

Witness Name: Rt Hon Nicola Sturgeon
MSP

Statement No: WITN7299002

Exhibits: WITN7299003 - WITN7299011

Dated: 17 October 2022

INFECTED BLOOD INQUIRY

SECOND 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

1. Please set out your name, address, date of birth and any professional qualifications relevant to the duties you discharged while: Shadow Minister for Education, Health and Justice; Leader of the Opposition; Cabinet Secretary for Health and Wellbeing; and First Minister of Scotland.

1. My name is Nicola Sturgeon MSP and my address is care of St Andrew's House, Regent Road, Edinburgh, EH1 3DG. My date of birth is GRO-C 1970. I am a qualified lawyer, although that professional background was not directly relevant to the duties discharged in the posts referred to above.

2. Please outline your employment history including the various roles and responsibilities that you have held throughout your career, as well as the dates.

2. I worked as a solicitor prior to becoming an MSP in 1999. I have provided more detail on my role as an MSP in my First Statement to the Inquiry [WITN7299001].

Since becoming a Minister, I have held the following roles:

- Deputy First Minister of Scotland – May 2007 to November 2014
- Cabinet Secretary for Health and Wellbeing – May 2007 to September 2012
- Cabinet Secretary for Infrastructure, Capital Investment and Cities – September 2012 to November 2014
- First Minister of Scotland – November 2014 to the present day

3. Please set out your membership, past or present, of any other committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference, including the dates of your membership and the nature of your involvement. In particular, please provide the dates when you were a member of the Health and Community Care Committee, the role it played within the Scottish Parliament, and the impact, if any, your membership had on your roles as Shadow Health Minister, Cabinet Secretary for Health, and First Minister.

3.1 I have referred to my membership of Scottish Parliament Committees in my First Statement to the Inquiry. I am also a member of (and leader of) the Scottish National Party (SNP).

3.2 I am not however a member of any other committees, parties, societies or groups which are relevant to this Inquiry's terms of reference.

4. Please confirm whether you have provided evidence to, or have been involved in, any other inquiries, investigations or criminal or civil litigation in relation to human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products. Please provide details of your involvement and copies of any statements or reports which you provided.

4. I have not provided evidence to any Inquiries on these matters. I did have involvement in the Penrose Inquiry in that I was the Inquiry's sponsor Minister when it was established. Please see my answers to separate questions below on my involvement in that Inquiry.

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

Section 2(A): Scottish Executive Internal Review

I have answered these questions in my First Statement to the Inquiry.

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

I have answered these questions in my First Statement to the Inquiry.

Section 3: Questions relating to Government Roles (June 2007 onwards)

Section 3(A): Calls for a public inquiry (Part II)

17. Following the SNP's election victory in 2007, you succeeded Andy Kerr as Cabinet Secretary for Health and Wellbeing. Please consider the following documents and questions: WITN2287064, HSOC0003661.

a. Why did the SNP include a commitment to hold a public inquiry within its manifesto?

b. Why, and on what basis, did you decide to await the outcome of the Archer Inquiry before committing to a public inquiry?

c. How, and on what basis, did you form the view that "*Scotland had cooperated fully with Archer*" (HSOC0003661 paragraph 8)?

17.1 I have answered question 17a. in my First Statement to the Inquiry.

17.2 b. I initially felt it would be sensible to await the outcomes of the Archer Inquiry because it was considering many matters which were relevant to any Scottish public inquiry. I thought it would be better to take account of Lord Archer's findings in order to assess how to proceed with a Scottish Inquiry and to allow what became the

Penrose Inquiry to take account of the Archer Inquiry findings. However, the Archer Inquiry did take longer than anticipated to report and so I subsequently felt that it was necessary to make progress in setting up a Scottish Inquiry in the meantime.

17.3 c. The Scottish Government provided a CD Rom to Lord Archer in June 2007, which provided a significant volume of documents released under FOI by the previous Scottish Administration. As noted in the minute of the meeting on 16 August 2007 (HSOC0003661), a Scottish National Blood Transfusion Service witness provided evidence to the Archer Inquiry.

17.4 Finally, subsequent to the August 2007 meeting with Philip Dolan and other representatives of the Scottish Haemophilia Forum, I understand that Scottish Government officials also met privately with Lord Archer in February 2008 to discuss his Inquiry and to help them plan for the Scottish Inquiry [WITN7299003], [WITN7299004].

18. The Inquiry has seen evidence of communication between Department of Health England officials and Scottish Executive Health Department officials regarding Scotland's decision to hold a public inquiry. DHSC5486274 is an example provided by way of background information. To what extent, if any, did you liaise with your Ministerial counterpart, or any other Government representative in England, in respect of the issue of a public inquiry? Please provide the identity of who you liaised with and what was discussed.

18. I do not believe I liaised directly with the Department of Health on this matter, although I would have been aware that Scottish Government officials were having discussions with Department of Health officials on this matter.

Section 3(B): Penrose Inquiry

19. On 23rd April 2008 you announced the Penrose Inquiry (MACK0001174, MACK0001175). Please outline any requests, discussions or representations made by you or your officials to Ministers or officials in the Department of Health England to take part in, or assist with, the Penrose

Inquiry. Please provide any documentation you may have in relation to this.

19. Again I understand that officials were involved in discussions on this matter. See exhibits provided with this statement for background (in particular note of meeting on 14 March 2008 with Department of Health and Welsh Government) [DHSC5015521], [WITN7299005].

20. In a letter from you to Lord Penrose dated 12th January 2009 (ARCH0002076), you stated that the Terms of Reference of the Penrose Inquiry were settled by Scottish Ministers following consultation with the Chair.

a. Was consideration ever given to putting the terms of reference out to consultation to relevant groups, such as the Haemophilia Society (HSOC0013842, HSOC0011337)?

b. Please outline how you were aware, or what assurances were received and from whom, that “the Department of Health have also indicated that they will provide all reasonable and appropriate assistance in supplying information to the Inquiry”?

20.1 a. Scottish Government officials held a number of meetings with the Scottish Haemophilia Forum and their legal representative from Thompsons solicitors to discuss and consider the scope and terms of reference of the Inquiry. I understand that a Haemophilia Society representative attended some of these meetings. While this was not a formal consultation, relevant groups did provide input [WITN7299006], [WITN7299007], [WITN7299008].

20.2 In addition, I held a meeting with stakeholders on 18 September 2008, which included discussing the Inquiry’s terms of reference [WITN7299009], [WITN7299010].

20.3 b. I understood this from advice I received at the time from officials. I believe that Scottish Government officials were in touch with Department of Health officials and that led to a letter from the Department of Health’s Permanent Secretary to the then Director-General for Health in the Scottish Government, Dr Kevin Woods

providing reassurance that the Department of Health would cooperate with the Penrose Inquiry ([WITN7299011], [DHSC0041157_042]).

21. In a letter from you to the Secretary of State for Health, Andrew Lansley dated 22nd February 2011 (DHSC5176958), you were critical of the lack of liaison by Westminster with the Devolved Administrations on the issue of support payments. Please explain your concerns in relation to this issue.

21.1 My concerns were as set out in the letter of 22 February 2011 [DHSC5176958]. At the time, financial support was provided on a UK-wide basis. Therefore, while I was supportive in principle of the Department of Health carrying out a Contaminated Blood Review, the Scottish Government and other devolved administrations should have been informed on a continuing basis about and given prior notice of its findings and an opportunity for discussion on a four nations basis before the Review report was published.

21.2 The lack of engagement from the UK Government on this particular matter put the Scottish Government in a very difficult position given the clear expectation that the Scottish Government should take steps to ensure those beneficiaries funded by the Scottish Government could benefit from the changes proposed by the review. As noted in the letter, there had been no opportunity for the Scottish Government to consider the additional funding required via our Spending Review process in late 2010 and so that made it particularly challenging to secure the additional funding needed at such short notice.

21.3 In addition to the points raised in the letter, the announcement created a particular legal issue for the Scottish Government because, at the time, the legislation governing the powers of Scottish Ministers to provide for payments to certain individuals infected with Hepatitis C or their estate in certain circumstances (in section 28 of the Smoking, Health and Social Care (Scotland) Act 2005) did not include powers to make payments to widows, widowers, partners or children of infected people who had died. This then required the Scottish Government to seek to amend this primary legislation very quickly to allow for the new Caxton Foundation to support Scottish beneficiaries.

Again, while the Scottish Government supported this change in principle, greater sharing of information in advance from the Department of Health would have allowed officials more time to fully consider and prepare for this legislative change and more time for the Scottish Parliament to consider the proposed legislative changes before they were passed.

22. On publication of the Penrose Report in March 2015, the reaction among campaigners and those infected and affected was largely negative, with some calling the report a “whitewash” (PRSE0007002, WITN2050100, RCPE0000282_002, RCPE0000282_003, WITN1055178, WITN2287051).

a. In your opinion, did the Penrose Inquiry fulfil your pledges: “we are committed to a thorough inquiry to get to the bottom of what happened. We owe an explanation to patients and the public of what took place. We are determined to provide that” (MACK0001174); and “...what they desperately want is to know that the issues have been properly examined - rigorously, robustly and independently. They also want to know that there can no longer be any suspicion - justified or not - that things have been swept under the carpet and kept from them. I hope that the inquiry achieves that, at the very least” (MACK0001175).

b. With hindsight, did the Penrose Inquiry achieve the aims you campaigned for whilst Shadow Health Minister?

22.1 a. I would refer to the comments I made in the Scottish Parliament on the day after the Penrose Inquiry Report was published (26 March 2015 [WITN2287078]). I obviously understood the frustration and disappointment of all of those who were (and continue to be) affected and that the Penrose Inquiry findings were not what they expected. However, I do feel that Lord Penrose did carry out a thorough Inquiry, which examined the issues independently in great detail. While the Report did not consider as broad a range of issues as this UK Inquiry is considering, Lord Penrose did provide in his report a detailed evidence base, which set out what happened when and how decisions came to be taken. Although clearly most of those who are infected and affected did not agree with the conclusions that the Penrose Inquiry drew from the evidence it considered, the Inquiry was still a very important step in understanding what happened.

22.2 b. I had expected there would be more recommendations from a public inquiry and had hoped the outcomes would give infected blood victims and their families a greater sense of closure and justice. Also, the time gap between the events that led to individuals becoming infected and the Penrose Inquiry taking place meant that measures to ensure blood safety had already evolved greatly. Therefore some of the benefits of having an Inquiry in terms of ensuring lessons can be learned would have been greater if the Inquiry had taken place much earlier, directly after people were infected, to ensure lessons were learned quickly.

22.3 However, clearly a key point of having a statutory public inquiry is that it scrutinises the evidence independent of the views of government and politicians. Therefore it was of course for Lord Penrose and his Inquiry team to reach whatever conclusions they felt were in line with the evidence.

23. What if any concerns did you have as to the approach of the Department of Health (England) to assisting with the Penrose Inquiry?

23. It was obviously up to the Department of Health to decide on its approach and whether or not to become a core participant in the Penrose Inquiry or to set up its own Inquiry. Clearly there would have been some advantages in having a joint Inquiry, particularly as it could have allowed for consideration of matters which were reserved under the Scotland Act 1998. As per my responses above, I understand the Department made a general public release of relevant information and did provide documents and information to the Penrose Inquiry.

Section 4: Other

24. Please provide any further comment that you wish to provide about matters of relevance to the Inquiry's Terms of Reference.

24.1 As the Inquiry will be aware, the Scottish Government is committed to supporting those infected and affected by infected blood and so I am keen to support this Inquiry wherever possible to consider all of the complex issues involved and help ensure if

there are any further lessons to be learned that our Health services and governments do so.

24.2 I have no further comments to make, but please let me know if the Inquiry has any further questions on any of these matters.

Statement of Truth

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

Signed _____

GRO-C

Dated ____ 17 October 2022 _____

Table of exhibits:

Date	Notes/ Description	Exhibit number
10 October 2007	Minute from Andrew MacLeod proposing officials meet Lord Archer	WITN7299003
15 October 2007	Reply from Ministerial private office	WITN7299004
26 February 2008	Submission from Andrew MacLeod – public inquiry	DHSC5015521
14 March 2008	Note of officials meeting with Department of Health and Welsh Government	WITN7299005
18 March 2008	Note of meeting with Scottish Haemophilia Forum	WITN7299006

15 April 2008	Note of meeting with Scottish Haemophilia Forum	WITN7299007
22 July 2008	Note of meeting with Scottish Haemophilia Forum	WITN7299008
16 September 2008	Cover email attaching agenda for meeting with stakeholders on 18 September 2008	WITN7299009
16 September 2008	Agenda of meeting with Nicola Sturgeon, Cabinet Minister for Health and Wellbeing, on 18 September 2008	WITN7299010
9 February 2009	Cover email from Kelly Martin to Sylvia Shearer and Mark Dorrian attaching letter from Hugh Taylor	WITN7299011
9 February 2009	Letter from Hugh Taylor, Department of Health Permanent Secretary, to Dr Kevin Woods	DHSC0041157_042
26 March 2015	Official Report of First Minister's Questions for 26 March 2015	WITN2287078