

FIRST WRITTEN STATEMENT OF ELIZABETH WOODESON CBE
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Witness Name: Elizabeth
Woodeson

Statement No.: [WITN7481001]

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WITN7481007

Dated: [15/12/2022]

INFECTED BLOOD INQUIRY

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I, Elizabeth Woodeson, will say as follows: -

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Section 0: Preface

- 0.1. My name is Elizabeth Woodson. My date of birth has been made available to the Inquiry, and my address is c/o the Department of Health and Social Care ("DHSC"), 39 Victoria Street London SW1H 0EU. I make this statement pursuant to the Rule 9 request from the Inquiry dated 27 October 2022.
- 0.2. I have held a number of roles throughout the years as a civil servant in what is now known as the DHSC. However, I believe my role as Director of Health Protection will be of most relevance to the Inquiry. My other roles are outlined at Table 1 at paragraph 0 below.
- 0.3. I have set out this statement following the Inquiry's section headings in the Rule 9 request.

Opening Comments

- 0.4. I would like to begin my witness statement by making a few brief opening comments.
- 0.5. Unfortunately given the length of time since these events have passed, I have had some difficulty with independently recollecting events discussed in the statement request, and I am mostly reliant on the documentation provided to me.
- 0.6. Nevertheless, I am grateful for the opportunity to contribute to the Inquiry and help its important work as far as I can.

Section 1: Introduction

Professional Qualifications

- 1.1. I have a BA (Hons) in Philosophy and Modern Languages from Oxford University. I do not have any professional qualifications which are relevant to the duties I discharged whilst working for the Department of Health ("DH").

Details of Employment History

- 1.2. The following table outlines my employment history in the civil service:

Table 1 – Employment History

Date	Role & responsibilities
1993-1994	Various fast stream postings in Department of Health and Social Care
1995-1996	Role: Private Secretary Responsibility: To run the private office of the Lords Health Minister (Baroness Cumberledge)
1996-1997	Role: Section Head Responsibility: Emergency services and intensive care
1997-1999	Role: Section Head Responsibility: Dentistry
1999-2001	Role: Programme manager Responsibility: Care Standards Commission
2001-2003	Role: Branch Head Responsibility: Genetics and Assisted Reproduction
2003-2005	Role: Director Responsibility: Scientific Development and Bioethics
2005-2006	Role: Director Responsibility: Change and Operations - Cabinet Office
2006-2009	Role: Director

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Introduction

	Responsibility: Health Protection – responsible for all health protection policy, including policy regarding infectious diseases, environmental hazards and hospital acquired infections. Also included responsibility for the national vaccination programme.
2010-2013	Role: Director Responsibility: Health and Wellbeing
2014-2019	Role: Director Responsibility: Medicines and Pharmacy
2020-Present	Role: Director Responsibility: Medicines

Memberships relevant to the Inquiry's Terms of Reference

- 1.3. I have been asked to set out any memberships of any other committees, associations, parties, societies, or groups relevant to the Inquiry's Terms of Reference. I am not a member of anything relevant to the Inquiry's terms of Reference.

Involvement in inquiries, investigations and litigation

- 1.4. I have been asked to confirm whether I have provided evidence to or been involved in any inquiries, investigations or criminal or civil litigation in relation to human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products. I have not been involved in any of the above relating to Hepatitis B or vCJD. I was Director of Health Protection in the Department at the time of the Lord Archer Inquiry, which looked at the infections and deaths caused by NHS treatment with blood and blood products containing the Hepatitis C virus and/or HIV. I deal with the Lord Archer inquiry in more detail at Section 6, "The Department of Health's engagement with the Archer Inquiry" below.

Section 2: Destruction of documents within the Department of Health

Awareness of destruction papers from the Department of Health relating to infected blood

- 2.1. I have been asked to detail when I was first made aware that papers relating to contaminated blood from the DH were destroyed, how I was told, and who informed me. I was made aware of this when I first arrived in post as Director of Health Protection in September 2006. I do not recall the exact nature of how I was informed, but I believe this would have been in an introductory meeting with one of my deputy directors who was leading on this issue.

Steps taken to discover how Department papers were destroyed

- 2.2. I would not have taken any steps to try to discover how the papers were destroyed or who destroyed them as this was all dealt with by others before I arrived in post.

Loss of Macfarlane Trust Waivers

- 2.3. I have been referred to two documents by the Inquiry relating to legal waivers which had been signed by individuals as a condition of receiving payment from the Macfarlane Trust ("MFT") and had been lost. The first of these is an email chain between Edward Goff, William Connon, Jonathan Stopes-Roe and others, dated 20 - 23 April 2007 [DHSC5468582]. I am copied into William's email of the 23 April. An email enclosing a draft response to three parliamentary questions ("PQs") which had raised the issue of the MFT waivers was circulated, and there is ensuing discussion about the possibility that the waivers have been inadvertently destroyed or lost.

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Destruction of documents within the Department of Health

- 2.4. The second document outlines the related PQs, which request original copies of the legal waivers signed by haemophiliacs who undertook not to take legal action against the Department in respect of infection with contaminated blood which had resulted in HIV or Hepatitis [DHSC5468584]. The suggested reply outlines the Department's inability to provide the waivers as they have been inadvertently destroyed.
- 2.5. Whilst I was copied into emails regarding this matter at the time, I have no recollection of this issue and cannot offer any further information about it. In an email I was copied in to dated 23 April 2007 Linda Page (who was a Grade 6 civil servant brought into the Department to carry out the Review of Documentation Relating to the Safety of Blood Products 1970-1985) detailed that there *"were no waivers in the documents that I went through"* [DHSC5468522].

Initiatives taken to establish the extent of, and precise identity of documents destroyed

- 2.6. A memo from William Connon to the Chief Medical Officer ("CMO") which I was copied into dated 4 December 2006 detailed MS(PH) and MS(R)'s request to meet and discuss the need for a public inquiry into the contaminated blood products provided by the NHS in the 1970s and 80s. Annex A to this document, which is dated 24 July 2006, stated:

"Following firstly HIV and secondly hepatitis C litigation procedures in the 1990s, we know that various relevant Department of Health papers were destroyed in error. Currently we do not know the full extent of what was destroyed nor the content of all available papers. We need to establish more information about those papers as soon as practicable, as the issue has attracted considerable interest via FoI requests and parliamentary questions." [DHSC5069877].

- 2.7. Whilst I was in copy in the memo from December, I was not copied into the submission at Annex A, as this had been sent up prior to when I arrived in post. It is clear from that submission in July that officials were taking forward the work to establish more information about the destroyed documents, *"Following an internal audit of events surrounding the loss of papers, officials are now*

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analysing all the papers available" [DHSC5069877]. I am aware from my reading of the documentation provided to me that Linda Page was appointed by my predecessor (Gerard Hetherington) to carry out a review of these and to catalogue these papers. The results of this work were eventually published as the Review of Documentation Relating to the Safety of Blood Products 1970-1985. I discuss this Review in more depth at Section 3, "The Review of Documentation Relating to the Safety of Blood Products 1970 - 1985", below.

Decision not to refer to the destruction of Lord Owen's private office papers

- 2.8. I have been referred to a document dated 12 July 2007 which are emails between Gregory Hartwell and Linda Page, which I am copied into [DHSC0004109_023]. The email attaches a Guardian Newspaper article which outlined that Lord Owen was due to give evidence in the Lord Archer inquiry regarding his destroyed ministerial papers, and the lines for government to take in response to this.
- 2.9. I am asked to outline what involvement I had in the decision not to refer to the destruction of these papers in the Self-Sufficiency Report. The Self-Sufficiency Report began in 2002 and was published in February 2006, which was prior to my arrival in post as Director of Health Protection. I therefore did not have any involvement in this.
- 2.10. Whilst I was not involved in the Self-Sufficiency Report, when work on the Review of Documentation Relating to the Safety of Blood Products 1970-1985 was ongoing, the Department came across some of Lord Owen's documents. On 8 October 2008, I sent a letter to Lord Owen enclosing these which were some of his private office papers from 1974-75 which we had located [WITN7481002]. We also provided these to the Archer Inquiry.

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Filing of papers

2.11. In an email chain between Greg Hartwell, Zubeda Seedat, myself and others dated 12 July 2007 I stated:

"If ministers choose to keep their working copies in their offices that's up to them - and there is no requirement to keep these for posterity. When I was in private office we only filed papers on certain subjects the minister was most interested in. And we used to have regular annual culls when the filing cabinets got too full" [DHSC5093154].

2.12. When I stated this, I was speaking from my previous experience as Private Secretary for Baroness Cumberledge. It was departmental custom that the policy branch was responsible for keeping copies of what went to and came back from ministers. It was the policy teams' role to place copies of all important documents in registered files. Files kept in private offices were temporary working folders only. As outlined in my email in 2007, when I was in private office we kept copies in working folders for a short period of time of papers the minister had indicated she was interested in, or was still working on, or if we knew was a subject she cared about particularly and might ask to see again.

Section 3: The Review of Documentation Relating to the Safety of Blood Products 1970 - 1985

Role in production of the Review of Documentation Relating to the Safety of Blood Products 1970-1985

3.1. I have been asked to detail my role in relation to the production of the Review of Documentation Relating to the Safety of Blood Products 1970-1985 ("the Review").

3.2. The Review was set up before I arrived in post, and as previously outlined, Linda Page was appointed to undertake the Review. I was not closely involved in the operational detail of the Review, although I would have been consulted on key decisions. I am provided with documentation outlining an email from William Cannon describing me as project lead:

"We agreed at this morning's meeting that whilst we could have decided what to release, we all felt that we needed Liz's input, as Project Lead. For that reason we agreed to reconvene as soon as possible after the Easter break." [DHSC5466119].

I was actually the Chair of the Project Board overseeing the review. Alisa Wight reported to me, and William to her, so they would have had more involvement in the day to day work of the Review.

3.3. I ensured staff knew that this Review was an important priority and I monitored progress through the Project Board [DHSC0004232_035]. I was also responsible for the budget for the work as demonstrated by a discussion between Linda and I on 26 April 2007. We discussed the allocation of extra resource to speed up the release of 4,500 discovered documents in line with the Freedom of Information Act ("FOIA") along with the completed Review:

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"You mention the possibility of extra resources and I would like to mention to you some thoughts I had on 'fast-tracking' the preparation of the 4,500 odd documents." [WITN7481003].

- 3.4. I remember very clearly from the outset that I was keen that we should be as transparent as possible and that we should release all the documents, in line with FOI principles, as demonstrated above. My submission of 24 April 2007 to Lord Hunt and Caroline Flint stated that although some documents may need to be withheld under FOI, *"clearly the more we can release the better, so we would take further advice from solicitors about this"* [DHSC0041193_026]. I gained ministerial agreement to this approach and the necessary funding for the work and the documents were published on the government website in batches after the Review was published.

Impact of potential embarrassment in the Department and on the Review

- 3.5. In the minutes of a Project Board meeting on the Review held on 16 January 2007 section 2.2 stated:

"The additional review, by a junior barrister, of documents that were the subject of non-disclosure during the 1989/91 HIV litigation has been completed. The review confirms that they give no concern over liability but some are sensitive in their potential for criticism or embarrassment" [DHSC0004232_031].

- 3.6. At section 7 of a progress report of the Review, dated 10 January 2007, there is also a reference to potential embarrassment [DHSC0046869].
- 3.7. Although these examples were noted, I do not believe that potential embarrassment factored into decision making in the DH.
- 3.8. I also do not believe potential embarrassment was a factor in the scope, content and nature of the Review.

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- 3.9. Nor do I believe it was a factor in the documents that were held back under FOI principles. After a further review of those documents which were initially held back, ultimately only eight documents were withheld. I do not believe there was anything embarrassing in these very few exceptions which were withheld. This is evidenced in my email of 9 March 2009, to Morven Smith stating:

"I have now reviewed the 35 papers that the Department withheld when it published around 5000 documents that were considered to be relevant to the Archer inquiry.

In my view, solicitors have been over cautious in recommending that these documents should be withheld. I believe we can take a more robust line and put far more of them in the public domain, hopefully keeping back fewer than 10. However, I need to discuss this with solicitors. I am also consulting BPL about a number of the papers which are site maps of their buildings." [DHSC0041157_051].

- 3.10. In my follow up submission to the minster about this on 19 March 2009 I stated:

"We have concluded that there are actually only 8 documents that we should continue to withhold. Five of these contain personal information such as CVs and three are legal documents. The 30 year rule does not apply to the personal documents – and the legal documents are less than 20 years old.

I am attaching copies of these documents (at annex B) so that you can be satisfied that none contain any significant information – and that in proposing to continue to withhold them we would not be "concealing" anything of any interest to Lord Archer and other stakeholders." [DHSC0041157_023].

- 3.11. The eight documents that were withheld are outlined in the addendum to the written statement of William Vineall and Lorraine Jackson dated 26 October 2022 [WITN7193070]. This table is detailed below:

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No.	URN	Description	Section withheld under
1.	WITN5494038	Curriculum Vitae of Michael John Harvey	S 40 Personal Information
2.	WITN5494039	List of the membership of Joint Management Committee for the Central Blood Laboratories and the CVs of Stanley Arthur Hibbert, Arthur R. Lockwood, and E. Kenneth Samways	s 40 Personal Information
3.	WITN5494040	CV summaries of company representatives at a meeting with MS(H) including Robert A Schoellhorn, Gerald J Mossinghoff, Sir Philip De Zulueta, David C Jones, and David Gibbons	s 40 Personal Information
4.	WITN5494042	HIV/Haemophiliac Litigation Certificate completed by Christopher Walter France dated 23 July 1990	s 42 Legal Professional Privilege
5.	WITN5494044	Memo from D Burrage, Department of Health, to Mr Desai TSOL re: HIV Haemophilia Litigation, plaintiffs' summons dated 30 November 1990	s 42 Legal Professional Privilege

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6.	WITN5494046	Patient medical record relating to a newly reported AIDS case of an unknown patient reported by Dr J Craske dated 6 September 1983	s 40 Personal Information
7.	WITN5494048	Letter to Dr Donald Acheson re: patient with Christmas disease dated 13 September 1985	s 40 Personal Information
8.	WITN5494050	Schedule 1: Documents referred to in discovered documents but not themselves separately listed	s 42 Legal Professional Privilege

Timeframe of the Review

3.12. In an email from Linda Page to me on 8 March 2007, Linda stated:

“One query responded relates to the missing documents. The ACVSB files lost related to post 1985 and is not part of this review, their content might well have helped identify the process of introducing screening test for Hepatitis C in 1991 but would not have covered the 1970-85 period” [DHSC635906].

3.13. I have been asked to detail my involvement in determining the time period that the Review would cover.

3.14. I had no involvement in determining the time period covered as the Review was set up before I arrived in post in September 2006.

William Connon’s view on relevant MHRA documents

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- 3.15. I am asked if I was made aware of why William Connon was “*nervous*” about the potential finding of relevant MHRA documents as per his email of 15 March 2007 [DHSC5028652]. Further emails between Shaun Gallagher (MHRA), Linda Page and William Connon dated 19-20 March 2007 indicated Shaun was aware of the possibility the MHRA could be called to the Archer Inquiry and that their records should be searched for any relevant documents [DHSC5462946].
- 3.16. I have reviewed these emails and I am not aware of why William would have been nervous about the potential finding of any relevant documents from the MHRA.

Reason for consideration of filing the Review for internal use

- 3.17. I have been referred to a copy of emails between Linda Page, William Connon, myself, and others dated 4 April 2007 which discuss the Non-Hepatitis A, Non-Hepatitis B (“NANBH”) report [DHSC5466119].
- 3.18. Whilst I do not have any independent recollection of this discussion, and it appears from the later email from William that I was not available at this time. I do however note that Linda states:

“The change in direction has been initiated as concern has been expressed that the report includes a review of the documents that summarises/interprets the content of the documents we are releasing. The view is that those receiving the papers should summarise/interpret the documents themselves as the review may, unintentionally, display a bias toward the DH position that may leave us open to challenge.”
[DHSC5466119].

I believe that the reasoning for this consideration is explained succinctly through the above statement from Linda [DHSC5466119].

Malcolm Fawcett information

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- 3.19. I have been referred to emails which I am copied into between William Connon, Linda Page, Malcolm Fawcett, Jacky Buchan and others [DHSC5471680] concerning the release of the report.
- 3.20. Malcolm Fawcett describes the report as containing “*potentially explosive material*”. I have no knowledge of what Malcolm, who was a communication manager at this time, meant when he alluded to this type of material. I do however note from the document that William Connon challenged his view and did not agree with this interpretation of the material.

Patrick Hennessey email

- 3.21. In emails between William Connon and Patrick Hennessey to which I and others are in copy dated 9 - 10 July 2007, they discuss the disclosure of papers to Lord Archer’s Inquiry [DHSC5284704]. Patrick states that the review identified over 4,000 documents held in unregistered files which were to be released to the Inquiry.
- 3.22. As Patrick says in his email that these documents were in unregistered files, I would assume that this is correct. I cannot say why they were not registered as this would have occurred many years before the Department’s discovery of them and before I was in post.

Reasoning behind disclosure decisions of documents for the Review

- 3.23. I have been asked why documents reviewed for the Review were not disclosed in one tranche, and why some were withheld initially from disclosure. I have been referred to a number of documents in consideration of this question:
- 3.24. Emails between Linda Page, Colin McDonald and others dated 16 - 21 August 2006 [DHSC5429552] detail a Freedom of Information (“FOI”) request for papers returned to the Department by external solicitors. The emails also note

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the Department has had other requests for release of these documents under the Freedom of Information Act ("FOIA").

- 3.25. In an email between Linda Page and William Connon et al. dated 15 - 22 November 2006 [DHSC0015758], Linda stated:

"Regarding the project to review documents in relation to the safety of Blood, specifically Non-A Non-B hepatitis, we have a number of documents that were withheld from disclosure during the 1989/1991 HIV/ Hepatitis C litigation. The reasons for non disclosure are given, primarily that they relate to policy formulation, ministerial correspondence and frank and open discussion. We would like to release as many, if not all, of these documents in line with FOI" [DHSC0015758].

- 3.26. A progress report entitled *"Review of Documentation Related to the Safety of Blood Products: 1970 – 1985"* detailed progress of the Review between the time period 25 October 2006 - 3 January 2007 [DHSC0004232_037].

- 3.27. Minutes of the Project Board for the *"Review of Documentation Related to the Safety of Blood Products: 1970 – 1985"*, held on 16 January 2007 [DHSC0004232_031] is also referenced.

- 3.28. In an email from Linda Page to Zubeda Seedat dated 6 February 2007 [DHSC0103399_065], Linda details that 623 documents relating to the safety of blood were returned by external solicitors and, of these, 604 were released in November 2006, with 19 withheld. She notes that following an internal review requested by Carol Grayson of these 19, a further 9 were determined to be able to be released. This meant 614 in total had been released, with 10 withheld.

- 3.29. An email chain between me, Linda Page, William Connon, Jacky Buchan and others dated 6 February 2007 – 2 June 2007 show a discussion of the internal review taken of the return of documentation from solicitor's offices following on from an FOI request from Carol Grayson [DHSC0103400]. Initially, on 6

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February as per the above¹, Linda notes that nine of the nineteen documents can be released, and she attaches a draft response to Mrs Grayson detailing this. On 18 April Linda provides a further update, noting that 16 of 19 previously withheld documents which came from solicitors could be released. She attaches another draft response to Carol. However, the final version is also within this document, dated 12 June, and it notes that 18 of the 19 previously withheld documents could be released [DHSC0103400].

3.30. Emails between Jacky Buchan, William Connon, and Malcolm Fawcett dated 21 May 2007 [DHSC5473468] show a discussion regarding the fact that the Review was sent to Parliament when it should not have been. A parliamentary clerk queried whether an Observer newspaper article is referring to the Review when they write about an audit being withheld “*at the request of No 10*”.

3.31. Emails between Linda Page, Laura Kennedy (who was my personal assistant at this time), Patrick Hennessy and Zubeda Seedat et al. dated 19 - 26 June 2008 [DHSC5528801] show a discussion concerning the withheld documents previously held by the solicitors, and Laura Kennedy outlined extracted notes from the project board meeting:

“Nineteen documents were withheld when the ‘Solicitors’ documents were released in November 2006. Carole Grayson requested an internal review of these documents. The outcome of the review is that 18 of the 19 documents were released. The document that remains withheld is an individual’s CV. Advice from DCA is that it is very difficult to justify a public interest in withholding any document that is 30 years old, or approaching that date. This will inform our approach to remaining documents”.

3.32. The documents were released in tranches because of the sheer amount of work involved in preparing, scanning and uploading them. I recall that there was only one member of staff working on this.

¹ At paragraph 3.28.

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3.33. Some documents were also initially withheld from disclosure in line with FOI principles but after a re review of these, most were then subsequently released².

² As per paragraph 3.10 and 3.11 above.

Section 4: Discoveries of Unregistered Files in Wellington House

Sunday Herald article and discovery of Wellington House files

4.1. In August 2006, a reporter from the Sunday Herald, Judith Duffy, had contacted the Department of Health to enquire about recently discovered files relating to contaminated blood products [DHSC5429372]; [DHSC5430566]. The Sunday Herald later published an article on the topic on 27 August 2006 [DHSC0014975_143]. In an email following the publication dated 12 September 2006, Linda Page stated that her initial reaction was to comment that the files were the documents that had been returned by external solicitors [DHSC0004232_029].

4.2. Subsequent emails between Linda Page, William Connon, Jacky Buchan and others dated 27 September 2006 – 5 October 2006 discussed 47 files and there is a query as to whether they came from the solicitors or were part of the self-sufficiency report [DHSC5435884]. A further email from William Connon sent to me dated 9 October 2006 clarified that there had been 47 unregistered files discovered in Wellington House:

"I am by no means certain that the 47 "files" were included in the self-sufficiency report and I am told they were not shown to Lord Jenkin either. The reason being that they are not actually registered files but folders of papers which were simply found in a cupboard in the office. We will need to word any response carefully which is one of the reasons why I advised against rushing this one." [DHSC5154769].

4.3. When answering the following questions, I have also considered a number of documents the Inquiry has referred me to:

4.4. An email from Linda Page to William Connon and Zubeda Seedat dated 29 September 2006 [DHSC5435079]. This email outlined that:

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"Liz's secretary is arranging a meeting of the Project Board for when I get back, we'll need to consider what approach is going to be taken to the Wellington House files, the 47. Those papers I reference in my report should be processed for release but there will be few of these compared to the whole. Among the 47 files are some that were the subject of non disclosure during the HIV/Hep C litigation, about four files, I checked the status with SOL on Wednesday and their view is that, although they were previously withheld they will need to be checked to see if they should remain withheld. I've not read through them yet in detail but a quick scan indicates that they are part of formulation of policy and could be withheld should any decision be made to release them".

- 4.5. A minute from William Connon to Lord Warner regarding the Review, including those unregistered files at Wellington House [DHSC5002462].
- 4.6. A progress report of the Review, which evaluated the period 25 October 2006 – 3 January 2007 and discussed the unregistered Wellington House files [DHSC0004232_037].
- 4.7. An email from Rowena Jecock to Linda Page dated 2 April 2007 [DHSC5465598]. Rowena provides critical comments of the draft NANBH report providing suggestions to improve the understanding of the report to a layperson.

Circumstances of the discovery

- a) I do not know what the circumstances of the discovery were – this was before I arrived in post.

Reasoning why other members of the DH were not aware of these files

- b) I recall that there were a very large number of filing cabinets in the Department at the time and it would appear that people were not aware of the contents of each of these.

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When members of the DH were made aware of the files

- c) It is not clear from the documents when wider members of the Department were first made aware of this discovery.

Reasoning as to why the files were not registered and not previously discovered

- d) To my understanding, these files were not registered because not all files held in Wellington House were registered files. As well as registered files, there were working files with working papers being used by members of staff. As explained above at paragraph 2.11, there was no requirement for all files to be registered at this time. There was a combination of registered files and working folders. I am unaware of why they were missed from previous searches which would have taken place before I arrived in post.

Steps taken to ensure that there were no other unregistered files

- e) I am asked to outline what steps were taken to ensure that there were no other unregistered files in relation to contaminated blood products. In carrying out her review of the documentation, Linda Page was expected to review all the documents to see if they were relevant.

Statement regarding unregistered files in 2006

- 4.8. In an email I sent to Sophie Longbottom on 23 October 2006, I stated that there were no files that were left unregistered and:

"We are confident that there are no other documents in the office relating to this period and subject that have not been filed" [DHSC6484699].

- 4.9. I understand that there was a later discovery of unregistered files in 2008. My previous assertion would have been based on what my staff told me. My role as Director did not involve responsibility for filing documentation myself or searching through files to retrieve documents.

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Identification of 93 files

4.10. In the notes of a Project Board meeting held on 25 October 2006, it was stated:

"The review of 'Wellington House' documents is progressing, 55 of the 93 files have been reviewed" [DHSC0004232_035].

4.11. I am asked whether the above reference is being made to the same set of 47 files initially discovered in Wellington House. I have had sight of an email dated 9 November 2006 from Linda Page to me and detailing the source of the files in an attached diagram [WITN7481004]; [WITN7481005]. In this diagram there is reference to 92 returned files from the Departmental Record Office at Nelson, and these are perhaps the files referred to in the Project Board meeting, with a typo or misnumbering causing the notes to say 93 rather than 92.

Additional documents as identified in the Progress Report on the Review in 2007

4.12. Section 2 of the Progress Report on the Review held on 3 January 2007 outlined:

"However, additional documents that require review were identified in December 2006 and are relevant to the review, these have been placed in 8 registered files. These documents were located during a search of filing cabinets and were either loose, in box files or lever arch files. Two data cartridges were also found, marked HIV Litigation 1989 -1991" [DHSC0046869].

4.13. I do not know whether these additional documents were located following the discovery of the 'Wellington House' files as I have no recollection about this.

Reason for further unregistered files later discovery

4.14. Emails between me, Laura Kennedy, William Connon and others dated 16 July 2008 [DHSC5532594]. Laura explained that she discovered unregistered files:

"when reorganising the filing cabinets in Wel 517...They are not registered files, and are not very well organised. They contain documents from the time of the litigation, and documents from the 1970-1985 that

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have been removed or copied from the original files in order to be organised for discovery prior to the litigation”.

4.15. Further emails between William Connon, Laura Kennedy, and Patrick Hennessy et al. dated 16 – 18 July 2008 discussed the further discovery of “*old unfiled papers from the litigation period*” [DHSC5533007].

4.16. I have no understanding of why these further 41 files were not previously located in Wellington House. My assumption is that staff had simply not searched the storage space where these files were found but I have no independent evidential documentation to support this.

Assessment of disclosure of these files

4.17. On 21 August 2008 in an email to Alisa Wight, my personal assistant Laura Kennedy, expressed doubt as to whether the discovered documents should be released to Lord Archer [DHSC5061894]. In a further email dated 29 August 2008 to William Connon, Laura again stated that she was “*not sure whether these papers should be released or not. They don’t add any new information, but they indicate that Dr Owen was briefed on policy concerning self-sufficiency and active in shaping it.*” [DHSC6700882].

4.18. I am asked whether I agreed with Laura’s assessment. Though I do not recall this particular discussion, it is clear from the papers that I did not. I wrote to the Permanent Secretary Hugh Taylor on 6 October 2008 about this and said,

“This note is to inform you of our intention to release ten documents from his time in office to Lord Owen, copied to Lord Archer. The attached letters will be sent to Lord Owen and Lord Archer with copied of the ten documents later this week.” [DHSC5276915].

4.19. Thereafter, I sent a letter to Lord Owen on 8 October 2008 enclosing copies of the documents that had been found and stated:

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"The Department is committed to issuing, in line with the Freedom of Information Act, any documents held relating to the issue of the safety of blood and blood products used in the NHS during the period of 1970-1985, including the drive for self sufficiency in blood products that you launched during your term of office." [WITN7481002].

Systems in the DH regarding unregistered files

- 4.20. A memorandum from Patrick Hennessey addressed to me dated 23 September 2008 stated:

"We believe these to be the last such papers held by the Departmen[t]. However, in order to try and confirm this we are conducting a Division wide search of all cabinets to ensure that all papers stored around the Division have been checked and are inventoried" [DHSC5114710].

- 4.21. On the same date, I wrote in an email to Laura Kennedy:

"However I am worried that you say there are still more filing cabinets that haven't been checked" [DHSC5255116].

- 4.22. I am asked to detail the system in place to ensure that the Department did not have any unregistered files. As mentioned above at paragraph 2.11, there was no such system because there was no requirement that all files should be registered. It was normal practice for officials to keep their own working folders of papers that would not all be placed on registered files, for example if they were early drafts.

DH's position in relation to unregistered files

- 4.23. An email chain from September 2008 includes an email from Laura Kennedy stating:

"I expect that many of these documents will be exempt from release under the FOIA act because they will be commercial in confidence and I am hoping that we can exempt all of them as a group under legal professional privilege" [DHSC5562807].

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4.24. The Department's position in relation to the disclosure of documents was to follow the Freedom of Information Act legislation. Specifically, the starting point was to disclose documents if we could, and the only exceptions to disclosure would be those that fell under the FOIA exemptions.

4.25. I stated this in an email to Rowena Jecock and others on 26 January 2009:

"I am still puzzling about this article. Before your time in this post, we asked Patrick to go through every single document that we were still withholding and double check with lawyers that we really couldn't release it - the starting point being that we should release absolutely everything precisely so as to avoid this sort of story. As a result of that process, I thought we had reduced the number still being withheld to a mere handful – far fewer than the 35 suggested in this article.

Would you be able to discuss this with Patrick tomorrow morning and check my understanding? I want to be sure that we are only withholding documents that lawyers have told us we cannot release. It would be good to be able to reassure the minister of this when we put up a draft letter.

I am also wondering whether we could go a step further and discuss with lawyers whether we can release even those documents we have previously withheld IF THE PERSON(S) CONCERNED AGREES TO ALLOW IT. In other words if the person whose "data protection" or "commercial in confidence" rights agrees to waive them? We won't be able to sort this out by tomorrow of course but we could inform the minister that we are going to explore it." [WITN7481006].

Release of documents relating to Hepatitis C only

4.26. I am asked about an email on 7 October 2008 in which Laura Kennedy stated:

"Just to sum up - we will organise for a contractor who has previous experience with releasing similar documents to look at the appendices to Professor Bloom's report and the other set of documents marked legal professional privilege in light of the fact that we really only need to release those documents that have a bearing on hepatitis C" [DHSC5545920].

4.27. This email refers to documents the blood policy team discovered in 2008 dated from 1971 to 1985 in a folder marked Legal Profession Privilege, which included Professor Bloom's report. The documents contained legal advice about DH

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liability related to the issue of contamination of blood and blood products. In an email sent on 24 September 2008 to Veronica Fraser (Section Head, Freedom of Information Casework) Laura noted:

"As you may know, we have made a commitment to publish all relevant documents from 1970-1985 about this, and to provide copies to the Archer Inquiry. I assume that these documents would be exempt from publication as they are legal advice, but I would be grateful if you could advise on this. There is some urgency to this, as if we were to release these documents, we would like to do so before the Archer inquiry reports."

In a later email sent on the same date, Laura stated:

"The other set of documents that we are concerned about, in addition to those mentioned in my last email are the appendices to an expert witness report written by Professor Bloom, a doctor very active in the Haemophilia community, for the 1989 Haemophilia Litigation. The report itself is not within the 1970-1985 range of dated the documents we are committed to release, however there are many letters in appendices that relate to 1970 – 1985. This is Professor Bloom's personal correspondence to DH and to other organisations, such as the Haemophilia Society. Is this exempt from release under the FOI act? I would assume that, as with the documents below, section 42 would apply."

...

We have not had any response from Lord Archer about when he will release his report. However, we would like to release any necessary documents to the inquiry as soon as possible, and to that end, Liz Woodson wants to send a submission up to Hugh Taylor by early next week at the latest, so a quick response to both the queries would be greatly appreciated." [WITN7481007].

4.28. On 25 September 2008 Laura said in a different email to Paula Cohen (DH legal adviser):

"I expect that many of these documents will be exempt from release under the FOIA act because they will be commercial in confidence and I am hoping that we can exempt all of them as a group under legal professional privilege. I want to be sure though, as I can see they could be relevant to the Archer inquiry because Professor Bloom felt that they were important, and because they show the involvement of clinicians in advising the Haemophilia Society and the Department of Health." [DHSC5562807].

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- 4.29. Whilst I have not had sight of any documentation detailing the reasoning behind the final decision on this, it is clear from the correspondence that Laura asked for input from the caseworker from Information Services and sought legal advice on all the papers – she did not make any distinction in her questions between papers relating to HIV and papers relating to AIDS. I believe that a decision therefore would have been reached to only release those relevant to Hepatitis C due to advice received regarding FOI and/or Legal Professional Privilege (“LPP”) principles.

Section 5: FOI request for the CMO's advice

Ed Webber FOI request for the Chief Medical Officer's advice

5.1. In March 2008 Ed Webber, researcher to Jenny Willott MP, made an FOI request for the release of the Chief Medical Officer's ("CMO") advice to Ken Clarke in 1990 (who at that time was Secretary of State) at the time of the HIV litigation [DHSC6473862]; [HSOC0017025_004]. I am referred to a number of documents by the Inquiry in consideration of answering the remaining questions in Section 5, and I will outline each in turn below:

5.2. A minute from me to Hugh Taylor (with others in copy) dated 24 June 2008 discusses the FOI request for the advice that Sir Donald Acheson (who at this time was CMO) gave to Ken Clarke (Secretary of State for Health) at the time of the HIV litigation in 1990. [DHSC6387197]. The minute asks for an early answer, and notes that:

"The Department initially favoured release of the relevant document (at Annex A) in response to the request and I wrote to Ken Clarke to inform him accordingly. However Ken Clarke does not accept our reasons for wishing to disclose the document and has asked us to withhold it. His letter is at Annex B."

5.3. A letter to Baroness Scotland from Hugh Taylor (who at this time was Permanent Secretary) dated 25 June 2008 [DHSC6432347]. This details an FOI request, which is to obtain advice from the Chief Medical Officer ("CMO") to the SoS for Health in August 1990 *"regarding the litigation over the infection of haemophiliacs with HIV through contaminated blood products"*. The letter contains an Annex, which is said document from 20 July 1990 containing advice from Sir Donald Acheson (who at this time was CMO) to Ken Clarke (who at this time was SoS for Health). Annex B outlines Ken Clarke's concern about releasing this document as it *"does not tell the full story"*, and a more general concern about the FOI Act being used in a way that was not intended.

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- 5.4. A letter from Jonathan Jones to Hugh Taylor of the Department, dated 25 July 2008 [DHSC5534558]. This letter discussed the aforementioned FOI request, and Hugh's request for the Attorney General's advice on this. The AG's advice was as follows:

"The Attorney General holds the opinion that disclosure of the advice would, or would be likely to, inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.

In particular, she considers that the disclosure of advice from the Chief Medical Officer to Ministers would make it more likely that advice provided by Chief Medical Officers in the future will be materially different in that it is likely to be less detailed, frank and candid because of the possibility that it will not remain confidential and will be prematurely disclosed."

- 5.5. On 28 July 2008 Zubeda Seedat sent an email to me, William Connon, and others outlining the AG's opinion, and in light of that opinion, that the information requested under FOIA was to be withheld [DHSC5534671].
- 5.6. On 29 July 2008 Zubeda Seedat sent a further email to William Connon [DHSC6697857]. She noted that I was disappointed that the AG did not consider the public interest argument in the FOI request, as the MOJ and Department at this time had differing views on this matter, and I felt the matter was not fully assessed.
- 5.7. A minute from me to Hugh Taylor (with others in copy) dated 30 July 2008 regarding the FOI request, detailing the AG's advice that Section 36 would apply i.e., *"that disclosure of the information would, or would be likely to, inhibit the free and frank provision of advice, or the free and frank exchange of views for the purposes of deliberation"* [DHSC0041157_073].
- 5.8. Emails on 30 July 2008 between Zubeda Seedat, William Connon, Alisa Wight, and others [DHSC6391109]. These emails discuss suggested amendments I have made to what appears to be a suggested statement on the refusal to release the information the FOI has requested (the emails do not show the

actual document rather they are a discussion about the urgent need for comment on it, however it appears it may be the document outlined below³).

- 5.9. An undated draft response to Ed Webber who has sent the FOI request for the CMO's advice [DHSC6110116]. This outlines the decision to withhold the information requested, as *"the balance of the public interest favours non-disclosure for the exceptional reasons outlined"*. These exceptional reasons are listed broadly as the role of the CMO, that the advice was given in the context of litigation, protection of the non-political position of the civil service, and a suggestion to include the fact that this information does not contain anything that isn't already in the public domain. There are comments (from unknown authors) on the CMO point for the lawyers, which state:

"DN TO LAWYERS - Can we really use this argument? Surely it would apply to any advice from CMO? Are we really saying that it could never be in the public interest to release advice from the CMO?" [DHSC6110116].

Communication about the release of the CMO advice to Ken Clarke

- 5.10. I am referred to a letter dated 28 April 2008, in which I state to Ken Clarke:

"I am writing to inform you of our intention to release correspondence under the Freedom of Information Act (FOIA)." [DHSC6407940].

However, in an email from William Connon dated 15 April 2008 to myself and others in copy, William stated that the majority view was in favour of withholding the document [DHSC6500120]. Furthermore, the Ministry of Justice ("MoJ") had also advised that the document be withheld, for example in a minute from Zubeda Seedat on 10 April 2008 [DHSC6370796]. This minute was provided to me via email on 11 April 2008 in which I stated *"My only suggestion is that we need to make it clearer to CMO that he is not being asked to decide whether this should be withheld, (because MOJ have already told us it should be, subject to AG's views)"* [DHSC6700815].

³ At paragraph 5.9.

5.11. The debate regarding the release of this document was extensive, and there were clearly mixed views from everyone involved in the decision of whether or not to release this document. Whilst there was apparent initial agreement between the MoJ and DH which was in agreement with Ken Clarke's view against disclosure, on 2 May 2008 Rhys Williams (MoJ) outlined that the CMO (who at this time was Sir Liam Donaldson) was in favour of disclosure of the advice:

"DH initially agreed but the CMO advocated quite strongly in favour of disclosure, adding that disclosure would never inhibit the CMO's advice. This has correctly been a significant factor in DH's thinking and non-disclosure would probably be difficult to sustain in the long-term without the support of a key player." [DHSC6700836].

Rhys also stated of the MoJ's position:

"I'm not in favour of disclosing the full memo and would prefer to see the first sentences of both the first and final paras redacted, at least..." [DHSC6700836].

On the DH position, William Connon stated:

"Just so that the DH position is quite clear, I have always supported the release of this document. Whilst I was initially against withholding this document the majority view differed, and I reluctantly agreed that the submission to GMO could go ahead, and that I would consider the views of GMO and the AG... CMO's decision confirms my view that we should release the document. Mr Clarke's reaction is entirely understandable but does not change my view that we should disclose this memo.

I completely agree with CMO's view on the availability of CMO advice generally and can see no reason for withholding this particular document." [DHSG6700836].

5.12. Whilst I cannot recall what exactly went on between 15 April and when I sent Ken the letter on the 28 April, it is clear as is evidenced from the later documentation above that there was never total agreement on the initial decision to withhold the document and the decision was then overturned.

Memorandum of the Directors of Public Health

5.13. In the same letter to Ken Clarke, I stated:

"The correspondence refers to a memorandum of the Directors of Public Health, which I also enclose as we propose to release this document as well" [DHSC6407940].

5.14. My legal representatives have found this document, which is undated and appears to be Annex B to the letter sent to Ken Clarke [DHSC0046962_186]. The memorandum outlines the regional directors' concerns at the prospect of the HIV litigation. Their view was that an ex-gratia settlement should be attempted for haemophiliacs who became infected with HIV through no fault of their own, and whilst,

"...

b) accepting that the treatment given was in good faith, and that before this treatment was available the life expectancy of the haemophiliacs was greatly reduced";

They concluded that:

"...thrashing out these issues in Court will not be in the best interests of patients or the NHS. They would favour some mechanism, eg ex-gratia payment, which avoids this." [DHSC0046962_186].

Decision to release the CMO advice

5.15. In a subsequent letter I drafted to Ken Clarke, I explained that it was decided to be in the public interest to release the information requested [DHSC5516763]. Ken responded on the 28 April 2008, expressing his surprise at the decision to release this advice [DHSC5042275].

5.16. The reasoning for the decision to release this information is set out in the letter I sent to Ken at this time, as we had concluded it was not in the public interest to withhold the document:

"- The advice from the former Chief Medical Officer (CMO), does not contain any information that is not already in the public domain. For your information, it was reported in The Guardian on 3/8/90 that Sir Donald was urging Ministers to offer an out of court settlement.

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- Sir Donald advised that Ministers settle the case, although this advice was not initially accepted by you. A settlement was reached and payments were made through the Macfarlane Trust (Special Payments) Trust. The Macfarlane Trust continues to provide support to patients with haemophilia who were infected with HIV.

-The current CMO considered this request and is in favour of release, in view of the fact that there have been many occasions where the advice from CMO to ministers is made public.

- The Department has already released thousands of documents, in line with the FOI Act covering the years 1970-1985 when most of the contamination of blood took place. This included a large number of submissions to ministers, which had been withheld at the time of the HIV litigation. These papers have been made available to the independent public inquiry, chaired by Lord Archer of Sandwell, and are available on the Department of Health website.

- Non-disclosure would create the impression that we are seeking to hide information relating to the infection of patients with HIV through contaminated blood products." [DHSC5516763].

I cannot now remember who had the final say on the release, although it is clear there was input from multiple people into the decision as outlined at paragraphs 5.11-5.12 above.

Concern regarding the effect of the release of the CMO's advice

5.17. I have been referred to an email chain, between Zubeda Seedat, Rhys Williams and William Connon, with others in copy, dated 1 – 6 May 2008 [DHSC6700836]. On 2 May, Rhys stated that his primary concern was *"the impetus such a document would give present campaigns"*.

5.18. I am asked to provide my opinion on the extent I think this concern affected any decisions to withhold the document. From my reading of this document, I am not entirely sure what Rhys meant by it. However, I do not believe that there was much, if any, weight given to this concern as I do not cover it in my submission to Hugh Taylor of 24 June 2008 setting out the various arguments for and against release [DHSC6387197].

Opinion on the impact the content of the CMO's advice made on release

5.19. I am also asked to detail to what extent I believe that the content and conclusion of the CMO's advice, namely the detailing of the seriousness of HIV infection, and recommendation that ex-gratia settlement be made to infected haemophiliacs, affected the reluctance to release the document [HSOC0017025_004].

5.20. I do not believe the content and conclusion of the advice from CMO in the paper had anything to do with whether to release it or not. The Department's original decision was to release it, as outlined in my submission to Hugh Taylor on 24 June 2008 [DHSC6387197]. This was then challenged by Ken Clarke, so we had to reconsider. The papers show that the debate was about the applicability of sections 35 (1)(a) (formulation of government policy) and Section 36 (2)(b)(i) (prejudice to the effective conduct of public affairs) to withhold the document [DHSC6473862]; [DHSC0041157_073]. Moreover, the views of the CMO were already in the public domain as I outlined in the letter to Ken:

"- The advice from the former Chief Medical Officer (CMO), does not contain any information that is not already in the public domain...it was reported in The Guardian on 3/8/90" [DHSC5516763].

Amendment to letter to the Attorney General

5.21. On 25 June 2008, Hugh Taylor wrote to the Attorney General to seek her opinion on the release of the document [DHSC6432347]. Within the letter it is stated:

"This letter seeks your agreement to use Section 36 in this case as justification to withhold the document."

I am asked why I thought it preferable to include this sentence.

5.22. The quote referred to above⁴ is lifted from an email I sent on 23 June which stated:

"Thank you. I have revised the letter a little so please could you run it past lawyers again to check they are still happy with it. Response today would be really good. I want to get this to Hugh quickly.

I would also like to know why the letter simply gives both points of view and asks for an opinion. Would it be an option - if Hugh decided he agreed with MoJ and Cabinet Office and wanted to withhold - to change the end of para 4 so that it simply says 'This letter seeks your agreement to use Section 36 in this case as justification to withhold the document.' The rest of the letter would stay the same." [DHSC6697857].

I believe the full paragraph from my email makes it clear that this would be a decision for Hugh rather than something I preferred to include. If Hugh agreed with the MoJ and Cabinet Office and he wanted to withhold the letter, then that is what the letter to the AG would outline- that he was seeking her agreement to use section 36.

Ministry of Justice recommendation as to why CMO advice should be withheld

5.23. An email chain dated 29 July 2008 between Zubeda Seedat and I (with others in copy) demonstrated that one of the arguments used by MoJ to recommend that the CMO's advice be withheld, was made in reference to a press article rather than the Judgement by Mr Justice Rougier, *"I have just been speaking to Karen Arnold about the reference to the judgment by Justice Rougier - see third bullet point, inserted by MOJ. I asked MOJ for a copy of this judgment, but discovered that they have based their comment from a press article, and not the actual judgment."* [DHSC6697887].

In response, I stated:

"In taking this point out it only leaves us with two reasons for the balance of public interest lying with non disclosure. Surely there is something else we can add?" [DHSC6697887].

⁴ At paragraph 5.21.

5.24. I sought to replace the point made by the MoJ rather than providing a reconsideration of whether it was in the public interest to release the document because we had already considered the public interest test before Hugh wrote to the AG. The emails show that our senior lawyers, our FOI team, the MoJ and the Cabinet Office had all considered the public interest test in reaching their view that the document should be withheld [DHSC6697857]. Ken Clarke had also written at length about why the public interest was best served by withholding the document.

5.25. As per Hugh's letter to Baroness Scotland on 25 June 2008, the MoJ had also told us that to ignore the views of a former Secretary of State in the Department would be unprecedented:

"MoJ officials also point out that this is new territory. There has not yet been an example where a department of state has ignored the wish of their former Secretary of State in relation to advice given to him/her in Government." [DHSC6432347].

The MoJ had also informed us that we would have to get agreement from Cabinet Office who had already made clear that they would not agree as per my submission on the 24 June 2008 to Hugh:

"The advice from officials at Ministry of Justice and Cabinet Office is that we should withhold the information requested." [DHSC6387197].

I was simply seeking to ensure that their arguments were fully reflected in the response.

Appeal on decision to withhold CMO advice and subsequent internal review

5.26. In April 2009, the decision to withhold the document was appealed and following an internal review on the decision, it was held that the document should not be released. I am referred to a number of documents in consideration of this decision, which I will outline below:

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- 5.27. A minute from Rowena Jecock to Hugh Taylor, dated 8 April 2009, which informed Hugh of the internal review of the FOI decision not to release the advice of the CMO [DHSC5214564]. In this Rowena requested Hugh seek the AG's view on the recommendation to continue to withhold this advice.
- 5.28. A further minute from Rowena Jecock to Hugh Taylor with me in copy, discussing the same material as the minute outlined above⁵ [DHSC6435411].
- 5.29. An email chain between Ed Webber, Tim Strevens, Tony Doole, and Vivek Kumar dated 21 - 22 May 2009 [DHSC6445478]. Ed requests confirmation that the internal review has been received and asks for an indication as to when it will be decided upon. A response is drafted to this in the later emails.
- 5.30. A letter to Ed Webber from Tony Doole dated 5 June 2009 which explains that they had referred his FOI request to the AG [DHSC5216642]. The letter stated:
- "Following referral for advice to the Attorney General the Department of Health considers that we continue to maintain our position in withholding the document under the exemption under the FOI Act at Section 36 (2) (b) (i) & (ii) (prejudice to the effective conduct of public affairs). Therefore, I should re-iterate the Department of Health's position as set out in our letter of 1 August, in that these are qualified exemptions and attract the public interest test to determine whether the balance of the public interest lies in favour of disclosure or non-disclosure. After careful consideration, our conclusion is that its disclosure 'would, or would be likely to inhibit the free and frank provision of advice or free and frank exchange of views for the purposes of deliberation'".*
- 5.31. A further letter from Tony Doole to Ed Webber, dated 18 June 2009 detailed that the internal review which Ed had requested was complete and the decision remained that *"that the public interest in withholding the requested information continues to outweigh the interest in disclosure of the advice"* [DHSC5215283].

⁵ At paragraph 5.27.

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- 5.32. A letter dated July 2009 to Paul Arnold of the FOI Case Unit from Tony Doole [DHSC6493189]. This letter was written in response to a complaint from Ed Webber and explained the reasoning behind the decision not to release the advice.
- 5.33. I am asked what further considerations were given to the request during the internal review. I have reviewed all of the documentation provided to me by the Inquiry on this internal review, however I do not now independently recall this review. I therefore have no information to provide the Inquiry on any further considerations which may have been made by the Department on this review.

Section 6: The Department of Health's engagement with the Archer Inquiry

Department's participation in Lord Archer Inquiry and view on the Inquiry

- 6.1. On page 9 in the Report published by the Archer Inquiry on 23 February 2009, the Report states:

"The Department of Health maintained its view that the Inquiry was unnecessary, and declined to provide witnesses to give evidence in public, but they supplied documents which we requested, and responded to questions from us and sent representatives to three private, informal and unminuted meetings" [ARCH0000001].

My responsibilities and involvement in DH's participation in the Archer Inquiry

- a) My responsibilities regarding the Archer Inquiry were fairly minimal as was my involvement in the Department's engagement with the Archer Inquiry. At this time, I was the Director dealing with the entirety of Health Protection, which was a very wide brief, and I had numerous responsibilities associated with it. I was involved at the outset in discussions about the Department's approach to the Inquiry but once it was up and running, I delegated responsibility for engagement with the Inquiry to my deputy director Ailsa Wight, and her team leader on blood policy, William Connon.

Department's justification on view that the Inquiry was unnecessary

- b) The Department observed to the Inquiry that *"the Inquiry was unnecessary"*. The decision against holding a public inquiry was made prior to when I arrived in post and reiterated numerous times by ministers with responsibility for that area, and therefore they did not think that the Archer inquiry was necessary. For example, Lord Warner, who was Minister of State in 2006, stated *"We do not consider that a Public Inquiry*

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is justified as we do not believe that any new light will be shed on this issue as a result" [HSOC0001824].

In another note from Lord Warner and Caroline Flint to the SofS on 24 July 2006, they write that an inquiry would "*not only be costly and resource intensive to run but also significantly raise the profile of the issue and expectations of interested parties that cannot be met. Importantly it would also set a precedent, especially for an issue where we do not consider the UK was a fault.*" They also noted that the Scottish Minister for Health "*firmly rejects the calls for an inquiry*" [DHSC5069877].

My view on the Department's position

- c) I do not feel it is appropriate for me to comment on a ministerial decision that I was not involved in and had no discussion with ministers about as it was made before my tenure as Director of Health Protection.

Lord Archer's request for the Department to attend the Inquiry

- 6.2. On 16 February 2007, Lord Archer wrote an introductory letter to the Secretary of State, who at this time was Patricia Hewitt [DHSC0041193_056]. He stated:

"It will be much appreciated if someone from the Department can be available, on a mutually agreed date, to say what its position has been and is; and to lay before us any further facts."

I am asked to review a number of documents in consideration of a number of questions I have been asked, which I shall outline below:

- 6.3. Emails between Joe Neanor, William Connon, Michelle Lucas and others dated 20 February 2007 [DHSC6700786]. Michelle requests a draft response to the letter outlined above⁶. William states in an email:

⁶ At paragraph 6.2

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"I am not at all clear how I should respond, given that this is not an independent inquiry in the normal sense and we are therefore, I assume, not obliged to take any part in the proceedings. However, the department would not wish to appear uncooperative, for obvious reasons.

...

It is clearly important that we cooperate where possible however, we do need to be very careful and ensure that we do not become involved in an inquiry "through the back door" given that ministers across the UK have consistently declined requests for an inquiry."

- 6.4. An email from William Connon to Simon Rogers, Bradley Smythe, and a number of other recipients in copy including me, dated 20 February 2007 [DHSC5264793]. This email followed on from the earlier email William had sent asking for a response to the Lord Archer letter. He stated:

"I cannot see how we can become involved given the stance DH, on behalf of successive Governments has taken in stating that an inquiry is not justified. Given that position it would be difficult to justify becoming involved in any form of inquiry."

- 6.5. A response from Karen Arnold (Office of the Solicitor, DH) to the email William Connon sent dated 20 February 2007 [DHSC5458311]. Karen advised that a holding reply should be sent. She also noted that she had added several comments to the draft letter William had created in response to Lord Archer.

- 6.6. A draft letter from Patricia Hewitt responding to Lord Archer [DHSC5458312]. Presumably this is the draft letter William had created with Karen's comments on it. The draft stated:

"The Government has great sympathy for those infected with Hepatitis C and HIV and, as I am sure you aware, have considered the need for a public inquiry very carefully indeed... However, the Government of the day acted in good faith, relying on the technology available at the time and therefore we really do not feel that a public inquiry would provide any further benefit to those affected."

Karen commented in response to this:

"[this is not quite true is it? I understood from the "Burton judgment" (A and Ors v NBA 2001) that the technology for testing for hep C was

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available but was not implemented until a later date... [In fact, I actually think that prolonging this issue may serve to prolong the suffering of those who have been affected. - do you think that this is true given the pressure to hold an inquiry?]"

- 6.7. Emails between Jacky Buchan and William Connon dated 20 February 2007 [DHSC5238049]. Jacky asks William if he knows how the inquiry is being funded, and what the implications are for the DH.
- 6.8. Further emails between Jacky and William on the same date [DHSC5152770]. William states that he is unaware of how the Lord Archer inquiry is being funded and is reluctant to ask as he fears this will cause the Department to be implicated in the Inquiry.
- 6.9. A response from William Connon to Karen Arnold dated 20 February 2007 [DHSC5458364]. William outlines his preference to not send a holding reply in response to Lord Archer's letter as he believed that all the issues had been debated in the past and are in the public domain. He notes that the essential message he wished to get across was that *"the Government does not feel an Inquiry is justified and that ministers do not support the current proposal"*.
- 6.10. A further email from William Connon to Alisa Wight, Zubeda Seedat and others, dated 20 February 2007 [DHSC6323081]. The email discusses the draft letter responding to Lord Archer.
- 6.11. The draft letter responding to Lord Archer from Caroline Flint (the matter had been passed from the SoS to Caroline to respond) [DHSC0006752]. This draft stated:

"The Government has great sympathy for those infected with hepatitis C and, as I am sure you aware, have considered the need for a public inquiry very carefully indeed. However, the Government of the day acted in good faith at the time and therefore we really do not feel that a public inquiry would provide any further benefit to those affected. In fact, actually

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believe that prolonging this issue may serve to prolong the suffering of those who have been affected.

...

In conclusion I can only repeat that the Government does not support your call for an independent Departmental inquiry and therefore it would not be proper for officials to appear before your inquiry."

- 6.12. Emails between William Connon and Dr Aileen Keel (who was the deputy CMO at this time) dated 21 February 2007 [DHSC5458735]. William encloses the draft letter to her, and Aileen states "*let's hope this business doesn't develop too many legs*".

Interpretation of Lord Archer's request

- a) I'm afraid I cannot recall at this distance in time what I thought at the time about Lord Archer's request or what his expectations of the Department were.

Meetings and discussions following Lord Archer's letter

- b) As outlined in the documentation above⁷ there was discussion in the Department about Lord Archer's letter and how to respond to his request. I do not recall whether any meetings took place amongst ministers and officials regarding Lord Archer's letter, however, I can see from the papers that officials evidently did meet:

"William

at their 1:1 on Monday, SofS wants to speak to Hugh about Lord Archer's letter about his Inquiry into contaminated blood products including the draft reply for Caroline Flint to send.

SofS has asked Caroline/Philip Hunt to find out the ToR and how the inquiry is being funded.

⁷ At paragraphs 6.2-6.12.

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I know that you met Hugh to discuss this in the context of the Tessa Jowell declaration of interest issue. Is there further briefing that he should have before he meets SofS on Monday? If so, I will need this by 1pm on Monday. Please give me a call to let me know.

thanks Ruth

Ruth Cuthbert

Principal Private Secretary to the Permanent Secretary
[DHSC5462554].

Understanding of the "robust line"

c) In an email dated 20 February 2007, William Connon states:

"As you can see I want to keep this short and hold a robust line on this matter" [DHSC6323081].

In a further email on 21 February 2007 to Jacky Buchan he also writes *"The advice is that we should not become involved in Lord Archer's Inquiry at all. The attached draft, which has been cleared by Perm Sec and Sol, takes a fairly robust line"* [DHSC5463720]. I do not recall why William Connon wrote this, but it appears he agreed it with the Permanent Secretary. However, I note that a month later on 21 March 2007 Jacky Buchan responds to say that:

"MS(PH) has met with SofS to discuss our response to Lord Archer's request and SofS subsequently had a discussion with Hugh Taylor. It has been agreed that the response needs to be more cooperative regarding the inquiry and officials should give evidence and papers should be made available" [DHSC5463720].

Questions and concerns regarding the Department's engagement with the Lord Archer Inquiry

6.13. I am referred to a memo I prepared to Hugh Taylor dated 23 March 2007 regarding Lord Archer's letter to the SoS [DHSC5857854]. In this memo I state:

"However there remain a number of questions and concerns amongst the team here regarding departmental involvement in this inquiry"

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There were a number of reasons for this statement; I recall amongst the team the main concern practically was the sheer amount of work that could be involved for them given that the team only consisted of two people, William and Zubeda, and they were already fully occupied with other matters.

- 6.14. Staff in the Department were also concerned that they might be asked to appear as witnesses and called to give evidence and answer questions on all the many thousands of documents that were being reviewed for the Review of Documentation Relating to the Safety of Blood Products 1970-1985, which we had already planned to give to Lord Archer and publish.
- 6.15. William Connon, who was team lead, set out his concerns in more detail in a submission to ministers on 28 March in which he also records that Departmental solicitors were of the view that "*we should avoid becoming in any way directly involved*" in the review [DHSC0041307_142]. He concludes "*For all these reasons, we think it is not advisable to offer in the reply that officials would be willing to give evidence to the Inquiry*". The submission confirms that the Permanent Secretary Hugh Taylor had cleared the draft reply to Lord Archer informing him of this.

Elaboration on view that there was no evidence of negligence or wrongdoing during 1970-1985

- 6.16. In this memo I also state, "*There is no evidence of any negligence or wrongdoing on the part of the department during the period in question (1970-1985)*" [DHSC5857854].
- 6.17. This statement was based on the review of all the relevant documents held by the Department for the Review of Documentation Relating to the Safety of Blood Products 1970-1985 at the time. As recorded in my note to Morven Smith in the minister's office dated 2 April 2009, we had not found any evidence of negligence or wrongdoing on the part of the Department:

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"I can assure MS(PH) that all the Department's paperwork has been trawled through very thoroughly. I have employed staff specifically over the past two years to read every single piece of paper from the relevant files, to catalogue them and to publish them on the DH website.....Lawyers too have crawled through these papers over the years. They have not been able to find anything to suggest that the Government at the time was at fault either. Indeed Counsel for the plaintiffs in the HIV litigation advised them to settle out of court because it would be "very difficult indeed" to show that the Government had acted unreasonably based on the knowledge available at the time. The lengthy document setting out their Counsel's advice is also publicly available on the web." [DHSC0041157_011].

Elaboration on view that there was considerable scope for embarrassment

- 6.18. I also stated that there was *"considerable scope for embarrassment for the department"* [DHSC5857854]. As per the memo, I held this view because I thought there was scope for embarrassment *"given the subsequent destruction and loss of various papers"*. I also noted a few examples in the papers which could cause embarrassment for those individuals (ministers and officials) if submissions were released and if the documents were released to the Inquiry team without officials' names being redacted in line with FOI principles. For example:

"While none of these policy documents gives rise to any real concerns over liability, some are sensitive in respect of potential for criticism or embarrassment. Examples are:

- Internal Minute where the view of MS(H) was cited 'he has strong views on spending money on the blood test for HTL V 111. He felt that to spend around £2m was not cost effective when there were so few AIDS cases and that the money could be better spent elsewhere'.*

. Internal minute between officials on cost implications of AIDS 'Of course the maintenance of the life of a haemophiliac is itself expensive, and I am very much afraid that those who are already doomed will generate savings which more than cover the cost of testing blood donations (5th March 1985)" [DHSC5857854].

Summary of view on in person evidence from officials

- 6.19. I am asked to summarise why I believed that *"Given the time which has elapsed, it is not clear exactly what "evidence" officials would be able to provide in person, beyond rehearsing the documents which are already in the public domain"* [DHSC5857854].

6.20. I held this view because none of the officials in the team had any involvement in, or responsibility for, blood policy during the period in question 1970-1985. This meant they would only have been able to repeat what it said in the papers, which we were already planning to release to Lord Archer and publish on the Government website. They would not have been able to add anything else to what had already been said in those papers.

Version of memo sent to Hugh Taylor

6.21. I am referred to another version of this memo which is also dated 23 March 2007 [DHSC5046267]. In this, the references, and examples of "*potential embarrassment and criticism*" are not contained on page 2 as they were in the other version. I am asked to clarify which version was ultimately sent to Hugh, why the examples were missing from one of these, and whether they were added or deleted.

6.22. At this distance in time, I cannot tell which one was ultimately sent to Hugh, and I do not know whether the examples were added or deleted from the final memo sent to him.

Private meetings between DH and Archer Inquiry

6.23. Three private meetings, referred to on page 9 of the Archer Report, between the Archer panel and representatives of the Department of Health, took place on 25 April 2007, 19 September 2007 and 12 June 2008 [ARCH0000001].

Attendees at meetings

6.24. I am referred to a number of documents in answering this question [DHSC5193222]; [DHSC5468141]; [DHSC5468879]; [DHSC5485698]; [ARCH0001026]; [DHSC5518489]. I am asked who attended these meetings

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on behalf of the Department, to detail their role, and why they were selected to attend.

6.25. I can see from emails between William and I on 24 April 2007 that I intended to attend the first meeting with my deputy director Ailsa Wight, who was responsible for blood policy, and her team leader William Connon [DHSC5468879]. However, I am not certain I did attend this meeting as I have no recollection of it, and a later email from William Connon on 9 May 2007 suggests that it was only himself and Ailsa from our team who attended the meeting [DHSC6701136]. It would also appear that a departmental solicitor Shibhani Rahulan also attended this initial meeting in April [DHSC6701136].

6.26. I am aware from my reading of the papers that the second meeting on 19 September 2007 was attended by William Connon, along with representatives of NHSBT.

6.27. An email from William Connon on 17 June 2008 to myself and Ailsa Wight describes the last meeting and shows that he attended it on behalf of the Department and together with colleagues from NHSBT [DHSC5526400].

Conditions of meetings

6.28. I have no knowledge of any conditions that were or were not attached to these meetings.

Written record of meetings

6.29. I am unaware of why there was no written record of these meetings kept by the Inquiry. I cannot see any mention in the papers that the Department kept a note either, however normal practice was that the Department would normally only keep a formal record of meetings that we organised ourselves.

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Recollection of meetings

- 6.30. From the papers I have reviewed, my understanding is that I did not attend any of these meetings, nor can I recall attending any, so I would not have any recollection of what was discussed.

Declination to provide witnesses

- 6.31. I am referred to an email chain primarily between William Connon and Shibani Rahulan (solicitor) dated 9 May 2007 [DHSC6701136]. Shibani states:

"When the inquiry asked DH about DH witnesses at the meeting, DH said that they would struggle to find appropriate people because the events are historic and consequently there is hardly anyone around who would have first-hand knowledge of the events" [DHSC6701136].

This explanation was given for declining to provide witnesses because of the reasons provided in my answer to 6.15 above.

Witness statement of Judith Willets

- 6.32. I am asked about my recollection of the disclosure process to the Archer Inquiry and am referred to a number of documents in consideration of this. The witness statement of Judith Willets, who was a panel member of the Archer Inquiry outlined difficulties she experienced in obtaining documents from the Department [WITN4736001]. She stated:

"We experienced no willingness to co-operate with this dilemma from the Department of Health. Had there been any desire to identify a range of key documents that would be useful, we might have saved days of work. My abiding sense was that the individuals we had contact with simply did not want to help".

- 6.33. On the 23 May 2007, William Connon sent an email noting that the Review of Documents Relating to the Safety of Blood Products 1970-1985 was released on 22nd May, and copies were issued to a number of relevant people, including Lord Archer [DHSC5084337].

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- 6.34. Linda Page's note dated 3 July 2007 on the Review [DHSC5479534]. This note details the progress of the Review, including that it has been released to Lord Archer, and 56 referenced papers relating to NANBH were also sent. It is further noted that the remaining 4000 documents were being prepared in line with FOIA and were due to be released in batches. The next steps detail a chronology being created for HIV/Aids for Lord Archer, and to scan 117 archived files for any further relevant documentation to be provided to the Inquiry.
- 6.35. Emails between myself, William Connon, Patrick Hennessy, and Jack Buchan et al. dated 10 July 2007 [DHSC5284704]. Patrick noted that the second release of papers was due to be sent to Lord Archer's team the following day.
- 6.36. I was surprised to read the comments above from Judith Willett's witness statement as our intention was always to be as transparent as possible and release as many documents to the Archer inquiry as we could. In my submission to ministers of 24 April 2007, I recommended that we should release our report "*Review of Documentation Relating to the Safety of Blood Products 1970-1985*" to Lord Archer and that we should also release all the documents reviewed (over 4000) at a cost of £40,000 [DHSC0041193_026]. I proposed that we would release them in line with FOI principles,

"However the more we can release the better, so we would take further advice from solicitors about this and report back to you during the preparation of the documents".

- 6.37. In her witness statement, Judith Willetts says that she would have liked us to identify key documents. I do not recall the Inquiry asking us to do that at the time. Given that there was a view held by some people outside the Department that the Department was hiding evidence of negligence and potential wrongdoing, we considered it best to simply release all the documents we had in order to let others form their own views, rather than directing them to particular documents.

FOI decision in 2007 and internal review

6.38. A submission from Rowena Jecock (who was Head of Blood Policy at this time), to the Minister of State Gillian Merron dated 2 June 2009 was entitled "*Government response to Lord Archer - next steps*" [DHSC0041219_077]. I am copied into this submission, and at paragraph 19 an overview of the FOI decision in 2008 and the subsequent internal review into it is given.

6.39. I was involved in the original FOI request as my responses at paragraphs 5.1 - 5.25 set out. I was responsible for giving advice to the Permanent Secretary who made the final decision. However, I have no recollection of the internal review in 2009 and I cannot see from the papers whether I was involved or not. I do not recall whether I agreed with the decision to withhold the document.

Discussion between Gillian Merron and I

6.40. A further submission from Rowena Jecock to Gillian Merron dated 10 June 2009 refers to a meeting that took place between Gillian and I on 11th June, which discussed the government's response to the Archer Report. I cannot now recall anything about this meeting back in 2009, and I do not have any note or minute of this meeting. However, from reading Rowena's submission it appears the aim of the meeting was to discuss the Department's response to the Archer report, rather than the Department's engagement with the Inquiry.

View on how DH handled engagement with Archer Inquiry

6.41. From my recollection and from reviewing the papers, after initial hesitation, it was the Department's intention to be as transparent and helpful as we could to the Inquiry. To that end we sought and gained ministerial agreement to share with the Inquiry as many of the papers we held and had reviewed for our Review of Documentation Relating to the Safety of Blood Products 1970 – 1985 as possible. This was a huge task as there were over 4,500 documents, but we were glad to do it as we wanted to be as helpful and open as possible, and to

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demonstrate that the Department was not concealing anything. We initially held back a few documents under FOI principles but most of these were eventually also published after we reviewed them further. My submission of 24 April 2007 to Lord Hunt and Caroline Flint says that although some documents may need to be withheld under FOI *"However clearly the more we can release the better, so we would take further advice from solicitors about this"* [DHSC0041193_026].

6.42. When we realised that the Inquiry were interested in HIV/AIDS as well as Hepatitis C we reviewed a further 117 files and released all relevant papers from those as well. We also decided to produce a chronology of events in relation to HIV/AIDS specifically to help the Inquiry [DHSC5526400].

6.43. After their first meeting with the Inquiry team, my team realised that their knowledge of blood matters was limited, and in an email dated 25 April 2007 from Alisa Wight to me, William Connon and others, a decision was made to help by preparing a brief for them:

"William

We spoke on the way back and thought we should ask NHSBT, with MHRA as necessary, to put together a note on the safety regulatory framework, that is requirements and practice in relation to testing for hepatitis and HIV viruses, for:

- whole blood*
- UK produced plasma prods*
- imported plasma prods*

to provide firstly a picture of the situation now, and secondly a chronology of the situation as it was pre-Directive as far as possible.

Grateful if you will follow up please. I don't know how long it will take to provide this - do you think the end of next week is too tight for them?

Thanks. Happy to discuss.

Dr Ailsa Wight" [DHSC5469657].

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- 6.44. As well as fielding officials to meet with the Inquiry team and providing them with written briefings, we also offered to review their report to assist them with factual accuracy, but they declined. An email from William Connon dated 16 June 2008 states:

"I said that we would be happy to receive and comment on a draft copy if that would be helpful, but they declined on the basis that the public and the haemophilia lobby would almost certainly see this as some form of compromise. I told them that this was not the intention but that we would be happy to check for factual accuracy etc. I also suggested that if it made things more transparent we could include any others in this process of commenting on the draft. However Lord Archer declined to take us up on this offer" [DHSC5526400].

- 6.45. Given the Department's general intention to be helpful I was sorry to read in the witness statement from Judith Willetts, one of the Inquiry panel members, that she did not feel the Departmental officials that the Inquiry team were dealing with were actually as helpful as they could have been. I wish that this had been raised with me by the Inquiry at the time so that I could have addressed it.
- 6.46. In retrospect I regret that we did not offer the opportunity for officials to give evidence to the Inquiry. The reasons we did not are set out in my answer above⁸, and they were definitely not because we were 'hiding something'. Junior officials felt very strongly about not appearing as witnesses in front of the Inquiry and they were supported by the Permanent Secretary and ministers. Nevertheless, I think it would have been better if we had fielded officials with expertise in blood matters. Even if they did not know anything first-hand about what had happened more than 20 years previously, they could perhaps have helped the Inquiry with their general knowledge relating to blood and blood products. It would have helped allay the suspicion that the Department was concealing something, and it would have visibly demonstrated that we were keen to learn lessons from the past, which of course, we were.

⁸ At paragraphs 6.13-6.15

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Statement of Truth

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

Signed.....

GRO-C

Dated.....

15/12/2022