Witness Name: Ms Nicola Sturgeon
Statement No: WITN7299001
Exhibits: 0
Dated:

INFECTED BLOOD INQUIRY

FIRST WRITTEN STATEMENT OF NICOLA STURGEON

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 18 August 2022.

I, Ms Nicola Sturgeon, will say as follows: -

Section 1: Introduction

Q1

1. My name is Nicola Ferguson Sturgeon and my contact address is c/o Scottish Parliament, Edinburgh EH99 1SP.

2. My date of birth is GRO-C 1970 and my qualifications are LLB (Hons) [1992], Diploma in Legal Practice [1993].

Q2

3. Below I set out my employment history, roles and responsibilities throughout my career:

3.1 Pre-Parliament Employment

Solicitor Traineeship, McLure Naismith (Glasgow), 1994 - 1995
Solicitor, Bell & Craig (Stirling), 1995 – 1997
Solicitor, Drumchapel Law & Money Advice Centre (Glasgow), 1997-1999

3.2 Member of the Scottish Parliament

MSP for Glasgow Region 1999 – 2007.

MSP for Glasgow Govan 2007 – 2011.

MSP for Glasgow Southside 2011 - Present.

3.3 SNP Positions 1999 - 2007

Shadow Minister for Education and Children, May 1999 to 26 September 2000.

Shadow Minister for Health & Community Care, 26 September 2000 - May 2003 (hereinafter referred to as 'Shadow Health Minister')

Shadow Minister for Justice, May 2003 - 3 September 2004.

Leader of the Opposition and SNP Depute Leader, September 2004 - May 2007.

3.4 Committee Positions

Education, Culture & Sport, 17 June 1999 – 30 November 2000

Health & Community Care, 2 November 2000 – 31 March 2003 (hereinafter referred to as 'Health Committee')

Justice 2, 4 June 2003 – 30 September 2004

Europe & External Relations [Substitute], 3 September 2003 – 30 September 2004

Q3

4. My membership of the Scottish Parliament's Health Committee from 2000-2003 was broadly concurrent with my holding the position of Shadow Health Minister on behalf of the SNP.

5. I did attend a meeting of the Health Committee on 25 October 2000 on the topic of haemophilia/Hep C. This was immediately prior to being appointed Shadow Health Minister and becoming a member of the Health Committee. MSPs have the right to attend any committee and with the permission of the Committee Convener participate (but not vote) in proceedings. My

colleagues Shona Robison MSP and the late Brian Adam MSP similarly attended these proceedings. Our principal interest was that these matters had been raised with us by constituents affected by these issues.

6. My participation in the Health Committee, and its investigatory work into the issue of haemophilia/infected blood products strongly influenced how I sought to take this matter forward as the Shadow Health Minister, but my initial engagement in the issue came directly from the concerns of constituents.

Q4

7. My involvement in any investigations into these matters prior to becoming Health Minister was as a member of the Health Committee during an inquiry prompted by two petitions to the Scottish Parliament's Petitions Committee. This work by the Health Committee was concluded in October 2001.

8. In my capacity as Health Minister, I commissioned the Scottish Public Inquiry into Hepatitis C/HIV acquired infection from NHS treatment in Scotland with blood and blood products [Penrose inquiry] on 23/4/2008 [MACK0001174].

Section 2: Questions relating to Shadow Government Roles (pre-June 2007)

Section 2(A): Scottish Executive Internal Review

Q5

9. Upon becoming an MSP in 1999 I, and other MSPs, were contacted by constituents who had either been affected personally, or had family members affected by infected blood products.

10. Following pressure for a public inquiry into this issue, led in the Scottish Parliament by the late Brian Adam MSP, the then Scottish Executive, in December 1999, commissioned an internal investigation into the role of the Scottish National Blood Transfusion Service (SNBTS) in hepatitis C infection via contaminated blood within the haemophilia community.

11. The final report into this internal investigation was published on 24 October 2000 (GGCL0000010) and the Health Committee took evidence from then Health Minister Susan Deacon the following day on 25 October 2000 (SCGV0000173_049). While not a member of the committee at that time I attended the meeting - alongside colleagues Brian Adam and Shona Robison - to put questions to Ms Deacon. Constituents had raised concerns with us on the process and completeness of the report.

12. At that stage I pressed the Health Minister on two points: first the need for a public inquiry; and second the need to provide fault compensation for those whose lives were affected by these infections.

Q6

13. With parliament in recess from early July to September 2000, the matter of the internal investigation report was raised by MSPs through written questions, and from these it seemed clear that the Health Minister had received the internal investigation report in August 2000, but only intended to publish it at a later date.

Q7

14. My view was that an internal investigation into these matters, for the reasons summarised below, would not command confidence, but instead (rightly or wrongly) fuel suspicion that certain facts or findings were being withheld from public scrutiny - hence my use of the term 'whitewash' (HSOC0020387_009).

15. To expand, the Scottish Executive Health department was effectively one and the same organisation in governance terms as 'NHS Scotland'. The civil service Director General Health is also the Chief Executive of NHS Scotland. The need to ensure public confidence in the outcomes of investigations about health/NHS matters, and ensure that lessons are properly learned, often requires external investigation and validation.

16. As far as the 'Internal report' was concerned, those affected by these issues lacked confidence in its independence, transparency or robustness. Many also felt that the process and findings displayed no appreciation of the impact of these issues on their lives.

17. The Haemophilia Society and others were unhappy that supporting evidence to back up the conclusions of the Internal Report had not been published, and so the opportunity to properly scrutinise or interrogate its findings was constrained. There was also disquiet that material submitted from people with haemophilia did not appear to have been fully considered. The internal nature of the investigation undermined confidence in it. Indeed, the position of the Scottish Executive - which was to maintain that there should be no independent investigation/inquiry and no compensation - intensified a belief amongst campaigners that they were not being presented with a full or accurate account.

Q8a

18. As with Q7, one of the central problems was that the report was 'internal' - given the governance of the Scottish Executive Health Department and NHS Scotland, set out above, this could be said to amount to the Executive effectively investigating itself. It is beyond doubt, in my view, that even if this did not in fact limit the scope and findings, it did undermine confidence in those findings. Had it been a full external investigation, and had those infected with Hep C been offered support on a similar basis to those infected with HIV, then it is possible that the reaction to the final report would have been different. As it was, those most impacted were left feeling ignored and devalued by the internal report. It also deepened suspicion that the 'truth' was being covered up.

Q8b

19. As with Q7 and Q8a, affected constituents and campaigners were left disheartened as they had engaged with the new parliament's procedures in good faith, raising issues with MSPs and through petitions. Despite a majority of MSPs backing Brian Adam's motion calling for a public inquiry the Scottish

Executive resisted. The consequence of the internal investigation not being external/independent or fully engaging with people with lived experience, was that there was no confidence in its outcome. There was a view - very likely justified - that the final product had not been fully informed by the facts.

Q8c

20. The Scottish Executive commissioned the internal review and so, in a very literal sense, it could be claimed that the commitment to 'take a fresh look' had been upheld. However, for the reasons set out above about the internal nature of the review, I do not believe that this delivered in a meaningful way on the commitments made.

21. As a result, a number of MSPs, myself included, continued to press these issues. The Health Committee conducted its own investigation, which concluded in October 2001 that the key priority should be the payment of no fault financial assistance within 12 months, rather than such compensation being delayed by, or contingent upon, further investigations/inquiries. The Scottish Executive sought to present this at the time as the Committee rejecting a public inquiry. This was not accurate, as was made clear by the Committee Convener in a debate in the Parliament in January 2002:

> "*The next key issue for the committee was whether it should support the Haemophilia Society's call for a full and independent public inquiry. The society made a compelling argument that the Executive's internal inquiry was not open or transparent and involved an inherent conflict of interests, as the department was investigating one of its own branches…the committee believed that a case could be made for further investigation …[but] questioned what that would seek to achieve.*
>
> ***We decided that the key priority was for the hundreds of individuals and their families to be given financial and other practical assistance rather than for a further two to three years to be spent in an inquiry seeking to apportion blame and prove negligence**. However, **it is misleading to suggest, as the Executive did in its initial response to our report, that we therefore concluded that a further independent inquiry was not desirable.** Our conclusion requires to be placed in the context of all our other conclusions and recommendations, especially our key recommendation that a mechanism for offering financial assistance to hepatitis C sufferers who were infected through treatment with blood and blood products should be put in place within 12 months. It is quite likely that, if the Executive decides to reject that recommendation totally, following the work of the*

expert group, the committee will want to revisit the issue of whether an inquiry is needed." [HSOC0009470]

22. In late 2001, Malcolm Chisholm - who had been a member of the Health Committee during some of its work on this issue - was appointed Health Minister. From his work on the Health Committee, I was of the view that Mr Chisholm was likely to be more sympathetic to calls for compensation than his predecessor had been.

23. Mr Chisholm indicated in response to the Health Committee's recommendations that he would establish an expert group to review the issue. In March 2002 he tasked Lord Ross with examining the issue of financial and other support for people suffering from Hep C. This action seemed to accept - at least in part - that the previous internal report had fallen short of what was needed on this matter.

24. Between the publishing of the internal report and the beginning of the Expert Group's work, the matter was also raised a number of times, by myself and others, in the Scottish Parliament chamber, including during sessions of First Minister's Questions.

Q9

25. Central to this whole issue, in my view, was a question of simple justice.

26. Ultimately, this was not just a question of whether unfortunate and unavoidable accident, negligence or deliberate malice had led to infected blood products being used – important though that was - but also one of what responsibility, in any event, the relevant authorities should owe to those affected. Whether accident, negligence or malice, the devastating impact on the lives and wellbeing of those infected was the same.

27. For that reason, I considered the case for compensation to be compelling and that it should not be dependent on any further inquiry into the circumstances which resulted in infected blood being used. I also considered that the principle of no fault compensation was as relevant for those infected with Hep C as for

those infected by HIV. By contrast the then Scottish Executive, prior to Mr Chisholm becoming Health Minister, seemed determined to distinguish between these situations and resist compensation for those infected with Hep C.

28. This struck me as untenable - either the Scottish Executive should have concluded that no fault compensation should not be awarded for either HIV or Hep C (a position that, for the avoidance of doubt, I would have opposed) or it should have concluded that compensation be paid to those infected with either HIV or Hep C.

Q10

29. By December 2000 it seemed clear from evidence to the Health Committee that the internal report was not a complete picture, but that it was nevertheless being used by the then Scottish Executive to justify not providing financial support to the many people affected. Perhaps most prominent in raising areas of specific concern at that time were Scottish members of the Haemophilia Society (who later became Haemophilia Scotland). For example, Bill Wright was a constituent of John Swinney and the late Philip Dolan was resident in the region I then represented.

30. I do not recall any specific response to this letter [HSOC0020387_015] from the Scottish Executive.

Q11a

31. On the issue of Hep C the description by the Convener of the Health Committee of communications difficulties with the Scottish Executive was accurate [SCGV0000174_032, col. 1326]. The Convener, on behalf of the Committee, wrote to the Scottish Executive on this issue on a number of occasions, and as far as I can recall these letters went without response. Even then, it would have been unusual, to say the least, for the Scottish Executive not to respond with greater priority to correspondence from a Parliamentary Committee.

Q11b

32. The Health Committee was broadly supportive of further examination. The Convener was clear that it should seek to go wherever the evidence took it. Some Labour members clearly preferred that any examination should be limited, but the failure of the then Health Minister to meet with the Haemophilia Society subsequent to the internal report being published seemed to reinforce the determination of the Convener and other members that commitments given to the Committee by the Minister should be honoured.

33. At that time reports emerged that while Hep C had not been classified as such in the 1980s, there had been recording of non-A and non-B hepatitis. This undermined conclusions in the internal report to the effect that no-one could have been identified due to the absence of Hep C classification. This further eroded the confidence of some Health Committee members in the internal report, and reinforced a view that further inquiry/evidence was necessary.

34. While a public inquiry at an earlier stage would have been welcome in my view, as per Q8c, the committee as a whole was able to coalesce around the pragmatic point that, irrespective of any further investigations, the priority should be financial support for those infected.

Section 2(B): Calls for a public inquiry (Part I)

Q12.

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35. As per Q7, the Scottish Executive Health Department and NHS Scotland are essentially one and the same. For purposes of administration of the health service, with distinct geographical and special health boards planning and providing day to day care, this is an effective model of governance. However, it means that whenever a substantial or contentious issue in the historical or current provision of services emerges there must be utmost care to ensure that investigations are above reproach. To achieve this, independent external expert assurance is often required, and ideally should involve and empower people with lived experience of the issue under investigation. That does not mean every issue requires a public inquiry, but it does mean that people

affected cannot be left with the impression that those conducting an inquiry have 'marked their own homework' (which, specifically, is what I would have meant by 'conflict of interest') and/or are dismissive of their concerns.

36. An internal report without clear input from external parties, especially those represented by the Haemophilia Society/Haemophilia Scotland, was always likely to give rise to concerns about cover-up and conflict of interest as a result.

Q13a

37. As per Q9 I felt strongly about the lack of justice inherent in the situation. Having heard in evidence to the Health Committee and from constituents about the impact on people infected, I could see no other acceptable outcome (whether or not a public or other form of further inquiry was to be held) than compensation being made available, as it had been for those infected with HIV. The justification from the Scottish Executive that people infected with HIV were anticipated at the time to die shortly after infection and so should be compensated, while those infected with Hep C should be refused as they were expected to live longer with the disease did not seem to be rooted in any human compassion or empathy. It also seemed to ignore the material impact of Hep C - including the ability of some to work and support themselves and their families - on those infected.

Q13b

38. I believe in the debate on 26 April 2001 [SBTS0000357_013] I indicated that I did not believe it was or should be a party political matter. The Conservative MSP Mary Scanlon, who also served on the Health Committee, stressed it was a cross-party matter and indicated the cross-party support for Brian Adam's earlier motion calling for an inquiry. Ultimately my goal was to bring pressure to bear on the Scottish Executive so that they would agree to explore the matter more fully than in the internal report and provide compensation to those affected. The motion of 26 April 2001 [SCGV0000242_060], and indeed my efforts to amend the 2002/03 Scottish Executive budget, were aimed at increasing that pressure. When Malcolm Chisholm later became Health Minister - given that I believed him to be more sympathetic to the demands of

campaigners than Susan Deacon had been - I assumed that he would seek to bring about a change in the Scottish Executive position and, at that stage, I hoped that cross-party parliamentary pressure might help him in any internal Scottish Executive discussions.

Q14

39. Ultimately the process of a Committee agreeing a final report is one of discussion and compromise. It is also the case that reports agreed unanimously can be more influential than those not. It was fairly clear that Labour and LibDem members would not agree to a final report that was particularly critical of the Scottish Executive or the positions it had hitherto taken. That meant it was always going to be difficult - if not impossible - to reach a position whereby the Committee backed an inquiry at that time. However, there was deep sympathy across the committee for the human plight of the people who had been affected. As a result, it was possible to reach a consensus position that strongly recommended compensation as a pragmatic, justified and necessary step. At that time my view was that financial support was essential, regardless of whether or not a further process of inquiry happened. I was also of the view that if financial support was achieved there may then be less of a barrier to further inquiry – as one concern often cited about an inquiry is that it would delay compensation. However, as per Q8c the Committee Convener was publicly unhappy that the Scottish Executive had characterised the Committee report as an outright rejection of calls for a public inquiry.

40. After Malcolm Chisholm announced that the Scottish Executive would act on the recommendations of Lord Ross and introduce a compensation scheme, it seemed to me that the concern that an inquiry would delay compensation was no longer a barrier. This was reinforced when John Reid became the UK Health Secretary and took the pragmatic step of introducing a four nations compensation scheme, in the form of the Skipton Fund. This also avoided the UK government taking a position contrary to that of the Scottish Executive.

Q15

41. My view was that an overriding priority was for people affected to have financial support. That view was informed by my understanding of the impact of Hep C

on the lives, earning potential and material security of many of those affected. I hoped that by concentrating on this issue it would motivate the Scottish Executive to act. Malcolm Chisholm had by that point committed to an External Review on the issue of financial support, which was started by Lord Ross in March 2002. I also believed it was important to build maximum political support around what I believed to be most achievable in the short term, rather than only divide opinion on what was unlikely to command the same cross-party support. However, this was an issue of priority and of what I considered most likely to be achieved - it was not, on my part, opposition to or lack of support for an inquiry. Indeed, the Health Committee itself had left the door open to an inquiry should the Scottish Executive not act on compensation.

Q16

42. With a form of compensation secured through Skipton there was no perceived barrier to further investigation. Through FOI, which came into force in Scotland in 2005, the BBC uncovered fresh evidence from the 1970s and 1980s that had not been considered through the internal investigation. As a result the Health Committee revisited the issue in 2005/06 and concluded in April 2006 that, in its view, a public inquiry was necessary. The then health minister Andy Kerr rejected these calls. One of the key benefits of such a public inquiry was in my view to ensure that the issues were independently investigated and that the public could have confidence that any failings had been or would be addressed. A compensation scheme was essential to address some of the physical and financial impact of Hep C on those affected. However, it became even more clear once such a scheme was in place that, while necessary, this was not sufficient. An additional and significant cause of the anguish faced by those affected was the sense that government didn't care about their plight and wasn't being open with them. Only a full independent inquiry would instil confidence in what they were being told by the Scottish Executive, and give assurance about lessons learned.

Section 3: Questions relating to Government Roles (June 2007 onwards) Section 3(A): Calls for a public inquiry (Part II)

43. I have answered questions 17(b), 17(c) and 18 in my Second Statement to the Inquiry [WITN7299002]

Q17a

44. Despite the time that had elapsed and reforms to the operation of the NHS and changes to blood products, there remained a strong desire on the part of those affected for transparency and truth. When the parliament was newly formed a cross party motion calling for an inquiry attracted support from a majority of MSPs, and in the most recent session of Parliament, a cross-party Health Committee had called for a public inquiry.

45. My view in 2007 was that a public inquiry was necessary to provide confidence and to ensure the matter was fully and frankly investigated.

Section 3(B): Penrose Inquiry

46. I have answered questions 19-23 in my Second Statement to the Inquiry [WITN7299002]

Section 4: Other

Q24

47. I have no further comment I wish to make

Statement of Truth

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

Signed GRO-C

Dated 21 October 2022