Witness Name: The Rt. Hon. Lord Forsyth of Drumlean Kt. PC
Statement No.: WITN7126001
Dated: 01 July 2022

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF
THE RT. HON. LORD FORSYTH
OF DRUMLEAN, KT. PC

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 28 April 2022.

I, the Rt. Hon. Lord Forsyth of Drumlean, Kt. PC will say as follows: -

A. I have completed this statement to the best of my ability and recollection. However, I have been hindered in my ability to provide fuller information by not having access to the copies of the written Ministerial submissions sent to me personally. Such documents would have contained my manuscript notations. I have answered the questions below to the best of my ability by reviewing the documents produced to me by the Inquiry, which, with one exception, contain no such personal manuscript notations.

Section 1: Introduction

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

1.1 My full title is The Rt. Hon. Lord Forsyth of Drumlean KT PC. My address is GRO-C I am a graduate of St Andrew's University (MA) and my date of birth is GRO-C 1954.

2. **Please set out, in list form, the positions you held in government between 1983 and 1997.**

2.1 The positions I held in Government from 1986 to 1997 were as follows

a) Private Parliamentary Secretary(PPS) to the Foreign Secretary Sir Geoffrey Howe MP 1986-87
b) Under Secretary of State at the Scottish Office 1987-1990
c) Minister of State at the Scottish Office 1990-92
d) Minister of State Department of Employment 1992-1994
e) Minister of State Home Office 1994-1995
f) Secretary of State for Scotland 1995-1997

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 given a written statement to the Penrose inquiry [PRSE 0004424]. I was not asked to give Oral evidence. I also participated in the BSE inquiry as a former Secretary of State for Scotland.

6. **In April 1987, before you joined the Scottish Office, you asked two Parliamentary Questions ("PQs") about restrictions on blood donors [SCGV0000035_114,SCGV0000052_033,SCGV0000035_103, SCGV0000157_064 and SCGV0000157_063]. What prompted or led you to ask these questions?**

6.1 I don't recall.

7. **The enclosed 24 June 1987 letter described you as the Scottish Home and Health Department's ("SHHD's) "*new Health Minister*" [DHSC0003855_108]. Did**

your ministerial responsibilities at this time relate only to health, or did they include other areas?

7.1 My responsibilities were for Education, Social Work, Health, Sport and the Arts from 1987-1989 and from 1990-1992.

7.2 From 1989-1990 this did not include Education. I answered in the Commons for some responsibilities held by our Lords Minister.

7.3 As Secretary of State from 1995-1997 I was responsible for all policy matters and finance in the Scottish Office and as a Cabinet Minister represented on all relevant Cabinet committees.

Section 2: Structure and organisation of the Scottish Home and Health Department and Scottish Office

General

8 **The Inquiry understands that you were Parliamentary Under-Secretary of State for Scotland ("Parliamentary Under-Secretary"), with responsibility for health, from 1987 to 1990; Minister of State in the Scottish Office, again with responsibility for health, from 1990 to 1992; and Secretary of State for Scotland ("Secretary of State") between 1995 and 1997. Please confirm if that is correct.**

8.1 I refer to my answers at 2.1 and 7.1, 7.2 and 7.3 above.

9 **Please describe, in broad terms, your role, functions and responsibilities as Parliamentary Under-Secretary, Minister of State and Secretary of State (in particular in relation to blood and blood products). Please also describe how, if at all, your responsibilities changed over time.**

9.1 Submissions concerning routine Health policy would be sent to me by officials and, depending on importance, copied to the Secretary of State. Cabinet level or less routine matters would be directed to the Secretary of State and usually copied to me. I would respond by writing my view on the submission and, if I had any concerns or issues, I would ask my private office to arrange a meeting to discuss them. These meetings would be minuted by my private Secretary and copied to relevant officials and if appropriate to the Secretary of State. It is a matter of regret to me that the

Inquiry has not been able to provide me with copies of the submissions I received which would carry my written annotations. Officials would be responsible for the administration of agreed policy and were expected to draw to the attention of Ministers any issues of concern. My experience of the officials at that time was that they were extremely effective and diligent in carrying out their duties.

10 Did any other ministers have responsibility for blood and blood products during your time as Parliamentary Under-Secretary, Minister of State and Secretary of State?

10.1 Overall responsibility lay with the Secretary of State for all departmental matters and for policy requiring Cabinet collective agreement. Health routine issues would be dealt with by the junior Minister responsible. The issue of compensation was, for example, for the Secretary of State and matters such as improving blood donor numbers were covered by me in my capacity as Minister of State. Ministerial submissions to me would generally be copied to the Secretary of State.

11 To what extent did you have autonomy in health matters (in particular in relation to blood and blood products), and in what circumstances did you require the involvement of other ministers in decisions? Please answer this question both in relation to your time as Parliamentary Under-Secretary and as Minister of State.

11.1 I refer to my answer to Q10 above.

12 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.

12.1 I refer to my answer to Q10 above.

13 To the best of your ability, please outline the organisational structure of the Scottish Office, insofar as relevant to the Inquiry's Terms of Reference. Please do so in respect of your time as Parliamentary Under-Secretary, Minister of State and Secretary of State, identifying any differences in structures between those times. You may be assisted by the enclosed article from the Scottish Government Yearbook 1991: "*The Scottish Office in the 1980s*" [RLIT0001019]. When providing your answer, 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 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.

13.1 Ministerial responsibilities were allocated by the Secretary of State who remained in charge of policy and was kept fully informed of decisions made by junior Ministers and would, from time to time, intervene if he wished an alternative approach. Copies of collective consideration of policy at Cabinet level would normally be circulated to junior ministers. Officials in SHHD would keep Ministers and the Permanent Secretary informed on emerging policy issues and any relevant matters concerning the CSA and the SNBTS. The Penrose inquiry document (PRSE0000358) sets out the structure very clearly.

13.2 SHHD was responsible to Ministers and officials had a duty to keep them informed on any policy matters or developments which might be of concern. In my experience they did this very well.

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

14.1 I refer again to the Penrose Inquiry document (PRSE0000358) which sets out not only the structure of the Scottish Office, it also explains the structure of the Scottish Home and Health Department ("SHHD"), the relevant personnel and the Divisions

relevant to the issues in this Inquiry. I refer again also to my answers at 13.1 and 13.2 above regarding Ministerial oversight.

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

15.1 I refer to my answers to Q9 and Q13.

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

a. **Which criteria determined whether a matter was of sufficient importance to be brought to the attention of ministers.**
b. **Who would make those decisions.**
c. **How effective the process was, in your experience, in ensuring that you and other relevant ministers were suitably informed of the key issues with which the SHHD was concerned during your tenure.**

16.1 I refer to my answers to Q9 and Q13.

17. **To the best of your ability, please identify (by name and position) the ministers, advisers and senior civil servants within the SHHD with whom you principally dealt, or from whom you received advice, 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 financial support for people infected as a result of treatment with blood or blood products. You may be assisted by PRSE0000358, a document prepared during the Penrose Inquiry.**

17.1 Without access to all my Ministerial papers this is a difficult question to answer but I do recall Duncan Macniven and George Tucker, who were each Assistant Secretary at Division IVD of SHHD as document PRSE0000358 shows. Licensing and regulation of

pharmaceutical companies and products was a matter for DoH (using the Inquiry abbreviation as denoted in footnote 1 at Q19 below.)

18. Please describe the respective roles of ministers and SHHD officials in:

a. setting up advisory groups;

b. determining their terms of reference; and

c. imposing any conditions on their functioning.

18.1 I think this would depend on the nature of the group being established as to whether there needed to be Ministerial involvement.

Funding

19. 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, (ii) Minister of State and (iii) 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 Department of Health ("DoH"), (iii) the roles (if any) of the SHHD and the CSA, and (iv) your involvement and other ministers' involvement in this process.[1]

19.1 The determination of the budget and negotiations with the Chief Secretary to the Treasury were the responsibility of the Secretary of State. Bids would be made by each department with the relevant junior Ministers, including SHHD indicating their preferences and priorities.

19.2 The Barnett formula provided the Scottish Office automatically with approximately 10% of any increase given to equivalent departments and responsibilities in England. This figure was based on relative population rather than any needs assessment.

19.3 The Barnett funding in respect of any Whitehall Department increases did not need to be allocated to those same areas in Scotland as the Secretary of State had discretion to use all funds according to his priorities. Spending, for example, on Health in Scotland being around a quarter higher per head than in England.

[1] It is noted that the Department of Health was part of the Department of Health and Social Security until the latter was split in 1988. "DoH" is used for ease of reference in this request, since it relates primarily to the period from 1987 to 1992.

19.4 In addition to Barnett there were other areas which required direct support from the Treasury which were covered in the Secretary of State's negotiation with the Chief Secretary to the Treasury. All Ministers would be consulted on the conclusions reached on the initial bids by the Secretary of State prior to submission to the Treasury. The final outcome would be subject to his negotiation.

20. Please address, to the best of your ability, how Scottish blood services were funded during your time as (i) Parliamentary Under-Secretary, (ii) Minister of State and (iii) Secretary of State. If there were changes in the funding arrangements over this period, please describe them and outline the reasons behind the changes.

20.1 Bids were made in the normal way (as outlined in 19.1 above) and I recall capital being allocated for expanding the provision of blood products. I refer generally to my answer to Q19.

21. Please describe the process by which government funding was granted for specific health matters not budgeted or allowed for in the Scottish Office or SHHD budget, in the period in which you were (i) Parliamentary Under-Secretary, (ii) Minister of State and (iii) 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 other 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.**

21.1 The Department ("SHHD") would make a submission to Ministers, having considered whether savings could be made elsewhere, and the Secretary of State would decide, depending on the issue, whether to approach the Treasury for funding from the contingency reserve or to find savings from other programmes.

Role of CMO

22. **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, (ii) Minister of State and (iii) 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 instruction 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.**

22.1 The CMO was responsible for informing Ministers and the public of risks to Public Health and advising on policy measures to minimise these risks. He was also responsible for giving guidance to clinicians, health boards and patients where he thought it appropriate.

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

23.1 I refer to my answers to Q24 and to Q26 below.

24. **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?**

24.1 As far as I can recall, it was only as Secretary of State in respect of the BSE crisis and an eColi outbreak, when I had significant engagement directly with the CMO.

25. What contact, if any, would Scottish Office ministers 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.

25.1 I refer to my answer to Q24 above. I do not recall any contact with the CMOs for England & Wales or Northern Ireland.

26. 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) Minister of State?

26.1 Ministers were not involved in debating medical issues which were for the professional judgement of the CMO and his colleagues. I think this question needs to be directed to officials.

Section 3: Relationships with the UK government and devolved administrations

27. Please describe, in broad terms, the relationship between the SHHD and the DoH in respect of health policy in Scotland during your time as (i) Parliamentary Under-Secretary, (ii) Minister of State and (iii) Secretary of State, with particular reference to policy related to blood, blood products and haemophilia. You may be assisted by considering the following:

- **a. How much oversight, if any, did the DoH 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 DoH on matters relating to blood and blood products?**
- **c. To what extent did the Scottish Office and/or the SHHD attempt to align its policies and activities with those of the DoH on such matters?**
- **d. How would disputes between the DoH and the Scottish Office/SHHD be resolved?**

27.1 As to (a) Health Policy issues in Scotland were a matter for the Scottish Office.

27.2 As to (b) and (c) there were procedures in place to ensure communication with the Department of Health between officials. The SHHD had limited resources compared to the DOH.

27.3 As to (d) any serious disagreements would be resolved by senior officials or, if necessary, at Ministerial level. There were occasions when the DoH did not take account of Scottish circumstances and moved ahead without proper consultation particularly around the issue of compensation. I refer to my answers to Qs 45.1, 65.1 and 68.1 below.

28. **Please describe, in broad terms, your interactions as (i) Parliamentary Under-Secretary and (ii) Minister of State with the DoH in relation to health policy. Please also identify by name and position the ministers and civil servants with whom you liaised in the DoH. Please address, in particular, any such involvement in decisions relating to: blood and blood products, the licensing and regulation of pharmaceutical companies and products, risk of infection from blood or blood products, the response to such risks, and compensation or financial support for people infected as a result of treatment with blood or blood products.**

28.1 I cannot answer this question properly without having access to all my Ministerial papers. To the best of my recollection, I would not have had contact with DoH officials and in the main cross departmental Ministerial involvement would be for the Secretary of State who usually attended the relevant Cabinet Committees and would engage in any Whitehall correspondence. A good example of this was the involvement of DoH and Treasury in considering the issue of compensation for haemophiliacs and others who had been infected from blood products and transfusions.

29. **Please describe, in broad terms, your interactions as (i) Parliamentary Under-Secretary and (ii) Minister of State 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, risk of infection from blood or blood products, the response to such risks, and compensation or financial support for people infected as a result of treatment with blood or blood products.**

29.1 I refer to my answer to Q28 above. There was only one government at the time and collective consideration of policy would be resolved in committee of officials or Ministers or by Whitehall correspondence.

30. **As (i) Parliamentary Under-Secretary and (ii) Minister of State, 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, risk of infection from blood or blood products, the response to such risks, and compensation or financial support for people infected as a result of treatment with blood or blood products.**

30.1 The policy in Scotland was determined to suit circumstances in Scotland and it was generally acknowledged that the Scottish National Blood Transfusion Service ("SNBTS") was doing a good job. I expressed my views on the approach to compensation. As far as blood products were concerned, I was committed to achieving self-sufficiency and effective screening in line with professional and clinical advice. Eligibility for compensation and the amount was determined by the Chancellor and the DoH.

31. **What, in your experience, was the impact of having different organisations and structures responsible for blood in Scotland and England? In particular, did this lead to differences in service delivery in the two countries? You may be assisted by the following documents, concerning an article published in the British Medical Journal by Professor Cash:**

- 4 September 1987 minute from Hugh Morison [SCGV0000052_115].
- 7 September 1987 minute from Dr Macdonald [SCGV0000052_114].
- 10 September 1987 minute from Duncan Macniven, enclosing a draft of the article [SCGV0000052_016].
- Professor Cash, "The blood transfusion service and the National Health Service", 12 September 1987, British Medical Journal [PRSE0000598].

31.1 I refer to my answer to Q30 above.

Section 4: Relationships between the SHHD and others

Relationship with the CSA

32. Please describe, in broad terms, your interactions as (i) Parliamentary Under-Secretary and (ii) Minister of State with the CSA in relation to: blood and blood products, the licensing and regulation of pharmaceutical companies and products, risk of infection from blood or blood products, the response to such risks, and compensation or financial support for people infected as a result of treatment with blood or blood products.

32.1 As far as I can recall all interactions with the CSA were with my officials.

Relationship with the SNBTS

33. Please describe, in broad terms, your interactions as (i) Parliamentary Under-Secretary and (ii) Minister of State with the SNBTS. You may be assisted by the enclosed October 1988 briefing note from Professor Cash [SBTS0000627_062].

33.1 As far as I recall all interactions with the SNBTS were with my officials at the SHHD and the SNBTS. I refer also to my answer to Q34 below.

34. Were you aware of any difficulties in the working relationship between the SNBTS and SHHD during your time as Parliamentary Under-Secretary or Minister of State, or have you become aware of any such difficulties subsequently? If so, please explain whether you consider that they had any material impact on the issues being considered by the Inquiry. As well as documents referred to elsewhere in this letter, you may wish to consider the enclosed documents from May and December 1988 [SCGV0000090_128 and SBTS0000187_032], as well as a February 1991 letter from Professor Cash to The Scotsman [SCGV0000269_053].

34.1 Relations with the SNBTS would normally be through SHHD officials and the October 1988 briefing note you refer to (SBTS0000627_062) was sent, I think, to encourage me to support a PES bid. It was not needed as I was committed to providing the resources required and well advised by my officials. I do recall there was some tension between officials and Professor Cash mainly because of his style of approach which was motivated by a determination to have the highest standards of service. His letter to the Scotsman (SCGV0000269_053) suggests that these tensions had not resulted in any adverse outcome.

Relationship with the PFC

35. Please describe, in broad terms, your interactions as (i) Parliamentary Under-Secretary and (ii) Minister of State with the Protein Fractionation Centre ("PFC"). You may be assisted by the following documents:

- **Note of an 18 April 1988 meeting (recording your desire to visit the PFC) [SBTS0000687_089].**
- **March 1989 PQ regarding the PFC [SBTS0000436_025].**
- **August 1990 minute from Mr Tucker [SCGV0000273_004].[2]**
- **17 October 1991 press release regarding an extension to the PFC [SBTS0000640_166].**
- **January 1992 article in a staff newspaper [SBTS0003002_025**

35.1I recall being supportive of the PFC and had increased capital and revenue funding to enable the expansion of production, R&D and storage facilities as the above documents indicate. I thought the SNBTS had done a good job in enabling Scotland to be self-sufficient in blood and blood products.

Section 5: Licensing and regulation of blood and blood products

36. The Inquiry understands that, during the 1970s and 1980s, the UK licensing authority for medicines was formally comprised of the Secretaries of State for Health, Agriculture and Scotland. What role did you, or other Scottish Office ministers, play in relation to the licensing and regulation of blood and blood products (if any)

36.1 I do not recall any involvement.

Section 6: Knowledge of and response to risk/safety of blood and blood products

37. What decision-making structures and processes were in place (and with what oversight) during your time at the SHHD:

a. for ensuring that the SHHD was kept informed of developing knowledge (internationally and/or domestically) about the risks

[2] This would appear to be a draft minute.

arising from blood and blood products and the various national and international responses to such risks?

b. for briefing ministers about the risks from blood and blood products, including any risks posed by the purchase of commercially supplied blood products?

c. for ensuring that ministers and the CMO for Scotland were kept informed of changes in the understanding of relative risk?

37.1 This is a question for Senior Officials and the CMO. I refer also to my answers to Q9, Q13 and Q14 above.

38. What kinds of decisions, relating either to the risks arising from blood and blood products or the response to such risks, would be taken personally by (a) ministers or (b) the CMO for Scotland? What kind of information on these matters would you expect to be brought to your attention as Parliamentary Under-Secretary and Minister of State? Please provide any relevant examples.

38.1 Matters concerning public health would be for the CMO and medical officials and Minsters should be kept informed. I refer again to my answers to Q9, Q10, Q13, Q14, Q22 and Q24.

39. When you were appointed Parliamentary Under-Secretary, what was your knowledge and understanding of:

a. the risks of infection associated with blood and blood products;

b. the risks of the transmission of hepatitis from blood and blood products;

c. the nature and severity of the different types of blood borne viral hepatitis;

d. the relative risks of infection from the use of commercially supplied blood products and the use of domestically sourced blood and blood products?

39.1 I don't recall and without sight of all my Ministerial papers at the time cannot make a judgement. The briefing for me on appointment as Parliamentary Under-Secretary may have touched on these issues.

40. How, if at all, did your knowledge and understanding of these issues develop or change during your time at the SHHD? Who or what were the sources of your knowledge and understanding of these issues during this time?

40.1 I would be briefed by officials. I refer also to my answers to Q9, Q13 and Q14 above.

41 What was your understanding of NANB hepatitis and the potential harm it posed to those infected by it? As well as documents referred to elsewhere in this letter, you may wish to consider the enclosed 30 August 1988 minute from Dr Forrester [PRSE0003962].

41.1 Without seeing all my papers and the briefing provided to me at the time I find it impossible to answer this question. At some stage I was aware that Hepatitis B was tested in blood donations and I was advised by medical officials that there were difficulties in obtaining an accurate test for Hepatitis C.

Section 7: Donor selection/screening

NANB surrogate testing

42 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.[3]

- **a. So far as you can recall, were you aware of this debate during your time as Parliamentary Under-Secretary or Minister of State?**
- **b. If not, would you have expected Scottish Office officials to have made you aware of the issues, and to have sought your involvement in any decisions?**
- **c. If neither you nor any other minister(s) were made aware of the issue, do you consider that you should have been?**
- **d. If you had been made aware of the issue, would you have expected to have consulted or otherwise involved the Secretary of State?**

[3] It is noted that a number of these documents pre-date your time at the SHHD. They are provided to illustrate the nature of the issues and debate, which continued following your appointment as Parliamentary Under-Secretary.

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.**

42.1 These papers were not copied to Ministers. The Ministerial paper made available to me (PRSE0000558) suggests that all UK Health Departments together with the UK transfusion services were examining data before making any decision about generalised testing. The DoH was taking the lead, with SHHD and SNBTS represented at any meeting, and with Ministers consulted before any decision was taken. I would have been content with that.

Hepatitis C screening

43 As far as you can from your recollection and the documents provided or made available to you, please provide a chronological account of your involvement in decisions and actions by the SHHD in relation to the introduction of hepatitis C screening of blood donations in Scotland. As well as the documents referred to below, you may be assisted by the enclosed 18 June 1990 minute from Mr Panton to Mr Hancock [PRSE0000744].

43.1 I refer to my answers to Q42 above and to Q44 below.

44 The enclosed 23 August 1989 note from George Tucker, SHHD Assistant Secretary, advised you about an article in the Guardian concerning hepatitis C screening [PRSE0000558 and NHBT0000014_060[4]]. A manuscript response appears to read: "*This is a very good note put together as promptly as the Minister could have wished*".

a. **Do you recall reviewing this note and the accompanying article? If so, what was your reaction to the issues it raised and the suggested lines to take? If you had any concerns about the note and the article, please explain what they were and whether, so far as you can recall, you took any steps in response.**

[4] Note that the article is dated the day after the note. The Inquiry nonetheless understands it to be the relevant document. If you believe that to be wrong, please say so.

b. **The note stated that "*[o]nly a minority of those infected with HPC display any symptoms either in the short or long term (as referred to in the 3rd paragraph of the Guardian's front page article)*". The article described hepatitis C as often having no symptoms, but stated that "*about 10 per cent of those infected can develop cirrhosis of the liver, which is likely to prove fatal within 10 years*". So far as you can recall, what was your response to these descriptions of the seriousness of hepatitis C? Do you recall asking for any further information on the seriousness of hepatitis C infection?**

c. **The conclusion to the note described the introduction of screening as a "*UK issue*" and stated that the DoH would be "*taking the lead*", but that the SHHD and SNBTS would be represented in any meeting and that you would be "*consulted*" before any decisions were taken. Please explain what you understood this to mean. In particular, was its effect that decisions on the introduction of screening would involve consultation with you and Scottish officials, but that they would ultimately be taken by the DoH? In practice, did such an approach preclude the possibility that Scotland could take a different approach to the rest of the UK in relation to hepatitis C screening?**

d. **Do you recall having any discussions with the CMO for Scotland about the issues raised in the note and/or the article? Would you have expected to have had such discussions, or otherwise to have been briefed directly by the CMO?**

e. **More broadly, did you ask officials to keep you informed, or otherwise involved, on the potential introduction of hepatitis C screening tests? If not, why not? In any event, would you have expected officials to keep you informed or otherwise involved?**

44.1 The comment is clearly not from me. I do not recognize the handwriting. I was aware of Hepatitis C and of the issues about reliability of testing. It was clearly a matter which required professional medical advice and should be approached on a UK basis. I would not have expected the CMO to intervene with Ministers unless he was concerned at the conclusions being reached. I had every confidence that officials would keep Ministers informed about what was, essentially, a matter to be determined on the basis of carefully considered professional advice. The DoH had considerably more resources than SHHD and was the lead department.

45 **In a 1 February 1990 minute to your Private Secretary on a separate topic, Mr Tucker wrote: "*All budgets are likely to be very tight next year and the Common Services***

Agency Budget in particular is likely to come under severe pressure from a number of sources which were not foreseen at the time of framing bids for PES. (Eg. the prospect of a two year settlement for pay of ambulance staff and the introduction of routine blood testing for Hepatitis C which is expected to become unavoidable following expert advice that such testing should be introduced in order to prevent the risk of future claims against the Government similar to those now pending in respect of haemophiliacs with HIV.) **" [SCGV0000230_145].**

a. **So far as you can recall, were you aware at the time of the "expert advice" referred to in Mr Tucker's minute?**
b. **What was your response to Mr Tucker's suggestion that hepatitis C screening was expected to become "unavoidable" in order to avoid future claims for compensation against the Government?**
c. **Do you recall taking any steps to follow up the reference to hepatitis C screening in Mr Tucker's minute? Your Private Secretary's response to the minute is also enclosed [SCGV0000230_143].**
d. **How significant were budgetary constraints in your and the SHHD's decision-making around this time, including with respect to the introduction of hepatitis C screening?**

45.1 I don't recall what my response was as I have not had access to all my papers. I would have expected my response to be that the primary issue was to ensure public health and not concern regarding any liability to litigation, and that we must find the money, but without seeing my responses and subsequent engagement with officials I cannot answer. A clue as to my attitude is contained in my written response of 6th February 1990 (SCGV0000230_143) on the original paper sent to me by Mr Tucker on February 1rst (SCGV0000230_145). My PS replied making clear that we should make a financial contribution and expressing irritation that this had not been highlighted earlier as part of the PES discussions. The funds were found, but there was an issue with the DoH making decisions without proper consultation with its territorial counterparts.

46 **In the enclosed 21 January 1991 minute, Mr Tucker referred to DoH ministers giving their approval to a submission on hepatitis C testing, and to uncertainty about the date for the introduction of testing [SCGV0000136_151]. Mr Tucker asked another SHHD official, Mr Panton, to prepare a draft submission for you. The DoH submission is also enclosed [PRSE0004667].**

a. **The Inquiry understands that, as at the date of this January 1991 minute, a submission requiring a Scottish ministerial decision had not yet been**

prepared or put to you. So far are you aware, is that correct? Do you recall asking officials for an update or taking any other such steps between Mr Tucker's February 1990 minute and July 1991 (when a submission was put to you)?

b. **Were you aware that a submission had been prepared for DoH ministers about this issue? Do you recall discussing the issue with ministerial colleagues or others at the DoH? If so, please describe what you can recall of such discussions.**

c. **So far as you are aware, why were decisions about the introduction of hepatitis C screening put to DoH ministers before their Scottish counterparts?**

d. **Mr Tucker's note asked Mr Panton to "*ascertain from SNBTS when it would be practical to introduce the test in Scotland but indicate that we wish to maintain a UK approach*". So far as you understand it, did "maintain[ing] a UK approach" mean introducing a test in all parts of the UK at the same time? Were you involved in taking this policy decision or otherwise aware of it? If so, please explain the reasoning behind it.**

e. **Was the "UK approach" decided on the basis that screening would be introduced simultaneously throughout the UK, even if: i) SHHD officials and ministers considered its introduction to be justified earlier than the DoH; and/or ii) Scottish regional transfusion centres were operationally ready to introduce screening before their English counterparts? If so, please explain the reasoning behind this position.**

46.1 This seems to refer to discussions between officials. I would have expected officials in both departments to offer advice to Ministers to ensure public health was protected on a UK basis. I refer also to my answers to Q47, Q50 and Q52 below.

47 **In a 24 July 1991 submission, Mr Tucker informed you of the DoH decision to approve routine hepatitis C testing of blood donations from 1 September 1991 and recommended that testing be introduced in Scotland from the same date [PRSE0004608]. On 26 July, your Private Office accepted the recommendations and asked that a press release be prepared [SCGV0000163_031].**

a. **So far as you can recall, was this the first time that you had considered the arguments for and against the introduction of screening? If so, did you have any concerns about the length of time it had taken for the issue to be put to you for a decision?**

b. **Did any particular factors weigh more heavily than others in your decision, (whether identified in the submission or not)? If so, please explain why.**

c. **The submission recorded that the SNBTS had "*been in favour of introducing the test for Hepatitis C for some time now but on the basis that a reliable testing kit can be supplied*". Were you aware of the SNBTS position prior to this submission? If so, what did you understand it to be?**

d. **Were you aware that a PES bid had earlier been lodged in anticipation that testing would be introduced in 1991/92? If so, had you approved it?**

e. **The submission noted that no specific publicity was being given to the introduction of tests by DoH ministers, and that this was in part probably due to "*the need to avoid giving an opportunity for <u>further</u> criticism that testing should have been introduced earlier*" (emphasis added). Were you aware, at the time, of criticism that testing should have been introduced earlier? If so, what, if any, steps had you taken in response to it?**

f. **The submission noted that an announcement "*may prompt questions about blood safety and that it would give rise to another pressure group seeking compensation for contracting Hepatitis C*". What was your view of these potential consequences of publicising the introduction of screening? Why did you decide, seemingly in contrast to the DoH, that a press release should be prepared?**

47.1 To answer these questions I need to see all my Ministerial papers as I do not remember, more than 30 years on, the precise timing. My general view would have been to get on with testing as quickly as possible on a UK basis provided there was a reliable test available. I would have wanted an announcement in the interests of transparency and my understanding was that the delay in introducing a test was as a result of professional differences on the issue of the reliability of testing. I refer also to my answer to Q52 below.

48 **The enclosed documents contain draft, July 1991, versions of the press release [SCGV0000163_038 and RCPE0000223_002] and the final, 2 September 1991, version [PRSE0000743]. What role did you play in formulating or approving the press release? Do you know the factual basis for the assertion in the final document that "*it is only very recently that appropriate technology has become available to reliably allow routine testing for Hepatitis C*"? Was this statement made in anticipation of criticism that there had been a delay in introducing the test?**

48.1 The press release was approved by me. The statement was made, as I understood the lack of a reliable test to be the reason for not having introduced testing earlier, and this reason was what my officials had advised. I refer also to my answer to Q52 below.

49 The 2 September 1991 press release referred to "*additional funds*" which would be allocated to the SNBTS to cover the annual cost of testing, and your statement described the "*additional funding*" you were making available to the SNBTS to "*allow this testing to start today throughout Scotland*" [PRSE0000743]. See also the enclosed newspaper article, which described you as announcing that the SNBTS would "*receive more money to cover*" the cost of testing [SCGV0000163_012].

- **a. Which additional funds had you decided should be allocated to cover the cost of testing?**
- **b. The 26 July 1991 ministerial submission stated that the "*costs for 1991/92 will be in the region of £700,000 and as indicated above this has been already included in the CSA allocation*" [PRSE0004608]. An 8 August 1991 letter informing the CSA of your approval for testing stated that the SNBTS had "*already been funded for the introduction of this testing*" [PRSE0004513]. Was your statement regarding additional funds consistent with these documents? Please explain why either way.**
- ***c.* Were difficulties around funding ever a reason why the *introduction of hepatitis C screening in Scotland took the time that it did?***

49.1 The press release was drafted by officials and I have no reason to believe it was not accurate. The Minute to me from Mr Tucker (SCGV0000163_038-4) at paragraph 7 (page 4 of the document) confirmed that a PES bid was successful for this purpose.

50 If a submission had been put to you, prior to July 1991, recommending the introduction of hepatitis C screening in Scotland before the rest of the UK, could you have agreed to it without the DoH's agreement? In what circumstances would you have done so?

50.1 As the Tucker Minute (SCGV00000163_038-4) at paragraph 8 (page 4 of the document) makes clear, we had already agreed that screening should take place on a UK basis. I had no reason to believe it could be introduced earlier given the advice about the reliability of testing and the need for research.

51 What responsibility, if any, do you consider you had as Parliamentary Under-Secretary and Minister of State to ensure the timely introduction of the screening test in Scotland?

51.1 My responsibility was to proceed in accordance with the medical advice I was being given.

52 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 in the Scottish Office, to introduce the screening test in Scotland at an earlier stage? If so, what, by whom and when?

52.1 This is not a policy question and is best addressed to medically qualified officials. However, I refer again to the Minute to me from Mr Tucker (SCGV0000163_038-4) at paragraph 8 (page 4 of the document) which states "The testing kit now available is considered by medical experts to be sufficiently sophisticated to give accurate results and we recommend that the SNBTS should be authorised to begin testing from September 1, 1991."

Section 8: Anonymous testing and other AIDS measures

53. Please describe your involvement in proposals for anonymous HIV testing of blood taken for other purposes without the knowledge and consent of patients. In doing so, please describe the position you took on the issue. You may be assisted by the following documents:

- 4 May 1988 submission from CM Lugton [SCGV0000216_056].
- Minutes of the 23 November 1988 Home and Social Affairs Committee Sub-Committee on Aids [CABO0000195_051].
- Briefing for the 13 January 1989 Adjournment Debate on Aids [DHSC0046986_107].
- 13 January Hansard report [DHSC0046986_053 internal pp 1099–1110].

53.1 I was concerned at the extent to which HIV was being transmitted in the heterosexual community as a result of needle sharing. Two schemes for voluntary testing of named samples were planned in Edinburgh and Dundee which were approved by the HA Cabinet committee. We encouraged voluntary testing but this had to be supported by appropriate counselling.

Section 9: The wider AIDS campaign

54. Please outline your involvement, as Parliamentary Under-Secretary and Minister of State, in wider public health measures relating to AIDS introduced by the Scottish Office and the UK Government. In your answer, please provide an overview of the key decisions or actions which you took in relation to these issues, and the reasons for them. As well as documents referred to elsewhere in this letter, you may be assisted by the following:

- 22 October 1987 letter to you from Robert Maclennan MP, enclosing a letter from a constituent [SCGV0000008_024].
- Your 11 November 1987 response to Mr Maclennan [SCGV0000008_020].
- Your 26 January 1988 speech to the World Summit of Ministers of Health on Programmes for AIDS Prevention [DHSC0003926_103].
- A draft January 1989 letter from you to Gavin Strang MP, further to a 13 January 1989 debate on AIDS in the House of Commons [DHSC0046986_050].[5]
- 17 May 1991 letter from the SHHD to the DoH regarding an AIDS Task Force for Scotland, with enclosure [DHSC0032264_154 and DHSC0032264_155].
- 14 February 1992 letter from Ian Lang to Lord Waddington [HMTR0000003_089].
- March 1992 report of the AIDS Task Force, "*HIV and AIDS in Scotland: prevention the key*" [SBTS0003008_001].

54.1 My approach was set out in a speech to the World Summit of Health Ministers in January 1988 (DHSC0003926_103) and later, on prevention, with the publication of the report of the AIDS Ministerial Task force which I chaired in March 1992. (SBTS0003008_001)

55. The Inquiry has heard evidence from individuals infected with HIV/AIDS and their families, describing the fear and stigma they associated with some of the imagery in the UK-wide public health campaign (for example, the tombstone feature in television announcements).

a. **What involvement, if any, did you have in deciding the messaging and imagery used in the campaign?**

[5] Similar drafts were prepared for Harriet Harman MP [DHSC0041328_167] and Archy Kirkwood MP [DHSC0041328_169].

b. **If you were involved, to what extent did you/the Scottish Office consider the possibility that some of this messaging and imagery could lead to fear and/or stigma amongst individuals who had been infected or who were at risk of infection, as well as their families?**
c. **To what extent did you consider the specific impact on individuals with bleeding disorders and their families?**
d. **Were there any differences in the public health campaigns run in Scotland and England? If not, was any consideration given to taking a different approach in Scotland?**
e. **Did you/the Scottish Office take any steps to mitigate or avoid the fear and/or stigma which might be associated with the UK-wide campaign?**
f. **Did you subsequently, or do you now, consider that a different approach should have been taken to any part of the campaign?**

55.1 Of course we wanted to tackle stigma and were acutely conscious of the issues involved in testing for individuals. The DoH was in the lead on the National campaign and the Health Education Board would be responsible for specific Scottish campaigns and kept Ministers informed. I think it is generally recognised that Norman Fowler has been an effective champion in the fight against Aids in the UK and the rest of the world. Our concern was to alert the public as a whole to the dangers and at the time, (over 30 years ago) we considered this was the most effective way to benefit the majority with the resources available.

Section 10: Funding for haemophilia centres

56. **On 28 October 1987, in response to a PQ, you stated that funding for haemophilia centres for AIDS-related work was a matter for the relevant health boards "*to consider in the context of the various demands which AIDS and HIV infection are placing and will place on them*" [HSOC0018349_002].**
    a. **Please explain why you considered, at that time, that additional funding should not be provided to haemophilia centres for AIDS-related work. You may wish to consider the enclosed note, setting out the background to your 28 October 1987 answer [SCGV0000153_013], as well as your answer to a PQ on 16 July 1987 [HSOC0018491].**[6]

[6] The note refers to September 1987 correspondence with Dr Lowe, which is also enclosed [SCGV0000007_054 and SCGV0000007_047].

b. **A 4 November 1987 press release from the Liberal MP, Archy Kirkwood, criticised this answer and highlighted disparities in funding between Scotland and the rest of the UK [HSOC0004533]. What was your position at the time on the apparent disparity? Did you have any response to Mr Kirkwood's criticisms?**

56.1 Health Boards were funded to provide for their communities and were best placed to decide on need and how to meet it. The Health Boards were considerably better funded than the rest of the UK and additional resources had been provided for AIDS units in Edinburgh, Glasgow and Dundee.

Section 11: Self-sufficiency

57. **What was your understanding, during your time in the Scottish Office, 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 time as Parliamentary Under-Secretary and Minister of State? If so, what were its principal features, and what was your involvement in trying to achieve it? Please address your understanding of the relationship between the production of blood products in Scotland and other parts of the UK in your answer. You may wish to consider the enclosed documents:**
    - 11 November 1987 written PQ and background note [SCGV0000035_082].
    - 11 January 1988 written PQ and background note [SCGV0000035_078 and SCGV0000035_075].

57.1 My understanding was that we had achieved self-sufficiency and wished to maintain that. My role was to support the SNBTS in seeking to maintain that position.

58. **Did you understand others to have a different definition of self-sufficiency, or a different view on whether it was a policy objective, during your time as Parliamentary Under-Secretary and Minister of State?**

58.1 I don't know what is meant by others.

59. **Were you aware of Scotland ceasing to be self-sufficient at any point while you were at the Scottish Office? If so, please describe your understanding of the**

reasons for this development. You may wish to consider the following documents:

- 6 July 1988 letter from the Haemophilia Society, with enclosures [SBTS0000430_017, PRSE0003441 and PRSE0003849].
- 14 July 1988 minute from Mr Macniven [SCGV0000110_096].
- 15 July 1988 letter from Mr Macniven [SCGV0000110_093].
- 19 July 1988 letter from Dr Macdonald to the Haemophilia Society [HSOC0015345].
- 20 July 1988 minute from Jane Rougvie [SCGV0000110_085 p 2].
- 22 July 1988 minute from Mr Macniven [SCGV0000110_084].
- August 1988 minute from David Binnie to Mr Macniven [SCGV0000110_075].
- Paragraphs 10.197-10.276 of the Penrose Inquiry Preliminary Report [PRSE0007003 internal pp 383-401].

59.1 The objective was to maintain self-sufficiency but there was a huge increase in demand for Factor VIII. I was concerned that we should avoid importation and look at the means for increasing manufacturing capacity and assessing the reasons for escalating demand and its likely trajectory. Importation was unlikely to be an option, anyway, as the shortage of Factor VIII was worldwide. I encouraged officials to consider a campaign for increasing the number of blood donors, to increase equipment for plasmapheresis and to negate production difficulties.

Section 12: Campaigns for financial support and compensation and the HIV litigation

Campaign for compensation

60. In a 9 October 1987 letter to Dr Lowe, you wrote as follows in relation to the "*issue of specific compensation for infected haemophiliacs*": "*my colleagues Norman Fowler and Tony Newton spoke 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*" [SCGV0000007_047]. Dr Lowe's letter to you is also enclosed [SCGV0000007_054].

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. **To what extent, if at all, did you exercise influence on policy on this matter with, (i) DoH, (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 people who became infected with hepatitis B or hepatitis C as a result of NHS treatment with blood transfusions or blood products?**

As well as documents referred to elsewhere in this letter, you may be assisted by the following:

- 15 May 1987 article in the Guardian [DHSC0004541_212].
- 6 October 1987 minute from Mr Lugton with enclosure [SCGV0000007_051 and SCGV0000007_050].
- October–November 1987 letters to you from MPs regarding the Haemophilia Society's campaign for compensation, and a letter of response [SCGV0000008_064, SCGV0000009_089, SCGV0000008_086 and SCGV0000008_082].

60.1 Regarding (a) - (e) the best answer I can give, more than 30 years later, is the government position at the time set out in my response of 30 October 1987 to the letter from Bill Walker MP (SCGV0000008_082).

60.2 Regarding (f) my own personal view was that compensation should be paid not only to haemophiliacs with HIV, but to any patients infected as a result of blood transfusions. This was an issue for the Treasury.

60.3 Regarding (g) I don't recall my personal view at the time (over 30 years ago.)

61. **In a 12 October 1987 letter, Sam Galbraith MP wrote that, while there was "*no legal responsibility to compensation*" for 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? You may wish to consider your response to Mr Galbraith [SCGV0000007_004], as well as a later, 14 November 1990 letter [SBTS0000680_127].**

61.1 I refer to my answer to Q60 above.

Establishment of the Macfarlane Trust

62 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 with bleeding disorders infected with HIV through blood transfusions and blood products. You may wish to consider the following documents:

- Briefing paper on 6 November 1987 for senior government ministers [CABO0000205].
- Minutes of a meeting of the Home and Social Affairs Committee and Sub-Committee on AIDS on 10 November 1987 [CABO0100016_011].
- 11 November 1987 minute from Mr Lugton [SCGV0000229_171].
- 13 November 1987 minute from Mr Binnie [SCGV0000229_164].
- 13 November 1987 minute from Mr Lugton, with enclosure [SCGV0000229_165 and SCGVx0000229_156].
- 16 November 1987 Parliamentary statement from Tony Newton MP [LDOW0000241].
- Your 4 December 1987 letter to Sir Russell Johnston [SCGV0000009_039] and 10 December 1987 letter to Bill Walker MP [SCGV0000008_026].[7]
- 10 December 1987 letter to the family of an infected haemophiliac [SCGV0000008_073].

62.1 This was taken forward by the DoH and Treasury. We could not have had a separate Scottish scheme not least because it would have required Treasury approval and collective agreement.

[7] These are two examples of a number of similar letters to MPs around this time.

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

63.1 I refer to my answer to Q62 above.

64. 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?

64.1 I refer to my answer to Q62 above.

Expansion of payments to the Macfarlane Trust

65. 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:

- 22 November 1989 letter from Kenneth Clarke MP to the Prime Minister [HMTR0000001_013].
- 23 November 1989 letter from RB Saunders to Mr Anson [HMTR0000001_017].
- 23 November 1989 Parliamentary announcement by Mr Clarke [HMTR0000001_023].
- 27 November 1989 minute to your Private Secretary (Mr Binnie) [SCGV0000230_111].
- 22 December 1989 letter from Jane Wheeler to Mrs Beattie [SCGV0000230_060].
- 4 January 1990 letter from Mrs Beattie to Mr Tucker [SCGV0000230_055].
- January 1990 letter from Mrs Beattie to Ms Wheeler [SCGV0000230_057].
- 18 January 1990 minute from AJ Rushworth to Ms Ross [SCGV0000230_056].
- 26 January 1990 letter from Ms Wheeler to Ms Ross [DHSC0046951_090].
- 31 January 1990 minute from Mrs Beattie to Mr Tucker [SCGV0000230_044].
- 1 February 1990 minute from Mr Tucker to Mr Rushworth [SCGV0000230_040].
- 1 February 1990 minute from Mr Rushworth to Mr Tucker [SCGV0000230_038].
- 1 February 1990 minute from IGF Gray to Mr Tucker [SCGV0000230_042].
- 1 February 1990 minute from Mr Tucker to Mr Binnie [SCGV0000230_145].

- 6 February 1990 minute from Mr Binnie to Mr Tucker [SCGV0000230_143].
- 13 February 1990 minute from Mr Tucker to Mr Binnie [SCGV0000230_122].
- 14 February 1990 minute from Mr Binnie to Mr Tucker [SCGV0000230_119].

65.1 I am unable to provide a chronological account without access to all my papers, but this was very much a matter in which the Treasury and DoH took the lead and where consultation by the DOH with the Scottish Office was not always as good as it should have been. This is evidenced by the above documents and in particular by the Minute of 1 February 1990 from Mr Tucker to Mr Binnie (SCGV0000230_145), the Minute of 6 February 1990 from Mr Binnie to Mr Tucker (SCGV0000230_143), the Minute from Mr Tucker to Mr Binnie of 13 February 1990 (SCGV0000230_122) and for completeness the Minute from Mr Binnie to Mr Tucker of 14 February 1990 (SCGV0000230_119)

HIV litigation and settlement

66. 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 views about how the Government should respond to the claim? You may wish to consider the enclosed documents:

- 18 January 1989 minute from Jane Rougvie to Mr Lugton, with enclosure [SCGV0000229_053 and SCGV0000229_054].
- 15 February 1989 minute from Mr Macniven [SCGV0000229_052].
- 22 February 1989 minute from Mr Binnie to Mr Macniven [SCGV0000229_051].
- 15 November 1989 article in the Daily Record [SCGV0000230_088].
- Your 14 November 1990 letter [SBTS0000680_127].
- 11 December 1990 minute from Mr Tucker [BNOR0000064].
- 7 January 1991 minute from Mr Tucker [SCGV0000231_040].
- 10 January 1991 minute from JD Gallagher to Mr Tucker [SCGV0000231_021].
- 15 January 1991 minute from Mr Tucker [SCGV0000231_019].
- 17 January 1991 minute from Mr Binnie [SCGV0000231_017].
- 17 January 1991 letter from the Secretary of State for Scotland to the Secretary of State for Health [DHSC0003660_009].
- 30 January 1991 response from the Secretary of State for Health [DHSC0003660_010].
- 31 January 1991 response from the Chief Secretary to the Treasury [DHSC0003657_019].

- 8 February 1991 minute from Mr Tucker [SCGV0000232_042].
- 13 February 1991 minute from Mr Binnie [SCGV0000232_036].
- 14 February 1991 minute from Mr Tucker [SCGV0000232_168].
- 15 February 1991 letter from the Secretary of State [SCGV0000232_031].
- 15 February 1991 letter from the Secretary of State [HMTR0000002_045].
- 18 February 1991 minute from Mr Tucker [SCGV0000232_023].
- 19 February 1991 minute from Mr Binnie [SCGV0000232_021].
- 12 April 1991 minute from Mr Tucker [SCGV0000233_080].
- 10 June 1991 Parliamentary announcement of settlement in England and Wales [DHSC0002451_011].
- 24 June 1991 letter from Richard Henderson to Balfour and Manson, with enclosure [DHSC0003635_065 and BNOR0000329].
- 26 June 1991 minute from Mr Tucker with enclosure [SCGV0000234_033 and SCGV0000234_034].
- 26 June 1991 minute from Mr Tucker to Mr Rushworth [SCGV0000234_035].
- 3 July 1991 PQ background note and line to take [SCGV0000234_028].
- 11 July 1991 letter from Mr Tucker to John Williams [SCGV0000235_235].
- 17 July 1991 letter from John Williams [SCGV0000235_227].
- 18 July 1991 letter from Mr Tucker to Mr Williams [SCGV0000235_221].
- October 1991 draft minute from Mr Tucker [SCGV0000235_143].[8]
- 8 October 1991 minute from Mr Tucker to Mr Rushworth [SCGV0000235_142].
- 9 October 1991 letter from Mr Tucker to Mr Dobson [SCGV0000235_139].
- 11 October 1991 letter from Mr Dobson to Mr Tucker [SCGV0000235_130].
- 1 May 1992 report of the Macfarlane (Special Payments) (No.2) Trust [SCGV0000235_067].

66.1 I don't recall when I first knew about the litigation. My recollection of my view, which was communicated to officials and the Secretary of State, was that a payment should be made to everyone who had suffered as a result of infected blood and that this should not be limited to any particular group. I felt the Treasury position was not coherent and of course in the end they decided to extend the support as a result.

67. Please explain which minister had responsibility for the decision-making on the claim, and what role, if any, you had as Minister of State.

[8] It appears, from the documents which follow this draft minute, that it may not have been submitted to you and the Secretary of State, and that the issues it describes were instead resolved by officials. If you are able to clarify this point, please do so.

67.1 I had no responsibility other than to agree to find the funding.

68. 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?

68.1 Scottish Office officials did their best to keep informed but the consultation by the DoH and Treasury was not adequate to enable the Scottish Office to fulfil its functions as it would have wished.

69. 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.

69.1 I was impressed by the team in the Scottish Office who did their best to keep Ministers informed. The level of communication from the DOH could have been better. I refer also to my answers at paragraphs 45.1, 65.1 and 68.1 above.

The HIV blood and tissue transfer scheme

70. 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 compensation or other financial support for individuals who did not have bleeding disorders and who were infected with HIV through blood transfusions and blood products. What were your personal views (if any) on what payments, if any, should be made to that group. You may be assisted by the following documents:

- 29 January 1990 minute from Mr Bearhop [DHSC0002840_017].
- 6 February 1990 minute from Mr Tucker [DHSC0002840_018].
- 9 February 1990 minute from Mr Bearhop [DHSC0002839_015].
- Your 9 February 1990 letter to Allan Stewart MP [DHSC0002840_001].
- 17 January 1991 minute from Mr Binnie [SCGV0000231_017].[9]
- 25 April 1991 minute from Richard Henderson to Mr Tucker [SCGV0000233_036].

[9] The 15 January 1991 minute to which this responded is available at SCGV0000231_019.

- 29 April 1991 minute from Mr Tucker [SCGV0000233_124].
- 15 August 1991 letter from Lord Douglas-Hamilton MP [SCGV0000041_151].
- 30 September 1991 letter from Lord Douglas-Hamilton MP [SCGV0000041_115].
- 23 October minute from Mr Tucker [SCGV0000041_114].
- Your 24 October 1991 letter to Lord Douglas-Hamilton MP [SCGV0000041_119].
- 11 December 1991 minute from Mr Henderson to Mr Tucker [SCGV0000112_134].
- 11 December 1991 minute from Mr Tucker, with enclosure [SCGV0000237_089 and DHSC0002921_009].
- 13 December 1991 minute from Mr Kernohan [SCGV0000237_084].
- 17 December 1991 letter from the Secretary of State to the Chief Secretary [SCGV0000237_072].
- 14 January 1992 letter from John Robertson MP [SCGV0000041_102].
- Your 3 February 1992 response to Mr Robertson [SCGV0000041_094].
- 11 February 1992 letter from Gavin Strang MP [SCGV0000041_088].
- 12 February 1992 article in the Edinburgh Evening News [SCGV0000237_022].
- 12 February 1992 minute from Mr Tucker [SCGV0000237_026].
- 13 February 1992 minute from Mr Kernohan [SCGV0000237_008].
- 14 February 1992 minute from Mr Tucker [SCGV0000041_161].
- 17 February 1992 Written Answer from Mr Waldegrave [DHSC0002713_016].
- 17 February 1992 Written Answer from Mr Lang [DHSC0002578_010].
- 17 February 1992 minute from Mr Kernohan and your response to Mr Strang [SCGV0000041_087].
- 2 March 1992 letter from Mr Strang [SCGV0000041_071].
- 4 March 1992 letter from Irene Adams MP [SCGV0000041_063].
- 11 March 1992 letter to Lord Douglas-Hamilton [SCGV0000041_077].
- 13 March 1992 minute from Mr Tucker [SCGV0000041_072].
- 16 March 1992 response to Mrs Adams [SCGV0000041_062].
- 16 March 1992 letter to Mr Strang [SCGV0000041_069].
- 10 April 1992, "*Scheme of payments for those infected with HIV through blood or tissue transfer*" [DHSC0002703_001].

70.1 I am unable to provide a chronological account without seeing all my Ministerial papers and responses. However, DHSC0002840_017 confirms my recollection that I was consistently of the view that ex gratia payments should be made to everyone who was infected through blood transfusions and blood products. I did not think the arguments for distinguishing between haemophiliacs and people infected by HIV from blood transfusions stood up to scrutiny and the DoH line, about which we were not consulted, was unsatisfactory. The fact that victims of HIV infection from transfusions could not by law obtain the identity of donors meant they were unable to establish causation.

71. In his 6 February 1990 minute, Mr Tucker stated the "*Scottish Office could not adopt a policy which would undermine the stance taken by other UK Health Departments*" [DHSC0002840_018]. What did you understand Mr Tucker to mean by this? Did you agree with him, at the time, with respect to the blood and tissue transfer scheme? Did your view remain the same during the development of UK Government policy on this issue? Other than with respect to this particular scheme, did you agree with Mr Tucker's statement on the relationship between Scottish Office policy and other parts of the Government? Please provide any relevant examples.

71.1 I guess he meant there should be collective agreement based on the medical advice provided, to proceed on a UK basis. I agreed with this approach in the absence of any medical advice to the contrary.

72. Please describe your involvement in responding to allegations of delay in making payments under the blood and tissue transfer scheme. You may wish to consider the following documents:

- 29 March 1992 article in the Sunday Mail [SCGV0000238_096].
- 30 March 1992 letter from Gavin Strang MP [SCGV0000041_045].
- 31 March 1992 article in the Edinburgh Evening News [DHSC0002672_006].
- 15 April 1992 minute from Mr Tucker [SCGV0000041_046].
- 22 April 1992 letter from Mr Kernohan to Mr Strang [SCGV0000041_42]

72.1 I was frustrated by the delays, of course, but officials did proceed as quickly as practicable. My officials and the Secretary of State were fully aware of my view that the DoH and Treasury had taken too long to reach the conclusion that payments were justified.

Section 13: Other issues

Numbers Infected

73. In late 1987 you were asked a PQ regarding the number and proportion of Scottish haemophiliacs infected with HIV [SCGV0000229_153]. In late 1991 and early 1992 you were asked similar PQs regarding the number of non-haemophiliacs in Scotland who had been infected with HIV following blood/tissue transfers [DHSC0003594_036, DHSC0002436_081 p 1, SCGV0000237_149, DHSC0002899_005 and DHSC0003625_055]. As far as you can recall, did these PQs have any effect on your decisions and actions in relation to individuals infected by blood and blood products, or the risk of infection occurring in the future?

73.1 No. My personal view had, I think, remained consistent that whilst understanding the long established position on compensation for medical accidents, those people infected as a result of contaminated blood or tissue had an extremely strong claim to be treated as exceptional. I refer also to my answer to Q70.

Declining blood donations

74. Please outline your involvement in responding to reports of declining blood donations in Scotland in the late 1980s. In doing so, please address, to the best of your ability and knowledge: i) your understanding of the reasons for the decline; and ii) whether, in your view, the decline was linked to other issues being considered by the Inquiry (for example, steps taken to exclude high risk donors). You may be assisted by the following documents:

- 28 September 1987 minute from your Private Secretary [SCGV0000269_159].
- 2 December 1987 minute from Mr Macniven [SCGV0000269_155].
- 7 December 1987 minute from your Private Secretary [SCGV0000269_154].
- 23 December 1987 minute from Mr Macniven [SCGV0000269_148].
- 26 January 1988 PQ [HSOC0022428].
- 28 January 1988 minute from Mr Macniven [SCGV0000269_137].
- 1 February 1988 PQ [SCGV0000035_029].
- 9 February 1988 minute from Mr Macniven [SCGV0000269_127].
- 15 February 1988 press release [SCGV0000269_124].
- Note of 18 April 1988 meeting [SBTS0000687_089].
- 29 August 1988 minute from Mr Macniven [SCGV0000269_109].

- 7 September 1988 article in the Daily Record [SCGV0000269_102].
- 21 August 1989 press release [DHSC0006227_072].

74.1 Obviously we were concerned to support SNBTS in ensuring donor numbers were maintained and enhanced. Industrial action in the Blood transfusion service had delayed a campaign to encourage donors and additional funding was allocated at my request for a national and regional campaign and to improve links with existing donors. The Daily Record newspaper, which at that time had a substantial readership, ran a very helpful donor campaign.

ACVSB

75. Please outline your involvement in the creation of the Advisory Committee on the Virological Safety of Blood. You may be assisted by the following documents:

- 11 November 1988 letter from Mr Macniven to Elaine Webb [PRSE0002344].
- 13 January 1989 letter from Roger Freeman to you [PRSE0004664].
- 6 February 1989 minute from Mr Macniven [PRSE0001975].

75.1 I supported it, as its task was to provide professional advice for each of the territorial departments.

HIV 2 screening

76. Please consider the enclosed documents concerning the introduction of HIV 2 screening of blood donations in 1990 and answer the questions that follow:

- 22 February 1990 minute from Mr Tucker [SCGV0000156_013].
- 27 February 1990 minute from your Private Secretary [DHSC0003888_027].
- 25 July 1990 minute from Mr Tucker [SCGV0000156_012].
- 31 July 1990 minute from your Private Secretary [SCGV0000156_010].
- 6 August 1990 letter from Mr Panton to the SNBTS [SBTS0000652_168].
- 13 August 1990 minute from Mr Tucker [SCGV0000156_070].
- 20 August 1990 letter from the CSA to the SNBTS [SCGV0000163_040].

a. Why, as reported by your Private Secretary on 27 February 1990, did you "stress" that it was "*particularly important that this additional test* [be] *implemented very quickly*" [DHSC0003888_027]? Similarly, why did you request a proposed timetable for the introduction of the test and *"to be kept appraised of its implementation*"?

b. In his 31 July 1990 minute, your Private Secretary requested information on the follow-up of a donor who had tested positive for HIV I [SCGV0000156_010]. Was this request prompted by any particular concerns or developments? So far as you can recall, were you satisfied with the answer you were given?

c. Did your approach to the proposed implementation of HIV 2 screening differ from your approach to hepatitis C screening? If so, please explain how and why.

76.1 Clearly there was a public health interest in getting on with it. I was concerned to ensure that anyone who tested positive could no longer be a donor and that they were given support and counselling. I was satisfied with the answer. On the question of testing, I was guided in all cases by the professional advice as to the efficacy of the tests.

77. **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) Minister 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.**

77.1 I believe our small team of officials did a good job in communicating the Scottish position to the DoH (which had far greater resources) finding the necessary funding and involving Ministers at the appropriate stages. In my opinion the Treasury were slow to accept the need to provide support and the DoH could have made more effort to consult with the territorial departments.

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

78.1 I have no further comments.

Statement of Truth

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

Signed GRO-C

Dated July 15th 2022