

Witness Name: Sylvia Shearer

Statement No.: WITN7489001

Exhibits: 0

Dated: 23 November 2022

## INFECTED BLOOD INQUIRY

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### WRITTEN STATEMENT OF SYLVIA SHEARER

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I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 13 October 2022.

I, Sylvia Shearer, will say as follows: -

#### **Section 1: Introduction**

1.1 My name is Sylvia Drummond Shearer and I live at GRO-C  
GRO-C Midlothian GRO-C My qualifications include a Masters In Business Administration (MBA) and Member of the Institute of Health Service Managers (until retirement).

#### 2.1 Employment history:

2003 – 2011      Policy Analyst/Branch Head, Scottish Government,  
Health Directorates

I headed up the Blood and Rehabilitation Branch until March 2010, when I transferred to the Maternal & Infant Health Branch within the Children & Families Division. Prior to this in 2003/4 I developed a flagship managed migration policy of the First

Minister for the Labour Administration entitled “The Fresh Talent Initiative”, encouraging **economic** migrants to Scotland to address the declining population, support public services and improve the economic status of Scotland. This involved liaising with “Scotland PLC”, European Union representatives, and, as immigration is a reserved issue, the Home Office. Although challenging, this was a very exciting time in my career and I met many diverse groups and senior corporate individuals with Scotland’s interests at heart.

During my tenure with the Blood & Rehab Branch, I established a public inquiry led by Lord Penrose into Hepatitis C/HIV acquired infection from NHS blood and blood products. I sponsored the Scottish National Blood Transfusion Service (SNBTS) and directly updated Ministers on all issues relating to blood and blood products, providing advice on policies as required. I worked closely with the then Deputy Chief Medical Officer for Scotland, UK Medical Expert Committees, Department of Health colleagues and oversaw implementation/compliance in Scotland with EEC regulations regarding blood and blood products within the NHS in Scotland. A key role was building relationships with those affected with Hep C/HIV by this route and their representatives, including legal representation. I worked with them, the judiciary, including directly with the Lord Advocate, SNBTS and Ministers to establish the role and remit of the public inquiry. I was also responsible for rehabilitation issues for military service personnel as health is a devolved issue and liaised closely with the MOD, representing Scotland on their Health Committee developing the health aspects of the Military Covenant - a policy of the then Prime Minister, Gordon Brown now in place for veterans and those requiring rehabilitation support after Afghanistan etc. I funded the rehabilitation services within NHS

Scotland to deliver these services. I was promoted during this posting.

After time out for a knee replacement, in March 2010 I was asked to head up the Maternal & Infant Health Branch and was requested by the then Minister for Public Health and Sport Shona Robison to establish several Expert Groups to expedite recommendations on a number of policy issues of concern to her. These included the National Infertility Group and the Neonatal Expert Advisory Group. In January 2011 the Minister launched new policies developed by my team on maternity care, antenatal inequalities and maternal and infant nutrition and reports including recommendations were due from the groups in 2012.

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| 2000 – 2003 | As a member of the Strategic Change Unit within the Scottish Government Health Directorate, I delivered a National Leadership Programme within the NHS in Scotland to a cohort of 80 (4X20) using external contractors. |
| 2000 – 2003 | I was part of a team which delivered a development programme for senior NHS directors.  |
| 1998 - 2000 | I headed up a team within the NHS which was responsible for providing the secretariat to a number of national Committees appointed by the Scottish Home & Health Department/Scottish Executive.                         |
| 1995 – 1998 | As head of Administration, Royal College of Surgeons of Edinburgh, I was responsible for the day to day administration of the College.  |

1990 – 1995 I was the Personal Assistant to Professor John D Cash, Medical and Scientific Director of the Scottish National Blood Transfusion Service.

(I obtained my Masters Degree in Administration (MBA) in 1998, by studying part time at Napier University and was a member of the Institute for Health Management from 1993 until my retirement.)

3.1 I have never been a member of any other committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference.

4.1 I have not provided evidence to, or have been involved in, any other inquiries, investigations or criminal or civil litigation in relation to human immunodeficiency virus ("HIV") and/or hepatitis B virus ("HBV") and/or hepatitis C virus ("HCV") infections and/or variant Creutzfeldt-Jakob disease ("vCJD") in blood and/or blood products.

## **Section 2: Calls for a public inquiry**

***Q5: Please outline what, if any, briefing or handover notes you received on the issue of infected blood and blood products when you succeeded Robert Stock at the Health and Quality Planning Division. Please provide documents if available.***

5.1 I cannot recall if there was an official handover document prepared by Bob Stock. I do recall having several one to one meetings with him prior to his departure and was aware that both Sandra Falconer in branch and my line manager Andrew McLeod were very knowledgeable around the issues relating to blood products. I did attend Bob's last meeting with SNBTS on 10 November 2004, as minuted (SCGV0000098\_073). I refer you to Item 8, fairly far down

the agenda in which Mr Stock advised that FOI requests might require release of information supplied by SNBTS and that, should SNBTS be in a similar position they inform SEHD of any documents from SEHD before releasing them. From the tone of the Minute it was not, at that time, considered to be a high priority. I was certainly not briefed on coming into the post that there was an ongoing and urgent demand on the Scottish Government for a public inquiry.

- 5.2 I was made aware of the Skipton Fund; that we kept those files in a locked cabinet in branch and only I and Sandra would have the keys. Also the Fund was run at UK level but the position given to me was that this was considered adequate in terms of compensation and my involvement would only be in response to directives from the UK administrator to make payments to Scottish recipients who met the criteria.

***Q6: What was your understanding at this time of the reasons given by the Scottish Executive for refusing an independent public inquiry? Documents SCGV0000098\_073, MACK0002352\_002, SCGV0000193\_080, SCGV0000044\_043 and SCGV0000044\_050 may assist in answering this question.***

- 6.1 On taking up the post, my understanding was two fold. One was that lessons had been learned and there was no new evidence forthcoming to support the need for a public inquiry. The other was concern at Ministerial level that a precedent would be set in relation to NHS treatment and this could result in large sums being paid in compensation claims which would impact on the Health budget and thereby the efficacy of the NHS to provide treatment free at the point of delivery. The latter was mostly responsible for the official “line to take” as directed by Ministers.

***Q7: As a result of an article published in the Sunday Herald on 23 January 2005 regarding alleged new evidence to force a public inquiry [HSOC0009030], you forwarded ‘lines to take’ to the Health Ministers [SCGV0000262\_008]. You were also contacted by William Connon of the Department of Health, England (DH) for an update on “the developing situation in Scotland” [DHSC5357534], to which***

***you responded that “there is no indication that the Minister is considering a public inquiry” [DHSC0006235\_038]. Please answer the following questions:***

- a. What role did you play in drafting the ‘lines to take’ referred to above?***
- b. What investigation, research or analysis did you or colleagues undertake to determine that the reports in the Sunday Herald article did not reveal any new information?***
- c. To the best of your knowledge and recollection, was any follow-up undertaken with the Scottish National Blood Transfusion Service (SNBTS) to establish why they believed Health Minister Andy Kerr was minded to say “yes” to a public inquiry?***

- 7.1 (a) I would have drafted the “lines to take” in accordance with my knowledge of the Minister’s position known to me at that time. It was common to have pre prepared lines to take (previously cleared/agreed), however I would have liaised with Sandra Falconer in doing so due to the nature of the Herald’s content and then consulted Mr McLeod before they were passed up for clearance by the Minister. Only then would they have been released. Often there was pressure from our press department colleagues to turn this around swiftly due to the pressures on them to respond to the media.
- (b) I cannot recall any such action.
- (c) I cannot recall any such action although I may well have contacted them by telephone to try to establish that fact but do not recall their response (if any). It was certainly not known to me if Mr Kerr had advised them of any change of his position.

***Q8: On 1 February 2005, you accompanied Mr Kerr to a meeting with the Scottish Haemophilia Forum along with colleagues Andrew Macleod, Sandra Falconer and Julie McIlroy [SCGV0001080\_052]. In your view, why were four representatives of the Scottish Executive needed to accompany Mr Kerr at this meeting? What follow-up, if any, was undertaken by SEHD following this meeting?***

- 8.1 It was common practice when the Minister was meeting with an outside body for his Private Secretary to minute the meeting, hence the presence of A/PS

Julie McIlroy. Mr McLeod, myself and Mrs Falconer would be present as the civil servants responsible for delivery of this area of policy. This would not be considered unusual particularly due to the gravity of the area involved. It also gave me the opportunity to meet Mr Dolan and Mr Maguire and assure them I was taking their concerns seriously.

- 8.2 As indicated in the Minute, I agreed to advise Mr Dolan of the outcome of the forthcoming meeting of the 28th February in relation to the points raised by Mr Dolan. I can no longer recall that action, but if I said I would do so, then I would have done.

***Q9: In an email from you to Mr Macleod dated 16 February 2005 regarding an FOI request about Hepatitis C [SCGV0001080\_048], you stated you wanted to: "...try and avoid the flurry of unrehearsed activity that occurred within the Executive the last time in order that senior management in SEHD is not alarmed.' Please explain what you meant by this statement. In particular, describe the 'unrehearsed activity' to which you refer, what event occurred 'last time' and why the SEHD was alarmed.***

- 9.1 The "unrehearsed activity" to which I refer would be the reaction of our press officers, the Private Office, and the Chief Executive of the Health Department to the Herald's articles. There was concern that the facts would be misinterpreted. I was bombarded with phone calls to provide an immediate response (see answer 7a) to calm the situation and provide the press officers with cleared lines to take as a matter of urgency. It was a stressful and urgent exercise which was not how I felt these matters should be conducted. My email to Mr McLeod was an attempt to avoid a similar experience once the Medicines Inspectorate papers were released and to at least be prepared in advance with the Minister, the CE and the press office aware of the situation.

***Q10: Document SCGV0000262\_002 appears to be a draft of a memorandum from you to Mr Kerr regarding the release of documentation under the Freedom of Information (Scotland) Act 2002 (FOI).***

***a. Why did you consider it necessary to ‘undermine’ calls for a public inquiry?***

***b. Was the release of documentation an attempt to deflect a public inquiry, as suggested by paragraph 6, page 1?***

***c. The Inquiry has seen evidence of reasons provided by DH officials to English Ministers for not holding a public inquiry, which are similar to those contained in Annex B. Why did you consider it necessary to liaise with colleagues at the DH England regarding reasons not to hold a public inquiry [DHSC0004520\_045, SCGV0001080\_033, DHSC5362409, SCGV0001067\_064]?***

***d. With reference to document DHSC0004520\_045, you stated: “Due to FOI, the line that there is no new evidence to suggest holding a PI is becoming increasingly difficult to defend.” Please explain why this was the case and what cooperation regarding an inquiry Scottish Ministers would be seeking from Westminster.***

10.1 The drafted corrections are, I think, in Mr McLeod’s handwriting.

(a) The line to take from the Minister for Health continued to be “there is no new evidence therefore no need for a PI”. The use of the word “undermining” is in relation to continued calls for a PI and the branch fielding many time-limited FOI requests and has no sinister intent other than to emphasise, if the Minister agreed to the proposal i.e, the pro active release of a large number of relevant documents in the public domain, it was hoped this would result in a reduction in the calls for a PI and FOI requests.

(b) Yes.

(c) As indicated in the draft Minute, the events in question took place prior to Devolution. It was therefore necessary to inform DH colleagues of our proposal and indicate we would liaise with them with regard to any DH/UK Government correspondence before release should we find it in the files. Ministers of both Governments (Labour) at that time were holding the line that there was no new evidence and therefore no need for a PI and it was made clear to me that the UK Government would stand firm on this (SCGV0001080\_033).

(d) Due to the volume of FOI requests it was necessary to review an ever increasing number of files from the period in question. It became evident that



there had been pressure from DH (UK Government) at the time on the SHHD/ Secretary of State for Scotland, to hold the line of no PI. The main concern was around precedent and the financial implications of compensation rather than any suspected malpractice. This I felt was not necessarily sufficient justification for not holding a PI as holding it would have clarified the scientific and medical decisions taken at the time based on the knowledge base at the time. My comment that it was increasingly difficult to hold the line due to FOI requests was not an indication that I had found new evidence, merely the fact it had become obvious UK Government were in control of the lines to take prior to and even after Devolution. Our legal advisor Jan Marshall wanted confirmation that the Westminster Government would cooperate with any PI set up in Scotland. To the best of my knowledge this was not forthcoming at the time despite me asking directly of Mr Connon. I note the eventual response from Hugh Taylor to Dr Kevin Woods dated 9 February 2009 in relation to the Penrose Inquiry (DHSC0041157\_042). I am unaware of any interaction between Mr Kerr and his counterparts in Westminster on this issue. This is normal as that would be a political matter rather than a policy issue. It was my overall impression from reviewing dozens of files from the late 70s and 1980s onwards and not something I could direct you to now in the files (if they still exist of which I am doubtful.)

***Q11: Mr Kerr was invited to give evidence before the Health and Community Care Committee (HCCC) on the issue of a public inquiry at a meeting scheduled for 10 May 2005. You provided two briefing notes in advance of the meeting [SCGV0000263\_076] and [SCGV0000263\_140].***

***a. Please outline how and from where you sourced the information contained in the 'Comments' section of the table on pages 8-9 of SCGV0000263\_140.***

***b. What investigation, analysis or inquiries were undertaken to reach the conclusion contained in Annex E of SCGV0000263\_140?***

***c. In his statement to this Inquiry, Mr Kerr states: "I always made it clear to officials that if we felt that the position being adopted on the matter of a public inquiry was wrong then we should acknowledge that and move to a public inquiry, for example, if there was evidence that actions were wrong and covered***

***up then then we should acknowledge that and move to a public inquiry” [WITN5753003 paragraph 53]. Please provide your opinion on this statement, and in particular, whether Mr Kerr did make it clear?***

11.1 (a) If I recall correctly, the comments in the table on pages 8 and 9 were compiled with the assistance of SNBTS and Dr Keel. I would not have been qualified nor have sufficient knowledge to make such statements. It is common practice to enlist the assistance of relevant expertise in preparing briefings for Ministers.

(b) Please see my answer to (a).

(c) I cannot recall whether Mr Kerr made this exact statement to the Committee. The meeting was filmed so it may be possible to obtain that footage. I am unaware of him having expressed any opinion to me at any time other than to continue to hold the line to take as agreed with the UK Government “As *there is no new evidence and lessons have been learned there is no need for a Public Inquiry*”.

***Q12: In response to growing FOI requests, Scottish Executive files were ‘trawled’ and documents were sent by you to Mr Kerr for his review, including those identified as ‘most sensitive’ [SCGV0001081\_066]. Mr Kerr had earlier expressed a desire to be “as open and transparent as possible on these issues” following his meeting with the Scottish Haemophilia Forum on 1 February 2005, but subsequently did not want documents which would be exempt as “advice to ministers” to be released [SCGV0001081\_053]. What was your understanding of why these particular documents should not be released?***

12.1 “Advice to Ministers” in any policy area was always considered as exempt from FOI requests in order that Civil Servants could brief Ministers candidly in the knowledge that the information contained within would remain confidential.

***Q13: In an email from you to Mr Macleod and Scottish Executive solicitor Jan Marshall dated 22 August 2005, you enclosed a draft minute to Mr Kerr following a further invitation from the HCCC to give evidence on the issue of***

***a public inquiry [SCGV0000263\_020].***

***a. Please explain your understanding of why Mr Kerr's private secretary Lindsay Blackmore had asked for an 'off the record' briefing.***

***b. In addition to the 'complex' nature of the issues, please expand upon why you felt a formal response was necessary.***

***c. Why did you want to present your 'own assessment' from your perspective' to the Minister?***

***d . Please explain the meaning of the sentence, "The perceived "blame" lies with Westminster Ministers rather than SNBTS or, indeed, the Scottish Home and Health Department at that time" (paragraph 5). Who perceived the blame to lie with Westminster?***

***e. In reference to paragraph 6, to what extent did the petition for judicial review concerning a public inquiry impact upon your advice to the Minister to release documentation?***

***f. Please elaborate on the 'difficulty' you perceived for Secretary of State Patricia Hewitt and colleagues if documentation was released (paragraph 7). Similarly, what was the 'embarrassment' you perceived in paragraph 8?***

***g. In reference to paragraph 11, why would the release of the documentation make it 'increasingly difficult' to maintain the line against a public inquiry?***

13.1 (a) This is difficult to recall, however I suspect it was because there were so many FOI requests in this policy area at the time and the Minister wanted advice without a paper trail.

(b) I felt exposed being asked to give an "Off the record" briefing and, on reflection, wanted a formal record of my actions and advice. You will note my draft was withheld by Mr Mcleod so Mr Kerr will have been correct in saying he did not receive it.

(c) There was considerable and increasing tension developing between what Mr Kerr wished to happen and the pressures via FOI from the Scottish branch of the Haemophilia Society to hold a PI. I also felt I was being forced to make personal judgements on what should be released which I felt was not appropriate to my position within the organisation. On delivering the documents for release to the Private Office for approval, (3 large ring binders full) I was

informed shortly afterwards that the Minister would not have time to review them and I was asked by his PS whether I personally felt there was anything incriminating contained within them which could “harm” the Minister. (Privately I considered this to be a matter for the Minister’s Special Advisors). I responded, as I had stated in paragraph 5 of my Minute dated 22/8/2005 [SCGV0000263\_020], that the Haemophilia Society were adept at gaining media coverage and I could not guarantee they would not raise issues. I had done my best within the parameters of the FOI Act to comply as fully as I could with the Minister’s wishes. Due to the volume of work involved (which required me to undertake a considerable amount of unpaid overtime to complete the exercise), more senior colleagues were content to leave it to me to make these judgements. As Mr Stock has already outlined in his statement, my branch was not solely dealing with this area of policy which, due to FOI, had increased exponentially. I was also responsible for improvement of National Health Service in Scotland (NHSiS) audiology services (budget £20m), improvements to wheelchair and prosthetics services (budget £5M – (which involved liaison with MOD due to the Afghan war and NHSiS treatment of veterans), MHRA re Medical Devices and other sundry issues.

(d) I refer to paragraph 5 of the same draft Minute [SCGV0000263\_020]. It was my opinion the “blame” would come from the Haemophilia Society based on the facts outlined by me in that paragraph if these facts became public.

(e) I did not express a view, merely laid out the advice from the senior lawyers involved in the pending judicial review around the timing of release for consideration by the Minister.

(f) The perceived difficulty came from examining the files and the conclusion I reached that they could expose the Westminster Government to accusations with regard to their actions (or lack of) around the issues in question. I cannot, at this point in time, recall exactly why I came to express that opinion but it will have been as a result of reviewing the files at that time.

(g) I refer you to (f) above. If others came to the same conclusion once the files had been released, it could have been very difficult to continue to hold the line. I felt the Minister needed to be made aware of that. I refer you to the first bullet point under paragraph 14, “recommendations” [SCGV0000263\_020]. As it turned out, his eventual appearance before the Health Committee reflected my

concerns as outlined in the second bullet point. I also refer you to paragraph 6 of Advice to Ministers dated 23 August 2005.

***Q14: In his witness statement to this Inquiry, Mr Kerr stated that he did not have sight of your draft minute dated 22 August 2005, as evidenced by the annotation on document SCGV0000263\_021, but instead received the version dated 24 August 2005 shown at SCGV0000263\_010 [WITN5753003, paragraph 62]. Document SCGV0000263\_016 is an email chain between you, Mr Macleod and Ms Marshall dated 22nd August.***

***a. What was your understanding of Mr Macleod's request to make the briefing "more neutral and factual" and "not as the views of the 'branch head' however sensible and well informed these may be!"?***

***b. Did you have further discussions with Mr Macleod and Ms Marshall in addition to this email chain regarding what aspects to exclude from the final draft? If so, and to the best of your recollection, please outline what was discussed.***

***c. The Inquiry has heard evidence from former Health Ministers from both Scotland and Westminster that their decision-making regarding a public inquiry was based upon information provided to them by civil servants. How would you reconcile this with Mr Macleod's final sentence: "It is not something that either you or I have the authority to recommend to the Minister."***

***d. Please explain what you meant by the sentence: "I am being inadvertently backed into a corner on this issue which is quite beyond my authority to decide."***

- 14.1 (a) Mr McLeod, as my line manager, and a long serving civil servant, had the experience to suggest rephrasing the terminology to be more acceptable, less personal and, as he put it, "neutral". It is obvious to me now I did not feel at the time I was getting the support I should have had from more senior colleagues in dealing with this issue. That said, I maintain the views I expressed in that draft although it was not sent.

(b) I cannot recall whether further discussions took place. You will note our legal advisor Jan Marshall commented that the Minister had two separate (although linked) decisions to make and they were his alone.

(c) I can only speak for myself. I did my best to provide Mr Kerr with as much information around the issues as possible in order that he could make an informed decision regarding whether or not to hold a Public Inquiry in Scotland. Throughout his tenure he continued to ask me to hold the line that “there was no new evidence, lessons had been learnt and therefore there was no need to hold a Public Inquiry.” I think what Mr McLeod meant by that statement was that a decision *whether* to hold a Public Inquiry was for Ministers not civil servants. Perhaps you can clarify that with him yourselves? In a way he was reassuring me that, despite the position in which I found myself, ultimately such a decision was a matter for Ministers.

(d) I was being asked verbally by the Private Office whether we should be concerned about holding the line on a Public Inquiry based on my knowledge of the content of the files. Hence I felt I was being backed into a corner. My opinion was being sought when it really was not my decision. I felt I was being asked to make a political judgement which is not the role of a civil servant. On a practical note, the volume of files involved meant I was the only person who had reviewed them all so I could understand, up to a point, why I was asked.

***Q15: Please refer to documents DHSC5394925 and DHSC5445167 comprising email correspondence between you and DH’s Mr Cannon, and answer the following questions:***

***a. Please describe the team within the SEHD who reviewed the 100 files referred to, explain why the exercise was ‘long and tortuous’ and clarify who made the final decision regarding which documents to disclose under FOI.***

***b. On what basis was it concluded that the 100 files contained no new evidence?***

***c. Did you believe that the release of a ‘guesstimated’ half the files held would end calls of a ‘cover-up’?***

***d. Why would you have denied the FOI request, as stated in your second paragraph, p 2 of DHSC5394925?***

***e. You described the calls for a public inquiry as ‘relentless’. Did you, your colleagues or Ministers ever consider that, and or discuss whether, a public inquiry was justified? How did you come to that conclusion?***

***f. In reference to DHSC5445167, please clarify why you were concerned that release of FOI documents from the DH could impact on Scotland’s position on a public inquiry.***

- 15.1 (a) I reviewed the 100 files referred to. The process was long and tortuous because I and my team had, with the help of the records department, first to track down where all the files were held. I physically went to the main record store to review some of them. Others were brought to me from the records department. I then had to review each document and some files were several inches thick! The CD was produced by colleagues in records by scanning once I had made a decision on what was to be released under FOI. The final decision should have been with the Minister, but as outlined under question 13 (c) the sheer volume was regarded as prohibitive.
- (b) That was a decision made by the Minister.
- (c) I was doubtful as the pressure to have a Public Inquiry was as I described at the time “relentless.”
- (d) Under FOI rules the amount of work involved would have been regarded as not feasible and the request rejected. The only reason, as I explained in my email to Mr Connon, that the exercise was undertaken was because Mr Kerr had promised Mr Dolan when he met with him in February there was nothing to hide and SHHD would release the documents relating to the issue, (subject to FOI rules.) In fairness to Mr Kerr, at that point in time, none of us were aware of the volume of work involved. I should explain that I then had to consult colleagues who were informed about FOI procedures as I had not been previously involved in an FOI request. They advised the Act was much less restrictively interpreted in Scotland than in England and I should bear that in mind.
- (e) No, consideration was not given to whether a public inquiry was justified. As already indicated, the line to hold from the Minister did not change during the time in question. The Haemophilia Society in Scotland however were very skilled at keeping the issue in the media spotlight.

(f) My concern would have been around the fact that Mr Connon, if I recall correctly, was unwilling to let me have sight of any documents DH was likely to release in advance of doing so.

***Q16: In a letter from you dated 12 December 2005 releasing the FOI documents [MACK0001194\_001], you refer to the 100 files reviewed for the FOI and state, "We have withheld some material". In light of the information provided to Mr Connon in [DHSC5394925] that approximately half of the material reviewed was withheld, please clarify whether half the material was withheld or only some smaller amount of material?***

- 16.1 After this length of time, it is hard to be completely accurate but I would estimate approximately one third was not released. For example, I withheld an exchange between officials and a clinician within the Medical Corridor (not Dr Keel) in which the clinician referred to "the great unwashed". There was a level of arrogance at that time in the 70s/80s displayed but which did nothing to indicate "new evidence". (Some of the 100 files reviewed were not relevant - for example around building works at the SNBTS Protein Fractionation Centre).
- 16.2 I clearly remember marking all relevant files from those I reviewed 'Do not destroy' with my signature and branch before they were collected by records management, however later discovered they had been destroyed and, despite pursuing it, I was given no satisfactory reason as to why this had happened.

***Q17: In advance of a parliamentary debate on the issue of a public inquiry on 22 December 2005, you provided a briefing pack to Deputy Minister of Health and Community Care, Lewis Macdonald [SCGV0001082\_018]. What investigation, research and analysis was undertaken by you or colleagues to reach the conclusion in the final bullet of Annex C: "Lessons have been learnt and action taken. Nothing new would be forthcoming." What was the basis for this conclusion?***



- 17.1 As previously indicated, I had consulted SNBTS and Dr Keel on matters relating to medical and scientific responses. Again, this particular bullet point comes back to the “line to take” as directed by the Minister.

***Q18: Mr Kerr appeared before the HCCC on 31 January 2006 and was asked whether his views on a public inquiry were his own or that of “his advisers” [MACK0001200\_002]. In his statement to this Inquiry, Mr Kerr explains: “The civil service provided briefing and advice and I took the position that the advice was persuasive. I asked questions as to whether the new evidence would change the position on the call for a public inquiry. I had little option but to rely on that advice, the advice was from many sources which included special advisors. It is the case that I did not have the capacity (in terms of available time) to review all of the documents nor the capacity in terms of medical expertise to fully understand the content of the documents” [WITN5753003 paragraph 71]. Please provide your opinion on this statement. Is it an accurate assessment of how Scottish policy was decided at that time?***

- 18.1 Mr Kerr, in admitting he did not have the capacity in terms of available time to review the FOI documents is compatible with what I was told at the time of forwarding the documents to the Private Office. What I cannot confirm is whether he took the time to review the numerous, detailed briefing documents prepared by me and cleared by Mr McLeod, (examples of which are within the documents provided to me by the Inquiry), provided to him whilst in office on this issue.
- 18.2 It is worth noting that, in the briefing notes I supplied prior to his appearance before the Health Committee, there is reference to an initial pilot “Look Back” exercise undertaken by SNBTS in the 1990s to attempt to establish who may have received a blood transfusion in the period in question. My understanding was this proved extremely difficult due to the poor quality of patient records held by Health Boards at the time, however the methodology was eventually adopted UK wide in January 1995 (pre Devolution) with limited success and concerns raised at UK level re funding.

18.3 There is a reference to “new evidence”. I had been unaware of any “new evidence” in relation to the medical and scientific evidence of which he was aware from the briefings. If the “new evidence” related to the role of DH/UK Ministers over the period in question then his interpretation of that was a matter for him.

18.4 I would not agree that policy generally was decided solely on the advice given by civil servants. It was and remains the role of civil servants to present the facts and/or options as requested and any decisions on policy were a matter for the democratically elected Ministers.

***Q19: In her statement to this Inquiry, Shona Robison MSP states: “I believe that the Scottish Executive at the time were very slow to address issues and to get on the front foot. It appeared to be reacting to information that emerged at the time rather than being proactive. I believe this left them looking less than transparent at times.” [WITN6648001, para. 47]. Do you accept or reject this criticism? Please explain why.***

19.1 On reviewing Ms Robison’s statement, the time referred to was when she was on the HCCC. From my responses to this Inquiry it can be concluded it was a matter of continuing to hold the same line as DoH as instructed by Mr Kerr. I can, however, understand why this could be perceived by the Committee to appear to be “a lack of transparency”.

***Q20: On 18th April 2006, the HCCC voted in favour of a public inquiry [HSOC0002983]. To the best of your recollection, please explain why the Scottish Executive did not implement this recommendation. Documents SCGV0001083\_017, SCGV0001083\_010 DHSC0041198\_048, DHSC5293683 and PRSE0000167 may assist in answering this question.***

20.1 Quite simply, as can be seen from Mr Kerr’s response to the HCCC we were instructed to continue to hold the same line.

***Q21: In an email from you to DH England's Mr Connon dated 1 December 2006, you expressed your concern that release of documents in England under FOI may impact on Scotland's stance on a public inquiry. Please describe what information, or type of information, you anticipated could be released that may cause a "shift in the position we have all maintained to date, namely no to a PI" [DHSC6704976].***

21.1 I was working blind at that point as I had received no indication from DH as to the nature and content of any information they were planning to release under FOI. I had been asked by the Minister to try and receive reassurance that any such release would not affect the line firmly held by him to date. I am unable to give you direct examples 18 years on. The lack of cooperation from DH contributed to a general concern as to what might be released without our knowledge. Mr Connon did reassure me at that time the line would remain and would advise me should any change occur.

21.2 It is worth noting within the Scottish Executive, post Devolution, we had much closer contact directly to Ministers than perhaps existed within Whitehall.

***Q22: Following election of the Scottish National Party to the Scottish Executive in May 2007, the Executive announced a commitment to fulfil its manifesto pledge to hold a public inquiry, pending the outcome of Lord Archer of Sandwell's Inquiry [ARCH0001727], [DHSC0006259\_018], [WITN2287064]. Please describe, to the best of your recollection, how this change in policy was communicated to, and actioned within, the SEHD.***

22.1 Unfortunately, I cannot recall exactly how this was "conveyed" although Mr McLeod's Advice to Ministers dated 26 February 2008 outlines a proposed way forward so he will have been asked by Ministers to provide this [DHSC5015521]. We were aware, as it was a manifesto commitment by the incoming Scottish National Party, it would likely occur once the outcome of the Archer Inquiry was known. Documents provided to me by the Inquiry would support this. The normal formal method would be for a Press Release to be prepared in branch and approved by the relevant Minister for release, a

decision having been made at Cabinet level to proceed. A statement announcing it will have been made in the Scottish Parliament and this will have been formally communicated to us to implement.

***Q23: Please refer to documents DHSC5486274, HSOC0003661, DHSC5486282, DHSC5506094, DHSC5504684, DHSC5508756 and DHSC5514071.***

***a. In your view, to what extent did DH officials, such as Mr Connon, try to influence the Scottish Executive's decision-making process in relation to its public inquiry?***

***b. Why was it considered necessary that 'communication to be maintained with DoH' as set out in your second paragraph, page 3 of DHSC5508756?***

23.1 (a) Mr Connon was keen to be kept fully informed of any action proposed/being undertaken by the Scottish Government in order that he could keep his colleagues and his Minister advised. He did express concern that DH were not always given prior notice of certain actions as we progressed towards announcing the Inquiry. He was keen to have a UK-wide response but the political climate had altered with Devolution initially and latterly because the political landscape had changed. The SNP were in power and Ministers did not feel it necessary to consult Westminster to the extent previously undertaken by the Labour Administration in Scotland.

(b) Despite my answer to 23 (a), to avoid unnecessary friction, the then Minister (Nicola Sturgeon) wanted us to continue liaising with DH colleagues although not necessarily consulting them in advance on every action but keeping them informed.

***Q24: With hindsight, drawing on your entire experience working within the SEHD, what is your present view on how the Scottish Executive handled the issue of calls for a public inquiry prior to the announcement of the Penrose Inquiry?***

24.1 My present (personal) view is it would have been preferable to acknowledge the need for a Public Inquiry and to agree to a UK-wide Inquiry covering all four

administrations, (such as is ongoing at the moment), much earlier. Understandably, the Haemophilia Society in Scotland were vigorous, post Devolution, in pressing for one in Scotland and it was unfortunate for them that the line “there was no need” was held for so long causing them continued distress.

### **Section 3: Penrose Inquiry**

***Q25: On 23rd April 2008, Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, announced the Penrose Inquiry [MACK0001174]. At a meeting with the Scottish Haemophilia Forum on 22 July 2008, you stated that the Forum’s suggested amendments to the Terms of Reference “could narrow the scope of the Inquiry” and be “counterproductive” [HSOC0011311, paragraph 16], [HSOC0013838]. Please explain what you meant by this.***

- 25.1 I cannot clearly recall now why I would have made that specific comment. I suspect it was because the Haemophilia Society wished to apportion “blame” on individuals and were also wishing the issue of a high level of compensation to be included. (They had continually referred to the Canadian settlement and the situation in France in other discussions). As I had built up a level of trust with them over time, I explained to them, whilst I genuinely sympathised with their situation, their expectations had to be realistic at the start otherwise there was a danger of derailing the initiative at this stage. Also I felt it would be a matter for Lady Cosgrove to decide on such matters based upon the evidence placed before her which was the whole point of having a PI.
- 25.2 The Inquiry will note from HSOC0011311 that Mr Maguire was pressing for a joint inquiry throughout.

***Q26: In reference to documents DHSC5015521, DHSC5508756, DHSC5514071, DHSC5526112, DHSC5528199, HSOC0011307, HSOC0011311, DHSC6700983, DHSC5560942, DHSC5560943, DHSC0041157\_042, DHSC5569092 and DHSC6705508, please answer the following questions:***

***a. Please outline the role you played in liaising with the DH and other Devolved Administrations in relation to their involvement with the Penrose Inquiry.***

***b. In reference to a proposed meeting with Devolved Nations scheduled for the 13 or 14 March 2008 [DHSC5508756], please describe what discussion took place concerning the DA's role and involvement in the Penrose Inquiry. Please provide any briefings and minutes you may have in relation to this meeting.***

***c. Did the meeting with Lady Cosgrove take place as suggested by document [DHSC5528199]? Please describe what discussion took place and provide any briefings and minutes you may have in relation to this meeting.***

***d. Based on the documents provided and your recollection, did you find officials at the DH and other Devolved Nations cooperative in relation to their involvement with the Penrose Inquiry? Please explain your answer.***

- 26.1 (a) I refer to answers 23 a) and b) in relation to the DH. It is hard to recall details now but I suspect I would have kept the other Devolved Administrations informed as appropriate.
- (b) I cannot now recall these details and do not have access to any further briefings/minutes. The Inquiry will need to seek them from the Scottish Government (SG) or other sources. SG has advised me the Inquiry now has a copy of the Minute of 14 March 2008 [WITN7299005].
- (c) I cannot clearly recall if the meeting took place. I am retired and do not have access to any briefings/minutes. I am aware Lady Cosgrove stood down relatively shortly after this so the meeting may not have taken place. Perhaps DH can clarify?
- (d) From my recollection DH officials expressed to us they were not keen to participate in the Penrose Inquiry, unless legally required to do so, as their Ministers were maintaining the line there was no need for a PI. As you will note, Mr Macleod made it clear to Mr Maguire in HSOC0011311 that the Penrose Inquiry would only be dealing with Scottish matters.

***Q27: This Inquiry understands that Dr Aileen Keel, Deputy Chief Medical Officer, gave evidence to the Penrose Inquiry and Sandra Falconer of the SEHD***

***provided a witness statement. Please provide your opinion on why no former Scottish Health Ministers, or other officials of SEHD such as yourself, provided evidence, either written or oral, to the Penrose Inquiry?***

- 27.1 I retired from the Civil Service in July 2011. Prior to that, I had been responsible for setting up the Inquiry, including, finding suitable accommodation, control of the budget, liaising with the Lord Advocate, the Solicitor General, the SNBTS, the Scottish Haemophilia Society (re the terms of reference) and their legal representative, the Inquiry team once established and colleagues within Scottish Government, etc as outlined in Mr McLeod's Minute of 28 February 2008.
- 27.2 I do not know exactly why Lord Penrose did not request I, other officials or former Ministers give evidence to the Inquiry but it may have been his interpretation of the terms of reference were to only establish the medical and scientific facts for the period in question which will have predated myself and more recent Ministers.
- 27.3 After Lady Cosgrove resigned and Lord Penrose was appointed, he indicated to the Minister that he would not address the issue of compensation in the terms of reference. I was saddened by this and felt he was perhaps considering the DoH view of how the Inquiry should be conducted. That could be part of the reason none of us were called to give evidence although I have no direct evidence to support that statement.

#### **Section 4: Other**

***Q28: Please provide any further comment that you wish to provide about matters of relevance to the Inquiry's Terms of Reference.***

- 28.1 In summary, I have done my best to provide the Inquiry with answers as I remember them 18 years on.

- 28.2 I had considerable sympathy for all those affected by this issue on both sides - (patients affected, the SNBTS and NHSiS) but as a civil servant it was my duty to uphold the wishes of the Minister in dealing with the matter in the way I did during Mr Kerr's tenure.
- 28.3 I was extremely disappointed at the outcome of the Penrose Inquiry. I had set it up in good faith and hoped the recommendations would satisfy all parties, which "it" did not. The one recommendation that a look back exercise should be undertaken by SNBTS to try to trace those affected had been carried out previously by the SNBTS in 1994. This outcome resulted in anger from the Haemophiliacs present at the Press Conference and in them actually setting fire to the document which they considered a whitewash.
- 28.4 I had worked closely with SNBTS, Mr Dolan and Mr Maguire in delivering the setting up of the Penrose Inquiry and had increasing respect for Mr Dolan in particular, who worked tirelessly despite his own ill health on behalf of those he represented - so much so I recommended he be considered for the MBE. I am saddened that he is no longer with us and able to see the way in which this latest Public Inquiry is being conducted. It would have gladdened his heart.

### **Statement of Truth**

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



Signed

GRO-C

Dated 23 November 2022.