Witness Name: Sir Graham Hart
Statement No.: [WITN7112001]
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INFECTED BLOOD INQUIRY

FIRST WRITTEN STATEMENT OF SIR GRAHAM HART

Contents

Section 0: Introduction

I, Sir Graham Hart, will say as follows: -

0.1. My full name is Graham Allan Hart. I was born on GRO-C 1940. My address is GRO-C.

0.2. I am providing this statement in response to a Rule 9 request from the Inquiry, dated 24 August 2022. I was the Permanent Secretary in the Department of Health (DH) from 2 March 1992 to 30 November 1997. I retired from this role (and from the Civil Service) on 30 November 1997.

0.3. I am asked by the Inquiry about events which occurred more than 25 years ago, and which, in the nature of the positions I then held, took up only a small part of my time. Relying on my own memory, I could recall very little about those events. To a great extent therefore, my answers are based on the written record, the papers supplied to me by the Inquiry or retrieved for me by my legal advisers from official files. Where I have been able to draw on my own memory, I have made this clear.

Q1. Career overview

0.4. I do not have any professional qualifications of direct relevance to the Inquiry. I graduated from the University of Oxford in 1962 with a degree in Classics and immediately entered the Civil Service as an Assistant Principal in the Ministry of Health.

0.5. From 1962 to 1965, I worked in three different Divisions of the Ministry, being trained on the job and at the Treasury's Centre for Administrative Studies. I then became Private Secretary to the Permanent Secretary (1965-6) and to the Parliamentary Secretary (1966-7).

0.6. From 1967 to 1969, I was a Principal, working on medical education and medical staffing issues. In 1969, I left the Ministry, by then named the Department of Health and Social Security (DHSS), for appointment as an Assistant Registrar of the General Medical Council.

0.7. I returned to the DHSS in 1971 and from 1972 to 1974, I was Principal Private Secretary to the Secretary of State for Social Services, initially Sir Keith Joseph and later Barbara Castle until around June 1974.

0.8. From 1974 to 1977, I was an Assistant Secretary in the Department's Establishments and Personnel Division and from 1977 to 1979 in the Disablement Services Branch of Supply Division. From 1979 to 1982, I was the Under Secretary in charge of the Division responsible for NHS supplies and for relations with the medical supplies and pharmaceutical industries.

0.9. In 1982, I was seconded to work in the Central Policy Review Staff (CPRS), an independent unit within the Cabinet Office. In 1983, the CPRS was wound up and I returned to DHSS, where I spent some time as the Under Secretary (Grade 3) in charge of the Department's Regional Directorate, which was responsible for the management of the Department's network of local Social Security offices.

0.10. In September 1984, I was promoted to the Deputy Secretary (Grade 2) post with responsibility for much of the Department's work relating to the management of the National Health Service (NHS).

Q2. Key roles within government

0.11. The Inquiry asks me to give particular emphasis to describing the roles and responsibilities that I held within government from 1985 onwards.

January 1985 - 31 December 1989. Director of Operations then Deputy Chief Executive of the NHS Management Board (later the NHS Management Executive)

0.12. By way of background, in October 1983, Roy Griffiths delivered his report on management in the NHS. He made a series of recommendations which led to the introduction of general management into the NHS. At the national level, Mr Griffiths recommended that the government should introduce a Health Service Supervisory Board (HSSB), chaired by the Secretary of State, to decide on NHS policy and strategy. He also recommended the establishment of an NHS Management Board (NHSMB) within the Department to act as the central management body for the NHS. The government accepted these recommendations.

0.13. In around January 1985, if I recall correctly, the NHSMB was set up in the Department. Victor Paige was appointed its Chairman at Second Permanent Secretary level and designated Accounting Officer for expenditure on the NHS. The main areas of the Board's work were Planning and Information, Finance, Personnel (Human Resources), and Operations. My duties and those of the Divisions reporting to me were incorporated into the NHSMB and I was appointed Director of Operations (a Deputy Secretary or Grade 2 post) reporting to Mr Paige. The relationship between the NHSMB and the rest of the Department, which retained responsibility for policy on health services, was an evolving one over the next few years, as explained further at paragraph 1.3 below onwards.

1 January 1990 - 1 March 1992. Secretary, Scottish Office Home and Health Department

0.14. In January 1990, I was appointed Secretary of the Scottish Home and Health Department (SHHD). This was a department of the Scottish Office with responsibility for home affairs in Scotland (e.g. police, prisons, fire service) and for health and the NHS in Scotland. I was the Civil Service head of the

Department (a Grade 2 post). I reported to the Permanent Secretary of the Scottish Office, Sir Russell Hillhouse. The Secretary of State for Scotland was Malcolm Rifkind and later Ian Lang. Michael Forsyth was the junior minister for health throughout my period.

0.15. I worked closely with two senior colleagues on the health side: the Chief Executive of the NHS in Scotland, Donald Cruickshank, and the Chief Medical Officer (CMO) for Scotland, who was Dr (later Sir) Kenneth Calman and later Dr Robert Kendell. The CMO had direct access to ministers on all medical issues and was responsible for providing medical advice to all the Scottish Departments.

2 March 1992 - 30 November 1997. Permanent Secretary, Department of Health.

0.16. On 2 March 1992, I was appointed Permanent Secretary of the Department of Health (DH). I was the Civil Service head of the DH and reported directly to the Secretary of State. This was, in turn, William Waldegrave (for around a month, until 9 April 1992); Virginia Bottomley (10 April 1992 to 4 July 1995); Stephen Dorrell (5 July 1995 to 1 May 1997); and Frank Dobson (2 May 1997 onwards).

0.17. I worked closely with the CMO and the Chief Executive of the NHS, both of whom held posts at Second Permanent Secretary level. Dr Kenneth Calman was CMO throughout my tenure. We had worked together previously when I was at the SHHD and he was the CMO for Scotland; we had a close working relationship. The NHS Chief Executive was at first Sir Duncan Nichol and from 1993 onwards Mr (later Sir) Alan Langlands.

0.18. As head of the Department, I was responsible for ensuring that the Department was organised and staffed to carry out the work required by the Secretary of State, and for advising ministers as necessary, but the CMO and the NHS Chief Executive had unrestricted access to ministers in their areas of responsibility.

0.19. In my 1998 statement to the BSE Inquiry, I estimated that approximately 50% of my time was spent on management of the Department and about 50% on supervising the development of policy and advising ministers **[WITN7112002]**. Management involved controlling the budget for the Department's running costs, which came under intense pressure in the mid-1990s as the Treasury imposed a large reduction in expenditure and staff numbers. The Department's structure and organisation were reviewed to improve efficiency and save money. My post also involved me in ensuring that the top one hundred or so posts in the Department were served by talented people from a variety of professional backgrounds.

0.20. As to policy, by the 1990s it was no longer possible for the Permanent Secretary to be involved in every issue which was 'live'. It was necessary to be selective. It was possible to monitor the quality of the advice flowing to ministers, principally through sight and review of the more important submissions to ministers. Sometimes this process led to my involvement in the issue in question, but the main purpose was quality assurance: to ensure that the advice going to ministers was of a high quality and that the staff who were advising ministers were well-qualified and working well with other colleagues.

0.21. As Permanent Secretary, I had my own Private Office. All minutes and letters sent to me were read first by my Private Secretary who was responsible for making a preliminary assessment of which documents I needed to see. My supplementary witness statement to the BSE Inquiry estimated that in practice only about 10% of documents sent to me would have been sifted out by my Private Office **[WITN7112003]**. This process would not have sifted out any significant documents on an important subject such as infected blood.

Q3. Memberships

0.22. I have never been a member of nor involved in any organisation relevant to the Inquiry's Terms of Reference, except of course the government departments in which I worked.

Q4. Business or private interests

0.23. I do not have (nor have I had) any private or business interests which are relevant to the Inquiry's Terms of Reference.

Q5. Involvement in other inquiries

0.24. I gave oral evidence to the BSE Inquiry, jointly, with the CMO (Sir Kenneth Calman), on 12 October 1998. The Inquiry refers me to a transcript of my evidence **[I BSEI0000007]**. I provided a witness statement **[WITN7112002]** and a supplementary witness statement **[WITN7112003]** to the Inquiry in advance of my oral evidence. I also provided a further statement, which I authored jointly with my predecessor as Permanent Secretary, Sir Christopher France **[WITN7112004]**. This joint statement addressed the systems in place in the DH (and previously the DHSS) for the preservation of Ministerial papers. I did not remember providing these statements until I was shown copies recently by my advisers. The three witness statements that I have been shown are all unsigned. I have read them again recently and confirm that they remain true to the best of my knowledge and belief.

Section 1: Decision-making regarding screening, testing and counselling

Screening, testing and counselling in relation to HIV

Q6. Ministerial submission on screening test for AIDS antibodies

1.1. The Inquiry asks me about the introduction of a screening test for AIDS antibodies in the National Blood Transfusion Service (NBTS). The Inquiry refers me to the following documents:

a) Minute dated 11 January 1985 from Dr Alison Smithies (Principal Medical Officer, DHSS) to Dr Alderslade (copied to me) regarding screening blood donations for AIDS antibody **[DHSC0000562]**. This attached a submission that sought Ministers' agreement in principle to the introduction of a test to screen all blood donations for evidence of infection with the AIDS virus.

b) Minute dated 15 January 1985 from the CMO, Dr (later Sir) Donald Acheson, to the Minister of State for Health, Kenneth Clarke (copied to me) **[USOT0000016_171]**. The minute attached Dr Smithies' submission. Dr Acheson said that he strongly endorsed the proposal set out in the submission and recommended that the decision to introduce screening should be taken as soon as possible.

c) Minute dated 22 January 1985 from Kenneth Clarke to Dr Acheson (copied to me) in response to the submission **[DHSC0002482_012]**. Kenneth Clarke considered that the proposal looked *"inevitable, I suppose"*.

1.2. The Inquiry asks me for what purpose I was copied into this correspondence. It is clear from the papers shown to me that the proposal came from the medical and administrative Divisions of the DHSS, which were outside the NHSMB and which were responsible for policy on the NBTS. No doubt I was copied into the

correspondence because the NHSMB were responsible for the Department's relationship with the RHAs, who were financing and managing the NBTS at that time, and it was clear that the NBTS would have to implement any decision to introduce the testing system.

The involvement of the NHS Management Board in submissions to ministers

1.3. The Inquiry asks whether it was usual for me and other members of the NHSMB to be copied into correspondence in relation to submissions to ministers on matters relevant to the Inquiry. The correspondence to which the Inquiry refers me dates from the first months of the NHSMB's existence. At that time, responsibility for advising ministers on many aspects of health and healthcare remained with policy Divisions, which were not then incorporated into the NHSMB. But all parts of the Department were expected to continue to work together, across boundaries where necessary, to progress business in support of ministers. It was therefore normal practice for HS1 Division and Med SEB to consult and communicate with colleagues in the NHSMB when they wished to initiate change which would need the support and cooperation of NHS management. Arrangements of this kind could work well, but over time they were developed in a new way. In practice, special arrangements were made for NHSMB directors to be responsible for some issues which were handled in a policy Division: for example, I recollect that the Branch Head who dealt with policy on competitive tendering for NHS cleaning, catering and laundry services reported to me on that subject, even though he remained in a different command. Limited arrangements of this kind could work well between colleagues in the same government Department, but it became clear over time that the separation of policy work on NHS services from responsibility for its implementation in the NHS was not efficient. As I recollect, we changed the system in April 1995 by the transfer of responsibility for most policy work on NHS services to the NHSMB.

Decision to implement a screening test for AIDS antibodies

1.4. The Inquiry further asks what input I had on the decision to propose and/or implement a screening test for AIDS antibodies. I do not recall being consulted about the introduction of the test, which was clearly a necessary development. I saw my role as to help ensure that NHS management was ready to do it.

Q7. Introduction of HIV antibody screening

1.5. The Inquiry asks me about my role in putting in place measures to prepare for the introduction of the tests between the submission in January 1985 and the introduction of widespread HIV antibody screening tests in October 1985.

1.6. I have been shown a minute dated 30 January 1985 to Dr Smithies (copied to me) **[WITN7112005]**. The minute concerned a draft letter to RHA Chairmen (which I later sent – see below). The minute recorded the comments of Tim Stevens (NHSMB Secretary) and Michael Fairey (NHSMB Director of Planning) on the draft letter. They said,

> *"2. From the point of view – which is fundamental to the post-Griffiths changes in NHS management and, in particular, to the establishment of the NHS Management Group/Board – of creating a more coherent system for specifying Ministers' priority requirements to health authorities, a one-off letter, more or less out of the blue, to RHA Chairmen, asking them to earmark funds for a specific purpose, is less than desirable. I understand, however, that Ministers have already decided against the alternative of centrally funding AIDS blood donation screening tests and we accept that public and political anxiety over AIDS is such that exceptional steps have to be taken…"*

1.7. This interchange is an illustration of the relationship between the NHSMB and the policy Divisions, which I referred to at paragraph 1.3 above. Dr Smithies' letter asked top management of the RHAs to arrange for the planning and financing of the proposed testing system. She was no doubt aware that such an important communication needed to go through the Department's system for approving and issuing communications about such business.

1.8. The Inquiry refers me to a minute dated 12 February 1985 from Kenneth Clarke's Private Secretary to Mr Murray (copied to me) **[DHSC0002337_005]**. The minute referred to a meeting between Kenneth Clarke, Dr Acheson and myself that had taken place earlier the same day. It recorded that it was agreed that Kenneth Clarke should make a statement (in the form of an inspired written PQ) on what was being done to combat AIDS. The minute set out six points that should be covered, one of which was the introduction of a screening test. I was to write to Regional General Managers (RGMs) advising RHAs to set money aside to finance this.

1.9. On 20 February 1985, as agreed, I wrote to all RGMs **[DHSC0002261_031]**. The letter will have been based on the draft discussed between Dr Smithies and Mr Stevens / Mr Fairey. My letter noted that a screening test for the HIV (then, HTLV-III) antibody was still under development and would need evaluation. I further said,

> *"3. We hope that a reliable screening test, compatible with existing equipment, will be available within a few months. There is as yet no firm indication of what this will cost. As a broad indicator it would be prudent to assume for planning purposes a cost of around £2 per test, though we hope for a lower figure. Although there are many competing calls upon your resources, this test, when available, will be an important preventive development, meriting a very high priority. We would be grateful therefore if, in firming up the budgets for 1985-86, you would make suitable provision. As soon as there is firmer information about when in 1985 the test will be available and how much it will cost we will let you have it."*

1.10. I have been shown a selection of replies that I received from RGMs **[DHSC0002263_078]**; **[DHSC0002263_032]**; and **[DHSC0002267_006]**.

1.11. I have been shown a copy of a minute of 9 July 1985 from Joan Firth to Mr Stevens. Agreement was sought to sending a letter about testing facilities outside the BTS **[DHSC0002311_023]**. The draft she attached, with further detail added, was the basis of my letter of 30 July 1985 in which I asked the RHAs to provide testing facilities outside the Blood Transfusion Service (BTS) **[I DHSC0000515]**.

1.12. At this time, by no means all communication between the Department and the NHS was conducted via the NHSMB. It is clear from a further document now shown to me that, as I would expect, colleagues in the policy Divisions were in active touch with the NBTS during 1985 following up the action needed to get the testing system implemented (letter of 1 August 1985 from Alun Williams to Regional Transfusion Directors), **[PRSE0003215]**. The papers show RHAs disseminated the advice set out in my letter of 30 July 1985 to District General Managers in efforts to avoid delay in the roll-out of testing. An example of this is at **[WITN7112006]**.

1.13. Colleagues who worked in policy Divisions knew well those working on blood issues in the Regions and could follow up what was going on and whether progress was on track. Policy colleagues will have known that I or my staff in Regional Liaison Division would have been able and willing to take up with any RHA further matters which needed action from them to get the new testing system in place as soon as possible. I do not recall having been involved in that way, although it is possible that with the passage of time, I may have forgotten something. I see from the papers that routine HIV antibody screening of donated blood was introduced on 14 October 1985, which was the target date for implementation.

1.14. The Inquiry asks me to provide an overview of any further role which I played at that time in seeking to reduce the risk of infection by HIV through blood and blood products. I cannot recall any further action of that kind and the available documents do not assist further.

Q8. RHAs funding cost of introduction of screening tests

1.15. I am asked why the RHAs were expected to meet the costs of introducing the screening tests, rather than these being funded centrally by the Department.

1.16. I have no memory of this point being raised with me at the time. I note the minute to Dr Smithies of 30 January 1985, referred to at paragraph 1.6 above, said that Ministers had already decided against central funding for these screening tests. I do however recall that the Department's policy was that rising costs of services and of new developments such as the screening system should normally be met from RHAs' general allocations from the Department, especially if the sums involved were likely to be small in relation to the Region's total allocations. It is evident from the letter which I sent to RGMs on 20 February 1985 that that policy was being applied in this case: the letter gave them early warning to make provision in their plans for 1985/86. I am not aware that the policy caused any delay or difficulties in the introduction of HIV screening tests.

1.17. I am asked by the Inquiry whether any additional support was provided by the Department to assist regions that had difficulty in funding the tests. I have no memory of this happening. It could have happened but given the importance of testing being introduced as soon as possible I would certainly have expected any local problems in funding to have been resolved by the RHA in question.

Q9. Alternate sites for HIV testing

1.18. I am asked to explain the rationale for the introduction of alternate sites for HIV testing away from blood transfusion centres. The rationale for alternate sites is explained in paragraph 4 of Mrs Firth's minute of 9 July 1985 **[DHSC0002311_023]** and in my letter of 30 July 1985 referred to above **[DHSC0000515]**.

1.19. The Inquiry asks me what my role was, if any, in ensuring that regions responded sufficiently to requirements communicated by me. The question is put in a general way, but the answer depends on the nature of the particular issue. On the issue of the provision of alternative sites for testing, about which the Inquiry asks me specifically, responsibility for action lay with RHAs. My letter did not ask for a report back, but when it became clear to HS Division that in

some regions action may have been slow and inadequate, it appears that they took the matter in hand. This apparently led to their proposing follow up action by the NHSMB in a minute of 12 December 1985 **[DHSC0101847]**. I have no information as to the outcome of that minute and no recollection of the matter ever coming to my knowledge.

Q10. Regional response to request for alternate testing facilities

1.20. The Inquiry refers me to a letter dated 3 September 1985 from the Regional Transfusion Director at the South London Transfusion Centre, Dr Rogers, to Alun Williams **[DHSC0002121]**. Dr Rogers' letter expressed concern that the need to point people at risk away from the BTS had not been seen as an urgent problem by his two Regions. He questioned whether further guidance needed to be issued to the RHAs around this issue. The Inquiry asks me a series of questions about this letter. This letter was not copied to me, and I have no recollection of being aware of it.

1.21. I am asked whether I was made aware of concerns that some regions did not consider testing people at risk outside the Transfusion Service as an urgent problem and whether I was aware of other measures to deter people from using the NBTS in order to get tested for HIV. I regret that I have no recollection on any of these points and that the papers shown to me do not provide an answer. I can say that if I was or had been informed of the need for action by me on any of these points, I would have done my best to respond helpfully.

Q11. Testing of blood collected outside the NBTS

1.22. The Inquiry refers me to a minute dated 12 December 1985 from Alun Williams to Geoffrey Podger about a proposed "Dear Administrator" letter **[DHSC0101847]**. The minute explained that all NBTS donations had been subject to routine testing for HIV since 14 October 1985. Officials had learnt that outside the NBTS (e.g., in teaching hospitals) arrangements for routine testing had not been made in several instances. Alun Williams asked Mr Podger

to seek Mr Fairey's agreement to the issue of a "Dear Administrator" letter to RGMs asking them to take immediate action to ensure that all blood donations taken outside NBTS are screened routinely for HIV.

1.23. The Inquiry asks whether I was aware that, in some instances, RGMs had not implemented arrangements for routine testing of blood donations in parts of the NHS outside the NBTS. As I have explained at paragraph 1.21 above, to the best of my knowledge and belief, I was unaware of the issue and did not therefore respond.

1.24. The Inquiry also asks what my role was in the implementation of routine testing for HIV in those parts of the NHS outside the NBTS. I am not aware of any other measures that were taken.

Section 2: Structural and organisational matters and relationships with other bodies

Relationship between the NHS Management Board and the National Blood Transfusion Service ("NBTS")

Q12 & 13. NHS Management Consultancy Services' report on the NBTS

2.1. The Inquiry asks me about a report by the NHS Management Consultancy Services (NHS MCS). I am asked to describe my involvement in the NHS MCS report. The need for this report was identified by HS1A and medical colleagues, who commissioned it. I was consulted about the proposed study. On realising the scope of the study and its possible implications for the NHS I asked for the terms of reference to be modified and that the NHSMB should be consulted **[DHSC0002323_071]** and **[WITN7112007]**. It appears that RHA Chairmen and the RGMs were also consulted **[DHSC0002442_058]**; **[DHSC0002443_020]**; **[DHSC0002446_065]**. The report was submitted in October 1987 and considered in May and July 1988 by the NHSMB, under the chairmanship of the Minister of State for Health, Tony Newton **[WITN7112008]**. The decision of ministers that the National Directorate should be set up and would report to me was announced to Parliament on 28 July 1988 **[DHSC0004764_060]**. It should be noted that the creation of the National Directorate under my management was another example of the way that the remit of the NHSMB (discussed at paragraphs 0.13 and 1.3 above) was progressively widened.

2.2. I have been shown the following documents from 1985/86:

a) Minute dated 2 December 1985 from P N Hackney (NHS MCS Division) to Malcolm Harris, copied to me **[DHSC0002323_069]**. The minute said,

> *"I had some doubts about the need to seek NHS Management Board approval for this study and I took an opportunity to speak to Mr Hart about it. His reaction was that this study was an HS matter and there was no need to put the proposal to the Management Board itself. As Mr Hart did say that he would like to know of the study I am copying to him your minute of 28 November and the paper enclosed with it"* **[DHSC0002323_125]**; **[WITN7112009]**; **[WITN7112010]**.

b) My reply to Mr Harris dated 9 December 1985 explained that in fact it would be necessary to consult the NHSMB given the scope of the MCS study and the fact it was intended to cover the NBTS' future management arrangements **[DHSC0002323_071]**. I also said,

"As I said to you, I am doubtful whether it would be right to put NHS MS in the position of having to adjudicate on what is essentially a very tricky 'political' as well as management issue. I suggest that their remit should be to analyse the problems and set out options: otherwise we shall end up with a report which becomes the object of attack from one party or another, with the risk that attention is diverted from the important issues."

c) Mr Harris replied to me on 23 December 1985 **[WITN7112007]**. The MCS study's terms of reference had been amended to reflect my advice. He sought my approval to put the draft paper to the NHSMB.

d) Minute dated 7 January 1986 from Mr Harris to Mr Paige's Private Secretary, Mr Podger (copied to me), which invited the NHSMB to consider, at the earliest opportunity, the proposed MCS study **[WITN7112011]**. He attached a paper for the Board to consider.

2.3. A year later, on 20 January 1987, Mr Harris minuted me with a draft letter to the Chairman of Mersey RHA, Sir Donald Wilson **[WITN7112012]**. At that stage, Mr Harris suggested that RHA Chairmen should be sent a full background note about the MCS study and enclosed a note. He also reported to me positive feedback from the BTS on the professional approach of the study team. The study team was supervised by an NHS/DHSS steering group (with a Secretariat from HS1). I did not sit on the steering group.

2.4. I wrote to Sir Donald on 22 January 1987 **[DHSC0002442_058]**. My letter said:

"Within the Department we have felt for sometime that there was a need to examine the NBTS in some depth in order to see whether the present organisation and funding arrangements were in keeping with the current and predictable needs of the service. Accordingly, after consulting RGMs, we commissioned a management services study of the service.

I attach a background paper which sets out the reasons for the study and its terms of reference etc."

2.5. The NHS MCS delivered its report in October 1987 **[WITN7112013]**. The report identified three options: (i) do nothing; (ii) create a new Special Health Authority; or (iii) retained management of RTCs by RHAs but with formal, national coordination of their work.

2.6. The Inquiry refers me to my letter dated 30 December 1987 to David Blythe (Principal Secretary of the RHA Chairmen & RGMs Inter-Regional Secretariat) **[DHSC0002443_020]**. My letter was in response to Mr Blythe's request for RHA Chairmen to discuss with Ministers the proposal to create a new Special Health Authority to run the NBTS **[WITN7112014]**. I confirmed that one of the options proposed in the report was for the BTS to become the responsibility of a Special Health Authority. I said that it would be premature to discuss just one of the options out of context of the report and before the report had been considered by Ministers. My response was based on advice and a draft reply provided by Mr Harris in his minute dated 15 December 1987 **[WITN7112015]**.

2.7. In July 1988, the DHSS decided to adopt the third option set out in the MCS report (i.e., national coordination) **[WITN7112008]**. I have been shown the following documents on this issue from 1988:

a) Minute dated 10 June 1988 from Mr Harris to the Private Secretary to the then Chief Executive of the NHSMB, Len Peach (copied to me) **[WITN7112016]**. The minute proposed a process for taking the third option forward:

"*2. The proposal was:*

2.1 Clear with Mr Heppell and Dr Harris the choice of Mr Hart as NHSMB member responsible for NBTS and the associated changes in internal management responsibilities;

2.2 Clear proposals with MS(H); and then

2.3 Mr Hart to sound out RGMs via Mr Kember on a personal basis; subject to this feedback;

2.4 Mr Hart to square Sir Don Wilson prior to putting proposals formally to Regional Chairmen and CBLA (including the proposed choice of Dr Gunson as first National Director; but stressing he had not been approached);

2.5 Subject to Regional Chairmen views, the RTDs and RCP to be informed of the proposals.

2.6 Target date for implementation 1 October."

b) Minute dated 20 June 1988 from me to Mr Peach **[WITN7112017]**. I said, *"I have discussed responsibilities with Mr Heppell and we agree that the right course is for HS1 (Mr Harris and Dr Moore) to continue to be responsible for all matters concerning NBTS and CBLA. On all issues concerning management of these services they will report, through Mr Cashman, to me and on to you."*

c) Minute dated 8 July 1988 from Dr Roger Moore to the Private Secretary to the then Secretary of State for Health, John Moore, and me **[WITN7112018]**. Dr Moore enclosed introductory speaking notes **[WITN7112019]** and a background brief on the NBTS reorganisation for the Secretary of State's meeting with RHA Chairmen **[WITN7112020]**; **[WITN7112021]**; **[WITN7112022]**.

d) Minute dated 12 July 1988 from the Private Secretary to the then Parliamentary Under Secretary of State in the Lords, Lord Skelmersdale, to Mr Harris (copied to me). Lord Skelmersdale gave his approval to Mr Harris' submission of 5 July 1988 regarding the proposals for future management of the NBTS **[WITN7112023]**.

e) Minute dated 15 July 1988 from John Moore's Private Secretary to Mr Harris (copied to me), which confirmed ministerial approval to proceed with the proposed NBTS management structure **[WITN7112024]**.

f) Minute dated 19 July 1988 from Mike Arthur (HS1) to me **[WITN7112025]**. The minute explained that I had asked for additional documentation in support of the briefing on the future management of the NBTS for the RHA Chairmen's meeting. Mr Arthur's minute attached an article by Dr Cash, National Director of the Scottish NBTS, that was critical of the NBTS; a summary of the MCS study's report; and the report itself.

g) DH press release dated 28 July 1988, which announced the new management arrangements for the NBTS **[DHSC0004764_060]**.

h) Letter dated 9 September 1988 to me from Mr Blythe, which set out the RHA Chairmen's observations on the proposals for the future management of the NBTS **[DHSC0002446_065]**. He said that, *"Chairmen…warmly welcomed the model of stronger co-ordination of regional services. They were, however, concerned about the need for greater clarity in the role of the national director…"*.

2.8. The Inquiry refers me to a letter dated 31 March 1989 from Charles Dobson (HS1) to RGMs, **[DHSC0002405_088]**. The letter said,

> *"NATIONAL BLOOD TRANSFUSION SERVICE: CROSS CHARGING FOR PLASMA AND BLOOD PRODUCTS*
>
> *1. In July 1988 Ministers announced to Parliament that new arrangements were to be introduced for the future management of the National Blood Transfusion Service (NBTS). This followed a report by the NHS Management Consultancy Service which identified the need to increase efficiency and improve performance.*
>
> *NATIONAL MANAGEMENT STRUCTURE*
>
> *2. Under these new arrangements the management structure of the NBTS at Regional level was retained. However, a new National Directorate for the NBTS was established with Dr Harold Gunson as National Director. He has day-to day responsibility for the national management of the NBTS, for implementing national plans and co-ordinating the activities between Regional Transfusion Centres (RTCs), and between them and the Central Blood Laboratories Authority (CBLA).*

> *3. Dr Gunson reports directly to Mr Graham Hart, Director of Operations for the NHS Management Board who has overall operational responsibility at national level, in association with the Director NHS Wales in respect of Welsh issues. Mr Hart is advised by a Co-ordinating Committee which includes representatives of RHA Chairmen and management.*
>
> *4. This Co-ordinating Committee advises on national strategies and planning, monitors the achievements of the National Directorate and acts as a channel of communication with RHA's to help secure alignment between Regional and National plans."*

2.9. I have been shown the minutes of the meeting on 24 January 1989 **[WITN7112026]** and 4 July 1989 **[WITN7112027]**. The purpose of the Co-ordinating Committee was to "*discuss matters affecting the national strategy* [of the NBTS] *and its implementation*" **[WITN7112008]**. The NBTS Co-ordinating Committee comprised me (as Chair) and Dr Gunson amongst others, including a lead Regional Chairman and regional officers, a representative of the Director NHS Wales, and the Chairman of CBLA. The remit of the Co-ordinating Committee was,

> *"1. To advise the Director of Operations NHSMB, (and in respect of Wales the Director NHS Wales), on the national strategic planning and operational issues of the National Blood Transfusion Service and general co-ordination between the RTCs making up the NBTS and the NBTS and CBLA.*
>
> *2. To advise on the strategic and operational plans and budget of the National Directorate and to monitor the achievement of these operational and budgetary goals.*
>
> *3. To act as a channel of communication with RHAs and to help secure alignment between Regional and National plans."* **[WITN7112028]**.

2.10. The Inquiry asks me *"prior to the introduction of the new National Directorate, how effective was the communication and organisation between the NBTS and you"* [i.e., myself]? At that time the main responsibility for communication between the Department and the NBTS lay with the policy Division (HS1A) and their medical colleagues rather than with myself or any other of the NHSMB Directors. When it was thought necessary to communicate with the RGMs, who were the chief officers of the RHAs which financed and ran the Regional transfusion Centres, then I or another senior person in the NHSMB could be

asked to act as the Department's channel of communication. In doing so I would rely on the experts in HS1A and Medical for briefing and for follow up action if any was required. I had very little if any direct contact with the NBTS until the National Directorate was set up and reporting to me.

2.11. I am asked about my relationship with Dr Gunson, how we communicated and what information was shared. I believe I first met Dr Gunson on 25 July 1988: before then I had heard very good reports of his abilities and character. We met to discuss his future role **[WITN7112029]**. We met again on 25-26 September 1988 when I visited Manchester for that purpose, prior to his taking up his new role on 1 October. Thereafter Dr Gunson and I were regularly in touch until I left the Department in December 1989. I chaired the meetings of the NBTS Co-ordinating Committee **[WITN7112026]**; **[WITN7112027]**, and we corresponded from time to time **[WITN7112030]**. I had confidence in Dr Gunson and his deputy, Dr Moore (seconded from DHSS), and did not think they needed close supervision from me.

2.12. The Inquiry asks about my role in responding to the recommendations following the report by the NHS MCS. My role in the DHSS' response to the recommendations insofar as they concerned the creation of the National Directorate of the NBTS is set out above. I cannot now recall involvement in responding to any other recommendations that may have been made by the NHS MCS and have not been shown any documents on this issue.

Q14. Working group of the Advisory Committee on the NBTS

2.13. On 14 July 1988, Dr Ed Harris (DCMO) minuted Sir Donald Acheson (copied to me) **[DHSC0003597_133]**. Dr Harris suggested that a new advisory group be set up to advise on the steps for ensuring the virological safety of blood in the UK. Dr Harris proposed that (for budgetary reasons) the advisory group could be called *"a working group of the Advisory Committee on the NBTS"* (the papers indicate that the Advisory Committee itself was set up in 1980). Dr Harris attached to the minute a draft note entitled 'advisory committee on virological

safety in the NBTS' which set out the proposed terms of reference and membership **[DHSC0003597_133]**.

2.14. The Inquiry asks about my involvement in establishing the *"working group on the Advisory Committee on the NBTS"*. This misquotes Dr Harris' minute, which suggested the group be called a working group *"of"* the Advisory Committee. I understand this advisory group was later named the Advisory Committee on the Virological Safety of Blood (ACVSB). As far as I can recall, or see from the written record, I did not have any involvement in the setting up of ACVSB and the documents do not suggest otherwise.

Q15. Plasma procurement and cross-charging arrangements

2.15. The Inquiry asks whether I was aware of tensions between RTCs concerning plasma procurement and cross-charging arrangements. I am referred to a letter dated 3 February 1989 from Dr Marcela Contreras of the North London Blood Transfusion Centre to Dr Gunson **[NHBT0123185_024]**. I do not think that I would have seen Dr Contreras' letter at the time.

2.16. I do not recall being aware of such tensions. I have no memory of being involved in this issue. If I was asked by Dr Gunson to contact certain RGMs I probably did so, expecting them to investigate and if necessary to organise for any shortfall to be made good. I have been shown a report provided to me on 5 December 1988, which in relation to cross-charging said that, "*Several problem areas have been identified and the possible means for their resolution*") **[WITN7112031]**.

Section 3: Financial Assistance – Trusts and Schemes

Financial support for those infected with Hepatitis C

Q16. Financial support for HCV, 1994 to 1996

3.1. The Inquiry asks me to explain my role in the debate that took place within the DH from 1994 to 1996 about whether financial compensation or support should be offered to people infected with Hepatitis C virus (HCV) through blood transfusions and blood products. At the outset I wish to make clear that my role as Permanent Secretary was to ensure that ministers were well advised by the Department's officials (including myself) and to discharge my responsibilities as Accounting Officer, which meant that I was responsible to Parliament, including the Public Accounts Committee, for ensuring regularity, propriety and value for money in the use of the funds under my charge. The chronological account that follows is based on the documents made available to me.

3.2. I have been shown a minute dated 25 November 1994 from my Private Secretary, Rosamond Roughton, to Roger Scofield (he was the Grade 5 in the branch responsible for blood supplies, CA-OPU) **[DHSC0002548_139]**. The minute recorded that a meeting had been held that morning between me, Mr Scofield, Dr Metters, Mr Roberts (DH solicitor) and Mr Brown. I had called the meeting to discuss the line then taken by Ministers that the Government would not make payments to those infected with HCV through transfusions. Ms Roughton's minute said,

> *"5. It was agreed that you* [Mr Scofield] *would submit to Ministers (probably as part of the briefing for the oral PQs on the subject) a reasoned argument as to why we regard the case of those infected with Hepatitis C through blood transfusions differently from those infected with HIV in a similar manner. Of significance would be the prognosis for those with the disease, the stigma attached to it and the extent to which it affects one's lifestyle. Mr Roberts noted that SOL still needed to explore whether the Government had been negligent, although it was sensible in the meantime to assume it had not been negligent.*
>
> *6. It was agreed that we needed to pursue immediately a positive strategy in respect of haemophiliacs and others who might have been infected*

with Hepatitis C. This would take the form of looking back to try and identify who might have been infected, so as to administer pre-emptive treatment if possible.

7. In the longer term, it was also agreed you would consider the elements that might make up a fall-back position."

3.3. On 9 December 1994, Mr Scofield minuted Dr Metters, Strachan Heppell (Grade 2 in the Health and Social Services Group) and John Shaw (copied to my Private Secretary) **[DHSC0003512_168]**. Mr Scofield noted that, *"Hepatitis C has moved from being a problem on the horizon to a highly political and volatile policy issue."* The campaign for compensation for those infected would be stepped up. He referred to the meeting on 25 November and said, *"it was important to think ahead about how this campaign might develop and to decide in advance what positive action might be taken and to develop a robust and defensible line for Ministers"*.

3.4. The minute set out the line that had been taken in oral and written PQs that those infected with HIV through medical treatment were in a special category. It also set out a series of specific actions that should be considered by the department (research; access to treatment; possible "look-back" exercise – with reference to consideration of this by the Advisory Committee on the Microbiological Safety of Blood and Tissue for Transplantation (MSBT); and self-help initiatives).

3.5. The minute concluded,

"Next Steps

11 I am circulating a draft paper to colleagues describing in much greater detail the package of initiatives that the Department can take short of an ex gratia payment scheme. The intention is that when completed this should form the basis of a submission to TOTO/Ministers for a comprehensive Governmental response.

12 A separate submission will be sent to Ministers before the Christmas break following the MSBT's advice on "look back".

Line to Take

> *13 Meanwhile Ministers have been advised to take the line that the Government has no plans to make any payments to those infected with Hep C as a result of treatment."*

3.6. The Inquiry refers me to a minute dated 12 December 1994 from Tom Kelly to the Private Secretary to the then Minister of State for Health, Gerald Malone **[DHSC0002548_112]**. This was not copied to me at the time. It referred to a letter from the Haemophilia Society and recited the points made in Mr Scofield's minute.

3.7. Dr Metters replied to Mr Scofield's minute on 14 December 1994 (again, copied to my Private Secretary) **[DHSC0032203_170]**. He expressed agreement with the line to take, pending a submission on advice from MSBT. Dr Metters also raised the question of which DH branch would lead on policy around *"non-negligent harm"* issues, following the Banks recommendations. This was to be discussed at the next meeting of the Public Health Group's Steering Group. The Public Health Group Board was established as part of the post Banks restructuring. This comprised me as Chair, the CMO, the DCMO (Dr Jeremy Metters), the Finance Director and two Heads of Divisions in the Public Health Group.

3.8. On 22 December 1994, Mr Scofield minuted the Private Secretary to the then Parliamentary Under Secretary of State for Health, Tom Sackville with a paper on "Hepatitis C – the Government's response" (copied to my Private Secretary) **[DHSC0032208_149]**. The paper sought to identify the actions that the Department should take to assist those who had been infected with HCV as a result of blood products or transfusion. It included a recommendation to undertake a look-back exercise.

3.9. In terms of the legal position at the time, Mr Scofield said,

> *"7 The Department's lawyers have not yet taken Counsel's advice on whether any case exists for negligence. Officials have taken the line throughout that everything has been done that could have been and that*

they acted on the advice of the Advisory Committee for Virological Safety of Blood…. It is planned to assemble the key documents and to seek Counsel's opinion in the New Year."

3.10. The Inquiry refers me to an email dated 8 February 1995 from Mr Scofield to Dr Rejman, Keith Paley and Mr Kelly (not copied to me) in which he said, *"Ministers have clearly got the wind up and don't feel that we have a good defence. Perm Sec has taken a personal interest in all this and I shall henceforth report to him via John Shaw"* **[DHSC0032208_071]**. His email attached a draft policy paper dated 10 February 1995 on contingency plans for an HCV payment scheme **[DHSC0032203_070]**, plus Annex A **[WITN7112032]**; Appendix 1 to Annex A **[WITN7112033]**; Annex B **[WITN7112034]**; and Annex C (which concerned estimated costs and had been left blank) **[WITN7112035]**.

3.11. The purpose of Mr Scofield's paper was to consider whether a payments scheme could be provided if Ministers wanted it; how it might be structured and the likely cost. The paper emphasised that it had been prepared *"purely on a contingency basis"* against the possibility that more serious consideration would need to be given to setting up such a payment scheme. It referred to the threat of impending HCV litigation against the Department and recent debates in the Commons and the Lords. It said, *"It must be acknowledged that the Government might have to reconsider its position if determined cross party support were to emerge, especially if this was fuelled by a major Press campaign."*

3.12. On 10 February 1995, Mr Scofield put a submission to my Private Secretary, Rosamond Roughton **[WITN7112036]**. Since the meeting on 24 November, Ministers had announced the HCV look-back exercise. He said Ministers had stated publicly that they were against making any payments but were concerned that the arguments for defending the policy were unconvincing. He referred to pressure from the Opposition and campaigners. He attached a slightly amended copy of his draft paper **[DHSC0032203_070]**, plus Annex A **[WITN7112037]**; Appendix 1 to Annex A **[WITN7112038]** and Annex B

[WITN7112039]. His submission said, *"My preliminary conclusion is that whilst it would be possible to mount a payments scheme along the lines of the HIV settlement it would be very expensive (possibly as much as £360 million) and would represent very poor targeting of resources."* He asked me whether he should discuss the matter further with medical, legal and financial colleagues. He noted Hepatitis C was on the agenda for the TOTO meeting scheduled for 13 February 1995.

3.13. Mr Brownlee of F1 (Finance division) minuted my Private Secretary in response to Mr Scofield's submission of 10 February **[WITN7112037]**. He said Treasury approval would have to be sought and would be unlikely to be forthcoming without strong political support nor without clear legal advice on the likely outcome of the case if it went all the way. He referred to the HIV payment scheme set up in 1992 and said that the then Chief Secretary to the Treasury, David Mellor, agreed only after the intervention of the Prime Minister and with assurances from the then Secretary of State, William Waldegrave. Mr Brownlee sent my Private Office copies of the correspondence between David Mellor and William Waldegrave **[DHSC0042937_139]**.

3.14. I have been shown Ms Roughton's note of a meeting on HCV compensation that took place on 6 March 1995 **[WITN7112041]**. I was joined by Dr Metters and other senior officials, including Mr Scofield and Mr Brownlee. I called the meeting to discuss whether it would be appropriate to prepare options for a payment scheme to cover patients who had been infected with HCV in the course of NHS treatment. There was discussion of the basis on which payments had been made to those infected with HIV; of no-fault compensation; and of cases of CJD as a result of Human Growth Hormone. Mr Gooderham (HC(A)4) agreed to produce a paper on three options to be considered further: maintain the status quo; set up a discretionary payment scheme for HCV; or set up a more general scheme for those infected with diseases through blood. This would provide the Department with a fallback position.

3.15. On 30 March 1995, Gerald Malone met with MPs (including John Marshall MP) to discuss payments to those infected with HCV. His Private Secretary, David Abrahams, minuted Mr Scofield after the meeting (copied to my Private Secretary) with a request for advice from Mr Scofield **[DHSC0002548_009]**. Gerald Malone also wanted to discuss the matter with me and Tom Sackville either at TOTO or at a specially convened meeting.

3.16. The same day Mr Scofield emailed policy colleagues **[DHSC0002610_006]**. His email said, *"You will wish to see that M(H) has come out in favour of making payments to haemophiliacs and others infected with HCV. He has yet to convince his Ministerial colleagues."* He said that Dr Metters had advised me to go for a meeting with Gerald Malone.

3.17. On 5 April 1995, Mr Scofield minuted my Private Secretary and Dr Metters about Gerald Malone's request **[DHSC0042937_122]**. He referred to a forthcoming meeting to discuss options for payment schemes. He attached a paper (which he said had been adapted from the submission that he sent me on 20 February - I assume that he meant 10 February) and asked for comments. His minute said,

> *"3 I have written this against the background that M(H) seems persuaded of the need to come to a settlement with those infected and to do this within a wider policy context so as to avoid this issue surfacing every few years. He seems convinced both of the natural justice of the case and that the Government would eventually have to concede. This being so he would wish to settle as soon as possible and with the least publicity."*

3.18. Mr Brownlee of F1 (finance) replied by minute dated 6 April 1995 (copied to my Private Secretary) **[DHSC0042258_060]**. He said, *"Finance believes that any claim on the Reserve for those infected with Hepatitis C would be strongly resisted by Treasury."* Dr Metters also commented by minute of the same date (copied to my Private Secretary) **[WITN7112042]**.

3.19. Mr Scofield's finalised paper was sent to Gerald Malone's Private Office on 6 April 1995 (copied to me). I have been shown two different versions of the covering minute **[WITN7112043]** and **[WITN7112044]**. I do not know which was the final version that was sent to Gerald Malone. The latter version said,

> *"2 The paper follows M(H)'s request that a plan for some sort of scheme be prepared. Whether this is desirable or inevitable should not be assumed to be the case. Indeed it is the exact opposite of the position that the Government generally and Health Ministers in particular have taken to date"* (original emphasis)

3.20. The covering minute attached a summary of the paper, which had been prepared for the benefit of Ministers **[SCGV0000165_007]**, and the final paper itself (dated 6 April 1995), plus Annexes **[MHRA0024543]**. The paper set out options for a payment scheme and included estimated costs that ranged from £60 million (for a scheme for only those who actually died of liver failure, paragraph 49) to £500 million (for a scheme similar to the HIV scheme, paragraph 47). Further work would be needed on the cost estimates if the proposal was to be taken further **[WITN7112044]**. The paper said, at paragraph 17, *"if Ministers consider that the case for a payments scheme is admissible… then there is a case for taking a pro-active approach now."*

3.21. The same day, 6 April 1995, I minuted Gerald Malone's Private Secretary, Andy Taylor, in response to Gerald Malone's request for my views **[DHSC0042937_121]**. I said,

> *"2. My recollection is that when the Government conceded payments for those infected with HIV/AIDS via blood products, and then via blood, a very firm line was drawn, by all Ministers, around that scheme. It was, of course a first step down what could be a very slippery slope towards no-fault compensation and that is why the Treasury and others were so adamant that the line had to be defended. There will therefore be great resistance to any weakening of the line.*
>
> *3. Having looked at no-fault compensation, I do think it is a destination to be avoided at almost any price. It would be very expensive, and it would be immensely difficult to devise a scheme that was acceptable to the parties. Such schemes are I believe no longer well regarded in other countries that have them eg New Zealand.*

4. Any concession towards Hepatitis C victims would be very difficult and we should soon be vulnerable to further demands on behalf of those suffering from other forms of Hepatitis, CJD etc etc, let alone from people suffering non-negligent harm eg in the course of surgery. Mr Scofield has given some thought to this, but we would need to do a lot more work to see whether a defensible and containable scheme could be devised. I have my doubts.

5. The logical position is that if one has been harmed through negligence, the law is available for redress; if the harm is non-negligent and accidental, then there may be substantial help available from the statutory services (including social security) but there is no obligation on the government to provide specific schemes of assistance. The HIV/ AIDS scheme is an exception to what is otherwise a pretty general rule and I think it may prove easier to differentiate between the HIV/AIDS cases and the rest, (though I recognize the argument is not easy) than it is to draw the line somewhere completely different.

6. I think Ministers will certainly wish to discuss this very fully with officials before reaching a view."

3.22. Tom Sackville's Private Secretary set out his Minister's response in a minute dated 11 April 1995 to the then Secretary of State, Virginia Bottomley **[DHSC0042937_120]**. He said Tom Sackville had seen Mr Scofield's submission and his response was that my paper *"looks pretty decisive."*

3.23. The views of the then Parliamentary Under Secretary of State for Health in the Lords, Baroness Cumberlege, were set out in a minute from her Private Office dated 11 April 1995 (copied to my Private Secretary) **[WITN7112045]**. Baroness Cumberledge said,

"I think it would be a <u>great</u> mistake to concede payments for Hepatitis C victims. It was a mistake to concede the HIV victims but the scheme was at least clearly defined.

Hepatitis C is still the tip of the iceberg in the context of other emerging strains of Hepatitis and CJD etc. We have got good reasons to refuse now in that there is a well argued case setting out the distinction between our current position and the campaign's case. Theirs is not logical - as they admitted in the Lords - ours is. Even the Haemophiliac Society has reservations about the campaign.

It is too easy to slip into no fault compensation which would be financially and principally disastrous, not only for the NHS but to other areas, of Government" (original emphasis).

3.24. The Inquiry refers me to a minute dated 11 April 1995 from Mr Scofield to Mr Shaw **[DHSC0003160_003]**. This concerned possible discussions with the Haemophilia Society if Ministers decided to seriously promote the idea of a payment scheme. This was not copied to my Private Office, so I do not think I would have seen it at the time.

3.25. I sent a further minute to Gerald Malone's Private Secretary, Andy Taylor, on 12 April 1995 **[DHSC0042937_119]**. I referred to the fact Gerald Malone intended to hold a meeting on HCV payment scheme the following week when I and other officials were on leave. I said,

> *"2. I do not need to repeat the difficulties that would arise over any decision to concede on payments to those infected with Hepatitis C by blood transfusion or blood products. Those are difficulties of principle as well as practice - and I find them pretty compelling. I recognize, of course, that the political pressures could become too great but I think the prospects of persuading other Departments, especially the Treasury, that we had to move now are not at all good.*
>
> *3. I am sure that it would be useful to have a full discussion of the pros and cons before a decision is reached. And, in the meantime, I am sure we must avoid giving any hints to anyone that our line could weaken. That could be fatal."*

3.26. The Inquiry refers me to Mr Scofield's minute of 20 April 1995 to Mr Kelly and David Burrage **[DHSC0014961_152]**. Mr Scofield advised his colleagues to note the final lines of my minute (*"we must avoid giving any hints..."*) and advised that they should respond to outstanding correspondence by *"serving up the traditional line that we have no intention of making payments"*. I do not think I would have seen this at the time.

3.27. The Inquiry refers me to a minute dated 1 May 1995 from Gerald Malone to Tom Sackville, which was copied to Virginia Bottomley and other Health Ministers **[DHSC0006946_014]** . This was not copied to me at the time. Gerald Malone said, *"I would firmly and enthusiastically support a strategy to resist compensation payments. I think a logical and defensible distinction can be*

drawn between HIV sufferers and Hepatitis C sufferers." This appeared to represent a change of mind on the part of Gerald Malone. He further said,

> *"However, if we were to resist compensation payments, it would be catastrophic to cave in to any subsequent pressure. There are three points to bear in mind:*
>
> *1. A national newspaper is bound to take a campaigning stance with the usual constituency consequences for our Parliamentary colleagues.*
>
> *2. A number of supporters of the campaign are prominent backbenchers…*
>
> *3. Number 10 must be taken along at all stages and alerted both to the likely vigour of the campaign and to the fact that the PM could be faced with a powerful deputation at what might be a difficult moment (it is quite likely that this would be around Party Conference time or at the time of a possible challenge to his leadership.)*
>
> *Unless these pressures are clearly understood now, we risk placing SofS in the invidious position of being obliged to back down having initially resisted for all the right reasons. That is why we must consider the political consequences most carefully, before we decide how to react."*

3.28. Virginia Bottomley's Private Secretary set out the Secretary of State's response in a minute dated 5 May 1995 to Gerald Malone's Private Secretary (copied to my Private Secretary, Ben Dyson) **[WITN7112046]**. Virginia Bottomley's view was that a consistent line should be held on no fault compensation. She asked senior officials to speak to Carolyn Fairbairn from No 10. In a handwritten comment on the foot of the minute, I asked officials to find out the current position and suggested that I should discuss the matter with Mr Scofield.

3.29. On 18 May 1995, Mr Scofield minuted Virginia Bottomley's Private Secretary (copied to my Private Secretary) in response to her request for urgent advice on how other major countries had reacted to Hepatitis C infection through blood **[DHSC0002549_165]**. He said, *"No consensus has emerged concerning the way in which those who have been damaged non-negligently should be treated"* (original emphasis). Mr Scofield said the UK was believed to have been the first country to put in hand a general look-back exercise. There were no hard details of other countries who had set up compensation schemes for those infected. On 19 May 1995, Dr Rejman provided Virginia Bottomley's Private Secretary

with a table of international comparisons (copied to my Private Secretary) **[WITN5289034]**.

3.30. On 7 June 1995, I attended a meeting with Gerald Malone, Tom Sackville, Dr Metters and officials (including Carolyn Fairbairn from No 10). Two days before the meeting, on 5 June 1995, Paul Pudlo (CA-OPU) minuted Gerald Malone's Private Secretary with an update in advance of the meeting (copied to my Private Secretary) **[DHSC0004428_152]**. The minute set out the view of the Territorials and said that advice from DH legal advisers on the Department's vulnerability to a negligence claim was not yet available.

3.31. I have been shown a minute from Mr Pudlo that was received in my Private Office on the day of the meeting **[WITN7112047]**. It said,

> *Re : Today's meeting on Hepatitis C, I have just received the following note from Charles Blake in SOL.*
>
> *"In my opinion the difficulties of testing, the unreliable results obtained in 1990 and the other problems mentioned suggest that there was no negligence in not introducing the testing at that time. As to the timing of the later introduction of the tests it is arguable that there was some needless delay. I suspect that if we were sued an expert could be found to say that we reacted too slowly.*
>
> *The difficulty in this area is that whether or not we broke the duty of care owed is a matter of fact rather than of law. Experts can always be found to contradict each other. But my preliminary view is that we would have some prospects of defending a negligence suit,"*
>
> *This view is based on the current evidence - discovery is continuing.*

3.32. The Inquiry refers me to an email dated 7 June 1995 from Mr Pudlo to Mr Scofield **[DHSC0042937_103]**. The email said that at the meeting Gerald Malone had decided that further work was needed on legal vulnerability before the question of HCV payments could be considered further. I would not have seen this email at the time.

3.33. I was, however, sent (via my Private Secretary, Ben Dyson) a minute from Gerald Malone's Private Secretary, which set out a summary of the meeting **[WITN5249052]**. The minute said discussion had concentrated on whether the Department would be able successfully to defend a charge of negligence. It said,

> *"3. There was agreement that the Department's case was weakest in connection with those infected with Hepatitis C in the period 1990-91. At that time a test for the virus was in existence and was being used in a number of countries, notably Belgium. However, the expert committee advising ministers on these matters did not consider that the test was sufficiently reliable to justify using it to test blood donations. At the time some experts were urging the introduction of testing. Testing was eventually introduced in September 1991 in response to the introduction of a second, more reliable, version of the test. There was some concern that blood and blood products could be judged to come within the jurisdiction of the Consumer Protection Act 1988, under which the onus of proof that these products were safe would lie with the Department, potentially making the case more difficult to defend."*

3.34. The minute concluded,

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

3.35. I see that on my copy of this minute I noted down (as a reminder to myself) two points on which more work was to be done: first, to examine further the risk of losing cases alleging negligence in the period 1990-91; and second, to continue consideration of how to handle allegations of negligence in the use of human growth hormone.

3.36. On 3 July 1995, Mr Pudlo minuted Virginia Bottomley's Private Secretary in relation to a meeting to discuss the case for and against compensation that took place on 21 June 1995 (copied to my Private Secretary) **[DHSC0002549_108]**.

He attached a note that summarised the then current position **[WITN5289032]**. He noted that advice had been sought from counsel.

3.37. On 5 July 1995, Stephen Dorrell replaced Virginia Bottomley as Secretary of State for Health. On 29 November 1995, John Horam replaced Tom Sackville as Parliamentary Under Secretary of State for Health. Gerald Malone remained as Minister of State for Health throughout this period.

3.38. The available documents indicate there was hiatus in my involvement in the correspondence between August and November 1995. I have been shown an email dated 20 December 1995 from Kevin Guinness (CA-OPU) to my Private Secretary, Mr Dyson **[DHSC0004498_188]**. The email attached a minute of the same date from Ann Towner (CA-OPU) to John Horam's Private Secretary **[DHSC0004498_051]**. The minute said, *"You rang to advise that PS(H) would like the words "at present" inserted in the statement that "we have no plans to make special payments" in our replies to correspondence on compensation for haemophiliacs infected with hepatitis C."* Ms Towner's advice was that qualification of the existing line would be taken as an implication that compensation was being considered. She suggested that John Horam discuss the proposed wording with the Secretary of State.

3.39. Mr Guinness' email to my Private Secretary said that John Horam was *"trying to change the line, little by little"* and that *"sympathy for those concerned is clearly uppermost in his mind. Cost comes second"*. Stephen Dorrell's Private Secretary responded to Ms Towner's minute the same day and said he had not spoken to the Secretary of State but suspected *"he* [Mr Dorrell] *will not be too concerned about an amendment to the line to take (never say never) but you should note that he is much more concerned about availability of alpha interferon, and alleged rationing on cost grounds."* **[WITN7112048]**. I made a handwritten comment on the email that said, *"Please arrange a short meeting in the New Year with Mr Guinness to see what the prospects are of holding the line."*

3.40. The following day, 21 December 1995, John Horam's Private Secretary emailed Mr Pudlo (not copied to me) and said, *"PS(H) has seen Ann Towner's note of 20 December. Basically, he very much accepts the Department's stance on this issue, but does not want to give the impression that he is deaf to the concerns of the haemophiliac community"* **[DHSC0004498_045]**. John Horam asked officials to propose an alternative form of words for the line to take.

3.41. I have been shown an email dated 4 January 1996 about a meeting between me and Mr Guinness scheduled for 5 January 1996 **[WITN7112049]**. I made a handwritten comment on the email that read, *"Discussed with Mr Guinness. PS(H) is now happy with the line. Agreed to continue to hold the line, tho' we should be prepared for a possible reversal!"*.

3.42. The Inquiry refers me to a minute dated 8 January 1996 (the document appears to contain a typo and provides the date inaccurately as 1995) from Mr Guinness to Dr Rejman (not copied to me) **[DHSC0042937_032]**. The minute referred to my meeting with Mr Guinness on 5 January 1996. It reported that I was, *"pleased to note that PS(H) had now agreed a draft with which we were happy and that the Secretary of State had recently written in firm terms to the Prime Minister on a constituency case."* (Stephen Dorrell's letter to the Prime Minister is at **[DHSC0042937_033]**. The minute further reported that my view was that,

> *"...if pressure continues, we shall eventually be forced to concede. It would be nice to do so in an orderly manner, but, in practice, the Treasury would be unlikely to budge until such time as the political situation became so untenable that the Prime Minister decreed that something had to be done. For the time being, therefore, we should continue to hold the line firmly."*

3.43. On 9 January 1996, Ms Towner minuted Mr Guinness and Karen Marsden (not copied to me) **[DHSC0042937_035]**. This concerned a letter from the Treasury dated 18 December 1995 about comments made by John Horam in the Commons on 13 December 1995 **[DHSC0042937_036]**. The minute said the

Treasury ought to be reassured that John Horam had accepted a draft Private Office reply that *"left the original wording about having no plans to make payments intact"*. The minute closed with the comment *"And of course PS(H) cannot alter the Department's policy without the agreement of SoS who – recent correspondence suggests – retains a firm line."*

3.44. On 12 January 1996, John Horam's Private Secretary minuted Mr Guinness with a request for a submission (copied to my Private Secretary) **[DHSC0003883_123]**. It said,

> *"PS(H) has been giving further thought to the issue of awarding compensation to haemophiliacs who contracted hepatitis C before routine screening of blood products was introduced. He is well aware of our current position on this issue and the reasons for this. However, against a background of mounting political pressure, he would like to explore the options for offering compensation, if only to assure himself that we have done all that is feasible."*

3.45. The minute asked for *"costed options for compensation"*; an assessment of the acceptability of the options to the Haemophilia Society; advice on availability of funds; and the implications any change on policy might have *"in terms of triggering off demands from other areas"*.

3.46. Mr Guinness sent my Private Secretary a minute on 5 February 1996 **[WITN7112050]**. The minute said that I had asked to see the submission before it went up to John Horam and attached the draft submission **[WITN5426058]**. I made a handwritten comment on the draft which read, *"(1) Not clear if discretionary scheme (paras 16-18) could be operated on its own or only as a supplement to a lump sum scheme. (2) A scheme costing only £12m a year (which is what para 40, 2nd tiret appears to offer) looks very good."*

3.47. On 6 February 1996, my Private Secretary minuted Mr Guinness with my comments on his draft submission **[DHSC0042937_013]**. The draft submission had suggested a scheme for HCV based on the discretionary elements from

the HIV scheme only (without the lump sum payments) could cost around £12 million per year. I commented that, *"a cost of £12m a year might look very attractive to Ministers. But could it in practice be a stand-alone scheme and if so could it really be done for £12m a year – surely the awards would be on a more widespread and generous basis than in the HIV schemes?"*.

3.48. In light of my comments, Mr Guinness recirculated an updated draft submission to policy colleagues on 7 February 1996 (copied to my Private Secretary) **[WITN7112051]**. Dr Metters responded to the updated draft with a suggestion for further qualification of the estimated annual cost of a discretionary scheme **[WITN7112052]**.

3.49. The final submission went up to John Horam on 9 February 1996 **[SCGV0000166_015]**. As requested by John Horam, the submission set out costed options. Mr Guinness' costings were more detailed than those provided in Mr Scofield's submission of 6 April 1995, referred to at paragraph 3.20 above. The options in Mr Guinness' submission ranged from £72 million (for payments limited to cases of liver cirrhosis – the John Marshall model) to £360 million (for payment on infection). Mr Guinness said that the early indication was that only the most expensive scheme would be acceptable to the Haemophilia Society.

3.50. John Horam's Private Secretary communicated his response to the submission by minute dated 28 February 1996 **[WITN5426068]** (copied to my Private Secretary). He said he wanted to consider the options further and was meeting with the Haemophilia Society on 6 March 1996. He asked for further advice on John Marshall MP's suggestion that payments could be restricted to those who developed cirrhosis.

3.51. The following day, 29 February 1996, my Private Secretary minuted John Horam's office with my comments **[DHSC0003883_100]**. The minute recorded me as having said,

> *"2. He* [i.e., me] *appreciates that it may be possible to devise schemes which cover only restricted groups and are thus more affordable. He does however point out that any move to pay compensation to a restricted group of Hepatitis C sufferers (eg haemophiliacs) is likely to lead to irresistible pressure to extend it to a much wider group. There is no obvious basis for distinguishing between people infected via blood products and those infected by blood transfusion, for example; and the Government was quite unable to sustain the same distinction in the case of HIV/AIDS sufferers. The unfortunate truth is that this is a very slippery slope. Our present stance is uncomfortable, but any movement from it, however slight, is likely to start something we won't be able to stop.*
>
> *3. He therefore recommends extreme caution in dealing with Mr Marshall's proposal."*

3.52. John Horam's Private Secretary replied on 5 March 1996. She said that John Horam had noted my points and would bear them in mind **[DHSC0003883_099]**.

Q.17 Meeting on 25 November 1994

3.53. In a minute of 25 November 1994, referred to at paragraph 3.2 above, my Private Secretary recorded a meeting which I had had with officials to discuss the line being taken by ministers regarding financial support for patients infected with HCV as a result of blood products or blood transfusion **[DHSC0002548_139]**. I am asked by the Inquiry what prompted me to call this meeting. I was surely aware that ministers were coming under pressure to reconsider their position, but I do not remember whether there was a specific event which prompted me to call the meeting.

3.54. In that minute, the view was expressed that while the Department's solicitors continued to consider whether the Government had been negligent, it would be sensible in the meantime to assume it had not been negligent. I am asked by the Inquiry why was that seen as a sensible assumption at the time. The Department's position was that it had not been negligent. That position might need to change in the future, for example on legal advice, but unless and until that occurred, there was no good reason to abandon our belief that our position was sound. The "assumption" went hand in hand with ongoing investigations

by lawyers over whether there had been negligence (see paragraphs 3.2 and 3.31 onwards above).

3.55. Also in that minute, it was agreed that a "lookback'" exercise should be conducted. I am asked by the Inquiry whether I was aware of previous discussions on lookback or why a lookback scheme had not been implemented previously. I cannot now recall whether I was aware at that time of the possibility of lookback, or why it had not already been implemented.

Q18. Dr Metters' minute dated 14 December 1994

3.56. The Inquiry refers to a minute of 14 December 1994 in which Dr Metters stated that at my meeting of 25 November, referred to above, it had been suggested that consideration should be given to whether the NHS Executive should continue to be responsible for dealing with cases of negligent harm caused to patients, while responsibility for dealing with cases where harm caused to patients was non-negligent should be assigned to the Public Health Group, which reported to the Permanent Secretary **[DHSC0032203_170]**.

3.57. I am asked by the Inquiry whether it was my view that HIV and HCV contracted by blood products or transfusion constituted *"non-negligent harm"*, and if so what informed this view. The position adopted by the Department was that the harm in question was not the result of negligence by the Department. I had confidence in my colleagues who were familiar with the history and the technicalities of the subject, and I do not recollect any doubts being expressed on the matter. Of course the position could be contested in court, but I believed it to be soundly based, and had no information to the contrary.

3.58. I am also asked by the Inquiry to explain why the distinction was being drawn between *"negligent harm"* and *"non-negligent harm"* and why these should be allocated to the NHS Executive and the Public Health Group respectively. The NHS deals with many claims for damages as a result of alleged negligence by

its staff, and the procedures for dealing with such claims and meeting the associated costs lay within the responsibilities of the NHS Management Executive. Any proposal to compensate victims for non-negligent harm would have been of a markedly different character. It would have been strongly contested by the Treasury, and possibly other Government Departments, and would have required agreement by Cabinet ministers. Moreover, the costs of such a compensation scheme would fall on a Vote for which the Permanent Secretary, not the Chief Executive of the NHS, was the Accounting Officer. It was therefore right for me to be responsible for advising ministers on the subject.

Q19. Mr Guinness' minute dated 8 January 1996

3.59. The Inquiry has drawn to my attention a minute of Mr Guinness of 8 January 1996 (not, as dated 1995), referred to at paragraph 3.42 above, in which he reported a conversation with me in which I had expressed the view that *"if pressure continues, we shall eventually be forced to concede. It would be nice to do so in an orderly manner, but, in practice, the Treasury would be unlikely to budge until ... the political situation became so untenable that the Prime Minister decreed that something had to be done."* **[DHSC0042937_032]**.

3.60. I am asked by the Inquiry whether I did think that the Government would eventually be forced to concede if the pressure continued: if so, why and what concession would be needed. I have no memory of this conversation with Mr Guinness, but I have no doubt that a conversation on this subject took place, and think that I can explain my views at that time. I thought that the position which ministers had taken was justified and defensible but that the pressure to change it, notably from victims, members of Parliament and some parts of the media, was growing in strength. **If** the pressure on ministers continued to build up, it could reach the point at which they found their position no longer tenable: I did not think it was inevitable, or imminent. Of course, the decision would rest with ministers and the form which any "concession" they took would depend on the circumstances at the time.

3.61. I am asked by the Inquiry why I thought the Treasury would be *"unlikely to budge"* until the political situation became untenable and whether it was usual for the Treasury to be unwilling to financially support proposals without considerable pressure. The Treasury's attitude was highly predictable, both because the cost of any scheme likely to be at all attractive to the claimants or (for that reason) to DH ministers would be high, and because of the implications for Government policy on no-fault compensation. In my experience, it was normally hard to win an argument with the Treasury for additional funding: controlling public expenditure was an important part of their role and they were good at it. It comes as no surprise to be reminded of the terms on which the Treasury had agreed the extension of payments to people who had been infected with HIV as a result of NHS blood transfusion or tissue transfer **[DHSC0042937_139]**, or that Mr Grice of the Treasury had written to express concern about remarks made by John Horam in Parliament **[DHSC0042937_036]**; **[I DHSC0042937_035]**. Like Lord Horam, I do not think I was made aware of Mr Grice's letter, and I agree with Lord Horam that it was *"certainly indicative of the strength of feeling in the Treasury about the cost and precedent implications of introducing a Hepatitis C payment scheme"* **[WITN5294001]**.

3.62. The Inquiry quotes Lord Horam's evidence to the Inquiry that he was not aware of my view that *"we shall eventually be forced to concede"* and that he would have liked to be informed of this **[INQY1000217]**. I have explained above that my view was conditional on the pressure for change continuing, so as eventually to override the powerful obstacles to change, which I did not expect to be imminent. I am asked by the Inquiry whether I communicated my view to Lord Horam; if not, why not; and with hindsight, should I have done so.

3.63. I have explained above what my views were: I do not recollect whether I ever expressed them in discussion with Lord Horam. I am sorry to learn that Lord Horam would have wished to hear them from me. I would gladly have discussed

my view with him, but I do not think that a change in policy would have resulted. I note that in a minute of 12 April 1995 to Gerald Malone I had written: *"I recognize, of course, that the political pressures* (sc. on the Government to concede) *could become too great but I think the prospects of persuading other Departments, especially the Treasury, that we had to move now are not at all good"* **[DHSC0042937_119]**.

3.64. I am asked by the Inquiry whether it was my suggestion or that of Mr Guinness to undertake some contingency work on the sort of scheme favoured by Mr Marshall. As Mr Guinness' minute of 8 January 1995 (corrected to 1996) says that I did not request any specific action, it seems that the suggestion of contingency work on Mr Marshall's proposal came from Mr Guinness **[DHSC0042937_032]**.

Q20. Why was Government policy maintained in period 1994-1996

3.65. I am asked by the Inquiry why do I think that Government policy on the question of financial support for those infected with HCV through the use of blood products and blood transfusions did not change in the period 1994-1996. Policy did not change because ministers, having considered the issues involved, decided that it should not be changed. In my perception, they were sympathetic to people who had been infected with HCV, and very well aware of the support for them in Parliament and the media, and amongst the public. They considered options for providing support but found them to be too costly, likely to reduce the money available for NHS services to other groups of patients, and likely to compromise Government policy on no-fault compensation.

Q21. What would have led to a change in Government policy

3.66. I am asked by the Inquiry what would it have taken to have led to a change in Government policy on this matter at that time. The Government could have changed policy if convinced it was desirable or necessary to do so and could

see a way to overcome the obstacles mentioned above. I do not wish to speculate as to how this might have come about.

Q22. Should policy have changed

3.67. I am asked by the Inquiry whether policy should have changed so that financial support was provided to some or all of those infected. As I have previously said, policy was decided by ministers. I could have advised them to change it, but having myself considered the issues, I agreed with their policy and did not think it right to recommend a change.

Q23. Balance between civil servants and ministers

3.68. I am asked by the Inquiry whether, looking back at the way policy was developed, I consider that an appropriate balance was struck between the involvement and influence of civil servants and of ministers in coming to decisions.

3.69. I believe that both ministers and civil servants were clear about their respective roles. Ministers were responsible for setting the aims and objectives of the Department and deciding policies and priorities. Civil servants were responsible for advising ministers and for carrying out their policies and decisions. It was always understood that if a minister wished to review an established policy, it was the duty of officials to provide the support needed. I believe that such support was provided when Mr Malone raised concerns in 1995 and when Lord Horam wished to explore options for action to help people infected with HCV in 1995-1996.

Q24. Reflections on my role in this period

3.70. I am asked by the Inquiry whether I have any regrets about my role in this period. I was aware of the pressure on ministers to offer financial support to people who had been infected with HCV and was happy for options for changing the established policy to be explored. My concerns were to make sure

that the potential problems for Government finances and policy were given due weight and that the normal processes of consultation, discussion and decision-making within Government were followed before any commitment was given, or any statements made which might pre-empt those processes. I consider that I was carrying out my duties, without regard to any personal opinions.

Statement of Truth

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

Signed..... GRO-C .....

Dated..... 25th November 2022 .....