

WRITTEN STATEMENT OF WILLIAM VINEALL AND LORRAINE JACKSON  
Public Interest Immunity in the HIV Litigation.

Witness Name: W. Vineall, L.  
Jackson.

Statement No.: [WITN7193052]

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WITN7193066]

Dated: [20/09/2022]

INFECTED BLOOD INQUIRY

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LORRAINE JACKSON

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We, William Vineall and Lorraine Jackson, will say as follows:

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## **Section 0: Introduction**

### **Opening Comments**

#### **The Making of this Statement**

- 0.1. This statement is made jointly by:
- (1) William Vineall; and
  - (2) Lorraine Jackson,
- both of the Department of Health and Social Care.
- 0.2. We make this statement in response to a 'corporate' R9 request dated 25 May 2022 addressed to the Department of Health and Social Care ("the DHSC") from the Infected Blood Inquiry ("the IBI"). We are making this statement as it seems to us that our joint understanding of the matters referred in this statement offers the best prospect of providing accurate and helpful evidence to the Inquiry.
- 0.3. We have considered filing separate statements in identical terms, but it seemed simpler and potentially more helpful to file a single joint document.
- 0.4. I, William Vineall, have been Director of NHS Quality, Safety, and Investigations at the DHSC since 2016. Part of my role includes oversight of on-going inquiries or investigations pertaining to the responsibilities of the Department, not just restricted to current NHS issues. The team in the department that provides evidence and information to the Infected Blood Inquiry has sat within my Directorate since late 2018. Since 2019 the responsibility for policy and governance of the England Infected Blood Support Scheme has sat within my Directorate also.
- 0.5. I, Lorraine Jackson, am currently employed as Director of Information Risk Management and Assurance ("IRMA") for the DHSC. I have been in that post since 1 April 2021 as Acting Director and following an external competition, was appointed as Director on 9 July 2021. As IRMA Director, I am responsible for information management for DHSC. I also act as DHSC's Senior Information Risk Owner (SIRO), as part of DHSC's Executive Committee.

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One of my teams has responsibility for the DHSC Departmental Records Office, hence my being a co-signatory to this witness statement.

**Knowledge of the Documents and Issues**

- 0.6. We should make it clear that all the information contained in the statement about past events is based on material that has been shown to us for the purpose of this statement. We have been asked to discuss events in the 1980s to about 2008/2009, when documents were gathered for the purpose of litigation: some of these were lost, some were recovered and some were put into the public domain, as set out in more detail below. We did not have any personal involvement in these matters but have based our discussion of them on the papers or statements that we have been shown. We have indicated the sources of our information and the evidence presented. We understand that the Inquiry may be seeking to explore the events of those years further with others including those who may have first-hand knowledge of them.
- 0.7. We have referred to the current Department of Health and Social Care as “the DHSC”, the name it has had since 2018. When referring to past events from 1988 - 2018, we have generally referred to the Department of Health, or “DH”, as it then was, to differentiate between the time periods in issue.

**Chronological Summary of Key Events.**

- 0.8. In order to explain what is a complex series of events, we have provided a chronology of dates at Annex 1 [WITN7193053]. This is based on the material that has been provided to us rather than on our first-hand knowledge. It is not detailed, and is intended to ‘signpost’ key events only.
- 0.9. It appears that there may have been three key periods, in relation to the HIV Public Interest Immunity (“PII”) material in particular:
- (1) 1989 – late 1990: this is when the DH, as one of the Central Defendants in the HIV Litigation, compiled its list of relevant documents, both those for disclosure and those it sought to withhold as it asserted that they



were subject to PII. This claim, and its various categories, is discussed further in Question 1. Following the Court of Appeal's judgment in respect of the claim for PII, it appears that DH gave disclosure of those documents which the Court had ordered should be released. These comprised some but not all of the documents for which PII had been claimed, as some of the claims for PII had either not been contested or were upheld. The Plaintiffs' lawyers were able to take the documents released into account when they advised their clients on settlement in December 1990. However, we have not seen documents that would establish exactly how the Discovery documents (both those subject to the PII and those on the wider Disclosure list) were gathered or copied from the registered files. Nor have we been supplied with a complete copy of the DH's Discovery List or a description of the files in which these documents were stored.

- (2) The mid-1990s: in response to enquiries generated by litigation (whether actual or anticipated) in relation to Hepatitis C caused by infected blood or blood products, enquiries were made into what documents were held from the HIV Litigation Discovery documents, as the potential overlap was appreciated. A later email (from Mr Charles Lister in June 2003) suggests that files were found to be missing, a fact which he linked to a suggested "clear out" of papers by DH Solicitors "some time in the mid 1990s" [DHSC5541395]. However, there are some indications that all but one of the volumes making up the HIV Litigation Discovery were traced. As far as we know, it would appear that no detailed or final audit into what was or was not available was undertaken during the mid-1990s.
- (3) Further review of the documents held was undertaken in the course of events such as the "Burgin Review" instigated by MS(PH) in spring 2002, but, as an observation, the number or intensity of questions relating to DH documents appears to have increased in late 2004 / 2005, so that by early 2006 a proposal was made to "*draw up a list of files on blood safety that we do hold by subject area ie. committees, finance, briefings, PQs, imported plasma etc...going back to the 1970's and*

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1980's." During the course of 2006 – 2008, extensive work was done to "inventory" (i.e. list) files and documents held (including those returned to DH by solicitors in May 2006), and to release them both to the public (via the DH website) and, when it was set up on February 2007, to Lord Archer's Inquiry.

- 0.10. The large numbers of documents released in 2006 – 2008 are still publicly available on the DH Archive website. From the work carried out for this statement to trace the documents in respect of which PII was claimed, it seems that those PII documents which had survived up to this point were amongst those placed in the public domain, as well as being supplied to Lord Archer for his inquiry into NHS Contaminated Blood and Blood Products (2007 – 2009). However, some were, and remain, missing. The gaps / losses are identified in the spreadsheet at Annex A [WITN7193054]. Given the thoroughness with which the task of describing and releasing documents was undertaken in 2006 – 2008, this probably lends weight to the suggestion that some Discovery files or documents were lost in the mid 1990s, or thereabouts.
- 0.11. We note that other file losses are also being investigated by the Inquiry, specifically the issue of the destruction of a number of the Advisory Committee on the Virological Safety of Blood ("the ACVSB") files over the period from 1994 – 1997. This has been the subject of evidence from others (e.g., Charles Lister, Anita James; Dr Rejman) and there is another R9 Request for a statement on the topic, to DHSC. We have not addressed it further in this Statement, although in documents, the topic occasionally overlaps with that of the HIV Litigation documents.

## **Section 1: Public Interest Immunity in the HIV Litigation.**

### **Q1: Present Availability of the HIV PII Documents**

- 1.1. The Inquiry has asked a series of questions about the present availability of the documents in respect of which PII was claimed in the litigation brought by haemophiliacs against the Department of Health, and other defendants, from 1988 – 1991 (“the HIV Litigation”).
- 1.2. The Inquiry notes, first, that in the course of this litigation, the Department of Health or DH as it then was, claimed PII in respect of a series of documents, divided into categories. We further note that the nature of those categories, the basis of the claim and the scrutiny given to the documents concerned was set out in the independent evidence of Justin Fenwick QC, Junior Counsel for the Central Defendants at the time [WITN7067001] and none of that is repeated in this Statement.
- 1.3. The Inquiry has referred to lists of documents from each category, namely:
  - (1) BPLL0016040\_011: category 1(1);
  - (2) BPLL0016040\_012: category 1(2);
  - (3) BPLL0016040\_013: category 2;
  - (4) BPLL0016040\_014: category 3;
  - (5) CBLA0000042\_038: category 4(1);
  - (6) BPLL0016040\_016: category 4(2);
  - (7) BPLL0016040\_017: category 5.
- 1.4. The DHSC has been asked to confirm, first, whether these documents contain the complete lists of documents over which the DH claimed PII in the HIV litigation.
- 1.5. As to this, the best evidence of the documents in respect of which the Department claimed PII in the HIV litigation is derived from the Affidavit of Mr Desai (Treasury Solicitors) dated 24 July 1990 [CBLA0000042\_033], to which was exhibited: (i) Exhibit JD1, the 29 page list of documents in respect of which

the claim was made, divided into 5 categories [DHSC0041445\_005; DHSC0041445\_006] and (ii) at JD2, the Certificate signed by Sir Christopher France, the Permanent Secretary at the Department of Health [DHSC0041445\_007; DHSC0002333\_004]. There is also an expanded version of the Category 4(1) list to be found at [DHSC0045116; DHSC0046962\_173].

1.6. These documents match with the lists supplied by the IBI, listed above at paragraph 1.3.

1.7. We have been further referred by the Inquiry to a series of supplementary lists:

- (1) DHSC0013054: Category 1(1) Supplementary list;
- (2) DHSC0013054: Category 1(2) Supplementary list;
- (3) DHSC0013054: Category 2 supplementary list;
- (4) DHSC0013054: Category 3 supplementary list;
- (5) DHSC0013054: Category 4(1) supplementary list;
- (6) DHSC0013054: Category 4(2) supplementary list.

1.8. DHSC has made searches to ascertain the status of these lists in the HIV Litigation. The following relevant documents were found:

- (1) In a letter dated 28 September 1990, Mr Burrage (DH) wrote to Mr Desai [DHSC0046936\_122] stating that he was sending “*additional documents which we wish to be included for inclusion in the Department’s claim for public interest immunity. These are documents which have come to light since the original schedules were submitted to you. The documents relate to the classes in the Permanent Secretary’s Certificate and have been arranged in those classes together with supplementary schedules.*” A handwritten note suggests that there were 4 folders, relating to categories 1 – 4 (but not category 5). The actual lists / supplementary schedules do not follow on, in the files, from that letter, but it seems plausible to link the letter to the supplementary lists itemised above.

- (2) In a letter dated 5 October 1990, Pannone Napier (the Plaintiffs' lead solicitor) wrote to the Treasury Solicitors [DHSC0014917], requesting to know when it would be served with the Supplementary List.
  - (3) There is a further letter to Mr Desai from Mr Burrage dated 23 November 1990 at [DHSC0046962\_132; DHSC0046962\_133], which refers to supplying Pannone Napier with the "*supplementary list submitted in connection with the Department's public interest immunity claim*".
  - (4) This letter also refers to the process of sending Pannone Napier documents in the PII list in respect of which production had been ordered (that is, we assume, by the Court of Appeal in September 1990, when the Court ordered production of the documents in Categories 1(1) and 1(2), and Category 2<sup>1</sup> [see DHSC0014917];
  - (5) We have further been shown a letter from Clifford Chance, who acted for the CBLA, dated 8 November 1990 to Mr Desai [see WITN7193057] which also refers to the documents for which PII had been claimed having "now been released for inspection by the Plaintiffs".
- 1.9. Overall, it appears from the various letters that we have seen that the DH did claim PII over the documents in the Supplementary Lists in late September 1990, albeit that the claim in respect of any documents in Categories 1(1), 1(2) and 2 would have been somewhat academic, since the Court of Appeal had held that the public interest favoured disclosure of these categories of documents.

### **Current Availability of the Documents for which PII was claimed.**

- 1.10. The DHSC has been asked by the Inquiry to confirm whether or not it has disclosed to the Inquiry all of the documents within the lists and supplementary lists above, together with any unique identifying data or number for each document.

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<sup>1</sup> Category 5 had not been in issue (that is, the Plaintiffs accepted the PII claim in respect of it). Mr Justice Rougier had not ordered disclosure of Category 3 and that part of his Order was not appealed. The Court of Appeal did not order disclosure of Category 4. So Categories 1 – 2 were to be disclosed.

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- 1.11. Please see the Spreadsheet at Annex A **[WITN7193054]**. This table outlines the documents within the PII lists above which have been disclosed to the Inquiry.
- 1.12. The DHSC has now been unable to locate some of the documents contained in the lists. The documents which have not been located are also clearly identified in the Spreadsheet exhibited at Annex A **[WITN7193054]**.
- 1.13. The missing documents are from within Category 1(1) (with documents missing dating from the 1970s); Category 3; Categories 4(1) and 4(2), and Category 5. Category 1(2) is complete bar one document and Category 2 is complete.
- 1.14. To explain the Categories: these are the headings into which the documents were grouped for the purpose of the PII claim (see the evidence of Mr Desai and the Certificate to which we have referred at paragraph 1.4 above). Thus:
- (1) Category 1(1) relates to submissions to Ministers and exchanges with Ministers, directly or through their Private Secretaries, relating to the formulation of policy and the making of decisions which can be characterised as “policy” rather than “operational”;
  - (2) Category 1(2): exchanges between civil servants relating to the formation of such policy;
  - (3) Category 2 (which is complete) relates to policy papers prepared by civil servants but not designed to be placed before Ministers;
  - (4) Category 3 relates to Briefings to Ministers directly relating to Parliamentary Questions or debates, and particularly draft Parliamentary Answers and notes in respect of possible Supplementary Questions, with documents missing dating from August 1980 through to 1985;
  - (5) The documents missing from Category 4(1) relate to briefing notes to Ministers prior to meetings at which they were expected to make a statement or declare their views.
  - (6) The documents missing from Category 4(2) relate to draft answers to be sent by Ministers in response to letters received by them.

- (7) The documents in Category 5 relate to the original unredacted versions of documents in or by which doctors and others supplied details of patients' illnesses and/or adverse reactions in confidence to or for the CSM and/or Licensing Authority.
- 1.15. The DHSC has then been asked to explain, if it has not disclosed to the Inquiry all of the documents that came under the claim for PII in the HIV litigation, why this is the case.
- 1.16. As to that, please see Paragraph 1.17 and following, below.

## **Q2: Destruction of HIV PII Documents**

- 1.17. The DHSC has been asked to specify which of the documents over which it claimed Public Interest Immunity in the HIV Litigation were thought to have been destroyed, at any time prior to the announcement of the Infected Blood Inquiry in 2017.
- 1.18. The Inquiry has referred us to two documents, which set out some background information about this issue:
- (1) [DHSC0020720\_081]: this is a Minute from Mr Charles Lister to Ms Zubeeda Seedat dated 10 June 2003. It summarises the remit of the work to be done by Mr Peter Burgin: to review surviving documents from 1973 – 1985 to address policy issues. Mr Lister noted that none of the key submissions to Ministers about self-sufficiency from the 70s/early 1980s appear to have survived. *“Our search of relevant surviving files from the time failed to find any”*. He suggested that *“one explanation”* for this was that papers marked as being subject to PII during the discovery process for the HIV litigation had since been destroyed in a *“clear out”* of papers by DH Solicitors in the mid-1990s, referencing an email from Ms Anita James (solicitor) in this regard. See further, however, the third statement of Mr Lister at paragraphs 3.6 – 3.9, in which he noted that this email had not been found and that there was *“a degree of supposition”* about whether the files had been destroyed in a clear out.



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(2) [LDOW0000350]: This is a minute from Mr Richard Gutowski, 15/12/2003 to MS(H). It repeats the points made by Mr Lister in the email above.

- 1.19. It appears from these emails that in the mid-1990s, some of the documents retained after the HIV Litigation were discovered to be missing. There are more complete details in the witness statement of Ms James, already filed with the Inquiry: see **WITN5426001** at paragraphs 2.86 – 2.90 in particular.
- 1.20. From Ms James' statement, in particular, it appears that the HIV disclosure documents, including the documents over which the DH claimed PII in the HIV litigation, were sought in 1995/96 as part of the response to claims in respect of Hepatitis C. But by May 1996 (see paragraph 2.86 of Ms James' statement), officials had discovered that some documents were missing. It seems that files were being held by DH solicitors in filing cabinets in the basement of New Court, where their offices were, but as the DH legal team noted on 2 May 1996 *"we have only been able to find half of the HIV discovery documents. We have files 21-43 and 45 onwards. We are therefore missing files 1 - 21 and 44."* The author of this minute (who was one of the DH legal team) noted that the files were copy files and asked administrators to find the originals. Dr Rejman replied on 3 May 1996, stating that he and colleagues had found files 1 – 30 (the originals and a duplicate set). He thought that the remainder were likely to be in a locked cabinet close by and was trying to get into it.
- 1.21. From this statement of Ms James, it does not appear that at this time there was a comprehensive study into exactly what was missing, or that there was an attempt made to inventory exactly what was left. What is very difficult to ascertain now is how many of the HIV discovery files were retrieved or not retrieved at that point, exactly what they contained, and how they were then stored again. It might be thought that any losses were small, if Dr Rejman had located files 1 – 30, and DH Solicitors held 21 – 43 and 45 onwards; the only apparent gap is file 44. However, we do not know what that file might have contained, or whether this information was definitive (not least as further searches were still being carried out).



1.22. The issue of what documents were retained was investigated much more exhaustively in 2006 – 2008, when the DH began a process of cataloguing documents and putting them into the public domain. It appears that at this point, an inventory was created of relevant documents then held, which were then transferred to registered files. The registered files that were then created were as follows, see [WITN7193058]:

- (1) HIM 22/1 series: Documents located at Wellington House, 102 registered files;
- (2) HIM 22/2: Documents returned by solicitors to DH in May 2006, 20 registered files;
- (3) HIM 22/3: Published and Unpublished references to the 'Self-Sufficiency in Blood Products: A Chronology from 1973 – 1991' report published in February 2006, 4 registered files;
- (4) HIM 22/4: Documents obtained from Department Record Office at Nelson, 1 registered file;
- (5) HIM 22/5: Documents released by the Scottish Executive; 351 documents held on a CD.

1.23. The inventory of the HIM 22/1 series is exhibited at Annex B [WITN7193055]. We understand from members of the legal team who carried out the checking process recorded in the spreadsheet at Annex A [WITN7193054] that within the 102 registered files in the HIM 22/1 file series, the extant documents over which the DH claimed PII in the HIV litigation can be located in files 67 to 80 and file 83.

1.24. The documents in this file series were released into the public domain, in line with the Freedom of Information Act, at broadly monthly intervals between June to October 2007. Specifically, 101 registered files from the HIM 22/1 series were released on the following dates:

- (1) Files 1 – 20 were released on 15 June 2007;
- (2) Files 21 – 40 were released on 10 July 2007;
- (3) Files 41 – 60 were released on 1 August 2007;

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(4) Files 61 – 80 were released on 7 September 2007;

(5) Files 81 – 101 were released on 26 October 2007.

- 1.25. To be clear, when we say that information was released into the public domain, we mean that documents were placed on the DH website. The documents and the accompanying inventories can still be found on the archived version of the DH website, at:

[https://webarchive.nationalarchives.gov.uk/ukgwa/20080107214941/http://www.dh.gov.uk/en/Publicationsandstatistics/Freedomofinformationpublications/chemefeedback/FOIreleases/DH\\_076693#\\_1](https://webarchive.nationalarchives.gov.uk/ukgwa/20080107214941/http://www.dh.gov.uk/en/Publicationsandstatistics/Freedomofinformationpublications/chemefeedback/FOIreleases/DH_076693#_1).

A copy of this page, showing the dates that the documents were placed on this website, is exhibited as [WITN7193059].

On that website, the inventories are currently listed as follows:

- (1) [Volumes 1-5: October 1969 to December 1976:](#)
- (2) [Volumes 6-10: January 1977 to May 1979;](#)
- (3) [Volumes 11-15: April 1979 to December 1980;](#)
- (4) [Volumes 16-20: January to October 1981;](#)
- (5) [Volumes 21 to 25: October 1981 to October 1982;](#)
- (6) [Volumes 26- 30: October 1982 to September 1983;](#)
- (7) [Volume 31- 35: September 1983 to May 1984;](#)
- (8) [Volumes 36-40: May to December 1984;](#)
- (9) [Volumes 41-45: December 1984 to February 1985;](#)
- (10) [Volumes 46-50: March to July 1985;](#)
- (11) [Volumes 51-55: July to October 1985;](#)
- (12) [Volumes 55-60: October 1985 to January 1986;](#)
- (13) [Volumes 61-65: January to June 1986;](#)
- (14) [Volumes 66-70: November 1979 to June 1986;](#)
- (15) [Volumes 71-75: May 1975 to June 1985;](#)

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- (16) [Volumes 76-80: December 1975 to June 1986;](#)
- (17) [Volumes 81-85: November 1976 to July 1986;](#)
- (18) [Volumes 86-90: September 1978 to June 1986;](#)
- (19) [Volumes 91-95: November 1973 to December 1984;](#)
- (20) [Volumes 96-101: Feb 1969 to May 1990.](#)

As **set out** above, the inventories or indexes to those volumes are exhibited at Annex B [WITN7193055].

- 1.26. Documents were redacted by the removal of names, following the conventions that the DH then applied when making release under the Freedom of Information Act 2000 ("FOIA"). However, technically the documents were released "in line with" rather than "under" FOIA, as the exercise was done without regard to the costs limits applicable to requests, under section 12 of FOIA. Had the DH been applying those costs limits, it would have been entitled not to disclose these documents; however, that entitlement was waived.
- 1.27. In addition, unredacted versions of the same documents went to Lord Archer's Inquiry. See the briefing for a PQ dated 12 July 2007 which records:  
  
*"4. The previous MS (PH) agreed that we should proceed with making copies of all the documents we hold on blood safety for the period covered by the internal review, available in line with the Freedom of Information Act. The Review identified just over 4,600 documents and we are working to release these documents in batches each month. The first batch of papers were sent to the inquiry [i.e. to Lord Archer] on 15 June. Arrangements are in hand to place these documents on the Department of Health Website. Further papers will be released in a months' time" [DHSC0006211\_136].*
- 1.28. As can be seen above, by October 2007 the DH had released 101 of the 102 volumes of documents found in 47 lever arch folders. The unpublished 102<sup>nd</sup> volume contained 35 documents, with 18 withheld in their entirety, and 17 partially withheld. All these 35 documents were withheld in line with exemptions in the Freedom of Information Act 2000.

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1.29. The documents withheld were as follows:

- (1) 10 documents withheld under Section 38 (Health and Safety grounds);
- (2) 9 documents withheld under Section 40(2) (personal information grounds);
- (3) 9 documents withheld under Section 40 (Legal Professional Privilege grounds);
- (4) 7 documents withheld under Section 43 (Commercial Interests grounds).

1.30. But by February 2009, the DH was reviewing the justification for withholding this material, given the time that had elapsed. By 16 March 2009, an email from Ms Laura Kennedy to Mike De Silva proposed withholding 8 of the 35 documents only [ **DHSC5081107**]. On or by 20 April 2009, the DH released 27 of the remaining 35 documents, after they were redacted [**DHSC5568876**]. We understand that the IBI has asked for these 8 documents to be identified, but to date this has not been possible. We will continue to seek these documents.

1.31. In summary, our best understanding is that the 102 HIM 22/1 files are files containing a collection of documents which were initially removed from the registered files for the purpose of discovery in the HIV litigation, some of which were later thought to be missing. Documents were later examined, carefully itemised, and put into the public domain in 2006 - 2008, including the PII documents which remained.

1.32. However, it is not possible to indicate which documents previously thought to be missing have been located, because as far as we are aware, when officials noted that some files were missing in 1996, the exact extent of the losses was not catalogued. Furthermore, although we have indicated which of the PII documents appear to be missing, we have not seen a complete or final copy of the DH's Discovery List in the HIV Litigation (as distinct from the list of documents in respect of which PII was claimed). It must have been lengthy, but we cannot compare any such list with the HIM 22/1 series, to understand the extent of any overlap or losses.

### **Q3: Information Given to Lord Owen and Lord Jenkin**

- 1.33. The DH has next been asked whether any of the documents listed in the responses to Questions 1a and 2 above include any of those documents Lord Jenkin and Lord Owen were informed had been destroyed.

#### **Lord Owen.**

- 1.34. To answer this question, the DHSC has sought to understand what information was given to Lord Owen about his documents. It does not have a record of a query from or on behalf of Lord Owen, but he explained to the Inquiry in his witness statement that in late 1987 – 1989 and almost certainly in January 1988, his secretary asked DH for access to his Ministerial papers relating to self-sufficiency but was told that *“Papers have been destroyed. Normal procedure after 10 years”* (see **WITN0663001** at paragraph 58).
- 1.35. It appears from this that the conversation was an oral one, with an unknown official in DH speaking to Lord Owen’s assistant, and that there was no itemised list of documents discussed – the conversation was more broadly about Lord Owen’s Ministerial papers relating to the self-sufficiency policy.
- 1.36. Details of what the Department has retained, from the papers dating from Lord Owen’s time in office (roughly, March 1974 – September 1976), and which have been provided to the Inquiry are:
- a) Contained in the Spreadsheet at Annex A **[WITN7193054]**; see Category 1(1) supplementary list items 167 – 169; Category 1(2) items 3 – 4; Category 2 items 3 – 9; Category 3 item 3; and further were
  - b) Discussed in the witness statement of Brendan Sheehy dated 2 February 2022, in which Mr Sheehy explained the practice with regards to the retention of Private Office papers in the DH in the 1970s and 1980s. He also listed some of the Ministerial papers now available: see the Table of 08.07.21 **[WITN0001021]**.
- 1.37. It is apparent that there is a limited overlap between the submissions listed in the Table of 08.07.21 and the papers contained in the Spreadsheet of PII

documents at Annex A [WITN7193054]. Specifically, Category 1(1) supplementary list items 167 and 169 also appear in the Table of 08.07.21.

1.38. The DH and the Inquiry thus are in possession of certain other documents from Lord Owen's time in office which were recovered in 2008 (see the emails summarised at paragraph 1.66 below). These documents were also placed in the public domain on 22 October 2008 (see the Spreadsheet dated 24 September 2008 [WITN7193060] which lists the disclosures made).

1.39. Having reviewed the matter after Mr Sheehy's statement gathered this material together, on 27 April 2022 an apology was provided to Lord Owen for the lack of assistance and support given to him when he sought his papers. Maria Caulfield MP, Parliamentary Under Secretary of State for Primary Care and Patient Safety wrote:

*"I wish to apologise that the Department did not offer more help and support when you requested your papers in 1987/1988 as this issue should have been discovered and resolved at that stage. I understand that those papers that have been found and are available, have already been provided to you in September 2020. I apologise if you feel your position was compromised by the lack of supporting information when you gave evidence, or indeed at any other time."*

1.40. To summarise, with regards to papers from Lord Owen's office:

- a) Mr Sheehy's statement sets out what the DHSC understands to have been the Departmental practice in the 1970s and 1980s, with regards to papers from Private Office. They were not routinely retained; the registered files were expected to hold copies of both the Ministerial submissions, etc, and any response from the Minister's Private Office. There was no repository of "Ministerial papers".
- b) The next event seems to have been an enquiry on behalf of Lord Owen for access to his Ministerial papers, in late 1987 - 1989. Looking at his account of this request, he was not given the assistance that he should have been entitled to expect, as a former Minister, to trace relevant Ministerial papers held on the registered files. Instead, it appears that his office was told that "his" papers had been destroyed 'under the 10-



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year rule' which to be clear is not an archiving rule that the Department understands to be in place.

- c) The official files were then searched for the purpose of discovery (disclosure) in the HIV litigation. The lists of documents in respect of which PII was claimed, and Category 1 in particular, show what was found and listed for that purpose, at that time.
- d) When the Court of Appeal ruled that documents in Categories 1 and 2 should be disclosed, it appears that those PII documents were disclosed to the Plaintiffs' team. See the letters referred to at paragraph 1.8 above, recording that the PII documents had been disclosed, as well as the Advice on Settlement written by the Plaintiffs' Counsel in December 1990 [WITN4486030, exhibited to the Second Statement of Dr Rejman]. This records at paragraph 5(c) that *"Documents from high levels of Government for which public interest immunity was claimed were produced after the successful conclusion of a much-publicised hearing before the Court of Appeal in September 1990."* There is no suggestion that any of the documents listed on the PII Lists had been lost at this stage or that disclosure was not made in accordance with the Court's orders.
- e) However, by the mid-1990s, it seems that some of the HIV disclosure files were missing. When a more comprehensive search was carried out in 2006 – 2008, a number of the documents on the list were confirmed to be missing and have never been found (see the Spreadsheet and lists provided in response to Question 1).
- f) A small number of other documents relating to Lord Owen's involvement were however found, and were put into the public domain in 2008, and have been disclosed to the Inquiry. It is not apparent why some of these documents were not found or disclosed in the HIV litigation.
- g) As far as we are aware, there has never been a satisfactory explanation for why some of the HIV Disclosure files were permanently lost after the litigation ended.

**Lord Jenkin**

1.41. Again, before addressing the topic of whether documents that Lord Jenkin was informed had been destroyed are now available, it is necessary to understand what Lord Jenkin was told had been destroyed. Information about the exchanges with Lord Jenkin is set out in the witness statement of Lord Crisp [WITN3996001] and we have relied on this statement to understand the exchanges that took place. From these sources and in summary only, we understand that:

- a) Lord Jenkin first made contact with the Department (Lord Warner) in December 2004, asking initially for copies of a “secret report”. That part of his request seems to have been satisfactorily answered by reference to a Haemophilia Centre Directors’ Report, but wider concerns about the files held arose; by the time that Lord Jenkin had a meeting with Sir Nigel Crisp (as he then was) in April 2005, he was concerned that he was being denied access to his Ministerial papers.

- b) The ‘line to take’ prepared for Sir Nigel Crisp for that meeting stated:

*““LINE TO TAKE*

*• Many key papers from the 1970s and 1980s have been destroyed. During the HIV litigation in 1990 many papers from that period were recalled. We understand that papers were not adequately archived and were unfortunately destroyed in the early 1990s.*

*• We have been in touch with Departmental Records Office to check which files related to the treatment of haemophilia patients and blood safety are still in existence from the period between 1979-1981. We have obtained a list of some files from this period. However, at first glance it is not clear about the extent to which these files will hold papers that Lord Jenkin will have handled. It would require significant staffing resource to go through these files to identify official papers that Lord Jenkin handled at the time.”*

- c) As far as we can see, this is a reference to the filing of the documents gathered for disclosure in the HIV litigation and was in response to the general concerns being expressed by Lord Jenkin about the filing of (and access to) papers from the 1970s and 1980s. This was a wider set of concerns than access to his Ministerial papers only (he himself having been Secretary of State for Health and Social Services from 4 May 1979 – 14 September 1981). According to the statement from Lord Crisp, Lord



Jenkin was supplied with those papers from his time in office that had been retrieved, but he continued to express his concerns about the limited files that had been retained / the fact that papers from the litigation had been destroyed.

- d) After the point when he had met with Lord Jenkin in April 2005, Sir Nigel became aware of the internal audit carried out in 2000 that examined the issue of the destruction of volumes 4 – 17 of the ACVSB files [see **DHSC0046961\_071**]. Looking at the letter that was sent by Sir Nigel on 1 December 2005 [WxiTN3996002\_034] it appears that this letter refers to two issues:

(1) First, it refers to the destruction of papers from “the 1970s and 1980s” that had been gathered for the purpose of the HIV litigation, were badly archived and destroyed in error “in the early 1990s”.

(2) Second, it introduced the audit relating to the destruction of the ACVSB files: “Officials have also established that a number of files were marked for destruction in the 1990's. Clearly, this should not have happened. When the discovery was made that files had been destroyed, an internal review was undertaken by officials...”

- e) Looking at that answer now, it seems to us that the distinction between these two groups of files / losses was not clearly identified. As the ACVSB was set up in 1989, its files had never been part of the disclosure exercise for the HIV litigation. Whilst of course it was right to detail the full extent of the known losses to Lord Jenkin, it might have been useful to have been clearer about the nature of the two sets of files being discussed.

- 1.42. We understand that the issue of the loss of the ACVSB files (Volumes 4 – 17 of “GEB 1” which contained the minutes and background papers to the ACVSB between May 1989 – February 1992) and the erroneous decision to destroy them over the period from 1994 – 1997 has been the subject of evidence from others (see Charles Lister, 3<sup>rd</sup> statement; Anita James; Dr Rejman) as well as a further R9 Request to the DHSC, and we have not addressed it further in this Statement.

- 1.43. In relation to the files from the HIV litigation, and the Inquiry's question as to whether the documents that Lord Jenkin was informed had been destroyed are now available, we refer the Inquiry to the answers given above (Q2). Since it is not clear what was believed to have been lost in the 1990s, we do not think that it is possible to be sure what has now been recovered.

#### **Q4: Macfarlane Trust Waivers**

- 1.44. The DHSC has been asked when it was first identified that the "Macfarlane Trust waivers" had been lost, and to set out its understanding of what happened. We have addressed this question at **paragraph 1.74** below, as it relates to a separate issue, not a part of the disclosure exercise of 2006 – 2008.

#### **Q5: Return of HIV Papers to the DH**

- 1.45. The Inquiry has noted that documents disclosed by the Department of Health in the HIV litigation and hepatitis C litigation were retained by several firms of solicitors and some were returned to the Department in 2006 **[DHSC0041304\_052; DHSC0041159\_228; DHSC0015834]**.
- 1.46. On 7 February 2006, the Treasury Solicitors were contacted by Blackett Hart and Pratt Solicitors ("BHP"), who had acted as co-ordinating Solicitors for the Claimants in the A & Others v National Blood Authority litigation **[DHSC0015865]**. The solicitors enclosed a copy of an order dated 11 December 1991 made by Mr Justice Ognall in the HIV Haemophiliac litigation, enabling documents disclosed in the HIV litigation to be used by Claimants lawyers in the Hepatitis litigation, subject to an undertaking that the documents or information gained from them would not be used for any other purposes other than establishing liability in the litigation. BHP stated that they took the view that it was now time to return these documents to the Department. They noted that they had been in correspondence with Mrs Carol Grayson, who had noted that the DH had stated that all relevant documents and information had been put into the public domain, save where documents had been mistakenly

destroyed. *"Mrs Grayson has suggested that the documents which we hold may be copies of documents which have otherwise been destroyed"*.

1.47. Having been passed this correspondence, lawyers within the DH responded, asking for the papers to be returned as suggested [see **DHSC0015857**]. The documents, consisting of seven lever arch files from J Keith Park and Co and Ross and Co Solicitors, and five lever arch files from BHP, were subsequently returned to the Office in May 2006.

1.48. In early June 2006, Anne Mihailovic, Solicitor at the Department of Health and Work and Pensions, instructed independent Counsel (Ms Leigh-Ann Mulcahy) to carry out four tasks:

- (1) Examine and log each of the documents/classes of documents contained in the 12 lever arch files which had been returned to the Department;
- (2) Produce a short description of the document or classes of documents and brief initial assessment of its likely relevance/importance;
- (3) Identify generally whether the documents are likely to be exempt from publication under the Freedom of Information Act or Data Protection Act provisions;
- (4) Produce a report for the Department dealing with the above issues.

1.49. Ms Mulcahy produced an 84-page report dated 26 June 2006, with an inventory of the documents examined and notes upon those documents [see **DHSC5428781**]. Her report set out an item by item list of documents returned to the Department of Health by the firms of solicitors, together with Counsel's comments on the appropriate redactions to be made under the Freedom of Information Act (generally, s40(2), which concerned the release of personal information, i.e., names). The 12 lever arch folders contained 623 documents.

1.50. Of these documents, the Department of Health subsequently put 604 into the public domain by November 2006. These were the HIM 22/2 series (20 volumes) released via the DH website [WITN7193059] and still now visible at <https://webarchive.nationalarchives.gov.uk/ukgwa/20080103120000/http://w>

[www.dh.gov.uk/en/Publicationsandstatistics/Freedomofinformationpublications/chemefeedback/FOIreleases/DH\\_076693.html](http://www.dh.gov.uk/en/Publicationsandstatistics/Freedomofinformationpublications/chemefeedback/FOIreleases/DH_076693.html)

with an inventory exhibited at Annex B [WITN7193055]. The released documents were redacted in compliance with s40(2), as such the names of all officials were redacted. Again, the release was regarded as being “in line with” rather than “under” the Freedom of Information Act, see [DHSC0004232\_029]. As we have explained above, the DH acted pro-actively in releasing these documents into the public domain, despite the fact that technically a request for release could have been refused under the rules regarding the costs and resources associated with responding to requests (see s12, FOIA).

- 1.51. In addition, the inventory of the documents returned was to be placed in the Commons Library; see the Progress Report of 3 January 2007, [DHSC0004232\_037].
- 1.52. Nineteen documents were initially withheld under the Freedom of Information Act 2000 [see DHSC0004232\_037]. The documents were withheld under:
  - (1) Section 43 (commercial confidentiality – 11 documents);
  - (2) Section 40 (personal data, 2 documents);
  - (3) Section 35 (frank and open discussion to develop policy - 5 documents); and
  - (4) Section 34 (submission to the Royal Commission on the NHS – 1 document).
- 1.53. Following an internal review by the DH FOIA Unit, a further 9 documents were released [DHSC0103399\_065]. Following a further review, the DH released 9 of the remaining documents. The remaining document was a personal CV [DHSC5528801].
- 1.54. The DHSC has been asked to confirm by the IBI that the returned documents correspond to the following files held by the IBI:  
  
MACK0002697\_011 - volume 1;  
  
MACK0002697\_012 - volume 2;  
  
MACK0002697\_013 - volume 3;

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MACK0002697\_014 - volume 4;  
MACK0002697\_021 - volume 5;  
MACK0002697\_001 - volume 6;  
HSOC0000045 - volume 7;  
MACK0002697\_004 - volume 8;  
MACK0002697\_005 - volume 9;  
MACK0002697\_006 - volume 10;  
MACK0002697\_007 - volume 11;  
MACK0002697\_008 - volume 12;  
MACK0002697\_009 - volume 13;  
MACK0002697\_010 - volume 14;  
MACK0002697\_015 - volume 15;  
MACK0002697\_016 - volume 16;  
MACK0002697\_017 - volume 17;  
MACK0002697\_018 - volume 18;  
MACK0002697\_019 - volume 19;  
MACK0002697\_020 - volume 20.

- 1.55. The DHSC can confirm that, although there are a few missing pages in the MACK files listed above (page 21 is missing from MACK0002697\_010 – volume 14 and page 34 is missing from MACK0002697\_019 – volume 19), those references are, in essence, copies of the 81-page inventory of the solicitors' files placed in the DH website (together with the underlying documents, in November 2006, see para 1.50 above). We have already exhibited a full copy of that inventory at Annex B [WITN7193055].
- 1.56. The DHSC has been further asked to:
- (1) Specify which of the returned documents were those over which the Department of Health claimed Public Interest Immunity in the HIV Litigation; and



(2) Specify which of the returned documents were previously thought to have been destroyed.

- 1.57. The “Mulcahy Inventory” of the returned documents has been exhibited at [DHSC0015729]. This is a list of all the documents returned to the DH by the Plaintiffs’ solicitors. For the avoidance of repetition, we refer the Inquiry to the answer given at paragraphs 1.11 – 1.12 and to the spreadsheet at Annex A [WITN7193054], which lists the documents over which the DH claimed Public Interest Immunity over in the HIV litigation.
- 1.58. However, whilst the DHSC can identify the documents over which it claimed Public Interest Immunity, it is again not possible to say “*which of the returned documents were previously thought to have been destroyed*”. When it was discovered in the mid-1990s that some files could not be located, the extent of the missing files was not identified.
- 1.59. In the categorisation and disclosure exercise that took place from 2006 - 2008, the focus of the exercise seems to have been on making sure that all key blood-related documents were made available to Lord Archer and were placed in the public domain. It was not focused on investigating whether material that had been available in the late 1980s/1990 was now missing, or on reconciling what was now available with lists from the HIV Litigation or the conduct of that litigation more generally.

#### **Q6: 47 Unregistered Files, Wellington House - 2006**

- 1.60. The Inquiry has referred to a number of documents concerning (it is said) the discovery of 47 boxes of unregistered files at Wellington House. We should say that, from these documents, it appears that the “47 boxes” in fact consisted of a number of folders of documents, making up 47 lever arch files when stored in that fashion. Furthermore, these appear to be the same files that were then reorganised into the 102 volumes of the HIM 22/1 series, to which we have already referred.
- 1.61. The Inquiry has referred us to the following documents:-

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- (1) "Progress Report, Review of Documentation Related to the Safety of Blood Products: 1970 – 1985", 14 July 2006. This noted that "there are 47 lever arch files at Wellington House." An inventory was scheduled to start on 3<sup>rd</sup> July and to be completed on 15 August 2006 [DHSC0004232\_066]. (The report also noted the work being done on the documents returned by the solicitors and reviewed by Ms Mulcahy, and the work to release the references for the Self-Sufficiency Report).
- (2) "Review of Documentation Related to the Safety of Blood Products 1970-1985", 27 July 2006. This noted that 21 of the 47 files had been inventoried, from which 300 documents had been identified from a series of files. (The note also reports on the documents returned by the solicitors, the work completed by Ms Mulcahy, work done on the Self-Sufficiency Report's references, files discovered at Nelson House and the file released by Scotland).
- (3) In September 2006, the Sunday Herald published an article headlined "*Copies of lost 'blood row' papers found*" [see DHSC5431767]. The IBI has also referred to an email from Ms Linda Page to Ms Zubeda Seedat dated 12/09/2006, which refers to these documents [DHSC0004232\_029]. Ms Page referred to the ongoing review of the files from the solicitors (Q5 above) but said that no further documents had been found; *thus, "the reference in the article to the finding of 45 boxes of documents is incorrect"*.
- (4) On 27 September 2006, the Private Secretary to the Minister of State for Reform sent an email to Linda Page concerning this matter [DHSC5435884]. Lord Jenkin had called; he understood that DH held 47 boxes of files and wished to inspect them. Linda Page responded, attaching a letter that she had sent Lord Jenkin on 27 September 2006, in relation to this query [DHSC5435884]. In the letter to Lord Jenkin, Linda Page repeated that the 47 files were not newly discovered "but had always been held by the Department [DHSC5121354].
- (5) On 29 September 2006, in an email to William Connon, Linda Page referred to a telephone call she had received from Lord Jenkin

[DHSC5435079] that day. She stated that Lord Jenkin wanted to know if the files he went through the last time he visited Wellington House were the same as the 47 she had referred in her letter of 27 September 2006. The thrust of the letter suggested, again, that the 47 files were the files that subsequently were registered as the HIM 22/1 series, see Q2 above. Lord Jenkin wanted a response from Lord Warner.

- (6) On 9 October 2006, Mr Connon wrote to Ms Woodeson on the topic of 47 files and Linda Page's letter to Lord Jenkin [DHSC5154769]. He stated that the topic of the 47 files was complicated. They were not registered files *"but folders of papers which were simply found in a cupboard in the office"*. He was "by no means certain" that they had been included in the self-sufficiency report (published in January 2006).
- (7) On the same day, Mr Connon drafted a submission to Lord Warner, attaching a draft reply to Lord Jenkin [DHSC0200135]. He referred to 47 lever arch files: these had always been in the possession of the DH and held in Wellington House, albeit that they were not properly filed in registered department files. Mr Connon explained that there was a project in hand, to review all documents held by the Department in relation to (broadly) blood-related issues, from 1970 – 1985. He continued:

*"There are three sets of documents held by the Department:*

- 1. Wellington House files, these have always been in the possession of DH and held at Wellington House, including the unpublished references to the report 'Self-Sufficiency in Blood Products A Chronology from 1973 – 1991'. This includes the 47 lever arch files which Lord Jenkin refers to, which were not properly filed on registered departmental files.*
- 2. Documents that have been returned to DH by a firm of solicitors in the North East following press articles on lost documents.*



3. *Files recalled from Departmental Record Office ... these files were recalled as part of the 'look back' exercise and a subsequent search for relevant files."*

Mr Connon explained that all these files had been inventoried and were being reviewed. He now stated that the DH was confident that these files had been included in the self-sufficiency report "*as colleagues who were present at that time recall seeing the consultants working on documents from the cupboards where the files were held. But we cannot be certain and I have therefore not included this in the reply to Lord Jenkin*". He suggested that Lord Jenkin be invited to inspect them.

- (8) On 3 January 2007, Linda Page completed a "Progress Report" on the Review of Documentation Related to the Safety of Blood Products: 1970-1985 [DHSC0004232\_037]. Her report discussed a number of categories of files being reviewed, including:

- (1) Wellington House files, from 1970 – 1985: the Report implies that there were 47 lever arch files at Wellington House identified for inclusion in the review and that 8 of them contained PII material.

- (2) However, "additional documents were identified in December 2006" and had been placed in 8 registered files. They were located in a search of filing cabinets and were either loose, in box files or lever arch files. In addition, two data cartridges were found marked "HIV Litigation 1989 – 1991" and were sent to an external company for scanning.

- (3) An inventory of the documents 'returned by solicitors' would be held in the Commons Library, although the review by Counsel (i.e. Ms Mulcahy) would not be released as it contained legal advice.

- (9) On 2 April 2007 Dr Jecock sent an email to Linda Page, commenting on the NANB Review as an "interested but non-expert reader" [DHSC5465598]. In the course of her comments, she queried whether the 47 unregistered files identified at Wellington House had always been in the possession of the DH, wondering whether these were the papers

that had been supplied to the SOL for the HIV litigation, and then never put back into registered files on their return to the Department.

(10) [DHSC5533007] is referred to in Q7 below and summarised in paragraph 1.66 below.

- 1.62. From these documents, it appears that the “47 boxes” in fact consisted of a number of folders of documents, making up 47 lever arch files when stored in that fashion.
- 1.63. The Inquiry has asked the Department to provide a full list of all the documents discovered within the 47 boxes. We have already set out above that the “47 boxes” were in fact a number of documents, making up 47 lever arch files. Shortly after discovering these documents, an inventory was made of these documents: they formed the 102 volumes in the HIM 22/1 series. The Department of Health released 101 volumes in batches in between 15 June 2007 and 26 October 2007. The greater part of Volume 102 was released on 20 April 2009. Details have been set out in answer to Q1 and Q2 above.
- 1.64. The DH is further asked to specify which of these documents were those over which the Department of Health claimed PII in the HIV Litigation. Please see the answers to Questions 1 and 2, above; these are the same papers, as we understand it.
- 1.65. The DH has also been asked to specify which of those documents were previously thought to have been destroyed. Again, please see the answers to Questions 1 and 2.

### **Q7: Further 41 folders of unregistered files – 2008**

- 1.66. The Inquiry has noted that in July 2008, a further 41 folders of unregistered files were discovered in Wellington House. The Inquiry has referred us to the following documents:

(1) In July 2008, in an email exchange between William Connon and Patrick Hennessey, Mr Connon asked Mr Hennessey for clarification of an earlier email (not seen) which probably concerned 41 folders of documents found at Wellington House, in Bay 517 [see **DHSC5533007**

/ **DHSC5435079**]. We note that “Bay 517” simply means “Room 517”, in Wellington House.

(2) Mr Hennessey’s subsequent response to Mr Connon noted that there was a hanging file system at the entrance of bay 517 which contained 41 folders of documents “*apparently compiled at the time of [the] HIV litigation (1989-90).*” In his response, Mr Hennessey stated that he and Linda Page had looked and felt that the documents were copies or top copies of “documents that were contained in the ‘Wellington’ and ‘Solicitor’ file series, and that had therefore been redacted and released under FOI” – but some of the earlier papers appeared to be unreleased, there was a need to be absolutely certain. He proposed that an inventory should be undertaken, by Laura Kennedy.

(3) Ms Kennedy, who had been copied into the email chain above, responded to Mr Connon on 16 July 2008 [see **DHSC5532594**]. In her response Ms Kennedy stated:

*“Sorry for being unclear - I can explain this.*

*Patrick and I discovered these files when reorganising the filing cabinets in Wel 517. We assume they were stored there by a previous inhabitant of Wel 517, perhaps since the 1989/90 Haemophilia litigation. They are not registered files, and are not very well organised. They contain documents from the time of the litigation, and documents from the [sic] 1970-1985 that have been removed or copied from the original files in order to be organised for discovery prior to the litigation. [...]*

*I would like to make inventories of these files so we know exactly what is in there. After this, we would need to consider how to store these files, and whether they need to be considered for release. [...]*”

(4) On the same day, Dr Ailsa Wight, who had also been copied into the email chain, responded, agreeing with the recommendation to have the documents inventoried [**DHSC5532594**].

(5) In an email to Mr Connon dated 21 August 2008 (copied to Dr Wight), Ms Kennedy noted that she had been tasked with looking through the documents and inventorying them, a task she had nearly completed [**DHSC5061894**]. Ms Kennedy stated that she had found 5 documents

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relating to Dr Owen which, as far as she had been able to ascertain so far, had not been found in papers previously published. Ms Kennedy noted that these papers either paraphrased Dr Owen's views or had his notes on them and so were significant. Further email interactions between Dr Wight and Ms Kennedy discussed whether these documents should be released to Lord Archer.

- (6) The Inquiry provided us with further correspondences between Ms Kennedy and Mr Connon dated 29 August 2008–[**DHSC6700882**], in addition to email correspondence between Mr Patrick Hennessey and Ms Woodeson [**DHSC5255116**] and [see **DHSC6423102**] in which all parties discussed the need to make public these documents.
- (7) On 23 September 2008, Mr Hennessey sent an internal letter, titled "Self-Sufficiency in Blood Products – Release of Further Documents to Lord Owen and Lord Archer", to Liz Woodeson and Hugh Taylor, copying in Dr Wight, Mr Connon and Ms Kennedy [see **DHSC5114710**]. Mr Hennessey referred to the need to disclose the documents found concerning Lord Owen to Lord Owen and Lord Archer. He went on to note that an inventory of all the documents on blood policy found in the cabinet at Wellington House had been compiled, with the intention of releasing any new papers found relating to the period from 1970-1985 both to Lord Archer and to the Department's website. Mr Hennessey stated that although officials believed that these were the last of such papers held by the Department, they would conduct a Division-wide search of all cabinets to ensure that all papers stored around the Division had been checked and inventoried. The intention was to release any new documents found, subject to the normal FOIA processes.
- (8) On 8 October 2008, Mr Connon wrote to Lord Archer, informing him of the additional documents relating to Lord Owen. He sent him copies of these documents [**DHSC6700949**]. Mr Connon informed Lord Archer that he would also send a copy of these documents to Lord Owen and place a copy on the Department's website. The DH released a copy of

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these documents, along with an inventory, on to the DH website on 20 April 2009; see paragraph 1.68 below.

- (9) We note that on 20 May 2009, 468 documents from these files were placed on the DH website. A note [see **DHSC5260906**] provides further information about the documents examined: *"Many of the documents from the relevant period were found to be copies of those already released. 469 previously unreleased documents were identified, none of which was judged to add materially to the knowledge of events in the years before 1985. One document from this batch was withheld as it contained personal information about a patient. The remaining 468 were released as soon as practicable"*. It stated: *"The documents in question were found in around 40 folders apparently compiled in the late 1980s and 1990, with papers from those years. In total there were around 2000 documents in these folders, of which around 1000 were from 1970-85. We released 468 of these documents, as the remainder of the approximately 1000 from 1970-85 were either copies of papers that had already been released, or were not relevant to the issue of safety of NHS blood supplies and blood products. One document was withheld under an exemption in FOI as it contains personal information about a patient."*
- (10) **[DHSC5544778]** is an email chain dated 30 September 2009, regarding documents in a folder dated from 1971 – 1985, in a folder marked Legal Professional Privilege ("LPP"). In this email reference was made to 19 pages being attached; however, our searches indicate that the attachment, which was a copy of this file, consisted of 25 pages, with pages 2-25 of these pages being LPP documents and page 1 being the scanned cover of the file itself." We attach a Schedule of these documents **[WITN7193067]**". We understand from the handwritten notes that accompanied them that they were probably not disclosed in the HIV Litigation as they were regarded as subject to LPP, but they are now all in the possession of the IBI. They were also put into the public domain in May 2009 (see Volume 3 of the releases made by the DH on that date).

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- 1.67. The Inquiry has asked, first, what the DHSC's understanding is of why these 41 files were not previously identified. The best evidence that we can offer is provided by the comments made at the time when these files were inventoried, in 2008.
- 1.68. The DHSC has further been asked to provide a full list of all of the documents discovered within the 41 folders of unregistered files. These files contain the documents which were placed into the HIM 22/6 files series (volumes 1 – 5), listed at:
- [https://webarchive.nationalarchives.gov.uk/ukgwa/20120503090845mp/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/documents/digitalasset/dh\\_099758.pdf](https://webarchive.nationalarchives.gov.uk/ukgwa/20120503090845mp/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_099758.pdf). This is also exhibited at WITN7193061. Furthermore, the documents' inventories are exhibited at Annex C **[WITN7193056]**.
- 1.69. The DHSC has then been asked to specify which of these documents were those over which the Department of Health claimed Public Interest Immunity in the HIV Litigation.
- 1.70. We asked for the documents listed in HIM 22/6 to be compared with the spreadsheet in Annex A **[WITN7193054]**. In 1990, the DH claimed Public Interest Immunity in respect of 7 documents in total. These are as follows:

<u>No.</u>	<u>Doc Ref:</u>	<u>Basic info about Doc</u>	<u>Type of Doc</u>	<u>Date</u>
1	2 CBLA0001 112	Note of meeting held on 11 June 1980 to discuss expenditure on the upgrading of BPL, Note of a meeting to discuss problems in connection with BGRL and BPL	Meeting Notes attached together	11/06/1980
2	70 DHSC000 3828_069	Internal Minute about coordinating briefing	Internal Minute	16/04/1985



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3	75 DHSC000 2484_080	AIDS	Internal Minute	21/11/1985
4	81 DHSC000 0825	Evaluation of AIDS Screening Tests	Internal Minute	31/07/1985
5	222 DHSC000 0514	AIDS and the treatment of Haemophiliacs Note from CMO	Internal Minute	30/07/1985
6	224 DHSC000 0555	Oral PQ – Blood donors (AIDS)	Internal minute	30/04/1985
7	290  DHSC000 0874	Note of Meeting Held at the DHSS on Friday 9 May 1980 to discuss Management and development of BPL	Minutes	09/05/1980

1.71. The DHSC has been asked to specify which of these documents were previously thought to have been destroyed. We refer the Inquiry to our previous answers, about how documents thought to be missing in the 1990s were not itemised.

### Q8: Missing PII Documents

1.72. Question 8 asks, “Following the return of documents by external solicitors and the two discoveries of files in Wellington House, please specify which of the documents over which the Department of Health claimed Public Interest Immunity in the HIV Litigation are still considered to be destroyed or missing.”

1.73. Please see answer to Q1 and paragraph 1.11 in particular.

#### **Q4: Macfarlane Trust Waivers**

- 1.74. The DHSC has been asked (Q4) when it was first identified that “the Macfarlane Trust waivers” had been lost, and to set out its understanding of what happened, by reference to documents in 2006 which refer to these being destroyed (see further below).
- 1.75. We understand that the waivers to which the Inquiry refers were the undertakings required of individuals as a condition of receipt of payments under the Macfarlane (Special Payments) (No. 2) Trust Deed dated 3<sup>rd</sup> May 1991 (i.e., under the terms of the settlement of the HIV litigation).
- 1.76. The process whereby that Trust was set up and payments made, is set out in the Macfarlane (Special Payments) (No. 2 Trust’s Report and Accounts [SCGV0000235\_067]. This sets out how payments to litigants were to be made following authorisation by DH; non-litigants were to be paid on the authority of the Trustees, subject to referral to the Secretary of State in cases of doubt. Payments started to be made on 10 May 1991; some 1429 payments had been made by the time of the Report, including 63 to recipients in Scotland and 17 in Northern Ireland (1 May 1992). Annex D of the Trust Report set out the process adopted. In the case of litigants, the Report noted that “virtually all negotiation was completed between the solicitors for the plaintiffs and the defendants”; the DH thus provided the Trust with a certificate authorising payment. There is no suggestion that waivers or undertakings were sent to the Trust or retained. In relation to non-litigants (applications handled by the Trust), a “Deed of Undertaking”, i.e., a waiver, had to be filed as part of the application. The Report recorded that the originals of the Deeds of Undertaking were sent to the DH (or the Departments in Scotland or Northern Ireland if appropriate) and copies retained by the Trust.
- 1.77. It therefore seems that (i) records of undertakings given by litigants would depend on the process adopted by DH Solicitors at the time. An explicit account of this process has not been traced; (ii) DH should have received the original Undertakings from non-litigants in England and Wales.



### **Documents Found as a Result of Searches**

- 1.78. It may be useful if we first outline what has been found now, as a result of searches in response to the Inquiry's questions.
- 1.79. The DHSC currently holds a small number of files containing a small number of undertakings, as far as searches carried out on our behalf have ascertained, including:
- (1) A file entitled "Haemophiliacs with HIV – payments: March 1996 – 23/12/1999" [HWK 1/3 Vol 2];
  - (2) A file headed "The Macfarlane Trust – New Cases: 25/06/2003 – 13/07/2011" [SLN/013/007],
- 1.80. Both of the files listed above are marked "Restricted – Medical". They contain paperwork related to claims for the lump sum payments administered under the Macfarlane (Special Payments) (No. 2) Trust Deed, including (in particular) requests for payment from the Macfarlane Trust, signed approval forms from the Macfarlane Trust (certifying that the claimant was eligible for the payment requested) and copies of signed undertakings. But both substantially postdate the main efforts made to meet claims, in 1991 – 1992 as detailed in the Trustees' Report summarised above. In the first file, it seems that the DH was itself making the payment to the claimant, after receipt of a request and the requisite forms from the Macfarlane Trust; by 2003, the system had changed so that the payment came from the Macfarlane Trust itself, which then invoiced the DH for reimbursement.
- 1.81. Also found were:
- (1) Four legal files of letters [Files 2, 3, 4, 5] from solicitors acting for Plaintiffs in the HIV litigation in mid-1991, sending in acceptances of the terms of settlement of the litigation in the 'non-negligence cases' (i.e., those who were not continuing claims against Health Authorities). It is apparent that that the Solicitor handling the matter for the Department (a Mr P K J Thompson) would send a signed form to the MacFarlane Trustees, certifying on behalf of the Secretary of State that a named Claimant was eligible for payment, under one of the categories for

payment under the settlement. This is consistent with the process for litigants described in the Report. The Inquiry has disclosed an anonymised example of a certificate at [DHSC0039945]. The process for the issues of the certificates is not apparent from the file. The letters from the Plaintiffs' solicitors were generally in a standard form, stating that they accepted the terms of settlement and that when the Macfarlane Trust had paid their clients the monies due, they would file a notice of discontinuance with the Court. There was no mention of waivers/undertakings and they are not contained in these files.

(2) "Haemophiliacs with HIV – Legal", Vol 1 [HWK 1/ 2, Vol 1, 19/09/91 – 22/04/92]. The various papers held in this file confirm for example that by 4 October 1991 the Trust had made 1,366 payments, with 63 outstanding. But there is no mention of waivers, and the bulk of the file deals with issues of legal costs.

- 1.82. Searches have been conducted for files with the suffix 'HWK' as these appear to be the files headed "Haemophiliacs with HIV" or "Haemophiliacs with HIV – Legal", but these files proved to contain matters such as higher level 'policy' documents or discussion of issues such as legal costs.
- 1.83. What have not been found to date are either (1) definitive repositories of further files, perhaps "Restricted – Medical" ones, relating to litigants' claims in 1991 – 1992 in particular, and containing signed undertakings; or (2) the undertakings that were sent to the DH by the Macfarlane Trust over the same period, when it accepted claims from non-litigants.
- 1.84. It therefore appears that files which would have been expected to contain this material have been lost or destroyed. However, without a better sense of how such files might have been stored, it is not possible to make any further comment on what led to this occurring.
- 1.85. On the other hand, it is not accurate to say that the DH holds no copies of undertakings/waivers, as the Inquiry's question implies. A limited number are held, as the details of the files summarised above (paragraphs 1.79 and 1.80) and as detailed in answers to PQs, below.

### Previous Requests for Information about Undertakings

- 1.86. The Inquiry's question is based on the answers to Parliamentary Questions (PQs) given in 2007. We asked for searches on such PQs to see if the history of this matter could be better understood.

### 2006

- 1.87. It seems that questions were asked about the Macfarlane "waivers" (undertakings) in 2006, at which point the great majority of waivers were not found.
- 1.88. On 11 April 2006, Ms Jenny Willot MP (joint secretary of the All Party Parliamentary Group on Haemophilia) asked the Secretary of State (PQ09954) whether her Department (a) asked and (b) required individuals with haemophilia to sign a waiver in 1991 intended to block legal redress in the event of infection with hepatitis C from NHS blood products after a hepatitis C test was completed [DHSC0041304\_036].
- 1.89. On 4 May 2006, Ms Caroline Flint responded to PQ09954 by stating that [DHSC0041304\_036]:

*"In 1988, a special payments scheme was introduced for haemophiliacs infected with HIV through blood products. This scheme is administered by the Macfarlane Trust. In 1991, as part of a settlement of court proceedings a further lump sum payment was made under the scheme for haemophilia patients infected with HIV. From that time, all beneficiaries of the Trust have been required to sign a waiver undertaking not to take legal action against the Department or any other public body in respect of infection from HIV, or hepatitis viruses. It is usual in litigation that when a settlement is reached, claimants cannot then reopen the proceedings.*

*We deeply regret that so many people with haemophilia were infected with HIV and hepatitis C through blood products. In 2004, the Government set up the Skipton Fund to administer the ex-gratia payment scheme for people infected with hepatitis C from National Health Service blood or blood products."*

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- 1.90. On 19 September 2006, Mr Peter Stevens (Chairman, Macfarlane Trust) sent an email to Ms Zubeda Seedat in relation to requests for copies of Macfarlane Trust Waivers. Mr Stevens indicated that two individuals had approached him requesting help in obtaining waivers. Furthermore, Mr Stevens made a request for copies of waivers for two other individuals. Mr Stevens also requested that if the files did not contain the waivers, he would like to be given “the names of anybody on whose files the waivers do appear” [DHSC0003451\_006].
- 1.91. On 26 September 2006, Mr Edward Goff (DH) responded to the query sent to Ms Zubeda Seedat. Mr Goff indicated that two individuals who had approached the Macfarlane Trust for a copy of their respective waivers earlier in the year had also written directly to the DH asking for a copy of their signed waivers. After a thorough search in DH files, both individuals were informed that DH were unable to find a copy of their waivers. An additional request was received by a third individual for a copy of his signed waiver. In August 2006, DH informed this individual that it could not locate a copy of his waiver. He said that *“all of these documents may have been amongst several files which we know were inadvertently destroyed since that time.”*
- 1.92. In response to the request made by Mr Stevens for the names of any person on whose files the waivers did appear, Mr Goff stated that only some 20 waivers had been found; a list of these were provided in an attachment to the email.
- 1.93. Mr Goff concluded by appreciating the frustration that these individuals must feel; although DH were able to find some waivers and he stressed that time-consuming searches had been made, it would seem that many of the applications were inadvertently destroyed [DHSC0003451\_006].

**2007**

- 1.94. The Inquiry has referred to two documents:
- (1) **DHSC5468582**: this is an email chain from April 2007, from Mr Edward Goff (DH) to other DH officials regarding a draft answer to Parliamentary Questions. Officials discussed the “lost[sic]/destruction of the Macfarlane Trust waivers”, suggesting that “From earlier PO [Private

Office] correspondence last year our replies made clear that it seemed that we could not find the signed waivers because some files were inadvertently destroyed.” The reference to “the signed waivers” is thus a reference back to the three requests made in 2006, not a general reference to all waivers. However, one official (Linda Grant) had confirmed that she did not come across any waivers in her searches of the “old files”.

(2) [DHSC5468584]: this document appears to be the draft answer to a PQ and also refers to recent requests (“in the last year”) for copies of individual waivers. “The Department was unable to find the requested waivers because some files had been inadvertently destroyed.”

- 1.95. It is apparent that Jenny Willott MP asked a question on 17 April 2007: *“To ask the Secretary of State for Health how many requests her Department has received for original copies of legal waivers signed by haemophiliacs undertaking not to take legal action against the Department or any other public body in respect of infection with HIV or hepatitis viruses as a result of infected blood products; how many such documents the Department has provided following those requests.”*
- 1.96. Ms Caroline Flint replied: *“In the period April 2006 to March 2007 the Department received three requests for copies of waivers signed by haemophiliacs infected with HIV through blood products. The Department has been unable to satisfy these requests. There is no requirement for such waivers in relation to infection with hepatitis.”* See the Hansard record at WITN7193065.
- 1.97. On 17 April 2007, Ms Jenny Willot MP also asked the Secretary of State (PQ04642) how many legal waivers were recorded by her Department as being signed by haemophiliacs undertaking not to take legal action against the Department or any other public body in respect of Infection with HIV or hepatitis viruses as a result of the use of infected blood products how many original copies of such documents the Department holds [DHSC0006780\_040].
- 1.98. On 14 May 2007, Ms Caroline Flint responded, stating that:

*“All new registrants of the Macfarlane Trust are routinely required to sign a Deed of Undertaking at the time of their registration, which indemnifies the Government against any further litigation.*

*The Department currently hold 90 original waivers. A number of signed waivers, going back to 1989, were inadvertently destroyed with the files in which they were held. There is no requirement for such waivers in relation to infection with hepatitis.” [WITN7193065].*

- 1.99. By 2009, when asked the same question by Ms Willot MP, the numbers held had increased to 239. On 13 July 2009, Ms Gillian Merron MP (as she then was) responded to PQ285739 by stating that the Department held 239 legal waivers signed by registrants of the Macfarlane Trust. These documents held personal information which the Department was not able to release [WITN7193066].
- 1.100. There is a background note relating to this answer at [DHSC5117783] but it does not explain the increase in the numbers. In particular, it is not apparent whether the increase was due to a small number of new Trust registrants or to the discovery of ‘old’ waivers/undertakings.
- 1.101. Overall, it seems likely that searches were undertaken for the files containing waivers or undertakings in 2006 – 2009 but that only limited documents were found. No formal investigation into the reason for the destruction or loss of the files was undertaken at the time, and it is difficult to comment further now.

### **Q9: Dr Archibald Prentice’s Statement**

- 1.102. Dr Archibald Grant Prentice worked as a Consultant Haematologist in the Plymouth District General Hospital from 1981 – 2006 [WITN5422001].
- 1.103. The Inquiry has asked the DHSC to set out what papers were removed from Dr Archibald Prentice’s possession, and why. This is a question arising out of Dr Prentice’s evidence to the Inquiry [WITN5422001], in which he stated:

*“I have a recollection that I was visited in Plymouth by three Civil Servants or Lawyers representing the Department of Health & Social Security in the 1980s. They went through all of my papers and expressed surprise that*



*our concerns in relation to blood supplies were kept well documented in the correspondence I had retained and the copies of papers from medical journals. I understood this was happening across England and Wales. My recollection is that they removed some papers which were never returned but I am not clear at this great remove. I do not recall receiving any written report from the Department of Health about that visit. The fact that the department responsible for the overarching care of patients destroyed papers, when the Scottish Office did not do that in Scotland, is of great concern to me.”*

- 1.104. The Inquiry has also asked whether what occurred was a process that was undertaken at other similar locations, and what has happened to the papers that were taken from Dr Prentice.
- 1.105. DHSC has conducted electronic searches across all the documents identified as relevant to the Inquiry’s Terms of Reference and disclosed to the Inquiry. A total of only 33 documents containing the name of Dr Archibald Prentice were located. However, these have produced no information of relevance to Dr Archibald’s recollection that he was visited by officials or lawyers for the DH/DHSS, in the 1980s or at any other time, or that papers were removed from him.
- 1.106. More generally, the recollection which Dr Prentice has does not match any obvious activity that has been noted, in respect of events in the 1980s. That is, there was no obvious process of visits to hospitals such as Dr Prentice’s hospital in Plymouth, even as part of the HIV litigation that started in 1988 (which might have been a possible context). We have been informed by members of the legal team, with knowledge of the relevant papers, that the documents show that in 1989 – 1990 the DH carried out a disclosure exercise by searching its own papers and commissioned experts to write reports, but it did not – as far as can be seen – send out civil servants or lawyers to interview or to take papers away from clinicians.
- 1.107. Thus, in relation to the Inquiry’s question as to whether what occurred was a process that was undertaken at other similar locations, the DHSC has no



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information to suggest that such a process involving the Department happened, either at Plymouth or more widely.

- 1.108. It might possibly be the case that Dr Prentice was visited on behalf of either his employing Health Authority (as part of the defence of the medical negligence claims) or by lawyers carrying out inspection / copying medical records of individual claimants. This is speculation on our part; DHSC is not in a position to comment on the likelihood of the former possibility as the defence(s) of the Health Authorities was separately conducted, with Davies Arnold Cooper acting as lead solicitors for the group outside the “Central Defendants”. The second possibility would relate to the (possible) actions of any one of the Plaintiffs’ lawyers, who we understand would have been the ones to obtain forms of authority from their clients, and thus to seek the medical records of their clients. But this is now purely speculative. DHSC can confirm that it does not hold any documents that would assist.
- 1.109. Given the possibility that others might be able to assist, DHSC asked the Inquiry whether it holds any documentation that might throw light on these issues, but we understand that nothing else has been found.

Statement of Truth

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

Signed... 

GRO-C

 .....  
Dated.....20.09.2022.....

Signed... 

GRO-C

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Dated.....20.09.2022.....