about a letter from Martin Harvey, Chief Executive of the Macfarlane Trust, to Lord Morris of Manchester dated 19 October 2009 [MACF0000074_057]. In that letter Martin Harvey says he remembers the "*time and effort it took*" to see me after the submission of its Business Case. I am asked if I have a response to this.

- 2.84. Peter Stevens, then Chair of the Macfarlane and Eileen Trusts, sent a letter dated 24 November 2005 to me, requesting a review of the funding of the Macfarlane Trust and its registrants and submitting its Business Case [DHSC0041198_162]. The letter concluded with:

"I would welcome the opportunity to discuss our requests with you."

- 2.85. I can see that this letter has a date stamp of 24 November 2005 on it. I interpret this as meaning it was received in DH on 24 November (but I do not know if that means it was received by the Blood Policy Team and I do not think that means it was received by my private office).

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- 2.86. I have been shown an email chain on 16 January 2006 (part of which is cut off) between officials and my private office [DHSC6278301]. A copy of Peter Stevens' letter dated 24 November 2005 was sent to my assistant private secretary by Clarissa Clark. I understand Ms Clark was an official in DH's Strategy and Legislation branch. The same day my assistant private secretary forwarded Peter Stevens' letter to my private secretary and wrote:

"Jacky

Brian Bradley from the Health Protection team rang today to ask Michelle about the attached correspondence. It was copied to officials but I can't find any records of us having received it...

Have you seen this letter before?"

- 2.87. Jacky Buchan then emailed Brian Bradley:

"Hi Brian

Thank you for bringing this to our attention – this is the first I have seen of it and I have not been able to find any record on this on our meeting request database.

Could you please let me have advice and draft reply as to whether PS(PH) should agree to a meeting and then I can put this to PS(PH)..."

- 2.88. Brian Bradley emailed Jacky Buchan on the same day to say he was sending a copy of a substantial paper document separately as it was impractical to scan it. This would have been a reference to the Business Case itself.

- 2.89. I cannot now explain why the letter from Peter Stevens, dated 24 November 2005, is date stamped but did not reach my office before 16 January 2006 and appears not to have been received by officials either. It should have been but unfortunately, I cannot shed any more light on this.

- 2.90. The Inquiry has provided to me (i.e. from the Preservica documents) an email exchange between Brian Bradley and Jacky Buchan on 20 and 24 January 2006 about the letter to be sent to Peter Stevens [DHSC5257604]. The

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emails suggest that the letter contained 2 possible sets of wording and Jacky Buchan raised a query about one version, asking whether money was already committed or "*could be changed by the review*". Unfortunately I have not seen the draft letter and cannot say more at this stage. I am happy to revisit this if further documents are provided.

- 2.91. By letter dated 26 January 2006 I wrote to Peter Stevens as follows [DHSC0041198_159]:

"Thank you for your letter of 24 November and the attached document, 'Funding Long Term Survival'. I apologise for my delay in replying, but I have considered your report carefully.

Let me say at the outset that I have every sympathy for the registrants of both the Macfarlane and Eileen Trusts and their families, and much respect for the way in which they are coping with their problems. I am pleased that advances in HIV treatment have increased the life expectancy of many of the Trusts' registrants.

We have not yet set budget figures for any Departmental budgets for next year, as priorities for all Departmental programmes are currently being reassessed. The Secretary of State has said that all of the Department's central budgets should be looked at to ensure they give value for money. We will be in touch with you again when this process is completed.

I understand that you are approaching the end of your term as chair of the Macfarlane Trust and I would like to thank you for your work on behalf of the Trust. The Department is indebted to individuals such as yourself who contribute to our work. I would, of course be pleased to meet with you, but I suggest that it would be the best approach if I met you together with the incoming chair, when your replacement has been identified, to welcome him, or her, to the position and to discuss the forward work of the Trust over the next year. It seems that the optimum timing for this meeting could be in April or May, which would also fit with the annual reporting and accounts cycle. I will ask my office to contact you to make the arrangements for this in due course."

- 2.92. The Inquiry will see from this letter that, as well as apologising for the delay in replying to Peter Stevens, I suggested a meeting with him. I thought it would be best for this to happen around the time of the Trusts' annual reporting and when the new Chair of the Macfarlane Trust had been identified and so could attend too. I suggested April or May 2006. A date of 12 July was subsequently set but I do not know why that date was picked. I

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did suggest moving it forward slightly, to 28 June 2006, but I can see from a handwritten note on a submission to me, dated 14 June 2006, that Peter Stevens wished to keep the 12 July 2006 date [DHSC0041159_238 and DHSC5026530]. The letter also tells me that, at the end of January 2006, budgets were still being considered and so I would not have been in a position then to make decisions on the Business Case.

2.93. By letter dated 30 January 2006, Martin Harvey (Chief Executive of the Macfarlane Trust) acknowledged receipt of my letter. He said he was replying on behalf of Peter Stevens and would ensure Mr Stevens saw my letter when he returned to the country [DHSC0041198_154].

2.94. I am asked to respond to Martin Harvey's comment about the "*time and effort*" it took to meet with me following submission of the Business Case. Certainly, it took some time, and my initial response to Peter Stevens was slow because the letter and Business Case did not reach my office. Thereafter, my letter of 26 January 2006 set out the reasoning for proposing a meeting in April or May. I have not seen documents to suggest that significant effort on the part of the Macfarlane Trust was required to secure the meeting or to seek an earlier date. I am, naturally, happy to review this if such documents are provided to me.

2.95. The Inquiry has referred me to three documents [HSOC0005423] (page 2), GLEW0000357 and HSOC0005412_002 (pag 1)] and asked for my response to the suggestion in the documents that I was badly briefed for the meeting on 12 July 2006 and was taken by surprise by the subject matter of the meeting. None of these documents were prepared by DH officials. I do not believe I have seen any of these documents until now. I cannot recall if DH officials saw any of these documents or were informed by representatives of the Trusts or beneficiaries that views like this were held.

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2.96. It is important to return to the context in which this meeting took place, as I think it shows I was fully aware of what the meeting was going to be about and had been briefed on this in advance. As explained above, by letter dated 24 November 2005, Peter Stevens sent a copy of the Business Case and a covering letter asking to discuss with me the Trust's request for increased funding. I replied on 26 January 2006, saying that I had considered the Business Case and suggesting a meeting.

2.97. On 14 June 2006 (so before the meeting with the Trusts on 12 July) Brian Bradley prepared a submission for my attention on funding for the Macfarlane and Eileen Trusts [DHSC0041159_238 and DHSC5026530]. I explain the content of this submission further below, however, the submission invited me to consider the options for continued funding for the Trusts, annexed the Business Case's executive summary, and also forwarded (again) a copy of the full Business Case.

2.98. The submission also stated:

"Mr Stevens asked in the same letter [letter dated 24 November 2005] for a meeting with MS(PH). The reply was sent on 26 January offering a meeting in "April or May", once clarity had been reached on the central budgets. That meeting was pencilled in your diary for 12 July, but is being moved forward at MS(PH)'s request, possibly to 28 June."

2.99. On 15 June 2006 Jacky Buchan provided me with a copy of this submission, saying that a decision on additional funding for the Trusts was sought and that officials wanted to know how I wished to handle the meeting with the Trusts [DHSC0041159_237]. I asked for the views of Lord Warner and Liz Kendall, a special advisor to the Secretary of State.

2.100. Jacky Buchan's reply included [DHSC0041159_236]:

"On how we have handled meetings in the past, Brian has advised that last meeting between a DH Minister and the Trust was in February 2003...The meeting was quite short and apparently fairly informal. We

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were able to announce that we had secured funding for three years as part of the last SR [Spending Review], which was clearly good news that would have made the meeting easy to handle with little preparation.

On this occasion, it would be practical for MS(PH) to advise the chair informally of her decision immediately after the formal meeting if she chose to do so, having listened to the 'presentation' from the wider group..."

2.101. In relation to when I should inform the Trusts of the funding allocation, I have written on this reply, "*Do you mean straight away after the meeting?*" There is no response written on the document but my note tells me I was thinking about whether I would be in a position to do that and the best timing for communicating my funding decision. By this point I knew I was not going to be able to provide a funding increase that was anything close to what the Trusts were seeking.

2.102. This document also tells me that I was aware the meeting would include a presentation from the Trusts and the context was the Trusts' request for additional funding, as set out in the detailed Business Case [MACCF0000177_017].

2.103. On 7 July 2006 Brian Bradley provided me with a written briefing in advance of the meeting on 12 July [DHSC5156234]. The briefing annexed the submission dated 14 June 2006 which advised me that the most that could be found for additional funding was £400,000 and that officials did not think the justification for the requested increase was strong. As explained above, I was aware of the background to the meeting and had received the Business Case. I would have re-read the Business Case before the meeting.

2.104. The briefing set out the agenda for the meeting was funding for the Macfarlane and Eileen Trusts and stated:

"My submission of 14 June addresses the claim presented by the chair of the Trusts for substantially increased funding and the options

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recommended. A further copy of the submission is attached at Annex A for ease of reference.

Mr Stevens would like to present an overview of the case, followed by a brief contribution from Mr Harvey and a view from each of the registrants present of how their lives have been affected by this infection....

There is no other business agreed with the MFT for the meeting. Briefing is, however, appended about several issues which may still be raised by registrants...."

2.105. I can also see from this written briefing dated 7 July that a briefing meeting with officials was planned for 11 July 2006. I cannot remember the contents of that oral briefing but it is likely I would have asked about the attendees at the meeting and discussed the scope of the request for increased funding and any other support that could be provided by government. I think I would have asked about the Trusts' expectations (the 14 June 2006 submission had informed me that "[o]fficials have so far informally advised the Trust to plan on the basis of 'flat cash' funding for 2006/7."

2.106. This review of the chronology and documents suggests to me that I was not badly briefed in advance of the meeting and was not taken by surprise by the subject matter of the meeting. I expected strong views to be expressed to me, and possibly anger or frustration. I cannot say now whether I was provided with some information at the meeting that I was not previously aware of – neither the note at [GLEW0000357] nor the DH note of the meeting at [DHSC0006259_046] are a comprehensive record of everything that was said – although actually I would expect to hear new information and perspectives, which I would have listened to. I recall all attendees being encouraged to speak and would have seen the meeting as an opportunity to find out more directly about the Trusts' concerns and the problems faced by registrants and their families.

2.107. I do not know who prepared the document at [GLEW0000357]. The document does not appear to be simply a record of what was discussed – for example, it says:

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"The verbal dissertation was designed to ensure that any rebuttal by the department was made as difficult as possible. The strategy was to deliver a message that could not be easily challenged."

2.108. The document expresses the opinion that I had been badly briefed and not prepared for the strategy deployed by the Trust. This is difficult to respond to, except by setting out the chronology that I have, as it does not give specific examples of how I was badly briefed or not prepared for the Trusts' strategy.

2.109. The document at **HSOC0005423** is minutes from a Macfarlane Trust Partnership Group meeting on 17 July 2006. I can see that Andrew Evans attended and know he was at the meeting on 12 July 2006. I therefore assume Mr Evans informed the Partnership Group meeting that I was *"either badly briefed or unprepared, despite her staff having been told exactly what the Trust was planning two weeks in advance."* I cannot say what officials were told but my review of the chronology above tells me both officials and I were fully aware that the meeting arose from the Business Case, was about the future funding of the Trusts and would rely on the details of the Business Case (which I had read).

2.110. The note also says *"it was clear that she was expecting something different"*. I have already explained that I do not think that is correct.

2.111. The note says that DH had had the funding bid for seven months and still not yet responded, with no good reason given. I can appreciate the frustration with the time taken to respond to the Business Case. There were pressures on all parts of the Department's central budget, from which the AHOs were funded, which meant spending needed to be examined and budgets were not confirmed until into the 2006/2007 financial year.

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- 2.112. The Inquiry has referred me to a document headed "*Response from the Minister for Public Health to our request for additional funding*" and seems to have been prepared by Trust representatives [HSOC0005412_002]. It states:

"The impression was gained at the meeting that the presentation by the Trusts' representatives contained several elements that the Minister and officials were not expecting. The result of the meeting was not the announcement by the Minister of her funding decision, as had been anticipated..."

- 2.113. Again, the note does not set out what elements of the presentation it was concluded I and officials had not been expecting, and so I am hampered in being able to respond to this. As explained above, I had read the Business Case more than once and had already been asked to consider the case for additional funding. I can see from the briefing note dated 7 July 2006 [DHSC5156234] that officials must have informed Martin Harvey that my decision on funding might be communicated at or after the meeting. The briefing note says:

"We suggest that MS(PH)...conveys any decision to the chairman and chief executive, possibly accompanied by ...(the user trustee) after the formal meeting. We understand from Mr Harvey that this approach will be acceptable."

- 2.114. The reference here to conveying "*any decision*" suggests to me there was not a fixed plan that my funding decision would be communicated at the meeting but I cannot comment on conversations that officials may have had with the Trusts. After the meeting I gave further consideration to how best to respond to the request for additional funding in the context of the very limited money that I knew was available to me. I wanted to ensure the Secretary of State was aware of the situation and seek her views. After listening at the meeting I did not want to decline to make any increase in funding.

- 2.115. The note says that I asked a few questions, "*most of which demonstrated a poor understanding of the purpose and nature of the Trusts*" and said I

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wished to consider what I had heard and would get in touch with the Trusts. As before, it is difficult for me to respond to this because of the lack of detail. It is, of course, disappointing to think that the Trust representatives left the meeting with this impression. Peter Stevens' letter sent immediately after the meeting said "*[t]hank you for the time you gave my colleagues and myself yesterday and for the patient and courteous manner in which you listened to us*" [DHSC0041159_194]

2.116. During my time in government, I always used meetings with organisations as an opportunity to listen carefully, and to ask questions with the goal of helping my understanding of the issues and problems people faced. At the meeting on 12 July 2006 I recall asking questions about the Business Case. But I also recall hearing from everyone – this was my first meeting with the Trusts and beneficiaries – and being told personal stories about the challenges facing beneficiaries and their frustrations and sense of not being supported in the way they needed. I remember asking questions about this and trying to understand what support should be coming from other sources of public funds, but was not. It was clear to me that the beneficiaries were facing very real financial issues causing stress and impacting on well-being. By the time of this meeting I knew I would not be able to provide significantly increased funding for the Trusts and so I think I would have wanted to find out if there was anything more that could be done to support registrants and their families. Given that, I think it would have been important for me to listen to what I was being told and to ask questions. Officials had also expressed doubts to me about what should be funded by the Trusts and what could or should be funded by other public services. As previously stated, I also knew there was no way that I could provide over £7m per year for the Trusts.

2.117. I have been shown another note of the meeting on 12 July 2006 [DHSC0006259_046]. This appears to be a note prepared by DH and includes:

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"The Trust's representatives presented an emotive case, describing the impact of their infection on their lives and the need for adequate funding to maintain their dignity and independence.

MS(PH) said that she had listened carefully to the presentations provided by the Trusts and thanked them for their efforts on behalf of all the registrants. She noted that the Trusts had been created originally to supplement the range of welfare benefits available from other sources and not to provide an alternative source of funding for the same needs. It had been, and remained the Department's intention in setting up the Trusts to recognise that harm had been caused which was not anyone's fault, but which nevertheless justified some ex gratia to those affected...She said that she would write to Mr Stevens in the next week or two with a decision about future funding."

- 2.118. Finally, I have seen a letter from Peter Stevens to me after the meeting, dated 12 July 2006. Mr Stevens' letter set out his awareness that the Business Case had been submitted, and the meeting had taken place, at a time of "great financial stringency" in DH [DHSC0041159_194]. From reading the documents I can see that officials, in advance of this meeting, had told Trust representatives that increased funding was not likely. I have also been shown a copy of minutes from a Macfarlane Trust meeting on 21 August 2006 [MACF0000020_102] which included:

"That the offer was not unexpected and the matter is now with officials."

- 2.119. Accordingly, I would have presumed the attendees should have been aware of the likely outcome of the funding request. I do not of course know if Trust representatives communicated that information to registrants.

Response to Business Case in July 2006

- 2.120. I am asked about my response to the Macfarlane and Eileen Trusts' Business Case, which was contained in a letter to the Trusts dated 28 July 2006 [HSOC0005411]. I am asked about the input the Secretary of State had in this response. I am also asked to set out the basis on which I was satisfied that the amounts to be allocated to the Trusts was appropriate, what role pressure central budgets played in the decision and whether, with the

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benefit of hindsight, my response was adequate given the detailed Business Case presented to me.

2.121. In order to answer these questions I will set out the chronology of events leading up to the meeting on 12 July 2006 and my letter dated 28 July 2006. I will also provide information on what happened later in 2006.

2.122. As explained earlier in my statement, on 26 January 2006 I sent a letter to Peter Stevens apologising for the delay in replying to his letter, which had sent the Business Case. I informed him that budget figures for Departmental budgets had not yet been set.

2.123. The Inquiry has provided me with an email from Brian Bradley to Jonathan Stopes-Roe and Gerard Hetherington, dated 17 May 2006 [DHSC5011528]. I understand this email is from the Preservica data. My private office was not copied into this email. A draft submission was attached to the email [DHSC5011529]. For the reasons set out below I do not think I was aware of the contents of this email or draft submission, or the information in it. However, I will reconsider this if the Inquiry provides further relevant documents.

2.124. The email, dated 17 May 2006, says [DHSC5011528]:

**Gerard, Jonathan*

We discussed briefly yesterday the options for utilising the funding for the MFT that we hope is about to be agreed. The full amount is considerably more than we could justify (and indeed than they expect) but we could put some £10m of this to good effect as a single payment – if Gerard is content to go that far. This would amount to less than half what they are asking for, and would leave approximately £6m in the budget after the recurrent funding for this year. This is identified in the DNs [I think this means drafting notes] in the attached draft submission, which would be required for ministerial endorsement....It would be helpful to have this ready to go up very soon after the budgets are agreed, so response in the next day or two would be appreciated.

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NB: I have not so far copied this to finance colleagues.

Brian Bradley

2.125. The submission is clearly a draft, dated only "May 2006", and was prepared by Brian Bradley [DHSC5011529]. As stated, I do not think this (or a final version) was ever sent to me. I have seen no later reference to this May 2006 submission in the documents provided to me. The subsequent documents I have seen refer to a submission on funding for the Trusts dated 14 June 2006 [DHSC5026530] that was prepared by Brian Bradley. Typically, where there was a series of submissions on the same subject matter, later submissions would refer back to earlier ones.

2.126. I have explained the contents of the 14 June 2006 submission in more detail below but it is worth saying now that the draft May 2006 submission and the final 14 June 2006 submission are very different. As far as I can tell, the draft May 2006 submission was prepared before budgets had been allocated (see the reference in the covering email to "*the options for utilising the funding for the MFT that we hope is about to be agreed*" and also §2 of the draft submission). I do not recall making a decision based on the draft May 2006 submission but again, am happy to reconsider other documents if they are provided to me.

2.127. The draft submission sets out 4 options for responding to the Macfarlane and Eileen Trusts' Business Case, namely, outright refusal, full acceptance at the requested level of £7m per year, partial acceptance with a smaller level of recurrent increase, and partial acceptance with a single payment now and no annual increase or a much smaller one. I will focus on this last option but wish to stress this option was not presented to me in the 14 June 2006 submission that I received.

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2.128. As I understand the draft submission, this proposed option would see the Macfarlane Trust receiving a £9m payment and the Eileen Trust receiving a £1m payment, alongside annual payments that would remain static. It says *"this could be presented as a 5 year settlement, in the same way as previously."* The draft submission then says:

"[DN Gerard This is rather more than we briefly discussed but it is still affordable within the current figures and would leave room for other contingencies, such as the Skipton Fund, which we have been advised will continue to be funded from provisions. You may however wish to present Ministers with a smaller single payment, say £5m, across both bodies for 3 years.]"

2.129. By the time I received the 14 June 2006 submission, the budgets had been set and I was informed by officials that only £400,000 was available. The 14 June 2006 submission contains no reference to a lump sum settlement over 5 years.

2.130. The Inquiry has also provided me with an email chain between Brian Bradley, Gerard Hetherington, Jonathan Stopes-Roe and Edward Goff, dated 8 June 2006 [DHSC6340820]. This shows Brian Bradley sent a draft submission to other officials, asking for assistance in completing "3 DNs", which I think means drafting notes or queries. I do not think I have seen that draft submission. On the same day Brian Bradley sent an email to Gerard Hetherington saying:

**Gerard*

You may be interested to note the present state of play, with our thinking on this submission. Jonathan and I have been redrafting this over the last couple of days and feel that the £400k is reasonable – but would be grateful for your confirmation (or otherwise) that it is affordable in the current budget planning. It is, of course, much less than they are asking for and it may be helpful for MS(PH) to have some negotiating room on this figure if this is possible..."

2.131. This email was not sent to me or my private office. I have not seen a reply. I have not seen other documents to help explain what happened between the May 2006 draft submission and the 14 June 2006 submission.

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2.132. However, the submission that was sent to me was different and contained different information about what was available in the budget, and the options for Macfarlane and Eileen Trust funding.

2.133. Brian Bradley prepared a submission dated 14 June 2006 inviting me to consider the options for continued funding for the Macfarlane and Eileen Trusts [DHSC0041159_238 and DHSC5026530]. This submission was very different from the draft May 2006 submission. I was asked to consider the submission urgently because the 2006/2007 financial year had already started and "central finance [were] on the point of confirming the available budget levels for this year." This 14 June 2006 submission referred to the Business Case sent by Peter Stevens in November 2005 [MACF0000177_017] which argued for increasing the funding of the Macfarlane Trust to £7m/ year and doubling the funding of the Eileen Trust (although I note that the Eileen Trust had not been receiving annual funding).

2.134. On DH financial pressures, Brian Bradley wrote at §8 of the submission:

"Financial position

"As you know, DH has faced acute pressure on NHS funds and (as a consequence) on the raft of central budgets from which MFT and ET are funded. Major ALBs [arm's length bodies] are being required to make challenging cuts in expenditure, to the point of 'thinking the unthinkable' about service reductions. The upshot of the prolonged review is, quite simply, that an extra £4m for MFT and £137k for the ET is not available. The most that could be found, within the budgets now available to us, might allow for growth or around 10% or £400k across both Trusts. Officials have so far informally advised the Trust to plan on the basis of 'flat cash' funding for 2006/7."

2.135. The Inquiry will see what was presented to me was very different from the content of the May 2006 draft submission.

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2.136. The 14 June 2006 submission presented me with three options which were:
 declining any increase in funding, fully accepting the Trusts' Business Case,
 and partially accepting it by providing an increase of up to £400,000 across
 both Trusts.

2.137. On the option of declining any increase the submission included:

"The option of outright refusal of this case, and flat cash funding, may be justified on the grounds that payments to the relatively small number of surviving registrants have increased substantially in the last 5 years, and the level of funding has not declined in parallel with the decline in registrant numbers...The historical data...indicates that the average annual payment to each registrant was relatively constant at around £3,500 from 1989 to 2001, when there was a step increase to an average of around £6,000. This supports the view that the Trusts have already secured much, if not all, of the increase in the rate of annual benefit needed by registrants. Blood policy colleagues have commented that they do not consider any increase in overall funding is justified."

2.138. This part of the submission also said it could be argued that other public services should share the financial responsibility of providing support. It said that some elements of the Business Case could be queried as they had:

"strayed somewhat from the original intention in setting up the Trusts and from the Department's original commitment to support these people."

2.139. The submission also said that the Trusts' representatives had:

"referred to earlier Ministerial commitments to review and to provide adequate funding for these registrants. We have not located a record of such commitments, although the 2003 settlement, following the meeting with Hazel Blears may be the basis for their position..."

2.140. Declining an increase in funding was not an option I wanted to pursue. From the Business Case and elsewhere I realised that registrants and their families were facing more pressures than had previously been foreseen and that support from other public agencies was not always forthcoming or easy to access.

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- 2.141. On the option of fully accepting the funding request in the Business Case, the submission said:

"Full acceptance of this claim seems neither affordable nor justifiable. It would more than double the average level of benefit per registrant (all else being equal), which could be seen as excessive. It would be difficult to defend complete acceptance of a case for increased expenditure in some of the questionable areas...without rigorous questioning and assessment against other spending priorities. The case clearly represents the maximum statement which may be regarded as a negotiating position rather than meriting settlement in full."

- 2.142. On my reading this section probably understates the fact that the budget needed to increase funding by around £4m/ year was not available (although I cannot now say more about the contents of the draft May 2006 submission). This was set out at §8 of the submission under "financial position" which stated that *"quite simply, ...an extra £4m for MFT and £137k for the ET is not available."* I recall at this time there were huge pressures on DH budgets. Parts of the NHS were being asked to make significant efficiency savings. The submission refers to ALBs being asked to 'think the unthinkable'. My recollection was that budget cuts and service reductions were being considered.

- 2.143. I do recall wondering how it had come about that the Trusts were seeking more than double the existing allocation and how this apparent disconnect between the Trusts' expectations and what DH would be able to commit to had arisen. Certainly, as the submission says, I would not have been able to commit to this increase and level of ongoing funding without DH undertaking its own analysis of the Business Case. I am aware that such an analysis did not take place while I was in post and address this below. I cannot now say how and to what extent officials analysed the Business Case before the 14 June 2006 submission was sent to me (which I would have expected).

- 2.144. On the third option of providing some additional funding, the submission said:

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"A partial acceptance of this claim might, however, be justifiable as it would indicate that the Department is indeed able and willing to renew its commitment to supporting those infected by contaminated blood products, while living within our reasonable resource limits. While the historical data show that average annual payments increased significantly in 2001, the MFT's case still makes some valid points in support of a further increase – albeit not on the scale requested. A recurrent increase of up to £400k across both of the Trusts would be affordable. This would represent a further step increase of slightly more than 10% in the overall funding, including administration costs."

2.145. Again, I think this should be read with §8 of the submission which says "[t]he most that could be found within the budgets now available to us, might allow for growth of around 10%, or £400k across both Trusts." My recollection is that I was told that £400,000 was all DH had available.

2.146. The submission states that this sum of £400,000, described as an increase of slightly more than 10% in overall funding, included administration costs. Looking back now (and as explained in more detail below), I think it was correct to say funding for the Macfarlane Trust was to include administration costs but it was not correct for the Eileen Trust. This distinction was not drawn in the submission to me and the submission did not include a separate section on administration costs of the Trusts. I am also now not sure that the increase turned out to be £400,000 – I think it was more.

2.147. The conclusion in the submission was:

"Conclusion

On balance, we feel that the justification for an increase is not strong. There is, however, a lot of pressure from the Trust and registrants, and MS(PH) could consider increasing the funding for the Macfarlane and Eileen Trusts by £400k (£350k for the MFT and £50k for the ET). The split could be adjusted on the advice of the Chairman."

2.148. Jacky Buchan sent this submission to me on 15 June 2006 with a handwritten note which summarised the conclusion and said "(I presume we

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would need to run any proposed increase past SofS [Secretary of State])..."

[DHSC0041159_237]. On 28 June 2006 I wrote on this note:

"Well it doesn't look like we can pay more. Why can't the costs of running the trust be reduced too to provide more money...run this past Norman [Lord Warner] + Liz [Liz Kendall] for urgent obs."

2.149. I asked about the Trusts' running costs because I wanted to see if there was an opportunity to reallocate running costs' money to provide more funding for beneficiaries on top of the £400,000 suggested. In seeking Lord Warner and Liz Kendall for comments I was seeking further guidance and ideas from a Ministerial colleague and the Secretary of State's special advisor.

2.150. Jacky Buchan subsequently wrote me a note (which I marked as having read on 6 July 2006) saying **[DHSC0041159_236]**:

"You asked for Lord Warner and Liz Kendall's views on additional funding for the Macfarlane and Eileen Trusts.

Lord Warner said he does not feel strongly about uprating payments to beneficiaries if the money is there. He also commented that we could merge trusts to reduce costs if they are a problem.

We did not get any comments from Liz. I understand she is too busy to look at this until late next week (by which time we will have had the meeting anyway) [this must be the meeting on 12 July].

Regarding your question about reducing running costs, officials have advised that the Trusts are run on a very tight administrative budget which has little or no scope for further efficiencies – not sufficient to generate the approximate 10% being contemplated, which is itself a long way short of what they are asking for."

2.151. As explained above, I received a written briefing from officials **[DHSC5156234]** dated 7 July 2006 in advance of my meeting with the Trusts and beneficiaries on 12 July 2006. As explained above an oral briefing was planned for 11 July.

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2.152. As the Inquiry knows, I did not communicate a decision on funding at this meeting on 12 July 2006. Instead I told the Trusts I would be in contact soon with a decision [DHSC0006259_046].

2.153. I can see from the documents that after the meeting, I must have asked for a draft minute that could be sent to the Secretary of State on the issue of funding. I received a draft from officials, to which I made significant amendments – I wanted to give the Secretary of State much more information [DHSC0041159_196 and DHSC0041159_195]. It appears that my re-draft was then sent to Jonathan Stopes-Roe, Head of Strategy and Legislation in DH's Health and Protection Division, for his comments. On 20 July 2006 he emailed [DHSC6025814]:

Jacky

Thanks for sending MS(PH)'s redraft of the note to SofS. I can confirm that officials (going back before my time on this subject) have been uniformly discouraging the Trusts' business case ambitions. But we can hardly tell them not to submit it!

Here is the draft, with some track changes to show my suggestions..."

2.154. The track changed document from Jonathan Stopes-Roe stated that officials had informally briefed the Trusts that additional funding would be unlikely and the Chief Executive had indicated this was understood [DHSC6025814 and WITN5427003A]. He suggested other changes to the note. It appears I incorporated some of these into the note to the Secretary of State and did not incorporate others.

2.155. On 20 July 2006 Jacky Buchan sent an email to Jonathan Stopes-Roe thanking him for his track changed comments and saying :

"MS(PH) has said what she needs to know urgently is when did the Trust start the review and what engagement did they have with DH. When they came to us saying they were doing a review, did we tell them there was no more money available or did we say it would be helpful/ a good idea?"

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I understand that, at the time of writing this statement, a substantive response to this question has not been located. I sent a minute dated 22 July 2006 to the Secretary of State [DHSC0006259_044] I explained that the Trusts had submitted a Business Case seeking to increase funding from DH from around £3m to over £7m a year and wrote:

"The present pressure on central budgets simply does not provide for that kind of increase – and I am not convinced that their case is strong enough. But this is an emotive issue, and I should be grateful for your views."

2.156. I also wrote that:

"In fact, DH's funding to the Trust has enabled them to roughly double the average annual payment to registrants, in real terms, over the lifetime of the Trust. This is mainly due, unhappily, to the fact that, of the original 1200 registrants, less than 400 are left, rather than to DH's generosity."

2.157. I appreciate that, from my reading of the documents now, this probably did not take into account widows and dependents who were not receiving support. I think I should have said more about that group of people. The reality however, at this point in time, was very little additional money was available to me. The reference to me not being convinced the Trusts' case was strong enough to justify such a large increase arose from my understanding that some of the expenses/ costs should have been covered by other public agencies. I was faced with very little money to 'work with' and wanted to provide some additional funding which could, at least, sustain and provide a little more to the current level of support to registrants.

2.158. I have already said that I had wondered how this disconnect or disparity between the figures in the Business Case and what DH would be able to commit to had arisen. It appears Jonathan Stopes-Roe had been able to provide more information on this, as the submission says (this information would not, I think, otherwise have been known to me):

"The Trusts describe their current claim is the first comprehensive review of what they are doing. That may be so, but officials have, all along,

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informally briefed the Trusts that additional funding would be unlikely. In response, the Trusts' Chief Executive has, equally informally, indicated to officials that they understood this, at least at the senior level....

I understand that when the Trust approached officials for increased funding in January 2005, officials told the Trust to prepare a realistic business case but made it clear the amount initially requested was unlikely to be met..."

2.159. The minute continued:

"My concerns are that DH having told the Trust to provide a business case (and therefore tacitly supported this review) hadn't really thought through how to deal with the outcome. As a consequence we're left with little resource to offer but no real answers to the challenge that the Trusts are not able to cope with the needs of registrants today based on the original presumptions."

2.160. This summed up my thoughts that there had not been close enough working between DH officials and Trusts when the Business Case was being developed, particularly when I had been told there was around £400,000 available. I thought there were reasonable questions to be asked about what the Trust was there to fund (decisions about how money was spent were for the Trusts, but the content of the Business Case had to be relevant to DH's decisions on a significant funding increase). But I was acutely aware, including as a result of the meeting on 12 July 2006, that did not take away from the difficult and harsh reality of the people impacted by infection. I remember thinking this was a dilemma made worse by the pressures on central budgets.

2.161. I presented the Secretary of State with three options in order to get her view. These were first, to make no increase to funding; secondly, to offer "a modest increase of say £400k across the two Trusts (which can be found within the tight central budget settlement)"; or thirdly, to proceed with the first or second option "and a DH/ Trusts working group to consider more fully the role of the Trusts and their responsibilities to registrants."

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2.162. I suggested the third option (which had not been in officials' original proposals) as a way forward to try to resolve some of the different views that had emerged with regards to the problems beneficiaries were facing on one hand, and DH queries about what the Trusts should be funding. However, the Inquiry will see that I had reservations about whether, even at the end of such a review, there would be any more money available. I wrote:

"Option 3 provides some space to consider further some of the concerns but would imply some change to the Trusts. DH needs to be clear what direction that change would take, how to deliver it (Divert officials from other work? Commission an independent reviewer?) and whether in (say) a year's time there will be any more money available to these Trusts than there is now."

2.163. The Inquiry will note that this minute to the Secretary of State did not include the option of providing the funding requested by the Trusts in the Business Case. The pressure on central budgets did not provide for that kind of increase. However, in the first paragraph of the note there is a reference to the Trusts seeking to increase *"their total funding by DH from around £3m to over £7m a year"*.

2.164. The minute was sent to the Secretary of State with a note that I would be grateful for her views and was happy to speak with her. I have seen a cover note to the Secretary of State attaching the minute, dated 21 July 2006 [WITN5427004]. I cannot explain why this is dated 21 July 2006 when my minute is dated 22 July 2006. There is handwriting on this note which I think may be the Secretary of State's and says:

"I'd go for 1 [i.e. no increase in funding] – but tricky."

2.165. Assuming that was the Secretary of State's writing, I may have had a telephone call with the Secretary of State to explain my view that there should be an increase in funding and a review, but I have not seen documents to confirm this.

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2.166. However, the Inquiry has provided me with an email dated 26 July 2006 from Dani Lee in the Secretary of State's private office, to Richard Douglas and Hugh Taylor [DHSC5132330]. I believe Hugh Taylor was Acting Permanent Secretary at DH at the time and that Richard Douglas was senior in DH Finance. The email says that the Secretary of State would welcome their views on:

"whether it is feasible to provide the trusts with an additional £400k this year, on the basis that we will review their funding needs for future years. In case this review does not report in time to influence their 2007/2008 budget, it would also be helpful if you could confirm that it would be possible for the additional £400k to continue."

2.167. This is contained in a chain of emails. On 27 July 2006 Alan Doran emailed Kasey Chan, from Hugh Taylor's office. My office was not copied in. The email said:

"Thanks. My views are –

- *As I understand it, we are able to offer an extra £400k from within existing central budgets so if we are convinced that the Trusts needs it and if we don't want to divert that money to other uses (children's hospices?) then we should offer it to them; MS(PH)'s view is that this is justified on grounds of Parliamentary feeling;*
- *The difficult issue is whether or not to stop there (finances are very stretched; many difficult choices) or whether to offer a longer term review with our involvement; it's only worth doing that if there is a reasonable prospect of there being extra funding in future years (because that is the most likely outcome); the risk of raising expectations and then giving them an unwelcome response that we could give them now.*

Provided the terms of reference are properly drafted I would favour a long term review."

2.168. On 27 July 2006 Kasey Chan sent a note from Hugh Taylor to the Secretary of State's private office. I have not seen that note.

2.169. I think the timeline suggests that, following my minute to the Secretary of State there was further discussion and advice sought. I do not believe I had sight of these exchanges at the time.

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2.170. On 27 July 2006 Brian Bradley sent me a further submission which invited me to write to the Chair of the Macfarlane and Eileen Trusts announcing their increased funding, and to consider the implications of a further review of the Trusts [DHSC5026529]. The submission says that, after the meeting on 12 July 2006, *"MS(PH) has subsequently discussed this issue with the SofS and decided that we increase the funding of both Trusts by a combined total of £400k. Ministers are also minded to carry out a review of the Trusts."*

2.171. The submission continued:

"Having thought through the suggestion of a review and discussed the implications with Gerard Hetherington (the Head of Health Protection Division), we invite Ministers to consider the following points:

- a) HP Division is not resourced to carry out such a review and we do not have a programme budget which would fund it externally;*
- b) Having just completed a challenging review of budgets and resources, we could not reprioritise resources to make room for the review without having to drop other agreed high priority work;*
- c) Such a review, however independent, would likely have spending implications for the Trusts' budgets which would require a significant increase, beyond that presently available or likely to be agreed in the next Spending Review;*
- d) A decision to carry out this review would have wider implications and could create precedents across the health protection area (and possibly wider) where there is pressure for increased funding for similar ex gratia or compensation schemes.*

Conclusion

MS(PH) is recommended to send the attached letter to Mr Stevens now, and to consider further, with officials, a review of the Trusts."

2.172. Brian Bradley attached a draft letter for me to send to Peter Stevens. The final paragraph of the draft letter is different from the letter I sent, but otherwise is the same [HSOC0005411]. The draft letter contained the substantive paragraph on the increase in funding.

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2.173. This submission dated 27 July 2006 has been provided by the Inquiry from the Preservica database. I have not seen documents to show whether I responded to officials' arguments against conducting a review of the Trusts, or if there was a meeting between officials and me on this.

2.174. The following day (28 July 2006) I wrote to Peter Stevens, as Chair of the Macfarlane and Eileen Trusts [HSOC0005411]. For ease I set out the key passage of that letter:

"I have considered carefully all the points that were made at our meeting. I have also looked at the wider picture, including trends in the numbers of registrants, and the level of benefits available from the Trusts' funds. I am satisfied that an increase of £400,000, approximately 11%, to the Trusts' funding will maintain an appropriate level of support to their remaining registrants and is within the current level of Government funding that is available. This will bring the funding each year to £3.754 million for the Macfarlane Trust and £177,000 for the Eileen Trust (assuming a 90:10 split on the current ratio of their size). Both these figures include provision for administration costs...."

2.175. This letter did not communicate that a DH/ Trusts working group might be set up. I assume that was because I wanted to consider the information in Brian Bradley's submission dated 27 July 2006. Clearly, I was already concerned about whether there would be extra funding available even after a working group had completed its review (and that also was the view of Alan Doran and officials).

2.176. I understand that a working group was not set up during my time. The documents I have seen do not help me with what happened to this idea. I am very happy to consider this again if further documents are made available.

2.177. I have been asked to explain the basis on which I was satisfied that £3.754m for the Macfarlane Trust and £177,000 for the Eileen Trust would maintain an appropriate level of support. I recognised that the sums fell far short of

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what the Trusts wanted for registrants and their families. I did not support the view expressed in the 14 June 2006 submission that there should be no increase. I was faced with very little money to 'work with' and wanted to provide some additional funding which could, at least, sustain and provide a little more to the current level of support to registrants. I think my letter used the word "*appropriate*" in that context. I can see that perhaps it could have been better phrased. It was the best that I could do with the funds that were available.

2.178. In preparing this statement I have spent some time looking more closely at the figures. I am aware that witnesses during the Inquiry's AHO hearings in early 2021 were extremely unhappy with the funding decision and the content of my letter.

2.179. I have seen nothing in the documents that tells me I received (or asked for) a more detailed explanation of the 11% figure. But it is likely I would have asked how the figures were calculated and had a verbal explanation from my private office or an official. Reading the 14 June 2006 submission again now, it is not as clear as it could be.

2.180. I have considered the figures in the Macfarlane Trust annual report and accounts for 2005/2006 and 2006/2007 [MACF0000045_011 and MACF0000045_010] and my understanding is that the Macfarlane Trust received the following:

Table 3: Macfarlane Trust Funding 2005 - 2007

Macfarlane Trust		
	2005/2006	2006/2007
Government capital grant	£3,000,000 I am aware that the funding commitment under Hazel Blears was for £3,050,000 in this year but	£3,754,000

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	the additional £50,000 appears not to have been paid.	
S64 grant	£294,000	No separate award
Total	£3,294,000	£3,754,000 (i.e. +£460,000)

2.181. The figures in the Eileen Trust annual report and accounts for 2005/2006 and 2006/2007 [EILN0000016_042 and EILN0000017_007] show:

Table 4: Eileen Trust funding 2005 - 2007

Eileen Trust		
	2005/2006	2006/2007
Government capital grant	No capital award	£177,000
S64 grant	£36,000	£37,000
Total	£36,000	£214,000 (i.e. +£178,000)

2.182. For the Macfarlane Trust, this appears to give a difference of £460,000 funding between 2005/2006 and 2006/2007. It is more difficult to compare the figures for the Eileen Trust as there was no capital grant in 2005/2006. However, these figures do not appear to match with the overall figure for both Trusts in my letter, or with the reference to 11%. As explained above, the Macfarlane Trust had made an application for s64 funding for 2005/2006 – 2007/2008 that was turned down. The s64 figure requested by the Trust for 2006/2007 was £304,000. I can also see that the Business Case stated that the Trusts' combined administrative costs was £350,000.

2.183. The funding decision was obviously being taken before DH had the actual running costs for 2006/2007 but if one takes running costs for the Macfarlane Trust of approximately £310,000 for 2006/2007 (the Business Case said both Trusts running costs were about £350,000 per year), then that leaves £3,444,000 in capital funding for the Macfarlane Trust in 2006/2007. That is

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an increase of approximately 14.85%. I appreciate that this level of running costs does not reflect the increase budgeted for in the Business Case, but I am looking here at the increase in funding that was provided. I also, of course, appreciate that these overall figures are very far from the sums requested by the Macfarlane Trust.

2.184. I have looked at a document prepared by Peter Stevens dated 11 August 2006 [HSOC0005412_002]. It says the funding offer was at first sight difficult to comprehend and there was a meeting between a Trust representative and an official to look at the make-up of the offer. I do not recall who that official was but, in my experience, it is not unusual for a meeting to take place following a funding offer to 'iron out' the details. Reading this document at [HSOC0005412_002] has reminded me that there was engagement between the Trusts and DH after my 28 July 2006 letter and I believe there was a conversation in my office about this.

2.185. Some of the figures in the document at [HSOC0005412_002] are confusing, not least because it is my understanding that the payments described as "*MSPT2 payments*" and "*ET capital payments*" were, in effect, separate from the Trusts' capital funding – these were not charitable payments, rather DH was obliged to make them and the payments were simply made through the Trusts. It also appears that any unspent allocation for these payments was retained by the Trusts. I can see from the Macfarlane Trust annual report and accounts for 2006/2007 [MACF0000045_010] that MSPT2 payments were accounted for separately from the capital grant received by the Macfarlane Trust. The MSPT2 payment was £23,500 and the capital grant was £3,754,000.

2.186. However, using the breakdown in Mr Stevens' note (which includes s64 running costs for both Trusts in 2005/2006), the new overall award for both Trusts comes to £3.931m. That matches the total of the combined figures of

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£3.754m overall for the Macfarlane Trust and £177,000 for capital funding for the Eileen Trust. That excludes a s64 grant of £37,000 for the Eileen Trust in 2006/2007. It is fairly clear to me now that my letter dated 28 July 2006 was wrong to imply the increased funding amount included the Eileen Trust's s64 grant.

2.187. After reviewing the documents and doing my best to interpret them now, I cannot explain parts of my letter to the Trusts. First, the figures are not as clear as they could and should be. Secondly, it appears to me that more than £400,000 in additional funding was in fact provided in 2006/2007. I do not understand the reference to an 11% increase. Thirdly, the figure of £177,000 for the Eileen Trust did not include administrative costs (so in fact, in that year the Trust received more than it would have anticipated based on my letter). I am sorry to say I cannot explain this further at this point in time.

2.188. However, I wish to make clear that I signed and sent the letter dated 28 July 2006 in good faith and based on the information provided to me by officials. I absolutely was not intending to be "*disingenuous*" or to 'dress up' the funding as something it was not. The documents I have seen indicate to me that I relied on the figures and information that were provided to me. Even if the Trusts received more than £400,000 in total (which I think is correct on my analysis now), the final sums clearly amounted to much less than the Trusts' Business Case advocated for.

2.189. I ended my letter to Peter Stevens by offering a further meeting with officials to discuss possible ways forward and provided my private secretary's contact details. Clearly, there was a meeting between officials and the Trusts to explain the funding offer in more detail.

2.190. I do not recall that Macfarlane or Eileen Trust representatives wrote to me to object to this funding offer or to express their disagreement with the figures

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in my letter. I have not seen any documents to indicate that they did. I have been shown a copy of a statement that was to be placed on the Macfarlane Trust website around 23 August 2005 which included that the *"settlement reported as an increase of 11% in overall funding was disingenuous"*. This may have been drawn to my attention, but I have not seen any documents showing it was. I will obviously review this if further documents are provided. However, as explained above, it appears there were discussions between officials and the Trusts where officials explained that a significant (or possibly) any increase in funding was not likely.

2.191. I have been shown a letter I wrote to Mr **GRO-A**, responding to his letter to the Prime Minister dated 24 August 2006 **[DHSC0041159_161]**. In it I repeated that I had agreed an increase of £400,000 for the two Trusts, with £177,000 for the Eileen Trust, and that I believed this would maintain an appropriate level of support and was within the current level of government funding available. I also wrote:

"In addition to the new funding of £177,000, the Eileen Trust will also receive a further £37,000 towards its administration costs, which will bring the total funding to £214,000."

2.192. I cannot now say why this was drafted differently from my letter of 28 July 2006 but my review of the documents suggests this was correct. My letter to Mr **GRO-A** also stated that the government remained committed to the Eileen Trust.

2.193. I have also been shown a letter from Peter Stevens to Liz Woodeson (Director of Health Protection), dated 1 December 2006 **[DHSC0041155_123]**. Peter Stevens was replying to Liz Woodeson's letter dated 28 November 2006 (I have not seen that letter). Peter Stevens' letter indicates that he and Liz Woodeson had met and funding for the Macfarlane Trust had been discussed. Peter Stevens asked Liz Woodeson to *"arrange*

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for us to have another opportunity to present our arguments at Ministerial level again."

2.194. On 4 December 2006 Liz Woodeson emailed Jacky Buchan [DHSC0041155_122]:

"Dear Jacky

I would be grateful if you could take a quick look at the attached [Peter Stevens' letter was attached]. You will see that I recently met with the Chair and Chief Executive of the Macfarlane Trust. It was by way of an introductory meeting – but they wanted to press their case for a big increase in funding. I listened sympathetically but as you can imagine was totally non committal re funding. They have followed up with the attached letter asking me to arrange a meeting with the minister.

Since I understand the minister only met with them back in July, I assume she will not want to do this? Nothing has changed since the July meeting. There is certainly no spare money available to give them an increase next year, and - set against all other pressures – we do not recommend one. Are you content for me to reply that I have brought their letter to the minister's attention and can assure them that she will bear it in mind as decisions are being made about next year's budgets?"

The email has a handwritten note on it saying "yes".

2.195. On 5 December 2006 [DHSC0041155_121] Jacky Buchan wrote me a note to say that Peter Stevens was requesting a further meeting so the Macfarlane Trust could put its funding case again. It appears Peter Stevens' letter was sent to me. Jacky Buchan wrote:

"...there appears to be no new information since your meeting in July.

Are you content for Liz to reply along the lines she has suggested that you will bear their funding request in mind but decline to meet?"

I have marked this "okay", indicating that I was content.

2.196. I have not seen any documents that assist with decisions on budgets in 2007/2008. Funding to the Macfarlane Trust was the same in 2007/2008 as in 2006/2007, i.e. £3.754m. I am very happy to reconsider this if provided with additional documents.

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2.197. I have explained above the very significant role that pressure on central budgets played in my July 2006 decision on funding. I am asked whether, with hindsight, my response to the Trusts' Business Case was adequate. I think the brevity of my response in my letter of 28 July 2006 was also shaped by the lack of money available to me. Given that I could only offer a fraction of what was sought, I think my view would have been that responding to the Business Case, line by line, would be to call into question the understandable aspirations of the Trusts to improve the quality of life of all of the infected and their families. I was also acutely aware of financial constraints; that future funding was likely to be tight and so I had to be careful about raising expectations that could not be met. I have explained that within DH I had proposed setting up a working group between officials and the Trusts but it seems that did not gain traction and therefore was not communicated to the Trusts. As explained, I cannot now say what happened to that idea but the documents show that I and others, even at the time, had concerns about whether it could lead to anything due to funding restrictions. I appreciate that the Trusts and registrants were disappointed with the content of my letter, including its brevity as against a detailed Business Case.

Adequacy of Macfarlane Trust Funding

2.198. I am asked whether I was aware that Macfarlane Trust trustees held the view that the Trust was underfunded and, if so, when I first became aware this was the view of the trustees. I am also asked whether I agree the Macfarlane Trust was underfunded and the reasons for my view.

2.199. As explained in this statement I was aware that Macfarlane Trust trustees held the view that the Trust was underfunded. I cannot now say exactly when I first became aware of this, although it is likely I would have been made aware in broad terms during any initial briefing on the AHOs when I started as Parliamentary Under-Secretary. I think I would have been informed that the Trusts were working on a Business Case. I don't recall being aware before I read the Business Case in January 2006 how much more significant

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funding the trustees felt was needed. Again, I cannot say exactly when, but certainly by mid-July 2006 I had the impression from officials that the Macfarlane Trust trustees were aware that significant additional funding was unlikely.

2.200. I am asked if I agree that the Macfarlane Trust was underfunded.

2.201. I obviously made a significant funding decision in July 2006 and so I will answer this question in the context of that decision. The Macfarlane (and Eileen) Trust, with its unique beneficiaries would, of course, have been able to do so much more if it had, for example, twice the annual funding. With that kind of increase in funding, clearly much more could have been done to support individuals and their families.

2.202. I have already explained that, from the Business Case and advice from officials, I formed a view that some of the expenses/ costs sought by the Macfarlane Trust perhaps should have been covered by other public agencies and should have been easier to access. The documents also show that officials' advice to me was to decline an increase in funding. The submission dated 14 June 2006 stated:

"The historical data...indicates that the average annual payment to each registrant was relatively constant at around £3,500 from 1989 to 2001, when there was a step increase to an average of around £6,000. This supports the view that the Trusts have already secured much, if not all, of the increase in the rate of annual benefit needed by registrants. Blood policy colleagues have commented that they do not consider any increase in overall funding is justified."

2.203. I would have been influenced by the advice that the payment to each recipient had increased from £3500 to £6000 from 2001. I have already mentioned in my statement that I recognise this probably did not include those widows and dependents who were not being supported. I did not want to decline any increase as I understood the Macfarlane Trust could do more

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to support beneficiaries with more money, but I also was limited in what I could provide by the budget available to me. I think I would have wanted to provide more funding to the Trusts if more funding was available to me.

Miscellaneous AHO Matters

Skipton Fund Payments to Dependents in 2006

2.204. I am asked about the 2006 decision to extend Skipton Fund payments to include some dependents of those who had died after the fund became operational. I am asked to explain my part in this decision, the rationale for this decision and my understanding of why this had not been done earlier.

2.205. I do not have a detailed memory of the chronology and reasons behind this decision and so am reliant on the documents I have seen.

2.206. When the Skipton Fund first became operational it provided ex gratia payments to people in the UK who were alive on 29 August 2003 and whose hepatitis C infection was attributable to NHS treatment with blood or blood products. This was the scheme as announced by John Reid in August 2003, Secretary of State for Health at the time. In the case of people who died between 29 August 2003, when the Skipton Fund scheme was announced, and 5 July 2004, when it was launched, payments were made to the deceased's estate. As I was not involved in this initial policy decision, I can only explain it by reference to how it was explained in documents post-dating the decision.

2.207. On around 23 May 2005, so very shortly after I took up my role as Parliamentary Under-Secretary, I was sent a briefing on a Lord's Starred Question (PQ00028) that would be put to Lord Warner in the House of Lords on 26 May 2005 [DHSC0004213_115]. I was asked if I was content with Lord Warner's proposed answer, to which I replied "yes". This was a restatement

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of the current policy position, which I would have only very recently have become familiar with. From my reading of the documents the answer I said I was content with was:

"The Lord Morris of Manchester – To ask Her Majesty's Government what further consideration they are giving to providing financial help for the dependents of patients who have died in consequence of being infected with hepatitis "C" by contaminated National Health Service blood and blood products.

Lord Warner – The government has great sympathy for the pain and hardship suffered by widows and dependants of those inadvertently infected with hepatitis C. However, as previously stated we have no plans to alter the existing financial arrangements regarding dependents of people infected with hepatitis C."

2.208. I can see that the answer given by Lord Warner was slightly different in that the second sentence said:

"But, as I have previously indicated, our scheme of financial help is designed to alleviate the suffering of those people infected with hepatitis C; it is not intended to compensate for bereavement."

2.209. It appears that I was also provided with the more detailed briefing that Lord Warner, that would have been prepared by officials. That briefing assists Lord Warner with possible supplementary questions and answers and includes:

"Why does the Scheme exclude Widows and Dependents?

The underlying principle of the Skipton Fund payments is that they should be targeted to help alleviate the suffering of people living with inadvertent hepatitis C infection.

The Government has great sympathy for the pain and hardship suffered by the widows of those inadvertently infected with hepatitis C, but the fund is not designed to compensate for bereavement. This is a fair and reasonable approach, bearing in mind that there is limited funding available."

2.210. On 2 June 2005 Andy Kerr wrote a letter to the Secretary of State [DHSC0006798_046]. This letter is signed and dated. Again, I have not seen documents to show this letter was passed to me but it may have been. The

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letter concerned the Smoking, Health and Social Care (Scotland) Bill (the "Bill") and said:

"I am writing to you and colleagues in other devolved administrations in relation to the progress of the legislation that is necessary in Scotland to enable Ministers to make payments in terms of the Skipton Fund scheme to people who have contracted Hepatitis C through NHS treatment. These powers are to be provided through the Smoking, Health and Social Care (Scotland) Bill.

Section 24 of the Bill – which relates to the Skipton Fund - was considered by the Health Committee of the Scottish Parliament on 31 May. A number of amendments were tabled for consideration at this meeting. These included two which were agreed by the Committee and have the effect of extending eligibility to claim payments to the relatives and dependents of patients who contracted Hepatitis C through NHS treatment, but have now died.

We regard this as a very unwelcome development which seriously risks undermining the existing UK Skipton scheme. We argued strongly in Committee against the adoption of those amendments, and intend to make further representations to the Convenor about the potential costs and damaging impact these could have. I intend to move at Stage 3 of the Bill to remove these amendments.

The purpose of this letter is to alert you to the position, and to the parliamentary pressures we are facing to force us to change our approach to Skipton Fund payments. I know that officials are in close touch on these issues, and I can assure that we wish to work as closely as we can with you to seek to ensure a common and consistent UK approach."

2.211. I have referred earlier in this statement to a letter I wrote to Nick Harvey MP, dated 7 June 2005, in which I acknowledged the disappointment some people had that the Skipton Fund did not extend to dependents of people who had died and said this was not an easy decision but stressed that the underlying principle of the payments was that they should be targeted to help alleviate the suffering of people living with hepatitis C [DHSC0004213_083].

2.212. I have been shown a memo sent by William Connon to James Ewing, dated 14 June 2005 [DHSC6263763]. I am told that other documents suggest James Ewing was an official in DH. From reading this memo he may have been in the Secretary of State's private office at this time but I am not sure. The document was also sent to Anna Norris who I think was in my private

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office at the time. I cannot say if I saw this document or would have been verbally updated by Anna Norris, but I believe I would have been made aware of the Scottish developments.

2.213. The memo refers to the proposed amendments to the Scottish legislation which would extend eligibility for Skipton Fund payments in Scotland and said:

"1. You [i.e. James Ewing or possibly the Secretary of State] have asked for advice on the letter Andy Kerr, Minister for Health and Community Care sent to our Secretary of State on 2 June. This letter is principally to alert Ministers in the other Health Departments about recent developments in Scotland on the Hepatitis C ex-gratia payment scheme.

2. We have already drafted a briefing note for Secretary of State on the payment scheme, this summarises the current position in Scotland. We understand that Andy Kerr is very concerned about the amendments by the SNP which have the effect of extending the eligibility criteria to the widows and dependents of people who contracted hepatitis C through contaminated blood and blood products, and who have died. He will move to have the amendments removed on 30 June.

3. This latest turn of events has serious implications for the existing scheme and once again, we find ourselves in a position where events in Scotland may put Ministers here under increased pressure to follow the Scots. In addition, there is concern that if the amendments are agreed then this will set a precedent for other cases. The whole basis on which the payment scheme was set up was to provide financial support to people living with the virus. These ex-gratia payments are designed to alleviate suffering of those living with the hepatitis C and do not infer that the NHS is liable.

4. Officials in the Scottish executive have been asked to work out the potential cost of the amendments which we have not yet seen. We have not sought to provide any calculations because, we are, at present, unclear as to the extent of the Scottish amendments and because we don't know the number of dependents of people who have died.

5. We do not consider a formal reply at this stage is necessary. The SofS may wish to speak with Andy Kerr on this matter. We would be grateful to have SofS views on the current structure of the payment scheme and whether we should continue to hold the line that widows and dependents should continue to be excluded from the payment scheme."

2.214. I have not seen a response from the Secretary of State but at this point in time Ministers did not have plans to change the arrangements regarding the

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date of eligibility for payments from the Skipton Fund. I also have not seen the briefing note referred to at paragraph 2 of the memo.

- 2.215. By letter dated 23 June 2005, Andy Kerr wrote again to the Secretary of State about the progress of the Bill [DHSC0006888_044]. Again, I think I would have been made aware of this letter. This letter included:

"... As you are aware the Health Committee of the Scottish Parliament amended Section 24 of the Smoking, Health and Social Care (Scotland) Bill – which relates to the Skipton Fund – to extend eligibility to claim payments to the relatives of patients who contacted Hepatitis C through NHS treatment, but have now died.

I am keen to ensure that we continue as far as possible with a clear and agreed UK approach to making ex gratia payments, as reflected in the UK Skipton scheme. We are concerned about the precedent with regard to calls for compensation; aware that we have an agreement with other UK administrations and with DWP (although we are all subject to the democratic process); and aware too of creating further calls on health budgets.

I have, however, to consider the parliamentary position at Stage 3 and the prospects of persuading the Parliament to reverse the amendments which have been made to the Bill. These provide for those who died prior to 29 August 2003 to be eligible for payments, and to allow relatives and dependents to make claims on behalf of those who died after 5 July 2004 whether or not they had applied to Skipton before they died.

My judgment is that the Parliament may agree not to extend eligibility to those who died before 29 August 2003. I believe, however, we need to show flexibility in relation to applications from relatives and dependents of those who die after 5 July 2004, and I propose that we agree to amend the Skipton Fund scheme to remove the requirement that claims need to be made before the date of death..."

- 2.216. The Inquiry has provided me with a document from the Preservica database which shows that, on 7 July 2005, Anna Norris from my private office emailed officials asking [DHSC5584679]:

"Whether officials would advise the Ministers look again at the decision to exclude the relatives of those who were infected but have died (after 5 July 2004). Scotland appear to have agreed to remove that exclusion. Gerard's note to SofS on 29th June did not recommend a change, but did not advise against it either. Ministers really need detailed information on why the decision was taken to exclude relatives in the first place and whether there are reasons to change the position now (apart from

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Scotland changing their position which PS(PH) didn't think was a good enough reason)."

I have not seen a response to this email. Anna Norris' email to officials, dated 19 August 2005 (see below) appears to suggest officials did not address this.

- 2.217. On 14 July 2005 Lord Warner gave a written answer to a PQ from Lord Morris about eligibility for the Skipton Fund [DHSC0004213_095]. He was asked whether in "hardship cases" the government would remove the cut-off date for applications to the Skipton Fund. The background information prepared by officials which accompanied the draft proposed answer stated that Scottish Ministers agreed on 30 June 2005 to make Skipton Fund payments to relatives and dependents of those who died between 29 August 2003 and 5 July 2004 but who had not made a claim between this period. The background information continued:

"This concession was made in an effort to prevent an amendment going through which would have had the effect of extending eligibility to the relatives and dependents of people who contracted hepatitis C...and who have died. We are currently considering the implications of the decision by Scottish Ministers on the operation of the Skipton Fund."

- 2.218. I was asked to approve the proposed answer to Lord Morris' question, which I did. Lord Warner's answer was

"The hepatitis C ex-gratia payment scheme has been designed to alleviate the suffering of those people living with the hepatitis C virus. We have no plans to amend the eligibility criteria to take account of individual cases."

- 2.219. By letter dated 9 August 2005 Andy Kerr wrote again to the Secretary of State, updating her on the Scottish legislation that was passed on 30 June 2005 [WITN5427005 and WITN5427006]. The letter included:

"I am pleased to advise you that we were successful in defeating, albeit narrowly, the amendment to the Bill proposing the 29 August 2003 date be removed to extent eligibility to claim payments to the relatives and dependents of all patients who contracted Hepatitis C through NHS treatment, but who died before 29 August 2003. We did, however, concede that relatives and dependents could make claims on behalf of

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those who died after 5 July 2004 whether or not the infected person had applied to Skipton before they died.

As I said in my previous letter, I remain keen to ensure that we continue as far as possible with a clear and agreed UK approach to making ex gratia payments, as reflected in the existing UK Skipton scheme and I am of the view that this was successfully achieved for the most part. I have received confirmation from my Welsh colleague Brian Gibbons that, provided the Department of Health accepts the deletion of the 5 July 2004 date, they are also content.

We are proceeding now to take decisions about implementing the Bill and would hope to have all the details of the scheme finalised as soon as possible. I understand that the Department of Health has still to consider its response and I would be grateful for your assistance in expediting this to retain consistency across the scheme."

2.220. On or around 18 August 2005 Gerard Hetherington sent a submission and draft letter to my private office and the private office of the Secretary of State [DHSC5005001]. This submission was about the changes to eligibility made in Scotland. As explained below, my reading of the documents is that the submission and draft letter were not actually sent to the Secretary of State (at least at this time) because I asked for clarification of a number of points. The submission referred to Andy Kerr's letter dated 9 August 2005.

2.221. The submission explained that Scottish Ministers required separate legislative powers to make payments to Scottish claimants under the Skipton Fund [DHSC5005001]. Section 24 of the Bill was originally designed to enable Scottish Ministers to make Skipton Fund payments using the same eligibility criteria applicable in England, Wales and Northern Ireland. However, during passage of the Bill there was "considerable lobbying" in Scotland to enhance the scheme for widows and dependents. The submission explained that ultimately Scottish Ministers "conceded that relatives and dependents could make claims on behalf of those who had died after 5 July 2004", regardless of whether the infected person had applied to the Skipton Fund before they died.

2.222. The submission continued:

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"Andy Kerr is now asking SofS (and the other Devolved Administrations) to introduce a similar change across the rest of the UK. Wales and Northern Ireland have agreed to do so provided England does so as well. It should be noted that the original scheme was introduced specifically to alleviate hardship of those directly infected, and not to compensate for bereavement. This point has been made consistently in PQs and correspondence. Skipton Fund allows payments to the estates of those who died between 29 August 2003 and 5 July 2004, purely because there was no way of dealing with applications for payments during the period the scheme was being put into place."

2.223. The submission then identified issues with making or not making changes in England aimed at mirroring what had been done in Scotland. These included that any advantage to potential claimants in one Devolved Administration would be seen as inequitable, and would lead to considerable pressure for England to "fall into line" with Scotland, and that the scope of changes to the Scottish scheme were still not known.

2.224. The submission's conclusion was:

"Conclusion

Ministers are asked if they are content to amend the Skipton Fund rules to reflect the Scottish amendment. If you do not agree to this then there will be different schemes operating in different parts of the UK, which could be done but would be hard to justify. There is a risk of setting a precedent and raising expectations of further requests for change but nevertheless, we can see little prospect of being able to hold our line. It is suggested that before making a final decision about any changes to our scheme, you seek further information in writing from Andy Kerr clarifying the precise operation of the Scottish amendment. This is necessary to avoid any differences of interpretation in the future, and to allow us to take advice on any legal issues that may arise from the Scottish legislation."

2.225. A draft letter to Andy Kerr was attached, but I can see from subsequent documents that the letter was not sent. The draft letter included that DH was minded to make similar changes as Scotland but first wanted further information about how Scotland would implement the eligibility changes [DHSC5005001].

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- 2.226. By email dated 19 August 2005 Anna Norris from my private office emailed officials to say that I was not content for the advice and draft letter to be sent to the Secretary of State [DHSC0004193_011]. The email continued:

"The key concern is that the only grounds given for changing the policy on the Skipton Fund is that Scotland have changed their policy. PS(PH) is absolutely clear that if we change the eligibility for this scheme it should be on the basis of policy considerations rather than being pushed by Scotland.

When PS(PH) was preparing for the adjournment debate on hepatitis C on 11th July the issue of the Scottish amendments was raised. She specifically asked at that stage what the policy issues are around the eligibility criteria – please see my email to Gerry Robb of 7th July...she is not clear, therefore, why this hasn't been addressed..."

- 2.227. I have referred above to the email from Anna Norris, dated 7 July 2005.

- 2.228. In any event, Anna Norris set out a list of questions I wanted officials to answer before a reply could be sent to Andy Kerr. The submission from Gerard Hetherington arrived with me during the summer recess. Anna Norris was going back to officials to say she had not had a response to her email, dated 7 July 2005, seeking more information for me from officials. While the preferable situation was to have parity across the UK, I wanted to understand the policy reason for departing from a position on the Skipton Fund that had been agreed between the UK government and the devolved administrations when Skipton was established. Officials had not offered me a policy reason for the change, other than that is what Scotland was doing (and I was aware that the Scottish Minister had not supported the change). I was not party to the policy discussions that must have taken place in Scotland and I needed to satisfy myself of the rationale for the change from the scheme that was originally set up. I would have to answer questions about this in the future. I would have appreciated an earlier conversation with officials about potential policy change so that we could have considered this alongside Scotland. I would also have wanted to ensure that any consequences of such a change had been properly considered and worked through and that officials were clear about how changes to eligibility would actually work. The documents

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indicate to me that I was concerned I was not getting enough advice on the change happening in Scotland, the reasons for it, and its implications. I had asked questions about the Scottish changes early in July 2005 when I was preparing for an adjournment debate on hepatitis C (debate on 11 July 2005) and had not received answers. I did not want to be faced with further potential policy changes that DH was not prepared for.

2.229. In a memo dated 8 September 2005 officials provided answers to my questions [DHSC5005003]. Officials repeated their advice that "*the Minister should respond in terms of the original draft reply*".

2.230. Some of my questions asked about the lawfulness and practicalities of a divergence in eligibility as between England and Scotland. Part of the information provided to me was that:

"...a wide policy divergence, although not of itself susceptible to challenge, could point towards unfairness or unreasonableness, particularly if the problems they are meant to address are fundamentally the same in both jurisdictions....But if there is a policy justification for the difference, based on different circumstances then I don't think there would be any difficulty. However, I think it would be difficult to argue that the circumstances of the individuals concerned in England are any different to those in Scotland" (emphasis in original).

2.231. It appears this memo was sent to me on 27 September 2005 [DHSC0041162_092 and DHSC0041162_093]. The covering note, which would have come from my private office, observed:

"I attach responses from officials on the Skipton Fund.

From the responses the argument verges on the circular – a scheme operating differently in England to Scotland is legally sound if there is a clear policy reason for operating two separate schemes, yet there is no clear policy reason for the Scottish system.

I've spoken to CMO's office about this, who have investigated further and commented that

- a) *The Scots only changed their payment scheme due to lobbying in the course of Parliament, not for any policy reason*

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- b) *If there is a policy justification to maintain the status quo in the UK, a challenge to the English system is unlikely to succeed.*

Do you want to discuss this officials before a reply is drafted to SofS?" [sic]

2.232. In response I have written:

"Yes

I understand this.

What concerns me is the fact that since being in post the Scottish situation has been well known but no advice to follow Scotland eg was forthcoming til August. What info was new that led to rec [recommended] policy change? The process in DH concerns me.

If info gathering letter is to be sent to Andy Kerr only with changes outlined but wait for meeting with officials."

2.233. It appears from reading this that I was somewhat frustrated that officials had left it so late in the day to recommend a change in policy on eligibility for the Skipton Fund when they had known about the proposed changes in Scotland for some time, were aware of the issues being raised, but had recommended keeping to the agreed position. I would have wanted to avoid disparity but also to be reassured that other issues would not emerge that would complicate the situation further.

2.234. I can see from the documents that the Secretary of State was due to meet Lord Morris on 12 October 2005. A briefing note was prepared by officials for the Secretary of State, which was copied to Jacky Buchan in my office [DHSC5120890]. One of the issues on the agenda for the meeting was the Scottish amendment to the Skipton Fund. §14 of the briefing note said that, at this point in time, "*Ministers in England have not yet decided how to respond to the Scottish amendment.*"

2.235. I have not seen any notes from this meeting between the Secretary of State and Lord Morris and do not believe I did or would have attended it.

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2.236. By letter dated 9 November 2005 Andy Kerr wrote again to the Secretary of State [DHSC0041162_019]. I think I would have seen this letter or have been informed of it. Andy Kerr referred to a letter from the Secretary of State, dated 21 October 2005. I am told that, to date, that letter has not been located. However, Andy Kerr's letter says "*I welcome the fact that you are minded to make changes in England to allow claims by relatives or dependents on behalf of infected persons who died after 5 July 2004*" and he provided some more information about how the Scottish changes would be implemented.

2.237. William Connon sent a further submission and draft letter on this issue, dated 8 December 2005, for the attention of the Secretary of State and me [DHSC5152685]. This included:

Issue

1. *SofS is being asked by Andy Kerr (Minister of Health and Community Care, Scottish Parliament) if she will make changes, in England, to the provisions of the Skipton Fund...in line with a recent amendment in the Smoking, Health and Social Care (Scotland) Act 2005.*

Recommendation

2. *SofS should agree to such a change and issue the attached letters....*

....

8. *Given that:-*

- *The Scottish intention is for single payments on behalf of deceased patients,*
- *The number of additional claimants is likely to be small,*
- *In England the costs of any such payments would have been included in the original estimates for the overall cost of the scheme,*
- *There would be presentational difficulties in operating different schemes in the different parts of the UK, and*
- *Brian Gibbons has already indicated that the Welsh Assembly Government would be in agreement with the removal of the 5 July 2004 date as a cut off point for applications from relatives and dependents on behalf of those who died since the announcement of the scheme, subject to the agreement of the four health*

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administrations for it to be adopted across the UK, and that Northern Ireland has taken a similar position;

Officials consider that SofS should accept the change introduced by the Scottish Amendment..."

2.238. A draft letter from the Secretary of State to Andy Kerr was attached to the submission which included:

"I was reassured to learn that there will only be one payment per deceased patient, and note that monies following a successful claim will be paid into the estate of the deceased. With this assurance, I am prepared to agree to a similar extension of the scheme for England. I think it important that we try to maintain a uniform approach across the whole of the UK in this matter."

2.239. I can see from the documents that, shortly afterwards and before the draft letter to Andy Kerr was sent to the Secretary of State for her approval, I approved the draft letter [DHSC5397961]. An email dated 15 December 2005 from the Secretary of State's private office stated [DHSC5397961]:

"SofS has agreed to make changes to the provision of the Skipton Fund to allow claims by relatives or dependents on behalf of infected persons to extend beyond 5 July 2004...."

2.240. I understand it has not been possible to locate the signed letter sent to Andy Kerr. The documents I have seen suggest it was probably the same or similar to the draft letter, but I cannot be sure.

2.241. I also approved a draft letter to Brian Gibbons, the Welsh Minister for Health and Social Services [DHSC5152685]. Again, I understand the final/ signed version of this letter has not been located.

2.242. This change to eligibility for the Skipton Fund was announced by Lord Warner on 12 January 2006 in his response to a Lords' PQ tabled by Lord Morris. Lord Warner said [ARCH0000428 (pages 5-7)]:

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"...as I have previously said, the Government have great sympathy for the pain and hardship suffered by the widows and dependants of those inadvertently infected with hepatitis C. But, as we have made clear repeatedly, the ex gratia payments scheme is designed to alleviate the suffering of people infected with hepatitis C and not to compensate for bereavement.

However, I can announce today that my right honourable friend the Secretary of State and her counterparts in the devolved administrations have agreed to extend the period when claims can be made to the Skipton Fund on behalf of deceased patients by relatives or dependants. This means that the relatives of dependants of a person infected with hepatitis C through NHS blood and blood products who died after 5 July 2004, which is when the scheme became operational, will now be eligible to make a claim..."

2.243. Alongside this announcement made by Lord Warner, I wrote on 12 January 2006 to Bob Laxton MP (following my meeting with him and others from the APPHG in November 2005) to inform him of the change in eligibility criteria [DHSC0041162_013].

2.244. Although much of the correspondence on this issue was between the Secretary of State and Andy Kerr, I would have been involved and I think the decision to extend eligibility was agreed between the Secretary of State and me. Our private offices would have been in contact with each other. As Andy Kerr was the Scottish Minister the protocol would have been for the Secretary of State to correspond with him.

2.245. It took some time for this decision to extend eligibility to be made but that does not surprise me. It was only by 18 August 2005 that officials recommended supporting an extension to eligibility in England. Some time was needed to consider this and to understand the detail of what Scotland was going to do. The documents indicate that the Secretary of State wrote to Andy Kerr on 21 October 2005 indicating that she was minded to make changes to the scheme in England, and so a policy change was in train by then. Andy Kerr's letter dated 9 November 2005 shows that the Secretary of State had asked questions about the detail of the changes in Scotland. The

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submission, dated 8 December 2005, shows there were ongoing practical issues about how the change in eligibility would be expressed in the Agency Agreement [DHSC5152685] and it was necessary for DH officials and those in Scotland to agree details so that the change could be the same across the UK.

Skipton Fund Appeals Panel: No Oral Hearings

2.246. I am asked why a decision was made not to allow oral hearings before the Skipton Fund Appeals Panel ('SFAP').

2.247. I am aware that in around May and June 2005 there are many emails between officials, including in the devolved administrations, on the Skipton Fund agency agreement and, to a lesser degree, the SFAP. From the documents I have seen the issues relating to appeals from the Skipton Fund mainly concerned whether the SFAP needed to have a legislative basis, what decisions were appealable and the composition of the SFAP.

2.248. From reviewing the documents provided to me, issues concerning the SFAP appear to have been very largely dealt with by officials without my involvement. However, in order to assist, I am setting out my understanding of the position now obtained from the documents.

2.249. I can see that in October 2004 Dr Michael Brennan from DH sent a draft proposal for the SFAP to various stakeholders, including the Haemophilia Society and the Hepatitis C Trust [DHSC0003458_004]. The Haemophilia Society replied a few days later with feedback only on the appropriate medical specialties to sit on an appeals panel.

2.250. On 16 December 2004 Melanie Johnson, then Parliamentary Under-Secretary, answered a PQ about appeal procedures for the Skipton Fund.

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The question included asking whether appellants would be able to "attend panel hearings" [CBCA0000045 (page 11)] . I can see that her answer included:

"Patient groups have been consulted and have commented on an initial proposal for the appeals process and membership of an independent appeals panel. The United Kingdom health departments are now considering arrangements for the appeal process and the appointment of the panel..."

2.251. On 5 May 2005 an official, William Connon, emailed other officials [DHSC0003458_004], including in the devolved administrations, referring to a meeting the previous week and attaching a draft proposal on Skipton Fund appeals. The Inquiry is aware that the Skipton Fund was a UK-wide scheme. I am not sure from the recipient list if a Northern Ireland official is included. My reading of the email chain is that he forwarded the Haemophilia Society's feedback from October 2004. He asked for comments from officials on the appeals procedure. The Inquiry will appreciate this happened before I was Parliamentary Under-Secretary and I was not involved.

2.252. It appears the draft document he attached was headed "Skipton Fund Appeals Panel" [DHSC5353906]. Annex B of that document summarised the Skipton Fund appeals process and included:

"The applicant can appeal to the Appeals Panel who will review the papers from the first application, together with any new evidence submitted by the applicant..." [emphasis in original].

This suggests, I think, that an appeal would be dealt with via papers rather than by the applicant in person. I cannot see any other reference to whether the appeal should be dealt with in person.

2.253. On 20 June 2005 William Connon sent another email to officials [DHSC0003466_003], including in Scotland, which referred to (I think) the SFAP paper at [DHSC5353906]. He wrote:

"The original paper which I forwarded to colleagues was I believe drafted by my predecessor and colleagues, including Bob Stock which was

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Sylvia's predecessor. It has the very real advantage of having been circulated to the Haemophilic groups, and others, for consultation and was deemed acceptable."

2.254. On 21 June 2005 William Connon sent another email to officials, including in Scotland and Wales [DHSC0003465_004]. He attached a draft of the outline appeals mechanism that had been prepared by an official in the Scottish executive. I am informed that it has not been possible to locate that attachment but I am happy to consider it further if the Inquiry is able to provide a copy. William Connon's email was part of a chain and I do not think there was any reference in that chain to consideration of whether the SFAP should hold oral hearings.

2.255. On 22 June 2005 William Connon sent another email to a long list of officials, including in Scotland and Wales [SCGV0001088_015]. He attached a paper on the appeals procedure that a Scottish official had "*kindly prepared from an earlier version which had been widely circulated and accepted.*" William Connon wrote in his email that:

"Appeals Procedures:

The attached document is largely based on the previous one which was circulated for consultation late last year, before many of us became involved. Joy [a Scottish official] has very helpfully looked at this and brought it up to date. It has the real advantage of being largely acceptable (at that time) to the various interested parties and where comments were made we have included these..."

2.256. The SFAP paper was attached [WITN5427013 and GLEW0000490]. It again said:

"[t]he applicant can appeal to the Appeals Panel who will review the papers from the first application, together with any new evidence submitted by the applicant..."

2.257. In the months after this email I have not seen correspondence or other documents to show that officials, or others involved in setting up the SFAP, expressed a view that it should hold oral hearings.

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2.258. As mentioned above, William Connon prepared a briefing note for me in advance of my meeting with the APPHG on 10 November 2005. The briefing was dated 8 November 2005 [DHSC0041162_058]. That briefing made no reference to how appeals would be dealt with or any controversy about this.

2.259. On 27 January 2006 officials sent a submission to Jacky Buchan [DHSC0041198_151] on the SFAP. She passed it on to me. I was asked to:

"...note progress towards setting up the promised independent Appeal panel for the Skipton Fund, and to agree the rate of remuneration that should be paid to members. A submission in the same terms as this is concurrently being made to Ministers in England, Scotland, Wales and Northern Ireland."

2.260. The Inquiry will see that the submission is not expressly about the SFAP's procedure although it does set out the *"appeal panel's terms of reference"* as follows:

"to reconsider the cases of any claimants who appeal against individual decisions made by the Skipton Fund Limited. The Panel will look at how the decision was reached and examine all available evidence, or request further evidence where necessary, in order to either confirm or change the Skipton Fund's decision."

2.261. I responded to this submission on 30 January 2006 with handwritten comments querying the proposed remuneration for panel members. At this stage the priority was getting the SFAP set up and I have seen nothing in the documents to suggest there were issues about whether the SFAP should hold oral hearings. It appears that the process that was consulted on before I joined DH was the agreed position.

2.262. When preparing this statement I have been shown correspondence from an applicant to the Skipton Fund and DH in January and February 2006. One letter, dated 22 January 2006, does not specify the recipient but I think it was sent to DH. The same applicant wrote to the Skipton Fund and provided a

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copy of that letter to William Connon. I have exhibited this correspondence at [DHSC0004510_038], [DHSC0004510_037], [DHSC0004510_036], [DHSC0004510_035], [DHSC0004510_034]

2.263. One of the issues raised by this applicant was his wish to be legally represented at an appeal hearing. I can see that William Connon's responses do not specifically address this point. I do not recall being made aware of these letters and do not think I would have been.

2.264. I have been shown an email chain in February and March 2006 concerning how and where to advertise SFAP roles [DHSC0007081]. The Inquiry will again see that these emails were between officials. My private office was not copied in and I would not have expected it to have been. The last email in the chain, dated 7 March 2006, attached an information pack for the SFAP and my reading of the emails is that this had been agreed between officials in the devolved administrations. I understand that it has not been possible to identify the information pack attached to this email. I have, however, been shown an information pack for the SFAP [SKIP0000031_229] which gives 28 April 2006 as the closing date for applications for appointment to the SFAP. This information pack says that the SFAP

"will look solely at the written evidence and will not seek personal attendance."

2.265. Again, I do not recall seeing this information pack (or a version of it). I have not seen documents to suggest it was sent to me. However, the documents do suggest it was agreed by officials in the devolved administrations. I will, of course, consider this again if I am provided with further documents.

2.266. I have been shown a letter from the Haemophilia Society to William Connon, dated 6 April 2006, concerning the SFAP [HSOC0009241_004]. I can see the Haemophilia Society's comments included:

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- *"We would like there to be an opportunity for appellants to attend the panel in person. We are aware that not everyone will want to take up this opportunity, but we think it should be offered.*
- *We would like to ask whether appellants will be allowed legal representation and if so, who will pay the legal fees?..."*

2.267. I have been shown a reply from William Connon, dated 9 May 2006

[HSOC0009240]. The reply includes:

"Firstly, I should point out that discussions on the appeals panel did, I believe, take place between the department and the Haemophilia Society back in 2004 before either of us was in post. Furthermore, the Society was included in the consultation exercise on the appeals panel and the comments received were fully considered and reflected in the finalised proposals.

...The role of the Appeals Panel is to reconsider the cases of any claimants who appeal against individual decisions made by the Skipton Fund. The Panel will look at how the decision was reached and examine all the evidence available to the Skipton Fund and any further evidence supplemented by the appellant and/ or those providing his/ her medical care or support. If matters are unclear, the Panel may request further written evidence.

In considering appeals, the Appeals Panel will look solely at the written evidence set before it. The process was never intended to allow for the attendance of the appellant or any legal representative; therefore, the question of legal fees does not arise..."

2.268. By letter dated 27 July 2006 the Scottish Minister for Health and Community

Care, Andy Kerr MSP, wrote to the Secretary of State about the SFAP

[DHSC6700811]. The letter included:

"I have recently received correspondence from the Scottish Haemophilia Forum on the procedure for reviewing appeals made on behalf of unsuccessful claimants to the Skipton Fund for those who contracted Hepatitis C from NHS treatment with blood and blood products prior to the introduction of the test in 1991. Their main concern is that the only written evidence is to be considered by the Panel and that appellants will have no other opportunity to present their case to the Panel either in person or through representation.

I understand DoH officials made the recommendation that the Panel only consider written evidence, and I am concerned that this may be regarded as rather restrictive, given the sensitivities that surround this issue and the representations made to me. Now that the Panel is about to

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commence reviewing cases. I would suggest that consideration be given to allowing the Panel the discretion to hear personally from a claimant or their representative should the Panel consider it appropriate to do so."

2.269. In August 2006 I wrote to the Scottish Minister for Health and Community Care, Andy Kerr MSP [DHSC0041159_177]. The letter stated:

"I am pleased to tell you that we hope to announce the creation of this panel [the SFAP] very soon and that it should be starting to hear appeals shortly after this. The Appeals Panel will only consider written evidence. This policy was clearly indicated in the consultation with stakeholders. We also fully consulted colleagues in the Devolved Administrations on this point earlier this year.

*...
I am not aware that any stakeholders, other than the Scottish Haemophilia Society, do not have confidence in the proposals for the Panels' procedures...The majority view of the stakeholders is that representation made in person at appeals would not add value to the quality of the Panel's considerations but it could well delay the proceedings."*

2.270. This letter would have been drafted by the officials working on the SFAP and I would have relied on information from them as to what consultation had taken place and what concerns had been raised by stakeholders.

2.271. I have not seen subsequent documents to suggest I had any further involvement in the decision not to hold oral hearings. More generally I do not recall being involved in making this decision. The chronology I have set out above, which is based on the documents I have seen, suggests there was agreement between the devolved administrations and at least some stakeholders in 2004 that appeals should be decided on paper only. I did not seek to revisit that approach because it did not present itself as an issue of concern until summer 2006, when DH was at the final stages of appointing appeal panel members. As I said in my letter to Andy Kerr, I did not think it appropriate to revisit plans for the SFAP's procedures [DHSC0041159_177]. After I arrived at the DH, the key priorities with regard to the Skipton Fund

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were getting the SFAP up and running and resolving the issue about eligibility.

Financial Support as Between HIV and Hepatitis C

2.272. I am asked about correspondence *"pointing out that there was unequal provision from the AHOs...between those infected with HIV and those infected with hepatitis C"* and referred to **WITN1567016** at pages 5 and 6. I am asked if I agreed that the provision was unequal and if so, why the Department did not, during my tenure, provide a mechanism to provide those infected with hepatitis C with access to a trust or scheme which could provide them with regular payments or with one off grants so as to create parity with those infected with HIV.

2.273. Although the Inquiry's question refers specifically to the absence of a mechanism to provide additional support to the infected, the correspondence at **WITN1567016** includes:

"For example the Macfarlane Trust provides on-going financial support to widows and dependent children of haemophiliacs infected with HIV; registrants who are still living are eligible for even larger payments."

It therefore includes widows and other dependents of people infected with hepatitis C, and not only those infected. I am informed that the government established a charity in 2011, the Caxton Foundation, which provided regular payments and one off grants to people infected and affected by hepatitis C.

2.274. The financial support as between HIV and HCV was not the same. There were clearly many years between the Macfarlane and Eileen Trusts being established and the Skipton Fund being established. I was not involved in the debate that preceded the Skipton Fund around whether the government should provide ex-gratia financial support for those infected (and affected) by hepatitis C. I was not involved in decisions that led to the Skipton Fund being established in June 2004 or decisions at that time about what support

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should be provided by the Skipton Fund, including how and when payments should be made, or who payments should be made to.

2.275. When I started as Parliamentary Under-Secretary the financial support schemes were not equal as between those with HIV and those with HCV. Previous Ministers had decided to provide financial support to those infected with hepatitis C by way of one or two lump sum payments, depending on whether a person progressed to 'stage 2'. The Inquiry will also appreciate that when I came into office the Skipton Fund had been operating for less than 1 year, i.e. it was still in its infancy. To change or reconsider the arrangements for the Skipton Fund at this time would have been unusual.

2.276. I have already explained that the government's policy, when I started as Parliamentary Under-Secretary, was that Skipton Fund payments were targeted to help alleviate the suffering of people living with hepatitis C infection and that the Skipton Fund was not designed to compensate for bereavement [see e.g. page 5 of the briefing pack at [DHSC0004213_115](#)]. In addition, and as can be seen from page 13 of the briefing pack to Lord Warner prepared in May 2005 [[DHSC0004213_115](#)], the government's position on disparities between the Macfarlane and Eileen Trusts and the Skipton Fund was:

"The Skipton Fund, unlike the Macfarlane and Eileen Trusts, is not a charitable trust. It has been designed to make lump sum, ex gratia payments on compassionate grounds and will not be making follow up or day to day payments. That said, the lump sums are comparable to those made by the Macfarlane and Eileen Trusts.

[[It is acknowledged] that other schemes do include dependents under the eligibility criteria but would stress again that the Skipton Fund is distinct and has not been designed to compensate for bereavement."

2.277. The answer I gave to a PQ on 16 June 2005 (just over a month after I came into office) supports the view that there was established government policy on what the Skipton Fund was designed to do, and a contrast drawn with the Trusts [[DHSC0006169_216](#)]. I was asked about the reason for not paying

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the same level of financial support to widows and dependents of those who had died from hepatitis C as was paid to widows and dependents of those who had died as a result of HIV infection. My answer referred back to an answer previously given on 22 March 2005, by Melanie Johnson, who was then Parliamentary Under-Secretary for Health. Her answer stated that the Skipton Fund was not a charitable trust (in contrast to the Macfarlane and Eileen Trusts) and that it had been designed to make lump sum payments to those living with hepatitis C and not to compensate for bereavement.

- 2.278. The background note to this PQ, prepared by officials, stated that the charitable trusts and Skipton Fund were designed to fulfil different purposes. It stated at page 4 [DHSC0006169_216]:

"on-going support for victims and their families whilst the Skipton Fund is a one-off ex gratia scheme designed to financially assist those living with hepatitis C. No widows are included under the Skipton Fund on the grounds that it is not compensation for bereavement and that it is prohibitively expensive."

- 2.279. I am also aware that Lord Warner gave a written answer to a PQ on 10 October 2005 to a question about the differences in financial support across the financial support schemes [DHSC0004213_161]. Lord Corbett asked Lord Warner whether the government would reconsider its refusal of financial help for Mrs [GRO-A], the widow of a haemophilia patient who died from hepatitis C, and grant her help equal to that she could have received if her husband's death had been caused by HIV infection by the same route and from the same source. Lord Warner's answer referred back to an answer given by Baroness Andrews on 23 February 2005. My office approved Lord Warner's answer.

- 2.280. Baroness Andrews, on 23 February 2005, had said:

"It has always been clear that the ex-gratia payment scheme is for those living with the virus and is not designed to compensate for bereavement."

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The schemes administered by the Skipton Fund and the Macfarlane Trust have been established for different purposes and are two distinct schemes."

2.281. I can see now that the background information pack provided by officials to assist Lord Warner with answering Lord Corbett's question also contained:

- A PQ from Lord Morris in January 2005. He asked why widows of haemophilia patients who had died of hepatitis C infection were excluded from access to financial help from the Skipton Fund, whereas widows of patients who had died of HIV infection had access to support from the Macfarlane Trust. In responding to that question Lord Warner referred back to his previous answer on 20 April 2004.
- On 20 April 2004 Lord Warner, in response to a PQ from Lord Morris, answered:

"Unlike the Macfarlane and Eileen Trusts, which administer schemes for those infected with HIV, the ex gratia payment scheme for those infected with hepatitis C as a result of National Health Service treatment with blood or blood products, known as the Skipton Fund, is not a charitable trust.

The Skipton Fund has been designed to make lump sum, ex-gratia payments to those living with hepatitis C virus and has not been designed to compensate for bereavement. For these reasons it is distinct from the HIV payment schemes."

2.282. I include this information to show the well-established government policy which originated before my time in office. I am not the best placed witness to explain more about why the Skipton Fund was established in the way it was.

2.283. On 22 November 2006 I gave a written answer to a PQ asking why haemophiliacs with hepatitis C virus contracted through blood transfusions had received less "compensation" than those with HIV. My answer repeated that the Skipton Fund was not a charitable trust, had been designed to make lump sum payments, ex gratia payments to those living with hepatitis C and these payments were not compensation [DHSC0006197_038].

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2.284. I appreciate this answer too relied on the established government policy and the Inquiry may wish to know why I did not take steps to try to change this policy. The Macfarlane and Eileen Trusts were long established, whilst the Skipton Fund was very new. The policy decisions for it had only been taken very recently by previous Ministers and they had decided to create the Skipton Fund to make lump sum, ex gratia payments on compassionate grounds and not to make follow-up or day to day payments, or to include widows and dependents under the eligibility criteria, unlike the Macfarlane and Eileen Trusts.

2.285. The briefing I received, on or around 23 May 2005, on a Lords' Starred Question for Lord Warner (very shortly after I started in DH) included information on the Skipton Fund, the reasons for it being established and how the scheme had been devised [DHSC0004213_115]. It had explained to me that the drawing up of the scheme was co-ordinated by DH officials but, as it was a UK wide scheme, counterparts in the devolved administrations were heavily involved. It also said that officials from other government departments such as the Department for Work and Pensions and the Treasury provided assistance. The briefing said that DH had held meetings with a number of charitable organisations, including the Haemophilia Society, the Hepatitis C Trust and the Macfarlane Trust and had considered the views of other groups and individuals through correspondence. The briefing said the DH had been advised by the National Blood Service, leading hepatologists and consultant haematologists. The document also referred to pressures on the health budget.

2.286. I believe I would have asked questions early on and as the issue arose, about the differences between the schemes, including support for widows and dependents. I do not think I would have been in a position to change the direction of a policy that had barely got started, against the advice of officials.

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2.287. As set out earlier in this statement, DH did receive correspondence from or on behalf of widows whose husbands/partners had died from hepatitis and which expressed disappointment and frustration that the Skipton Fund (or any financial support scheme) did not provide financial assistance to widows and dependents. I was aware of this, and of course, these issues arose during consideration of extending eligibility for lump sum payments from the Skipton Fund in 2005/2006. I have already referred to my letter to Nick Harvey MP, responding to a letter from him to the Secretary of State which passed on the concerns of a constituent [DHSC0004213_083]. My response repeated the underlying principle that Skipton Fund payments should be targeted to help alleviate the suffering of people living with hepatitis C and that payments were not designed to compensate for bereavement. My response also referred to the Skipton Fund being introduced "*within a limited healthcare budget*". My letter, date stamped 19 December 2006 also refers to there being "*limited funding available*" [WITN1567016 (page 8)]. I cannot now say what the source of that information was and, as explained above, other witnesses will be better placed to assist with budgetary pressures when the Skipton Fund was established. However, budgetary pressures continued during my time in DH.

Running of the AHOs

2.288. I am asked if I consider the AHOs to be well run. I think this question intends to ask me if I considered them to be well-run while I was in post and I will approach it that way.

2.289. This is a difficult question for me to answer after so many years. But I do not recall having reason to think they were poorly run when it came to how they dealt with registrants or made payments (other than in relation to the Skipton Fund – see below). As explained earlier in my statement, I have a memory that some of the beneficiary community were not content with how the Macfarlane Trust was run but that could have been because they thought DH funding was not adequate. I do not think I was made aware of significant

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complaints about how the AHOs administered the funds. As already explained, I think I was aware, probably through officials, that some people wanted the Macfarlane and Eileen Trusts to take on a more campaigning role.

2.290. I have already referred to the letter from a widow to my private office, dated 12 October 2006, who expressed concern that the Macfarlane Trust deed was not being properly fulfilled. As explained, I think her concern was that DH was not providing sufficient funding to allow Macfarlane Trust trustees to properly support bereaved widows and partners [DHSC5437858].

2.291. I have also seen that Lord Warner provided a written answer to a PQ on 30 March 2006 [WITN5427028] Lord Morris asked whether the government was content with the administration of the Skipton Fund and what ministerial surveillance there had been of its administration. Lord Warner's answer was:

"The Skipton Fund is an independent company set up to make ex-gratia payments to those people who contracted hepatitis C through National Health Service treatment. In January 2006, Department of Health officials were notified about a fraud against the Skipton Fund. Officials in the department and the NHS Counter Fraud and Security Management Services are working with the Skipton Fund to ensure that the necessary arrangements are in place to handle the administration of the scheme and prevent cases of maladministration."

2.292. I can see from the documents that on 29 March 2006 I ticked this proposed answer to indicate I was content with it [WITN5427028] (page 3)]. An earlier answer had been drafted by officials which said that the necessary arrangements were in place to handle the administration of the scheme and identify potential cases of maladministration. I was not happy with this draft answer and wrote on either 14 or 15 March 2006 [WITN5427028] (page 13)]:

"Talk to me. This doesn't sound like there are satisfactory arrangements in place."

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2.293. That suggests to me that I was concerned about administrative systems in place in the Skipton Fund. I can see that, on 29 March 2006, someone from NHS Counter Fraud and Security Management Services emailed that its report had highlighted "*serious weaknesses in the systems in place...*" [WITN5427028] (page 5)].

2.294. I have seen a follow-up question from Lord Morris, which Lord Warner answered on 26 June 2006 [DHSC0006342_002, [WITN5427028] Lord Morris asked what developments there had been with regard to the fraud against the Skipton Fund and surveillance of its administration. I can see I approved Lord Warner's answer which was:

"The NHS Counter Fraud and Security Management Service is continuing to work with the fund to ensure that measures are in place to prevent fraud from both internal and external sources. Action has been taken to implement several recommendations from this work. Further measures remain under consideration."

2.295. As explained earlier in my statement, I was keen to ensure that as much as possible could be recovered from Mr Foster, who committed the fraud on the Skipton Fund. I was clearly aware that concerns about its administration had been identified and that improvements to the Skipton Fund's systems had been recommended. This issue of whether Mr Foster stealing from the Skipton Fund was going to affect the money available to the Fund was never a concern and I expect I was reassured, verbally at an early stage on this.

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Section 3: Destruction of Documents, Inquiries and Reviews

General Information

- 3.1. I wish to make a preliminary point about this section of my statement and the documents used in writing it. I was originally sent a rule 9 request in September 2021. Significant work was done preparing a response to it. I was provided with a large number of documents to assist and did my best to read and digest those documents. In late February 2022, just before I was due to submit my statement to the Inquiry, I was sent a revised rule request which was substantially different from the rule 9 request sent in September 2021. I was also sent a large number of documents from the Preservica database. My legal representatives then conducted further document searches to help answer the additional questions. I only draw this to the Inquiry's attention because I have again done my best to read and digest what is now a very large volume of documents but am conscious I may have missed some documents, or the significance of documents, within the thousands of pages I have seen. I want to ensure my evidence is as accurate as possible and would therefore value the opportunity of being provided with any documents the Inquiry thinks I have overlooked. As previously stated, I am heavily reliant on the documents to help me prepare this section of my statement.
- 3.2. While I am reliant on the documents, they obviously do not capture all of the information I would have received or the discussions I would have had. I have already explained that when I joined DH I would have had briefings from policy officials (and possibly the communications team). My private office staff 'kept their ears to the ground' and would feed back to me information on an informal basis. As they got to know me they were able to pre-empt questions I might ask, concerns I might have or information I might want to know, and then pose questions to officials. My private office staff were physically just outside my office and there would have been very many informal and unscheduled

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discussions with them. I would also have been regularly asking questions. I also would have had informal discussions with Lord Warner and policy officials. The Inquiry will see that written briefings to Ministers on a topic were built up by officials over time, adding new information and amending the briefing when needed. The knowledge that I acquired was incremental and when an issue or new briefing came to me, I would have been asking questions to understand what, if anything, had changed. This means that the documents, while very helpful, do not communicate the whole picture and also do not help me remember the whole picture.

Destroyed/ Missing Documents

- 3.3. I am asked a series of questions about destroyed or missing documents. I have done my best to assist the Inquiry based on the information I was aware or likely to have been aware of. However, I think much of the work in relation to destroyed or missing documents was done by officials (who are charged with managing and securing documents), reporting back to Ministers at various points. I anticipate officials may be able to provide more detail to the Inquiry. Obviously documents being mislaid, misfiled or destroyed in the first place happened before my time in office.

First Made Aware that Documents had been Destroyed

- 3.4. I am asked to explain the context of when and how I was first made aware that papers from DH relating to contaminated blood and blood products had been destroyed.
- 3.5. Unfortunately, I have no independent recollection of when and how I was first made aware of this. The documents I have seen do not greatly assist with pinpointing this. I think I would have been briefed on this early on by officials and I would have asked questions to try to understand what had happened and why. I think I would also have asked my private office to update me if anything changed. I cannot now say what information I was given but I anticipate it

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reflected what I was told in later briefings, e.g William Connon's briefing dated 8 December 2005 [DHSC0200103]. I say more about that submission later in my statement.

- 3.6. I would have been informed that there was an ongoing DH document review on the topic of self-sufficiency. On 20 July 2005 William Connon sent me a submission headed "*Review of Papers: Self Sufficiency in Blood Products*" [DHSC0200084]. The submission refers to a DH review of "*surviving documents*" and states that it "*does not address comments by Lord Owen about the destruction of papers from his Private Office.*"

Steps Taken to Discover How Documents Destroyed

- 3.7. I am asked what steps I took to discover how DH papers relating to blood and blood products had been destroyed and whether attempts were made to identify the individual(s) responsible.
- 3.8. Officials will be able to assist the Inquiry on work they did to discover what documents had been destroyed or mislaid and how. Once I learnt this was an issue, it is likely I would have asked officials (whether directly or via Jacky Buchan) to explain what had happened and how.
- 3.9. When I was informed in late 2005 (submission dated 8 December 2005) that documents being released a few days later by the Scottish Executive might contain papers destroyed by DH, and then was informed in 2006 that documents had been returned to DH from a firm of solicitors, I was concerned about the adequacy of steps DH had taken to try to locate missing documents. As I recall, Lord Warner felt the same. It appears I and/ or Lord Warner asked for a briefing on how documents came to be destroyed and this was provided on 11 May 2006 by Steve Wells from Information Services [WITN5427043 and GFYF0000109]. Lord Warner and I then met with officials on 24 May 2006 and wanted them to take a more proactive approach to understanding what

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documents DH had (and did not have) [DHSC0015812 (at page 3) and DHSC5286062]. As explained later in this statement, DH commenced an internal document review in June/July 2006. That led to 47 unregistered files of documents being located in Wellington House. Later in my statement I say more about this document review and these files.

Lord Jenkin's Papers

- 3.10. I have been asked what involvement I had in assisting Lord Jenkin to inspect papers from his time in office and whether I discussed the issue of Lord Jenkin's papers with Lord Warner.
- 3.11. The Inquiry has referred me to two email chains between officials on the subject of Lord Jenkin's request to inspect papers [WITN3996006 and DHSC0200058]. Both email chains date from before my time in office. I do not think correspondence from before my time about these issues would have been provided to me (unless it was annexed to a submission that I saw).
- 3.12. However, when I joined DH it is likely officials would have given me a brief overview of Lord Jenkin's request for access to papers, his concerns about how DH had managed documents in the 1990's, and what had happened to date on communicating with Lord Jenkin about these issues. It is also likely Lord Jenkin would have been speaking with Lord Warner and Lord Warner would have kept me updated. Unfortunately, I cannot now remember what I was told.
- 3.13. The documents provided by the Inquiry show that Lord Jenkin had a meeting with Sir Nigel Crisp on 13 April 2005 (before I was in office). It was agreed Lord Jenkin would attend DH to go through papers he would have seen while Secretary of State for Health [DHSC0200058]. The document says that, at this 13 April meeting, Lord Jenkin recognised that not all papers would still exist and it would take some time and effort to identify the relevant files and find the appropriate papers.

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- 3.14. I have not seen documents showing that I was involved in arranging for Lord Jenkin to attend DH to inspect papers. This does not surprise me, as it was a matter Sir Nigel Crisp and officials had been working on. It appears Lord Jenkin did attend DH to review papers. It is possible I was told about this but I cannot remember. I have seen an email from Zubeda Seedat to William Connon, dated 5 September 2005, which says that Lord Jenkin would be "*coming in*" on 13 September 2005 to "*complete his search of the files*" [DHSC0200087]. I do not know if that means Lord Jenkin attended DH more than once to inspect papers.
- 3.15. The Inquiry has referred me to a submission from Zubeda Seedat, an official, to Sir Nigel, dated 29 November 2005 [WITN3996019]. That submission was not sent to me or my private office and so I do not think I would have seen it. The submission states that, following Sir Nigel's meeting with Lord Jenkin on 13 April 2005, officials had contacted the departmental records office and the National Archives to retrieve files and were able to obtain a limited number. Lord Jenkin was invited to DH to review the files. The submission stated that, at the time of the meeting in April 2005, it was understood that documents from the HIV litigation had been recalled but not properly archived and were destroyed in the early 1990s. As I read the submission (and I think other documents support this interpretation), officials had established that other documents, mainly from the Advisory Committee on Virological Safety of Blood ('ACVSB'), had been destroyed in the 1990s. The submission says "[t]his should not have happened" and refers to a DH internal investigation that had been done. I know from other documents that this was an audit carried out in 2000. Officials' advice to Sir Nigel was to decline to meet again with Lord Jenkin but to send a letter explaining in detail "*our understanding about why papers were destroyed*".
- 3.16. I cannot now say whether I was aware in November/ December 2005 of Lord Jenkin's request to meet Sir Nigel again or the proposal to decline this offer, although Jacky Buchan is likely to have informally told me about things like this.

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- 3.17. The Inquiry has also referred me to another submission from Zubeda Seedat to Sir Nigel, dated 6 February 2006 [WITN3996022]. Jacky Buchan was copied in. I do not now recall this submission but it is likely it was brought to my attention. A draft response from Sir Nigel to Lord Jenkin was sent with the submission which included:

"When we met in April I explained that certain papers dating back to the 1970's and 1980's had been destroyed following the HIV litigation. Following your enquiries, officials established that a number of other files were also marked for destruction. As I said in my previous reply, I am very sorry that many papers have been destroyed."

- 3.18. Before this, William Connon had sent me a submission, dated 8 December 2005 [DHSC0200103] which explained officials' understanding that papers had been destroyed following the HIV litigation and that papers on hepatitis C infection were destroyed in error in the mid-1990s, i.e. this seems to fit with the information in the draft letter from Sir Nigel to Lord Jenkin.

- 3.19. In April 2006 I was provided with a briefing pack for a Lords' Starred Question to be answered by Lord Warner [WITN4912063]. The briefing pack prepared by officials contained a section on Lord Jenkin's requests for papers (at page 47). The summary of events suggests that this issue was being dealt with by officials and that Sir Nigel had been involved.

- 3.20. On 24 May 2006 Lord Warner answered a PQ tabled by Lord Jenkin on whether papers that had recently been returned to DH from solicitors provided evidence to support claims that infection with hepatitis was caused by blood products [DHSC0041304_052].

- 3.21. There was further communication between DH and Lord Jenkin, including after 47 unregistered files were located in Wellington House. This is explained later in my statement but there was a proposal that Lord Warner may wish to invite

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Lord Jenkin into DH to examine the documents in these files (submission from William Connon to Lord Warner, dated 9 October 2006 [DHSC5002462]). I do not know if this happened.

3.22. On 22 May 2007 I sent the 'Review of the Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)' Report to Lord Jenkin and informed him that documents identified in the associated DH review were being released [DHSC0103399_079].

3.23. In summary, my review of the documents suggests that I was aware that Lord Jenkin had requested access to papers before I joined DH and this had been managed by officials including Sir Nigel Crisp, with some involvement from Lord Warner. Lord Jenkin attended DH at least once in 2005 to inspect papers that officials had been able to locate. In 2006, when papers were returned to DH from external solicitors and unregistered files were located in Wellington House, there was correspondence with Lord Jenkin about this – I have addressed this later in the statement. As I understand it, the unregistered files located in Wellington House had not previously been made available to Lord Jenkin when he attended DH to examine his papers. It is my understanding that this was because they were not in registered folders, and so officials were not aware they contained relevant information [DHSC5002462]. Lord Warner corresponded with Lord Jenkin about this in October 2006. In May 2007 I wrote to Lord Jenkin and sent him a copy of the DH report 'Review of Documentation Relating to Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)' and informed him that documents from this review would be made available.

3.24. As explained, I cannot recall my discussions with Lord Warner about Lord Jenkin's papers but the issue is likely to have come up in our discussions about DH's past management of documents, which both I and Lord Warner were concerned about.

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23 May 2006 PQ Response

3.25. I am asked about a response I gave to a PQ on 23 May 2006 on the destruction of documents in the 1990's, in which I said that the documents were destroyed in error [WITN1210012]. I am asked to explain the factual basis for that answer.

3.26. The written PQ (tabled by Jennifer Willott MP) was:

"To ask the Secretary of State for Health whether her Department has carried out an internal review into the destruction in the 1990s of documents held by her Department relating to national health service blood and plasma products infected with HIV and hepatitis C..."

3.27. I responded on 23 May 2006:

"During the HIV litigation many papers were recalled, and following that we understand papers were not adequately archived and unfortunately destroyed in error.

Officials subsequently established during the hepatitis C litigation that documents relating to the advisory committee on the virological safety of blood between 1989 and 1992 had been destroyed in error. Following this discovery, an internal investigation was undertaken in April 2000 by the Department's internal audit."

3.28. The practice for answering PQs was that officials drafted the answers, which were sent to Ministers to review (and to amend as they wished). Officials also prepared a background information document to assist Ministers with the PQ and the draft response. For this particular PQ the background information included [WITN5427029]

"2. Following requests under FOI and enquiries by Lord Jenkin it has emerged that many of our past papers on the issue of haemophilia patients infected with Hepatitis C through blood products and blood safety have been destroyed. We have had several PQs on this subject.

Destruction of papers

3. During the HIV litigation in the early 1990's many papers from the 1970's and 1980's were recalled. We understand that papers were not adequately archived and were unfortunately destroyed following the litigation. We are unable to establish the precise dates these papers were destroyed or the nature of the documents that were destroyed.

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4. *During the discovery exercise for the Hepatitis C litigation in 2000 it emerged that files on the Advisory Committee on the Virological Safety of Blood (ACVSB) were missing. A low key internal investigation was undertaken in April 2000, by colleagues in Internal Audit, to establish why files were destroyed. The investigation by Internal Audit established that 14 volumes of papers relating to the ACVSB between May 1989 – February 1992 were unfortunately destroyed. These papers were destroyed between July 1994 and March 1998. In respect of these files the Audit report states:*

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

Before any of the volumes reached their specified review date however, in July 1993 the files were marked for destruction and sent to the DRO...

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

5. *The report by Internal Audit concludes:*

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

- A delegation of responsibilities without proper instruction, or*
- An assumption of responsibility without proper authorisation.*

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

6. *Given the sensitivity, we are considering whether we can identify resources to carry out a full examination of the relevant papers, both registered and unregistered, to classify and record all the papers on this subject that are still in existence.*

7. *It is likely that we will need to release the internal audit report at some stage."*

- 3.29. As the Inquiry can see, the background information for this PQ informed me that officials understood papers from the HIV litigation had been destroyed. I cannot now say the exact basis for officials' understanding. However, my PQ answer used the same terminology ("we understand papers were not adequately archived and were unfortunately destroyed in error").

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- 3.30. In relation to the ACVSB papers, officials informed me that DH had carried out an internal audit in 2000, i.e. this had been looked at before.
- 3.31. As explained in my general comments at the start of section 3 of this statement, when an issue like this came before me in a PQ (or otherwise) I would have been asking questions about any new developments and seeking assurances from officials on the briefing.
- 3.32. Of course, by 23 May 2006 I had already seen other information about DH's understanding of documents that had been destroyed. For example, William Cannon's submission dated 8 December 2005 was intended to make me aware that the Scottish Executive had undertaken to release material but also included **[DHSC0200103]**

"3. ...Our understanding is that during the HIV litigation in the 1990s many papers were recalled. We understand that papers were not adequately archived and were destroyed in the early 1990s. In addition, we have established that many papers on HVC infection were destroyed in error in the mid-1990s. In response to various FOI requests we have had to own up to this fact.

...

5. All the relevant action took place prior to devolution. It is highly likely that, amongst the volume of documents being released by the Scottish Executive, there will be copies of papers that were destroyed in DH. As this information is held by the Scottish Office and not DH it is for them to release it under FOI if appropriate. They have taken the decision to do so.

6. Inevitably, this may well give renewed ammunition to the conspiracy theorists, and continue allegations of a "cover-up", all of which have been strenuously ["denied?" has been written in hand]...

7. On a separate but related matter, PS(PH) will be aware that we have finalised a report of a review of surviving documents on self-sufficiency on blood products...There will inevitably be criticism when the report is published because members of the haemophilia community are aware that many DH papers have been destroyed."

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- 3.33. The submission appears to say that papers about to be released by the Scottish Executive did or might include copies of papers that had been destroyed by DH.

I wrote on this submission:

"1) when were papers destroyed?

2) if Scotland had copies why didn't we acknowledge this when FOI requests came in?

3) what will the papers confirm?"

- 3.34. Officials provided answers which I read on 17 December 2005. I was told
[WITN5427030]

"When were the papers destroyed?

The documents were destroyed during the early 1990's but exact dates are not known. There were several files destroyed."

- 3.35. There is also a handwritten note on the question "*when were the papers destroyed*", I think that was written by Jacky Buchan and it says "*almost certainly pre '97 but cannot guarantee that.*" I think I would have wanted to know if it happened under the Labour government.

- 3.36. The answers from officials continued:

"If Scotland had copies why didn't we acknowledge this when our FOI requests came in?

Under FOI we respond in terms of England and not the UK therefore I doubt that we consider Scottish documents and are not obliged to do so. In the case of the forthcoming Report into Self-sufficiency the report only looked into England and North Wales (the NBA catchment areas). The report it seems did not consider whether copies of documents were held by DA departments which is unfortunate.

What will the papers confirm?

We do not expect the documents to report/ confirm any particular facts which have previously been unknown. We have not been able to examine the Scottish documents, due to the huge volume and the fact that we do not know exactly what documents were destroyed in the 1990's. There may well be documents released which express views which could be potentially difficult or inconsistent: I simply do not know."

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3.37. Towards the end of February 2006, I was also provided with a briefing pack prepared by officials alongside publication of the report 'Self-Sufficiency in Blood Products in England and Wales: a Chronology from 1973 – 1991' [WITN5427007]. Page 4 of the briefing pack contained a section on destruction of documents and included information that was very similar to that provided by officials prior to the PQ on 23 May 2006.

3.38. On 27 February 2006 Lord Warner answered a PQ tabled by Lord Morris [DHSC0041304_138]:

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

Answer: "My noble friend is aware that during the HIV litigation many papers were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s.

My noble friend is also aware that further documents were destroyed in the 1990s. Officials at the Department of Health have established that these documents related to the minutes and papers of the Advisory Committee on the Virological Safety of Blood between 1989 and 1992. These papers were destroyed between July 1994 and March 1998. A decision, most probably made by an inexperienced member of staff, was responsible for the destruction of these files."

3.39. Further, in April 2006 I was provided with a briefing pack for a Lords' Starred Question to be answered by Lord Warner [WITN4912063]. The briefing pack (from page 19) repeated the same information about the documents being destroyed.

3.40. Jacky Buchan had asked officials a question relating to shredding of Lord Owen's private office papers (on page 20 of the briefing pack). I think this relates to different documents from the ones referred to in my 23 May 2006 PQ answer. Zubeda Seedat emailed Jacky Buchan on 13 April 2006 to say it was her understanding that at the time relevant to Lord Owen papers kept by private

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office were either destroyed or returned to the policy section after a change in government [DHSC0200119]. She wrote:

"[t]he line to take [in the briefing pack and in relation to the shredding of Lord Owens' papers] is based on enquiries that the previous head of the blood team made following a statement from Lord Owen about the destruction of papers from his Private Office.

Cabinet Office (Propriety & Ethics Team) has also confirmed that there are unaware of any guidance about the retention/ destruction of papers in Ministerial Private Offices once there is a change in government" [sic].

- 3.41. On 18 April 2006 Jacky Buchan emailed William Connon with questions from me about the briefing pack [DHSC5408829]. In relation to documents, my questions were:

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

...

PS(PH) is not convinced by the arguments about destruction of document from Lord Owen's private office. She said there surely must have been some guidance from Cabinet Office – isn't there guidance now?"

- 3.42. In relation to the second question, I think I assumed private office papers would be retained. Looking back however, I do not ever remember seeing private office papers belonging to a former Minister whose role I had taken over.

- 3.43. On 18 April 2006 William Connon responded [DHSC0200120]. In response to my first question he said he did not know why DH did not check what papers the devolved administrations held and "[i]f appears that no-one did think to check with DA's which I agree was remiss." In response to the question about private office papers he wrote:

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

- 3.44. Lord Warner's oral answers to Lord Jenkin's question and the supplementary questions were given on 19 April 2006 [CBCA0000039]. Lord Warner stated

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that there was no deliberate attempt to destroy past papers and said "we understand that many of the papers were, unfortunately, destroyed, but I have to say that that did not take place under this Government."

- 3.45. It appears I and/ or Lord Warner had asked for information on reporting in the media about the destruction of documents which itself had referred to a letter from the Secretary of State to Charles Clarke MP (dated 9 February 2006). On 11 May 2006 Steve Wells from Information Services sent us a briefing which included [WITN5427043] and GFYF0000109];

"5. Decisions on retention and destruction of records may be made by relatively junior staff (IP2 or above).

6. Line managers at all levels are responsible for ensuring that record keeping in their area is consistent and meets Departmental standards. This includes making sure that staff making decisions on records retention and destruction are "sufficiently aware of the administrative needs of the section to be able to make the decisions."

7. There was no deliberate attempt to destroy past papers.

8. When the discovery was made that files had been destroyed, an internal audit report led to improvements in guidance and procedures on record keeping...

..

Lines to take

11. The guidance has been consistent. Although relatively junior officials are permitted to make decisions on retention or destruction of records, their line managers are responsible for ensuring that they are equipped to exercise that responsibility.

12. Clearly the files and papers should not have been destroyed. Given the sensitivity of this issue, we have fully investigated this matter. We have concluded that this was a very unfortunate administrative error.

13. We greatly regret that these papers were destroyed in error and are doing everything we possibly can to ensure that any documents, which were not destroyed, are made available.

- 3.46. As explained above, on 23 May 2006 I provided a written answer to a PQ on documents.

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- 3.47. On 24 May 2006 Lord Warner answered a PQ tabled by Lord Jenkin [DHSC0041304_052]:

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

Answer: "...we have established that a number of documents that have been disclosed by the department in the HIV litigation and hepatitis C litigation were held by Blackett Hart & Pratt solicitors. It agreed to return the papers to our solicitors, who are now considering them with other departmental officials. Advice has yet to be given to Ministers on the significance of the returned files."

- 3.48. The briefing pack for Lord Warner which accompanied this PQ, repeated that DH had destroyed documents in error [DHSC0200123⁴]. The briefing pack referred to papers not being adequately archived and then destroyed following the HIV litigation and to ACVSB files from May 1989 – February 1992 being destroyed in error between July 1994 and March 1998. It also referred the 2000 internal audit (see pages 9, 31-32).
- 3.49. My response to the PQ on 23 May 2006, about documents having been destroyed in the past was based on information provided to me at the time of the PQs, but also information previously provided to me by officials, including by reference to the 2000 internal audit. I approved an answer that I believed at the time to be accurate. I think I would have been aware that documents had been returned to DH by external solicitors but that did not change whether DH had itself destroyed documents. I explain below DH's changing understanding of documents that had been destroyed or mislaid. Essentially, in autumn 2006 I was informed that, in addition to the documents returned from external solicitors, DH had located relevant documents in Wellington House that were thought to be missing or destroyed but actually had not been properly registered.

⁴ The IBI has referred me to a briefing pack at DHSC0015839. I think that is a draft and the final briefing pack is at DHSC0200123.

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3.50. I have considered why I did not revisit the 23 May 2006 PQ answer after I was informed about these documents in Wellington House. On a practical level, it is unlikely I would have, months down the line, remembered the detail of the written PQ response in order to consider if I should revisit it. DH had a Parliamentary unit responsible for tracking and dealing with all PQs and the answers to PQs were drafted in conjunction with the relevant policy team. I do not recall either the Parliamentary unit or the blood policy team bringing to my attention that the PQ answer may need to be updated. In addition, and as explained below, the NANBH Document Review Report was provided, along with the underlying documents, to various interested persons, including Lord Archer, and put into the House Library. I did not seek to hold back this information that documents previously thought to be missing had been located. I also do not recall Jenny Willott MP subsequently raising this issue with me or my private office.

Calls for a Public Inquiry

3.51. I am asked a series of questions about the government's decision not to hold a statutory public inquiry and why it took that stance. Within these questions I am asked about a meeting on 24 May 2006, a memo dated 26 May 2006 [DHSC0041159_205] and a proposal made in mid-2006 that the Secretary of State should commission an independent review of documents.

3.52. I am also asked about a memo to me dated 13 December 2005 [DHSC0041162_049] and the proposed wording of a DH statement to the media. I deal with that below in the chronology. I am further asked about two reports published by DH, namely "Self-Sufficiency in Blood Products in England and Wales: A Chronology from 1973 – 1991" (the "Self-Sufficiency Report") and the "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)".

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- 3.53. The questions cover a number of topics and a detailed chronology of events. I have tried to set out the chronology and to group the common topics together. That has meant that I have needed to answer the questions in a different order from the way they are posed in the rule 9 request.

Role in Commissioning Self-Sufficiency Report

- 3.54. I will first answer a series of questions about the Self-Sufficiency Report. This is because that report was commissioned before I came into office.
- 3.55. I am asked to explain my role in commissioning the Self-Sufficiency Report, my understanding of its purpose and questions about who authored it. I am asked why it was not published until 2006. I am asked why documents referred to in the Self-Sufficiency Report were not published alongside it and why the Report did not explain how and when documents from the relevant period were destroyed. I am also asked what role the Self-Sufficiency Report played in the government's decision not to hold a public inquiry before then. I am asked whether I agreed with the Report's conclusions.
- 3.56. I had no role in commissioning the Self-Sufficiency Report. It was initiated in 2002 by Yvette Cooper who was then Parliamentary Under-Secretary for Health. It was published on 27 February 2006.
- 3.57. As to my understanding of the purpose of the Self-Sufficiency Report, on joining DH I probably would have been briefed that this Report was being prepared but I cannot remember what I was told.
- 3.58. I was sent a submission prepared by William Connon, dated 20 July 2005 (so around 2 months after I started as Parliamentary Under-Secretary), which explained [DHSC0200084]:

Background to the Review

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3. *Almost all haemophilia patients treated with blood products in the 1970's and early 1980's were infected with hepatitis C, and or HIV. Lord (David) Owen, a Health Minister in the 1970s, has publicly suggested that this might have been avoided had the UK achieved self sufficiency in blood products, a policy he initiated in 1975. Haemophilia campaigners have also raised other concerns about policy decisions taken at the time in the context of demands for compensation and a public inquiry.*

4. *In 2002, Yvette Copper the then Health Minister asked officials to undertake an internal review of the surviving documents, roughly between 1973-1991, to produce a chronology of events, and an analysis of the key issues. The remit of this work is attached at Annex 1. Without this it is difficult to answer any detailed accusations levelled against the Department by Lord Owen and others.*

5. *The review does not address comments by Lord Owen about the destruction of papers from his Private Office."*

3.59. Annex 1 to this submission set out the remit of the work:

Review of Internal Trawl of Papers into Self Sufficiency in Blood Products

Remit

(i) Review documents held by the Department and other bodies for the period 1971 to 1985, identify key documents and produce a chronology of events. Interviews with officials, clinicians and others active in this area at the time may be necessary to build up a full picture.

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

- The development of policy on UK self sufficiency in blood, the factors that influenced it and the reasons why it was never achieved;*
- The ability of the NHS blood products fractionators to produce the volumes of product required;*
- The evolving understanding of the viral risks associated with pooled blood products, both domestically produced and imported, and how this influenced policy;*
- The extent to which patients were informed of these risks;*
- The developing technologies to enable viral inactivation of blood products and the timing of their introduction in the UK.*

(iii) Summarise these findings in a report for Ministers."

3.60. Paragraph 4 of the 20 July 2005 submission referred to a review of documents between 1973 and 1991, but Annex 1 to the same submission referred to a review of documents between 1971 to 1985. The Self-Sufficiency Report described itself as a review of "surviving documents from 1973...to 1991". A

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briefing pack prepared by officials and provided to me in, I think, late February 2006 explained that Yvette Cooper originally asked for a review of "*surviving documents roughly between 1973-1985...*" but "[t]he actual analysis was extended to 1991, the year that a test to screen blood donations for hepatitis C was introduced in the UK. Without this it was considered difficult to answer any detailed accusations levelled against the Department by Lord Owen and others." That decision to extend the review from 1985 to 1991 was made before I was in office [WITN5427007].

- 3.61. A draft Self-Sufficiency Report was sent to me along with the 20 July 2005 submission. I would have read it. The draft had a section setting out the purpose of the Report and that section remained the same in the final Self-Sufficiency Report:

Purpose of the report

About 3000 patients with haemophilia treated with blood products in the 1970s and early 1980s were infected with hepatitis C (HCV), and many with HIV. A number of MPs have suggested that this might have been avoided had the UK achieved self sufficiency in blood products, a policy the Government initiated in 1975, and Ministers have asked officials to investigate this. This report is the result of a review of surviving documents from 1973 (when a decision was made to pursue self sufficiency for England and Wales) to 1991 (when a validated screening test for HCV was introduced in the UK). It contains a chronology of events...and an analysis of the key issues, including:

- *the developing understanding of the seriousness of Non A Non B hepatitis (NANBH), later known as HCV*
- *the evolving understanding of the viral risks associated with pooled blood products, both domestically produced and imported, and how this influenced policy*
- *the development of policy on UK self-sufficiency in blood products, the factors that influenced it, and the reasons why it was never achieved*
- *the developing technologies to enable viral inactivation of blood products and the timing of their introduction in the UK*
- *the ability of the Blood Products Laboratory (BPL) to produce the volumes of products required."*

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- 3.62. I note that this description of issues is in some respects different from that in Annex 1 to the 20 July 2005 submission. I cannot now explain why and I do not know if the remit at Annex 1 of the submission was the document agreed in 2002, to which the author(s) worked.
- 3.63. I think my understanding of the purpose of the Self-Sufficiency Report at the time would have come from any initial (or later) briefing, the submission dated 20 July 2005, and reading the draft Self-Sufficiency Report that was sent to me. When I received the briefing pack in late February 2006, I would have seen that the document review had extended from 1985 to 1991, but I do not think I would have otherwise have had reason to think the remit or process had changed since the 20 July 2005 submission. I can see from documents that William Connon spoke to me about work on the Self-Sufficiency Report [DHSC0200084 (page 1)]. I cannot now remember what he said but think he would have given me a verbal briefing and answered any questions I had.
- 3.64. The Inquiry will also see that William Connon's submission dated 20 July 2005 stated that Yvette Cooper asked for a review of "*surviving documents*" and that the review did not address comments from Lord Owen about destruction of papers from his private office. The same reference to a review of "*surviving documents*" is contained in the final Self-Sufficiency Report itself. Beyond this, I am not in a position to explain why the Self-Sufficiency Report did not include an explanation of how and when documents from the relevant period were destroyed - decisions about the remit and content of the Report were made before I came into office and I was informed that the review and Report were being completed (albeit this had taken a long time). I do not recall being informed that there was discontent with the remit of the Report. As the Inquiry knows, later in 2006 documents were returned to DH from external solicitors and unregistered files held by DH in Wellington House were identified. As I understand it, DH officials did not know about those documents when the Self-Sufficiency Report was written.

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3.65. I am asked who authored the Self-Sufficiency Report, why they were selected and why medical consultants were brought in to complete the Report.

3.66. As explained, I inherited the work on the Self-Sufficiency Report. By July 2005 it was already several years in the making and almost complete, and so I was not involved in decisions on who should write it. However, I set out below my understanding based on documents I have seen.

3.67. I have seen examples of letters sent by William Connon seeking comments on the draft Self-Sufficiency Report – a letter sent to Dr Hewitt at the National Blood Authority, to Professor Zuckerman at the Royal Free Hospital, and to Dr Snape [DHSC0020720_016, DHSC0020720_016, DHSC0020720_015]. The letter from William Connon to Dr Snape included:

"You may recall speaking to Peter Burgin at the Department in August 2002, about some of the issues. I note from the reference list that you were interviewed by Peter..."

3.68. I do not recall Peter Burgin. However, I have seen his name referred to in a briefing pack prepared for Lord Warner in response to a Lords' question [DHSC0004232_078]. In relation to the Self-Sufficiency Report, pages 23-24 of this briefing pack said:

"Who undertook the review?"

A DH official was recruited for three months (October 2002 – December 2002) to undertake the review. The task was completed by independent consultants.

For internal use

A DH official (Peter Burgin) was employed for three months to undertake the review of papers. A draft report was submitted to the Blood Policy Team in January 2003. The report was completed by Medical Consultants from a company called Dianthus Medical Limited. The company specialises in medical writing, statistical consultancy and clinical data management services. The consultants that assisted were Dr Shanida Nataraja and Dr Adam Jacobs."

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3.69. The 20 July 2005 submission also stated [DHSC0200084]:

14. There were a number of unsubstantiated statements in the report which had to be checked for accuracy, we had to draw up a lengthy list of references to the report and include an executive summary. In 2004, officials commissioned consultants to analyse the papers and finalise the report. We have also had to consult with colleagues in the devolved administrations, BPL, National Blood Service and some clinicians. The draft may be subject to some minor amendment to reflect comment from clinicians which we have just received. However, this will not alter the main findings of the report."

3.70. It appears therefore that an official called Peter Burgin reviewed documents and wrote a draft report (or part of a draft report, I cannot tell) in late 2002/ early 2003 and thereafter medical consultants were engaged to work on the Self-Sufficiency Report. I assume the reference in the 20 July 2005 submission to consultants being commissioned is to medical consultants from Dianthus Medical Limited. I was not involved in either decision. Beyond what is in the documents, unfortunately I cannot now assist with the reasons for these decisions.

3.71. The impression therefore is that several (or maybe more than several) people were involved in writing the draft of the Self-Sufficiency Report that was sent to me. The 20 July 2005 submission also refers to officials consulting with others (devolved administrations etc.) and I do not know what, if any, input they had. I cannot now say whether I knew more about this at the time but there may have been informal conversations about this.

3.72. Returning to the chronology, on 8 December 2005 William Cannon sent a submission to me on documents the Scottish Executive was intending to release just a few days later, on 12 December [DHSC0200103]. That submission included:

"On a separate but related matters, PS(PH) will be aware that we have finalised a report of a review of surviving documents on self-sufficiency

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in blood products. The report is currently with the printers and we hope to publish early in the New Year. There will inevitably be criticism when the report is published because members of the haemophilia community are aware that many DH papers have been destroyed."

- 3.73. On 6 February 2006 Zubeda Seedat (in the Blood Policy team) informed me that the Self-Sufficiency Report was scheduled to be published on 27 February 2006. I asked for information on what it would say [WITN5427008]. It was over 6 months since I had been sent the draft Self-Sufficiency Report. I would have wanted to be reminded of and updated on the contents of the final report (I would have been receiving submissions on other issues on a daily basis during that time). I can also see from the documents that I was asking questions on other policy issues relating to blood products and screening that may also be relevant when the Self-Sufficiency Report was published.
- 3.74. On 7 February 2006 I received a reply via Jacky Buchan attaching further information on the Self-Sufficiency Report [WITN5427009]. I wrote on this document, *"Where is the draft report. Did we import blood products based on donations in American prisons?"* This suggests the draft report was not re-sent to me but I cannot be certain. It does appear that officials provided an answer to my question about importing blood products in March 2006 [WITN5427010].
- 3.75. On 23 February 2006 Sophie Coppel from the DH communications team sent me a media handling plan in relation to publication of the Self-Sufficiency Report [DHSC0200112]. Under a summary of *"risks and considerations"* Sophie Coppel wrote:

"There may also be accusations that the report took so long to be published. The reason for this was having to check for accuracy for the report which took a significant amount of time. In 2004, officials commissioned independent consultants to analyse the papers and finalise the report. We have also consulted with colleagues in the devolved administrations, BPL, National Blood Service and some clinicians for factual accuracy."

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...

There could also be criticism that the review had not been an accurate representation of events because of the destruction of papers, as referred to Lord Warner's debate in the House of Lords...

- 3.76. The media handling plan included a draft press notice with a quote to be attributed to me:

"We have great sympathy for those people, and their families, who were infected with hepatitis C and HIV from contaminated blood products in the 1970s and early 80s.

The review based on the available evidence, concludes that clinicians acted in the best interest of their patients in the light of the evidence available at the time. Donor screening for hepatitis C was introduced in the UK in 1991 and the development of this test marked a major advance in technology, which could not have been implemented before this time."

I approved this [WITN5427011 (page 1)].

- 3.77. Officials also prepared a detailed briefing pack on the Self-Sufficiency Report [WITN5427007]. I think this may be the "detailed submission" referred to in Sophie Coppel's note. In simple terms briefing packs were prepared by officials and the communications team to summarise the background to and policy on an issue, including a "Q&A" dealing with the key concerns likely to be raised and updates on related topics. Packs could also reflect Ministers' requests for certain questions to be answered or for more information.

- 3.78. On the length of time taken to complete and publish the Self-Sufficiency Report, the briefing pack stated:

"DELAY IN CONCLUDING THE REVIEW

Due to a number of pressures, there has been a long delay in finalising the review report commissioned in 2002. A draft report was submitted to the Blood Policy Team in January 2003 following a 3 month assignment by a DH Official. However there were a number of outstanding issues which had to be resolved before the report could be finalised and submitted to Ministers.

There were a number of unsubstantiated statements in the report which had to be checked for accuracy, a lengthy list of references to the report

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had to be drawn up and an executive summary to be included. In 2004, officials commissioner independent consultants to analyse the papers and finalise the report. We have also consulted with colleagues in the devolved administrations, BPL, National Blood Service and come clinicians for factual accuracy."

This was essentially the same information as had been provided to me in the 20 July 2005 submission.

3.79. The briefing pack said (at page 5):

"REFERENCES

The report contains a substantial number of references to published scientific papers but also to internal documents. We see no reason why the latter cannot be released on request but for reasons of sheer volume, we have resisted supplying a complete set of documents with publication of the report."

3.80. Again, this mirrored what the 20 July 2005 submission said about releasing the documents referred to in the Self-Sufficiency Report. The briefing pack also said some of the documents were already in the public domain, i.e. the published references.

3.81. I am asked why the documents referred to in the Self-Sufficiency Report were not released at the point of publication. I have no independent recollection of this now and can only rely on the information in the documents. I understand that many of the references were already in the public domain (although I cannot now say how accessible they would have been). For DH internal documents not in the public domain, it seems that DH was prepared to release them, but because of the volume of documents that would happen only if documents were actually requested. I was clearly made aware of this proposed approach and there may have been discussions about it. I explain below that this issue came back to me in April 2006 and at that point I said the documents should be released.

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3.82. I am asked why the Self-Sufficiency Report was not published until 2006 and, in relation to my time in office, the reasons for the delay. As to time lapse between 2002 and May 2005, I can only assist by referring to the information set out above. I was not in office during that period. As to the period between May 2005 and February 2006, I was provided with a submission and the draft Self-Sufficiency Report at the end of July 2005 [DHSC0200084]. The submission stated that the draft might be subject to minor amendments to reflect comments from clinicians which had just been received, but these would not alter the main findings of the Report. On 8 December 2005 William Connors informed me that the Self-Sufficiency Report had been finalised and was with the printers and the aim was to publish it in the New Year. I cannot now say more about the reason for the passage of time in late 2005, or why the Report was not published earlier in 2006. I am happy to review any further documents that assist with this.

3.83. The Self-Sufficiency Report was published on 27 February 2006. A copy was sent to various interested parties. *For example*, I sent a copy to Michael Connarty MP. The covering letter included [WITN5427012]:

"The review shows that the funding enabled BPL to increase production of Factor VIII. However, the rapid growth in demand for clotting factors at the time meant that commercial products continued to be imported. As a consequence we were unable to achieve self sufficiency in blood products.

If we had achieved self sufficiency in the 1970s and 1980s as intended, blood products would still have transmitted hepatitis C because the virus was also present in the UK donor population..."

3.84. On 19 April 2006 Lord Warner answered a Lords' Starred Question tabled by Lord Jenkin [CBCA0000039]. I am likely to approved the answer:

Question: "Whether the Department of Health's report Self-Sufficiency in Blood Products in England and Wales, published on 27 February, is a complete account of the circumstances leading to the infection of National Health Service patients with HIV and hepatitis C due to contaminated blood products."

Answer: "My Lords, the report published on 27 February examined key issues around self-sufficiency in blood products in the 1970s and early

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1980s. The review was commissioned following suggestions that implementation of what was called the "self-sufficiency policy" in blood products in this period might have avoided haemophiliacs being treated with infected blood products. The report makes it clear that it was based on surviving documents from 1973, but that self-sufficiency would not have prevented infection of haemophiliacs with hepatitis C."

3.85. A detailed briefing for Lord Warner was prepared which would also have been shown to me. [WITN4912063]

3.86. I have seen emails from around this time about the release of documents. On 18 April 2006 Rebecca Spavin sent an email to William Connon and Jacky Buchan notifying them that Lord Warner wanted on 19 April 2006 to announce in the House of Lords that, *"in principle, we are not against the release/re[lea]sing of documents used in the Self Suff review, but that first off they need to be anonymised to protect individuals..."* [DHSC0200120 and DHSC0200121]

3.87. On 18 April 2006 William Connon informed Rebecca Spavin that he remained concerned by Lord Warner's intention to make this announcement in the Lords. He thought this could open the flood gates and that it would have a significant impact on already stretched resources. He added that the *"current FOI case has already been very time consuming and is not yet completed. I am also concerned that it will encourage similar requests which are not covered by the FOI provisions. When Scotland issued all the documents they released I am told they had to employ additional staff at significant cost."* As far as I can see this email was not copied to Jacky Buchan [DHSC0200121].

3.88. On 19 April 2006 Jacky Buchan replied to Rebecca Spavin's email of 18 April [DHSC0200122] to say:

"On the release of documents PS(PH) [i.e. me] sees no reason why we should not release the documents referenced in the Self Sufficiency Report once they have been anonymised as necessary. (The submission

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of 20 July 2005 recommended we release the documents on request but resist supplying a complete set.)"

3.89. I do not know if Rebecca Spavin had further discussions with William Connon to discuss his concerns about releasing the documents. On 19 April 2006 Lord Warner said in the House of Lords that the Self-Sufficiency Report gave 158 references to other documents on which it relied and *"we will be looking at a freedom of information request that has been made for putting more of those documents in the public arena. We will look sympathetically at the FOI request"* [CBCA0000039].

3.90. On 4 May 2006, I gave a written answer to a PQ tabled by Jenny Willott MP [CBCA0000045 (page 8)]. She asked whether DH had *"carried out an internal review into the use of blood and plasma products infected with HIV and hepatitis C"*. My answer was:

"The Department has not carried out an internal review into the use of blood and plasma products infected with HIV and hepatitis C. However, on 27 February the Department published a report, Self-Sufficiency in Blood Products in England and Wales. This report was the result of an internal review of papers on self-sufficiency in blood products.

The review was commissioned following suggestions that the policy of self-sufficiency in blood products during the 1970's and early 1980's might have prevent haemophilia patients being treated with infected blood products. The report makes clear that self-sufficiency in blood products would not have prevented the infection of haemophilia patients."

3.91. At a meeting between officials, Lord Warner and me on 24 May 2006, Lord Warner and I asked for *"details of the total number of documents (references in the [Self-Sufficiency] report), which ones have already been released, which ones are in the public domain and which ones are outstanding..."* [DHSC0015812].

3.92. As referred to above, Lord Warner and I wanted documents referred to in the Self-Sufficiency Report to be released after they had been anonymised. On 6 June 2006, I was asked to approve a draft letter to be sent to Lords Jenkin and

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Morris on the release of documents. I have not seen a final copy of the letter but have written on the draft "okay if Norman [Lord Warner] is happy." The draft letter included [WITN5427014]:

"The [DH] has received two FOI requests for copies of all of the documents which are referenced in the [Self-Sufficiency] report. We have already supplied some documents, which are either already in the public domain or are non-departmental documents. In the case of other references, we have agreed to release the documentation as the Department recognises the strong public interest in complying with the request, providing as much information as is not exempt under the relevant sections of the Act. We hope you will understand that because of the large volume of information involved, the Department requires further time to deal with the response. We are informed by officials that they plan to release the information by 20 June."

3.93. When preparing this statement I have seen a note from Linda Page to Hugh Taylor, the DH Permanent Secretary, dated 20 July 2006 [DHSC5425804]. This was not sent to me or my private office. The note relates to the proposed release of documents referenced in the Self-Sufficiency Report and says "MS(PH) and MS(R) have given an indication in Parliament that they are sympathetic of the FOI request to release these documents. It is recommended that these documents, suitably redacted, be released." That reflected the approach Lord Warner and I wanted to take – i.e. to be open with the documents.

3.94. On 18 October 2006 Jacky Buchan informed me that the documents referenced in the Self-Sufficiency Report had been released on 24 August 2006 [WITN5427031] (page 1)]. I cannot recall why the date slipped from 20 July to 24 August 2006.

3.95. I am asked what part the Self-Sufficiency Report played in the government's decision not to hold a public inquiry "before now", which I assume means before it was published in February 2006. I cannot answer this question for the period between 2002 and May 2005. Later in this statement I explain the decision-making after I came into office.

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3.96. I am asked whether I agreed with the conclusions of the Self-Sufficiency Report. I inherited an internal review which was established in 2002 to investigate the issue of self-sufficiency in blood products. The Self-Sufficiency Report read to me as a factual and straight analysis and not a political document. It provided a chronology of events describing, via an examination of the available documents, the clinical and policy decisions made, and seemed to do so in a methodical way. The Report acknowledged the information gathered during the review had been "*at times contradictory and incomplete*" (page 28). I was aware it was based on an incomplete set of documents. I would have read this Report and thought perhaps some things could have been handled differently but difficult and complex decisions were being made at the time. I knew the Report was not going to answer all the questions campaigners had and there would be challenge to the analysis. However, I did feel the Self-Sufficiency Report provided an adequate explanation as to the decisions taken on self-sufficiency based on scientific and medical evidence and views at the time. It did not raise with me 'red flags' about government wrongdoing. I was also not informed of concerns from within DH (e.g. from the Chief Medical Officer or Deputy Chief Medical Officer). It was important that after considerable time the Report was finally published.

3.97. I was aware that there would be criticism of the Self-Sufficiency Report, including because it was based on an incomplete set of documents. There was indeed criticism. I have seen a letter dated 28 March 2006 from Margaret Unwin, Chief Executive of the Haemophilia Society, to William Cannon [HSOC0003560]. Margaret Unwin wrote that the Self-Sufficiency Report was inadequate and seriously flawed and raised a number of specific concerns about the content. Her letter also expressed surprise that the Self-Sufficiency Report had no introduction from the Minister and interpreted this as either that the Report was given a very low priority or the Minister responsible did not wish to be "*associated with the document for some reason.*" To the best of my recollection now, I do not think either suggestion is correct. As far as I

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can tell from the documents I have seen, there was never an intention for a Minister to prepare an introduction. I do not think there was any question that I did not want to be associated with the Report. There was a media handling plan which included a medical expert responding to media queries in the first instance, and a press notice with a quote from me. It was planned that I would accept national media bids if there was significant media interest in the Report [WITN5427011 (page 1), DHSC0200112 (page 1), WITN5427011 (pages 2 and 3)].

I have seen that Lord Warner asked William Connon on 18 April 2006 why the Report did not have a foreword from me or another Minister [D DHSC0200120, bundle E/119]. I have not seen a reply from William Connon to Lord Warner and my understanding of the position is set out above.

- 3.98. I think I would have been made aware of Margaret Unwin's letter to William Connon and can see it was included in the index to a briefing pack sent to me in April 2006 for a Lords' Starred Question to Lord Warner [WITN4912063]. Unfortunately I cannot now say what my response was at the time. William Connon replied to Margaret Unwin on 15 May 2006 [HSOC0003558]. I do not think I would have seen William Connon's letter at the time but I refer to it because it says "*[t]here was never any intention to include a ministerial introduction and I simply do not agree that the length is unusual*". I do not recall being contacted by Margaret Unwin requesting a discussion with me (but am happy to review that if documents show I was).

Government Response to Calls for a Public Inquiry

- 3.99. I am asked a series of questions relating to the decision not to hold a statutory public inquiry during my time in office.

May 2005 – May 2006

- 3.100. Although the formal and informal briefings given to me when I joined DH would have made me aware of calls for a public inquiry and the government's policy

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on this, the documents I have seen suggest that it was 2006 when I was given fuller consideration to this question.

3.101. When I started as Parliamentary Under-Secretary it was already the government's policy that a public inquiry was not justified. There are inevitably challenges for a new Minister coming into an established policy position, particularly when the events happened many years before, and the underlying subject matter is complicated and specialist.

3.102. I have seen a briefing pack for a Lords' Starred Question answered by Lord Warner on 26 May 2005 which included information on the government's policy on a public inquiry [DHSC0004213_115]. The briefing pack said:

"It is important to stress that despite the Department of Health decision to make ex gratia payments, the position with regards to accepting liability has not changed. The Government does not accept that any wrongful practices were employed and does not consider a public inquiry justified, as we don't believe that any new light would be shed on this issue as a result.

Donor screening for hepatitis C was introduced in the UK in 1991 and the development of this test marked a major advance in microbiological technology, which could not have been implemented before this time.

Scotland

There is additional pressure on the Scottish Parliament for a public inquiry but this is also being resisted on similar grounds."

3.103. On 26 May 2005, during questions in the House of Lords about hepatitis C infection, a supplementary question was put to Lord Warner about whether a public inquiry should be held [WITN5427043]. Lord Warner answered:

"My Lords, we are not brushing anything under the carpet. I shall go back over the history: the issue arose under another government, but I am not making a party political point, because they also behaved responsibly in this area. In 1991, advances in microbiology enabled us to introduce screening of blood donors. At that point the world changed in this area. We are talking about the inability to test for hepatitis C in blood donors prior to that period. There has been no negligence; it is one of those tragedies. There is no need for a public inquiry.

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3.104. I can see from the documents that the Secretary of State planned to meet with Lord Morris on 12 October 2005 and on the agenda was the question of holding a public inquiry into haemophilia patients being infected with hepatitis through NHS blood products [DHSC5120890 and DHSC5120890]. Officials prepared a briefing for the Secretary of State which included the government's position that a public inquiry was not justified, that the government did not accept any "wrongful practices were employed", and that "[d]onor screening for hepatitis C was introduced in the UK in 1991 and the development of this test marked a major advance in microbiological technology, which could not have been implemented before this time."

3.105. I am asked about a note from Sophie Coppel to me, dated 13 December 2005, containing a proposed response to a BBC news report on contaminated blood causing infection with hepatitis C and calls for a public inquiry [DHSC0041162_049]. Her note says that a document agreed by the relevant DH policy team was attached, but I have not seen a copy of that attachment. A draft DH response to the BBC report included:

"...Donor screening for hepatitis C was introduced in the UK in 1991 and this marked a major advance in microbiological technology which could not have been implemented before this time.

...

We are aware that some people would like the Government to set up a public inquiry into this issue. We have great sympathy for those infected with hepatitis C and have considered the call for a public inquiry very carefully. However, the Government does not accept that any wrongful practices were employed and, therefore, there is no justification for a public inquiry.

Are you content with this statement?"

3.106. The note is annotated with my writing, "can't we say something better than this *"acting in good faith before technology could help"*. I do not know what, if any, statement was actually sent to the BBC or used. I do not know where, if at all, my comment was added into the statement. I am happy to review this if the Inquiry can assist.

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3.107. In any event, I am asked what investigation, analysis or enquiries were undertaken in order to reach this conclusion. No new steps were taken. The proposed wording was based on the briefings, reports, and information already provided to me, including on the timing of technological advances. I also think I would have wanted to humanise the statement as the final line sounded cold and detached.

3.108. As explained earlier in my statement, in 2002 the Parliamentary Under-Secretary for Health (then Yvette Cooper) asked officials to undertake a review of documents which became the Self-Sufficiency Report, published in February 2006. Its conclusions included that it was only in 1991 that routine testing for hepatitis C infection could be done on potential blood donors (i.e. the conclusion was consistent with one of that aspect of the government's reasoning for not holding a public inquiry). More generally, the conclusions in the Self-Sufficiency Report did not occasion a change in government policy on whether to hold a public inquiry.

3.109. The briefing pack prepared alongside completion of the Self-Sufficiency Report contained a proposed answer on why the government would not agree to a public inquiry, which again said the government did not accept wrongful practices were employed and did not consider an inquiry was justified [WITN5427007].

3.110. Calls to hold a public inquiry continued after the Self-Sufficiency Report was published.

From May 2006

3.111. I am asked about a meeting on 24 May 2006, attended by Lord Warner, William Connon, Gerard Hetherington (Director of Health Protection) and me. On 25

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May 2006 William Connon sent Gerard Hetherington a note of action points arising from this meeting [DHSC0015812]. My private office was not copied into this note. On the issue of a public inquiry, William Connon's note says:

"Public inquiry: Ministers asked that we look carefully at the issues surrounding the continued and increased requests for this, including the Scottish position. You [i.e. Gerard Hetherington] mentioned the name of a departmental contact re Inquiries (Richard Humphries?) and I think we need to speak with him urgently, in order to establish exactly what we can/ should do regarding this and establish just how decisions on inquiries are taken, costs involved, timescales etc. as the pressure to hold one looks set to continue."

3.112. I am asked what prompted the meeting on 24 May, what investigation and analysis was expected of DH officials and whether Ministers were considering establishing a statutory public inquiry at this stage.

3.113. I have no recollection of this specific date of the meeting, but prompted I do recall meeting with these officials and Lord Warner. On the detail of the meeting I am doing my best to assist based on the documents I have seen.

3.114. I think the meeting was primarily related to concerns held by Lord Warner and me on documents – the release of documents, destruction of documents, and documents recently returned by external solicitors to DH. I have already referred to a briefing from Steve Wells (information services) to Lord Warner and me, dated 11 May 2006 [WITN5427043]. That briefing referred to a meeting planned on 24 May 2006 and said we had asked for a briefing on a recent story in the Observer on document destruction.

3.115. In late May 2006 there were also 2 PQs about documents. As already explained, I had answered a PQ on 23 May 2006 on the destruction of documents in the 1990's. On 24 May 2006 Lord Warner answered a question tabled by Lord Jenkin about the contents of the documents recently returned to DH (i.e. from external solicitors) [DHSC0041304_052]. On 23 May 2006 there had

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also been a briefing meeting for Lord Warner in advance of the oral PQ the following day. After this Rebecca Spavin, from Lord Warner's private office, emailed officials (with Jacky Buchan copied) to set out an amended PQ response and sought further information about the recently returned documents [DHSC0041159_082]. Jacky Buchan sent this on to me, with a note, "*Caroline, you will want to see this tonight ahead of the meeting with Lord Warner tomorrow*".

3.116. The following morning William Connon replied to Rebecca Spavin (24 May 2006) [DHSC0200023]. His email included:

"We need to try to establish the date the papers were returned to DH, the exact period they cover, and how many files there are.

....

- * On the line to take regarding MS(PH) I suggest "The Minister for Public Health has requested advice on these papers and, once this has been received, I have asked the minister to ensure that all interested parties are fully informed as to whether these files do indeed shed any new light on the issues surrounding the infection of haemophiliacs."*

Lastly, can we give Lord W a rough indication of what proportion of the total files erroneously destroyed by DH these new files constitute i.e. how many files have been returned and how many were destroyed? ..."

3.117. Lord Warner's answers to the House of Lords on 24 May 2006 included that documents had been returned to DH from a firm of solicitors, Blackett Hart & Pratt, that advice on these documents had not yet been given to Ministers and that Lord Warner would speak with me about placing information "*from those files where it is significant in the public arena*" [DHSC0041304_052]

3.118. The meeting between officials, Lord Warner and me then took place on the evening of 24 May 2006. The note prepared by William Connon set out a number of actions points on FOI requests, destroyed documents, documents returned to solicitors and resources, as well as the reference above to a public inquiry [DHSC0015812]. The chronology above makes me conclude that the

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meeting was prompted by the issue of documents, but also that this issue was getting more bound up with calls for a public inquiry and that understandably there was frustration and concern that the government was or had been trying to hide something. Lord Warner and I wanted to be more proactive and transparent in relation to documents and try to restore some confidence. We also wanted the Permanent Secretary and the CMO involved so they could assist with additional resources to work on the issue of documents.

3.119. On the morning of 26 May 2006 Rebecca Spavin emailed Gerard Hetherington, William Connon and other officials [DHSC5286062]. Jacky Buchan was copied in. Rebecca Spavin referred to Lord Warner's PQ answers on 24 May 2006 and the need for time to assess the contents of the returned papers. She wrote that both Lord Warner and I wanted more proactive steps taken and set out a list of actions for officials to take. We wanted officials to prepare a paper that could be sent to the Secretary of State which, amongst other things, discussed "*the possibility of conducting a Public enquiry*." We asked for that note by 16 June 2006.

3.120. I am asked whether, at this stage, Ministers were considering establishing a statutory public inquiry. I think the answer is no, but we felt the problems with the documents needed to be addressed as they were contributing to concerns and calls for an inquiry. We probably also wanted to set out all options for the Secretary of State.

3.121. The same day (26 May 2006) Gerard Hetherington sent Rebecca Spavin a note [DHSC0041159_205]. This was copied to the private offices of Secretary of State and me. I cannot now say if this note was drawn to my attention but it clearly followed on from the meeting on 24 May 2006. This note included:

Demand for a Public Inquiry

6. Ministers pointed out that demands for a public inquiry were intensifying. MS(PH) [i.e. me] was particularly concerned that this issue should not be forced in England because of decisions in Scotland.

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7. We [i.e. officials] have consulted Dr Aileen Keel DCMO in Scotland. Advice from SE officials to Scottish Ministers continues to be very strongly against holding a public inquiry....

8. We are consulting the Patient Safety and Investigations branch about the steps that might have to be gone through in considering whether to hold a public inquiry. As Ministers will be aware, public inquiries (now governed by the Inquiries Act 2005) are huge undertakings which can be massively expensive and are held only in exceptional circumstances. DH's only public inquiry in recent years has been Shipman. The Department has, however, held a number of inquiries eg those into the activities of Drs Ayling and Neale which, while falling short of the definition of public inquiries, incorporated several of the key characteristics of public inquiries. This was done as a concession to those who had been pressing for full public inquiries and had sought a judicial review of the Department's decision not to hold Public Inquiries. The then Secretary of State changed the rules to create what became known as a Modified form of Private Inquiry...."

3.122. I am asked about Gerard Hetherington's comment in this note (his words), that I was concerned that this issue should not be forced in England because of decisions in Scotland and my reasons for taking this position. I do not think my concerns were about being "forced" into something. Rather, I would have wanted DH to be proactive and engaged and to ensure it had had early knowledge of any changes in Scotland. I would also have wanted DH and the devolved administrations to have a unified position on this issue. I have already explained in section 2 of this statement how the possibility of changes to Skipton Fund eligibility evolved in 2005 and early 2006. I think I probably did not want a replay of that situation, where the UK government was simply reacting to what was happening in Scotland.

3.123. I can see from the documents that on or around 14 June 2006 (i.e. shortly after this note) I was made aware of a draft letter that Andy Kerr MSP, Scottish Minister for Health and Community Care, proposed to send to Roseanna Cunningham MPS, convener of the Health Committee in the Scottish Parliament [DHSC0041198_048]. I have not seen the version of the letter that was actually sent, but the note from Jacky Buchan suggests the final letter is likely to have been the same or very similar to the draft. The draft letter included

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a section on holding a public inquiry. I will not set this out in full as this was Andy Kerr's letter and not mine, but I can see that the Scottish government also did not accept a need for a public inquiry into the infection of patients with hepatitis C. Andy Kerr relied on decisions taken prior to devolution by UK Ministers. He also expressed the view that an inquiry would not add significantly to the understanding of how the blood supply became infected with hepatitis C or the steps needed to deal with problems of this kind now or in the future and relied on the introduction of testing in 1991.

3.124. As explained above, officials had been asked to prepare a note by 16 June 2006 which Lord Warner and I could send to the Secretary of State and included information about the possibility of holding a public inquiry. The Inquiry has provided me with an email chain which I think shows that officials had prepared a draft submission, but Jacky Buchan thought it contained insufficient detail and so asked officials to re-draft it [DHSC5421014]. I do not think the draft submission would have been sent to me. Jacky Buchan's email, dated 22 June 2006, says:

"...On the inquiry issue this [the draft paper] just says "DH officials have advised an inquiry would be disproportionate and not justified in the circumstances". There is no argument, no pros and cons and no costings. Both MS(R) and MS(PH) will expect to see an argument for this decision and the pros and cons of having a public inquiry which would presumably include the cost. There is nothing in here about the steps that would have to be taken and nothing about the consultation with the Patient Safety and Investigations Branch that Gerard referred to in his note of 26 May.

Can you please provide a redrafted note for MS(PH) and MS(R)'s consideration, which takes account of the above points as soon as possible and no later than close on Monday 26 June."

3.125. On 26 June 2006 Gerard Hetherington sent a follow-up (and re-drafted) submission to Rebecca Spavin and Jacky Buchan [DHSC0041159_204]. This was sent to me – I have written on it. The submission set out a long list of pros and cons of holding a statutory public inquiry. The recommendation from officials was:

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"On balance therefore, we consider an inquiry to be disproportionate and not justified in the circumstances. This is in line with the views of the Scottish Minister, and we will continue to keep in close touch with officials in the Devolved Administrations, including Scotland..."

...

Recommendations:

....

Note the pros and cons of holding an inquiry and resist calls for an inquiry." (emphasis in original)

3.126. The note attached a draft note for Lord Warner and me to send to the Secretary of State (at Annex D). However, I think the documents show the note to the Secretary of State was itself re-drafted and then sent to me on 20 July 2006 (see below).

3.127. I am asked what investigation and analysis was expected of DH officials in response to William Connon's note on 25 May 2006 that "*Ministers asked that we look carefully at the issues surrounding the continued and increasing requests for [a public inquiry]*" [DHSC0015812]. I no longer recall what Lord Warner and I asked for in the meeting. William Connon's note suggests that we asked for information on Scotland's position on a public inquiry. But I think we may also have wanted to put pressure on officials to understand more about DH's actions/ inactions on documents that were contributing to calls for a public inquiry. By this time Scotland had released documents (and DH seemed not to have asked Scotland if it held documents) and documents had been returned from external solicitors.

3.128. William Connon's note indicates we may also have wanted to know more about how decisions on inquiries are taken, costs, and timescales. On 26 May 2006, we asked for a note for the Secretary of State on the possibility of a public inquiry. In June 2006 Jacky Buchan told officials that Lord Warner and I would expect to see arguments for and against a public inquiry and information on the costs and practical steps that would have to be taken to establish an inquiry.

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On 26 June 2006 officials provided a note setting out the 'pros' and 'cons' of a public inquiry. But I do not think this was what we were talking about when officials were asked to look at the *"issues surrounding the continued and increasing requests for [a public inquiry]."*

3.129. Returning to the chronology, on 5 July 2006 Jacky Buchan sent me Lord Warner's comments on the submission dated 26 June 2006 [DHSC0041159_251]:

"Jacky

We discussed.

I would be grateful if you could put MS(R) comments on this submission into MS(PH) for consideration.

MS(R) suggests that the weakness of DHs position is the slowness in collecting, reviewing and publishing documents.

*MS(R) also suggests that he would not go as far as to commission a public enquiry, but use the powers under the 1977 Act for SofS to commission a review of **ALL** the documents (new ones, old ones and if possible Scottish Ones) with a view to producing an independent legal/ judicial commentary on them and putting all these into the public arena.*

MS(R) thought that a retired Judge/ QC could do this with an administrative support team, with the aim to complete within 6 months.

I would be grateful for MS(HS) view.

Becca"

3.130. "*PH*" is written in hand under "*HS*" so I think "*HS*" was written in error and this was referring to me.

3.131. I wrote on this document that Lord Warner's suggestion was "*not a bad idea*" and that it should be included in the note to the Secretary of State [DHSC0041159_204, DHSC0041159_204]. It appears officials took legal advice on commissioning an independent review of the documents under the NHS Act 1977 [DHSC6676877]. Solicitors advised that this could be done, but the reviewer would not have powers to compel witnesses to give evidence or

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produce documents and so a reviewer may not be able to probe beyond the available documents. I do not think I would have seen this advice.

3.132. The Inquiry's questions describe Lord Warner's suggestion as an *"internal document review"*. That is wrong. The suggestion was for an external and independent document review.

3.133. On 20 July 2006 Jacky Buchan sent me a draft note for the Secretary of State [DHSC0041159_201]. I think this is a revised version of Annex D to the 26 June 2006 submission as Jacky Buchan has written on it:

"Caroline

A revised draft note from you and Lord Warner to SofS incorporating Lord Warner's suggestion. Are you content for this to go to SofS?"

On 20 July 2006 I ticked to indicate I was content.

3.134. On 24 July 2006 Lord Warner and I sent a note to the Secretary of State [DHSC0103399_003]. It explained that calls for a public inquiry had become *"more vocal"* and that the Scottish Minister for Health was rejecting calls for an inquiry and continued:

"While an Inquiry would ensure transparency, and be viewed by interested parties as an appropriate and independent response, as well as minimise the risks of judicial review, it would on the other hand not only be costly and resource intensive to run but also significantly raise the profile of the issue and expectations of interested parties that cannot be met. Importantly, it would also set a precedent, especially for an issue where we do not consider the UK was at fault.

Officials have therefore on balance advised that an Inquiry would be disproportionate and not justified in the circumstances, in line with the views of the Scottish Minister.

As an alternative we have explored the possibility of commissioning an independent review and commentary on the papers. With regard to the relevant statutory powers, this could be done under the NHS Act 1977, as something incidental to your duty as SoS to continue to promote a comprehensive health service designed to secure improvement in treatment of illness, and to provide services required for treatment, as it would amongst other things be a way of passing information to the public

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about these issues. It would provide additional reassurance and information to the public, and would build on the steps officials are already taking to review all the existing papers. It would however not provide powers to compel witnesses to give evidence or produce documents, and we would need to draw the terms of reference accordingly.

Conclusion

You are invited to note the current position, and the line we propose to take against the need for a public inquiry, and further, to consider the option of producing an independent commentary on the papers under the Act."

- 3.135. On 24 July 2006 the Secretary of State's private office wrote in a covering note to her **[DHSC0041306_038]**:

"...Caroline and Norman [Lord Warner] do not feel that an inquiry is justified, especially as we do not consider the UK was at fault. As an alternative they have explored the possibility of commissioning an independent review and commentary on all the papers, under the NHS Act 1977.

If possible Norman would like to make an announcement on this over the summer, to pre-empt questions in the Lords upon his return.

Are you content with the line they propose to take against the need for an inquiry?

Are you content for an independent commentary on the papers to be carried out?" (emphasis in original)

- 3.136. There is handwriting on this note which I think is the Secretary of State's. I think it says:

"If both NW + CF really believe an independent commentary is worth it and affordable (I assume will need to pay him/her) – fine. But I fear it will fuel, not deflect, calls for a public inquiry – which we are absolutely right not to do."

- 3.137. On 4 August 2006 Jacky Buchan wrote a note to me **[WITN5427031]**

"Caroline

SofS has seen your/ Lord Warner's note and commented [Jacky Buchan then repeated the Secretary of State's note set out above]...

Lord Warner's view is that this is really your call as it is your policy area. He does not think the calls for a public inquiry will go away whatever we do but thinks an independent commentary on all the papers will help to

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resist a public inquiry – he still thinks the commentary is worth doing if the money is available."

3.138. On 23 August 2006 I asked how much the independent commentary would cost and how long it would take [WITN5427031]. On 30 August 2006, Jacky Buchan wrote that officials estimated the review would cost up to £100,000 and was likely to take several months to complete. She also wrote "[t]hey have pointed out that there is no money identified for this" [WITN5427031] (page 2)].

3.139. I replied on 30 August 2006 as follows [WITN5427031] (page 2)]:

"Make sure Norman [Lord Warner] aware of this + Norman and I to have another talk after recess".

I do not now recall the content of any such conversation with Lord Warner after recess.

3.140. The review of documents that led to "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)" was commenced by DH in around June/ July 2006. I explain this in more detail below.

3.141. The Inquiry has provided a document headed "*email summary – public inquiry hepatitis C*" [DHSC5444515]. It appears to compile into a single document extracts from various emails between June – August 2006. The emails appear to be between officials (but I cannot see copy lists). They address the options of a public inquiry, an independent review of documents and an internal review of documents. I do not know who made this compilation, for what purpose it was made, or whether it is complete. With these observations in mind, the "*email summary*" says that William Connors emailed Ailsa Wight on 17 July 2006:

"...I assume that the work Linda [i.e Linda Page] is currently undertaking would be the "independent commentary" on the papers under the 1977 Act, referred to? If so, then I think we should explicitly state that so ministers know exactly what we are doing. I feel this is particularly

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important given the persistent request that we engage a Judge/ QC to carry this out."

3.142. I do not now know what was communicated to me about this. I was aware that DH had identified an official to identify and analyse the available documents, create an inventory and a report and that might take 6 months [DHSC0041159_204]. The note from Lord Warner and me to the Secretary of State, dated 24 July 2006, explained this, then talked about calls for a public inquiry and stated that an "*independent review and commentary on all the papers*" might be an alternative to an inquiry. The note does not say that the internal review by an official was to be an "*independent commentary*" on the papers by a retired QC/ judge under the 1977 Act.

3.143. On 23 November 2006 I gave written answers to two PQs which asked about DH's assessment of the cost of a public inquiry and the merits of undertaking a public inquiry. The answers were:

"The Government has great sympathy for those infected with hepatitis C and has considered the call for a public inquiry very carefully.

However, as previously stated, the Government does not accept that any wrongful practices were employed and does not consider that a public inquiry is justified. Donor screening for hepatitis C was introduced in the United Kingdom in 1991 and the development of this test marked a major advance in microbiological technology which could not have been implemented before this time.

The cost of holding a public inquiry would vary depending on the scope and length of any inquiry." [CBCA0000045]

3.144. I was asked a follow-up PQ and gave a written answer on 7 December 2006:

Question: "To ask the Secretary of State for Health, pursuant to the Answer of 23rd November 2006....what assessment she has made of the merits of undertaking a public inquiry into the supply of contaminated NHS blood products to people with haemophilia in relation to HIV and hepatitis B."

Answer: "We regret that patients were infected with HIV and hepatitis B through treatment with plasma products, prior to the introduction of heat treatment in the mid 1980s.

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These heat treatments were developed to inactivate HIV. HIV was much more sensitive to heat treatment than hepatitis C and hepatitis B. From the mid 1980s a range of heat treatments for plasma products were developed that eliminated HIV, hepatitis B and hepatitis C.

Donor screening for HIV was introduced in 1985 and donor testing for hepatitis B was introduced by 1972. Both these microbiological tests were introduced as soon as practicable. In view of these actions, we do not consider a public inquiry is justified.

In February this year, the Department published the report on Self Sufficiency in Blood Products in England and Wales...This provides a summary on the issue of infected blood products." [CBCA0000045]

3.145. Based on the documents I have seen before this PQ, the focus of attention had mainly been on hepatitis C rather than HIV or hepatitis B. To answer this question officials would have provided to me the information about practices in the 1970's and 1980's in relation to HIV and hepatitis B. I also think I would have had oral briefings from officials on issues like this.

3.146. In February 2007 Lord Archer announced that he would be conducting an inquiry. Later in this statement I explain the government's response to that.

3.147. The Inquiry has provided me with 2 draft submissions which, while undated (i.e. they must be drafts), I think must have been prepared in 2007 [DHSC0015740_001 and DHSC5459681]. I do not know if these are the same or similar to any submission that was actually sent to me but am happy to review this if further documents are provided. Both draft submissions indicate that an independent review of documents by a retired lawyer was still being considered as an alternative to a public inquiry and give a cost estimate for this. DHSC5459681 states that DH did not have money to fund this and that DH did not have the money to fund a public inquiry. I cannot now recall, however, the extent to which budgetary limitations influenced decision making but I do not think that was an overriding factor.

Response to Specific Questions

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- 3.148. I am asked what part I played in the government's decision not to hold a statutory public inquiry during my time in office and to explain my understanding of the reasons the government took this stance. The answers in this section are in addition to the information above.
- 3.149. It had been government policy not to hold a public inquiry. Lord Warner and I considered whether that policy should be maintained and both reached the view that it should. The documents indicate this was supported by the Secretary of State. My recollection is that I did not seek to overturn established government policy and support a public inquiry at this time because of the medical and scientific information I was receiving, which I was informed was compelling. I was informed that the advantages of using factor blood products to treat haemophiliacs outweighed the risks; that accurate screening for hepatitis C was only available in 1991; that even if self-sufficiency had been achieved, hepatitis C infections would still have arisen from blood supplies here; that NANBH had been considered a mild disease by the medical and scientific community for many years; and that BPL had developed a heat treated product in 1985 that had proved safe. I was not being presented with a significant amount of evidence that the medical and scientific community or the governments of the day had disregarded the risks of infection. I am neither a scientist nor a clinician but I do not recall being told by officials that there was a wide spread of medical and scientific views on these kinds of issues. I do not recall the CMO or Deputy CMO expressing concerns to me about the government's position or a view that the government should change the established policy (although I am happy to review this if documents show they did).
- 3.150. Whilst recognising the terrible impact of infected blood and blood products on individuals and their families, as well as ongoing concerns about documents and financial support, the information and advice I received led me to believe there were no wrongful actions employed and so I continued to support existing DH policy on this (which at the time was a policy shared by counterparts in the Scottish Executive). My recollection is that this was also the primary basis for the government's stance. There were also some concern that an inquiry would be costly, resource intensive and could raise expectations that could not be met.

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- 3.151. I have explained, as best I can, the meeting on 24 May 2006 and my wish to work proactively and alongside Scotland on the issue of a public inquiry (although in fact Scotland's Executive did not support an inquiry). I have explained Lord Warner's suggestion in July 2006, which I supported, of an independent review of documents.
- 3.152. I am asked why I considered Lord Warner's idea of an independent document review (not an "*internal document review*" as in the Inquiry's question) to be a good idea. Whilst I did not support a statutory public inquiry, I was obviously very aware of calls for a public inquiry, the understandable concerns about missing and destroyed documents, and the breakdown in trust in successive governments. I did come to believe that DH needed to do more to reassure the public about what documents were available and what they said. That is why I supported Lord Warner's suggestion. It is also why I wished, as explained later in this statement, to make documents available to interested parties. As far as I can recall I do not think I believed an independent review would end calls for a public inquiry, but it might help allay concerns caused by destroyed, missing and newly identified documents and provide information about events in the 1970's and 80's. Realistically, whether there was an independent review of documents or not, there would still be calls for a public inquiry, but such a review could still have been a positive action to take. It may also have eased the pressures on resources in the blood policy team.
- 3.153. I cannot really say with confidence why progress was not made with an independent external review of the documents. It would appear that the end of July 2006, a DH official had already started an internal document review and I do not recall if we thought it best to await the outcome of that. That was completed in February 2007 and, of course, Lord Archer announced his inquiry in February 2007 also. That may then have overtaken things but I do not think the possibility of an independent review was abandoned altogether [see **DHSC0041193_026** at paragraph 11]. However, I do not recall this and stress this is my attempt to assist the Inquiry. If there are other documents that help with this I am happy to consider them.

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3.154. I am asked about the Secretary of State's view that an "*internal review*" would "*fuel rather than deflect calls for a public inquiry*" whereas Lord Warner felt an "*internal review will help resist a public inquiry*." To be clear, while the Inquiry asks me about an "*internal review*", what was being considered was an independent, external review (i.e. the premise of the question is wrong). I have explained my position on this. Ultimately, the independent review envisaged by Lord Warner and I did not take place.

Review of Documents Commenced in 2006

3.155. I am asked to explain my role in commissioning the review of documents held by DH in June 2006 that resulted in the publication of the "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 (Non A Non B Hepatitis)" (the "NANBH Document Review Report") [PRSE0000642]. I am asked about what the purpose of the review was and who undertook it. I am asked why it only covered documents from 1970 – 1985. I am also asked whether the review was a factor in the government's decision not to hold a public inquiry and whether it was a factor in the decision not to provide witnesses to Lord Archer's inquiry.

3.156. Finally, I am asked whether I read the NANBH Document Review Report and whether I considered it had fulfilled its objective. The premise to the Inquiry's question is that the NANBH Document Review Report was completed after I left DH. In fact that is not correct. As explained below, it was completed in April 2007 and provided to Lord Archer and other interested persons on 22 May 2007.

3.157. For context, the review that led to the NANBH Document Review Report was an internal DH project. It was prompted at least in large part by the return of documents to DH from the external solicitors.

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3.158. I have already explained that Lord Warner answered PQs on 24 May 2006 and was asked about these returned documents. There was a meeting between me, Lord Warner and officials later on 24 May 2006 [DHSC0015812]. On 26 May 2006 Rebecca Spavin, from Lord Warner's private office, emailed officials and Jacky Buchan about the returned documents. Her email included [DHSC5286062]:

"Whilst sympathetic to the fact you were not the officials that caused this problem and that resources are an issue both MS(PH) and MS(R) were instant [I think this should say insistent] that more proactive measures are taken to appease the Lords that are campaigning on this issue."

3.159. A series of actions was then set out, including that the CMO and DH Permanent Secretary should be contacted *"to set out the seriousness of this issue and that this may need him and Hugh Taylor to step in..."* and that it had been agreed that someone independent, possibly from the *"Information Commission would conduct a 'stocktake' of the documents..."* (i.e. those recently returned to DH). Lord Warner and I also asked for a note to send to the Secretary of State that would review the contents of the returned files, provide information on the returned files and discuss the possibility of conducting a public inquiry.

3.160. I have already referred in this statement to Gerard Hetherington's submission, dated 26 May 2006, sent to Rebecca Spavin and Jacky Buchan [DHSC0041159_205]. The submission contained a section on documents:

"Documents

a) Handling of documents returned by solicitors

3. Both Ministers [i.e. Lord Warner and I] requested that we should give high priority to examining the files which had been returned to the Department by Blackett, Hart and Pratt (solicitors). While I have reprioritised the work of existing staff in the Division, the work required to examine the returned documents, together with several other related tasks, represents a major undertaking. I have urgently requested additional staff from the Business Partnership Team. We have also arranged with SOL to commission an initial analysis of what the returned papers contain to be carried out by an independent legal expert (panel counsel). We will also pursue MS(PH)'s suggestion of seeking assistance from the Information Commission.

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4. Lord Warner pointed out that Baroness Barker had asked what steps the Department would be taking to ensure that the returned documents would be adequately protected [I believe Baroness Barker asked about this in oral questions to Lord Warner on 24 May 2006]. We have raised this point with SOL who have given assurances that the returned documents are being held securely.

b) Documents which have been destroyed

5. We know that there were two instances in the 1990's where papers were destroyed in error. The first instance was following the HIV litigation. Currently we do not know the full extent of what was destroyed. We propose to establish more information about these papers, and the circumstances of the destruction. In the second instance, we know that 14 volumes of papers relating to the...ACVSB were destroyed. An internal investigation was undertaken in April 2000 by colleagues in Internal Audit to establish why these files were destroyed. We have a copy of the report by Internal Audit, therefore in relation to these files we may be able to establish whether some of the papers recently returned include papers from the ACVSB. We will also list the documents (of which there are thousands) recently released in Scotland.

...

9. I note your request for a draft paper by 16 June for MS(R) and MS(PH) to send to SofS. I cannot at this stage say whether the review of the returned files will have been completed by then. I will, however, report back as soon as possible setting out the programme of tasks in this area and a timetable for this work to be completed."

3.161. This submission, around 3 months after publication of the Self-Sufficiency Report, set out that DH had not yet reviewed the documents returned by external solicitors, that Scotland had released a large number of documents, that officials were planning to look further into documents understood to have been destroyed after the HIV litigation, and that they may be able to establish whether some of the recently returned documents included papers from the ACVSB that had been destroyed. Alongside this, there were ongoing calls for a public inquiry to be established and I was aware of criticism of the Self-Sufficiency Report, including that it was based on an incomplete document set. The 26 May 2006 submission repeated that both Lord Warner and I wanted DH to prioritise reviewing the files returned from Blackett Hart & Pratt, and there was a plan to instruct counsel to help expedite this.

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3.162. Gerard Hetherington also prepared a submission dated 26 June 2006, which I read⁵ [DHSC0041159_204]. That submission was intended to provide an update from the 26 May 2006 submission and gave further advice on the issue of a public inquiry. It said that a report from counsel (i.e. an independent barrister) on the documents returned from Blackett Hart & Pratt was expected imminently.

3.163. The submission also said:

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

3.164. This must refer to the review of documents and writing what became the NANBH Document Review Report. I wrote on this submission, "okay. The note to SoS includes [Lord Warner's] idea I think?". I thought that, regardless of the DH internal review of documents, an independent review should still be considered.

3.165. I am asked about my role in "commissioning" this document review. I cannot say what precise role I had. It is clear that Lord Warner and I had concerns about documents now being returned to DH from both external solicitors and Scotland. We wanted action taken in response. But I cannot tell from the documents whether Lord Warner or I actually "commissioned" the document review and NANBH Document Review Report or we were involved in setting the remit, or whether this was a decision made by senior officials or the

⁵ The Inquiry has provided me with an earlier version of this submission, dated 21 June 2006, but I am as confident as I can be that I considered the submission dated 26 June 2006. First, my writing is on that document and secondly, I have seen an email from Jacky Buchan to officials, dated 22 June 2006, asking for further work to be done on the submission sent on 21 June 2006 [DHSC5421014].

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Permanent Secretary as an operational matter, driven by pressure from Lord Warner and me. I have not seen a submission to Lord Warner or me with a proposal for the review and costings. However, I was clearly aware it was happening.

3.166. I am asked how and why the person who carried out the review was selected. I do not think I can assist – it appears officials were responsible for this decision. It appears that an official called Linda Page was responsible or largely responsible for carrying out the document review and then writing the NANBH Document Review Report. However, in preparing this statement I have also seen a *“Project Initiation Document”* for the document review, dated 27 July 2006 but amended in September 2006. This sets out the initial *“business case”*, *“project objectives”* and *“deliverables”* [WITN5427015]. It says that the project is a *“result of direct Ministerial interest...”* It also refers to a *“Project Board”* made up of Gerard Hetherington, William Connors and Ailsa Wight and Hugh Nicholas undertaking a *“quality assurance function”*. I do not think I would have seen this document at the time.

3.167. I am asked how independent those who carried out the review were considered to be. I cannot say how independent Linda Page was considered to be by officials but I think she worked for DH. I would not have viewed her as independent (although I have no reason to think she was involved in decisions about destroying or storing documents in the 1990s). The members of the *“project board”* were obviously DH senior officials. As already explained, Lord Warner and I had considered the merits of an external, independent review (short of an inquiry) which was different from this internal DH review.

3.168. I am also asked if cost was a factor in the choice of who to appoint. I am not aware that cost was a factor in who to appoint to undertake this review of documents – it was an internal DH review and it appears to have started before Lord Warner and I canvassed the Secretary of State's views at the end of July

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2006 on a public inquiry or independent review. On the issue of costs, the inquiry has referred me to a draft submission which I think must date from around April 2007 [DHSC5459681]. As explained above, that draft submission includes possible costs of a public inquiry and an independent review of documents and says "[w]e do not have the money to fund" either. But I do not think this is relevant to the choice, in June 2006, of who to appoint to conduct the DH document review.

3.169. Returning to the chronology, I have explained earlier in my statement that Lord Warner and I sent a note to the Secretary of State, dated 24 July 2006, which contained background information about documents [DHSC0103399_003].

3.170. At some point during the document review officials identified 47 files of unregistered documents that were previously thought to be mislaid or destroyed. I think I may have learnt about this in September/ start of October 2006, but I cannot be more specific. It appears Lord Jenkin contacted Lord Warner because he was informed about the files and wanted this brought to the attention of Lord Warner and me. On 27 September 2006 Lord Warner's private office emailed Linda Page, copying Jacky Buchan [DHSC5121353]:

"Linda

I've just had a word with William who advised me to address this to you.

Lord Jenkin has called to say he and one of his campaigners have received letters from an official with the surname 'Burke' – assuming this is David from CSC who leads MS(PH)'s correspondence team. He is under the impression that DH has had the 47 boxes of files/ or has 47 boxes of files now.

He has asked for a letter and it to be brought to the attention of MS(R) and MS(PH). In particular he would like to know where we've got to in examining the files, and whether the 47 boxes were the ones which were sent down from the Scottish lawyers. I understand that Lord Jenkin has inspected our premises in person, in line with his entitlement as a former health Minister, and found no files.

Apologies for this email as my knowledge of this is scant..."

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- 3.171. It seems Linda Page replied to Lord Jenkin. Jacky Buchan emailed William Connon on 5 October 2006 [DHSC5121353].

"William

Can I please have an urgent short submission in a form that can be put directly to MS(PH) and MS(R) regarding the 47 files referred to in the letter. The letter states these are not newly discovered – were they considered as part of the report on self sufficiency? There is no indication in this letter as to whether they were/were not. If they were not, can you please provide an explanation.

Also, it would have been helpful given the sensitivity of this issue if the letter had come for Minister's approval before being sent out, particularly given who the recipient was and the request that the letter be brought to the attention of MS(PH) and MS(R).

Grateful for the submission by 4pm Monday at the latest."

- 3.172. On 8 October 2006 Liz Woodeson sent an email to William Connon about this and wrote:

"I was talking to Jacky Buchan last week...One of the things Jacky mentioned was a letter to Lord Jenkin about contaminated blood products files. Apparently Caroline is very worried about this and has agreed with Lord Warner that he should write urgently to Lord Jenkin to clarify whether then 47 files mentioned in the letter were included in the self-sufficiency report. If not, she thinks we are in big trouble!..."
[DHSC5121353].

- 3.173. I do not have a good memory of this but it appears I was unhappy with how officials had managed this correspondence with Lord Jenkin and alarmed at the discovery of more documents. I was concerned about the potential impact on the Self-Sufficiency Report's analysis and conclusions if these documents had not been included and the impact on public confidence.

- 3.174. On 9 October 2006 William Connon provided a submission to Lord Warner, updating him on the document review and work on the 47 files that had been located, and also providing a draft letter to send to Lord Jenkin [DHSC5002462]. It appears this was copied to Jacky Buchan [DHSC5052193]. The submission included:

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Project Brief

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

There are three sets of documents held by the Department

- 1. Wellington House files, these have always been in the possession of DH and held at Wellington House, including the unpublished references to the [Self-Sufficiency Report]. This includes the 47 lever arch files which Lord Jenkin refers to, which were not properly filed on registered departmental files.*
- 2. Documents that have been returned to DH by a firm of solicitors in the North East following press articles on lost documents.*
- 3. Files recalled from Departmental Record Office (DRO) Nelson, these files were recalled as part of the 'look back' exercise and a subsequent search for relevant files."*

Project Deliverables

- An inventory of all documents related to the subject held by DH. There are about 7,000 – 8,000 documents. The majority of these documents relate to 1970 – 1985.*
- A review of all documents inventoried to assess the approach taken between 1970 and 1985 to the inactivation of blood products: Non-A Non-B Hepatitis (Hepatitis C).*
- Prepare and process for release, in line with, but not under FOI, two sets of documents: those relating to the unpublished documents referred to in the published [Self-Sufficiency Report] and those documents returned to DH by a firm of solicitors.*
- In as far as it is possible to do so, establish which papers and/or files have actually been destroyed, when this happened and what they were likely to contain.*
- Report on the documenting the outcome of the project" [sic].*

3.175. The conclusion in the submission was:

Conclusion

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

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

3.176. On 21 February 2007 I answered 2 written PQs tabled by Jenny Willott MP.

She asked [DHSC0006197_023]:

"...how many and what proportion of documents relating to the infection of haemophiliacs with contaminated blood products have been returned to the Department of Health by Blackett, Hart and Pratt solicitors have (a) undergone independent legal examination and (b) been passed to the Haemophilia Society.

...how many documents relating to the infection of haemophiliacs with contaminated blood products have been returned to the Department by Blackett, Hart and Pratt solicitors..." [sic]

3.177. The written answer given by me was:

"In May 2006, Blackett, Hart and Pratt solicitors returned 623 documents to departmental solicitors. All the documents were reviewed by independent counsel, before they were sent to officials in the Department. The vast majority of these documents (604 in total) were released in line with the Freedom of Information (FOI) Act. The documents were sent to a number of individuals at their request and to the Haemophilia Society.

Some documents were withheld under FOI. However, officials are further reviewing these papers with a view to releasing them if possible."

3.178. The background information to these PQs provided by officials included that the documents from Blackett Hart & Pratt had been returned to DH on 17 May 2006 and there was a plan to release another 9 documents.

3.179. On 24 April 2007 Liz Woodeson sent a submission to me and to Lord Hunt (who had taken over from Lord Warner as Minister in the Lords) on the document review and NANBH Document Review Report [DHSC0041193_026].

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3.180. This submission stated:

Issue

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

Recommendation

2. We recommend that you:

- agree to the release of this report to interested parties and*
- agree that we should prepare the papers reviewed for release in line with FOI (this will cost around £40,000 and take four to five months)*

...

Background

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

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

...

The way forward

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

9. In addition we recommend that we should release the documents reviewed in line with FOI principles. Overall, there are around 4,500 of these documents so this will be a major task. It is estimated that the preparation and processing of the documents will take approximately four

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to five months...The cost is estimated to be at least £40,000. Nevertheless, we recommend this approach, as release of the documents may go a considerable way to support our line that a public inquiry is not required as all the information is in the public domain. This includes fifty-eight previously unpublished documents specifically referenced in the current report, which we would treat as a priority...

11. Given that this inquiry [i.e. Lord Archer's inquiry] is going ahead, we assume that you will not want to pursue the option of commissioning and independent review by a QC for the time being. (We did not recommend this in our earlier submissions because we estimate that such a review would cost in the region of £200,000. We do not have funds available for this. And we doubt that it would satisfy external parties anyway as an independent review by a QC would not be able to compel witnesses to give evidence...."

3.181. I am not sure which are the "earlier submissions" Liz Woodeson refers to here.

It may be the finalised versions of undated, draft submissions provided to me by the Inquiry (explained above, **DHSC0015740_001** and **DHSC5459681**) but I do not know. In any event, this submission suggests to me that a final decision on whether to commission an independent commentary by a retired lawyer had not been taken by that point but this had probably now had been overtaken by Lord Archer's inquiry. That made sense, but I do not think it had been permanently ruled out as a future option (see reference to "we assume that you will not want to pursue the option...for the time being").

3.182. Annex A of the 24 April 2007 submission set out:

"Source of Papers Reviewed

- *Wellington House. These have always been in the possession of the Department and were located at Wellington House in 47 lever arch files.*
- *The unpublished references to the [Self-Sufficiency Report]. These were in Wellington House in two lever arch files.*
- *The documents 'returned by solicitors.' These files were returned to the Department following press articles on documents destroyed in error, and were in 11 lever arch files.*
- *Files scanned at DRO Nelson. A scan of files at DRO Nelson identified four documents relating to NANBH.*

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- *Documents released by the Scottish Executive; 351 documents held on CD.*
- *All documents are now in registered files (127 files)."*

3.183. Jacky Buchan wrote on the submission "*seen and agreed by Hugh Taylor*". I agreed the course of action proposed by officials, i.e. to release the NANBH Document Review Report and to release the documents that had been reviewed in line with FOI Act principles. I wrote "*good work by officials..*" on the submission.

3.184. The NANBH Document Review Report was sent to me alongside this submission. I would have read this.

3.185. On 22 May 2007 the NANBH Document Review Report was sent to Lord Archer, along with 56 documents, including the DH Internal Audit Review from April 2000 [DHSC0103399_079 and PRSE0000642]. The letter to Lord Archer also explained that DH had released two sets of documents during the course of the document review process and that:

"[t]he review identifies 4,629 official documents that are available, including those released with this review. These cover a number of areas related to haemophilia and plasma products: HIV/AIDS; self-sufficiency; hepatitis and hepatitis B; and BPL/ NHS re-organisation. We propose to release these documents in line with FOIA. You will appreciate the time required to prepare this number of documents and my officials will release the documents in batches at monthly intervals."

3.186. The same letter and the NANBH Document Review Report were sent to Lords Jenkin and Morris and to Betty Williams MP, Chair of the All Parliamentary Haemophilia Group.

3.187. By letter dated 27 May 2007 Lord Archer replied [DHSC0041193_002]:

"Thank you for providing me with a copy of the review of documentation on the safety of blood products. I understand that my colleagues on the Inquiry have also received copies."

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We have not yet had an opportunity to study them in detail, but the Review appears to be a comprehensive one, and if occasion arises, we will avail ourselves of the offer in your final paragraph, and communicate with Ms Linda Page."

3.188. On 7 June 2007 Lord Hunt answered a written PQ in the House of Lords, tabled by Lord Morris. Lord Morris had asked why DH's 2000 internal audit report had not been published and whether it would now be placed in the House library and provided to Lord Archer [ARCH0002895_001 (page 2)]. Lord Hunt's answer was:

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

3.189. As referred to in my letter dated 22 May 2007 to Lord Archer DH's intention was to release the documents in batches. On 13 June 2007 Linda Page sent me a submission with notification that a batch of documents would be released and provided to Lord Archer the following day [DHSC6341171 and DHSC0006612_026]. The plan was then to release batches at monthly intervals. On 25 June 2007 I answered a written PQ on this [WITN5427032] (page 1)]. I left DH at the end of June 2007 so cannot comment further on the documents that were released.

Responses to Questions on Review of Documents and NANBH Document Review Report

3.190. In the section above I already answered a number of the questions posed by the Inquiry.

3.191. I am asked about the purpose of DH's document review. Gerard Hetherington's submission dated 26 June 2006 says that work would be done "to identify and analyse all the papers currently available, including the very large number

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recently released in Scotland" and that a comprehensive inventory and report of all the papers would be prepared. I do not think that a more detailed description of the remit of work was sent to me for consideration at this time, but am happy to revisit this if documents show it was.

3.192. The Blood Policy team prepared a note, dated 12 July 2006, which appears to be for me [DHSC6548519]. It said:

"MS(PH) will be familiar with the request for the Government to hold a public inquiry into the issue of haemophilia patients infected with hepatitis C through contaminated blood products. MS(PH) will also be aware of the sensitivity around the destruction of past papers on blood policy.

In view of the parliamentary interest on this subject, we have recruited a member of staff to carry out a full examination of the relevant papers, both registered and unregistered, to classify and record all the papers on this subject that are still in existence. We will also be considering how to make available papers within the context of the [FOI] Act."

3.193. The final NANBH Document Review Report stated [PRSE0000642]:

"13. The aim of this review was to identify, and consider the content of, all documents held by the Department of Health (DH) in relation to the safety of blood products, specifically the viral inactivation of blood products for non-A non-B hepatitis (NANBH), during the period 1970 – 1985.

21. The review therefore aimed to deliver the following:

- An inventory of all documents held by the DH, these being those returned by the firm of solicitors and those held in unregistered files at DH (Wellington House), relating to the safety of blood products between 1970 and 1985.*
- The identification, where possible, of missing documents.*
- The preparation and release, in line with FOIA, of two sets of documents. Set one relates to the referenced documents referred to in the [Self-Sufficiency Report]. Set two are the photocopies of documents returned to the DH in May 2006 by the firm of solicitors who had represented claimants during the HIV litigation.*
- A report (this document) on the content of documents dating from between 1970 and 1985 on post-transfusion NANBH."*

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- 3.194. I have already answered questions about who carried out the review, how they were selected, how independent they were and cost as a factor in who to appoint.
- 3.195. I am asked why the document review only covered documents from the period 1970 – 1985. The NANBH Document Review Report was limited to this period but I am now not sure if the document review covered some documents outside this period. Officials may be able to say more about this. Regardless, I cannot now say from my own knowledge why a window of 1970 - 1985 was selected. Gerard Hetherington's submission, dated 26 June 2006, did not specify this time period [DHSC0041159_204]. Neither did a note to me on the topic, dated 12 July 2006 [DHSC6548519]. As explained above, my reading of the documents is that this review was led by officials and I do not recall having a role in setting or approving the "*project brief*" or "*project deliverables*" prior to the work starting. I would not have expected to be involved although I do recall update conversations with Linda Page and the documents show me the project had high level departmental support. I have seen later documents which would suggest the end date of 1985 was selected as heat treatment of plasma products was introduced in 1985 [DHSC0041193_026 and DHSC5479536].
- 3.196. I am asked if the review of documents culminating in the publication of the NANBH Document Review Report was a factor in the government's decision not to hold a public inquiry before now and, if so, the weight placed on it. I think this must be asking about the decision not to hold a public inquiry from around June 2006 to June 2007 (as I cannot comment on decisions after that). I do not think the fact the DH document review was being done was a significant factor in the decision not to hold a public inquiry – as far as I can tell the document review was primarily driven by the uncertain and unsatisfactory position on documents (which itself was feeding into calls for a public inquiry). However, I cannot say it had no weight. Depending on the documents, it may have reaffirmed the position taken by DH at that time or may have caused DH to reconsider its position. The NANBH Document Review Report itself says that

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the review was "*prompted by calls for a Government backed public inquiry and the return of documents, previously considered missing, by a firm of solicitors*" [PRSE0000642 (page 3)]. By the time NANBH Document Review Report was completed, Lord Archer had commenced his inquiry.

3.197. On 24 April 2007, when Liz Woodeson sent the final Report, the submission said [DHSC0041193_026]:

"[t]he report concludes that the documents provide no new information that challenges the Department's position. The papers reviewed support the view in the 1970s and early 1980s that NANBH (hepatitis C) was a mild disease, a view widely shared at the time. CMO has commended the report's rigorous analysis and agreed its conclusions."

Therefore, I was not provided with information that would have led me to revisit the government's established policy position. I was also reassured by the view of the CMO. Releasing the documents that had been reviewed was important to the transparency of the process and provided evidence behind the NANBH Document Review Report's findings.

3.198. I have already explained that Lord Warner and I did consider obtaining an independent review of documents as an alternative to a public inquiry.

3.199. I am asked if the DH's review of documents was an influencing factor in the government's decision not to provide witnesses to the Archer inquiry. I do not think it was.

3.200. I am asked if, despite the NANBH Document Review Report being completed after I left DH, I read it. I am asked whether I considered it had filled its objectives. As explained, the NANBH Document Review Report was completed in April 2007 and sent to Lord Archer and others in May 2007. I would have read it during my time in office.

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3.201. In relation to whether I thought it had fulfilled its objectives, I do not remember what I thought in 2007. I have not seen any documents that show I was dissatisfied with the report.

3.202. Turning to the stated objectives of the NANBH Document Review Report (paragraph 3.193 above), as I understand it an inventory of documents held by DH relating to the safety of blood products between 1970 and 1985 was prepared.

3.203. The second objective was to identify, where possible, missing documents. It seems that the NANBH Document Review Report did manage to make some progress on this. Paragraph 103 onwards of the Report referred to two instances of documents relating to blood products being mislaid or destroyed and continued:

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

105. In the second instance, between September 1994 and March 1998, a number of files recording the work of the [ACVSB] between May 1989 and February 1992 were inadvertently destroyed.

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

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

108. 24 of these 102 registered files contain documents that, at that time, were subject to a Public Interest Immunity (PII) claim by the DH that they should not be disclosed in civil litigation on the grounds of public interest.

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

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

3.204. This third objective was to prepare and release two sets of documents in line with the FOI Act. Paragraph 21 of the NANBH Document Review Report stated that these had been released during the course of the review. As explained above, further documents were released in batches.

3.205. The final aim was to prepare a report on the content of documents dating from between 1970 and 1985, on post-transfusion NANBH. I do not feel that I am now in a good position to assess the merits of the conclusions of that report, other than by reference to other general observations earlier in this statement. It is many years after the event and even at the time I did not see the thousands of documents that were inventoried, and I did not read the large number of documents that must have been relied on.

Responses to Questions about Documents Returned by Solicitors

3.206. I am asked questions about the documents returned from external solicitors to DH. I have already explained the background to this.

3.207. I am referred to [DHSC5414762] and [DHSC0041304_052] and asked why I felt it was insufficient to state that the documents returned by solicitors were in secure storage as per departmental procedures.

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3.208. On 24 May 2006 Lord Jenkin asked Lord Warner an oral PQ about the return of these documents [DHSC0041304_052]. Baroness Barker asked a follow-up question:

Question: "...what steps will the Department of Health take to ensure the safety of the documents and to ensure that they will not be destroyed inadvertently, as documents that should have been kept for 25 years were destroyed between 1994 and 1998?"

Answer: "My Lords, they were passed from solicitor to solicitor. Government solicitors have professional responsibilities in this area. My colleague Caroline Flint and I will ensure that they are safeguarded, but we need time to go through the documents to see what their significance is. There are a large number of documents to be gone through."

3.209. I cannot now say what, if any, discussions Lord Warner and I had about how the returned documents should be stored prior to this answer. The briefing pack prepared for Lord Warner in advance of the 24 May 2006 PQ did not contain information on about storage of the documents. However, both Lord Warner and I would clearly have been conscious that it was essential to give public reassurance about this because of concerns documents had been destroyed or mislaid in the past. The question Baroness Barker posed to Lord Warner reinforces this.

3.210. On 2 June 2006 Jacky Buchan emailed Gerard Hetherington and other officials [DHSC5414762]. Officials had sent a draft letter to Lord Jenkin. I have not seen a copy of it when preparing this statement. Jacky Buchan wrote:

"Gerard

Thank you for providing the draft letter. Unfortunately MS(PH) is not content with the draft. She does not feel it addresses sufficiently the safe storage issue – she said we should have had the original documents in safe storage so simply saying they are being stored under secure departmental procedures is not enough.

MS(PH) said we also spoke at the meeting about someone independent listing the documents we receive so there can be no question of documents going missing – this is not clear in the letter.

Grateful if you could take these points on board and provide a revised draft..."

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3.211. On 6 June 2006 I approved a re-drafted letter to Lord Jenkin [WITN5427014].

3.212. The Inquiry has also provided me an unknown document which I think would have been prepared by officials [DHSC0041159_228]. It is undated but must have been written after 6 June 2006. It includes:

"We have raised with SOL the question from Baroness Barker about what steps the Department would be taking to ensure that the returned documents would be adequately protected. They have given assurances that the returned documents are being held securely. SOL have arranged for independent Counsel to list the recently returned documents and undertake an initial evaluation of their contents as set out in the letter of 8 June 06 from Ministers to Lord Jenkin. A report from Counsel is expected imminently..."

3.213. This shows that officials had taken legal advice as a result of Baroness Barker's question to Lord Warner (see also [DHSC0041159_205] at paragraphs 3 and 4).

3.214. I do not think I was concerned that anyone in DH would actually destroy these documents. Rather, I wanted to provide reassurance to the public, the Lords and MPs given the background distrust and concerns about DH's handling of documents in the past. Part of issue, as I understood it, was that documents had been destroyed contrary to departmental procedures and so I did not think storing these documents as per departmental procedures would be sufficient reassurance to the public.

3.215. I am asked what investigation or analysis was undertaken to establish whether any of the returned documents included any of those which Lord Jenkin or Lord Owen were previously informed had been destroyed. I am also asked what investigation or analysis was done to establish which documents were still recorded as missing.

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3.216. Lord Warner and I met with officials on 24 May 2006, William Cannon noted the following plan **[DHSC0015812]**:

"Destroyed documents: although not explicitly requested, I think it would be helpful to compile a definitive list of all the sets of documents which have been destroyed (there are two sets and we know more about one than the others), when they were destroyed (if we know), circumstances of destruction and likelihood of the documents which have been found by solicitors being copies of some of the destroyed documents. We have this info but just need to pull it together in a crib sheet. We should also perhaps attach the list of documents (of which there are thousands) recently released by Scotland."

3.217. In preparing this statement I have not seen a list like this and cannot remember if I saw it at the time.

3.218. The documents returned from external solicitors were catalogued and reviewed by independent counsel. My understanding is that they were then reviewed by Linda Page during her review of documents held by DH (which resulted in the NANBH Document Review Report) and were also released.

3.219. As I understand it, part of the challenge of assessing whether any of the returned documents were those Lords Jenkin and Owen were previously told had been destroyed, was that DH did not know exactly the extent of what had been destroyed or have a detailed list of documents which had been destroyed (that could make it problematic to marry up the returned documents with missing documents) [see **DHSC0200123** (page 31) and **DHSC0041159_205** (paragraph 5)].

3.220. The DH internal review of documents did attempt to ascertain whether the returned documents were the same as those already held by DH. I have already set out extracts from the NANBH Document Review Report **[PRSE0000642** (from paragraph 103 of that Report)]. The documents returned by external solicitors were believed to be some of the documents previously thought mislaid. I cannot now say if this included papers linked to Lords Owen or Jenkin.

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Officials may be able to assist with this. The Report accepted that it had not been possible to state that all documents previously recorded as missing had been located, but concluded a very substantial number relating to the time in question had been and were included in the inventory (paragraph 109 of the Report).

Responses to Questions about Unregistered Files in Wellington House

3.221. I am asked questions about DH officials locating 47 boxes of unregistered files in Wellington House. I have summarised above the chronology as best I can.

3.222. As a preliminary point my understanding from reviewing the documents is that 47 arch lever files, and not 47 boxes (as in the Inquiry's question), were located in Wellington House. This is clearly still a significant number of documents.

3.223. I am asked when I was first made aware of the discovery of the Wellington House files. I cannot remember when I was first made aware. Doing my best with the documents I have seen, this may have been in September/ start of October 2006.

3.224. I am asked what I was told about the circumstances in which David Burke discovered the documents. I do not recall what I was told and can only refer to the chronology above. It appears someone called David Burke worked in the DH customer service centre. However, it is not clear from the documents if the reference to "*Burke*" is in fact David Burke, or if David Burke actually discovered the 47 files (not boxes). I would be surprised if someone working in the customer service centre was looking for documents but I may well be wrong. Officials may be able to assist the Inquiry further on this.

3.225. I am asked if the discovery of these unregistered files led to any further investigations or enquiries into other unregistered files within DH and if not, why

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not. I do not now know the answer to this. In preparing this statement I have not seen documents to suggest this happened but am happy to revisit this if such documents exist. Again, officials may be better placed to answer this question.

The Department of Health's Engagement with the Archer Inquiry

3.226. I am asked a series of questions about DH's engagement with Lord Archer's inquiry. Before answering these, I wish to repeat that I cannot be confident I have seen all documents relevant to these questions. The Archer Inquiry was established in February 2007, so well into the period of Preservica documents and, as explained above, I understand GLD lawyers have not been able to search those Preservica documents. In addition, some of the emails provided to me by the Inquiry have names redacted from them, meaning at times I do not know the sender or recipient or the names of people referred to in the email.

Events from 16 February to 30 March 2007

3.227. By letter dated 16 February 2007 Lord Archer wrote to the Secretary of State to inform her he had agreed to chair an independent inquiry [DHSC0041193_056]. Lord Archer's letter included:

"It will be much appreciated if someone from the Department can be available, on a mutually agreed date, to say what its position has been and is; and to lay before us any further facts, of which you think we should be aware."

3.228. On 19 February 2007, William Cannon sent me a note to inform me about reports of an independent inquiry [DHSC6698142]. I assume his note was prepared before DH received Lord Archer's letter. I asked for an explanation of the implications of this for DH and how an inquiry was being funded.

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3.229. Lord Archer's letter was received on 19 February 2007 (see date stamp on letter). On the same day, my private office asked for advice on responding to Lord Archer's letter and for a draft reply [WITN5427034].

3.230. The Inquiry has provided me with a number of emails on 20 February 2007 [DHSC6698110 and DHSC5264793]. Although the names on some of the emails are redacted, they appear to be between officials and solicitors working together to prepare the advice and draft reply I had requested. I do not think I would not have seen those email exchanges. It seems they fed into in the document sent to me on 21 February 2007 (see below). It is likely that Jacky Buchan would have been asking officials for information at this time and updating me on what was known about Lord Archer's inquiry, but I cannot now say more about the content of such conversations (as seen in [DHSC5152770]).

3.231. I have been provided with 2 emails which address in part my questions on the note dated 19 February 2007. I cannot tell which, if either, was sent to my private office as the recipient name is redacted [DHSC0041193_056 and WITN5427015A]. The emails say the situation surrounding Lord Archer's inquiry was very unclear and officials were drafting a letter to Lord Archer for me to consider.

3.232. By email dated 21 February 2007 William Connon sent Jacky Buchan a covering email with officials' advice and a draft letter [DHSC5458684]. The covering email stated:

"As requested, I attach a draft letter for MS(PH) to send to Lord Archer following his letter to SofS regarding his inquiry..."

The advice is that we should not become involved in Lord Archer's Inquiry at all. The attached draft, which has been cleared by Perm Sec [DH's Permanent Secretary] and Sol [solicitors], takes a fairly robust line.

...

As I explained yesterday, we have very little information about the exact nature of the inquiry. I am concerned that if we enter into a dialogue about

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the details with either Lord Archer or the Haemophilia Society (HS) then we will simply become implicated in the inquiry, by association. I have therefore decided not to do this.

The main points are:

- *It is recommended that no DH officials appear before this informal inquiry.*
- *The Inquiry is being launched by Lords Archer, Morris and Turnbull.*
- *I am told that the inquiry is not directly linked to the Haemophilia Society, although Lord Morris is the President of the Society.*
- *I have no specific information about the terms of reference, location, funding or what form exactly the inquiry will take.*
- *I would not advise that we make any contact with those launching the inquiry to request further details.*
- *The draft does offer to provide Lord Archer with a copy of the report currently being compiled on all the documentation available to DH. You will be receiving a submission on this in the next few weeks. The report should be ready by the end of March*
- *I will continue to monitor the situation and keep everyone fully informed of any developments.*
- *I am copying this to the DA's [devolved administrations] for information, as I believe they will be taking a similar line...."*

3.233. The Inquiry has sent me multiple versions of the draft letter to Lord Archer. These were drafted by officials and have my name printed at the bottom [e.g. **DHSC0006752** and **DHSC0006752**]. To be clear these drafts were not sent to Lord Archer. The Secretary of State sent a letter on 30 March 2007, the content of which was different. I think (but cannot be sure) the draft letter sent to me on 21 February 2007 by William Connon is at **[DHSC6698110 (page 37)]**.

3.234. On 6 March 2007 William Connon emailed Jacky Buchan asking for an update. Jacky Buchan replied **[DHSC5460426]**:

"MS(PH) is meeting with SofS and Special Advisers to discuss the issue before a reply is sent and I am still pushing for a meeting date sooner rather than later."

3.235. Later that day Jacky Buchan emailed Dani Lee in the Secretary of State's private office **[DHSC5460473]**:

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"Dani,

I understand Ush [my diary secretary] has been trying to set up a meeting with SofS to discuss Lord Archer's inquiry and you have asked why.

Caroline has asked to meet with SofS to discuss Lord Archer's inquiry into contaminated blood products. Officials advice and draft reply to the letter is that we do not get involved at all. Caroline needs a discussion with SofS both on a DH and political level before we can respond.

I gave you a hard copy of the letter and draft reply a while ago."

3.236. I am asked about my view of officials' advice (email 21 February 2007) that DH *"should not become involved with Lord Archer's inquiry at all."* I thought the approach being recommended by officials (i.e. not to become involved at all) was not helpful. I was not happy with the formal tone of the draft letters to Lord Archer. My view was that not co-operating in any way was not sustainable and DH needed to strike a balance in how involved it should become in the inquiry. I wanted to get the Secretary of State's opinion on this, which is why I sought a meeting with her. I also wanted her to be fully aware of the situation as it was likely to be a high profile issue.

3.237. In preparing this statement I have seen a note dated 12 March 2007 prepared by Dani Lee for the Secretary of State [WITN5427016]. This says I had asked to meet the Secretary of State and wanted to speak to her about the draft letter to Lord Archer. It indicates that a meeting was planned for the following evening and Lords Hunt and Warner would also attend.

3.238. I recall meeting with the Secretary of State on 13 March 2007. I am asked if this was the same meeting as referred to in Jacky Buchan's email of 6 March 2007 [DHSC5460426]. I am confident it was. I am asked to clarify the identity of special advisors who attended this meeting (referred to in Jacky Buchan's email of 6 March 2007). Unfortunately I cannot recall which, if any, special advisors attended and have not seen names in documents. I did not have a special advisor. The Secretary of State, Lord Hunt, Lord Warner and I were present. I think Dani Lee was probably present.

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3.239. I am asked what was discussed at this meeting. I do not have a good recollection of the detail but we certainly discussed what Lord Archer's inquiry was likely to cover; DH's response to the inquiry, including the letter to be sent to Lord Archer; and whether DH officials should agree to give evidence. It is likely we also discussed issues about documents and the level of interest in the inquiry from Lords and MPs.

3.240. I am asked what decisions were made. On this, I have seen two written records of the meeting. First, Dani Lee emailed Jacky Buchan and Rebecca (Spavin, I think) on 14 March 2007 as follows [WITN5427017]:

"Jacky and Rebecca,

Note and actions from yesterday's meeting:

1. Meeting started with a brief discussion on Lord Archer's inquiry. SofS thought that we need to find out more information about the inquiry and asked either MS(PH) or MS(Q) to follow up with Lord Archer or Lesley Turnberg on terms of reference, funding, how they intend to proceed and what they hope to get out of the meeting. Can you discuss with each other which Minister you think would be best placed to do this. We might want to consider asking Lord Warner instead to make contact if officials feel strongly that Ministers should not get involved. [Lord Hunt had replaced Lord Warner at this point.]

2. On the draft response to Lord Archer's letter – MS(PH) was concerned about the content and language of the letter. The letter was signed off by Hugh which SofS agreed to take up with him at their next 1:1. I'll let you know the outcome of that discussion on Tues 20 March.

3. SofS gave a steer on how we approach the Inquiry. She is happy for officials to give evidence to the Inquiry but only after they have completed and compiled their report on the analysis of the documentation. She is also content to make all the documentation available to the Inquiry. Jacky – you might want to agree a deadline with officials on their report so that we/ they can start planning their appearance before the Inquiry.

Thanks/ happy to discuss."

3.241. Secondly, I have seen what looks like a 'read out' from the meeting. I think this was written by Dani Lee [WITN5427016]:

"Patricia to speak to Hugh:

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1. *Caroline concerned about the content + language of the draft response to Lord Archer.*
2. *Officials to give evidence to the Inquiry after they have compiled their report on the analysis of the documentation.*
3. *Caroline/ Philip or Norman will find out more about Inquiry."*

3.242. It appears the Secretary of State met with Hugh Taylor on 19 March 2007 [DHSC5046267]. I am asked to outline my understanding of why she had this meeting. As I recall the Secretary of State had regular one-to-one meetings with the Permanent Secretary. I was not at the meeting but I expect they would have discussed the reasons for the initial advice from officials and any implications of officials giving evidence.

3.243. On 21 March 2007 Jacky Buchan emailed William Connon [DHSC5463411]:

"William

MS(PH) has met with SofS to discuss our response to Lord Archer's request and SofS subsequently had a discussion with Hugh Taylor.

It has been agreed that the response needs to be more cooperative regarding the inquiry and officials should give evidence and papers should be made available.

Can you please redraft the reply taking this into account..."

3.244. I am asked if I agreed that the response needed to be more co-operative, that officials should give evidence and papers should be made available. I certainly had reservations about the unco-operative stance that officials had recommended and thought a more helpful approach was needed to demonstrate that, even if DH did not agree there should be a public inquiry, it could engage to provide reassurance and understanding of ongoing concerns affecting individuals and their families. I was pleased with the outcome of the meeting on 13 March 2007 and the Secretary of State's steer on officials giving evidence and making documents available to Lord Archer.

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3.245. I have been asked about two submissions from Liz Woodeson to Hugh Taylor [DHSC5046267 and DHSC5857854]. The submissions are on the same issue, namely officials' concerns about Ministers' proposed response to Lord Archer. I do not know why there are two or which was sent to Hugh Taylor although [DHSC5046267] looks like it may be an earlier draft.

3.246. Both submissions include:

Issue

1. Following your meeting with SofS on Monday 19th March we were asked to provide a redrafted letter for MS(PH) to send to Lord Archer. A draft is attached at Annex A. Given that my team have concerns about this inquiry I wanted to run this letter past you before putting it up to ministers.

...

3. William Cannon's email to MS(PH)'s office dated 21 Feb listed a number of concerns regarding this inquiry – and he subsequently discussed them with you. However, Ministers have asked that we reply in a cooperative spirit regarding the inquiry and that "officials should give evidence and papers should be made available"....

3.247. On the question of officials giving evidence, one document says [DHSC5046267]:

"6. ...There remain a number of questions and concerns amongst the team here regarding departmental involvement in this inquiry, which I would just like to flag up to you. They mainly arise from the suggestion that officials should agree to appear as witnesses...

7. For all these reasons, we think it preferable not to offer in the reply that officials would be willing to give evidence if requested. Do you think that SofS will be content with the reply as drafted here?"

3.248. The draft letter annexed to this submission suggests that officials should meet Lord Archer's team but is silent on officials giving evidence.

3.249. The other submission is different [DHSC5857854]. It includes:

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"...Given the time which has elapsed, it is not clear exactly what "evidence" officials would be able to provide in person, beyond rehearsing the documents which are already in the public domain..."

A draft letter for Hugh Taylor to approve was annexed to this submission but I have not seen a copy of it.

3.250. Doing my best with the documents, on 26 March 2007 William Connon emailed Jacky Buchan, sending a version of the submission and draft letter to Jacky Buchan [DHSC6326158]. The documents attached to the email have not been provided to me so I do now not know what they said.

3.251. Later that evening William Connon emailed Jacky Buchan again to say he had spoken with Liz Woodeson and *"gone over the changes suggested by Solicitors"* [DHSC6326158]. He said Liz Woodeson was content for the submission and draft letter to *"go to the minister asap"*. However, the following morning William Connon emailed Jacky Buchan again [DHSC6326158]:

"Jacky,

Sorry to come back again on this but I have received a couple of comments on the advice in the submission and draft letter, regarding the appropriateness of offering to meet Lord Archer's team.

I included in my submission the fact that Sol have advised against meeting with the review team for the reasons outlined. This remains Sol's advice. However, given that SofS has indicated that she wishes the department to be as cooperative as possible, and suggested that we do offer to meet, I decided to leave this in the draft reply. You will see that I have modified the offer of a meeting to make it clear that we will only meet to discuss timing or our impending report and to clarify the precise extent of DH involvement, which will be very limited.

I hope this clarifies the position for MS(PH)."

3.252. Jacky Buchan emailed Dani Lee on the morning of 27 March 2007:

"Dani,

*I understand Sol have more comments on this yet but can you let me know if SofS would be agreeable to the proposition of a meeting with officials rather than them formally giving evidence at the inquiry – if SofS would not be content, can **you** please go back to William to say so as*

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soon as possible (please copy in all on the cc list and myself) so that a further reply can be drafted today.

I'll forward on a second, later email which relates to this."

Again I have not seen the documents that were attached.

3.253. It appears there were further comments that day from solicitors on the submission and draft letter. Again I do not know what they were
[DHSC6326158]

3.254. On 27 March 2007 Dani Lee then emailed Hugh Taylor's private office
[DHSC6326158] :

"You mentioned that Hugh would need to see the draft response before it came to SofS. Please could you also ask Hugh to consider the submission attached in William's email below and let me know what his thoughts are about letting officials give evidence at Lord Archer's Inquiry. SofS and Hugh discussed this briefly at their 1:1 on 19 March."

3.255. The Inquiry has provided me with two very similar (but not identical versions) of a submission dated 28 March 2007 [DHSC0041193_054 and DHSC0041307_142]. Both versions say that a further draft letter to Lord Archer is attached but neither version I have seen includes that letter.

3.256. However, both versions of the submission included:

"Background

3. My email to you dated 21st Feb listed a number of concerns regarding this inquiry, which I understand were discussed by ministers. However, we have been asked to draft a reply to Lord Archer in a more cooperative spirit regarding the inquiry suggesting officials should give evidence and papers should be made available.

4. As you know we have commissioned our own review...of all the documentation held by DH on this topic. We expect this report to be finalised by the end of April and we had always intended to circulate it widely to all interested parties, now including Lord Archer. Lord Warner had already agreed this approach.

5. We were also going to propose to ministers that we should make available all the documents reviewed in the report...

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6. These plans have obviously now been overtaken by the announcement of the inquiry and ministers' natural wish to be helpful. However, there remain a number of significant questions and concerns amongst officials including solicitors branch, regarding any departmental involvement in this inquiry, which I would just like to flag up to you again. They mainly arise from the suggestion that officials should agree to appear as witnesses:

- There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985). Nevertheless, given the subsequent destruction and loss of a number of files there is considerable scope for embarrassment for the department if officials are asked to appear before the inquiry.
- With official Government Inquiries there is a clear legal framework under which to operate in the case of an inquiry under the Inquiries Act 2005 and in the case of non-statutory inquiries there are established principles and guidelines. These would not apply to a non-government inquiry such as Lord Archer's one and it is unclear exactly what departmental involvement may entail. For example, would officials be asked to attend?
- Colleagues are naturally worried about the vast amount of preparation that would be required to prepare themselves if they were called to give evidence and answer questions about over 6000 documents.
- If it is agreed that officials should give evidence, this may in turn raise the possibility of ministers themselves being asked to give evidence.
- We will inevitably be pressed to release documents without any redaction – and to release submissions. While none of these policy documents gives rise to any real concerns over liability, some are sensitive in respect of potential criticism or embarrassment of former ministers and senior officials. It may be much harder to maintain the line that we are only prepared to release documents under FOI principles if officials are asked to defend this line publicly in front of the inquiry.
- Sol have pointed out that the inquiry will not have statutory powers therefore civil servants, ministers or others could not be compelled to attend or provide evidence. However, if it is suggested that they should do so, then no doubt the inquiry would draw adverse inferences from any refusal to do so.
- There is also a question of whether the inquiry would offer legal indemnities to officials against the possibility of legal proceedings being instituted against them as a result of their evidence to the inquiry.
- Sol's view is that we should avoid becoming in any way directly involved.

Recommendation

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7. For all these reasons, we think it is not advisable to offer in the reply that officials would be willing to give evidence to the inquiry. The offer of a meeting between Lord Archer's team and departmental officials is qualified to explaining about our review and the level of assistance we can provide his team."

3.257. On 28 March 2007 Dani Lee wrote the following at the top of one of these submissions [DHSC0041307_142]:

"Patricia,

At a meeting with Caroline, Philip [Lord Hunt] + Norman [Lord Warner], you agreed to officials giving evidence at Lord Archer's Inquiry...SOL's advice, which Hugh [Taylor] agrees with, is that we should avoid becoming in any way directly involved. We could offer a meeting between Lord Archer's team and DH officials to explain our review of all the documentation + the level of assistance we can provide to his inquiry. Are you content with this approach? Are you happy with the revised draft response to Lord Archer? For you to sign" (emphasis in original)

3.258. On 29 March 2007 Jacky Buchan wrote me a note [DHSC0041193_054]:

**Caroline*

This is the redrafted proposed reply to Lord Archer. It falls short of agreeing to give evidence but agrees to share documentation.

SofS is also considering this draft reply and is likely to sign the letter herself. Hugh Taylor has agreed the wording.

**Dani thinks SofS will be content to agree to provide the docs but not to give evidence."*

It appears I was provided with the submission (as well as the draft letter).⁶

3.259. I read Jacky Buchan's note as saying the Secretary of State was planning to take on sending a reply letter to Lord Archer and the Secretary of State's private office was communicating that she was now content for officials not to give evidence. On 30 March 2007 I wrote "fine" against Jacky Buchan's note [DHSC0041193_054].

⁶ The Inquiry document DHSC0041193_054 includes a submission with Jacky Buchan's note – I assume that was the version sent to me but do not know.

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3.260. I have not seen documents that show a submission being sent to me before 29 March 2007. I do not have an independent memory of this. But it is likely Jacky Buchan would have made me aware of officials' ongoing concerns and the 'direction of travel'.

3.261. Therefore, doing my best to assist the Inquiry with the documents I have seen, a summary of the broad chronology appears to be:

- William Cannon's email and draft letter of 21 February 2007, recommending that DH should not become involved with the Lord Archer's inquiry at all. It appears this approach had been approved by Hugh Taylor.
- Meeting on 13 March 2007 between the Secretary of State, Lord Hunt, Lord Warner and me (and possibly others) at which we agreed a more co-operative approach should be taken, officials should give evidence to Lord Archer's inquiry and documents should be provided.
- Meeting on 19 March 2007 between the Secretary of State and Hugh Taylor.
- Submission(s) on 23 March 2007 from officials to Hugh Taylor expressing concerns about DH getting involved with the inquiry and particularly about officials giving evidence.
- Officials drafted a further submission (and letter to Lord Archer), recommending that officials did not give evidence and instead would agree to meet Lord Archer's team. It appears this was approved by Hugh Taylor.
- Submission on 28 March 2007 sent to the Secretary of State and me recommending that the letter to Lord Archer should not offer for officials to give evidence and instead should propose a meeting with Lord Archer's team to discuss limited topics.
- Indication from the Secretary of State's private office that she was likely to agree this approach and to send the letter to Lord Archer, and that Hugh Taylor had agreed the wording of the letter.

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- Letter, dated 30 March 2007, sent from the Secretary of State to Lord Archer.

3.262. By letter dated 30 March 2007, the Secretary of State replied to Lord Archer [DHSC0041193_048]:

"Thank you for your letter of 16 February. Please accept my apologies for the delay in responding.

The Government has great sympathy for those infected with hepatitis C and, as I am sure you are aware, we have considered the need for an official public inquiry very carefully indeed. However, our view remains that this would not be justified and would not provide any further benefit to those affected.

Nevertheless, the Department is willing to assist you as far as we can; and an early meeting between officials here and yours might be helpful in this respect. In particular we are, of course, willing to cooperate with your team by sharing the results of our own review. Work has been underway within the Department, over the past few months to identify and review all the documents held relating to the safety of blood products between 1970 and 1985. A draft report on the analysis of the documentation is currently being compiled, and is expected to be completed shortly. My former colleague, Lord Warner, has already agreed to send a copy of this report to Lord Jenkin and I would be very happy to arrange for you to receive a copy as well.

Furthermore, a large number of the documents referenced in this report are already in the public domain and consideration will be given to releasing the rest in accordance with the provisions of the Freedom of Information Act 2000."

3.263. I do not now know if this letter is identical to the draft annexed to the 28 March 2007 submissions (either version of that submission).

Response to Specific Questions

3.264. I have already answered some of the Inquiry's questions in the chronology above. In this section I will answer the rest of questions 16 – 21 inclusive.

3.265. The Inquiry has referred me to the following section from the Archer Inquiry report [ARCH0000001]:

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"The Department of Health maintained its view that the Inquiry was unnecessary, and declined to provide witnesses to give evidence in public, but they supplied documents which we requested, and responded to questions from us and sent representatives to three private, informal and unminuted meetings."

I am asked to confirm my responsibilities and involvement in DH's engagement with the Archer inquiry and have explained this in the chronology above and my answers below.

3.266. I am asked to explain DH's justification that Lord Archer's inquiry was *"unnecessary"*, who in DH came to that conclusion, and on what basis. I am asked if I agreed with DH's observation at the time. The Secretary of State's letter to Lord Archer, dated 30 March 2007, stated the government's position was that an *"official public inquiry"* would not be *"justified"* and I have explained earlier in this statement the reasons for that position. As for Lord Archer's inquiry, I am not sure I held a view either way – it was happening and I thought DH should co-operate in a way that was consistent with government policy.

3.267. I am asked about my interpretation of Lord Archer's request and expectations of DH at the start of his inquiry. From what I can recall I was not surprised that Lord Archer would seek DH's engagement and I felt it would be difficult for DH not to get involved in some form or another. The documents indicate there was initial uncertainty in DH about what the inquiry would entail and how it would impact on DH. William Connon's email of 21 February 2007 made an early recommendation that *"no DH officials appear before this informal inquiry"* – officials will be better placed to assist with whether they interpreted Lord Archer's request as asking officials to give evidence.

3.268. I am asked to outline any immediate meetings or discussions that took place among ministers and officials on receipt of Lord Archer's letter. I have set this out in the chronology above, based on the documents I have seen. There are also likely to have been informal discussions before and after I met with the Secretary of State on 13 March 2007, but I cannot be specific. I would also have

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been aware of some of the arguments being made against officials giving evidence to Lord Archer's inquiry.

3.269. I am asked whether I saw either version of Liz Woodeson's submission to Hugh Taylor, both dated 23 March 2007, before the Secretary of State's letter to Lord Archer on 30 March 2007. The Inquiry has specifically referred to examples of potential areas of criticism or embarrassment for past DH Ministers or officials in one of these submissions [DHSC5857854]. These submissions were not addressed to me and so I doubt I saw either, but I do not know now for sure. I also do not recall what Jacky Buchan told me but she probably would have made me aware that officials remained opposed to engaging with Lord Archer's inquiry and particularly to giving evidence. I was sent a submission dated 28 March 2007, with a recommendation that DH should not say officials were willing to give evidence to Lord Archer. The Secretary of State was sent the same or a very similar submission.

3.270. I am asked for my views on the reasons for not providing witnesses to Lord Archer's inquiry that were contained in Liz Woodeson's submission(s) to Hugh Taylor. As explained, I do not think I was sent those submissions. I was sent a submission dated 28 March 2007 and so have considered that.

3.271. These were officials' reasons against becoming involved in Lord Archer's inquiry, with some being directed at officials giving evidence. However, my recollection is that, after the meeting on 13 March 2007, I supported officials giving evidence. I do not think I would have placed weight on potential embarrassment to DH or officials because of the destruction and loss of files – this was already in the public domain and the NANBH Document Review Report had made progress on looking into this. For me, the key problem with officials giving evidence was the risk they would get drawn into questioning about past wrongdoing. I think there were also understandable concerns about pressures on resources if officials were preparing for and giving evidence, along with the

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support (including legal) they might need. But, as stated, I did not think DH could stand back and play no part in Lord Archer's inquiry.

3.272. I am asked what action I took on receipt of William Connon's submission dated 28 March 2007. It appears this was sent to me on 29 March and I read it on 30 March 2007. I had been informed that the Secretary of State was likely to sign the letter to Lord Archer herself and that she would probably be content with the proposal from officials to provide documents but for officials not to give evidence. The draft letter had been approved by Hugh Taylor.

3.273. I am asked who ultimately made the final decision on behalf of DH not to provide witnesses to the Archer Inquiry. I have done my best to set out the chronology in detail. I do not think I 'signed off' my agreement to officials' proposals before they went to the Secretary of State. But I think I ultimately agreed with the plan of action on the basis that I was aware the DH Permanent Secretary had approved the draft letter to Lord Archer and I was given an indication that the Secretary of State agreed with officials' advice against giving evidence.

3.274. I am asked whether, as at the end of March 2007, I agreed with the decision that it was "*not necessary*" to provide witness evidence. I think the decision that officials should not give evidence was made on the basis it was not advisable rather than "*not necessary*" ("*advisable*" was the word used in William Connon's submission dated 28 March 2007). As explained above, I had been supportive of officials giving evidence but I could also see this was problematic.

3.275. I am asked to explain what reasons, if any, were given to the Archer panel for DH's decision not to provide witness evidence. I cannot now recall what, if any, reasons were given by Ministers. Later in this statement I address an email from a DH solicitor [DHSC6701136].

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3.276. I am referred to the Secretary of State's letter to Lord Archer, dated 30 March 2007 which says [DHSC0041193_048]:

"The Government has great sympathy for those infected with hepatitis C and, as I am sure you are aware, we have considered the need for an official public inquiry very carefully indeed. However, our view remains that this would not be justified and would not provide any further benefit to those affected."

I am asked what investigation, analysis or enquiries were undertaken in order to read the view that an inquiry would not *"provide any further benefit to those affected."* While this was the Secretary of State's letter I think this observation was linked with DH's focus at the time on whether there had been past wrongdoing. It was the government's position there had not been and I think that underpinned the view in the letter, i.e. an inquiry would not achieve more for those infected and affected.

Events from 1 April 2007

3.277. By email dated 12 April 2007 Lord Archer's team contacted the Secretary of State's private office to arrange a meeting with officials [DHSC0015361]. By email dated 16 April 2007, Liz Woodeson was asked for advice on who should attend the meeting [DHSC5193222]. Names have been redacted from this email so I do not know who sent it. The email suggested that the attendees should include a *"representative from SoI"*. I do not recall being involved in deciding who should attend the meeting.

3.278. I have not seen a reply from Liz Woodeson or another document setting out who from DH would attend the planned meeting with Lord Archer's team. I am aware that an official or officials met with Lord Archer's team on 25 April 2007. I do not recall who attended this meeting and have not seen any notes from it to help my memory. Apart from some fairly general information that I can glean from the documents described below, I cannot now say what was discussed. William Cannon's submission, dated 28 March 2007, recommended that the meeting should be limited to *"explaining about our review and the level of*

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assistance we can provide to [Lord Archer's] team." I am very happy to revisit these matters if further documents are provided to me.

3.279. I have seen two emails dated 9 May 2007 which appear to have been sent between government lawyers. Neither was sent to me or my private office and I would not have seen them. The first email says **[DHSC6701136]**:

"DH also recently met with the inquiry to see what further assistance they could provide. The inquiry panel indicated that at this stage they were interested in background information, i.e. the whole set up in relation to blood products, including the process of purchase, testing, regulation etc. DH promised to let the inquiry team have a document setting out this process in detail.

Attached is something which DH has produced and which they intend to send to the inquiry panel along with a referral to NHSBT's [NHS Blood and Transplant] website for further information...."

3.280. I have not seen a copy of the document attached to this email but it seems DH was responding to a request for information from Lord Archer's team.

3.281. The second email was sent by a government lawyer, Shibani Rahulan, to other government lawyers **[DHSC6701136]**. It included:

"...DH, although they are cooperating with the inquiry, so far have no intention of sending along witnesses to the inquiry. DH is aware that the inquiry could request civil servants and Ministers to attend but that, as a non-statutory inquiry, it would have no powers of compulsion.

When the inquiry asked DH about DH witnesses at the meeting, DH said that they would struggle to find appropriate people because the events are historic and consequently there is hardly anyone around who would have first-hand knowledge of the events."

I do not know if this means Shibani Rahulan attended the meeting on 25 April 2007.

3.282. I am asked why the reason for declining to provide witnesses in the meeting with Lord Archer's team that is contained in Shibani Rahulan's email is different from that given in my letter to Lord Archer **[DHSC5458637]**. First, the letter I

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am referred to at [DHSC5458637] was a draft letter prepared by officials. It was not signed by me and it was not sent to Lord Archer. The letter sent by the Secretary of State did not give a specific reason for witnesses not giving evidence [DHSC0041193_048]. Secondly, I think this question is better directed at Shibani Rahulan. Further, this was not one of the reasons articulated in William Cannon's submission to the Secretary of State and me, dated 28 March 2007 [DHSC0041193_054 and DHSC0041307_142]. It may have been discussed with me informally (I do not remember) but I do not think it was a deciding factor when I agreed to the proposal that officials should not give evidence.

3.283. On 14 May 2007 I answered a written PQ [WITN5427033] (page 1 and page 3):

Question: "To ask the Secretary of State for Health, what assistance her Department (a) has given and (b) anticipates giving to the independent public inquiry into the supply of contaminated NHS blood to haemophilia patients."

Answer: "Officials met with members of the inquiry team on 25 April 2007 to discuss what information the Department may be able to provide to the inquiry. It was agreed that officials would provide a copy of a report, Review of Documentation Relating to the Safety of Blood Products 1970-1985, which is due to be issued shortly and will be placed in the Library. Officials also agreed to provide some additional information regarding the chronology of certain events."

3.284. I did not attend the meeting on 25 April 2007 and officials provided me with this information. The background note stated that the meeting between officials and the inquiry team:

"2. ...went well and officials agreed to follow up some queries that the inquiry team had. It was agreed to provide a chronology of events which we are currently working on, and a copy of the [NANBH Document Review] and supporting references.

3. MS(PH) has agreed that we should proceed with making copies of all the documents we hold on blood safety for the period covered by the internal review, available in line with the Freedom of Information Act. It will take several months to complete this work."

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3.285. As explained earlier in this statement, on 22 May 2007 I sent a letter to Lord Archer [DHSC0103399_079] along with the NANBH Document Review Report, 56 documents related to NANBH hepatitis and the 2000 DH internal audit. The letter explained that DH had already released (in line with the FOI Act) documents contained the documents referenced in the Self-Sufficiency Report and copies of documents returned to DH by external solicitors. The letter also stated that DH proposed to release (in line with the FOI Act) the rest of the documents reviewed by DH and this would be done in batches.

3.286. In June 2007, I gave written answers to further PQs relating to Lord Archer's inquiry. Jenny Willott MP asked what plans DH had to submit written and oral evidence from Ministers, civil servants and NHS staff to Lord Archer's inquiry and whether DH had been asked to provide Ministers, civil servants and NHS staff as witnesses in the inquiry [DHSC0006780_049 (page 1 and page 3)]. My answer was:

"Lord Archer of Sandwell wrote to the Secretary of State for Health in February to invite the Department to give evidence at the independent inquiry.

Officials met with members of the inquiry team on 25 April 2007 to discuss what information the Department may be able to provide to the inquiry. We have made available [the NANBH Document Review Report] and the supporting references...

Officials continue to liaise with the Secretary to the inquiry team.

3.287. On 12 June 2007, I gave a written answer to Jenny Willott's questions about how many of the document "rediscovered" by the DH, as referred to in the NANBH Document Review Report, had "(a) yet to be made publicly available and (b) relate to AIDS/HIV", and how many of those documents "relate to Non A Non B Hepatitis" [D DHSC0006780_020 (page 1)]. My written answer was:

"The [NANBH Document Review Report] identified 56 previously unpublished documents that relate to NANBH. These were released with the review on the 22 May 2007.

The Review identifies just over 4,600 documents that have yet to be made publicly available and approximately 42 per cent of these have been identified as relating to HIV/ AIDS. Lord Archer has been advised

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that we propose to release these documents in line with the Freedom of Information Act."

3.288. On 13 June 2007, Linda Page prepared a submission for me, informing me that another batch of documents would be released to Lord Archer the following day and those files would also be put onto the DH website [DHSC6341171 and DHSC0006612_026]. The submission attached a draft letter to send to Lord Archer's inquiry explaining that a batch of 20 files out of 100 was being provided (with the balance to follow once they had been prepared), and explaining redactions made under the FOI Act.

3.289. It is my recollection that decisions on what, if anything, should be redacted under the FOI Act were made by officials. I cannot think of an occasion when I was involved.

3.290. I left DH on 28 June 2007 and so cannot comment on other documents provided or not provided to Lord Archer, or redactions that were applied. I think it was planned that all documents identified and catalogued during Linda Page's review should be provided in line with FOI Act principles.

Response to Specific Questions

3.291. I am asked to identify the names and job titles of any individuals in DH who had responsibility for engaging with the Archer inquiry (question 16a). Unfortunately, I do not remember this and redactions have been applied to some of the emails I have seen. I think this would have been the responsibility of officials. It is likely some information would have been communicated to me, but I cannot now say what.

3.292. I am asked about the circumstances in which DH agreed to hold 3 meetings with the Inquiry, who was responsible for arranging these meetings, the dates of the meetings, and how the agendas were set. During my time in office there

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was only 1 meeting with Lord Archer's team, on 25 April 2007. The Inquiry has informed me that the other meetings were on 19 September 2007 and 12 June 2008. To the best of my knowledge these had not been arranged before I left DH.

3.293. As for how the meeting in April 2007 was arranged, Lord Archer's letter dated 16 February 2007 asked to speak with someone from DH. The Secretary of State, in her letter dated 30 March 2007, suggested a meeting between Lord Archer's team and officials. On 12 April 2007 Lord Archer's team contacted DH to arrange a meeting. As already explained, the documents I have seen unfortunately do not tell me who attended that meeting. I have not seen an agenda and cannot now assist with whether there was an agenda or, if there was, how it was set. William Connon's submission dated 28 March 2007, recommended that meeting should be limited to explaining the DH document review and the level of assistance DH could provide but I cannot say if that was borne out in the meeting. It seems DH agreed to provide some background information to Lord Archer's team.

3.294. I am asked to provide the names of attendees at the 3 meetings between DH and Lord Archer. As explained I was only in office for one of these meetings and I cannot now say who attended it.

3.295. I am asked for an account of what was discussed at the three meetings. I was not present at the meeting on 25 April 2007 and do not think I have seen a note of it, other than the brief reference in a PQ background note[WITN5427033]. I have set out above in this statement what the documents suggest was or would be discussed but unfortunately I cannot assist further.

3.296. I am asked what conditions were attached to these meetings and who requested such conditions. Again, I can only comment on the 25 April 2007 meeting. I do not think I have seen any documents showing that conditions were

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attached to the meeting. I am happy to reconsider this if further documents are provided to me.

3.297. I am asked why no written record was kept of the meetings and who took this decision. I note the extract from Lord Archer's report that the meetings were unminuted and certainly I have not seen minutes of the 25 April 2007 meeting. The documents I have seen do not explain why this meeting was unminuted and I do not know the reason. Based on the documents I have seen, I was not involved in any decision about whether a record was kept or not.

3.298. I am asked why DH agreed to 3 meetings with the Inquiry, but declined to provide witness evidence in public. I can only comment in relation to the early part of Lord Archer's inquiry when I was in office. I have explained earlier in this statement that Ministers wished to co-operate with the inquiry but a decision was taken that officials would not give evidence.

3.299. I am asked to explain how DH determined which documents should be provided to the Inquiry. Again, I can only answer this question for the period up until the end of June 2007. I have explained this in the chronology above. Beyond this, the Inquiry may be assisted by documents prepared by officials from around this time, and officials may be better placed to provide more detail [DHSC5051140, DHSC5479536 and (DHSC6341171 and DHSC0006612_026)].

3.300. I am asked if DH withheld documents requested by Lord Archer. I do not recall this happening and do not think I have seen documents indicating it did.

3.301. The extract from Lord Archer's report cited by the Inquiry [ARCH0000001, (page 9)] says that DH "*supplied documents which we [i.e. Lord Archer's team] requested*". It is my understanding that DH proactively provided documents to

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Lord Archer. The only references I have seen in the documents to Lord Archer's team requesting documents are set out above, i.e. a request for "*background information*" and a "*chronology of events*" (I cannot say if these are the same). Of course, I am happy to revisit this if further documents are made available.

3.302. I am asked to provide a response to a number of excerpts from the witness statement of Judith Willetts, a panel member on Lord Archer's inquiry [WITN4736001]. I stress I can only give a view based on the time I was in office, i.e. up to the end of June 2007.

3.303. I am asked to respond to Ms Willetts' impression that "*the Department's priority was to draw a line under the matter. There was a complete refusal to acknowledge that lessons could be learned for the future.*" I do not know what interactions Ms Willetts had with DH officials and Ms Willetts does not give concrete examples so that I can understand more about the reasons for her impression. I think all I can say is that, while I did not support holding an official public inquiry, I wanted DH to co-operate with Lord Archer's inquiry in a way that was consistent with the government's policy. By the end of March 2007 it had been agreed that officials would meet with the inquiry team, provide documents and be helpful. I have explained this in more detail in this statement.

3.304. I am asked about an extract at pages 6-7 of Ms Willetts' statement in which she says that establishing the relevant documentation that existed and could therefore be requested was a key barrier for the inquiry. She says the panel experienced no willingness from DH to co-operate with this dilemma and that her sense was that the individuals the panel had contact with did not want to help. I think officials are likely to be best placed to respond to this. I sent the NANBH Document Review Report and other documents to Lord Archer in May 2007 and officials informed me that another batch of documents had been provided in June 2007. I would have wanted DH officials to be helpful and I was not made aware of an unwillingness or lack of co-operation from officials.

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3.305. I am asked about an extract on page 8 of Ms Willetts' statement. She says it was her understanding that it was a Ministerial decision that DH's meetings with the Archer inquiry were private, unminuted and informal. As explained in my statement, it was ultimately a Ministerial decision that officials would not give evidence but instead would offer to meet Lord Archer's team to provide assistance. I can only comment on the meeting on 25 April 2007. That would have been an informal meeting with Lord Archer's team (and not with wider stakeholders). I do not recall Ministers saying that there could be no agenda, or no note of the meeting and I do not think I did. But I am happy to consider any further documents the Inquiry can provide on this.

3.306. At page 9 of her statement, Ms Willetts says her personal view was the DH was determined to maintain a position of non-liability and she believes there was a concern that significant compensation claims could be made and would be successful. I do not think that is correct. I think DH's position was that it did not think an inquiry was justified because there had not been wrongdoing, rather than because it feared a finding of liability.

3.307. I am asked how I reconcile DH's *"lines to take on its engagement with the Archer Inquiry with the version of events provided by Ms Willetts."* I assume the reference to *"lines to take"* is that DH wished to show co-operation with Lord Archer's inquiry. If so, I am not sure I can say more at this point in time, other than by reference to the detailed chronology and explanations in this statement. I was not directly dealing with Lord Archer's inquiry and officials may be able to help more.

Reflective Questions

3.308. I am asked a number of reflective questions:

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- I am asked, on reflection and drawing on the totality of my experience as a DH Minister, for my present view of how DH handled the issue of engaging with the Archer inquiry.
- I am asked for my view on a statement made by Andy Burnham, former Secretary of State for Health, on 15 January 2015 in the House of Commons [RLIT0000771]. He said:

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

- I am referred to evidence in the Inquiry from campaigners and former Secretary of State for Health, Lord Fowler [INQY1000144; INQY1000145] that the government should have established a UK-wide public inquiry before now. I am asked for my present view on this observation.

3.309. My answers to these questions overlap. At the time I was a DH Minister the consistent position of successive governments had been that HIV and hepatitis infections had not occurred because of negligence or wrongdoing. The government position did not take away from the enormity of the tragedy that befell families and the need for government to provide financial support, but I think many policy decisions in this area were taken against that starting point and through that prism. This included decisions on whether to hold a public inquiry and level of participation in the Archer inquiry.

3.310. I think this also influenced how government provided financial support and the nature of DH's relationship with the financial support schemes. I think the DH focus on (lack of) wrongdoing and blame and so a lack of legal liability framed policy and discussions in this area. It hampered more creative and flexible thinking about the issues and got in the way of having a more open and meaningful discussion about the present crises facing some individual and

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families. The support the financial support schemes could provide was constrained by the funding DH provided, and DH funding was itself under multiple pressures. But perhaps there was also a reluctance to think more closely about whether the support in place was appropriate for the conditions people were living. I should also say there were no clear sources of funds to provide more.

3.311. Over years, I think the government position of opposing a public inquiry may also have conditioned the response of civil servants, many of whom will have had no original knowledge of events in the 1970's or 1980's, and their advice to Ministers. I think this played into the issue of engaging with the Archer inquiry.

3.312. I think government probably should have established a UK-wide public inquiry before it did but that decisions, including during my time, were coloured by DH's position that there had been no wrongdoing. In preparing this statement I have reflected that things would have been different if DH could have worked better with campaigners, the financial support schemes and others to find better solutions for those infected and their families, and look into 'lessons learned', without the DH focus on wrongdoing or liability.

Section 4: Q34

4.1. I have been asked by the Inquiry not to answer Questions 29 to 33.

Q.34 The relationship between the DH and the vCJD Trust

- 4.2. I am asked to explain the relationship between the DH and the vCJD Trust during my time as first Parliamentary Under-Secretary of State for Public Health and latterly Minister of State for Public Health. In particular, I am asked to explain the circumstances in which the vCJD Trust would seek permission from the Minister/Department to make decisions that came within the Trust's powers.
- 4.3. During my time as a health minister, I was the minister responsible for the vCJD Trust. Before seeing the documents, I could recollect the broad outline of some of the issues in this area but not any of the detail. I have relied on the available documents to prompt my memory. What I say is therefore based on the documentary record and not, unless made clear expressly, from my own

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memory. I refer below to certain correspondence between officials and between others and the Department. This is to give context to my answer. The fact I have mentioned a particular item of correspondence does not necessarily mean I would have been aware of it at the time. I have made clear where I have described my personal involvement.

- 4.4. In setting out the account that follows, I have borne in mind the Inquiry's question and sought to focus on what I can say about the relationship between the DH and the vCJD Trust. I have not sought to provide an exhaustive account of all the dealings between the DH and the Trust.

Background to the vCJD Trust

- 4.5. I have been referred to a ministerial submission from Jonathan Stopes-Roe dated 16 September 2005 [DHSC6795449]. Annex A sets out the background to the Trust. I am reminded of the following points:

- a) The vCJD Trust was set up in February 2002 to administer the Government's compensation scheme for victims of vCJD and their families. The scheme was set up in recognition of the special plight of those affected by vCJD.
- b) The scheme was administered by independent Trustees. Sir Robert Owen QC was appointed as Chair by the then Secretary of State. *'The intention at the time was to minimise the ongoing role of the SofS in future appointments and to present the Trust as "independent". Therefore the Trust Deed makes provision for the Trustees themselves to make future appointments.'*
- c) The Trustees appointed Charles Russell solicitors to administer the scheme. The costs of administering the scheme were met from the overall sum.
- d) The terms of the scheme were agreed between the DH and Irwin Mitchell solicitors acting for the families. The scheme provided for payments to be made to each victim or their family. Within the overall scheme, there was a discretionary fund that was intended to meet exceptional cases of hardship.
- e) At the outset, there was an expectation the Chair would meet annually with a DH minister. The first meeting took place with the then Secretary of State for Health, John Reid, in October 2004.

- 4.6. I have seen a letter dated 25 November 2004, so before my tenure, from Sir Robert to John Reid [DHSC0004223_045]. The letter followed a meeting between the two of them in October 2004. Sir Robert's letter emphasised the independence of the Trust:

'Whilst historically the Trustees have sought the views of both parties to the agreement, namely the DOH and the Victims' families as to the manner in

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which the Trust can be administered, the Trust is entirely independent of either [...]

- 4.7. In terms of background, I have also been referred to a document that sets out DH solicitors' advice on the legal relationship between the DH and the Trust [DHSC0006797_073]. The advice concluded:

'8. Where does this leave the relationship between the settlor [DH] and the trustees? In essence the law recognises no such continuing relationship. In practice the trustees may listen to what the settlor may say to them about their management of the trust but ultimately the law expects the trustees to exercise their own independent judgment.

9. DH have always recognised the distance that now exists between it and the trust – a distance recognised in law. Equally it has recognised the very onerous work the trustees face and part of this recognition has been to support the trustees where that support has been sought – but not to hold them to account.'

- 4.8. The solicitor's advice was circulated by Brian Bradley on 28 March 2006, with a copy sent to Jacky Buchan in my private office [DHSC0006797_073]

Events in the period shortly after I took office

- 4.9. On 18 May 2005, Michael Ancram QC MP wrote to the Secretary of State on behalf of a constituent – a vCJD victim who was living in unsuitable accommodation and who was trying to get help from the Trust to buy an alternative property [DHSC0004194_030].

- 4.10. I have seen an email dated 7 June 2005 from Lawrence Patchett to Brian Bradley which said [WITN5427018]:

'I'm afraid the Minister didn't like the wording of our draft on this [GRO-A] case. It came back down with the comments on the third paragraph of the reply: "DH clearly had sympathy with this family. Is there nothing that can be done?" She also referred to the second to last paragraph of the MP's letter, where he states that Mrs [GRO-A] is anxious to know whether DH would look again at how the money is being implemented as the circumstances have changed. The Minister asks "are we doing so"?'

- 4.11. I assume 'the Minister' referred to was the Minister of State for Quality and Patient Safety, Jane Kennedy MP, because she replied to Michael Ancram on 14 June 2005 [DHSC0020870_028]. Her letter said that while the DH was kept informed of general progress, and was aware of the individual case in question, the DH would not 'second guess' the independence of the Trustees. She said if the scheme or Trust Deed needed amendment then that would be considered, but that was not necessary at that stage. I do not appear to have had any involvement in this reply. Michael Ancram wrote further to Jane Kennedy on 26 July 2005 and on 22 August 2005 [DHSC0004194_025, DHSC0004194_026].

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- 4.12. I have also seen that around the same time, on 20 May 2005, the Trust's solicitor wrote to Jonathan Stopes-Roe about Michael Ancram's constituent [WITN5427019]. He said the case in point highlighted two issues which arose from the fact victims were living for longer than anticipated at the time of negotiation of the Trust Deed. On the first issue, namely the Trustees exercise of discretion, the solicitor asked the DH to endorse the Trustees' use of their wide discretion under the Deed to reimburse expenditure arising from victims living longer (accommodation, equipment etc). The second issue he raised was that increased life expectancy meant there was a future need to increase the level of compensation in the fund. I see that Jonathan Stopes-Roe sought advice from Anita James [WITN5427020]. I do not appear to have been involved at this stage.

Submission of 16 September 2005

- 4.13. As I mentioned above, on 16 September 2005, Jonathan Stopes-Roe put a submission to me and to the Secretary of State. The submission explained the background and that the Trust had reached the conclusion that a suitable property should be purchased for Michael Ancram's constituent. The submission summarised the issue that faced the Trust as follows:

'7. The Trustees have considered their powers in this case, and have concluded that the ordinary provisions of the Trust Deed would not permit them to buy and let a property in this way. The Trustees have considered seeking Secretary of State's agreement to an amendment to the Trust Deed which would straightforwardly enable the action they propose, in any suitable case. DH officials have discouraged this, since it would change the nature of the Trust, which was set up as a compensation scheme for specific harm, and would potentially create a substantial financial burden.

8. However on further consideration, the Trustees now argue that, if they had additional financial "headroom" of £325k in this case, the complex conditions in the Deed governing their limited power to invest in property could be satisfied in such a way as to permit them to proceed as they wish. The Deed allows the Trustees to exceed the standard limit per case (defined in the Deed as the "Basic Sum"), given the approval of the Secretary of State. Once they have that latitude, they can designate [GRO-A] in such a way that he may benefit from a capital investment. The Trustees therefore propose that the Secretary of State should exercise her power to agree a specific increase in the Basic Sum, for this case only, so as to permit the total expenditure of £445k (the previous 20k plus the new 325k) for the benefit of [GRO-A]

[GRO-A] DH lawyers have studied the Trustees' reasoning, and accept its force.'

- 4.14. The submission set out various risks of approving the increase to the Basic Sum (creating a precedent etc). It also noted that I had agreed to meet with Michael Ancram.

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- 4.15. I see from the documents that I met Michael Ancram on 11 October 2005. Officials provided me with a written briefing from in advance of the meeting [DHSC0004194_023]. I have seen a note from Jacky Buchan in my private office dated 10 October that referred to the 16 September submission and stated, '*I understand SofS is waiting for a recommendation from you before making a decision.*'
- 4.16. The Inquiry has referred me to a submission I sent to the Secretary of State on 12 October 2005 [DHSC0004223_030]. I have also seen a cover note, produced by the Secretary of State's private office, which attached my submission [DHSC0004223_029]. I recommended that the Secretary of State should agree to the vCJD Trust's proposal. I also set out some of the wider implications and the conditions that should be attached to the Trust's proposal, which included that the agreement was for this case only; that the Trust should ensure its expenditure was not duplicating statutory services; and that the Trust should recover vacant possession after death. On 13 October 2005, I wrote to Michael Ancram to confirm that the Secretary of State had agreed to the Trust's proposal [DHSC0004194_019].
- 4.17. I see from the papers that on 7 December 2005, Jonathan Stopes-Roe, Brian Bradley and Anita James met the Trust's solicitor to review various matters (hardship claims, numbers of applications, sums paid out and the costs of the Trust were all discussed) [WITN5427021]. The meeting seems to have been one of the ways in which the Trust kept the Department informed of its work. I have not seen any documents that were sent to me in relation to these meetings, which seem to have been conducted by officials. The next meeting was anticipated to take place in Autumn 2006.

Private Office correspondence in early 2006

- 4.18. On 31 January 2006, I wrote to Crispin Blunt MP [DHSC0038543_065] in reply to a letter he had sent to the Secretary of State [DHSC0006797_113]. Crispin Blunt had raised the case of a constituent whose daughter died of vCJD. The family of the deceased had raised concern about the level of payments under the scheme and delays in the Trust making payment. My letter expressed my sympathy to Crispin Blunt's constituent and explained the background to the Trust and its independence. I concluded by saying '*Officials in the Department meet regularly with Charles Russell & Co to review the work of the Trust and I have asked them to take up the issues in [the constituent's] letter concerning payments and delays.*'
- 4.19. Crispin Blunt wrote to me again on 14 March 2006 and invited me to meet his constituents to hear their proposals for how to improve the scheme [DHSC0038543_064]. I received advice from Jacky Buchan to decline the request [DHSC0038543_063]. I replied to Crispin Blunt's letter on 27 March 2006 [DHSC0006797_072]. I explained that it would not be appropriate for Ministers to become directly involved and suggested that his constituents should direct their proposals to the Trust. Crispin Blunt repeated his request for

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a meeting on 28 March 2006 [DHSC0038543_061]. I replied on 10 April 2006 to decline the request for a meeting and said the *'aim of this arrangement was to place the compensation scheme at arm's length from ministers'* [DHSC0006797_083]. The same day Jacky Buchan emailed Brian Bradley with a copy of the letter and said *'PS(H) has said if they do put forward to the Trust, she would like to be informed of discussions and outcomes please.'* [DHSC0006797_083].

- 4.20. On 10 April 2006, another MP, Rosemary McKenna, wrote to me about a constituent who had incurred probate costs as a precondition of making a claim to the vCJD Trust [DHSC0006797_046, DHSC0006797_048, DHSC0006797_049]. The vCJD Trust would not reimburse the probate costs, so the solicitor had billed the constituent.

Trust efficiencies

- 4.21. On 18 January 2006, I approved a response to a Parliamentary Question from Nick Harvey MP [DHSC0038543_126]. The question asked about the proportion of the Trust's budget that had been allocated to legal and professional fees. I made a handwritten note on the briefing paper that read: *'I am concerned about the costs of administration what are we doing about it? + what are our options'*. Jacky Buchan emailed officials the next day to raise my concern about the administrative costs and asked for a short submission on the options [DHSC0006797_111].
- 4.22. I see from the documents that on 30 January 2006, Brian Bradley emailed Jonathan Stopes-Roe to ask for advice on what to say to me. On 1 February 2006, Jacky Buchan forwarded me a copy of the advice from officials [DHSC0038543_125]. The advice was:

'The Trust is an independent body which has appointed its own legal representatives, Charles Russell, who are answerable only to the Trustees. Similarly, the claimants have appointed their own legal representatives mostly but not exclusively Irwin Mitchell. We do not have control over which lawyers either party chooses to represent them nor over the legal fees incurred [...]. There are also medical costs incurred, e.g. for psychiatrists to endorse the claims for carers.'

The Trust Deed is intrinsically complex [...].

Charles Russell have told us that they do try to simplify claims procedures to minimise the claimants need for legal advice. Officials meet regularly with Charles Russell to review the work of the Trust and they are encouraged to drive down the costs as much as possible. They are also encouraged to suggest amendments to the Trust Deed that could simplify procedures and so reduce costs.

We have no direct levers to control the costs of the families' lawyers, although we do press Charles Russell to be robust in their assessment of activities and costs, Irwin Mitchell occasionally write at length to officials, although we take

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care not to give them cause for doing so and we always aim to close such correspondence expeditiously [...].'

- 4.23. The advice further noted the Chair last met with Ministers in October 2004. It was suggested that I could ask to meet the Chair, although reference was made to the previous meeting was with the Secretary of State and the Chair may feel that was more appropriate. Jacky Buchan's comments on the advice repeated the suggestion of another meeting. I made some handwritten comments to the effect that I did not think a meeting would resolve anything and asked when the Trust would suggest amendments to simplify procedures. My comments on the advice were repeated in an email sent from Jacky Buchan to Brian Bradley on 3 February 2006 [DHSC0038543_124]. Brian Bradley replied on 14 February 2006 to say no changes were planned [DHSC0038543_1231].
- 4.24. On 13 February 2006, Jacky Buchan provided me with a copy of a briefing for Prime Minister's Questions [DHSC0038543_1235]. The briefing concerned negative press coverage of the vCJD Trust.⁷ The Department had received FoI requests from journalists seeking correspondence between the DH and the Trust related to the cost of administering the scheme, delays in payments and the performance of Charles Russell as administrators. The material disclosed by the Department formed the basis of the articles. The PMQ's briefing set out lines to take on the two main criticisms made in the articles, namely that the Trust had been slow to make payments and that too much money had gone on lawyers' fees. I see there was also a separate issue about comments made by John Reid in his October 2004 meeting with Sir Robert, which had been interpreted as critical of the families of vCJD victims.
- 4.25. On 14 February 2006, I see Jacky Buchan sent me some background information on CJD issues which had been sent to the Secretary of State [WITN5427022]. Her cover note said:
- 'I have asked Dani [Private Secretary to the Secretary of State] to make sure SofS knows you had previously raised concerns over the admin and legal costs of the Trust and to also make sure SofS is aware of the response you received from officials.'*
- 4.26. The cover note went on to recite the advice I received from officials, which I set out more fully above.
- 4.27. On 15 February 2006, Brian Bradley sent a minute to the Secretary of State's private office (copied to my private office) [DHSC0004223_041]. The minute set out the background to the FoI response and sought to explain why the news potential of the information had not been recognised. I have also seen a note to the Secretary of State from her private office which said 'Caroline Flint wanted to add she has cleared a number of PQs on the administration of the

⁷ I have been referred to articles that appeared in the Guardian [DHSC0038543_130 and DHSC0038543_131] and the Mail on Sunday [DHSC0004223_055], [DHSC0038543_134].

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vCJD trust, and at no point did officials advise her about the FoI requests.'

[WITN5427035]

4.28. Also on 15 February 2006, Jacky Buchan passed me an email from the DH Press Office which referred to an interview request from BBC South East [WITN5427036]. The interview request concerned Crispin Blunt's constituent who died of vCJD and her family's unhappiness with how the Trust was run. The note to me from Jacky Buchan said *'Are you content to decline?'* to which I ticked that a statement should go out from a DH spokesperson. I suggested any press statement should be compatible with the letter I had written previously and which I referred to above. I see the Press Office liaised with Jonathan Stopes-Roe to draft a press statement [DHSC0006797_095].

4.29. On 16 March 2006, a submission was put to the Secretary of State (copied to my private office) about an FoI request from a vCJD victim's relative, [GRO-A] [GRO-A] [DHSC0038543_074]. Jacky Buchan passed the submission to me the following day with the comment *'Caroline. To be aware in case the media resurrect the comments alleged to have been made by John Reid.'* [DHSC0038543_074]. On 21 March 2006, I made a note on the face of the submission which asked if the office of John Reid (who was by then the Secretary of State for Defence) had been made aware. The submission attached lines to take on John Reid's comments and the same background briefing on the vCJD Trust that had been attached to the earlier submission of 16 September 2005.

4.30. On 22 March 2006, Brian Bradley emailed the Secretary of State's private office, with a copy sent to my private office. I see his email opened *'You requested an update for SofS on the performance of the vCJD Trust following the recent release of documents [under FoI]'* [DHSC6709794]. The email referred to the meeting between officials and the Trust on 7 December 2005, discussed above, and provided an update on progress in resolving claims. The Secretary of State's Private Secretary, Dani Lee, replied on 23 March 2006 [DHSC0006797_073]

'I also need a note from you on allegations that the performance of the vCJD Trust is much worse than we are admitting. We discussed this earlier in the week and I explained that SofS has been told about this from a very worried MP.'

4.31. Brian Bradley's reply dated 24 March 2006 was copied to my private office. He explained:

'[T]he Trust is an independent body which is responsible entirely to the Trustees and does not have accountability to the SofS. That is why we refer correspondence about the performance of the Trust to their representatives and administrators. We do however, take an interest in the performance of the Trust because it is disbursing public funds in order to implement an aspect of DH policy, i.e. ex gratia compensation to the victims of vCJD and their families / carers in the light of the report of the Phillips Inquiry.'

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- 4.32. He went on to say that without detail of the allegations he could not comment further but would ask colleagues to put together a briefing on vCJD policy.
- 4.33. On 28 April 2006, Jacky Buchan was copied into an email regarding **GRO-A** **GRO-A**'s FoI requests. I have seen a handwritten note from Jacky Buchan to me which read '*Caroline. To be aware. I have asked that we see the final letter + media handling plan (if necessary) and outline of difficult issues before anything goes out.*' **[DHSC0038543_055]**. I ticked to confirm on 2 May 2006.
- 4.34. On 17 May 2006, Diana Johnson MP wrote to the Secretary of State and enclosed a letter from a constituent **[DHSC6462956]**. The constituent raised issue about the cost of Charles Russell's administration of the fund. He referred to a critical Guardian newspaper article dated 11 February 2006 and a Newsnight programme. I have now seen emails that show officials and Charles Russell liaised over a response **[WITN5427037]**. On 20 June 2006, I replied to Diana Johnson on behalf of the Secretary of State. I said:
- I assume that Mr **GRO-A**'s second point refers to the costs of assessing and making claims for particular financial and/or emotional hardship as a result of psychiatric injury. Although the figures quoted on the programme were not correct, it is indeed true that this, and some other aspects of the Scheme, have been costly to administer under the terms of the Trust Deed. We do not, however, consider this to be due to Charles Russell's handling.'*
- 4.35. On 22 May 2006, Jacky Buchan sent me a note that enclosed an email dated 25 April 2006 from a solicitor at Irwin Mitchell to the Minister of State for Health Services, Rosie Winterton **[DHSC0038543_043, DHSC0038543_045]**. My understanding of the documents I have been shown is that the solicitor's email attached an earlier letter from Irwin Mitchell (of 16 January 2006 **[DHSC0038543_047]**) and an undated reply from Jonathan Stopes-Roe **[DHSC0038543_046]**. Irwin Mitchell's letter had set out various issues with the vCJD Trust. Jonathan Stopes-Roe's reply said the points raised were matters properly for the Trust, not DH.⁸ It appears that the solicitors wanted a meeting with Rosie Winterton to discuss the issue further. Jonathan Stopes-Roe advised Rose Winterton's private office against such a meeting **[WITN5427038]** **DHSC0038543_036]**. He noted that in due course the Secretary of State would meet with the chair of the vCJD Trust and emphasised that '*It is important that Ministers keep all this activity at arm's length, and let the Trustees get on with their (independent) job.*' His advice was copied to Jacky Buchan in my private office.
- 4.36. On 21 June 2006, I was sent a submission regarding **GRO-A** FoI request **[DHSC0038543_036]**. The submission sought my agreement to the Department relying upon a statutory exemption as grounds to withhold disclosure of three emails. The reason for the exemption was the public interest in maintaining the confidentiality of ministerial correspondence with third

⁸ For the purpose of this statement, I have also been shown Irwin Mitchell's reply to Jonathan Stopes-Roe, dated 1 February 2006 **[DHSC0006797_099]**.

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parties. I see from my handwritten note that I agreed the proposed course of action.

- 4.37. On 24 July 2006, I was sent a further submission regarding an FoI request from a BBC journalist [DHSC0038543_016]. Officials recommended withholding disclosure of material relating to preparation for a meeting between the Secretary of State and Sir Robert Owen. I approved the recommendation for the Department to rely upon the same statutory exemption.
- 4.38. For the purpose of preparing this statement, I have seen correspondence between the National Audit Office and Jonathan Stopes-Roe [DHSC0006797_028, DHSC0006797_020]. The correspondence indicated that an MP had asked the NAO to investigate the finances of the vCJD Trust and whether Charles Russell offered value for money.

Secretary of State's meeting with chair of vCJD Trust – July 2006

- 4.39. On 26 April 2006, Brian Bradley emailed the Secretary of State's private office about a letter from Sir Robert Owen to the Secretary of State [WITN5427038] DHSC0038543_036]. The email attached a letter from Sir Robert dated 11 April 2006 [DHSC0006797_040]. Sir Robert's letter referred to correspondence from the Human BSE Foundation to the Secretary of State and to representations made by solicitors acting for families affected by vCJD. It concluded '*a number of families express unhappiness at the manner in which the Trust is being administered. I would welcome the opportunity to meet you as party to the agreement that established the Trust to explain the current situation and the problems inherent in its administration.*'
- 4.40. Brian Bradley's advice was that, in light of recent correspondence and interest in the vCJD Trust, the Secretary of State and I should meet with Sir Robert Owen to review the work of the Trust. The email carried a handwritten comment from Jacky Buchan that said '*Caroline You will want to be aware.*' I see I replied 'okay' on 2 May 2006.
- 4.41. I see from the documents that I was also copied into a letter dated 11 April 2006 from Sir Robert Owen to Crispin Blunt's constituent [DHSC0038543_049]. Sir Robert's letter referred to 'shortcomings' in the scheme and described it as 'regrettably complex'.
- 4.42. On 2 May 2006, the Secretary of State replied to Sir Robert Owen [DHSC0038543_056]. She agreed to meet Sir Robert to '*discuss this extremely important and difficult issue.*'. I see on the same date I made a handwritten mark on a copy of the letter to confirm that I had noted its contents.
- 4.43. On 11 May 2006, Sir Robert replied to the Secretary of State [DHSC0006797_034]. He enclosed a paper he authored which he said summarised the difficulties faced by the Trustees in administering the Trust fund [WITN5427039]. Sir Robert copied his letter to Nick Harvey and Crispin Blunt.

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- 4.44. On Wednesday, 19 July 2006, the Secretary of State met with Sir Robert Owen to review the operation of the vCJD Trust. This is described in the briefing papers as *'one of a series of routine meetings between the chair of the Trustees and the Health Ministers'*, albeit the last such meeting was apparently in October 2004. Sir Robert's letter of 11 April was also noted as part of the background. The briefing said that Sir Robert wished to explain to the Secretary of State the problems inherent in the Trust's administration.
- 4.45. The day before the meeting the Secretary of State's private office sent her Sir Robert's written proposal for revision to the vCJD Trust [WITN5427040]. The reasons given by Sir Robert for the proposal included the fact that *'The administration of the scheme has given rise to very considerable difficulties'*. The Secretary of State was also sent counsel's advice on the proposal.
- 4.46. I see the Secretary of state was provided with a written briefing from officials. The 'key messages' set out by officials [DHSC0004223_070]:
- 'Generally pleased with the performance of the Trust but slightly disappointed that many claims have not yet been settled in full (but note that Sir Robert will be explaining the reasons for this);*
- Still concerned at the level of costs in administering the scheme;*
- Welcome Sir Roberts views as to how we can best resolve any difficulties and his longer term views on the future of the Trust;*
- Cautious about radical review of the Trust without full consideration of all the implications'*
- 4.47. In relation to Sir Robert's proposal for revision of the Trust, the briefing said:
- 'Sir Robert's paper at Appendix 1 describes a clear case for a radical revision of the scheme. This paper was received at the end of June and has been passed to the Department's counsel for their view [...] We are advised informally that counsel have significant concerns about this revision of the Trust and consider that it could open the possibility of Judicial Review [...].*
- 4.48. The papers show that I did not attend the meeting. I do not now recall having had any involvement in preparation for the meeting or the meeting itself. The papers do not indicate any particular involvement on my part, save that there was a handwritten comment on the cover of Secretary of State's briefing, which said *'Caroline is concerned about the administration costs of the fund'*.
- 4.49. I have seen an email from Jonathan Stope-Roe to Jacky Buchan dated 20 July 2006 [DHSC6025814]. The email suggests that, at that stage, I had had limited involvement with either the Trust meeting or Sir Robert's proposed revision to the Trust. The email attached a note on the Macfarlane and Eileen Trusts. Jonathan Stopes-Roe said *'There are no direct parallels [between Macfarlane / Eileen and the vCJD Trust], but one may nevertheless note that SofS met Sir Robert Owen [...] yesterday. They are not asking for more money; rather they want to simplify their compensation scheme.'*

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Subsequent events

- 4.50. While preparing this statement I have been shown a note of the meeting dated 19 July 2006 [WITN5427041] and Jonathan Stopes-Roe's file note dated 29 July 2006 [DHSC0006797_029]. He had attended the meeting. Although I cannot now recall the detail, I see from Jonathan Stopes-Roe's file note that the Secretary of State wanted to consult widely on the proposals and for the Department to take legal advice. I note she asked officials to work with the Trust to take forward an analysis of options for change.
- 4.51. I note from the documents that on 31 August 2006, the Department's solicitor sought advice from leading counsel on Sir Robert's proposals [DHSC0006797_021]. A conference was arranged for 14 September 2006.
- 4.52. I see from the papers that on 5 September 2006, Jonathan Stopes-Roe, Brian Bradley and other officials met with a departmental solicitor, Mark Gidden, to discuss the scheme and the proposed changes [DHSC0006797_013]. It appears from what was said that the plan at that stage was to put a submission to the Secretary of State and I in early October 2006. I note that it was anticipated that any submission would follow on from advice from leading counsel.
- 4.53. On 22 September 2006, I see Jonathan Stopes-Roe sent the Department solicitor an email that attached a document drafted by junior counsel [DHSC0006797_018]. The document set out a series of questions for officials to ask Sir Robert about his proposals [DHSC0006797_019]. On 2 October 2006, the Department solicitor met leading and junior counsel to discuss Sir Robert's proposals [DHSC0006797_017]. Leading counsel provided a note setting out his analysis of Sir Robert's concerns and possible solutions [DHSC0006797_105].
- 4.54. The papers indicate that on 5 October 2006, Jonathan Stopes-Roe, Brian Bradley and Mark Gidden met with Sir Robert Owen, one of the professional trustees and the Trust's solicitor [DHSC0006797_015]. The stated purpose of the meeting was to clarify various aspects of Sir Robert's proposed revisions. An amended version of junior counsel's list of questions was sent to Sir Robert in advance of the meeting [WITN5427042] .
- 4.55. I have seen a series of emails between officials and the Trust's solicitors dated between December 2006 and March 2007 [WITN5427023, WITN5427024]. I see from the emails that officials had asked Charles Russell to summarise the basis of the Trustee's application to the Secretary of State for amendment to the scheme. On 9 March 2007, Jonathan Stopes-Roe emailed the Department's solicitor and said [WITN5427042] :

'I am forwarding below the (final?) submission from Charles Russell setting out the Trustees' proposals for revision of the vCJD Compensation Scheme [...]

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The overall plan is now to put this submission to Ministers (first MS(PH), then SofS). If Ministers think the proposals have enough merit, they can ask the Trustees to consult their stakeholders and report back. However as [the Trust's solicitor] Richard Vallance points out, even if Ministers see no merit, the Trustees are under no obligation to remain silent.

[...]

- 4.56. *We must therefore now work up clear recommendations to Ministers, and an essential component of this will be input from [leading counsel] Justin Fenwick'.*
- 4.57. In the course of preparing this statement I have seen a subsequent written advice from leading counsel dated 27 April 2007 [WITN5427025]. I have also seen a further written advice from leading counsel dated 27 November 2007, so after I left office [WITN5427026].
- 4.58. I do not recall receiving a ministerial submission on the proposed revisions, as anticipated in Jonathan Stopes-Roe's email. I surmise that any such submission was delayed, at least while the advice of leading counsel was awaited, and that I left office in the meantime. Although it was after I left office, for completeness I mention that I have seen from the papers that in October 2007 the families of some vCJD victims sent a letter before claim to the Department challenging the failure to revise the scheme.

Reflections

- 4.59. Tying together the chronology of developments set out above, it seems to me the relationship between the DH and the vCJD Trust during my tenure can be summarised as follows:
- a) The Trust was set up some years before I came into office, and arose out of negotiations between the DH and the representatives of families affected by vCJD. The Trust was independent of the DH. While the Trust kept the DH informed of its work the DH were not responsible for directing or managing the administration of the Trust. The DH line was that Ministers should be kept at 'arm's length' from the workings of the Trust.
 - b) In late 2005, shortly after I took office, a particular issue emerged in relation to Michael Ancram's constituent. The Trust had reached the view they wanted to support the purchase of suitable accommodation, but their ability to make the funds available was limited by the Trust Deed. The Trust made its case to the Secretary of State and she exercised her power to raise the Basic Sum for that particular case. This was not so much an example of the Trust seeking 'permission' to make a decision within its own powers. Rather, the operation of the Trust Deed prevented a particular course of action and the DH took pragmatic steps to remove the impediment in one particular case.

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- c) During 2005, concern was raised in various parts about the Trust's administration (costs, alleged delay etc). I note I myself had raised concern within the department about the level of expenses incurred by the Trust in carrying out its work. The work of the Trust had also been complicated by the fact the life expectancy of victims had significantly improved since the Trust was set up. Interest in the Trust's activities was manifested in correspondence to the department, FoI requests and coverage on television and in the press. The Chair of the Trust considered that the administration of the scheme was the cause of the difficulties that faced the Trust and proposed that the scheme should be revised.
- d) The 11 April 2006 letter from Sir Robert Owen regarding proposed reform of the Trust was dealt with at Secretary of State level. The Secretary of State met with the Chair of the Trust in July 2006 to discuss the Trust's concerns. Thereafter, officials continued to liaise with the Trust and its solicitors and also took advice from leading counsel. I see that it was envisaged that a submission would be put to ministers, but this did not happen before I left office in June 2007.
- e) The document that I have seen remind me that a number of Ministers, for different reasons, had some involvement with the vCJD Trust during my tenure. As with other trusts and schemes, it was important that Ministers were not drawn into affecting decisions on individual applications for funding. The Trust request in relation to the **GRO-A** case was exceptional as it was to enable the Trust to enact a decision it wished to make, not one made by Ministers. I am not aware of any other similar examples during my time in the Department. On the issue of administration costs and proposed reform of the Trust, I am reminded that these matters were primarily handled by the Secretary of State and senior officials. While I do not wish to speculate, I think that this may have been because early meetings between the vCJD Trusts' Chair and the Department were at Secretary of State level and so that practice continued.

Section 5: Others

- 5.1. I am asked to provide any more information and/ or views I may have that are relevant to the Inquiry's terms of reference.
- 5.2. In this section I have sought to flag to the Inquiry a number of issues that I was involved with, without going into detail. But if further information is required then the Inquiry should let me know and I will try to assist.
- 5.3. After the original rule 9 request was sent to me, I was informed that the Inquiry no longer wished me to answer a series of questions on vCJD and

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recombinant Factor VIII. I am therefore not providing evidence in relation to these issues in this section of my statement.

Hepatitis C

- 5.4. The Inquiry will be aware that I participated in an adjournment debate on hepatitis C in the House of Commons on 11 July 2005. This was largely about hepatitis C as a public health issue and the Hepatitis C Action Plan that was launched in 2004. The APPhG had produced a report on hepatitis C in March 2005 and Bob Laxton MP raised a series of issues relating to that. A copy of the debate is at [WITN5427027].
- 5.5. As the Inquiry would expect, in my role as Minister for Public Health I was involved with a number of issues relating to hepatitis C awareness and surveillance (and hepatitis B also).

Skipton Fund Agency Agreement

- 5.6. I am aware that there was some delay in finalising the agency agreement for the Skipton Fund and that officials were working with the devolved administrations on this. I anticipate that officials will be best placed to provide detail about this.

PQs

- 5.7. I have referred in this statement to a number of PQs either answered by me, or where the answers were approved by me. I understand that the Inquiry has a list of relevant PQs during my time at DH.

Stigma - HIV

- 5.8. In late 2005 DH published, for consultation, an action plan on HIV stigma and discrimination. Consultation on this action plan took place in early 2006. The action plan was complete by April 2007 but I cannot recall exactly when it was published.

BPL

- 5.9. NHSBT was formed in 2005 when the National Blood Service and UK Transplant merged. Over much of my time in office, in depth consideration

FIRST WRITTEN STATEMENT OF CAROLINE FLINT

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was being given to the future ownership of Bio Products Laboratory and whether it should continue to be part of NHSBT. I was involved in these issues.

Statement of Truth

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

GRO-C

Signed:

Dated: *07 October 2022.*