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Statement No.: WITN7197001
Exhibits: WITN7197002-
WITN7197010
Dated: 30/08/2022

INFECTED BLOOD INQUIRY

FIRST WRITTEN STATEMENT OF ALAN JOHNSON

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Section 0: Opening Comments

Opening Comments

I, ALAN JOHNSON, will say as follows: -

- 0.1. I am Alan Arthur Johnson and my address and date of birth are known to the Inquiry. I was the Secretary of State for the Department of Health ("DH") for a period of two years, between 28 June 2007 and 5 June 2009.
- 0.2. I make this statement in response to the Rule 9 request sent to me by the Inquiry, dated 28 June 2022. I also received a supplementary Rule 9 request dated 20 July 2022, attaching two further documents to review. I shall address both Rule 9 letters in this response.
- 0.3. I am keen to assist the Inquiry in its important work.
- 0.4. Due to the passage of time, I have only a limited recollection of the issues raised with me by the Inquiry. I have reviewed the documents supplied to me by the Inquiry and I have been supplied with further records from my time as Secretary of State. I have endeavoured to provide a substantive response wherever possible with the assistance of the documents provided. If further documents are specifically raised with me I shall continue to do my best to assist.

Section 1: Introduction

- 1.1. I have been asked to set out my professional qualifications relevant to my duties as Secretary of State for the Department of Health, my employment history and my role / responsibilities as Secretary of State.

Employment History

- 1.2. In terms of my qualifications and employment history, I left school at aged 15 and had various jobs working in retail, supermarkets and the Post Office. I was an officer of the Union of Communication Workers between September 1987 and May 1997 (which included serving as General Secretary). I became an elected Member of Parliament for Hull West and Hessle between June 1997 and June 2017.

- 1.3. The following table outlines my employment history in Government:

Date	Position
June 1997	Elected as Member of Parliament for Hull West and Hessle
November 1997 to July 1999	Parliamentary Private Secretary to the Paymaster General
July 1999 to June 2001	Parliamentary Under - Secretary of State at the Department for Trade and Industry
June 2001 to June 2003	Minister of State for the Department of Trade and Industry
June 2003 to September 2004	Minister of State for the Department of Education and Skills
September 2004 to May 2005	Secretary of State for the Department of Work and Pensions
May 2005 to May 2006	Secretary of State for the Department of Trade and Industry

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May 2006 to June 2007	Secretary of State for Education and Skills
June 2007 to June 2009	Secretary of State for the Department of Health
June 2009 to May 2010	Home Secretary for the Home Office

1.4. I also held the following positions in Opposition:

(1) May 2010 to October 2010 - Shadow Home Secretary;

(2) October 2010 to January 2011 - Shadow Chancellor.

1.5. In terms of membership, past or present, of any committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference, I have served on the following:

- (1) August 1995 to August 1997 - Member of the Labour Party National Executive Committee; and
- (2) July 1997 to February 1998 – Member of Trade and Industry Committee (House of Commons).

1.6. Save for engaging with the Archer Inquiry via the Department of Health, as outlined in this statement, I can confirm that I have not provided evidence to or been involved in any inquiries, investigations, or litigation (civil or criminal) in relation to the Terms of Reference.

1.7. I was appointed Secretary of State for the Department of Health on 28 June 2007 in the reshuffle when Gordon Brown became Prime Minister. I held that post until 5 June 2009 when I became Home Secretary. My predecessor as Health Secretary was Patricia Hewitt, who was Secretary of State between 6 May 2005 and 28 June 2007.

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- 1.8. As Secretary of State, I held responsibility for the work of the Department, including overall financial control and overseeing the delivery and performance of the NHS.
- 1.9. The Inquiry will be familiar with the depth and breadth of the responsibilities of the Secretary of State for Health, which covered an enormous range of policy areas. The Ministers of State and Parliamentary Under-Secretaries had their own delegated areas of policy responsibility. My Private Office would be copied into some of the submissions going to junior Ministers. In turn, I would see some (but not all) such submissions depending upon the judgement of my Private Office team. On other policy and financial matters, submissions would come directly to my Private Office. My ministerial team and I would meet to discuss matters and they could (and did) raise issues of concern. Blood products and associated issues, including Lord Archer's Inquiry, were handled by Dawn Primarolo.
- 1.10. During my time in office as Secretary of State, the Ministerial team consisted of the following:
- (1) Minister of State for Public Health – Dawn Primarolo. Dawn was responsible for matters relating to blood and blood products;
 - (2) Minister of State for Health Services – Ben Bradshaw;
 - (3) Minister of State for Care Services – Phil Hope;
 - (4) Parliamentary Under - Secretary of State in the Lords – Professor the Lord Darzi;
 - (5) Parliamentary Under - Secretary of State for Health Services (Commons) – Ann Keen; and
 - (6) Parliamentary Under - Secretary of State for Care Services (Commons) – Ivan Lewis.
- 1.11. During my time as Secretary of State, the most senior civil servants were:

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- (1) The Permanent Secretary – Hugh Taylor;
- (2) Chief Medical Officer (“CMO”) – Liam Donaldson; and
- (3) Chief Executive of the NHS – David Nicholson.

1.12. In terms of civil servants working more directly on blood and blood products, and engagement with and the response to the Archer Inquiry, I do not have any independent recollection of this. From the documents those most involved appear to have been Liz Woodeson; Dr Ailsa Wight; William Connon; Rowena Jecock; Patrick Hennessy and Linda Page. Within my Private Office, my Principal Private Secretary was Maeve Walsh. The Assistant Private Secretaries whom it appears had the most involvement in these matters were Beth Foster and Penelope Irving. I have also seen Marjorie Palmer’s name appear on documents; she was a Ministerial Briefing Manager.

1.13. Following Jacqui Smith’s resignation, I was moved from the Department of Health on 5 June 2009 and became Home Secretary. There were further changes within the Department of Health in the period following the local and European elections on 4 June 2009, in which Dawn Primarolo moved roles and was succeeded by Gillian Merron.

Section 2: Engagement with the Archer Inquiry

Section 2a – The Department's Engagement with the Archer Inquiry

- 2.1. Lord Archer's Inquiry was announced by the Rt Hon Lord Morris of Manchester on 19 February 2007 when Patricia Hewitt was Secretary of State. As the then-Secretary of State for Education and Skills, I had a general awareness that the Inquiry had been launched but had little, if any, knowledge of its subject-matter beyond what I had heard in the media as it was not an issue that overlapped with my own Ministerial responsibilities at that time. This is reflected in my comments to the Health Select Committee shortly after becoming Secretary of State, at which I confirmed awareness of Lord Archer's Inquiry but indicated I would be increasing my knowledge in the coming days **[RLIT0001064]**.
- 2.2. I received a briefing pack when I took up the post of Secretary of State in June 2007 **[WITN7197002]**; **[WITN7197003]**; **[WITN7197004]**; **[WITN7197005]**; **[DHSC5895219]**; **[DHSC5895221]**; **[WITN7197006]**. Although the briefing pack does not specifically refer to the Archer Inquiry, by necessity the pack could not cover every issue with which the Department was dealing. It was designed to provide an explanation of the structure of DH / the NHS, introduce key individuals and flag the most pressing issues. The briefing serves as a good illustration of the breadth of the Department's responsibilities and the wider context of health issues and challenges at that time.
- 2.3. After becoming Secretary of State, I received a number of briefings so as to quickly become fully immersed in the new role. I cannot specifically recall when I was briefed about the Archer Inquiry, but I would be surprised if the Archer Inquiry had not featured at an early stage.
- 2.4. I have been asked about my understanding of the Department's approach to the Archer Inquiry at the time and whether I considered it to be appropriate.

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2.5. When I received the Inquiry's request for a statement and considered it (initially without access to the documents), my general recollection was that the Inquiry was already underway when I became Secretary of State and that the Departmental approach had already been established. That recollection is borne out by the documents with which the Inquiry has provided me as background / context, but which pre-date my appointment. I can see from these documents that – in broad terms – the Department's approach was to assist the Inquiry by providing documents from the relevant time and by holding meetings with the Inquiry team, but the Department did not provide witnesses to give evidence. Those decisions had been made before my arrival.

2.6. As the documents on this issue provided to me by the Inquiry on the issue of DH's engagement with the Archer Inquiry pre-date my time as Secretary of State, I will outline them only briefly. However, they do set the scene for the position I inherited in late June 2007:

(1) In June 2006, Ministers commissioned a review to identify all relevant documents related to haemophilia and plasma products held by DH between 1970 – 1985, and to review those that related to Non-A, Non-B hepatitis (NANBH) **[DHSC6329110]**.

(2) Lord Archer wrote to my predecessor, Patricia Hewitt, on 16 February 2007 and requested that:

“... It will be much appreciated if someone from the Department can be available, on a mutually agreed date, to say what its position has been and is; and to lay before us any further facts, of which you think we should be aware.” **[DHSC6447176]**.

(3) William Connon drafted a reply dated 28 March 2007 **[DHSC0041193_054]**. The accompanying note stated that the Department had commissioned a review “of all the documentation available” on the subjects covered by the Archer Inquiry. The submission proposed circulating both the report and the documentation to all interested parties (including Lord Archer). However, it

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recommended that DH decline to give evidence to the Inquiry. The reasons for this were set out in the note and included concerns raised by the Solicitor's Division.

- (4) The draft reply to Lord Archer appears to have been sent to Caroline Flint (then Minister for Public Health) [DHSC0041193_054]. The handwritten note indicates that Hugh Taylor, the Permanent Secretary, had approved the draft reply and that the Secretary of State was likely to agree with officials' recommendations as to DH's approach.
- (5) On 30 March 2007, Patricia Hewitt sent the final response to Lord Archer's letter [DHSC0041193_048]. She said that although the "*Government has great sympathy for those infected with hepatitis C*" and had "*considered the need for an official public inquiry very carefully indeed*", in its view holding a public inquiry would not be justified. However, to assist Lord Archer the Department proposed a meeting should be held between its officials and Lord Archer's. Patricia also confirmed that the Department would share the results of its document review with the Inquiry.
- (6) On 24 April 2007, Liz Woodeson provided a submission to Caroline Flint [DHSC0041193_026]. It explained that the internal report on the Department's documents had been completed and there was "*no new information that challenges the Department's position.*" A full QC-led Independent Review was not recommended (because of its costs and because it was thought it would not satisfy external parties), but the submission sought approval for an official to review each of the documents and clear them for release, applying FOI principles to Lord Archer (at the cost of around £40,000). Handwritten annotations, presumably from Caroline Flint, suggest that she agreed with this course of action. That is confirmed in the minutes of an officials' blood stocktake meeting on 1 May, also supplied to me by the Inquiry [DHSC5007684].

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The minutes reflect that Caroline Flint had agreed for the Department's report to be released to interested parties and for the documents to be released in line with FOI principles.

(7) A submission from Linda Page to Caroline Flint dated 13 June 2007 confirmed that the Department's internal review, titled 'Review of documents relating to the safety of blood products 1970-1985 (Non-A, Non-B Hepatitis)' had been released on 22 May and provided to Lord Archer **[DHSC6341171]**. The underlying documents were issued in tranches thereafter, with the first set issued on 14 June 2007 **[DHSC5040550]**.

2.7. DH's position was unchanged by the time I became Secretary of State. The Inquiry has referred me to discussions between Liz Woodeson and Patrick Hennessy (Infectious Diseases and Blood Policy Branch) ahead of my appearance before the Health Select Committee in July 2007 **[DHSC5482358, DHSC5482362]**. The draft line to take reiterated that DH had undertaken a review of relevant documents, which it would release in accordance with the Freedom of Information Act 2000 ("FOIA"), and explained:

"... • Officials have advised, following advice from SOL, that, in these circumstances, any direct involvement of the Department with the current independent and private inquiry would be inappropriate and undesirable.

• This advice extends to the issue of any public appearance by officials or Ministers. Inquiries under the Inquiries Act 2005 have a clear legal Framework in which to operate and there are established principles and guidelines in the case of non-statutory governmental inquiries. These would not apply in a private independent inquiry and therefore there would be no certainty as to what departmental involvement would entail, such as whether the inquiry would offer legal indemnities to officials against the possibility of legal proceedings being instituted against them as a result of their evidence to the inquiry. There is also likely to be a vast amount of preparation required if officials were called to give evidence and answer questions about over 6000 documents.

• Further, the events in question are historic, having taken place 25 to 30 years ago, well before the memory of current officials."

- 2.8. I note the final briefing pack removed the reference to legal advice received.
- 2.9. Following my appearance at the Health Select Committee in July 2007, I confirmed via a Supplementary Memorandum on 11 September 2007 that the Government would take note of Lord Archer's findings and expressed great sympathy for those affected **[RLIT0001064]**.¹
- 2.10. I accept that it would have been theoretically open to me (as the new Secretary of State) to change our approach to the Archer Inquiry. In practice, however, the approach of co-operating with the Inquiry by providing the relevant historic documents did not strike me as inappropriate. Nor have I seen any submission to me positively suggesting that a change of approach might be advisable. As I shall address below, I do recall discussing the Department's response to Lord Archer's report with Dawn Primarolo, but I do not recall her raising any concern with me – prior to the publication of the Archer Inquiry's report - about how the Department was engaging with the Inquiry. Dawn Primarolo was an effective Minister, who would raise issues with me where appropriate and who was prepared to challenge officials' thinking in her subject areas.
- 2.11. The Inquiry asks which officials were most involved in engaging with the Archer Inquiry. At paragraph 1.11 above, I have set out – based solely on the documents – the officials who seem to have been involved in this area. The individual submissions on the Archer Inquiry will assist on this and Dawn Primarolo will also be able to provide further detail about those who were most involved.

¹ The Inquiry has pointed me to the draft response at **[DHSC5243290]**, but the final version is as above.

Section 2b – Documents provided to the Archer Inquiry

- 2.12. The Inquiry asks about the Department's approach to the provision of documents to Lord Archer's Inquiry.
- 2.13. I have already dealt with the Department's approach prior to my appointment as the Secretary of State in June 2007.
- 2.14. To the best of my recollection, which I believe is borne out by the documents with which I have been provided, I did not have had any direct personal involvement in the disclosure of documents to Lord Archer nor in any decision to withhold documents.
- 2.15. The search for, and release of, documents appears to have been primarily handled by officials. The documents show that there was an officials' 'project board' which met and reviewed the release of documents underlying the Department's May 2007 report (see for example **[DHSC5212168]**). As I explain later in this statement, that is in part because Ministers are not allowed to see the documents giving advice to Ministers of previous administrations.
- 2.16. At a Ministerial level, Dawn Primarolo was primarily responsible for this area and considered it in detail with Liz Woodeson and Hugh Taylor. As I recall, and as reflected in the documents, Dawn Primarolo appropriately challenged the recommendations of officials, encouraged re-assessment of the limited number of documents being withheld and discussed the issues at some length with officials. For example, on one occasion Dawn appears to have objected to authorising non-disclosure of documents without having had sight of them herself **[WITN5494035]**; **[WITN5494036]**.
- 2.17. In terms of the release of material before Lord Archer's report, the key points are as follows:

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- a) As previously indicated, the first batch of documents was released to Lord Archer on 14 June 2007 and was made freely available online **[RLIT0001064]**.
- b) In June 2008, Dawn Primarolo provided written answers which explained that one document returned to the Department by Blackett, Hart and Pratt solicitors had been withheld from the Archer Inquiry under s.40 FOIA **[WITN5494030]**. A number of rediscovered documents had not been released to Lord Archer at that stage **[WITN5494030]**.
- c) As of 27 January 2009, only 35 documents were being withheld in part/ in full, of which only seven were on commercial interest grounds **[DHSC6694296]**; **[DHSC5561030]**. Dawn asked officials to ascertain whether this number could be reduced further **[DHSC5559507]**.
- d) Officials met with Lord Archer and his team on a number of occasions, including 18 February 2009² when Lord Archer met with Scottish officials but Patrick Hennessy of DH also attended. A note of the meeting shows Lord Archer stated "*DH had been very helpful in releasing documents, given that the DH position was that his inquiry was unnecessary*" adding that, "*However, there was a huge amount of paper, and the inquiry did not have the resources to handle it all in detail. Much will not have been read*" **[DHSC5507507]**.
- e) On 19 February 2009, a staff member from the Archer Inquiry drafted an email to my office which enclosed an embargoed copy of the report. The draft email stated that DH officials had assisted the Inquiry by providing documents and information, as "*we readily acknowledge*" **[ARCH0000459_004]**. One Inquiry staff member seems to have sought the removal of the word "readily". I have not been provided with the final email, as sent.
- f) On 26 February 2009 a further submission was provided to Dawn from Rowena Jecock, copying in my Private Office **[DHSC0041157_056]**³. It

² The minute says 2008 but this would appear to be year dating error

³ **[DHSC5034285]** and **[DHSC0011467]** provided to me by the Inquiry are, I think, duplicate copies of the same submission (though not annotated).

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stated 10 documents were being withheld because they concerned animal testing and there was a cross-Government understanding about the need to protect those involved, 9 contained personal data (e.g. CVs), 9 were subject to Legal Professional Privilege, and 7 to protect commercial interests. The handwritten notes suggest Dawn critically analysed those justifications and expressed dissatisfaction with authorising non-disclosure when she had not seen the documents herself **[DHSC0041157_056]**.

- g) On 2 March 2009, Dawn held a meeting with officials (to which I refer below in section 3 of this statement) in relation to the response to Lord Archer's report. One of the action points of this meeting was that Dawn was to be given a "blow by blow" account of the documents which had been either wholly and partially withheld from disclosure **[DHSC6120809]**. My Private Office was copied into the email giving the action points of the meeting.
- h) Although my Private Office was not copied into it at the time, on 9 March 2009 Liz Woodeson emailed Dawn's Private Office indicating that she thought the approach to the 35 documents had been overcautious and that the number of withheld documents could be further reduced **[DHSC0041157_051]**.
- i) On 19 March 2009, my Private Office was copied into a further update to Dawn Primarolo on 35 documents from Liz Woodeson **[DHSC0041157_023]**. It was now considered that only eight needed to be withheld. It was said that neither the documents still to be withheld (copies of which were provided to Dawn), nor those that were now proposed for release, contained any information of significance.
- j) On 7 April 2009, Dawn wrote to Lord Archer (and others), explaining that she had asked officials to review their previous decisions. In light of that, further documents were now being released (though eight documents could not be) **[ARCH0000061]**. Lord Archer replied on 23 April 2009. While noting that the documents were too late for inclusion in his report which had of course been published, Lord Archer thanked Dawn for

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“...trying to ensure that as much information as possible is in the public domain” [DHSC0041240_082].

2.18. Within the documents made available to me by the Inquiry and my legal advisers, I note that there was an issue about a Freedom of Information request which sought a copy of the advice given by Sir Donald Acheson (the former CMO) to Ken Clarke (then Secretary of State for Health) at the time of the HIV litigation [DHSC6432347]. It is apparent from the documents I have reviewed that the Attorney General’s opinion was obtained. Within DH, the issue was addressed at Permanent Secretary level (by Hugh Taylor) because the document consisted of advice given to Ministers of a previous administration. The convention is that the Permanent Secretary (rather than current Ministers) should decide such matters. Having said that, Dawn Primarolo would have been kept abreast of this issue.

2.19. I do not believe that I was involved in the debate about whether to release the CMO’s advice, but to summarise the main documents to which I have been referred:

(1) There appears to have been an internal debate between Department of Health officials as to whether or not reliance should be placed on the exemption in s.36 Freedom of Information Act 2000 that the release of the advice *“would, or would be likely to, inhibit the free and frank provision of advice”*. On 15 April 2008, William Connon wrote an email to Liz Woodeson setting out why he favoured releasing the document, although I note most officials appeared to have been on the other side of the argument [DHSC6500120].

(2) The current CMO (Liam Donaldson) examined Sir Donald’s advice and favoured release [DHSC6500120]. His view was that releasing the document would not inhibit the provision of frank advice because CMOs gave advice *“without fear or favour”*. In addition, CMOs were used to their advice being made public.

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- (3) On 25 April 2008, a submission to Hugh Taylor proposed writing to Ken Clarke and Sir Donald to notify them of the Department's intention to release the advice **[DHSC0038592_070]**.
- (4) An email dated 28 April 2008 shows Hugh Taylor was content to release the document **[DHSC6500120]**. Ken Clarke was accordingly informed **[DHSC6387197]**.
- (5) Ken Clarke opposed release of the advice due to a concern that it would inhibit the frank provision of advice and the document alone would be out of context given other advice provided at the time **[DHSC5042275]**; **[DHSC6432347]**.
- (6) Ken Clarke's objection produced further consideration at official level, both within DH and at the MOJ. For example, Rhys Williams' (MOJ) objected to disclosure **[DHSC6500120]**, whereas William Connon (DH) maintained his contrary view **[DHSC6500120]**.
- (7) On 24 June 2008, Liz Woodeson provided a further submission to Hugh Taylor regarding the FOI request **[DHSC6387197]**; **[DHSC6452375]**. It does not appear the Ministers were copied in (presumably because of the convention and because it was attaching the actual advice). It explained that DH had favoured releasing the advice, but that a different view was taken by Ken Clarke, officials at the Ministry of Justice and the Cabinet Office. The submission recommended seeking advice from the Attorney General.
- (8) The next day, Hugh Taylor duly sought advice from the Attorney General, Baroness Scotland **[DHSC6432347]**. The Attorney's advice was that s.36 did apply although the public interest balance was for the Department to assess **[DHSC6500120]**.
- (9) In light of that, William Connon accepted that the decision had been made to withhold the advice **[DHSC6500120]**.
- (10) On 30 July 2008 Liz Woodeson put a further submission to Hugh Taylor explaining the Attorney General's view **[DHSC0041157_073]** (854). Again, Ministers were not involved in this decision (nor copied

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into the submission), no doubt because of the convention about advice to previous administrations.

(11) The decision to withhold the advice produced a complaint dated 21 August 2008 from the political researcher who had requested it **[DHSC6445437]**. This was reflected in the submission of 19 March 2009, to which I have referred at paragraph 2.17.i), above.

(12) The Attorney General was asked to confirm her advice on 9 April 2009 **[DHSC6452375]**. Ken Clarke was again contacted and re-confirmed his view on 24 March 2009 **[DHSC6452375]**.

(13) On 2 June 2009, Ailsa Wight provided a submission to Dawn Primarolo **[DHSC0041219_077]**. Paragraph 19 contained an update on the FOI case. It explained that there was an internal review of the decision to withhold the document, but that the Attorney's advice was that the advice should continue to be withheld. My Private Office was copied into this submission (though I would leave DH shortly thereafter).

2.20. Against the background of this chronology, I turn to the further questions the Inquiry has asked me about the release of documents to Lord Archer's inquiry. So far as I am aware, the Department's approach was to provide the Inquiry with all the documents underlying its own May 2007 review of documents, only withholding those that could not be released applying normal FOI principles. The consideration of which documents may need to be withheld was led by officials (the documents related to previous administrations and were voluminous) but Dawn Primarolo was closely engaged in the documents that were held back. They were released in batches to the Inquiry, and only 35 were held back. Even this limited number was further assessed following Dawn's input and a re-assessment by officials. They were reduced down to eight, albeit that the release of the further documents came after Lord Archer had reported. The grounds for withholding the eight documents was recorded as being personal information in the case of five of the documents, the other three being legal documents. I was not personally involved in this because it was led by officials and, at Ministerial level, Dawn Primarolo was scrutinising the position.

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2.21. The advice given to Ken Clarke was given during the HIV litigation and was after the period covered by documents being provided to the Archer Inquiry. It arose because of an FOI request. Since it involved advice given directly to the Minister of a previous administration, that issue was (appropriately) handled by the Permanent Secretary and was not for Dawn or I to decide. Views were taken from Ken Clarke and the former CMO, from current officials in the Department, more widely in Government and ultimately from the Attorney General.

Section 3: Response to the Archer Inquiry

Overview

3.1. I was involved in the Department's response to the Archer report and held several discussions with Dawn Primarolo on this subject. According to my recollection, Dawn wanted to be as helpful as possible, recognising the tragic circumstances of those directly involved and adopting Lord Archer's constructive approach. Although I cannot recall the detail of my conversations with Dawn, my general recollection is that she was rigorous and assiduous in considering the recommendations in Lord Archer's report and that she kept me appropriately informed of the work she was doing in trying to get positive responses to Lord Archer's recommendations. As I set out more fully below, she eventually came to me with a formal minute on what she considered our response should be. My assessment at that time was that the Department's proposed response was reasonable in the circumstances that prevailed. I knew that Dawn had pressed the issues hard with officials to explore what response could be given. I approved her recommended line. We both recognised that aspects of DH's response would not go as far as the infected, their supporters or Lord Archer would have liked. But we were in an exceptionally difficult economic climate. As a Government, we were of course dealing with the immediate impact of the Global Financial Crisis and all its profound fiscal and financial ramifications. Although the Department of Health's budget was protected, that money had all been allocated and the Treasury exercised greater scrutiny on how the money was spent. In addition, there was no likelihood of any additional funds being made available from the Treasury reserves.

Chronology of main developments / documents

3.2. The report was published on 23 February 2009. Lord Archer's summary of conclusions in Chapter 11 of his report was as follows:

"1. A full public Inquiry into this issue should have been held much earlier to address the concerns of the haemophilia community."

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2. *The procrastination in achieving national self-sufficiency to avoid the use of high-risk blood products from overseas had disastrous consequences. Had self-sufficiency been achieved earlier, the scale of the catastrophe would have been significantly reduced. If in the future concern arises about the safety of blood products this lesson must be remembered.*
3. *The doctor-patient relationship during the evolution of this tragedy sometimes had unfortunate consequences. The medical profession appears to have made good progress in this area. The importance of patient involvement when making difficult clinical decisions is now appreciated and should not be forgotten.*
4. *Commercial priorities should never again override the interests of public health” [DHSC0011679_002].*

3.3. The report's recommendations (Chapter 12) were as follows:

“1. (a) A Committee should be established by Statute to advise Government on the management of haemophilia in the United Kingdom. It should have overarching responsibility for:

- i) the selection, procurement and delivery of the best therapies currently available and recommended by NICE;*
- ii) readily available access to any necessary treatment relating to the condition itself or any condition arising from consequent therapy;*
- iii) all provisions necessary to address the financial and other needs of haemophilia patients.*

(b) We set out on page 96 our recommendations relating to the composition of the Committee. We emphasise the importance of patient representation, through nomination by the Haemophilia Society and other bodies working to support the haemophilia community.

(c) There should be a statutory requirement to consult the Committee prior to the introduction of legislation or substantial changes in policy.

(d) Where the Committee deems it necessary, regional subcommittees should be established to exercise prescribed functions falling to the principal committee.

2. Patients with Haemophilia who have received blood or blood products, and their partners, should be tested for any condition identified by the Committee described in 1 above.

3. Every blood donor should be similarly tested following the donation. We understand that at present donations are tested for Syphilis, Hepatitis B, HIV, Hepatitis C, and HTL V. This list must be kept under review.

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4. *Those who have been infected should be issued with cards entitling the holder to benefits not freely available under the NHS, including free of charge prescription drugs, general practitioner visits, counselling, physiotherapy, home nursing and support services. The card should facilitate access to an NHS hospital bed and specialist [services]*

5. *We consider it vital that the Government should secure the future of the UK Haemophilia Society by adequate funding. This should be seen as a matter of urgency.*

6. *Direct financial relief should be provided for those infected, and for carers who have been prevented from working. We propose that the scheme should have the following characteristics:*

a) It should be paid through the Department of Work and Pensions in the same way as existing statutory benefits, so that beneficiaries should receive their entitlements from the Government and not through intermediate sources such as the Macfarlane or Eileen Trusts, or the Skipton Fund. The Government would thus have direct responsibility to the individual beneficiary for providing the necessary resources.

b) Entitlements should be payable if infection is established within the appropriate time-frame. An appeal mechanism should be provided against rejection of a claim and the assessment of the amount due.

c) Entitlement should not be means-tested, but should take the form of an initial capital sum, followed by prescribed periodical payments.

d) There should be no distinctions dependent upon the reason for the treatment with blood or blood products.

e) The anomalies which at present apply according to the age when the recipient was first infected, or when the infection took place or, in the case of dependents, the date of death of the original patient should be rectified. In particular, the Government should review the conditions under which the widow of a patient infected by blood products now becomes eligible for benefit from the Eileen Trust and from the Skipton Fund.

f) Payments under the scheme should be disregarded for the purposes of calculating other benefits.

g) There should be a table of amounts payable in the case of double or multiple infections.

h) We suggest that payments should be at least the equivalent of those payable under the Scheme which applies at any time in Ireland.

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7. There is a need for some provision to ensure to patients access to insurance. This could be done either by providing the premiums, or by establishing a separate scheme for the patients in question.

8. In addition, a look back exercise should be undertaken to identify, as far as possible, individuals who may have been unknowingly infected by contaminated blood products and who might still not be aware of this.” [DHSC0011679_002].

3.4. On 24 February 2009, there was an initial submission to Dawn Primarolo from Rowena Jecock on the report’s recommendations [WITN5494033]. My Private Office was copied into this submission. The annotations appear to be a combination of Dawn and her Private Office staff, who criticised the quality of the submission. Since Dawn was handling the response, I am not able to say whether or precisely at what stage my own Private Office showed me this initial submission on the recommendations. As I have indicated, I certainly discussed our response to the report with Dawn but I am not able to specify at precisely what stages in the flow of submissions this was.

3.5. It is clear that Dawn pressed for more information because on 26 February 2009 a further submission was provided to Dawn from Rowena Jecock responding to questions she had asked [DHSC0041157_056]⁴. The submission was copied to my Private Office. Reviewing this submission now, I note that it was structured as a short covering note, with ten numbered annexes dealing with the questions that Dawn had raised. The tenth and last of these was a draft minute for Dawn to send to me (from the documents, however, it does not seem that this was sent to me at this stage).

3.6. The Inquiry draws my attention to paragraph 4 of the covering submission which stated:

“... You may want to note the following points in particular, which we suggest you may wish to discuss with SofS. A draft note, covering these points, is attached at question 10:

⁴ [DHSC5034285] and [DHSC0011467] provided to me by the Inquiry are, I think, duplicate copies of the same submission (though not annotated).

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- *A statement could be drafted, expressing this Government's regret at the events that occurred and the consequences for those affected. Legal advice is that this can be done, given the length of time that has passed, and the fact that there has been litigation during that period.*
- *A number of anomalies exist in the three schemes set up to provide financial relief for those infected and for their dependents and carers, for example in relation to the conditions under which widows of those infected with Hepatitis C become eligible for benefit. Lord Archer has recommended that these be addressed, and an intention to review perceived anomalies could be announced at an early stage, ahead of the Government's substantive response to the report."*

3.7. The Inquiry asks me to describe (to the best of my recollection) my discussion with Dawn, as referred to in paragraph 4 of the submission above. In fact, paragraph 4 of this submission was not referring to any conversation which had already taken place between Dawn and me. It was a recommendation of officials that Dawn may wish to discuss these points with me, and – as I have mentioned – annex 10 to the submission provided a draft note from Dawn to me. As I address below, it was not until later (23 April 2009) that Dawn sent me the finalised note recommending our approach to the response to Lord Archer. However, I am confident that we would have discussed the response before then. Though I cannot now recall the detail of these discussions, the documents show Dawn exploring with officials and pressing them on what more could be done and I expect that our discussions would have reflected that she was in the course of doing that.

3.8. Without repeating the entirety of this submission, I would note that the issues upon which Dawn had asked for further advice included whether the Government could acknowledge what had happened and apologise, without admitting legal liability. At annex 6, the submission set out the following advice:

"... Advice from the Department's solicitors is that the term 'health disaster' is too strong a term, as if the available blood products had not been employed, patients may have died even earlier than they did. They suggest the term "a tragedy for those affected" as these patients suffered appalling health consequences in circumstances no fault of their own.

As regards liability, these events occurred many years ago and there has been litigation. In any speech or Press Notice, mention should be made that proceedings were brought in relation to both HIV and hepatitis C, and

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that as a consequence arrangements were made to make payments to those affected, beginning 20 years ago.

The Government was not in office at the material time. There is a need to be cautious in relation to previous administrations, but this is no reason to stop an expression of sorrow at what has occurred.

A possible form of words is:

"Whilst we believe that successive Governments have acted in good faith, we acknowledge that the circumstances in which patients contracted serious infections through their NHS treatment with blood and blood products were a tragedy for those affected and for their families. We want to say how sorry we are that this has happened."

- 3.9. I note also that Annex 7 sets out options for the immediate additional support to Trusts:

"MFT (Macfarlane Trust) and ET (Eileen Trust) trustees have recently submitted to officials a set of options for large-scale long-term funding for the Trusts, involving sums in excess of £100m. These have yet to be assessed in any detail.

As the number of registrants in these Trusts is declining, the argument for increased funding will need to take account of the reduced number of people receiving payment.

In 2006, Caroline Flint (then MS(PH)), reviewed the funding position for the Macfarlane and Eileen Trusts, following a request from the trustees for significantly increased funding (a combined increase of over £4million/year).

The trustees argued that when the Trusts were established, registrants were not expected to survive for long. Modern treatments had changed that prognosis, and registrants needs had changed with it. Additional funding was needed, for example, for housing and associated maintenance, childcare, assisted conception, respite/stress relief, mobility, etc.

[The then] MS(PH) and SofS were not convinced of the strength of the case made by the trustees, and consequently agreed a partial acceptance of the trustees' claim, via a combined annual increase in funding of £400,000 to be shared between the Trusts pro-rata. This represented an increase of around 11 % to the Trusts' funding, bringing the funding for MFT to over £3.7million, and funding for ET to £177,000."

- 3.10. The 10th annex – the draft note for Dawn to send to me at this early stage - reads as follows:

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“... • We prepare a statement expressing the Government’s regret in the strongest terms. Subject to your agreement, I will open discussions with former Ministers in previous administrations on this proposal.

• [DN: As an initial response, we carry out an early, rapid review of perceived anomalies in the current set of payments to those affected.]

• We reiterate that we will give careful consideration to Lord Archer’s [other] recommendations, need time to do so, and will respond in due course.” [DHSC5034285].

3.11. On 2 March 2009 a meeting was arranged between Dawn Primarolo and key officials [DHSC6120809]. There is reference in the flow of documents at this time to Dawn wanting a meeting with officials before a meeting with me on Tuesday 3 March [DHSC5290386]. So it may be that at this stage Dawn had not yet spoken to me but did so on 3 March. The following action points were agreed at the meeting which Dawn held on 2 March (my Private Office was provided with a copy of the same):

“... • Hugh Taylor & David Harper to go through withheld and partially withheld documents and give MS(PH) a 'blow-by-blow' account. They will also explain how the 30-year rule applies.

• The Blood Team to report back on the following questions:

- Why did it take DH more than ten years to react to concerns ('73 to '85)?*
- When did we know something was wrong? Why didn't we act?*
- Why did it take England longer than Northern Ireland and Scotland?*
- Have Ministers apologised or expressed sorrow in the past?*
- How is the ROI scheme going? why did they decide to accept liability?*
- Who claims what for the schemes and what else they claim or can claim*

• The Blood Team to report back on other actions:

- A timeline and summary analysis of the self Sufficiency in Blood Products report.*
- A time-line regarding the securing safety of supply.*
- A reassessment of the argument not to have a public inquiry.*
- A draft Written Ministerial Statement as initial response to Report.*

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- *A real case study (with identifiers removed) to show how the funding patients receive from each scheme assists them and what might need to added.*
 - *An idea of what money would be reasonable to give to MFT, ET and Skipton Fund. MS(PH) has grave concerns about the long term implications of a final settlement figure for these schemes.*
 - *Review of the three schemes and the anomalies with a working plan to address the anomalies in the next financial year*
 - *A report back on how discussions are progressing with the schemes regarding financial needs. MS(PH) wants to ensure that these patients receive fair recompense for their escalating healthcare costs. She would like to know how best to support these patients who were affected by contaminated blood and blood products. Recipients have said that they prefer the Skipton Fund model of lump sum payments.*
 - *To check that the DWP and HMRC are sorted in terms of support to these patients.*
 - *To check with the British Association of Insurers as to these patients access to insurance.*
 - *To review the documents withheld or partially withheld under the commercial section of the FOI Act including writing to the companies to see if they have objections to release.*
- *Additional Points:*
- *MS(PH) will talk to SofS about this issue tomorrow. She will show him the Chronology and the explanation of the withheld and partially withheld documents. She will also talk to him about the need to express sorrow and the possible additional money needed for the three schemes.*
 - *MS(PH) believes that a WMS would be a good way to respond initially. An apology or expression of sorrow is important.*
 - *MS(PH) made it clear that as she is expected to put on the public record that she is satisfied as to the reasons behind the withheld or partially withheld documents she (and SofS) need to know the exact reasons for these documents being withheld.*
 - *The Blood Team are taking forward discussions around the financing of the three schemes.*
 - *MS(PH) will meet with David Harper and Hugh Taylor to go through the withheld and partially withheld documents.*

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- *In relation to 'free prescriptions', MS(PH) made it clear that we need to wait until the outcome of Professor Gilmore's review is known.*

Again, MS(PH) is very grateful to the team for all their hard work.”
[DHSC6120809].

3.12. If I did have a meeting with Dawn on 3 March 2009 in which Lord Archer's recommendations were discussed, I do not now specifically recall it or the detail of what we discussed. The documents do not appear to include any record of the same. However, as I have already indicated, it is likely that Dawn would have drawn to my attention what she was doing in terms of pressing for more information on the options for responding more positively to Lord Archer's report.

3.13. On 10 March 2009, Dawn Primarolo and I were sent a briefing by Rowena Jecock ahead of the planned meeting with Lord Archer the next day **[DHSC0041157_052]**. The key findings were summarised in Annex A of the briefing as follows:

“... Key Findings

1. There is a strong sense that the Government has never apologised for what happened, that little has been done to deal with the hurt of those affected and that their plight has never been properly recognised. Successive Governments, as the report makes clear, have declined to establish an inquiry, which might have helped to identify problems earlier.

2. This, coupled with difficulties in identifying documents, some of which were inadvertently destroyed in the early 1990s, has meant that there was a suspicion of an 'exercise in suppressing evidence of negligence or misconduct', but, importantly, the report goes on to state '... we have discovered no evidence of malicious destruction of relevant records.'

3. As demand for blood products increased during the 1970s, due to the success of the Factor VIII treatment for haemophiliacs, there was increased sourcing of commercial product from paid US donors. Procurement of such product at the time was a local decision, and although the report suggests that 'it is difficult to avoid the conclusion that commercial interests took precedence over public health concerns,' there was no financial advantage to the NHS in the purchase of US products;

which were expensive and necessary to meet growing numbers of patients who were being successfully treated.

4. The report also finds that there was little involvement of patients in decisions about their care, though it acknowledges that matters have improved considerably in this respect, particularly in relation to research activities, since then.

Whilst the report identifies sourcing and supply of treatment as a key concern for haemophilia patients, it also recognises that the availability, over recent years, of treatment with non human derived synthetic product is a 'significant move forward'.

Other Key Points from the Report

The report explicitly avoids apportioning blame and recognises that these are historical events. There is a suggestion that a secure supply of safer products could have been provided earlier by a faster drive towards self-sufficiency.

However, it is debatable how much contamination could have been avoided, given that domestic products could not have been safeguarded against risk of HIV and hepatitis C any sooner than they were .

Overall, since the 1970s and 1980s, there is a tighter regulatory framework in place and the establishment of NHSBT has brought the safety and supply of blood products under closer control."

3.14. Within Annex B of the brief, Rowena Jecock set out what she described as "initial response[s]" to the report's recommendations:

"... 1) Proposal to establish a statutory committee to advise Government on the management of haemophilia:

From the haemophilia patients' perspective, this would give them assurance that an independent body was providing dedicated advice on best management of their condition.

- *However, we would not recommend acceptance of this recommendation.*
 - *It must be considered in the light of wider policy on patient consultation. We do not see the rationale for establishing on a statutory basis.*
 - *Other patient groups with long-term or hereditary conditions may seek a similar body.*

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- *Establishing and supporting a committee would have long-term resource implications for DH.*

- *This recommendation is the subject of an amendment by Lord Morris and Lord Corbett to the Health Bill in the House of Lords, for committee later this week.*

2) Free prescription drugs:

- *This will need to be considered in the context of Professor Ian Gilmore's review, looking at long term conditions.*

3) Secured funding for the Haemophilia Society:

- *We would not recommend acceptance of this recommendation.*
- *This runs counter to policy on third sector organisations.*

4) Review of ex-gratia payments system (see page 6 for more detail):

- *The issue of financial relief for those affected and their families is a major theme of Lord Archer's report. The report states that haemophilia patients, especially those infected with hepatitis C or HIV find it extremely difficult to secure health insurance, life assurance or a mortgage. Also, many people died leaving dependents. Many others, who are living longer than originally anticipated, are unable to work and provide adequately for themselves and their families.*
- *The report identifies between the MacFarlane Trust Fund, established in 1988 to support haemophiliacs with HIV, and the Skipton Fund, established in 2004 to support those infected with hepatitis C. The report considers that discretionary payments, as the MacFarlane Trust provides, are not appropriate to the circumstances of many patients, and that those infected should be 'entitled to look to the Government for redress' and the solution 'should take the form of a standard payment or payments adequate for the purpose.'*

5) Access to insurance:

- *We will discuss this with the Association of British Insurers.*

6) Lookback exercise:

- *There has already been one lookback exercise in the 1990s to identify patients who may have been infected. If it were decided to carry out a further search, we would propose asking the UK Haemophilia Centre Doctors' Organisation to manage it."*

3.15. Annex D to the submission set out potential costs implications that may arise from a review of funding for the ex-gratia funding schemes.

3.16. On 11 March 2009, Dawn Primarolo and I met Lord Archer as planned to discuss his report. From my recollection, the meeting with Lord Archer was entirely amicable. A summary of the points discussed is set out in an email from my Assistant Private Secretary, Penelope Irving, to officials on 13 March 2009:

“... • Lord Archer summarised his three main recommendations from the report. These were:

- Establish a Committee representing all clinicians/patients to advise the government on haemophilia*
- Funding should be provided to keep the Haemophilia Society afloat*
- Financial relief for those affected should be reassessed.*
- The report deliberately did not apportion blame for the events in the 1970s and 1980s but sought to identify the need for recompense for the victims. An amount had not been specified as this should be decided on by negotiation.*
- In the 1970s the government of the day acted in good faith: the medical conditions were not fully understood, tests to detect viruses were not available and the biggest cause of difficulty was in fact the 'doctor knows best' culture.*
- Families had settled legal action out of court in 1991.*
- SoS would need to be convinced that current financial arrangements were insufficient before he considered any adjustments to the compensation system. Lord Archer explained that many patients suffered financial hardship but MS(PH) said it was important to distinguish what financial pressures were a consequence of infection, as opposed to being the consequence of the illness which had caused the patients to need transfusion in the first place i.e. haemophilia.*
- Any finance-related decisions had to be taken in the context of other patient group such as the Thalidomide Trust who were seeking further Government compensation.*
- MS(PH) asked why Lord Archer had identified both the continuation of funding for the Haemophilia Society and also the establishment of a new statutory Committee as two of the top recommendations and what was the difference between the two bodies? In response, Lord Archer explained that the Haemophilia Society did not discuss issues as the Committee would nor have representation at the level necessary to advise government. The Society focused more as a social network for members.*
- SoS raised the issue of infected patients not being able to get insurance coverage. Lord Archer explained several potential solutions: government*

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could pay for any augmented premiums or could provide independent insurance coverage.

- *Lord Archer did not understand why a public inquiry had not been held earlier as it fuelled talk of a conspiracy.*

- *SoS asked about the importance of commercial considerations in previous governments' actions: even if the UK had been self-sufficient in plasma products there was no evidence that infection rates would have been any lower given the high rate of HIV infection in the UK population. Lord Archer confirmed that it was difficult to identify people's primary considerations.*

- *SoS thanked Lord Archer for his time and said that he wished to speak to him again once the department had decided on its response to the review.” [DHSC5277959].⁵*

3.17. I note the caution that I appear to have injected into this meeting by indicating that I would need to be convinced that current financial arrangements were insufficient before considering any adjustments to the compensation system. While I do not specifically now recall making this point, I expect that I would have said this because some of the options for changing the payments schemes as summarised in Annex D to the briefing for this meeting involved very large sums and – as I have explained – the country was in an acutely difficult financial climate. I was not ruling out increased funding but sounding a note of caution. I am sure that I would have been aware at this meeting that Dawn was still working with officials on what our full response could be. That is reflected in the final bullet point in the quotation above: this was not a meeting where we were conveying to Lord Archer what our response would be, rather it was an opportunity to discuss these findings and the importance of the recommendations more generally.

3.18. I also note that I appear to have said there was no evidence that HIV infection rates would have been lower had the UK been self-sufficient in plasma products. I cannot specifically remember stating this, not least due to the passage of time (though I do not dispute the accuracy of the minute). It is

⁵ The Inquiry have referred me to [DHSC5564474]. This is, in substance, a copy of the above document.

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possible that I momentarily confused the position of HIV when compared to that of Hepatitis C – I cannot now say for sure.

- 3.19. My APS's note of the meeting also set out next steps that officials should undertake which reflects the areas where Dawn and I wanted officials to work further on what could be done positively in response to the report:

"... In terms of next steps SoS and MS(PH) would like to receive advice on the following points:

- they would like to look at the eligibility criteria for those who receive money under the different schemes including options to rationalise the schemes (which should incorporate the options already outlined on how and if to adjust compensation)

- what are the options for the department regarding insurance provision (including perhaps an arrangement with the insurance industry?)

- they would like to look at the funding for the Haemophilia Society and options to give the Society a wider remit (in the context of the recommendation for the establishment of a Committee which had not been recommended)." [DHSC5277959].

- 3.20. On 19 March 2009, Rowena Jecock provided a submission addressed to Dawn Primarolo and to me, in response to the action points following our meeting with Lord Archer [DHSC5005952]. I am not entirely sure whether I would have seen this submission because it is apparent that Dawn again asked for more advice to be prepared. The handwritten notes show she disagreed with officials' advice, believing that the Haemophilia Society should be funded and it should be given a preferential status [DHSC0041157_046].

- 3.21. Dawn's comments led to a further submission from Rowena Jecock to Dawn dated 31 March 2009 [DHSC0041157_035]. My Private Office was copied into this further submission. Dawn had requested further advice in relation to Lord Archer's recommendations that the level of *ex gratia* payments was uplifted, and that the future of the Haemophilia Society should be formally supported by Government.

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3.22. In relation to the payment schemes, this further submission started from the position of Dawn's preferred approach which was to:

- a) Replace the on-going discretionary payments made by the Macfarlane and Eileen Trusts with recurrent fixed payments.
- b) Harmonise the eligibility criteria for the Skipton Fund with those used by the Macfarlane and Eileen Trusts.

A table of the costs implications was set out with details in Annex A to the submission.

3.23. Officials were still arguing against the approach of providing Core Grant funding to the Haemophilia Society as this was contrary to the way in which the Department was now seeking to fund third sector organisations. Their advice remained in favour of funding which would allow the Society to build its capability and capacity, but not to fund its overhead costs for a longer period through a core grant.

3.24. By contrast, an email dated 6 April 2009, from Dawn's locum APS to Liz Woodeson and Rowena Jecock, shows Dawn and I wanted to pursue the idea of "*supporting the Haemophilia Society to have a greater advisory role*" and:

*"... • a way to put the Haemophilia Society on reasonably secure funding
[...] I understand the difficulties regarding moving away from
Government policy, but both SoS and MS(PH) want to do this"*
[DHSC5567339].

3.25. The submission also contained an update on the other recommendations made by Lord Archer (at paragraph 14 and following).

3.26. Again, these documents show Dawn carefully questioning officials' responses seeking to secure positive responses where possible.

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3.27. On 17 April 2009, Liz Woodeson provided a further submission to Dawn Primarolo regarding the response to Lord Archer's recommendations **[DHSC0041307_021]**. My Private Office was copied in. This drew together the position in respect of each recommendation. Handwritten comments, which appear to be from Dawn Primarolo, are at **[DHSC0041157_014]**. In summary on the recommendations:

(1) *A statutory committee to advise on the management of haemophilia.*

Dawn Primarolo had already agreed that she did not want such a committee, but the submission proposed taking advice from an alliance of haemophilia patients, haemophilia doctors and others such as nurses, physiotherapists and social workers.

(2) *Haemophilia patients and their parents to receive any test recommended by the statutory committee.* This was agreed (albeit with the recommendations to come from the above Alliance).

(3) *All blood donors to receive the same tests.* It was agreed that recommendations for tests for blood donors should be referred to the Advisory Committee on the Safety of Blood, Tissues and Organs (who were already advising on this issue).

(4) *Free prescriptions and free access to other services "not freely available under the NHS including visits, counselling, physiotherapy, home nursing and support services" for those infected.* Free prescriptions were already being reviewed by Professor Gilmore. With regard to home nursing and support services, that was a matter for local authorities who would need to take into account specific needs and costs associated with the person's condition or disability, which would include any additional costs related to HIV or Hepatitis C.

(5) *Secure future of Haemophilia Society by adequate funding.* There is a handwritten note from Dawn Primarolo agreeing ongoing core funding of £100,000 for five more years **[DHSC0041157_014]**.

(6a) *Financial assistance should be increased and take the form of prescribed periodic payments.* I can see it was agreed that the Skipton Fund would continue at current payment levels, with a review in 2014.

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For the Macfarlane and Eileen Trusts, two options were set out, either to level up the payment to £10,000 for everyone or to double the average payment from £6,400 to £12,800 per annum.

(6b) *Anomalies between and within schemes should be removed.* There were a range of arguments set out in this submission.

(7) *Access to insurance by providing premiums or setting up separate scheme.* The submission suggested that further information was required from the Association of British Insurers on this point.

(8) *A look back exercise to identify any others who may be infected.* According to the submission, this was accepted.

3.28. On 23 April 2009, after what was clearly detailed consideration with officials, Dawn then sent me the formal minute seeking my agreement to the Department's package of response to Lord Archer [DHSC0041307_026]. It stated:

"... I have been exploring Lord Archer's recommendations in detail with officials. I would like to respond positively as far as possible, whilst recognising that some of the recommendations are simply unaffordable, particularly at the present time".

Dawn attached to this note the further detailed submission from Liz Woodeson dated 17 April 2009 to which I have already referred.

3.29. The proposed responses were summarised in Dawn's minute as follows.

"... • That we do not agree to set up a statutory committee. Instead that we agree to seek advice on matters relating to haemophilia patients from the Haemophilia Alliance - an existing UK wide partnership between patients, haemophilia doctors and others involved in their care. And that we will meet formally with the Alliance twice a year (and fund the cost of those meetings).

• That we implement any tests for haemophilia patients and their partners recommended by this Alliance.

• That we refer any recommendations the Alliance makes for tests for blood donors to our advisory committee on the Safety of Blood, Tissues and Organs.

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- *That Professor Gilmore's review will consider the possibility of free prescriptions.*
- *That we give the Haemophilia Society ongoing core funding of £100k a year for five more years.*
- *That we leave the payments under the Skipton Fund for those infected with hepatitis C the same as they are now but announce we will review this in 2014 - ten years after the Fund was set up.*
- *That we change the system of payments made by the MacFarlane and Eileen Trusts to those infected with HIV to remove the discretionary element and give all recipients the same amount every year. And that we double the current average annual amount from £6,400 a year to £12,800 per year. This will cost around £7.6m per year in total - a total increase of £3.8 m per year. We will need to note this with Treasury both as a formal commitment of future spending reviews, but also to ensure consistency with wider public finance protocols.*
- *That we do not rectify any of the anomalies within and between the schemes. To rectify the main anomaly in the Skipton Fund would cost up to £54m and even to harmonise the lump sum payments between the two other Trusts would cost £19m.*
- *That the increased payments for MacFarlane and Eileen Trust recipients will help them to meet the increased insurance premiums they face. That we will continue to discuss the insurance issue with the Association of British Insurers.*
- *That we will carry out a look back exercise to try and identify any other patients with bleeding disorders who might be unknowingly infected. (This will cost around £50k)"*

3.30. Dawn went on to say as follows:

"... This package of measures will not satisfy Lord Archer or his supporters entirely. In particular we are likely to face significant criticism from the hepatitis C community as we will not be making any changes to the Skipton Fund. As mentioned above, to rectify the main anomaly in the Skipton Fund to make payments to dependents of those who died before it was introduced would cost up to £54m. And to introduce annual payments for Skipton Fund recipients, even if limited to those with the most serious form of the disease, would cost £10m per annum. (This assumes the same payment of £12,800 as for the HIV patients as it would be very difficult to justify giving them any less.)

Nevertheless I believe the above package does demonstrate our very real desire to help these patients. And I would hope that, particularly after yesterday's budget, Lord Archer and others would appreciate that we are doing all we realistically can.

Lord Morris has tabled an amendment to the Health Bill to require the establishment of the statutory committee that he recommends. This will

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be debated at Report Stage and may be reached next Tuesday. If you agree the proposals set out here then I suggest that we make clear in the debate that we are very sympathetic to Lord Archer, and that we will be responding very shortly to his recommendations. I believe this should be enough to persuade him not to press his amendment."

3.31. I responded to the submission as follows:

"Agreed. Good outcome if not all that Lord A would want"

3.32. I felt that we had done as much as we could to address Lord Archer's recommendations, particularly in respect of doubling the amount of money paid into the Macfarlane and Eileen Trusts and removing the discretionary elements so that all recipients received the same amounts each year. As I have indicated, we both recognised that would not satisfy those affected, but it would be a positive step forwards. Other measures, particularly curing the anomaly whereby the Skipton Fund did not pay the dependents of those who had died before the scheme was introduced were desirable but had considerable costs implications (£54 million in relation to that issue). Dawn had ruled that out, although I think that she would have discussed that with me before her minute of 23 April 2009. On this, I can only repeat that this has to be seen in the context of the acute financial challenges of the time, which is no doubt why Dawn referred to the very recent budget.

3.33. There was a Lords' debate initiated by Lord Morris of Manchester on contaminated blood products and Lord Archer's report on the same day, 23 April 2009 [HSOC0002256]. Baroness Thornton replied on behalf of the Government. She was not able to detail our response to Lord Archer's report because it was in the process of being finalised. Baroness Thornton also explained:

"... I say on behalf of this Government how deeply sorry we are for what happened. We acknowledge that these serious infections, which were acquired as a result of NHS treatment some two or more decades ago, have struck a particularly cruel blow [...]"

Our ability now to make properly informed assessments of the relevant events and decisions taken throughout the period in question – the 15

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years from 1970 to 1985 – is limited by the incompleteness of the documentary record, for which this and former Governments have apologised [...]

The department remains committed to publishing, in line with the Freedom of Information Act, any further relevant documents from these years. That is why it has reviewed the 35 remaining documents and I am pleased to report to the House that there are now only nine documents outstanding, and these contain personalised information within the terms of the Freedom of Information Act” [HSOC0002256].

- 3.34. Baroness Thornton also explained why Ministers and/ or officials did not give evidence to the Archer Inquiry:

“Apart from the fact that no one in the department has any direct knowledge of this, the department agreed that the evidence it held was documentary, which is why over 5,000 documents were released and copied to the noble and learned Lord for his inquiry. I appreciate that that may not completely satisfy noble Lords on this matter, but I also make the point that, as several noble Lords have indicated, this is the - beginning of a process of accountability for the Government on this important matter, and I do not doubt that we will have several opportunities to discuss it and take it forward” [HSOC0002256].

- 3.35. On 13 May 2009, Debby Webb sent a submission to Dawn Primarolo on the publication arrangements for our response to Lord Archer's report on contaminated blood and blood products [DHSC0041307_029]. My Private Office was copied in. This set out the proposed Government's response and recommended that this should be announced via a written ministerial statement on 20 May 2009. Consistent with that, there is a handwritten note on the top of the page which states, *“Alan – this outlines the plan to issue Government's response to the Archer Inquiry by WMS [Written Ministerial Statement] on 20 May: Dawn is content with this approach and to issue the WMS in her name: Are you content? Thanks Penelope 15/5”*. There is a tick with a date written 16/5 which suggests that I approved this on 16 May.

- 3.36. On 19 May 2009, Dawn Primarolo wrote to Lord Archer setting out the Government's response [DHSC0041240_070]. This stated:

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"... As you are aware, Alan Johnson and I have been carefully considering your recommendations. We acknowledge the strong moral case for Government to do what it reasonably can to ensure those affected are supported. To that end, we have committed to increase funding for those infected with HIV. We intend that in future payments of £12,800 per annum would be made to each infected individual. We will also increase funding for dependents of those infected with HIV.

We have committed to review the Skipton Fund for hepatitis C in 2014, when it will have been running for 10 years.

We will invite the Haemophilia Alliance to advise Government on matters relating to care of haemophilia. We will host twice-yearly meetings with the Alliance, and will invite all UK health departments to attend. In addition, we will establish a link between the Alliance and SaBTO, our independent expert advisory committee on the Safety of Blood, Tissues and Organs.

We will provide £100,000 per annum to the Haemophilia Society for the next 5 years. After this time, the Society will be expected to have in place an effective strategy to meet its future funding plans.

We will fund the UK Haemophilia Centre Doctors' Organisation to conduct a UK-wide review to try to identify any further patients with bleeding disorders who may have as yet unrecognised infection as a result of their treatment with blood/blood products.

In England, as you may know, we have commissioned Professor Ian Gilmore to review prescription charges for long-term conditions. We expect to receive Professor Gilmore's recommendations later this summer.

I believe these measures demonstrate our commitment to ensuring there is appropriate support in place for those affected , and provide reassurance about the seriousness with which we treat blood safety issues"

3.37. The Government's formal response was then published on 20 May 2009 **[DHSC0015670]**, as well as the Written Ministerial Statement **[MACF0000256_057]**.

3.38. There was, unfortunately, a negative reaction to the Government's response to the Archer report (the reaction was described as "... limited but negative") **[DHSC0041219_077]**. In light of this response, I can see from the available records that Dawn sought to re-open consideration in the sense of asking officials for options concerning the handling of the criticism; she also asked for

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more detailed information on why the situation in the UK was different from Ireland.

3.39. The result appears to have been a further submission from Rowena Jecock to Dawn on 2 June 2009 regarding the Government's response **[DHSC0041219_077]**. I can see from the copy provided to me by the Inquiry that the submission bears handwritten annotations to Dawn, presumably from her Private Office. Whilst this submission was copied to my Private Office, I have no recollection of it and suspect it would not have been shown to me given that Dawn had not yet (so far as I can see from the documents) given her own response to this submission.

3.40. My term as Secretary of State ended on 5 June 2009. Therefore, I was not involved in the detail from thereon in as I had other responsibilities. My successor was Andy Burnham.

3.41. Other documents to which the Inquiry has referred me post – date my time as Secretary of State, including:

(1) A submission dated 28 August 2009 from Debby Webb to my successor as Secretary of State, Andy Burnham **[DHSC0041307_002]**. This proposed that Mr Burnham retained the Government's previous response to the Archer Inquiry.

(2) The Written Ministerial Statement by Gillian Merron (Dawn Primarolo's successor), announcing that the review of the Skipton Fund would be brought forward **[ARCH0001105]**.

Questions raised by the Inquiry

- 3.42. In detailing the chronology above I have responded to most of the questions raised by the Inquiry, but I would add the following.
- 3.43. The Inquiry asks what steps I took on receipt of the note from Dawn provided to me at [DHSC0041219_018]. This document is labelled as a draft and so far as I can tell from the records I do not think that it was sent to me. The minute that did come to me from Dawn in finalised form was that of 23 April to which I have referred at paragraph 3.28 above. Dawn's minute of 23 April did not come out of the blue; she kept me informed of the progress of her work on the response and – as indicated – I agreed with the package she recommended following her detailed work with officials.
- 3.44. The Inquiry asks what action Dawn Primarolo and I took to “carefully consider” the recommendations in Lord Archer's report, as Dawn had indicated we had done in her letter of 19 May 2009 to Lord Archer [DHSC0041240_070]. I have summarised this in the chronology above. Dawn, in particular, went into great detail with officials about the response, pressing for further information, clarification and options leading to a significant number of submissions on what the response could and should be. Of necessity, it was Dawn who led on the details of this but – as I have indicated – she would have kept me fully informed.
- 3.45. I have been asked about the concerns Dawn Primarolo had. The Inquiry refers me to email correspondence between Morven Smith (APS to Dawn Primarolo), Rowena Jecock and others (which included my Private Office) on 25 February 2009 where it was noted that *“The [Minister of State] is very concerned about the contamination of NHS blood and blood products during the 1970s and 1980s. She is particularly concerned about how this issue has been handled.”* [DHSC5006534]. It was clarified in a further email from Morven Smith on 25 February 2009 that the Minister (Dawn Primarolo) *“was referring to the handling of the issue as whole in an historical context as well as how we came to the position we are at now. Particularly with reference to our position regarding a*

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public inquiry.” [DHSC5006534]. While I cannot now recall the details and specifics of conversations that Dawn and I had about this, I recall that she was frustrated at having to give assurances when she could not see some of the documents (those from previous administrations). She wanted to understand the background and – as I have indicated – repeatedly pressed for more information and clarification. At this early stage in our consideration of the response to Lord Archer (25 February 2009) for example, the same document shows that Dawn was seeking a list of the Ministers responsible for blood policy since 1970, as well as:

- “... 1. Copies of all documents withheld from the inquiry.*
- 2. Brief Chronology of patients being infected through NHS blood and blood products – in terms of when they have been identified as having been infected and, if known, when they are likely to have been infected.*
- 3. Details of any payments made directly to patients who received contaminated blood and blood products - in relation to the two additional payments made in the early 1990s – one in 1990 and one in settlement of litigation in 1991.*
- 4. Background on the setting up of all three trusts - MacFarlane, Eileen and Skipton*
- specifically:*
- how each was set up?*
 - why each was set up?*
 - how the amounts of funding were decided?*
- 5. A brief note on the attitude of the Government of the Day to this issue.*
- 6. How to respond immediately to the request for an apology to victims? I will show MS(PH) the note given to me by Rowena when she is back from her meeting, but can this also be included as part of this pack?*
- 7. How much can we give to the Eileen and MacFarlane Trusts as an immediate amount of additional resources?*
- 8. How to take forward consideration of each recommendation of the report? She needs a more robust response than was given in the previous note.*
- 9. What is in place so that this tragedy is never repeated?*
- 9. A note from MS(PH) to SofS on this issue and our proposed way forward/response.*

I understand that this is a huge amount of work to be gathered for tomorrow morning, but MS(PH) would like to put a note into SofS's weekend box which is going tomorrow at 14:00.

Thank you very much and I appreciate all your help to take this work forward immediately” [DHSC5006534].

- 3.46. I am asked to outline what investigation, analysis or enquiries were undertaken in order to reach the conclusion that *“action was taken as soon as possible to introduce testing and safety measures for blood and blood products as these became available.”* [ARCH0001160]. This quotation is from a Parliamentary Labour Party briefing, dated 27 May 2009. I should be clear that, by definition, this would not have been drafted by officials within the Department because it is a political briefing. These documents were drafted by Special Advisors and / or staff in the Parliamentary Labour Party offices. Decisions to introduce testing and safety measures were of course decisions taken by previous administrations and it is always difficult to accurately judge or review those actions, particularly when they took place many years ago. Dawn Primarolo paid particular attention to Lord Archer’s comments about procrastination. It was on the basis of this examination that I think our understanding was that technologies to improve safety (heat treatment and testing) were introduced as soon as they were available. However, I note that the briefing on Lord Archer’s report referred to the fact that in 2001 the Court had found that the UK should have introduced screening or surrogate tests for Hepatitis C earlier than it did [DHSC0041157_056]. This should have been reflected in the Parliamentary Labour Party briefing.

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- 4.1. The Inquiry asks me seven questions under this heading, which I will address under the following headings:
- a) DH's response to calls for a public inquiry;
 - b) DH's interactions with Scotland's Penrose Inquiry;
 - c) Whether the establishment and / or findings of inquiries in other countries affected the Government's decision not to hold a public inquiry.

4a. Calls for a Public Inquiry

- 4.2. The decision not to hold a public inquiry was taken before I became Secretary of State. That position had been the policy of successive Governments, both Labour and Conservative. Nor did the announcement of the Archer Inquiry change the position. As explained above, the policy was affirmed by my predecessor, Patricia Hewitt, in consultation with the MS(PH), then Caroline Flint, the Permanent Secretary Hugh Taylor and senior officials. The reasons for not holding a public inquiry were very similar to the justification for not providing officials / Ministers as witnesses.
- 4.3. The pre-existing DH position is reflected in a submission from 24 April 2007, provided by Liz Woodeson to Caroline Flint [DHSC0041193_026]. In terms of the request of a public inquiry, the submission noted that:

"... 6. The Haemophilia Society and others continue to press for an official government backed public inquiry. The submission to SofS dated 24 July 2006 sets out the background in relation to a public inquiry and the alternative option of appointing independent counsel. SofS responded that she did not want a public inquiry, but that if Ministers really believed an independent review by a QC was worthwhile - and affordable - then she would accept it. However she felt that it would fuel, not deflect, calls for a public inquiry.

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7. On the 19th February 2007, a non-governmental independent public inquiry into the supply of contaminated NHS blood and blood products was announced. The inquiry was launched by Lords Archer, Morris and Turnberg and opened on Tuesday 27th March. [...] There is little information on the exact nature of this inquiry. However, SofS has written to Lord Archer suggesting that DH officials meet with his team to explore areas where the department could assist the inquiry without becoming directly involved. She also agreed that a copy of the attached report be provided to Lord Archer.”⁶

4.4. When outlining the way forward, the submission stated:

“... 11. Given that this inquiry is going ahead, we assume that you will not want to pursue the option of commissioning an independent review by a QC for the time being. (We did not recommend this in our earlier submissions because we estimate that such a review would cost in the region of £200,000. We do not have funds available for this. And we doubt that it would satisfy external parties anyway as an independent review by a QC would not be able to compel witnesses to give evidence).”

4.5. The handwritten comments indicate that the proposals were approved by Caroline Flint and Hugh Taylor.

4.6. On becoming Secretary of State, the advice provided by officials was unchanged. Ahead of my appearance before the Health Select Committee on 25 July 2007, Linda Page (Health Protection Division) provided my private office with a briefing which stated:

“... ”

Lines to Take

4. The line to take as agreed with Ministers previously is:

The Government has great sympathy for those infected with hepatitis C and HIV. The Government has considered the call for a public inquiry very carefully. However, we believe the Government of the day acted in good faith, relying on the technology available at the time and therefore we do not consider that a public inquiry would provide any real benefit to those affected ...” [DHSC5011228]

⁶ The submission of 24 July 2006 is at [DHSC5228443].

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4.7. The briefing explained that successive Secretaries of State had resisted calls for a statutory inquiry because:

“... ”

- *A full judicial inquiry would be a major, costly and time-consuming exercise that would depend on the recollections of witnesses about events that took place twenty or more years ago. This would make it difficult to construct a clear and detailed picture of what took place.*
- *An inquiry would not add significantly to our current understanding of how the blood supply became infected with Hepatitis C, or the steps needed to deal with problems of this kind now or in the future.*
- *A public inquiry could undermine public confidence and affect the donor population, thus putting at risk the supply of blood to the NHS.*
- *There are many conflicting demands upon NHS resources and it was felt that the current ex gratia payment scheme (Skipton Fund (para 10 above)) should be aimed at assisting those currently living with hepatitis C as a result of this treatment.*
- *There is no evidence that any wrongful practices were employed. The release of a significant number of papers, with a minimal number withheld, could provide much of the information sought by interested parties.*
- *It should be noted that the no-fault compensation to haemophiliacs infected with HIV through contaminated blood products was based on the assessment that those who contracted AIDS would die within two years. With the improved treatment of AIDS, many people have lived longer than this...” [DHSC5011228]*

4.8. Reviewing the available documents, I can see that the same advice was provided to other Ministers in our ministerial team. For example, Lord Darzi was given a brief on 9 October 2007, ahead of his own appearance at the Health Select Committee [DHSC5059194]. My Private Office was copied in. The ‘lines to take’ regarding the calls for a public inquiry were identical to that given above.

4.9. On becoming Secretary of State, I received a number of letters on the issue of infected blood- including from the Chair of the Haemophilia Society (on 9 July 2007) [HSOC0029711] and from concerned individuals (e.g. [DHSC0006211_085]). The Inquiry has referred me to two letters which asked me to establish a public inquiry:

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- a) The Manor House Group (29 June 2007) **[WITN7197007]**. The Chairman's response to Dawn's reply (below) is at **[DHSC6548444]**.
- b) **GRO-A** the Chairman of Tainted Blood (6 July 2007) **[DHSC6548435]**.

4.10. Dawn Primarolo responded on my behalf to both letters. Both responses included the following paragraph, reflecting the decisions made by our predecessors and the advice we were given:

"... On the issue of a public inquiry into the issue of contaminated blood products, as previously stated, the Government does not accept that any wrongful practices were employed and does not consider that a public inquiry is justified. Donor screening for hepatitis C was introduced in the UK in 1991 and the development of this test marked a major advance in microbiological technology, which could not have been implemented before this time". **[DHSC6548424]; [GLEW0000176_001]**.

4.11. I do not recall seeing the above correspondence and it is unlikely that I did so. As the Inquiry will understand, big Departments can receive a very large volume of correspondence directed at the Secretary of State personally. I would often not see such correspondence because it would be responded to by the Minister within whose portfolio the issue lay. Out of necessity, officials would also reply to correspondence on my behalf.

4.12. However, a letter from me, responding to one of Jack Straw MP's constituents, also contained a very similar paragraph **[DHSC5557058]**. As I have already accepted in the context of the Parliamentary Labour Party briefing in paragraph 3.46, above, the fact that the High Court in 2001 had found that HCV testing should have been introduced sooner ought to have been reflected in the replies sent to this correspondence.

4.13. After the Archer Inquiry had concluded, officials did not propose that the Government's decision not to hold a public inquiry should change. On 26 February 2009, Rowena Jecock (Head of Blood Policy) provided a submission to Dawn Primarolo which sought to answer questions Dawn had posed about

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Lord Archer's findings [DHSC5034285]. My Private Office was copied in. The submission explained:

"... This and previous administrations have maintained that an official inquiry was unnecessary and not justified, given:

- the time that has elapsed*
- previous litigations and settlements – funds have been established to make payments to those infected with HIV and hepatitis C*
- we have issued a full review of all papers to 1985, with relevant documents – the full review found no evidence of any wrongdoing by government or the NHS*
- we have issued all available relevant official documents 1970-1985 – there is no need for an inquiry to find and set out the evidence*
- the lack of prospect of new lessons being learnt - the causes of contamination in the 1970s and 1980s are well known, and the necessary remedies have been in place for many years*
- and the high cost of a public inquiry (e.g Bristol Royal Infirmary, over £14 million; Royal Liverpool Children's (Alder Hey) inquiry, £3.5 million; Victoria Climbié inquiry, £3.8 million)."*

4.14. A handwritten note suggests that Dawn questioned the first justification given, on the basis that it was a circular argument [WITN5494035]. However, she appears to have agreed with the third, fourth and fifth justifications.

4.15. Dawn appears to have annotated the draft minute which had been drafted for Dawn to send to me (but which, as I have explained was not finalised and sent to me until considerably later) [DHSC0041157_056]; [DHSC5034285].⁷ Officials had recommended that in response to Lord Archer's report a statement of regret, in strong terms, could be issued for the fact that the infections had occurred. In that context, the annotations on this draft minute show that Dawn had raised the question of whether Ministers of earlier administrations could be approached in relation to the advice they had received. Officials were said to be very uncomfortable about that idea, and Dawn agreed with her APS's suggestion that she would like a note explaining their concerns.

⁷ The Inquiry has referred me to [WITN5494037], but this appears to be a photocopy of the above.

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4.16. The briefing note provided by Rowena Jecock to me and Dawn Primarolo ahead of our meeting with Lord Archer to which I have referred at paragraph 3.13 above, also addressed the issue of calls for a public inquiry [DHSC0041157_052] It reiterated as follows:

“ ...

8. The position of this and previous Governments is that this is a tragedy and there is every sympathy for those infected. However, it is important to remember the following points:

- the treatment given to haemophiliacs was the best available at the time and action was taken in good faith;*
- such treatments markedly increase the life expectancy (formerly 25 years) and quality of life of haemophilia patients;*
- as soon as technologies (heat treatment and testing) were available to improve safety, they were introduced;*
- evidence in relation to hepatitis C emerged over time, and the very severe long term consequences of infection were only fully recognised by the scientific community during the late 1980s;*
- legal proceedings in relation to HIV were settled out of court, on the advice of the litigants' counsel, without the Government being found liable;*
- special payments were set up for people infected with HIV, who waived their right to take further action against the Government;*
- Although litigants won damages against the blood service in 2001 for the supply of whole blood that was contaminated with hepatitis C, this was under the Consumer Protection Act 1988, under which companies have 'strict liability' for the supply of defective products. It did not imply negligence;*
- the present Government resisted calls for further funding until Scotland decided to make hepatitis C payments in 2003, when England followed suit.” [DHSC0041157_052]*

4.17. The Inquiry requests that I comment on a sentence contained within the introduction to the Archer Inquiry's report:

“The Department of Health maintained its view that the Inquiry was unnecessary” [ARCH0000001].

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4.18. As explained above, on balance I considered that DH's approach to this area was appropriate. I did not feel it was right to rescind previous Governments' decisions not to hold a public inquiry. As described in sections 2 and 3 of this statement, I was aware that Dawn Primarolo was heavily involved in the detail of these issues with officials. I do not recall, and nor do the documents suggest, that DH officials concluded there was a good case to hold a public inquiry and, therefore, such a submission did not reach me. I was also conscious that the matter was being investigated by Lord Archer. On that basis, I did not feel it was appropriate to alter the approach set by my predecessor.

4.19. I am also asked to set out my views on comments made by my successor, Andy Burnham, in a debate in the House of Commons on 15 January 2015:

"... I do not detect the failure being caused by Members of Parliament or, indeed, Ministers; I have met many who want to resolve this in the right way. I have to say that in my experience the resistance is found in the civil service within Government. That is often the case in examples such as this; I found the same with Hillsborough too. It is very hard to move that machine to face up to historical injustice." [RLIT0000771].

4.20. For my part, I did not meet resistance from the civil service on these issues during my tenure. As usual, officials set out the various options and commented upon them. Dawn Primarolo and I sought to question matters and officials in the appropriate way. Incidentally, during my time as the Home Secretary, I set up the disclosure process for Hillsborough with the full cooperation of the civil service. In order to appreciate the totality of my response, it is important to stress my understanding of the role of civil servants. Civil servants advise (and in my experience do so very effectively) and ministers decide.

4.21. Drawing upon my experience as a Cabinet Minister - it is probably fair to say that officials would generally be more reluctant than politicians to agree that a public inquiry should be held. I believe that is because of a concern that elected politicians may resort to them as a political expedient to pass a difficult problem to somebody else, rather than because such an inquiry would make a genuine contribution to resolving a difficult issue. Civil servants understand, however,

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that it is elected politicians who ultimately decide whether or not a public inquiry should be held.

- 4.22. Finally, I am referred to a statement made by Lord Fowler in oral evidence to this Inquiry on 21 September 2021 [INQY1000145]. Lord Fowler stated that the Government should have established a UK-wide public inquiry before now. To my knowledge, Lord Fowler was Secretary of State for the Department of Health and Social Security (as it was known then) between 1981 and 1987. He would be a better judge of the circumstances in the 1970s and 1980s, so I would defer to his opinion on that matter at the time. As explained, I was never asked by officials to consider having a public inquiry on this issue. Given all the advice I received from ministers and officials during my tenure as Health Secretary, and given the dire financial situation the country was facing, I am sure I would have felt that on balance a public inquiry so long after the event could not be justified. In hindsight, however, and from reviewing all of the documentary evidence sent to me, the balance, for me, has tipped in favour of such an inquiry.

4b. Other Inquiries: Scotland

4.23. As the Inquiry knows, the Penrose Inquiry was established in Scotland to investigate the transmission of blood-borne viruses to people in Scotland in the course of medical treatment provided by the NHS. The Inquiry was led by Lord Penrose and the final report was published in March 2015.

4.24. I have no independent recollection of my involvement in the Penrose Inquiry, but I have been reminded of the events from the documents provided to me. The documents indicate that Dawn Primarolo primarily dealt with this area.

4.25. Dawn Primarolo and DH officials considered whether the Government should join the Penrose Inquiry. However, the advice was not to do so. On 5 March 2008, following the Scottish Executive's decision to announce what would become the Penrose Inquiry, Patrick Hennessy provided Dawn Primarolo with a submission which reiterated "*[t]his and previous administrations have maintained that an official inquiry is unnecessary and not justified*" and listed the relevant reasons [DHSC5003744]. It explained:

" ...

8. The Scottish National Party's manifesto, prior to the last election in Scotland in 2007, included a commitment to a public inquiry into contamination by hepatitis C. At a meeting in the summer the Scottish health minister confirmed to interested parties that an inquiry would be set up in Scotland, but in order to avoid duplication of work it was proposed to wait upon the conclusion of Lord Archer's independent inquiry before deciding on the scope.

9. This situation changed in February when a judicial review in Scotland concluded that it had been wrong not to convene an accidental death inquiry into two deaths from contamination by hepatitis C. (There is no inquest system in Scotland and an accidental death inquiry is broadly equivalent.) This was deemed to be non compliant with the European Convention on Human Rights. The SG is now required to return shortly to the judge to say how it would seek to become compliant.

10. Following a meeting between Lord Archer and Scottish Government officials (attended by this Department) it was decided by the Scottish Government not to wait for Lord Archer's report before announcing plans for a Scottish inquiry. We have now been informed that a general inquiry into contamination by both hepatitis C and HIV, which includes the two

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deaths at issue, will be announced before the end of March. There is therefore an urgent need to review the UK position before that announcement.

11. We are awaiting legal advice on the implications for the rest of the UK of the Scottish Inquiry. We will send a further submission covering the options for the UK Government when this is available" ...

[DHSC5003744]

- 4.26. Ian Bishop, Dawn's APS, seems to have endorsed that submission on 6 March 2008 and noted:

"For Info

A further submission with legal advice will follow – however Scotland's decision could significantly weaken our lines, which may be coupled with the imminent publication of Lord Archer's review" [DHSC0038592_080]

- 4.27. On 12 March he added:

"Officials have advised that we would have a good legal case for not joining the Inquiry- however they are concerned re handling implications/ risks re highlighting devolution tensions and are concerned this may become politically sensitive - and as such are seeking an initial steer as to whether you are still minded to retain our current position. Your initial views are sought before Friday" [DHSC0038592_080]

- 4.28. Dawn Primarolo endorsed that by hand stating:

"Ilan, for now we should hold our line. We are not to join Scottish Enquiry. Officials must keep events under close scrutiny - and report back regularly so that I can keep our position under review" [DHSC0038592_080]

- 4.29. On 1 April 2008, a submission was provided to Hugh Taylor (who agreed it) and Dawn Primarolo, copying in my Private Office **[WITN7197008]**. It recommended against joining the Penrose Inquiry. The advantages and disadvantages of doing so were expressed as follows:

" ...

- Advantages of joining the Scottish inquiry

- The UK Government could have some influence over the proceedings, in particular the scope and identity of the inquiry panel (the Scottish

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government proposes that this will consist of a Chairman who will be a judge).

- Initial reaction from stakeholders and the media would be likely to be favourable, although such a change of direction would inevitably attract comment.

- Disadvantages of joining Scottish inquiry

- Public inquiries are very costly and the costs are not easy to control.

- The UK Government would have little influence over the direction of proceedings once the inquiry was established.

- UK Government Ministers, officials and NHS bodies from England may be summoned to give evidence.

- The recommendations would apply to the UK.

- There would be a diversion of funds which would be better spent on healthcare given the minimal chance of adding to current knowledge or learning of new lessons.

- Advantages of staying out of Scottish inquiry

- UK Government Ministers, officials and NHS bodies from England and Wales cannot be summoned to give evidence (but could choose to do so voluntarily).

- The recommendations would not apply to the UK, and although they might be seen as relevant, the UK would have options as regards its policy in response to the inquiry.

- Cost savings: a Scottish commitment is met from Scottish Government funds.

- Disadvantages of staying out of Scottish inquiry

- It may exacerbate Scottish-UK Government relations.

- There may be a legal challenge to this decision, citing Article 2 of ECHR, as in Scotland (although lawyers believe there are good reasons why this would be unlikely to succeed in England, as set out in Annex A).

- There is likely to be strong criticism from campaigners, interested Parliamentarians and media, requiring strong defence of the UK position...".

4.30. The recommendation was to "say that we understand the legal need for an inquiry in Scotland but emphasise that this does not apply to England"

[WITN7197008]

4.31. Annex A contained a summary of legal advice, which stated there was “no similar obligation” to hold a similar inquiry covering England because:

“ ...

d. In England there is the possibility of an inquest.

e. Further, there has already been substantial investigation into hepatitis C infections such as reports on the self-sufficiency of blood products and on the documents relating to the safety of blood products.

f. The relevant facts and documents are in the public domain.

g. A full public inquiry would not add to current knowledge about how infections happened or the steps needed to deal with this kind of problem now or in the future.

h. There is little risk of future infection of hepatitis C from blood or blood products and that has been the case since 1985.

i. All the important lessons have been learnt and there are no new issues or areas for improvement which remain to be identified.

j. Thus there would be no practical benefit to be gained from a full public inquiry which would be a time consuming and expensive process, diverting funds away from health services and would depend on the recollection of witnesses about events which took place over 20 years ago.

k. There is an additional argument in the case of hepatitis C through blood transfusions (as opposed to from Factor 8 for action under the Consumer Protection Act 1987 in the case of A and another v National Blood Authority and another (2001). This considered whether Hep C infections through blood transfusions could have been avoided. Therefore it is arguable that there has already been an effective investigation into this particular issue.

l. The objectives of Article 2 investigations, namely minimising the risk of future deaths, giving the beginnings of justice to the bereaved and assuaging the anxieties of the public have already been served.

m. Similar grounds apply to contamination with HIV. The causes are well known and are set out in the relevant medical and scientific literature. Measures have been in place since 1985 to prevent further risk. There is no case that, after this time, an inquiry is necessary to establish the facts and prevent further cases...” [WITN7197008].

4.32. In a covering handwritten comment, Ian Bishop briefly summarised the content of the submission and stated, “Given your previous steer, I assume you are

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content for the Govt. to stay out of the Scottish Inquiry" [DHSC0038592_075].

Dawn annotated that comment indicating that she agreed.

- 4.33. That submission was followed by a further submission on 22 April 2008, which contained 'lines to take' ahead of the Penrose Inquiry being formally announced. The advice from officials was that the NHS took appropriate steps given the knowledge and technology available at the time [WITN7197009] [WITN7197010].
- 4.34. On 18 November 2008, Patrick Hennessey provided a submission to Dawn Primarolo [DHSC0041307_110]. My Private Office was copied in. It explained that there was a possibility Lord Mackay, the judge sitting on the judicial review in Scotland, could decide that the Advocate General for Scotland had to be joined as a party to the Penrose Inquiry. Given that the Advocate General was a UK Minister, officials were concerned that such a decision would effectively turn the Penrose Inquiry into a joint inquiry by the UK Government and the Scottish Executive. The submission asked for approval to appeal the judge's decision should it become necessary.
- 4.35. The handwritten notes on the submission indicate that Dawn Primarolo agreed to officials' 'strong' recommendation that an appeal should be lodged in the event of an adverse decision. I must also have seen this submission as there is a tick, my initials and the date 22 November. In the event, Lord Mackay rejected the application to join the Advocate General as a party to the Scottish public inquiry [DHSC0041240_204].
- 4.36. The submission also explained that DH's approach to the Penrose Inquiry was very similar to that taken to the Archer Inquiry. DH was willing to help by providing documents, but decided not to appear as witnesses [DHSC0041307_110].

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4.37. On 12 January 2009, a further submission from Patrick Hennessey to Dawn Primarolo advised that Lord Mackay's judgment meant it was "*very likely that the UK government will have to give some further commitment to the Scottish Executive (SE) to co-operate with the Scottish inquiry*" [DHSC0041240_204]. It was noted that the UK had already given an undertaking in 2008 to co-operate in general terms. Dawn's handwritten note confirmed that she had seen and noted the submission.

4.38. A submission was sent from Patrick Hennessey to Hugh Taylor and Dawn Primarolo on 5 February 2009, stating "*the judge has indicated that a commitment from the UK Government to support the inquiry will be necessary*" [DHSC0041157_067]. My Private Office was copied in.

4.39. Dawn Primarolo agreed that the Permanent Secretary should write a letter providing the requisite assurances. However, there is also a handwritten note from Dawn questioning whether Scotland's agreement to hold an inquiry was a 'backdoor' way of holding a UK-wide inquiry.

4.40. The requisite assurances to the Penrose Inquiry were provided by Hugh Taylor on 9 February 2009:

" ...

As I am sure you are aware, the Department of Health has already made a commitment to release into the public domain all the relevant documentation that we hold on blood safety in the years from 1970 up to 1985 [...]

More recently, we have identified some further documents from those years that we intend to release as soon as they have been prepared in line with FOi. I am content that they do not add to our understanding of these events, but they will be released in keeping with our commitment. Lord Penrose therefore will have a considerable weight of documentary evidence already to hand. I can assure you that we will offer all reasonable assistance to Lord Penrose in explaining to him what other documents are held at this Department, and in making available to him any additional documents that he feels necessary to his inquiry. We may need to discuss with him how to meet our other obligations in respect of official documents, for example, protection of personal information and

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documents subject to legal professional privilege, but I am sure this will not inhibit this cooperation to any significant extent. As a starting point, we can supply Lord Penrose with a list of all the files held by this Department on blood safety or related issues in the years he intends to cover.

In relation to the provision of personal testimony, none of my officials currently in post would be able to provide personal evidence of the development of policy in the years in question. However, we have issued two reports on these events, one on hepatitis C as referred to above, and one on the development of self-sufficiency in blood products in England and Wales. Two of my officials, together with two experts from NHSBT, had a private meeting with Lord Archer of Sandwell, who as you know is conducting an independent private inquiry, to answer questions from his team arising from these reports and from the official documents that we have issued, in so far as they were able to do so. We would be very happy to provide similar help to Lord Penrose in his examination of the available documentation.

Others who were actively involved at the time may be able to provide Lord Penrose with further help. I note that a number of former experts and Ministers gave evidence to Lord Archer, and no doubt those with knowledge of these events who may be approached by Lord Penrose will consider his invitation in a positive light. I do not intend to discuss any such invitations with those concerned, nor would it be appropriate for me to do so. However, we will naturally provide whatever help we can to former Ministers or officials who may wish to assist Lord Penrose with his inquiry, and who may need to consult relevant documents from former years before doing so.

I hope this letter is helpful in setting out what assistance Lord Penrose can expect from this Department.

I understand that a copy of this letter may be lodged with the court, and I am also sending a copy to Lord Penrose." **[DHSC0041157_042]**

- 4.41. After my departure from the DH as Secretary of State, a further submission was sent by Debby Webb to Andy Burnham on 28 August 2009, where it was noted that "... it is reasonable to assume that [Lord Penrose's] inquiry may increase the pressure on DH ministers to do more for those affected." **[DHSC0041307_002]**. My views on whether a public inquiry was necessary have been set out in section 4a above.

4c. Other Inquiries: inquiries abroad

4.42. I am asked whether the establishment and findings of inquiries in other countries, such as Canada, France and Ireland, affected the Government's decision not to hold a full public inquiry during my time in office. I do not recall the details of these matters, but the reasons for the Government's decision not to hold a public inquiry have been set out in section 4a above.

4.43. Officials provided advice that there was a distinction to be applied between the situation in the UK and other countries. Before I was Secretary of State, for example, a draft submission from Linda Harper to the CMO and the-then Minister of State explained:

" ...

4.6. Haemophilia patient groups have cited Ireland and Canada as paying significantly higher sums to those infected with post-transfusion hepatitis C, in both cases negligence was found. The Irish Government set up their hepatitis C compensation scheme following evidence of negligence by the Irish Blood Transfusion Service. A judicial inquiry, the Finlay report, found that "wrongful acts were committed". It is important to stress that the blood services in the UK have not been found to be similarly at fault. Compensation is therefore being given in very different, specific circumstances in Ireland that do not apply in the UK. The Irish scheme does not create any precedent for us.

4.7. The awards being made in Canada follow a class action brought against the Canadian Government. The compensation from the federal Government is limited to those infected between 1986 and 1990. Subsequent inquiries found that wrongful practices had been employed, and criminal charges were made against organisations including the Canadian Red Cross Society. Those conditions in Ireland and Canada do not apply in the UK ..." [DHSC6359060].

4.44. This position continued whilst I was Secretary of State. Linda Page's briefing ahead of my appearance at the Health Select Committee, dated 19 July 2007, stated:

" ...

19. There are a number of examples of countries such as France, Ireland and Canada where trials/inquiries have led to large compensation amounts. The circumstances are different as fault was determined, though the lobby groups do not make that distinction". [DHSC5011228]

- 4.45. A briefing pack on the internal DH document review contained the following information:

“...

Disparity with Canadian scheme

It is important to make a distinction here. The awards being made in Canada follow class action brought against the Canadian Government. A settlement agreement was reached with the federal government, and as such the payment structure was based on claims for punitive damages. The compensation from the federal government is limited to those infected between 1986 and 1990.

Subsequent inquiries found that wrongful practices had been employed, and criminal charges were made against organisations including the Red Cross Society, who were responsible for screening blood in Canada at the time. We do not acknowledge any such wrongful doing in England, so it is unfair to compare the two schemes.

Comparison with Irish scheme

The Irish Government set up their hepatitis C compensation scheme following evidence of negligence by the Irish Blood Transfusion Service.

A judicial inquiry, the Finlay report, found that "wrongful acts were committed". It is important to stress that the blood services in the UK have not been found to be similarly at fault. Compensation is therefore being given in very different, specific circumstances in Ireland that do not apply in the UK..." [DHSC5040550]

- 4.46. A briefing provided by Patrick Hennessy to my private office on 22 April 2008, just before the Penrose Inquiry was publicly announced, contained the following 'question and answer':

“...

Other countries such as Canada and Ireland have paid more in Compensation

Different countries have set payment schemes at levels that they feel are right for their circumstances, for example, in relation to the level of negligence or fault that was identified in their blood supply services.

We have set payments that are appropriate in the UK context..." [WITN7197009]; [WITN7197010].

- 4.47. The same advice was provided specifically with respect to Ireland. The initial submission on Lord Archer's recommendations was sent by Rowena Jecock to

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Dawn Primarolo on 24 February 2009, copying in my Private Office **[WITN5494033]**. It was endorsed with a handwritten note (from the context, this appears to have been from Dawn Primarolo's APS informed by discussions with officials) which stated:

"The Government at the time (1980s) did not accept that there was a case to be answered and did not accept blame. In Ireland, the Government did accept blame and thus offered compensation ..."
[WITN5494033].

4.48. Rowena Jecock's further submission to Dawn Primarolo on 2 June 2009 explained why the position in Ireland was said to be different as compared to the UK:

" ...

3. *The Government here has never accepted any liability. We believe that people were offered the best treatment available at the time and that as soon as blood screening tests were available they were implemented. [...]*

4. *In Ireland also, the State did not explicitly admit liability. However, contrary to the position in the UK, the Irish Blood Transfusion Service (IBTS) was found, by a judicial inquiry, to have been responsible on two occasions (1977 and again in 1991) for failures which resulted in the large-scale contamination with hepatitis C of a blood product used to treat pregnant women. [...] The Irish Government therefore set up a hepatitis C compensation scheme in 1977 for the infected women following this conclusion, and because of the threat of litigation (which the Irish Government believed it would lose). The compensation scheme was later extended to all people infected with hepatitis C through blood products and blood transfusion, as some infected women had donated blood and thereby infected others. **Annex A** contains a Hansard extract from 2004, in which Lord Warner contrasts the position in Ireland with that in England for hepatitis C.*

5. *Haemophiliacs with HIV in Ireland initially received similar ex-gratia payments to those in the UK, but successfully campaigned to be included in the more generous hepatitis C scheme. If you were to decide to increase significantly the payments to hepatitis C patients and/or their dependents, it seems reasonable to assume that the HIV community would push for similar increases..."* **[DHSC0041219_077]**.

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4.49. Officials' advice was reflected in correspondence issued by DH. An undated and unsigned letter (which may be a draft) from Dawn Primarolo responding to a letter date 30 July (presumably 2007) from Norman Lamb MP, stated:

"... Turning to your comments about the Republic of Ireland, it has never been established that any wrongful practices were employed in the UK, which is why successive Governments have concluded that a public inquiry is not justified..." [DHSC6548448].

4.50. The Inquiry asks whether the establishment and / or findings of Inquiries in other countries played a role in the Government's decision not to establish a public inquiry. As the decision was made by my predecessor I have no first-hand knowledge, but I would be surprised if developments in other countries were not considered. As indicated above, however, the advice from officials was that the situation in the UK as a whole was different from that both in Canada and in Ireland. To the best of my knowledge and recollection, I do not believe that the findings of any inquiries held in another country affected DH's decision. I have set out the reasons for the Government's decision in Section 4(a).

4.51. The Inquiry has referred me to a number of documents which post-date my time as Secretary of State. In brief:

- a) I understand a haemophilia patient subsequently, and successfully, challenged the Government's response to Lord Archer's recommendation on financial relief [DHSC0041307_002]. In part, the challenge was based on the fact that there had been an error of fact by the Government in their understanding that the Irish scheme had been introduced on the basis of Irish inquiry findings of fault. I was not aware of that matter at the time because my tenure had ended by the time proceedings were served (26 August 2009).
- b) On 13 July 2011 a note from the House of Commons Library (dated 13 July 2011) was provided to Members of Parliament titled 'HIV and Hepatitis C infection from contaminated blood and blood products' [MACK0002055]. The note states that substantial inquiries were undertaken in Canada (the Krever Commission) and Ireland (the Finlay

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and Lindsay Tribunals), both resulting in “*significant reform of the systems for supply of blood and blood products and establishment of compensation schemes*” [MACK0002055]. The report noted that Ireland provided “*substantially higher payments than the UK schemes but successive government have rejected comparability on the basis that the Irish scheme was established to compensate victims for wrongdoing by a government agency but that no similar wrongdoing occurred in the UK*” [MACK0002055]. The document suggested that some had disputed the distinctions drawn between the UK and Ireland. The core findings of the judicial review were set out. The note then referenced subsequent developments under the Coalition Government from 2010 onwards. I am not in a position to assist with those developments, which occurred after my time in office.

Section 5: Other issues

- 5.1. I have been asked to provide a chronological list of all statements, speeches or interventions made by me in Parliament both during my tenure as Secretary of State or during my time in Opposition, insofar as relevant to the Inquiry's Terms of Reference.
- 5.2. A search of Hansard has been conducted on my behalf. The results suggest that I did not personally speak on such matters. In the House of Commons, it was appropriate that Dawn Primarolo should address the issues herself; she was the Minister responsible, directly and heaving engaged with the issues, and of course was a minister of Minister of State rank. Lord Darzi would have been the main minister speaking to the relevant issues in the Lords, although Baroness Thornton handled the debate on 23 April 2009.

Statement of Truth

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

Signed GRO-C

Dated 27th of August 2022