

Witness Name: Lynda Towers

Statement No.: WITN7469001

Exhibits: None

Dated: 20 November 2022

INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF LYNDA TOWERS

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 5 September 2022.

I, Lynda Towers will say as follows: -

Section 1: Introduction

1. My full name is Lynda Ann Towers, GRO-C Edinburgh GRO-C I hold an LLB (Hons) from the University of Edinburgh. I am also a Notary Public.
2. I was a Government lawyer for most of my legal career. I have advised on specific subject areas, instructed and drafted legislation, appeared in and instructed litigation, including Judicial Reviews (JRs), statutory appeals and general law issues in the Court of Justice of the European Union (CJEU), the House of Lords, Supreme Court, Court of Session, Sheriff Court, Tribunals and in Public, Planning and Marine Inquiries. I was also responsible for all advice to the Scottish Parliament in relation to its functions as an active parliament and delivering advice to its Scottish Parliamentary Corporate Body and members as well as the constitutional and procedural advice on legislative competence required by a legislature. My responsibilities have been focused in the area of public and administrative law.

June 2016 - to date	Director of Public Law- Morton Fraser
March 2018 – to date	Legal Convenor of Mental Health Tribunal of Scotland
Sept 2015 – June 2016	Senior Civil Servant (SCS)- Special Project on Statutory Public Inquiries for Scottish Government Justice and Health Dept
Oct 2007 – Oct 2015	Solicitor to the Scottish Parliament
Oct 2000 – Oct 2007	Deputy Solicitor to Scottish Government
May 1996 – Oct 2000	Divisional Solicitor – (S C S) with responsibility for UK legal advice to Dept of Health and DWP (in relation to Scots law) and Scottish law advice to Scottish Executive, relating to Health
Feb 1983 -May 1996	Senior Legal Officer (Grade 6) advising various departments including, at different times, litigation, health, Department of Social Security, public inquiries, justice, planning
Feb 1983	Joined Scottish Office Legal Department
June 1979 – Feb 1983	Apprentice and conveyancing assistant – private practice firm in Edinburgh
June 1979	Graduated LLB (Hons) University of Edinburgh

3. I am a member of the Public Policy Group of the Law Society of Scotland and as a result of that membership have recently co-chaired a Law Society working group on Advance Choices and Medical Decision Making which published its report in May 2022. The Group has now stood down.

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4. My main contacts were those who feature in the documents forwarded to me and which varied over the years. The Scottish National Blood Transfusion Service (SNBTS) and their witnesses were never my clients and while I may have had discussions with them I did not give them legal advice.
 5. I have not provided evidence to the other inquiries referred to in para 5 of the note. I attended the UK vCJD to legally support Scottish Executive witnesses. I have no statements or reports in my possession.

Section 2: Central Legal Office ("CLO") and look-back exercise relating to HCV infection from blood transfusion/products

Please describe your work insofar as it involved advising the Scottish Home and Health Department ("SHHD") on whether and when to undertake a look-back exercise concerning HCV in consequence of blood transfusion or blood products.

6. In 1994 I was a senior legal officer in The Office of the Solicitor to the Scottish Office and managed a small team of lawyers providing advice to the Scottish Executive Home and Health Department (SHHD) and to the Secretary of State for Scotland (SofS). The Common Services Agency (CSA) was a statutory creation of Ministers to manage and take responsibility for certain health matters, including SNBTS. The Central Legal Office (CLO) at that time provided legal advice to CSA and to health boards. They had no direct relationship with the government legal office but on occasions both offices liaised on matters of common interest. Legal advice to SNBTS was for CLO. SHHD and the SofS had an interest in their actions since the SofS had ultimate parliamentary responsibility for their actions.
7. By 2000, devolution had been implemented. So far as I recollect the CSA and CLO position remained virtually the same operationally but Scottish Ministers (SMs), were now responsible for health in Scotland.
8. By 2000 I was a Divisional Solicitor (SCS), still with responsibility for health advice in Scotland. In October 2000 I became Deputy Solicitor and ceased to have responsibility for health advice, taking over responsibility for other areas of advice and management in the Solicitors' Office.

On 18 May 1994, the Scottish National Blood Transfusion Service ("SNBTS") Medical and Scientific Committee decided that a look-back exercise in relation to Hepatitis C should be undertaken (PRSE0003685). Dr Aileen Keel, who was the Senior Medical Officer within the SHHD at the time, asked that no action be taken until she had spoken with colleagues at SHHD.

- a. Did Dr Aileen Keel discuss the issue with you? If so, what was your advice?***
- b. Was this the first occasion in which you had been asked to advise on the need and appropriateness of a look back exercise?***

On 19 May 1994, Mr McIntosh (General Manager of SNBTS) wrote to Rab Panton (SHHD) stating that he was satisfied “that the medical and scientific reasons for this, combined with good ethical and legal arguments, as well as the obvious public relations implications” meant that he considered the Medical and Scientific Committee’s recommendation for a look-back exercise should be accepted (PRSE0002093). Did you discuss the issue with Mr McIntosh and provide him with the “legal arguments” involved? If so, what were the legal arguments you discussed with him?

Did you provide any further advice in relation to the nature, extent and scope of the Hepatitis C lookback exercise? If so, to whom did you give that advice and what was the nature of it?

9. Consideration of a lookback process was almost 30 years ago and while I remember this being an important issue at the time I have no recollection of what happened at specific meetings. I remember a number of discussions and meetings with Dr Aileen Keel, both formal and informal around the emerging issues and discussing a look back exercise. I also remember Rab Panton, who was the main contact in SHHD. I suspect I would have been asked to advise SHHD on what SNBTS were proposing but I do not know when that request was made or when I replied. I do not have a copy of that advice. However I note that the lookback proceeded and had I had concerns about SNBTS carrying out that lookback, I would have expected to have seen that reflected in the documents sent to me. I have no recollection that was the case. I would not have advised Mr McIntosh and would not have discussed the legal arguments with him. I would have expected any discussions he would have had would be with CLO.

10. I note that in a submission to SofS on 4 October 1996 **SCGV0000167_056** it refers to a look back having been undertaken by SNBTS and is also referred to in a minute seeking my advice on retention of samples on 24 September 1997 by Gary Wildridge **SCGV0000112_062**.

At a meeting on 10 February 2000, with regard to identifying patients with haemophilia who had been infected by Hepatitis C, you stated that the CLO was "representing the Trusts and SNBTS and that the Haemophilia Directors ("HDs") should therefore follow CLO advice on whether any further investigation or the tracking down of patients was necessary" (ARCH0003312_020).

- a. Who made the decision that the CLO, rather than clinicians, was to determine whether or not it was necessary to carry out further investigations or track down patients?***
- b. Why was the fact of the litigation relevant to the scope and extent of looking back to identify patients who had been infected with hepatitis C?***
- c. What was the advice given by the CLO, by whom was it given and what was such advice based on?***
- d. What efforts, if any, were made to contact those infected persons whose contact details were unknown? Were any records kept? What did these records detail?***
- e. Do you believe the advice that was given should have been different? If so, in what way should it have been different?***

11. I suspect the minute of 14 February 2000 of the meeting of 10 February 2000 has been written short and is therefore confusing as to what was discussed. In para 9, I read this as Prof Lowe asking whether they should tell their medical predecessors that their patients may have been infected. Prof Ludlum was also asking related questions relating to tracing previous patients. I suggested they should ask CLO since legal advice to them should be from CLO not me. By 2000 some form of lookback had already been carried out so I would not have wished to cut across any CLO advice. There would have been questions of patient confidentiality in advising retired practitioners as to patients then status as well which would have been for CLO to advise on. My response reflects the separate roles of CLO and myself in providing advice.

12. The clinicians would have made the decision to further investigate based on the legal advice of CLO. SHHD would have been aware of their decision. These decisions were being taken in the context of court cases being raised and investigations being carried out as to the extent of the issues and who might have been infected. This was both a clinical issue for patient welfare and a legal issue to establish what had happened.
13. CLO were advising the Health Boards (HBs) and SNBTS who had been directly involved in the treatment and against whom claims were being raised. SMs were also being sued in respect of their statutory responsibility for delivery of health in Scotland. Patients had been infected at different stages and were suffering from different infections. It would have seemed prudent to identify the likely extent of those who would potentially wish to claim. Initially, CLO were objecting to legal aid applications by patients on the basis the claims were prescribed while Ministers did not take that position and made no objection. The date of becoming aware of the infection would have been relevant for patients to that legal issue.
14. I do not know who gave the legal advice to SNBTS but my contacts were with Mrs Susan Murray. I have not seen any advice from CLO on this issue, and have no information on what efforts were made to contact patients, what records were kept and what the records detailed. I would not have required access to any of that information.
15. With the benefit of hindsight and many years practice since then, I believe today that a lookback exercise, with appropriate safeguards in place to assist and support the patients unaware of the potential risk of infection, would have been appropriate at that time. I also accept there would have been complex legal and support issues around such an exercise even today.

Section 3: HIV litigation

At the top of the page of SCGV0000229_041, the first handwritten note was written by someone with the initials RP. The note reads: "I spoke to Mrs Towers we will meet (just ourselves) on 14 June". This appears to be in response to your request for a meeting to discuss how the various legal actions brought against the Health Boards, SNBTS and the Secretary of State ("SofS") for Scotland, should be responded to.

- a. Was the RP noted here, Rab Panton? If not, who was it and what was their role?***
- b. Did the meeting, organised for 14 June 1989 with RP, take place? If so, what did you discuss?***
- c. What was the advice you gave to RP in relation to the various legal actions?***
- d. Was a decision made regarding how to respond to the various legal actions? If so, what was it and who made the decision?***

16. I presume that was Rob Panton. It looks from **SCGV0000229** that we met on 20 June 1989. I have no notes of that meeting. However it looks to have been a preliminary meeting setting out what information we in the Solicitors' Office would need to be able to deal with the cases. By that time I was based in the Litigation Division of the Solicitors' Office. I had dealt with actions involving numerous cases in other contexts based on one set of circumstances (there was no provision for class actions at that time in Scotland). I would have been seeking background papers on the chronology of the knowledge of the development of the virus. I suspect I would also have advised Mr Panton on how court cases proceeded and what Ministers, as defenders, had to do and when. I had clearly been contacted by Mr Tyler, of Balfour and Manson Solicitors who acted for a group of the patients. The actions were to be sisted (a stay in English law) by Mr Tyler to allow his clients to apply for legal aid and I would have advised Ministers should agree to that, which is what happened. I would also have wished to ensure the Scottish and English cases ran in tandem so far as that was possible and that consistent approaches were taken on matters where that was relevant, accepting there were different timescales of development in Scotland and the structures were different.

17. I do not recollect what decisions were made at this stage except those set out in the email of 28 June 1989. This was an early stage in preparation for the

court cases. The cases were being sisted, so no immediate decisions were required but we needed to ingather information to advise on prospects nearer any hearing. I would take instructions from Mr Panton. I would have given advice on the matter but suspect Ministers would not have been consulted at this stage in proceedings because the Department would not have considered that this would be appropriate at this early stage in the litigation particularly since the right to raise prescription arguments at a later stage were reserved. I do not have a copy of those instructions but would not have discussed the issues as narrated in my note of 17 July 1989 **SCGV0000506_073**.

On page 1, at paragraph 4 of DHSC0023439, it was noted that a meeting with Mr Fred Tyler (Messrs Balfour & Manson Solicitors) "may be arranged to discuss the next stages of the procedure of the cases and possibly also the merits". On page 1, at paragraph 1 of SCGV0000506_073, you state that this meeting took place and Mr Tyler was "accompanied by Mr Thomas Williamson of Messrs Roberston and Ross, Solicitors, Paisley who is the Secretary of the group, Mr David Stewart of Messrs Caruthers Curdie Sturrock, Solicitors, Kilmarnock and Miss Logan of Balfour and Manson".

- a. When was the meeting and did anyone accompany you?***
- b. What was discussed at the meeting and what was its outcome?***
- c. Why were you "anxious to keep this matter under control" and how did you anticipate doing so?***
- ***d. Did you receive the requested chronology of events, and if so, how did it help your strategy?***

18. I have no note of the meeting to confirm my recollections but my note of 17 July 1989 to Mr Panton suggests it was fairly soon before that date. I would likely have taken one of the lawyers who worked for me to the meeting to take notes but I cannot remember who that would have been. The meeting involved all the Scottish solicitors who were representing groups of claimants but Mr Tyler had the largest number and he took the lead. It is also probably fair to say he was the most experienced personal injury lawyer of the group involving groups of claimants. The note also sets out in some detail what we discussed and what positions I had taken in respect of aspects of the cases.

19. My comment in keeping "the matter under control" was in ensuring all preparations were made timeously, that information was provided or commissioned in good time to consider the merits of the action and that we were managing the information around the cases lodged and expected to be lodged. We were looking at a large number of individual cases which had to be appropriately case managed. I had experience of this before in other areas and was very aware of the dangers if the actions and information were not appropriately managed.

20. I do remember receiving a chronology of events and receiving briefing from the experts, and beginning to assess the merits of the actions. The cases in Scotland were not argued in court but certain differences were identified in looking at the chronology between dates of introduction of different testing arrangements between England and Scotland which had to be considered.

On page 1, at paragraph 5 of DHSC0023439, P M Beaton, Solicitor to the Secretary of State for Scotland, stated that "[w]e are hoping to arrange a meeting involving members of this Office and members of SHHD who have an interest in this matter to discuss the issues which are before us in these cases not least, the nature of any defence which might be put forward to meet the various actions concerned". SCGV0000229_035 is a note of a meeting that took place on 20 June 1989 between the Solicitors' Office and SHHD. The purpose of this meeting was to "discuss AIDS Litigation (Haemophiliacs) Cases". Is SCGV0000229_035 the meeting P M Beaton hoped to have, as expressed in DHSC0023439?

21. It seems likely the handwritten note SCGV0000229_035 is a note of the meeting Mr Beaton is referring to in his letter of DHSC0023439.

Please consider SCGV0000229_035 and SCGV0000229_029.

a. Were you informed of the "policy decision" in relation to defending the cases? If so, who informed you of it and what were you told?

b. Were “copies of all relevant papers from the various files held within SHHD” provided to you? To the best of your recollection, what did these papers consist of? What did you advise as a result of seeing such papers?

c. Did you meet with all or any of Professor Cash (Medical Director, SNBTS), Dr Ludlam and/or Dr Lowe? If so, when did the meeting(s) take place, what was discussed and what were the outcomes of the meeting (s)?

22. On the question of the “policy decision” I cannot remember when or if I was told what the decision was. My instructions were to defend the cases to the extent all were currently sisted and preparations were ongoing and information being ingathered to reach a decision on whether to defend the Scottish cases. I must have been informed the Scottish cases were to be settled since that was ultimately what happened.

23. I presume that the papers were related to any involvement in the Health department showing decisions which may have been made and the involvement of ministers together with any background information as to what was known when and was of relevance to the cases. That would have included any discussions with the English Department of Health. I had no concern at the time that I was not provided with all relevant papers. They would have informed further work and investigations needing to be done and identified possible witnesses. This would have been an ongoing process as information became available as opposed to a note such as counsel would provide prior to a case. We never reached that stage in the cases.

24. I presume I met with Professor Cash and Drs Ludlam and Lowe at times, probably with the purpose of explaining the processes as they developed and to explain how infection could have taken place. It is likely Dr Keel and possibly Mrs Murray from CLO were present. I am unable to give precise dates and outcomes.

On page 1, at paragraph 2 of SCGV0000506_062, it is noted that “the CLO intended defending these actions in the “usual” manner”.

- a. What was the “usual” way of defending such actions?***
- b. Did you or G L McNicoll (Solicitor’s Office) receive a response from Mr R Panton in relation to what approach was to be taken in response to the legal actions? If so, what was it?***

25. The “usual way” in **SCGV0000506_062** is how CLO described what they would do in defending an action. I assume this was to take all possible defences and in this context it was to plead time bar. You will note that I similarly reserved the Minister’s position on prescription in the context of the action but not the legal aid application. No final decision was taken before the actions were settled. I presume I must have received a reply or Mr Griffiths of CLO would have chased again. I cannot remember what instructions I had asked for on Mr Griffith’s letter. I would not have proceeded further in discussions with CLO without instructions.

On page 1, at paragraph 2 of DHSC0003655_004, Richard M Henderson (Solicitor’s Office) mentioned a “draft of the proposed detailed terms of settlement”.

- a. Do you recall what the terms of the draft settlement were?***
- b. Who prepared the draft?***
- c. What was the rationale behind the terms of the draft settlement?***
- d. Did you or Richard M Henderson receive a response to DHSC0003655_004 from Mr Tucker (SHHD Management Executive 3) or any other member of staff at the SHHD? If so, what did the response say?***
- e. What were the implications of the terms of settlement for Scotland?***

26. In relation to **DHSC000365_004** I do not at this distance in time remember the terms of settlement. There were clearly still issues arising as to the terms of the drafts and who was covered by the settlement, possibly based on issues of Scots law. It seems from the minute that English Counsel were drafting the settlement agreement but this would probably have required amendment to reflect Scots law requirements and that would have been done on advice from

Solicitors office, either by myself or Mr Henderson (or both). I have a recollection of a number of versions. I have no specific recollection of a response but the minute dealt with critical issues which would have required a response to enable us to proceed, either in writing or in discussions.

27. This would enable the Scottish cases to be withdrawn from court. I do not remember from which budget payments were made in respect of the settlement sums. The Solicitors' Office would have paid the costs of the court proceedings.

Section 4: Hepatitis C litigation

On page 1, at paragraph 1 of SCGV0000167_056 (dated 04 October 1996), it is noted that the Department of Health in England decided that there should be no compensation scheme for haemophiliacs infected with HCV through blood or blood products. Further, in the first paragraph on page 3, the "line to take" is set out. This line of approach was adopted through to August 1999 (please see paragraph 9 on pages 2 and 3 of SCGV0000169_076).

- a. Did you have any part in the development of the "line to take"?***
- b. What did you think of the "line to take"?***
- c. Did this approach to haemophiliacs with HCV ever change? If so, when, how and why did it change?***

28. In relation to doc **SCGV0000167_056** and **SCGV0000169_076** I would not have drafted either line to take. However since I am copied in to both minutes I would have seen them in advance and would have checked they reflected the then legal position being taken. To that extent I would not have commented adversely on that aspect of the minute.

29. While I was aware of the different routes of infection and outcomes for patients, this was reflected in the research and investigation being done to deal with the court cases. I did not deal with the cases any differently on the basis of the nature of their infection. I am not aware of whether the approach to those with HCV changed in the context of internal consideration. I cannot now remember whether the settlements were on the basis that no liability was accepted although that would have been my normal practice.

On page 5 of document NHBT0097064, S.A. Janisch (Le Brasseur J Tickle Solicitors) confirmed a meeting with the CLO on 18 December 1996 to discuss the HCV litigation in England and Scotland. At page 7, S.A. Janisch mentioned that you may be attending this meeting. Did you attend the meeting, and if so, what was discussed?

30. I note the references in **NHBT0097064** to my attending a meeting. I have no recollection of whether I did attend or not.

On page 1, at paragraph 2 of SCGV0000280_077 Thea Teale (SHHD) had written that she would be grateful for your advice as to “whether any decision to settle could be limited to claims against SNBTS or whether it would naturally follow that all claims, including those against the Secretary of State/Scottish Ministers would need to be settled”. She went on to say that “we would have to consider carefully the moral if not the legal implications in standing out against a settlement”.

- a. What did you advise in relation to this matter?***
- b. What did you base your advice on?***
- c. What were the moral and legal implications in “standing out against a settlement”?***

31. In relation to **SCGV0000280_077** the emails are dated March 2000. No final decision to settle claims had been made. I cannot remember whether different arguments were being made as to the legal responsibilities of the SofS /SMs as opposed to SNBTS in the claims. While I can not remember what advice I gave I am sure I would have wanted claims against the SMs to be settled at the same time. This would be a matter of good litigation practice to protect the SMs position. Ms Teale’s comments on the “moral...implications” are a matter for her advising the SMs. This was not for me as a solicitor advising on the legal implications.

Please consider SCGV0000240_107:

- a. Why were you not happy with the chronology that had been prepared?***

- b. Why were you not persuaded by the argument that others would raise court actions if the current group of litigants pursue their claims through the courts?***
- c. Did you contact the solicitors of the Department of Health in England, and if so, what did you discuss?***

32. In considering **SCGV0000240_107** neither I nor Mrs Murray for CLO had seen the legal advice. I did not know on what basis it was being said that a settlement should be made and whether the Department of Health (DH) chronology was the same as the Scottish chronology leading to the basis for settlement. This was a general statement, so far as I was concerned, rather than reflecting concern with any particular element of the DH legal advice and chronology. The final comment attributed to me does not make sense to me at this distance in time.

33. I cannot remember if I had contact with DH lawyers at this time.

On pages 2 and 3 of SCGV0000241_094, five options were set out that were available to Scotland in relation to legal claims from patients infected with HCV through treatment with blood/blood products.

- a. Did you come up with these five options, and if so, which option did you think was the best one and why?***
- b. If you did not come up with these five options, who did?***

34. In doc **SCGV0000241_094** options are referred to. I did not draft the options but it looks as if I contributed current numbers and the nature of cases for the paper. I note this is undated but is after 1 June 2000 since it refers to the information I provided on that date. I think the paper was put together by Christine Dora, but she may have discussed the content with me in advance while preparing it.

In the eighth paragraph, on page 2 of SCGV0000240_050, you were asked if there is "any way of knowing how many of the current claimants have in fact developed liver cirrhosis/cancer".

- a. Did you have an answer to this question, and if so, how did you find out such information?*
- b. Why was finding out the number of claimants who had developed liver cirrhosis/cancer important?*
- c. Did finding out this information influence Scotland's approach to the HCV litigation, and if so, why?*

35. In **SCGV0000240_050** Mrs Murray and I were asked regarding development of cirrhosis/cancer. The only way we would have that information would be if it were narrated in the pleadings of any claims. It was presumably relevant since higher levels of compensation were being suggested for those who had developed cirrhosis/cancer. I cannot answer this question since it was never a legal question, but I was never conscious that the overall level of compensation was a deciding matter if settlement was considered appropriate.

In an email you sent to Christine Dora from the SHHD (Thea Teale and Aileen Keel cc'd) (SCGV0000172_105), you list a batch of letters and note that one cannot be traced.

- a. Why were these letters significant for the HCV litigation?*
- b. Do you recall what information was within the letters?*
- c. How did you know that there was one letter that existed but could not be traced?*

36. I presume the reference **SCGV0000172_105** relates to acceptance letters from the settlement offers and there is one we were not aware of being in that category that was dealt with separately. It seems to have been an extra one rather than a missing letter. Without accessing those file references I cannot confirm the nature of the contents beyond my assumption above. Each settlement offer had a separate file.

On page 1, at paragraph 4 of SCGV0000240_008, it was recorded that the English litigation went to trial.

- a. How did the Scottish Health and Community Care Department react to this?*

b. Did your advice remain the same that Scotland would have to treat the cases in a similar way to those in England?

37. I am not aware of Scottish Health and Community Care Department's reaction to SCGV0000240_008 but it would focus attention on the Scottish cases. This was informing the Minister of the start of the hearing, so no court decision had emerged. On that basis there would not have been grounds for changing the Scottish position or advice.

In the second paragraph of SCGV0000244_116, Colin Troup (SHHD) stated that "[w]e may not want to demonstrate how closely we could be involved in the conduct of various matters which have been delegated to various bodies", and further commented that "[i]f we can do it here we can do it elsewhere".

- a. Do you know the reasons why Colin Troup made this comment?***
- b. What was/would have been the benefit of not demonstrating close involvement with the conduct of other public bodies?***
- c. Was there any conduct "elsewhere" that Scottish Ministers would not have wanted to be associated with? If so, what was the nature of such conduct?***
- d. What was eventually decided with regard to approaching this matter, and who made the decision?***

Please outline the advice, if any, that you provided to assist in the Hepatitis C litigation process.

38.38. In SCGV0000244_116 Mr Troup is replying after a discussion with me and is interpreting Mr Lindsay's comments. Both were lawyers in the Solicitors' Office and I was Deputy Solicitor by then and no longer involved in this advice area. This goes back to my earlier comments on the sensitivities of S of S for Scotland and later SMs being seen to stand back from the operation aspects of the CSA/SNBTS/CLO although there were overarching statutory powers of direction which could have been exercised. That would have been an exceptional use of those powers. The approach kept the practical approach which had been adopted in place. There may have been concerns early in a devolved government that SMs might choose to exercise their powers

differently and more widely. There was no evidence I am aware of that this was a valid concern or that there was any conduct elsewhere in health that SM's would not want to be associated with. It is always important to be able to differentiate between operational aspects of the exercise of powers and responsibility for exercise and development of policy. I have no information on what was decided.

Section 5: Internal inquiry/investigation into the introduction of blood clotting products in Scotland that were safe from HCV

On page 1, at paragraph 1 of SCGV0000176_118, it is stated that the Haemophilia Society continued to campaign for compensation for haemophiliacs infected with HCV as a result of NHS treatment using blood and blood products. Further, on page 3 at paragraph 9 the recommendation that was given in relation to this was as follows:

"In light of the fact that the Department of Health have rigorously examined this issue twice in recent years and that the Haemophilia Society have not produced fresh evidence to support their claim for financial assistance, we advise that a further examination of this issue would only draw the same conclusions previously reached".

- a. Did you contribute to this recommendation?***
- b. What were your thoughts on the recommendation?***

39. I was not involved in the recommendation in **SCGV0000176_118**. I was copied in so I would probably have seen a draft which I would have checked for legal content. The recommendation reflected the legal position at that time so I would not have asked for it to be changed.

What changed between the recommendation to "adopt a consistent line" throughout the UK's Health Departments by not investigating HCV infections from blood products (SCGV0000176_118), and the decision to begin an internal inquiry (SCGV0000176_101)?

- a. Did you provide legal advice in relation to this matter, and if so, what was your advice?***

- b. Do you recall who made the decision to begin an internal inquiry and their reasoning for doing so?**

40. I have looked at **SCGV0000176_118** and **SCGV0000176_101** and note there was a change in approach. I do remember a discussion with the Minister on the powers to hold referendums in Scotland (this being before the Inquiries Act 2005) and that any decision to do so was at the discretion of the SMs. Holding an internal investigation appears to have been at the initiative of the Minister and would have been a political rather than a legal decision but was within her powers.

On page 1, at paragraph 4 of SBTS0000379_040, it is stated that you advised that "Wales and Northern Ireland should also be asked to provide [...] information" on the safety of blood products between September 1985 (when the English product that was safe from HIV became available) and June 1987 (when the same product was made fully available in Scotland).

- a. Why did you believe that this information was important?**
b. Did you ever receive answers from Wales and/or Northern Ireland, and if so, what did they reveal?

41. My concern expressed in **SBTS0000379_040** related to the matter raised in **SCGV0000280_027** and I was anxious to ascertain what was happening in Wales and Northern Ireland relating to the important period for comparative purposes. I do not recollect whether we received that information.

SCGV0000043_047 is a briefing note for a meeting with the Haemophilia Society.

- a. On page 3, paragraph 14 refers to "marshalling data". Were you involved in this process, and if so, what were your findings?**
b. Did you advise on any part of the investigation?
c. Did you have any involvement with the initial conclusions set out on page 10?

42. I was not involved in "marshalling data", assuming that relates to clinical information and technical information on testing regimes and the development

processes. The initial conclusions would have been drafted by the administrators and I would have been copied in. At the time of the minute the conclusions were in accordance with the legal position as understood at that time.

Michael Palmer of the Health Care Policy Division circulated some recommendations ahead of the meeting with the Haemophilia Society that was scheduled to take place on 14 September 1999 (SCGV0000170_164). On page 1, at paragraph 4a) he emphasised that "the Department is at arm's length from SNBTS and is engaged in an impartial and objective analysis of the events and circumstances surrounding this issue". The handwritten note at the top of page 1 reads: "Whilst I see the point you are making at x, this is open to misinterpretation. The Minister should settle on the inquiry being impartial and objective".

- a. Why did Michael Palmer think it was important to emphasise that the Department was "at arm's length" from the SNBTS?***
- b. Do you recall there being general concern about the maintenance of impartiality and objectivity of the inquiry? If so, why was there concern?***
- c. Do you believe the inquiry was impartial and objective?***

43. In **SCGV0000170_164** Mr Palmer was clearly attempting to establish the credibility and independence of the inquiry by emphasising the hands off relationship with SNBTS and that the inquiry would be impartial and objective. This would have been important for the Haemophilia Society to believe it would be an impartial inquiry. I had no reason to believe the inquiry was not impartial in its consideration.

SCGV0000170_232 is a note of the meeting with the Haemophilia Society that took place on 14 September 1999. You were listed as an attendee. Do you recall what was discussed at the meeting?

44. I note that I was at the meeting in **SCGC0000170_232**. I have no recollection of the content at this meeting other than as noted in the minute. This was the

Minister's meeting and there does not appear to have been discussion of legal issues.

On page 2, at paragraph 7 of DHSC0006801_084, it is stated that two reports were to be produced and the Scottish Executive would then seek legal advice on such reports.

- a. When were the reports produced and what were their findings?***
- b. Did you provide legal advice on these reports? If so, what did you advise? If you did not, who did?***

45. Reports are referred to in **DHSC0006801_84**. I have no recollection of when they were produced. Legal advice would have been provided by myself or/and Richard Henderson. This would have been advice on the reports as drafted as opposed to drafting sections of the reports.

On 06 December 1999 David Bell, from the Health Care Policy Division, asked for your advice on the best way to deal with correspondence received from Ross & Co Solicitors in relation to their clients who were infected with HCV (SCGV0000187_035). The correspondence specifically included their offering to provide evidence to the internal inquiry.

- a. What advice did you provide to David Bell?***
- b. Was the material referenced in this correspondence submitted to the internal inquiry? If so, do you recall the documents that were submitted? If not, why was it not submitted?***

46. Advice was sought in **SCGV0000187_035** on correspondence where information was being offered by Ross and Co solicitors who acted for some claimants. I do not have access to my response but I suspect I would have been very cautious about this offer which raises issues of confidentiality of information both generally and in respect of patients. Legal privilege looks like an issue as well. It also suggests evidence of negligence on behalf of DH. I do not remember what the draft reply said but I suspect I would have recommended refusing the offer. I do not know who else Mr Bell may have told about this correspondence.

In SCGV0000170_079, there is a handwritten note towards the bottom of the page that mentions your comments regarding pending litigation and documents that could eventually be used in court. Do you recall what your comments were?

47. I think the handwritten note on **SCGV0000170_079** is purely a reminder I made to Ms Teale that they need to remember that documents referred to or relied upon could be produced in the court hearings. I had also had an occasion in the past when a very unhelpful and derogatory note on a submission handwritten by an official on a minute was read out in full at a public inquiry, to the detriment of the writer.

PRSE0001249 is the SNBTS's report on the 'Introduction of Heat Treatment for Blood Products in the mid 1980s'.

- a. What advice did you provide, if any, to the Scottish Executive after having received this report?***
- b. Did you have any concerns after reading the report, and if so, what were they?***

48. **PRSE0001249** is, I presume, the additional information following on from a submission of December 1999. I would have understood the implications of what is a technical document. At that time I understood the timeline of the developments and how the developments affected different communities. I would therefore have understood the content of the report. I regret that at this time I can not remember whether I provided legal advice and I cannot now comment on the adequacy of the content of the report. The team, in the widest sense, was still trying to ensure we had the full picture and could assess whether there was liability.

SCGV0000171_068 includes the first draft of the report of "the facts behind the alleged discrepancy in the heat treatment of blood products in Scotland and England in the mid 1980s, with reference to the infection of haemophiliacs with the Hepatitis C virus". Did you make any contributions to this draft report? If so, what were they?

49. I would have read and possibly commented on this draft **SCGV0000171_068**.

The handwritten amendments are not mine.

On page 3, at paragraph 10 of SCGV0000171_077, a submission from Christine Dora to Ministers, copied to you, it is stated that “publishing this draft ought to be kept as low-key as possible”. What was the reasoning behind this? Did you agree with it?

50. The decision on publication of the report in **SCGV0000171_077** was a political one for the administrators, not for the lawyers.

In an email from Christine Dora to Dougie Atkinson (SHHD), which you were copied into (SCGV0000171_076), on page 1, at paragraph 4, Christine Dora asked for advice about the procedure of a public inquiry and whether or not it would enable access “to files we have from the mid 1980s”. The reply appears to be at SCGV0000171_039.

- a. Did you provide any advice in relation to a public inquiry at this time? If so, what did you advise?***
 - b. Do you know what files Christine Dora was referring to in this email?***
 - c. Why was there concern about whether or not such files could be accessed?***
-

51. In relation to the questions on **SCGV0000171_076** and **SCGV0000171_039** I indicated that I did have a discussion with the Minister at some time on Public inquiry procedures etc. I cannot remember if it was at this point or over different occasions. I presume the files were pre- devolution departmental files and possibly files held by CSA. Mr Jamieson had been the solicitor who had instructed the Scotland Act 1998 and was familiar with the Statutory Instruments made in respect of transfer of pre- devolution property. I agree with his advice in this note. There may have been concerns on the part of officials but the legal position was clear.

On page 1, in paragraph 8 of SCGV0000280_027, you stated: "I can foresee arguments that we were doing nothing between March 1985 and September 1986". Why did you foresee such arguments?

52. **SCGV0000280_027** refers to my comments on foreseeing arguments on what had happened between March 1985 and September 1986. The chronology was very complex dealing with different testing regimes being developed in the USA, England, Scotland and elsewhere. It seemed to me in considering the various papers and chronologies that there was a potential argument that Scotland could have introduced a higher level of testing at an earlier stage than it did, leaving people open to risk for a shorter period. It was explained to me by those at SNBTS why the higher level of testing could not have been introduced any earlier than it was. Testing, peer review and awaiting outcomes were cited to me as being the reasons why it could not have been done any quicker. I remained concerned despite the firm position of the scientists and doctors that this could prove difficult to deal with should the cases be litigated in court. I did not feel I was being misled by their explanations but as a lawyer, I could see challenges being made to their position and I considered it a weakness in the defence. It was in practice never tested in court so I have no way of knowing if my concerns were valid or not.

In preparation for a meeting between the Minister and the Haemophilia Society to discuss the findings of the report, it was suggested, in an email copied to you, that an eminent scientist should be identified to attend (SCGV0000172_069). Subsequently, Kate Cunningham (Media and Communications Group) stated that there had been difficulty in finding an eminent scientist and asked "[w]ill no one support our findings?" (SCGV0000172_059).

- a. Why was it difficult to find an eminent scientist?***
- b. Which scientists were approached?***
- c. Did scientists who were approached to attend the meeting not support the report's findings?***

53. SCGV0000172_069 and SCGV0000172_059 refer to finding a scientist. I have no recollection of this issue.

In a briefing to Ministers on 4 September 2000, copied to you (see page 10, at paragraph 6 of SCGV0000172_049), it is stated that some files had been destroyed and this was “presumably during routine procedures for the review and disposal of files”.

- a. Was a log kept of the files that were destroyed?***
- b. Do you know which files were destroyed and when?***
- c. Do you know why it was presumed that the files were destroyed during routine procedures for review and disposal? Did anyone confirm that that was the reason why they were destroyed?***

54. I would not have been surprised that files were destroyed (SCGV0000172_049). Paper files were regularly and systematically destroyed in the Scottish Office and in the Scottish Executive in accordance with the destruction policies. As far as I was aware, having reviewed files in my own office area, records were kept of the files destroyed but not of the entire contents. There was a rolling programme of review and destruction from the date a file was marked as closed. There was an option to “keep” the file for longer and it would be reviewed again at the end of that period. There is now an electronic filing system in the Scottish Government.

The report was published on 24 October 2000 (SCGV0000173_031). Not long before, it had been expected to be published at the end of September 2000 (SCGV0000095_050). Why was there a delay until 24 October?

55. I have no knowledge of why the report was published in October. That would have been a decision of officials or the Minister (SCGV0000173_031 and SCGV0000095_050).

Did you have any involvement in determining the final conclusions in the report

of the Investigation? Please see SCGV0000172_049.

What actions, if any, were taken as a result of the internal report?

Did you make contributions to the "line to take" (set out in a memo dated 7 December 2000, copied to you, at SCGV0000173_031) which was in response to the Haemophilia Society's request for an urgent meeting following publication of the internal investigation report? If so, what were your contributions? Did you agree this was the right way to respond, and if so, why?

56. I would have seen the final version of the report (SCGV0000172_049) before publication including the conclusion. I would also have seen the news release and the lines to take. I note I commented on the draft report on 7 June 2000 (SCGV0000280_027). I became Deputy Solicitor in October 2000 so I would not have had much further involvement with the final report and am not aware of what further actions were taken as a result of the report.

Section 6: Blood donor sample retention

In a memorandum sent on 24 September 1997 (SCGV0000112_062), you were asked by Gary Wildridge (Provider Policy Development Division 3) to provide advice on sample retention periods. In your reply on 16 October 1997 (SCGV0000112_060) you stated that you did not feel that you could advise and that ultimately it was a "balance between the legal risks of not being able to access the sample and all liability that arises therefrom and the administrative difficulties that may arise in any look back situation basis set against the financial implications for the SNBTS." Who eventually made the decision on what the retention policy would be, and when was this decided?

On page 4, at paragraph 16 of SCGV0000095_079, it was agreed that a meeting would be held between SNBTS and the Solicitors Office to discuss and review the retention period of blood donor samples.

- a. Did you attend this meeting, when did it take place and who else attended?***
- b. What was the outcome of the meeting?***

- c. Who eventually made the decision on what the retention policy would be, and when was this decided?**

57. I was not prepared to say it was legally safe to destroy the samples because they may be necessary as productions in future court actions which were in contemplation at that time. I saw it as risky. The pressure was to destroy them because of the space needed for retention as opposed to degradation in the quality of the samples. I did not consider that to be an overwhelming reason. I considered a 10 year period may be appropriate but I could not be sure since at that time the investigations were still ongoing and it was a balance of risk as to the appropriate period. I do not remember what the outcome of the discussion was or who made the final decision. **SCGV0000095_079** I suspect had there been a meeting I would have been there to argue my position.

Section 7: Irish HCV Compensation Tribunal ("Irish Tribunal")

On 03 April 2000, David Bell (SHHD) asked for Dr Keel's and your comments on the minute attached to his email regarding the Irish Tribunal (see SCGV0000194_051 and SCGV0000194_050). Dr Keel's response was recorded by David Bell in SCGV0000194_048. Did you comment on this document, and if so, did you agree with Dr Keel? If not, what was your view?

In an email chain dated 4 April 2000 (SCGV0000194_043), you discussed the Irish Tribunal with Christine Dora. You were concerned that the SNBTS may be challenged in public if they gave evidence and would subsequently be "faced with a transcript from Ireland saying something different [...] which might not be their fully considered view out of the witness box".

- a. What were your concerns based on?**
- b. Were you aware of anything that was outside of the chronology which you thought the SNBTS could agree to and/or comment on which would negatively impact Scotland?**
- c. Why was the "possible settlement in England" (penultimate paragraph on page 2) a reason not to give evidence to the Irish Tribunal?**

d. Please explain what you meant by “[t]he timing now appears unfortunate”.

58. I considered this an unnecessary risk from a legal management perspective since SNBTS were potential defenders in future actions. I saw it as an unnecessary risk. I was not clear whose witness they were and what they might say under questioning which might prejudice a future defence in Scotland or contradict anything in the report. I was not sure we had a fully agreed timeline or an investigation which covered all aspects of a court defence by that time. I saw Dr Keel’s response and appreciated SNBTS were keen to assist but I disagreed it was an appropriate thing to do at that stage, since the Report was in preparation. I do not remember if my advice was accepted or whether SNBTS went to the tribunal (SCGV0000194_051, SCGV0000194_050, SCGV0000194_048, SCGV0000194_043).

On pages 2 and 3 of a memorandum circulated by Sandra Falconer (Blood Policy Team, SHHD) on 4 May 2000 (SCGV0000194_030), three options were set out for how the SNBTS could respond to the invitation of two members of staff to appear as expert witnesses at the Irish Tribunal. It was recommended at paragraph 10 to take Option 2 which was to decline participation in the Irish Tribunal.

- a. Did you come up with these three options? If you did not, who did?**
- b. Were there any more options that were discussed at this time but were not set out in the memorandum? If so, what were they, and why were they not presented alongside the other three options?**

In SCGV0000194_034, Colin Troup suggested a fourth option which was that the SNBTS gave evidence in affidavit form.

- a. Did you have any input into this suggestion?**
- b. What were your thoughts, at the time, on adopting this approach?**
- c. What was your understanding of what Colin Troup was referring to when he said “the areas we would prefer them to avoid”?**

On 14 December 2000, in an email (SCGV0000194_017), an “informal meeting” was suggested to discuss attendance at the Irish Tribunal.

- a. Did this meeting take place, if so, when?**
- b. Do you know who attended this meeting?**
- c. Did you attend this meeting, and if so, what was the outcome? Were your concerns about the operation of the Irish Tribunal allayed?**

On page 1, in paragraph 1.3 of SCGV0000095_186, it was confirmed that SNBTS’s Peter Foster was preparing to appear before the Irish Tribunal. Who decided that Peter Foster should appear before the Tribunal? What was the reasoning behind him attending in person as opposed to providing evidence in affidavit form?

59. The options would have been drafted by officials but probably after discussion with me. I would have discussed the 4th option with Mr Troup. It was a potential solution but apparently not acceptable to SNBTS. I do not remember what further discussions took place or if there was a meeting which I attended. I do not know on what basis Peter Foster attended the Irish Tribunal.

Section 8 :Professor Cash documents

On the 24 September 1999, Dr Aileen Keel wrote to you and stated that it had “emerged that Professor John Cash [...] took with him some files which may be relevant, which he has “gifted” to the Royal College of Physicians in Edinburgh” (SCGV0000170_150). Dr Aileen Keel stated she had “tried without success to persuade him that it would be much more convenient to allow [...] access to the files in another location” but “Professor Cash is extremely resistant to the idea”. Dr Aileen keel asked you for your “advice on the question of ownership”.

- a. What was contained in these files?**
- b. Did you ascertain why Professor Cash was not willing to share these files?**
- c. What advice did you provide with regard to the ownership of these documents?**
- d. Were the documents subsequently obtained?**

60. I do not think I ever saw the Professor Cash documents but Dr Keel was very concerned about what he might be holding. I would have given advice to Dr Keel depending on what kind of files they were, who was the original owner (SNBTS, NHS or Scottish Government) and what degree of confidentiality might apply to them. I did not understand them to be private files. I never spoke with Professor Cash as to the contents, how he had acquired the files or where he had got the documents from. Dr Keel was the liaison and Professor Cash was not an ex-employee of the Scottish Government so it would have been inappropriate for me to question him on the files (SCGV0000170_150).

On page 1, in the third paragraph of SCGV0000171_054, Thea Teale stated she was "a bit concerned too about what might come out of John Cash's papers". She also wanted to "make sure we look carefully for any suggestions that the state of knowledge was other than that which SNBTS have offered".

- a. Do you know the reason(s) why Thea Teale had concerns over the documents?***
- b. Did you share her concerns?***
- c. What knowledge did SNBTS offer?***
- d. Why were alternative accounts of the state of knowledge being sought?***

In an email to you dated 21 July 2000 SCGV0000240_028, Sandra Falconer mentioned that Dr Aileen Keel held incomplete copies of Advisory Committee on the Virological Safety of Blood ("ACVSB") minutes.

- a. What was missing from them to make them incomplete?***
- b. Where had Dr Aileen Keel obtained these documents? Were these from Professor Cash?***
- c. Do you know if copies of the documents were kept or destroyed?***

In the second paragraph of SCGV0000240_028, Sandra Falconer stated that Professor Cash's documents were held by Dr Aileen Keel's secretary and she had asked for the documents to be kept "in the meantime".

- a. What were the reasons for retaining the documents?***

- b. How long did Dr Keel's secretary keep the documents for?**
- c. What was eventually decided in relation to retaining these documents, and who made the final decision?**

In an email dated 15 November 2000, in which you were copied into (SCGV0000173_044), Dr Aileen Keel stated that Professor Cash had told her that he had "rescued" the documents he had in his possession "from a potential bonfire at CSA when they were about to be destroyed by a previous SNBTS manager".

- a. Did Professor Cash ever disclose to you, or anyone else, his understanding as to why the documents were going to be destroyed?**
- b. Did Professor Cash tell you, or anyone else, the name of the previous SNBTS manager? If so, who was it?**

In SCGV0000173_044, an email you were copied into, Dr Aileen Keel expressed that she was "very doubtful" that Professor Cash got many of the papers from the Department of Health (England). Where did you think Professor Cash got the papers from?

61. I have no knowledge of the basis of Ms Teale's concerns on what the files might say (SCGV0000171_054) or what was eventually found in the files.

Section 9 :Involvement in CJD information

On page 2, at paragraph 7 of SCGV0000095_082, it is stated that the policy at that time (11 November 1999), regarding exposure to vCJD, was: "individuals should not be told on the basis that there was no diagnostic test for vCJD, and no treatment available". Further on in the paragraph it was advised that "if the patient asked about the flag they would have to be told the truth".

- a. Did you advise on what is set out there as the current policy i.e. that individuals should not be told if they had received donations from patients implicated with vCJD. If so, what was your advice?**

- b. Did you seek any views from ethicists before advising on this issue? If so, please give details. If not, why not?**
- c. Was it your advice that if a patient asked they would have to be told the truth? If so, what was this based on?**
- d. The last sentence of paragraph of 7 suggests you were approached for further legal advice on the topic of vCJD exposure. Did you provide additional advice, and if so, what was it? What was your advice based upon?**

62. SCGV000095_082 I do not understand that I gave advice as to the then current policy that patients were not to be told if they had received blood from a vCJD person. I was not at this meeting and others were quoting discussions they had had with me earlier. I suspect that not informing patients was the practice at that time and do not know whether that was based on legal advice. It would I suspect not have been my advice. I did not have any discussions with ethicists on this issue. However I clearly had concerns that a patient should be informed if they ask. I do not recollect being asked if the underlying policy on it being a matter for the clinician was appropriate. I have no information on my reply to Ms Teale. Even in 1999I, as a lawyer, I would have advocated for information being given to a patient on their condition subject to them being supported as necessary in the context of the clinician's duty of care.

Document SCGV0001059_023, states that a UK-wide system to exclude donors implicated by vCJD should be implemented as soon as possible. Michael Palmer of the Health Care Policy Division asked for your advice on the legal position in Scotland. What advice did you provide?

In a memorandum to you dated 18 March 1999 (SCGV0001059_015), Aileen Keel provided details on the TMER 'look-back' exercise which was being conducted by the CJD Surveillance Unit and asked for advice on the interpretation of 'duty of care' owed to individuals who have received potentially implicated blood.

- a. What was your advice regarding the interpretation of 'duty of care' owed to these individuals?**
- b. Did this advice differ from the legal opinion in England of 'duty of care' to these individuals?**

63. I do not have a copy of the advice I would have given to Mr Palmer (SCGV0001059_ 023). The same applies to the legal advice given to Dr Keel on "Duty of care". I do not recollect having seen the English legal opinion referred to.

Statement of Truth

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

Signed

GRO-C

Dated

8 January 2023