

Witness Name: The Right Hon. Malcolm

Leslie Rifkind KCMG KC

Statement No.: WITN7009001

Exhibits: None

Dated: 25/11/2022

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF THE RIGHT HON. SIR MALCOLM LESLIE RIFKIND KCMG KC

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 22 June 2022.

I, The Right Hon. Sir Malcolm Leslie Rifkind KCMG KC, will say as follows: -

Section 1: Introduction

1. *Please set out your name, address, date of birth and professional qualifications.*

1.1 My full name and title are Sir Malcolm Leslie Rifkind, KCMG KC, of GRO-C
GRO-C. My date of birth is GRO-C 1946. I am a King's Counsel
(retired.)

2. *Please set out, in list form, the positions you held in government between 1979 and 1990. Please also set out any Front Bench positions held while in Opposition.*

2.1 The positions I held in government from 1979 to 1990 were as follows:

- a) Parliamentary Under-Secretary at the Scottish Office 1979 -1982
- b) Minister, Foreign Office 1982 -1986
- c) Secretary of State for Scotland – 11/1/86 to 28/11/90

2.2 As some of the documents provided to me by the Inquiry postdate the period 1979 –1990 I also set out below the further positions I held in government.

- a) Secretary of State for Transport – 28/11/90 to 10/4/92
- b) Secretary of State for Defence – 10/4/92 to 5/7/95
- c) Foreign Secretary - 5/7/95 to 2/5/97

3. *Please provide details of any business or private interests you have or have had which are relevant to the Inquiry's Terms of Reference.*

3.1 None relevant to this Inquiry.

4. *Please set out your membership, past or present, of any committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference, including the dates of your membership.*

4.1 None relevant to this Inquiry.

5. *Please confirm whether you have provided evidence or have been involved in any other inquiries, investigations, criminal or civil litigation in relation to the human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products. Please provide details of your involvement.*

5.1. I have had no involvement.

Section 2: Structure of the Scottish Office

You may be assisted by the following documents in respect of the questions that follow:

- *Penrose Inquiry structure of Scottish Home and Health Department ("SHHD") 1980-1991 [PRSE0000358];*
- *BSE Inquiry document with ministerial charts [MHRA0031910].*
- *'The Scottish Office in the 80s' by Richard Parry (University of Edinburgh), Scottish Government Yearbook 1991 [RLIT0001019].*

6. *The Inquiry understands that you were Parliamentary Under-Secretary of State for Scotland from May 1979 to April 1982, with responsibility for Home Affairs and the*

Environment, and that you returned to the Scottish Office as Secretary of State for Scotland ('Secretary of State') from January 1986 to November 1990. Please confirm if that is correct.

6.1 That is correct.

7. *Please describe:*

- a. *your roles and responsibilities as Parliamentary Under-Secretary, and explain whether you were involved in any matters relating to health (in particular, blood and blood products);*
- b. *how, if at all, your responsibilities changed during the time you were in this role.*

7.1 As Parliamentary Under-Secretary I had responsibility for Home Affairs and the Environment. As such, I was responsible for Police, Prisons, Law Reform, Housing, Transport, Environment, Heritage and other miscellaneous matters.

7.2 I had no responsibility for Health throughout this time.

8. *Please describe:*

- a. *your roles and responsibilities as Secretary of State, including with respect to health; and*
- b. *how, if at all, these changed during the time you were in this role.*

8.1 As Secretary of State for Scotland, I had responsibility for Education, Home Affairs, Police, Prisons, Law and Order, Transport, Health, Agriculture, and other Miscellaneous matters. This wide set of responsibilities necessitated that I delegate certain topics to my then junior Ministers, leaving me the ability to focus on areas which required at the time my attention and input on a political level. I chose to delegate the day-to-day responsibility for Health to one of my junior ministers, then Michael Forsyth (now Lord Forsyth).

8.2 Delegation in this manner was not unusual at the Scottish Office. My predecessor as Secretary of State, George Younger¹, also operated in this way, delegating to me as Parliamentary Under-Secretary the day-to-day responsibility for Home Affairs and the Environment as I mention at 7.1 above. It is important to

¹ George Younger, 4th Viscount Younger of Leckie, dec'd 26/1/2003

appreciate the breadth of responsibilities provided to the Secretary of State for Scotland, and the former Scottish Office, as this was far broader in scope than many of the individual departments at Westminster. Like my predecessor before, I trusted my junior ministers, having faith in their intelligence and ability to perform as required. I refer also to my response below at 11.3.

8.4 During my time as Secretary of State for Scotland, Health was not regarded by me as a political area of concern. There was a general political consensus on the desire for a health service in Scotland which responded to its needs. In my opinion, Health was an area which required expert input from the medical profession and other sources to ensure that the NHS provided a service which met the needs and circumstances of Scotland. I had faith in my then junior Minister, Michael Forsyth, that he had the intelligence and ability to provide the required detailed questioning or decision-making on any issues arising.

8.5 Of course, the ultimate responsibility for Health lay with me as Secretary of State. Any correspondence or Minutes or Submissions sent to me would be reviewed by my Private Secretary and highlighted by them where it was thought my attention was needed. I also kept in touch with my junior Minister. He knew that he could raise any matters of concern or interest with me directly. That would be done formally by either an arranged meeting (which would be minuted) or informally as our paths crossed on parliamentary business at Westminster. With the passage of more than 30 years, I do not recall any specific formal or informal meetings with my then junior minister, but I know that we spoke reasonably frequently, and I have no reason to suspect that he did not keep me informed.

8.6. My overall responsibilities did not change during my time as Secretary of State.

9. *Who had ministerial responsibility for blood and blood products during your time as (i) Parliamentary Under-Secretary, and (ii) Secretary of State for Scotland?*
- a. *To what extent did they have autonomy in this area, and in what circumstances did they require the involvement of other ministers in decisions?*
 - b. *More broadly, please describe the processes which were in place for deciding whether to seek the involvement of other ministers (including the Secretary of State) on particular issues. Please include any relevant examples.*

9.1 While I was Parliamentary Under-Secretary, Russell Fairgrieve was

responsible for Health.²

9.2 John Mackay (Parliamentary Under-Secretary of State for Scotland 6/4/82-14/6/87³) and then Michael Forsyth (Parliamentary Under-Secretary of State for Scotland 13/6/87 – 7/9/90⁴) were responsible for Health during my time as Scottish Secretary.

9.3 In reality, the day-to-day ministerial involvement as regards health policy was carried out by the relevant junior minister as I outlined in my answer to Q8 above.

9.4 Some of the papers and correspondence which he handled would have been copied to my Private Office and it would have been for my Private Secretary to decide whether any of these papers were of an importance that they should be seen by me personally.

10. *To the best of your ability, please outline the organisational structure of the Scottish Office insofar as it is relevant to the Inquiry's Terms of Reference. Please do so in respect to your time as Parliamentary Under-Secretary and Secretary of State, identifying any differences in structures between those times. In doing so, please:*

- a. describe how ministerial responsibilities were allocated, in particular with respect to health matters, including who determined those responsibilities;*
- b. outline how, if at all, those ministerial responsibilities changed over time; and*
- c. explain (insofar as you have not done so already) the different roles played by the Secretary of State, the Minister of State, and Parliamentary Under-Secretaries of State, in respect of health matters (and in particular matters relating to blood and blood products);*

Insofar as it is relevant to do so, please comment on the role and responsibilities of the Scottish Home and Health Department ("SHHD"), and the Common Services Agency ("CSA"). Further questions on these bodies are contained below, but please feel free to structure your answers as you see fit.

10.1 As Secretary of State I had overall responsibility for all matters that came under the Scottish Office including Health. I determined which of my junior ministers would be responsible for Health. These responsibilities did not change

² Sir Thomas Russell Fairgrieve CBE – deceased 17/2/99

³ John Mackay, Baron Mackay of Ardbrecknish – deceased 21/2/2001

⁴ The Right Hon. Lord Forsyth of Drumlean, Kt. PC – IBI Inquiry witness on 20/7/22

during my time. As I mentioned in response to Q7, I had no responsibility for Health while a Parliamentary Under-Secretary.

10.2 I have been shown the document PRSE0000358 which is entitled "Penrose inquiry - SHHD Structure – 1980 to 1991". I understand that this document was prepared for and submitted to the Penrose Inquiry as an accurate reflection of the structure and personnel of the Scottish Home and Health Department of the Scottish Office during the period 1980 to 1991. I have no reason to doubt its accuracy, but I cannot recall the detail or the names of personnel or their positions while I was either Parliamentary Under-Secretary or Secretary of State for Scotland.

10.3 I note that on page 2 of the document it is stated that the Division of the SHHD responsible for the supply of blood and blood products was Division IVD, headed by Asst. Secretary Duncan Macniven during my time as Secretary of State. I understand that Mr Macniven gave testimony to the Inquiry on 19th July 2022.

11. *Please describe, in broad terms, your experience of how the decision-making process within the Scottish Office worked, including how, typically, decisions were requested of and taken by the Secretary of State and ministers; the procedures within the Scottish Office for providing advice to the Secretary of State and ministers; and the flow of information between civil servants and the Secretary of State or ministers.*

11.1 It was for the Private Offices and the Private Secretaries of the various Ministers to determine which correspondence or policy matters needed to be seen by Ministers and, if so, by which Minister. The Private Secretary to the Secretary of State had a special responsibility in deciding which matters either needed to be just seen by the Secretary of State or needed to be decided by him personally.

11.2 In exercising their judgement they would need to take into account the extent to which their Secretary of State had indicated his preference for matters of detail to be devolved to the relevant junior minister and which matters he wished to be referred to him.

11.3 Such was the breadth and depth of Scottish Office responsibilities in the days before there was a Scottish Parliament that both I, and my predecessor, George Younger, believed in a high degree of devolved responsibility from the

Secretary of State to junior ministers. That was the reason why George Younger initiated, and I followed, the policy of designating the junior ministers not as parliamentary secretaries but as, for example, the Minister of Home Affairs, the Minister for Health, the Minister for Education etc.

12. *Please describe how, (i) as Parliamentary Under-Secretary of State, and (ii) as Secretary of State, information and issues would be brought to your attention. In particular, please explain:*

- a. *What criteria determined whether a matter was of sufficient importance to be brought to your attention?*
- b. *Who would make those decisions?*
- c. *How effective the process was, in your experience, in ensuring that the Secretary of State was suitably informed of the key issues with which the DH was concerned during the period of your tenure?*

12.1 I feel I have dealt with these matters in my answer to Question 11. I have no reason to believe that I was not suitably informed.

13. *To the best of your ability, please identify (by name and position) the ministers, advisers and senior civil servants within the Scottish Office and its constituent departments with whom you principally dealt, or from whom you received advice, when you were Parliamentary Under-Secretary or Secretary of State, in relation to the following issues: blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products.*

13.1 I had no such responsibility when I was Parliamentary Under-Secretary of State. As Secretary of State, I dealt with Michael Forsyth. I cannot recall the officials except the Permanent Secretaries, Sir William Fraser⁵ and Sir Russell Hillhouse⁶.

⁵ Permanent Secretary 1978-1988

⁶ Permanent Secretary 1988-1990

Section 3: The SHHD

The functions and structure of the SHHD

14. *To the best of your ability, please describe in broad terms the role and functions of the SHHD, constitutionally and in practice, during your time as Parliamentary Under-Secretary and Secretary of State for Scotland. In doing so, please explain which ministers and parliamentary under-secretaries had oversight of, or influence over, SHHD activities.*

14.1 Ministers had oversight and influence because the SHHD was part of the Scottish Office, and all of the functions of the Scottish Office came under the Secretary of State and his Ministers. I refer to my response in paragraphs 10.2 and 10.3.

15. *In relation to your time as (i) Parliamentary Under-Secretary and (ii) Secretary of State, please describe how and the degree to which you and your Private Office interacted with the SHHD on health policy, and in particular: blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products. Please describe any regular meetings, committees or forums through which you interacted with SHHD officers on such matters.*

15.1 Normally, I had no role in these matters which were handled on my behalf, when I was Secretary of State, by my Minister of Health. I also refer to my responses to Q7, Q8 and Q9 above.

16. *Please describe any interactions you had, in your capacity as (i) Parliamentary Under-Secretary and (ii) Secretary of State, with the CSA in relation to blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products.*

16.1 I do not recall any such interactions. As I mentioned, I had no responsibility for

Health as a Parliamentary Under-Secretary. As Secretary of State, Health was delegated to my junior Minister.

17. *Please describe any interactions you had, in your capacity as (i) Parliamentary Under-Secretary and (ii) Secretary of State, with any other health-related public bodies in Scotland, in particular in relation to blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products.*

17.1 I do not recall any such interactions. As I had no responsibility for Health as Parliamentary Under-Secretary, and as Secretary of State for Scotland I delegated the Health portfolio to my junior Minister, it would be unusual for me to have had any such interaction.

Funding of health services

18. *Please describe the process by which the SHHD budget was decided upon and approved in the period in which you were (i) Parliamentary Under-Secretary, and (ii) Secretary of State. In doing so, please describe (i) the function of the Public Expenditure Survey and the Treasury in this process, (ii) the role (if any) of the DHSS, (iii) the roles (if any) of the SHHD and the CSA, (iv) your involvement and ministers' involvement in this process.*

18.1 As Secretary of State I had to negotiate with the Treasury the size of the Scottish Office budget each year. That negotiating process was made much simpler by the application of the Barnett Formula which ensured that the resources of the Scottish Office would, normally, vary each year by a fixed percentage of any increases or decreases in the resources agreed for the rest of the United Kingdom. Once that total sum for the Scottish Office was determined, the Scottish Secretary had the freedom as to how he divided the resources available between his various departments. Thus, for example, Health could receive more, and Transport receive less than had been assumed in the application of the Barnett Formula as to the totality of resources which would be allocated to the Scottish Office.

19. *Please address, to the best of your ability, how Scottish blood services were funded*

during your time as (i) Parliamentary Under-Secretary and (ii) Secretary of State. If there were changes in the funding arrangements over this period, please describe them, and outline the reason behind these changes.

19.1 I have no specific recollection of this. To the best of my recollection blood services were part of the health service and would receive funding through the health budget as part of the overall Scottish Office budget. I refer also to my answer at 18.1 above. As document PRSE0000358 states, the Scottish Home and Health Department had responsibility for Health, and it was Group IVD which had responsibility for blood and blood products. This question on funding is best answered by reference to the evidence of Mr Duncan Macniven (INQY1000230⁷) or Lord Forsyth (INQY1000231.⁸)

20. *Please describe the process by which government funding was granted for specific health matters not budgeted for in the Scottish Office or SHHD budget, in the period in which you were (i) Parliamentary Under-Secretary or Secretary of State. In doing so, please describe:*

- a. *how an application was made for such funding;*
- b. *who took such decisions;*
- c. *the extent of your involvement, and ministers' involvement, in determining whether such funding would be applied for or granted;*
- d. *the factors taken into account, and by whom, when determining whether such funding should be granted; and*
- e. *whose responsibility it was to determine how such funding should be allocated and whether any conditions should be imposed on such funding.*

20.1 It would be unusual for any extra funding to be sought from the Treasury. If it was to be, that would have had to be approved by me as Secretary of State. In my experience, such applications would, normally, have been resisted by the Treasury and would have been unlikely to succeed unless the Prime Minister was well disposed to the request. I do not remember any such requests for additional funding during my time as Secretary of State regarding Health policy. As stated above at 18.1, as Secretary of State for Scotland I had the discretion to apply funds allocated through the Barnett formula to areas within the Scottish Office that I

⁷INQY1000230 pages 4-13; p45 line 20-25; p46 lines 1-26

⁸INQY1000231 pages 8-17 lines 1-14

thought had more need or best met the needs of the country at that time. I was not restricted to allocating funds in the same way as my counterparts in England & Wales or Northern Ireland.

Section 4: The role of the Chief Medical Officer for Scotland

21. *What was your understanding, in broad terms, of the role of the Chief Medical Officer ('CMO') for Scotland during your time as (i) Parliamentary Under-Secretary, and (ii) Secretary of State? Please comment, in particular, on the following areas:*

- a. *The extent to which the CMO was responsible for informing ministers about risks to public health;*
- b. *The extent to which the CMO was responsible for shaping policy and informing ministers of policy options;*
- c. *The extent to which the CMO was responsible for issuing guidance, advice or instructions to clinicians and health bodies as to the risks of infection from blood or blood products;*
- d. *The extent to which the CMO was responsible for issuing guidance or advice to patients, and in particular patients reliant on blood transfusions or blood products?*

21.1 I had very little personal contact with the Chief Medical Officer but would have been willing to see him whenever he requested a personal meeting. I understand from the evidence given by Lord Forsyth to the Inquiry that he was in contact with the CMO⁹.

22. *Please describe the relationship that you had with the CMOs with whom you worked while (i) Parliamentary Under-Secretary, and (ii) Secretary of State. Please describe any relevant differences in approach between the CMOs with whom you worked.*

22.1 As in my answer to Q21.

23. *Please describe how the CMO would interact with relevant ministers within the Scottish Office. How would the CMO raise issues of concern? Were there regular meetings, and if so who determined the agenda?*

23.1 As I mention at 21.1 above, I understand from the evidence given by Lord

⁹ INQY1000231 page 39, line25; pages 40-45 lines 1-15

Forsyth to the Inquiry that he, as Minister of Health, was in contact with the CMO. I would expect that meetings with the Secretary of State would only take place if requested either by the CMO or by the Secretary of State.

24. *What contact, if any, would Scottish Office ministers (including the Secretary of State) have with the CMOs for England, Wales and Northern Ireland? If there was any contact, please explain how, when and why it would be arranged.*

24.1 I do not know what contact Health Ministers had. I had no such contact.

25. *To the best of your knowledge and recollection, how significant a role did the CMO for Scotland play in forming policies on blood and blood products (and any other matters relevant to the Inquiry's Terms of Reference) during your time as (i) Parliamentary Under-Secretary, and (ii) Secretary of State?*

25.1 I do not know. This is a question for my former Minister of Health.¹⁰

Section 5: Relationships with the UK government and devolved administrations

26. *During your time as (i) Parliamentary Under-Secretary and (ii) Secretary of State:*
- a. *how much oversight, if any, did the Department for Health and Social Security ('DHSS')¹¹ retain over health policy decisions made in respect of Scotland? Please provide any relevant examples;*
 - b. *to what extent did the Scottish Office and/or the SHHD interact with and influence the DHSS on matters relating to blood and blood products; and*
 - c. *to what extent did the Scottish Office and/or the SHHD attempt to align its policies and activities with those of the DHSS on such matters?*
 - d. *How would disputes between the DHSS and the Scottish Office/SHHD be resolved?*

26.1 I have no detailed information on this. If the Scottish Office wished to apply health policy differently in Scotland to that elsewhere in the UK they would normally discuss and explain their reasons to their colleagues in the DHSS. Matters of detail

¹⁰ INQY1000231 pages 42 lines 21-25, pp 43,44 and 45 lines 1-15

¹¹ It is noted that the Department was later split, with the Department of Health retaining control of health policy. For ease of reference, 'DHSS' is used in this request to cover both the Department of Health and Social Security and the Department of Health.

would not cause any problem in normal circumstances. If there was strong disagreement the matter might have to be considered either by a Cabinet Committee or, ultimately, by the Prime Minister. I think it useful to refer to the Inquiry transcript of the evidence of my former Minister of Health, Lord Forsyth, of 20th July 2022, where he states at page 38, lines 9-25 INQY1000231]

“Q...More generally, the Department of Health being the much larger Department, the much better resourced Department, how much of a gravitational pull did they exert in terms of the policy that Scotland followed on health matters?

A. They didn't have a gravitational pull. But, obviously, any change in policy or additional provision would have a much bigger impact on them because their budgets were very much larger. Gravitational, I suppose, in the sense of they had much more in the resources in terms of officials, and so on, and there were some issues which were clearly best dealt with by them. I mean, I'm thinking of regulatory issues and things of that kind. But broadly speaking, every Secretary of State used to say that they were Scotland's person in the Cabinet, not the Cabinet's person in Scotland. And that is how we operated.....”

27. *Please describe in broad terms your interactions, as (i) Parliamentary Under-Secretary and (ii) Secretary of State, with the DHSS in relation to health policy. Please also identify by name and position the ministers and civil servants with whom you liaised in the DHSS. Please address in particular such interactions in relation to decision-making about blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products.*

27.1 I have no recollection of the need for any interaction on these matters by me with the UK Health Secretary. As I have said previously, I had no responsibility for Health as Parliamentary Under-Secretary. As Secretary of State, I delegated the day-to-day responsibility to my junior Minister at the time. I have read the documents supplied by the Inquiry to me and see that I attended a Cabinet Sub-Committee meeting on AIDS on 10th November 1987 (document CABO0100016_011 when Special Financial Assistance for Haemophiliacs was discussed. I am not recorded as having made any contribution to the discussion

on that item of the Agenda. However, I refer to my answer to Q36 below for greater discussion of my contribution on another aspect of the debate.

28. *Please describe your interactions, in your capacity as (i) Parliamentary Under-Secretary, and (ii) Secretary of State for Scotland, with the Welsh Office and Northern Ireland Office in relation to health. Please also identify by name and position the ministers and civil servants with whom you liaised in each government. Please address in particular such interactions in relation to decision-making about: blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products.*

28.1 There were none by me. There may have been by my Minister of Health.

29. *As (i) Parliamentary Under-Secretary, and (ii) Secretary of State for Scotland, to what extent were you involved in, or did you influence, the development of UK policy and the alignment or divergence of UK and Scottish policies on the following issues: blood and blood products, the licensing and regulation of pharmaceutical companies and products, risks of infection from blood or blood products, the response to such risks, and compensation or other financial support to people infected as a result of treatment with blood or blood products.*

29.1 I do not recollect such involvement which would have been more than 30 years ago. As mentioned in answers to Q27 and Q36 below I was present at one meeting of a Ministerial sub-committee. It is possible that I was present at other meetings where such UK policy was discussed but there is no such reference in the Inquiry documents that I have received. If there are records available of any such meetings I shall be happy to study them to try and refresh my memory.

Section 6: Hepatitis

NANB surrogate testing

30. *In the second half of the 1980s, a debate took place within the SHHD and SNBTS about the potential introduction of surrogate testing for NANB hepatitis for blood donors in Scotland. A (non-exhaustive) set of documents is enclosed to illustrate the nature of the debate and the issues: PRSE0002641, PRSE0000017, PRSE0004163, PRSE0002916,*

PRSE0000784, PRSE0000618, PRSE0002104, PRSE0001444, PRSE0004562, PRSE0004545, PRSE0003515, SBTS0000832.

- a. *So far as you can recall, were you aware of this debate during your time as Secretary of State?*
- b. *If not, would you have expected Scottish Office officials and/or junior minister(s) with responsibility for blood services to have made you aware of the issues, and to have sought your involvement in any decisions?*
- c. *Would you have expected the junior minister(s) with responsibility for blood services to have been made aware of and/or to have been involved in decisions on this issue?*
- d. *If neither you nor any junior minister(s) were made aware of the issue, do you consider that you should have been?*
- e. *The Inquiry understands that surrogate testing of donors for NANB hepatitis was introduced in the USA and a number of European countries between 1986 and 1989. Please explain whether you were aware of these developments at the time and, either way, whether they affect your answers to any of the previous questions.*

30.1 Regarding (a) no, I was not aware of this debate.

30.2 Regarding (b), if they involved matters of great importance, I would have expected any decisions, as opposed to the debates, to be referred to the Minister of Health and, through him, to the Secretary of State, if appropriate.

30.3 Regarding (c) if important, I would have expected the relevant officials to have copied the papers to the Minister's Private Office.

30.4 Regarding (d) as I do not know the details of the issue, I cannot offer a view.

30.5 Regarding (e) I was not aware. No, they do not affect my answers above.

30.6 I am aware from the transcript of the evidence which Lord Forsyth gave to the IBI Inquiry on 20th July 2022¹² that similar questions have been asked of him and answered.

¹²

Hepatitis C screening

31. *The Inquiry understands that, following the identification of the hepatitis C virus in 1988 and the subsequent development of screening tests, debate took place within Scotland and the UK as a whole about whether and when to introduce screening of blood donors. Hepatitis C screening of blood donations was eventually introduced UK-wide in September 1991 (after your time in office as Secretary of State). The following documents, which are non-exhaustive and are not limited to those involving Scottish officials and ministers, illustrate the nature of the debate until the end of your time in office: PRSE0000558, NHBT0000014_060, NHBT0083819, paragraph 5 of SCGV0000230_145, PRSE0001562, NHBT0000072_098, PRSE0000744, PRSE0000976, NHBT0000073_018, SCGV0000136_151 and PRSE0004608.*
- a. *So far as you can recall, what involvement, if any, did you have in decisions relating to the introduction of hepatitis C screening during your time as Secretary of State?*
 - b. *If you were not involved, do you consider that you should have been?*
 - c. *For example, would you have expected to have been aware of, or otherwise have been involved in, the issues raised in the enclosed 23 August 1989 memorandum from George Tucker to Michael Forsyth's private secretary [PRSE0000558]?*

31.1 Regarding (a) these matters were dealt with by my Minister of Health

31.2 Regarding (b) I would have been involved if the Minister of Health had felt this to be necessary.

31.3 Regarding (c) no I would not have expected to have been involved. It is clear from the Memorandum of 23 August 1989 that it is a briefing note to Mr Forsyth, as the then Minister of Health, to advise him of the background to an article in the press and to advise him on the line to take if questioned by other media on the issues. The briefing note was not copied to me but was copied to the Private Secretaries for each of the Under-Secretary of State, the Scottish Home and Health Department ("SHHD"), the CMO, Mr Hamill (the Under-Secretary) and two others.

32. *What responsibility, if any, do you consider you had as Secretary of State to ensure the timely introduction of the screening test in Scotland?*

32.1 I had confidence in the Minister of Health and those officials reporting to him. I

have no reason to believe that the screening was not introduced in a timely fashion. I refer again to the transcript of the evidence which Lord Forsyth gave to the Inquiry on 20th July where he states his own belief on this issue, page 106, lines 13-20 [INQY1000231]

*“A.....my understanding of the position was that there was a dispute as to the reliability of the tests, that the reliability of the tests improved, and when all the medics were satisfied that the tests were reliable, the policy changed.
.....and we were advised to go ahead accordingly.”*

33. *What are your reflections, looking back now, on the length of time it took to introduce the screening test in Scotland? Could more have been done, during your time as Secretary of State, to introduce the screening test in Scotland at an earlier stage? If so, what, by whom and when?*

33.1 I have no reason to believe that more could have been done but I am not well informed as to the detail. As I state at 32. 1 above, I have no reason to believe that the screening was not introduced in a timely fashion and refer again to Lord Forsyth's transcript as above.

Section 7: Campaigns for financial support and compensation and the HIV Litigation

34. *In an (unsigned) October 1987 letter to George Younger MP [SCGV0000007_010], you explained that the Government would not compensate haemophiliacs infected with AIDS by contaminated blood products administered by the NHS because of “the difficulties which we see in drawing a distinction between different individuals or groups suffering harm as a result of necessary medical treatment carried out in good faith without negligence, using the knowledge and products available at the time.” You added that: “I can assure you that we have given this matter the most careful consideration”. To the best of your recollection:*
- a. *What involvement did you have in deciding the UK Government's position on compensation (or other payments) for patients with haemophilia infected with HIV?*
 - b. *How did you exercise influence on policy on this matter with, (i) the DHSS (or Department of Health), (ii) the Treasury, (iii) the Prime Minister?*
 - c. *To what extent would the Scottish Office have been able to form a separate policy on this matter if it had wished to do so? Would this have required the assent or approval of other Departments?*
 - d. *Were efforts made to establish a separate Scottish policy on these matters?*

- e. *Was there any difference of views between ministers or Secretaries of State on this matter? If so, please describe them.*
- f. *What were your personal views (if any) on what, if any, payments should be made to people with haemophilia who had been infected with HIV?*
- g. *What were your personal views (if any) on what payments, if any, should be made to the following groups:*
 - i. *People who did not have haemophilia but who were infected with HIV as a result of NHS treatment with blood transfusions or blood products;*
 - ii. *People who became infected with hepatitis B or hepatitis C as a result of NHS treatment with blood transfusions or blood products?*

You may be assisted by the following documents:

- a. *15 May 1987 article in The Guardian [DHSC0004541_212].*
- b. *29 June 1987 article in The Guardian [MDIA0000057].*
- c. *6 October 1987 minute from Mr Lugton with enclosure [SCGV0000007_051 and SCGV0000007_050].*
- d. *Letter from Dr Lowe to Michael Forsyth MP (Scottish Office Minister with responsibility for health) on 16 September 1987 and Mr Forsyth's 9 October 1987 response [SCGV0000007_054 and SCGV0000007_047].*
- e. *October-November 1987 letters to and from Mr Forsyth regarding the Haemophilia Society's campaign for compensation [SCGV0000008_064, SCGV0000009_089 and SCGV0000008_082].*
- f. *11 November 1987 minute from Mr Lugton [SCGV0000229_171].*

34.1 Regarding (a) I had no personal involvement on this matter which was handled by the Scottish Office Minister of Health. My Private Office would have received copies of all important documents. I would have replied to the letter from George Younger because, as a previous Secretary of State, he was entitled to a reply from me rather than from a Junior Minister. The contents of the reply reflected UK Government policy at that time.

34.2 Regarding (b) I had no personal involvement.

34.3 Regarding (c) It could have wished to form a separate policy on this matter. It is my belief that I would have agreed with the view of the Minister of Health that there were no good Scottish reasons for advocating a policy, in this area, different to that in England and Wales, if my opinion had been sought.

34.4 Regarding (d) not so far as I am aware.

34.5 Regarding (e) not so far as I am aware.

34.6 Regarding (f) I have nothing to add.

34.7 Regarding (g) I have nothing to add.

35. *In the enclosed, 12 October 1987 letter to Mr Forsyth, Sam Galbraith MP wrote that, while there was “no legal responsibility to compensate” haemophiliacs who had contracted AIDS through their treatment, he felt that “we have a certain moral obligation to them” [SCGV0000007_007]. Did you agree with Mr Galbraith at the time that the Government had a “moral obligation” to infected haemophiliacs? If not, did your view on this issue change over time?*

35.1 I was not aware of that letter which was sent to Mr Forsyth. I cannot recall what my precise beliefs were at the time but in hindsight it is possible that I would have agreed with the moral argument for compensation.

Establishment of the Macfarlane Trust

36. *Insofar as you are able to do so from your recollection and the documents provided or available to you, please provide a chronological account of your involvement in decisions and actions taken by the Government up to the establishment of the Macfarlane Trust in 1988, in relation to compensation or other financial support for individuals infected with HIV through blood transfusions and blood products. You may wish to consider the following documents:*

- a. *Briefing paper on 6 November 1987 for senior government ministers [CABO0000205].*
- b. *Minutes of meeting of the Home and Social Affairs Committee and Sub Committee on Aids on 10 November 1987 [CABO0100016_011].*
- c. *11 November 1987 minute from Mr Lugton [SCGV0000229_171].*
- d. *13 November 1987 minute from Mr Binnie [SCGV0000229_164].*
- e. *13 November 1987 minute from Mr Lugton, with enclosure [SCGV0000229_165 and SCGVx0000229_156.]*

- f. *16 November 1987 Parliamentary statement from Tony Newton MP [LDOW0000241].*

36.1 While I have no recollection of having been involved in the creation of the MacFarlane Trust, I see from the Minutes of the Meeting on 10 November 1987 [CABO0100016_011] that I, along with my other territorial counterparts, or their representative, was present at the meeting of the subcommittee on AIDS of the Home and Social Affairs Committee. The Minutes clearly set out what was proposed by way of compensation for haemophiliacs with AIDS at that time and the rationale for the decision was set out by John Moore, then Secretary of State for Social Services. I am not recorded as contributing to that decision, but I am recorded as contributing to the discussion on the piloting of an educational AIDS video for schools. I am recorded as commenting on the less than favourable reaction to the pilot and that many respondents had felt it placed insufficient emphasis on the sale of intravenous drug-taking as a means of spreading AIDS, which was a particular problem in Scotland. I am also recorded as reporting on the view of the churches on the pilot video at that time. My proposal at the time was that the video should be made available to local education authorities which, since schools in Scotland did not have governors, would decide whether it would be shown in schools. The Minute records that there was no objection to the video being handled in different ways in different parts of the UK.

36.2 I can't recall but it is possible that I updated my then Minister for Health (Michael Forsyth) on the decision by the Sub-Committee. However, it is clear from the Memorandum of 13 November 1987 [SCGV0000229_164] from David Binnie (PS to Mr Forsyth) that Mr Forsyth knew of the agreement reached as of that date (having seen the memo to me from Mr Lugton of 13/11/87 [SCGV0000229_165] alerting me and others to a likely imminent announcement by the DHSS on the compensation to be granted for haemophiliacs with AIDS. A public debate on the announcement of compensation took place in Parliament on 16 November 1987 as [LDOW0000241] shows.

37. *What was the Scottish Office's involvement in the establishment of the Macfarlane Trust?*

37. 1 I do not recall. I believe that this question should be put to Mr Forsyth. I see

from his witness statement WITN7126001 paragraph 62.1 that he states that this was taken forward by the DHSS (DOH) and Treasury.

38. *Was there any consideration of a separate scheme or trust specifically for Scotland? If so, could you explain the extent to which it was explored and why it was not ultimately implemented?*

38.1 I do not recall. This is a question for Lord Forsyth or the officials or law officers at the former Scottish Office. I refer again to Lord Forsyth's response in paragraph 62.1 of his witness statement WITN7126001 of what he believed the position to be.

Expansion of payments to the Macfarlane Trust

39. *Insofar as you are able to do so from your recollection and the documents provided or available to you, please provide a chronological account of your involvement in decisions and actions taken by the Government in relation to the expansion of payments to the Macfarlane Trust in 1989. You may wish to consider the following documents:*

- a. 22 November 1989 letter from Kenneth Clarke MP to the Prime Minister [HMTR0000001_013].
- b. 23 November 1989 letter from RB Saunders to Mr Anson [HMTR0000001_017].
- c. 23 November 1989 Parliamentary announcement by Mr Clarke of the additional funding to the Macfarlane Trust [HMTR0000001_023].
- d. 31 January 1990 minute from Mrs Beattie to Mr Tucker [SCGV0000230_044].
- e. 1 February 1990 minute from Mr Tucker to Mr Rushworth [SCGV0000230_040].
- f. 1 February 1990 minute from Mr Rushworth to Mr Tucker [SCGV0000230_038].
- g. 1 February 1990 minute from Mr Tucker to Mr Binnie [SCGV0000230_145].
- h. 6 February 1990 minute from Mr Binnie to Mr Tucker [SCGV0000230_143].
- i. 13 February 1990 minute from Mr Tucker to Mr Binnie [SCGV0000230_122].
- j. 14 February 1990 minute from Mr Binnie to Mr Tucker [SCGV0000230_119].

39.1 I was not personally involved despite being copied on some of the correspondence referred to. This was a matter for my Minister of Health at the time as most of the correspondence illustrates.

39.2 I note that it was intended that I be copied on the letter of 22 November 1989 from Ken Clarke to the Prime Minister [HMTR0000001_013], presumably out of

courtesy to give the Scottish Office some advance warning of what was proposed to be announced in Parliament the next day. I don't recall if I received a copy of the letter. As it was, the contents of the letter (an additional ex gratia payment to the Trust to take up to £19million and proposed payments of £10,000) were soon exceeded by the agreement to pay £20,000 to each individual – of which I recall no prior notice having been given to the Scottish Office.

39.3 I note from paragraph 4 of the memo of 23 November 1989 [HMTR0000001_017] that there was an initial proposal to recover £1million from both Scotland and Wales, which was a surprise to the Scottish Office when the DHSS made its initial request for payment in early January 1990, according to the memo from Mrs Beattie to Mr Tucker of 31 January 1990 [SCGV0000230_044]. Again, I do not recall being made aware of that initial request, nor do I see was my Minister of Health made aware until early February 1990. This does not surprise me as the request for funds would have gone initially from the DHSS or Treasury to the Finance Department at the Scottish Office.

39.4 As the rest of the correspondence in February 1990 makes clear [SCGV0000230_145, SCGV0000230_143, SCGV0000230_122 and SCGV0000230_119] they are all primarily addressed to my then Minister of Health or are sent by his Private Secretary on his behalf, with copies in the usual way to myself as Secretary of State and to various others. I have no recollection of whether my Private Secretary highlighted this correspondence for me to see or discuss with Mr Forsyth. His Private Secretary's Minute of 14 February 1990 [SCGV0000230_119] does not make any mention as to whether he has spoken to me or not.

40. *Looking back and drawing on the totality of your experience in government, what are your reflections on how the Scottish Office, the Department of Health, the Treasury and the Government handled the issues of:*
- a. *Providing financial support and/or recompense to people with haemophilia who had been infected with HIV through the use of blood or blood products provided by the NHS?*
 - b. *Providing financial support and/or recompense to people who did not have haemophilia who had been infected with HIV through blood or blood products provided by the NHS?*
 - c. *Providing financial support and/or recompense to people who had been infected*

with hepatitis or other viruses through the use of blood or blood products provided by the NHS?

40.1 I realise the importance of the question, but I do not have the knowledge to offer any substantive comments on this issue. As I explained at the outset in answer to Q8 I had chosen to delegate the area of Health to my junior Minister as I had to involve myself in other areas of detail which were more politically contentious at the time. While I was aware of the outline issues in Health, the detail was handled on a day-to-day basis by medical and other experts in the SHHD with oversight supplied by my junior Minister of Health. I had no reason to doubt any of their ability to best serve the health interests of Scotland.

41. *What aspects of these issues do you think (i) you, (ii) the Scottish Office, (iii) the Department of Health, (iv) the Treasury, and (v) the Government handled well, and on which could you/they have done better? Please explain your answer and (where relevant) give your view about why things were not done better.*

41.1 I refer to my answer to Q40 above.

HIV litigation and settlement

42. *When did you first learn about the HIV Haemophilia litigation, and what were you advised about whether and how it should be defended? What were your own thoughts about how the Government should respond to the claim?*

42.1 I see from one of the documents supplied to me by the Inquiry [SCGV0000229_054] that I was a named defender in the HIV litigation brought in Scotland in my capacity as Secretary of State. All these matters were handled by Scottish Office lawyers. I do not recall any personal involvement while Secretary of State.

42.2 I do note from the documents that postdate my position as Secretary of State (and when I was Secretary of State for Transport) that I wrote on behalf of some of my constituents to the then Secretary of State (Ian Lang) [SCGV0000232_046 and SCGV0000232_018] to enquire about the period for payment out of the MacFarlane Trust and, later while I was Secretary of Defence, I also enquired about the conditions of payment for those involved in the HIV litigation[

43. *Please explain which Minister had responsibility for the decision-making on the claim at that stage, and what role, if any, you had as Secretary of State for Scotland.*

43.1 In the first instance this would have been dealt with by the Minister of Health and Scottish Office lawyers. I have no recollection of having been involved and none of the documents produced by the inquiry suggest that I was. I moved from the position of Secretary of State for Scotland on 28 November 1990 to become Secretary of State for Transport.

44. *Looking back and drawing on the totality of your experience in government, what are your reflections on how the Scottish Office, the Department of Health, the Treasury and the Government handled the issue of settling the HIV litigation? You may be assisted by the following documents:*

- a. 18 January 1989 minute from Jane Rougvie to Mr Lugton, with enclosure [SCGV0000229_053 and SCGV0000229_054].
- b. 15 February 1989 minute from Mr Macniven [SCGV0000229_052].
- c. 15 November 1989 article in the Daily Record [SCGV0000230_088].
- d. 15 November 1990 letter from Mr Forsyth [RCPE0000402_006].
- e. 11 December 1990 minute from Mr Tucker [BNOR0000064].
- f. Your 5 February 1991 letter to Ian Lang MP (Secretary of State for Scotland) [SCGV0000232_046].
- g. 18 February 1991 minute from Mr Tucker to the Secretary of State [SCGV0000232_023].
- h. 20 February 1991 letter to you from Mr Lang [SCGV0000232_018].
- i. Your 15 February 1994 letter Mr Lang [SCGV0000042_171].
- j. 21 April 1994 letter to you from Mr Lang [SCGV0000042_170].

44.1 I have no additional comments to make that would be helpful to the Inquiry.

45. *What aspects of this issue do you think (i) you, (ii) the Scottish Office, (iii) the Department of Health, (iv) the Treasury, and (v) the Government handled well, and on which could you/they have done better? Please explain your answer and (where relevant) give your view about why things were not done better.*

45.1 I refer to my answer to Q 44.

Section 8: Self-sufficiency

46. *What was your understanding, during your time as Secretary of State, of the aim of achieving 'self-sufficiency' in blood products in Scotland? Did you understand it to continue to be a policy objective of the SHHD during your tenure? If so, what were its principal features, and what was your involvement in trying to achieve it?*

You may be assisted by the following documents:

- a. *Parliamentary Question from Donald Stewart to you on 28 April 1986 [HSOC0018759].*
- b. *Background note for 28 April 1986 Parliamentary Question [SCGV0000035_151].*
- c. *Letter from David Watters to you on 6 July 1988 [PRSE0003441].*
- d. *Letter from Mr Watters to Dr Macdonald on 6 July 1988 [PRSE0003849].*
- e. *Letter from Dr Macdonald to Mr Watters on 19 July 1988 [HSOC0015345].*
- f. *Article in the Haemophilia Society Bulletin on 1 September 1988 [PRSE0002116].*

46.1 I had no involvement and have no information on this Question. The Parliamentary Answer to Mr Stewart was given by me rather than by Mr Forsyth because Mr Stewart was the Leader of the SNP MPs. As the Answer to the Question was limited to the provision of facts, I was not consulted on the answer.

46.2 Although the letter from Mr Watters of 6 July 1988 [PRSE0003441] is addressed to me, it is possible that it was forwarded to my Minister of Health to consider any appropriate response. Moreover, the article from the Bulletin regarding Factor VIII [PRSE0002116] is highlighted for the attention of Mr Hamill, then Under-Secretary at the SHHD as doct PRSE0000358 shows.

Section 9: Other issues

47. *Other than as set out previously in your answers, are there other aspects of the Scottish Office's policies relating to infections through blood and blood products that you consider could or should have been handled differently during your time as (i) Parliamentary Under-Secretary, and (ii) Secretary of State? If so, please explain what these were, how you think the matters could or should have been handled, and why they were not so handled.*

47.1 I refer to my answer to Q40 above.

48. *Please provide any further comment that you wish to provide on matters that you believe may be of relevance to the Infected Blood Inquiry. To assist we have provided a list of issues (attached).*

48.1 I have no further comments to add.

Statement of Truth

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

Signed GRO-C

Dated 25th November 2022