

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
Contents

Witness Name: Deborah Mary
Webb

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INFECTED BLOOD INQUIRY

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB

Contents

Contents.....	1
Section 1: Introduction and opening comments.....	3
Introduction.....	3
Opening comments.....	3
Section 2: Professional history	3
Qualifications	3
Career overview.....	4
Roles and responsibilities as a principal civil servant	5
Memberships	5
Business of private interests	5
Judicial review statement.....	6
Litigation history.....	6
Section 3: Chronology of Ministers	6
Table 1.....	6
Section 4: The Archer Inquiry and the March judicial review	7
My role in formulating the Government's response	7

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB

Contents

'Departmental line'	8
Recommendation 6(h)	13
Reasons for providing a witness statement in the Andrew March judicial review .	19
Appeal from the Administrative Court	20
Communication with Campaigners	21
Parity with Republic of Ireland - costs.....	22
Section 5: The Skipton Fund	25
The review	25
Eligibility criteria	27
Section 6: Other issues	28

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
Introduction and opening comments

Section 1: Introduction and opening comments

I, Deborah Mary Webb, will say as follows: -

Introduction

- 1.1. I am providing this written statement in response to the Inquiry's Rule 9 request dated 23 August 2022.

Opening comments

- 1.2. I have done my very best with this statement and will assist the Inquiry but I am limited by the fact that most of the relevant events occurred over a decade ago.
- 1.3. I fully support the aims of the Inquiry and during my time working in this area, I did meet and get to know some of the campaigners, their families, and the support charities quite well. Their testimonies and accounts of their personal circumstances are distressing and are not what I have faced in my life, but I can empathise with the grief and personal loss. I extend my heartfelt condolences and sympathy to all those who have been infected and affected.

Section 2: Professional history

- 2.1. My name is Deborah Mary Webb. My address is GRO-C
GRO-C Essex GRO-C My date of birth is GRO-C 1965.

Qualifications

- 2.2. I have no academic or professional qualifications relevant to this Inquiry.

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB

Professional history

Career overview

- 2.3. Between 1985 and 1989, I worked in NHS administration at King George Hospital, Ilford, Essex primarily involved with the managing of the hospital stores and supplies.
- 2.4. In 1989, I moved into procurement at the area supplies based at Langthorne Hospital, Leytonstone, London E11 covering a variety of commodity portfolios for the (then) four Area Health Authorities in North East London. This then widened to include the East of England as part of the NHS Supplies Division reforms.
- 2.5. In 1993, I moved to NHS Supplies South East Division based in Preston Hall Hospital, Maidstone, Kent, covering a range of procurement portfolios, such as surgical draping systems, enteral feeds, blood bags, x-ray contrast media and vaccines.
- 2.6. In 1998, I transferred to the Department of Health ("DH") working on the policy delivery side of the storage and distribution of vaccines to support the childhood immunisation programme; the same portfolio of products I had previously been responsible for procuring while at NHS Supplies.
- 2.7. In 2003, I headed the Primary and Community Care Unit in the Medicines and Healthcare products Regulatory Agency (an Executive Agency of the DH) leading a team responsible for medical device technology and safety.
- 2.8. In April 2005, I moved back to the main DH to the Health Protection Division, initially with responsibility for implementing the Health Protection Agency Act. Further detail of my time in that Division is in paragraph 2.11 below.
- 2.9. In June 2011, I moved to a new role as a full-time business manager for Ms Liz Woodeson following her move to be the Director of Health and Wellbeing Division. I remained in that role for around six years supporting her and the next two Directors who held that post.
- 2.10. For a short time in 2017, I worked for the Drugs Policy team supporting the addition recovery strand of work. Following a Departmental re-structure, in 2018 I moved to my current role heading the Nutrition Legislation Team responsible for maintaining a portfolio of (now retained) EU and domestic legislation (and

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
Professional history

related policy work) relating to foods clearly distinguishable from normal food, e.g. infant formula, food supplements, foods for special medical purposes etc.

Roles and responsibilities as a principal civil servant

- 2.11. From 2005, I worked as a Principal Civil Servant in the Health Protection Division. My initial role was to implement the Health Protection Agency Act and to deal with certain policy matters within that scope, for example international health regulations and its overlap with immigration legislation. I also provided business management support (budget, payroll and staffing support) to the Division's Director, Ms Liz Woodeson. Although I cannot recall the precise date, I believe it was at the end of April 2009 when Ms Liz Woodeson asked me to temporarily help the Blood Policy Team with the work around implementing the package of support agreed by Ministers, following the independent inquiry report published by Lord Archer of Sandwell ("the Archer report"). Later, when it became clear there would be an ongoing need for additional resource due to the two judicial reviews and DH's input to the Penrose Inquiry in Scotland, I was transferred to the team permanently.
- 2.12. The branch was hierarchical. The Division was headed by the Director (initially Ms Liz Woodeson and then Ms Clara Swinson), then the Branch Head (Dr Ailsa Wight), then the Grade 6 (Dr Rowena Jecock) and then finally, me. There were various junior support staff, but I am afraid I cannot now remember all their names.

Memberships

- 2.13. I have no membership or involvement, past or present, with any associations or other groups relevant to the Inquiry's Terms of Reference.

Business of private interests

- 2.14. I have no business or private interests, past or present, relevant to the Inquiry's Terms of Reference.

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
Chronology of Ministers

Judicial review statement

2.15. On 16 February 2010, I provided a statement in the judicial review brought by Andrew March [DHSC0015684]. I can confirm that I have no additional knowledge or information since that time and so consider the contents accurate to the best of my knowledge.

Litigation history

2.16. I have not provided evidence or been involved in any other inquiry, investigation or litigation relevant to the Inquiry's Terms of Reference, save for statement I provide in the Andrew March judicial review [DHSC0015684].

Section 3: Chronology of Ministers

3.1. The table below shows a chronology of the Ministers I refer to within this statement:

Table 1

Date	Name
Secretary of State for Health (Department of Health) – “SofS”	
28 June 2007 – 5 June 2009	Alan Johnson
6 June 2009 - 6 May 2010	Andy Burnham
12 May 2010 - 6 September 2012	Andrew Lansley
Minister of State (Department of Health) (Public Health) – “MS(PH)”	
29 June 2007 - 8 June 2009	Dawn Primarolo
9 June 2009 - 6 May 2010	Gillian Merron
Parliamentary Under-Secretary (Department of Health) – “PS(PH)”	
17 May 2010 - 6 September 2012	Anne Milton

Section 4: The Archer Inquiry and the March judicial review

My role in formulating the Government's response

- 4.1. The "Archer Inquiry" was set up by Lord Archer of Sandwell QC in 2007 as a non-governmental independent inquiry on NHS-supplied contaminated blood and blood products. In the Archer report published on 23 February 2009, Lord Archer made a series of recommendations '*to meet the unmet need of patients with haemophilia and their families*' including recommendation 6(h), which is discussed further from paragraph 4.14 below [ARCH0000001]. The Government published its response to the Archer Report on 20 May 2009 [DHSC0015670]
- 4.2. As is apparent from the documents summarised below, a number of civil servants mainly in the Blood Policy Team but also in the Legislation and Environmental Hazards Branch (in respect of the sponsorship role of the Macfarlane and Eileen Trusts and the Skipton Fund) were tasked with drawing together a response to the Archer report.
- 4.3. I joined the Blood Policy Team as a Principal Civil Servant to help implement the Minister's support package as per the 16 April 2009 submission from Ms Liz Woodeson [DHSC5024031]. The more senior members of the Group were, in particular, Ms Liz Woodeson, Dr Wight and Dr Jecock. Although I often drafted submissions, the contents of those submissions would have come from above my grade and then cleared by more senior colleagues. The key decisions on the response appear to have followed Ms Liz Woodeson's submission of 16 April 2009 and those which I wrote focused on communication of the decisions taken [DHSC5024031].
- 4.4. In regard to my specific role in the Government's response to the Archer Report, I was brought into the team after Ministers had decided on the substance of the package to be announced in the response, and my role was to co-ordinate the announcement in Parliament (via a Written Ministerial Statement ("WMS")) and then to help with the specific implementation of the various aspects.

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

- 4.5. As I joined the team after the initial decisions from Ministers in respect of the response to the Archer's report, I do not have any first-hand knowledge of the decision to not implement recommendation 6(h) and can only rely on the relevant documents provided to the Inquiry. I discuss recommendation 6(h) further from paragraph 4.23 onwards.
- 4.6. I have seen a submission from Ms Liz Woodeson (the Director of Health Protection) to the MS(PH) dated 16 April 2009 [DHSC5024031]. She was responding to the Minister's desire to '*respond to Lord Archer's report in the most positive way possible*' and the fact that the Minister had not been satisfied with the submissions sent to date. Ms Liz Woodeson pulled together the position on all the recommendations made to date.
- 4.7. I have also seen a submission dated 13 May 2009, from myself to MS(PH) about the publication arrangements for the Government's response to the Archer report [DHSC0041307_029]. The submission outlined the elements of the response that had been agreed by the Minister following Ms Liz Woodeson's submission of 16 April 2009 [DHSC5024031].
- 4.8. Finally, I have seen an e-mail chain regarding the publication of the Government's response to Lord Archer's Report. Specifically, on 18 May 2009, I sent an e-mail to Ms Morven Smith attaching a submission for the Minister asking her to agree the proposed response to Lord Archer's report [DHSC5573748] (4). The draft response was attached, together with various other supporting documents. For instance, there is a further e-mail dated 19 May 2009 from Mr Morven Smith to myself recording that Mrs Dawn Primarolo had agreed the contents of the submission and the WMS accompanying it [DHSC5573748] (3). There is also correspondence about alerting the Alliance House Organisations in advance of the Parliamentary announcement and about contact with Lord Archer and Lord Morris.

'Departmental line'

- 4.9. The '*departmental line*', upon the origins of the Irish compensation scheme (which in turn was linked to the many reasons), for refusing parity with the Republic of Ireland ("RoI"), was that the Irish scheme was set up because the

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

Irish Blood Transfusion Service was found to be at fault, whereas in the UK this was not the case.

- 4.10. On 1 July 2009, Ms Gillian Merron Member of Parliament (“MP”) confirmed this position in a Parliamentary debate by stating, *‘I stand by the points that I made. Furthermore, a judicial inquiry in Ireland found failures of responsibility by the Irish blood transfusion service and concluded that wrongful acts had been committed. As a result, the Government of the Republic of Ireland decided to make significant payments to those affected. As I will explain, that was not the case with the blood transfusion service here’* [DHSC0015672] (8). On 23 June 2009, Ms Gillian Merron MP also wrote to Dr Iddon saying, *‘I cannot accept the comparison with Ireland, because the Irish blood transfusion was found to be at fault, and that was not the case here’* [DHSC0015671] (2).
- 4.11. This debate started at 16:00 and at 15:47, an e-mail from Ms Kay Maher came in, details of which are discussed further at paragraph 4.19 below [WITN7409004]. Although I cannot specifically recall, it is unlikely that prior to the Westminster Hall debate, Ms Gillian Merron was briefed of this response due to the timings. At that time, I did not have an electronic device (laptop or smart phone) to enable me to access e-mails when not in the office, so I would have already been in the Palace of Westminster when the specific e-mail arrived. However, it was re-confirming with Ireland rather than being the first time of asking them. I cannot recall anything more than what I have already provided in this section of my statement.
- 4.12. At the time Ms Merron’s answers were given in Parliament, it was also my understanding that the Irish scheme was set up following a finding of fault. In a submission dated 28 August 2009 from myself to the SoS, regarding the key issues arising from the Government’s response to the Archer report, I noted that the circumstances in the RoI were different because the *‘...Irish Blood Transfusion Service (IBTS) was found, by a judicial inquiry, to have been responsible on two occasions...’* [DHSC0041307_002] (3).
- 4.13. There were also other submissions that contained the *‘departmental line’* which re-iterated the point that the circumstances in the RoI were different. For example, in a submission dated 19 June 2009 from Dr Rowena Jecock (Head

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

of Blood Policy team) to Andy Burnham, Dr Rowena Jecock stated that the recommendation for an increase in payments *'This is based on the much higher level of payments made in Ireland, where the Blood Transfusion Service was found to have been at fault (not the case here)'* [DHSC5172177] (1). In another example, in a briefing dated 20 October 2009 from myself to MS(PH), regarding a meeting with Jenny Willott MP and parliamentary and patient representatives, the briefing outlined that *'The compensation scheme in the Republic of Ireland was set up in light of evidence of mistakes by the Irish Blood Transfusion Service, a very specific circumstance and unique to them'* [DHSC5022157] (4).

- 4.14. I have also referred to some documents below which shows the steps taken to investigate the history of the Rol scheme with their officials and why there may have been a finding of fault which supported my opinion at the time.
- 4.15. In an email found in a chain between Lara Hynes (Blood and Tissue Policy Unit, the Rol), Dr Alisa Wight and Dr Rowena Jecock, on 26 May 2009, Ms Kay Maher (Blood and Tissue Policy Unit, the Rol) e-mailed Ms Liz Woodeson attaching information on the Irish compensation scheme [DHSC0011436] (5). On the same day, Dr Alisa Wight responded to Ms Kay Maher's email and stated, *'what we really wanted to know was about litigation and fault'* [DHSC0011436] (5). On 27 May 2009, Lara Hynes responded to Dr Alisa Wight's email stating that *'[t]here was controversy here about whether testing was introduced as quickly as it could have been. The big difference between the situation in the UK and here is that there was a large-scale contamination of Anti-D with Hep C by the Irish Blood Service. & [sic] [a] judicial inquiry found that "wrongful acts were committed" by the Irish Blood Transfusion Service (IBTS)...The decision to set up a compensation scheme followed these conclusions and the threat of litigation, which the Irish Government believed they would lose. Infection with hepatitis C in this way is unique to the Irish Republic. It was also established that around 100 of the infected women were blood donors, recycling hepatitis C infection through the blood supply until screening was introduced in 1991. The Irish Government therefore decided to extend the compensation scheme to all people infected with hepatitis C through blood products and blood transfusion. ... The State did not admit liability. Our legal advice was to the effect that as a matter of law we were not liable for the*

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

injuries suffered. However, advice also pointed out there was no guarantee that a High Court judge would not be swayed by a Claimant. There was a strong public perception that the State had a moral responsibility to persons infected with Hepatitis C, which superseded any considerations of strict legal liability' [DHSC0011436] (2).

- 4.16. These emails were then followed up on the 2 June 2009 with an email from Ms Lara Hynes to Dr Rowena Jecock attaching an electronic copy of the Finlay Report into the contamination of Anti-D and a summary of the Lindsay Report into the infection of haemophiliacs with HIV and Hepatitis C [WITN7409002; DHSC0015673; WITN7409003].
- 4.17. The investigations above were then followed by a submission dated 2 June 2009 from Dr Rowena Jecock to MS(PH) [DHSC0041219_077]. This submission was in response to Ms Morven Smith's request for more clarity on the RoI scheme and stated that, *'In Ireland also, the State did not explicitly admit liability'* [DHSC0041219_077] (3). The submission outlined information on findings made by a judicial inquiry that the Irish Blood Transfusion Service was responsible on two occasions for failures that resulted in large-scale contamination.
- 4.18. On 9 June 2009, Ms Gillian Merron replaced Mrs Dawn Primarolo as MS (PH). The information referred to below formed the background to briefings for Ms Merron, following her appointment as MS(PH):
- a) In an email chain from 10 June 2009, Ms Morven Smith (the Assistant Private Secretary to Ms Gillian Merron) requested a meeting be arranged on 11 June 2009 between Ms Liz Woodeson and Ms Gillian Merron for a *'...half hour briefing meeting on the Archer Inquiry and attendant issues surrounding the Government response'* [DHSC6456681] (5). In a subsequent email in the same document, it is indicated that the meeting took place because it says, *'...greatly appreciated your thorough and helpful briefing at the meeting'* [DHSC6456681] (1). Attached to the emails were correspondence lines relating to the Archer's report which contained *'lines'* on the Irish Compensation scheme. Briefing of the new Minister was thus being led by Ms Liz Woodeson.

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

- b) In a submission dated 19 June 2009, regarding the Archer's recommendations for further financial relief and sent from Dr Rowena Jecock to the SoS, it said that the recommendations were '*... based on the much higher level of payments made in Ireland, where the Blood Transfusion Service was found to have been at fault (not the case here)*' [DHSC5172177] (1).

4.19. Further information in July 2009 includes:

- a) An email chain starting on 1 July 2009, where Ms Carol Grayson complained about the DH's '*misinformation*' and argued that the payments in Eire had been made on compassionate and moral grounds, and that the statement that '*Payments made by the Republic of Ireland were introduced following a judicial inquiry which found failures of responsibility by the Irish Blood Transfusion Service and concluded that wrongful acts were committed...*' was '*FACTUALLY INCORRECT [sic]*' [WITN7409004] (6). Dr Rowena Jecock was asked to look into the matter urgently and in turn asked me to check the position with Ms Kay Maher, from the Rol. On 1 July 2009, Ms Kay Maher replied by summarising the Irish position as being one in which compensation was paid to persons with compassionate grounds; at no time had the State accepted legal liability [WITN7409004] (1). In an email dated 23 July 2009, Mr Ed Davis wrote to me about a conversation he had with Ms Lara Hynes. Ms Hynes had confirmed that she was content with our draft lines on the Archer report, specifically the lines concerning the Irish compensation scheme [DHSC6451822] (1). A copy of the approved '*Lines to take*' sets out the history in some detail and noted that '*The information provided here has been agreed by officials in the Republic of Ireland's Department of Health and Children*' [DHSC0006611_007] (2).

- 4.20. The documents summarised above demonstrate the steps that were taken by officials in the Department to check the facts of the historic situation with regard to the background of the Irish compensation scheme, with Irish officials. When Ms Gillian Merron provided her answers in Parliament, she did so on the basis of information in her briefings, which in turn, were informed by information

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

supplied by officials from the RoI. Furthermore, there were attempts (in the line to take of late July 2009) to explain DH's understanding in some detail.

- 4.21. I have also noted Ms Whipple's QC Counsel Opinion of 6 May 2010 [DHSC0006606_010]. Although obviously a later analysis, Ms Whipple QC noted the importance of the Expert Inquiry, which reported in January 1995. She noted that there was a '*plain error*' in the Minister's reference on 1 July 2009 and that the reference should have been to the '*Expert Inquiry rather than the "judicial inquiry"...*' [DHSC0006606_010] (4). Given the relatively complex history of events, it is fair to say that there was some confusion about the sequence of decisions and the role of the Expert Group.
- 4.22. In regard to whether I consider that the Irish scheme was set up following and as a result of findings of fault, it is not easy to remember what I might have thought at the time. However, looking at the material gathered above, it seems to me that there was evidence that the scheme(s) followed findings of fault – but those words should not be taken to mean that legal liability had been found in any court (although there were concerns that it might be).

Recommendation 6(h)

- 4.23. It was suggested in the Archer report under recommendation 6(h) '*...that payments should be at least the equivalent [sic] of those payable under the Scheme which applies at any time in Ireland*' [ARCH0000001] (111). The Government's decision not to follow recommendation 6(h) was successfully challenged by way of the Andrew March judicial review (see the pre-action letter dated 25 August 2009 [DHSC0006611_151]) and the judgment dated 16 April 2010 [DHSC0003819_011]).
- 4.24. The factual error that was alleged was that the Irish payments were made as a result of judicial findings of fault [DHSC0003819_011] (8; 13).
- 4.25. In regard the steps the Department and I took to investigate the factual position in response to the allegation made by Mr March, that the Government's approach to recommendation 6(h) was infected by an error, I have been referred to the following documents which sets out an overview of what I and the DH did to investigate the factual position:

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

- a) A document containing mixed material primarily consisting of correspondence between DH officials and officials of the Blood and Tissue policy Unit in the RoI's Department of Health and Children regarding the Irish compensation scheme, from 2009 and 2010 [DHSC6699695]. The key emails are explained further below.
- b) An email chain regarding an Irish Times article published on 2 August 1997 by Brian Cowen from when he was the Minister for Health for the RoI [DHSC0006606_076].
- c) An email I sent to Ms Kay Maher dated 11 November 2009 following up on a telephone conversation we had about the Expert Group set up in the RoI, prior to the Finlay and Lindsay tribunals, which first highlighted problems with the Irish Blood Transfusion Service Board. I informed Ms Maher that DH was compiling background information for the purposes of the Andrew March judicial review, and I sought confirmation on whether the findings of the expert groups were published [DHSC0006772_072].
- d) An email chain between Ms Natalie Tomecki (DH Legal Services) and myself dated 18 November 2009 attaching a copy of the expert group report which I had been provided with by Irish officials [WITN7409005].
- e) An email from myself to Ms Natalie Tomecki, dated 3 February 2020, forwarding a detailed note by Ms Lara Hynes to Dr Alisa Wight (on 27 May 2009) concerning the Irish compensation scheme [WITN7409006].
- f) An email chain from myself to Ms Natalie Tomecki where on 5 February 2010, I indicated that '*They have been very helpful, will confirm various facts and figures...*' [WITN7409007] (2). Furthermore, I informed Ms Natalie Tomecki that I had requested from the Irish officials something which would confirm their agreement with what we had stated about the Irish compensation scheme.
- g) An email from Mr Ed Davis to myself dated 8 February 2010, where it shows that Mr Ed Davis had asked Ms Lara Hynes of the RoI for her confirmation that the DH narrative document on the Irish compensation scheme was correct [DHSC5611771]. She confirmed that she was

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

content that the narrative was factually correct and made various comments.

- h) An email chain from Ms Lara Hynes to Mr Ed Davis dated 12 February 2010 in which she confirmed that she was *'happy with the presentation in this document of the historical situation in Ireland in relation to the establishment of the statutory Hepatitis C Compensation Tribunal'* [DHSC6694837] (8). I note that I had forwarded this email to our colleagues in DH legal services who were working on the Andrew March judicial review.

4.26. I think it is fair to say that the factual narrative set out in the Department's case was checked with, and approved by, officials in the RoI. In regard to the witness statement in the March judicial review, I cannot provide more than what is in the documents. The situation in Ireland was very sensitive and we were mindful of the position our requests put our Irish colleagues in.

4.27. I address whether I altered my presentation to the Minister of the Irish compensation history in the light of the Andrew March Judgement ("the Judgement") below, taking into consideration a number of documents I have been referred to in paragraph 4.28 below.

4.28. On 26 May 2010, I wrote a submission to PS(PH), setting out advice on the decision to appeal the Judgment [DHSC0003623_004] and on 8 July 2010, I sent a submission to Ms Anne Milton MP advising that the Government's response to recommendation 6(h), *'... is rejected on the basis that it is unmeritorious, on ground of both: (i) the factual difference between the RoI & UK; and (ii) affordability'* [DHSC0006616_114] (2). The submissions were drafted by me but cleared by more senior colleagues (Ailsa Wight and Clara Swinson, or Dr Wight alone, in relation to the second submission).

4.29. I have been referred to by the Inquiry:

- a) A "pre-judgment" email chain about further lines to take for MS(PH) regarding the response to the Archer report. Specifically, I sent an email to Ms Morven Smith on 20 May 2009 with lines to take on specific queries raised by MS(PH) [DHSC5158079].

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

- b) An email chain regarding Counsel's advice on the merits of seeking to appeal the Judgment [DHSC6694837]. At paragraph 4.24 above, I have outlined how on 7 May 2010, I sent a draft submission to DH colleagues seeking permission to appeal, together with Counsel's opinion and advice from DH Legal Services on Counsel's opinion [DHSC0006606_010]. On 12 May 2010, I responded to an email from Ben Cole outlining the UK understanding of the Irish compensation scheme and discussing the conclusions reached by the judge in the Andrew March judicial review.
 - c) A further email chain dated 9 June 2010 regarding the Andrew March judicial review judgment and formulating a new '*line to take*' following the Judgment [DHSC5626448].
- 4.30. I have also seen a copy of an e-mail chain outlining the steps we took to seek clarification about the Irish compensation scheme [WITN7409006] and an email chain from June 2010 between Ben Cole and Lara Hynes. Mr Cole sent to Lara Hynes, on my behalf, a document that outlined the chronology of events in the Rol concerning the Irish compensation scheme. Ms Hynes confirmed that the chronology was accurate [WITN7409008] (2). It was this chronology which was then exhibited to the submission sent to PS(PH) on 8 July 2010 [DHSC0003623_004] (6).
- 4.31. As the documents above should demonstrate, following the Andrew March judicial review, DH again made contact with Irish officials to check its understanding of the chronology of events concerning the Irish compensation scheme. Irish officials considered our presentation of the history and confirmed its accuracy. Our understanding of the history, including the early role of the Expert Group, was then set out in some considerable detail in the submissions to Ms Anne Milton. We discussed matters such as the findings of the Expert Group in 1995, as well the information gained from Irish officials. Annex B was, as I have mentioned, the chronology that had been agreed with Irish officials [DHSC0003623_004] (6). Annex C summarised the litigation that had taken place in the two countries, including the HIV litigation in the UK (here, the fact that the legal advice from the Plaintiffs' own Counsel had been highly

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

- pessimistic was noted) and the *A v National Blood Authority* case (which was discussed in terms of its treatment of strict liability) [DHSC0003623_004] (19).
- 4.32. We set out details of the wide range of arrangements made in other countries at Annex D [DHSC0003623_004] 22). We attached the article from Mr Cowan at Annex E [DHSC0006616_009] (see para 17 of submission dated 8 July 2010 [DHSC0006616_114] (4)) which had not been before the Court in the March judicial review, before discussing the evidence regarding the link between an acceptance of fault and the establishment of a scheme providing 'compensatory' payments (see paragraphs 17 – 20 of submission dated 8 July 2010 [DHSC0006616_114] (4)).
- 4.33. The Inquiry will see the reasons why it remained the view of officials including myself that, as set out in the submission, there were material differences between the factual histories of Ireland and the UK. In addition, the issue of affordability was raised.
- 4.34. The Government again rejected recommendation 6(h) in a WMS given on 14 October 2010 [DHSC0006626]. The Inquiry suggested that the primary reason for this was because of '*...the principle of linking payments in the UK to those in the Republic of Ireland. This would require the UK to defer to the resourcing decisions made by the government of another sovereign state...*' [DHSC5222778] (2). While the Inquiry have suggested this, I do not agree with this statement for the various reasons below.
- 4.35. Firstly, before this recommendation was rejected, I have seen an e-mail from Ms Yemi Fagun to myself dated 16 August 2010, where PS(PH) was clear that '*the whole issue needs reviewing, but if she is forced by legal opinion to make an announcement on 6(h) then she would want to be very clear that we are looking at things more widely*' [DHSC5640704] (7).
- 4.36. I have also been asked whether the government's rejection of 6(h) was a change from my advice and whether the ground was based on factual differences between the UK and the Rol. The Inquiry has referred me to a letter from the SoS to Mr Nick Clegg (the then Deputy Prime Minister) dated 30 September 2010, in relation to Home Affairs Committee clearance for a WMS in response to the judgment in the Andrew March judicial review

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

[DHSC6547137]. The letter goes on to say, *'Having considered the issue at length, I have decided not to accept recommendation 6(h). There were very specific events and failings that occurred in Ireland that were unique to that country. In contrast, there have never been any findings of fault in the UK'* [DHSC6547137] (3).

- 4.37. I have also checked the text of the WMS from PS(PH) (14 October 2010) and Ms Milton stated that:

'Having carefully compared the circumstances pertaining here and in the Republic of Ireland during the period when most of the infections occurred, and having taken account of the fact that this tragedy similarly affected many other countries; I do not consider there is a case for accepting Lord Archer's recommendation 6(h) that levels of payment here should match those made in Ireland. Every country must make its own decisions on financial support for those affected, taking account of its own particular circumstances, and affordability. The scheme in Ireland was set up on that basis, and has not been replicated in any other country, as far as we know. However, our ex-gratia payment schemes for HIV compare well with those of other countries' [DHSC0003602_004] (1).

- 4.38. It would ultimately be for Ministers, and primarily Ms Anne Milton, to explain the exact balance of reasons as to why they again rejected recommendation 6(h). However, from what I can see, the reasoning continued to be based, at least in part, on an acceptance that there were factual differences between the RoI and UK. It is also clear that there were a number of reasons for the decision, including the financial position and its potential burden, noting that in regard to recommendation 6(h) *'... payments should be at least the equivalent [sic] of those payable under the Scheme which applies at any time in Ireland'* [ARCH0000001] (111). In explanation of the words *'at any time'*, this meant that in theory, if Ireland were to change their payment scheme at any time, the UK would have to follow suit. For example, if RoI changed their payments every week or month, the UK would be bound to stay *'at least the equivalent'* to it, thus having no control over what that would mean for the UK.

Reasons for providing a witness statement in the Andrew March judicial review

- 4.39. As far as I recall, there was no particular reason for me being chosen to provide a witness statement in the Andrew March judicial review other than it was a capacity issue because at the same time, Dr Wight was providing the witness statement to the Sharon Moore judicial review, and Dr Rowena Jecock was supporting the work for the Penrose Inquiry.
- 4.40. I had no other formal role in the judicial review process. The documents summarised below show that I worked alongside senior DH colleagues, lawyers from DH Legal Services and Counsel to investigate Mr Andrew March's claim and provide appropriate responses, including liaison with the RoI.
- 4.41. I have been also been referred to the following documents:
- a) An email chain regarding the Claimant's grounds in the Andrew March judicial review [DHSC0006611_056]. Specifically, on 11 November 2009, I provided a first draft commentary on the Claimant's judicial review grounds. Colleagues from DH, including DH Legal Services, responded with contributions on how to proceed following my commentary on the Claimant's grounds.
 - b) An email chain regarding the Claimant's grounds and evidence in the Andrew March judicial review [DHSC5603006].
 - c) An email chain relating to DH's response to the Claimant's grounds in the Andrew March judicial review [DHSC5603083]. Specifically, on 11 November 2009, I sent a summary of the three UK ex-gratia payment schemes and a link to the Irish Hepatitis C compensation scheme website to Ms Natalie Tomecki.
 - d) An email from myself to Dr Alisa Wight, Dr Rowena Jecock, Jonathon Stopes-Roe and Ms Liz Woodeson dated 12 November 2009 which related to a telephone conference with Counsel for DH on the Andrew March judicial review [DHSC5603197]. This email provided a summary of what was discussed in the conference with Counsel regarding the claim and the necessary next steps for DH.

Appeal from the Administrative Court

- 4.42. The Inquiry has noted that I drafted an initial submission to Ministers about the judgment in March and about seeking permission to appeal from the Administrative Court on a “*holding*” basis on 15 April 2010 [DHSC5081242]. This was followed by more detailed advice about seeking permission from the Court of Appeal on 26 May 2010 [DHSC0003623_004], by which time Counsel’s Advice had been sought and the recommendation was against seeking permission to appeal.
- 4.43. In regard to what factors influenced my advice as to whether or not to appeal, I have been referred to an email chain from early May 2010 regarding Counsel’s advice on the merits of seeking to appeal the judgment in the Andrew March judicial review [DHSC6694837]. Specifically, on 7 May 2010, I sent a draft submission to DH colleagues on seeking permission to appeal alongside Counsel’s opinion and advice from DH Legal Services on Counsel’s opinion [DHSC0006606_010]. As part of this chain, on 12 May 2010, I responded to an email from Mr Ben Cole and outlined DH’s understanding of the Irish compensation scheme, with regard to the conclusions reached by the judge in the Andrew March judicial review. While the submission may have been in my name, I was representing the whole position, including legal advice. I would not have been professionally capable of advising on any legal matters.
- 4.44. I refer back to the Submission dated 26 May 2010 from myself to PS(PH), regarding the decision on whether to appeal the judgment in the Andrew March judicial review. In this submission, although I recommended that the judgment was not appealed ‘*as the prospects of success are considered less than 50%*’, I was representing the position from the department as a whole [DHSC0003623_004] (1).
- 4.45. The factors which influenced the submission are clear from this correspondence and, in particular, from Counsel’s Advice on the prospects of success. In essence, although I continued to hold the view that that the Irish scheme was based (in whole or in part) on a recognition that there had been fault on the part of the Irish Blood Service (see my email of 12 May, as well as that of 9 June 2010 [DHSC5626448]), for the reasons set out in counsel’s

advice, it was not realistic to think that this could be successfully re-litigated in the Court of Appeal.

- 4.46. I should note that the timing of these submissions and what could be said to Ministers was affected by the timing of the General Election because the judgement was handed down during the Labour administration and initially, the date for response would have been straight after election day; hence why the courts provided some extra time for the Department's response to recognise it was not realistic. We certainly had to be careful about what we could share with new Ministers relating to the provision of advice to the previous administration.

Communication with Campaigners

- 4.47. I would communicate with campaigners in my general capacity as part of the team working in this policy area to either hear/answer specific points, or more generally to meet and listen to their concerns and understand their position. This included the meeting hosted by Anne Milton at Westminster Hall on 11 November 2010, with campaigners, Ministers, the Macfarlane and Eileen Trusts and the Skipton Fund (about the existing payment schemes), the Haemophilia Alliance.
- 4.48. In regard to my involvement in meetings or communications with campaigners or MPs, either with or without Ministers, in relation to the Government's response to the Lord Archer Report, I have been referred to the following documents:
- a) A briefing dated 14 December 2009 from myself (cleared by Dr Alisa Wight) to the SoS for a meeting with Mr Paul Goggins, Mr Brian Iddon and a number of hepatitis C infected haemophilia patient representatives at the end of December 2009 [DHSC5190274]. Amongst other issues, the briefing addressed Lord Archer's recommendation 6(h) concerning parity with the RoI.
 - b) A copy of minutes of a meeting dated 19 July 2020 between DH and the Chair of the Macfarlane Trust, Eileen Trust, and Skipton Fund [DHSC5148687]. The minutes record that attendees at the meeting were reminded that following the judgment in the Andrew March judicial

review, Ministers were required to retake a decision on Lord Archer's recommendation 6(h). I was one of the attendees at the meeting. I supported Dr Rowena Jecock and colleagues in the Sponsor Branch to gather information from those responsible for the existing payment schemes to help inform Ministers' understanding. I cannot recall anything more about the meeting that is not in the note, but it appears to have been one of discussion and information gathering.

Parity with Republic of Ireland - costs

4.49. The Inquiry has noted that the potential cost of achieving parity with the RoI was estimated to be approximately £3 - £3.5 billion. The Inquiry has asked how this figure was arrived at. I have also been asked to set out the extent of my involvement in this exercise and have been referred to the following documents:

- a) A document showing Lord Morris of Manchester asking a Parliamentary Question ("PQ") in a House of Lords regarding the costs estimate of implementing the compensatory recommendations in the Archer's report [HSOC0002261] (6). This PQ was answered by the Lords Health Minister at the time, Baroness Thornton, where she indicated that the initial estimate of £3 - £3.5 billion was based on multiplying the average figures decided in the RoI (ranging between £500,000 - £1 million), by the estimated number of infected claimants in the United Kingdom.
- b) An email chain regarding a draft WMS and amendment to a motion in relation to the potential costs of parity with the Irish scheme [DHSC5248580]. On 13 October 2010, I sent an email querying why the estimate for the UK could not be less than £3 billion and I provided my view on the appropriate wording for the WMS.
- c) An email chain starting on 4 February 2011 regarding data from Irish officials on awards from the Compensation Tribunal in the RoI [DHSC5659401]. It also includes an email I sent on 4 February 2011 to Ms Lara Hynes and Ms Kay Maher seeking information on this issue. On 11 February 2011, Ms Kay Maher responded by sending a note and I

responded back by thanking her for the additional information and raising queries on the figures in the note.

- d) A document outlining an estimate of £3.5 billion as the cost of implementing the Irish hepatitis C and HIV compensation scheme in the UK [DHSC0006608_083]. The document refers to information and figures that DH did (and did not) have in calculating this estimate.

4.50. I have also been supplied with two further documents which provide information on how the estimated figure of £3 - £3.5 billion was arrived at:

- a) An email chain finalising a note on the £3.5 billion cost estimate of implementing the Irish hepatitis C and HIV compensation scheme in the UK [DHSC5168262]. In the email chain, I can see that on 15 October 2010, I wrote an email to Ms Yemi Fagun and Mr Giancarlo Laura indicating that the note was to go *'...into the House library to answer the question how did we calculate the £3.5bn estimate for replicating the Irish contaminated blood compensation scheme in the UK (Ailsa Wight has cleared this)'* [DHSC5168262] (5). I do not recall who was asked to lead the drafting of this, but it would have been compiled following discussion within the team and ultimately cleared by Dr Ailsa Wight.
- b) An email chain containing how the cost estimate of £3 - £3.5 billion was arrived at including, an e-mail from Dr Rowena Jecock to me on 10 February 2010 stating, *'My recollection is that we had some information about the size of the Irish payments, which ranged from around £500k to £1m. We assumed £750k as the average payment, and multiplied by the estimated number of people affected in the UK which gave us the figure of around £3billion'* and that it was *'no more than 'back of envelope' figures to give MS(PH) some idea of the order of magnitude of the cost of a system similar to Ireland'* [WITN7409009] (2).

4.51. In a document entitled, *'Estimating the cost of implementing the Republic of Ireland's Hepatitis C and HIV compensation scheme in the UK'*, the *'UK estimate of £3.5 billion'* was described as *'...clearly inaccurate and misleading'* [DHSC0003623_015] (1). Firstly, I do not agree with this comment as the e-mail from Dr Rowena Jecock in the preceding paragraph explains there was a

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Archer Inquiry and the March judicial review

method behind the rough calculation by taking into consideration the Rol compensatory award payments and extrapolating that to UK population numbers.

4.52. Secondly, I do not know who authored the document nor do I believe this is entirely an internal departmental document for the following reasons:

- a) In a letter dated 18 October 2010 from Mr Michael Dorricott, of the Tainted Blood campaign group, to Ms Anne Milton, Mr Michael Dorricott, referring to the £3 - £3.5 billion figure, stated *'the information that you and previous Ministers have been given is inaccurate'* [DHSC003623_104] (1). Additionally, in an e-mail dated 20 October 2010, Mr Michael Dorricott wrote to Ms Ann Milton expressing his disappointment to receiving *'the calculations of the costings that have been carried out on implementing an equivalent to the Irish compensation scheme... It is clearly a rushed piece of work that has been thrown together in order to explain the costing...I attach a copy of the document where I have added comments'* [WITN7409010] (3). These comments have also been highlighted indicating that this is where Mr Michael Dorricott has inserted his comments.
- b) A letter from Ms Anne Milton to Mr Michael Dorricott, dated 28 October 2018, demonstrates that the DH did not accept Mr Michael Dorricott's description of the Government's explanation for the £3 - £3.5 billion figure as *'clearly inaccurate and misleading'*:

'Again, we have always said the figure of £3-3.5 billion is an estimated cost. The note that I placed in the Library clearly outlines the uncertainties involved in the calculation. You are quite correct that the note was drafted in the last few days, but the actual estimate was made some time ago, under the previous Government. It is the same estimate that formed the basis for the answer to the Parliamentary Question that you cite in your letter. The note that I placed in the library is simply a fuller explanation of the answer that was given to that question' [DHSC0006607_008] (2).

- c) The following document is quite clearly an original page of the DH document referred to in paragraph 4.51 above and does not contain the words, '*...clearly inaccurate and misleading*' [DHSC0006608_083].
- 4.53. On the basis of the documents above, I believe that the document entitled, '*Estimating the cost of implementing the Republic of Ireland's Hepatitis C and HIV compensation scheme in the UK*' is an amended version, consisting of additional critical commentary from Mr Michael Dorricott of the Tainted Blood campaign group, and is not therefore an entirely internally drafted DH document setting out DH views [DHSC0003623_015].

Section 5: The Skipton Fund

The review

- 5.1. As part of its response to the Archer Report, the Government committed to reviewing the Skipton Fund in 2014. On 6 April 2010, the then MS(PH), announced that the review would be brought forward and that it would begin '*as soon as possible this year*' [ARCH0001105]. The results of the review were published on 10 January 2011 [PRSE0004024].
- 5.2. Before the review was officially announced, the DH had considered reviewing the '*wider issues*' of the Skipton Fund as early as 2010 [DHSC0003623_109] (2).
- 5.3. In response to the Minister's request for advice on the options for bringing the review forward, my colleagues and I advised against doing so [DHSC0041307_015; DHSC0041307_014].
- 5.4. Bringing the review forward was continuously explored as can be seen in an e-mail from Ms Yemi Fagun to Dr Rowena Jecock, dated the 24 February 2010, showing that the '*SofS and MS(PH) wanted to know what options they had for bringing forward the review of the Skipton Fund - an options paper should be drafted for MS(PH) by next Wednesday*'; Dr Rowena Jecock responded that '*work is underway*' [DHSC6511164] (3).
- 5.5. However, a reason for advising against bringing the review forward can be found in a submission dated 3 March 2010 from Dr Rowena Jecock to MS(PH)

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Skipton Fund

where it states, *'We have agreed with DH Finance that we are unable to recommend that the review be brought forward because the Department is overcommitted on funding for 2010/11, and the financial position in subsequent years will be extremely tight. If you wish to fund a review, then decisions will be needed on cuts to other priority programmes'* [DHSC0041307_015] (2).

- 5.6. I can also see that I requested comments on a draft submission regarding the Skipton Fund review in an e-mail dated 17 March 2010 and in response, Mr Graham Kent from DH Legal Services responded by recommending against a *'rushed review'* [DHSC5615185] (1).
- 5.7. I have also seen a submission from myself to MS(PH) dated 17 March 2010 listing the *'pros and cons'* of the various Skipton Fund review options and indicating that *"this is likely to raise significant future funding problems when the review reports, given the expectations of those affected and the financial position from 2011/12 onwards"*. Furthermore, the submission referred to *'the advice from Finance is that our financial position in the next SR is already extremely tight and further pressures would require identification of other areas to be de-prioritised and this will be increasingly difficult'*. The submission recommended *'that you hold the existing line, and do not change the current commitment to review the SKF in 2014'* [DHSC0041307_014] (2).
- 5.8. Shortly after Ms Gillian Merron's announcement to bring the review forward, there was a change of Government. Although I cannot specifically remember what briefing or advice I gave the new Ministers about the review, I can see from a draft submission dated July 2010 from myself to PS(PH) that the departmental line was, *'We recommend that if, following your meetings with the campaigners, you are minded to look at what further assistance might be provided to those affected (if you reject 6(h)), that you announce in September that you are putting the SKF review temporarily on hold while you consider the evidence presented by the patient groups you met in July'* [DHSC5635652] (2).
- 5.9. I can also see from a submission I wrote to PS(PH) on 11 August 2010, I recommended that the Minister put the Skipton Fund review on hold while evidence provided by the campaigners in July 2010 were considered because *'you have agreed to consider information from the campaigners. We could find*

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB
The Skipton Fund

ourselves vulnerable to further legal challenge if we do not properly evaluate evidence to back up the rationality of any decision and we will work with Finance, Legal, Treasury and DWP colleagues on options for providing further support to those affected, together with implications for the SKF review' [DHSC0006649] (3).

Eligibility criteria

- 5.10. Although I was copied into various e-mails (as was custom in the team), I do not recall playing any role in the strand of work determining the eligibility criteria for the Skipton Fund and more specifically on whether those who had died before 29 August 2003 could apply. I also do not recall playing any role in developing the eligibility criteria for the cohort of applicants whose medical records were not always available.
- 5.11. Similarly, the entire team working on this area had a weekly 'Archer Team Meeting' which was a stocktake that everyone attended and was usually chaired by Dr Ailsa Wight. At that meeting, we would go through the project plan to discuss work in progress to ensure we were on track and could address any issues arising with everyone present. As such, I would have been aware of the discussion on all the relevant areas, but that does not mean that I had direct involvement in all the strands of work. This is similar to the custom and practice of having a wide copy list to e-mails as it ensured everyone was aware of progress in a fast moving environment even with areas they were not directly involved with.
- 5.12. I have seen an email chain regarding some patients on the Hepatitis C National Register who acquired their infection through contaminated blood and died before 29 August 2003, and the process for contacting the families of such persons [DHSC5245925]. The discussion in the email chain highlighted the difficulty in tracking down families of those who have died. On 5 January 2011, I responded to Dr Alisa Wight's e-mail where I requested further guidance on the ethical/governance issues related to contacting families of those who have died.

FIRST WRITTEN STATEMENT OF DEBORAH MARY WEBB

Other issues

- 5.13. I have also seen that I was copied into various e-mails that kept me in the loop on specific matters such as, an e-mail chain regarding the access to medical records of deceased patients and what constitutes reasonable evidence of treatment acquired hepatitis C in those who died before a test was available and possibly changing the eligibility evidence required [DHSC5655630], an e-mail chain I was copied into regarding the access to medical records of deceased patients and a discussion on seeking the views of an expert on eligibility evidence for pre-2003 deaths [DHSC5655747], and an email chain about the Skipton Fund application forms for deceased patients not tested for HCV and the specific wording for any additional questions on the application form and the role of the Skipton Fund in the assessment of applications [DHSC5656138].
- 5.14. Finally, I have seen an email chain regarding the Skipton Fund review where on 15 November 2010, I replied to an email from Peter Stevens (Chair of the Eileen Trust and the Skipton Fund), regarding various options under consideration in the context of the Skipton Fund review [DHSC5126209] (2).

Section 6: Other issues

- 6.1. I have no further information or views relevant to the Inquiry's Terms of Reference, other than what I have expressed above.

Statement of Truth

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

GRO-C

Signed.....

Dated.....02 November 2022.....