

Witness Name: Mr George Webster Tucker

Statement No.: WITN7609001

Exhibits:

Dated: 14/12/2022

## INFECTED BLOOD INQUIRY

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### WRITTEN STATEMENT OF MR GEORGE WEBSTER TUCKER

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I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 4 November 2022

I, Mr George Webster Tucker, will say as follows:

#### Section 1: Introduction

**1. Please set out your name, address, date of birth and professional qualifications.**

1.1 My name is George Webster Tucker and my address is GRO-C

GRO-C. I was born on GRO-C 1941. My qualifications were all earned in the Civil Service which I outline in my answer to Q2 below.

**2. Please set out your employment history with dates if possible, including the various roles and responsibilities that you have held throughout your career.**

2.1 I joined the Civil Service in 1959 at aged 18. I spent my whole career within the Civil Service, choosing to take voluntary early retirement in March 1995

while in the position of Assistant Secretary of the Scottish Home and Health Department (“SHHD”). My career progression is set out below.

- 2.2 September 1959 – March 1964: Clerical Officer within the Scottish Department of Health and Fisheries based in Inverness. This was an administrative position with the Crofter’s Commission, involving work on the Register of Crofts among other things.
- 2.3 March 1964 – 1968: Executive Officer. I passed the Civil Service examination for promotion to Executive Officer, spent two weeks at headquarters in Edinburgh then was assigned to SHHD and moved back to Inverness as part of SHHD audit service. This position required me to visit hospitals within Scotland to audit all processes and payments, including to medical staff, to ensure proper accounting verification for payments was in place. I held this position until 1968 when the office was closed and I was transferred to Edinburgh at the beginning of 1969.
- 2.4 1969 - 1970 Executive Officer: I was placed with the Education Department in Edinburgh and involved in the administration of the then school building extension programme. I was promoted to Higher Executive Officer and moved to another Department in 1970.
- 2.5 1970 – 1972: Higher Executive Officer. I was placed with the Social Work Services Group in Edinburgh, (part of the Education Department at the time) and was involved in the establishment of Children’s Hearings and various other related duties. I was then promoted and moved again at the end of 1972.
- 2.6 1972 – July 1974 (approx.): I was promoted to Private Secretary (“PS”) to the then Parliamentary Under-Secretary at the Scottish Office and Scottish Health & Education Minister, Hector Monro (subsequently Baron Monro of Langholm.) My work as PS was based in both London and Edinburgh. In London I oversaw the presentation to Parliament of all relevant Scottish papers for the Health & Education Minister. As PS, I was the main contact for anyone wishing to communicate with Mr Monro.

- 2.7 July 1974 to 1977 (approx.): There was a change of government in March 1974, whereby Mr Robert Hughes (later Baron Hughes of Woodside) replaced Sir Hector as Parliamentary Under-Secretary at the Scottish Office. After a short period with Mr Hughes I moved back to Edinburgh in July 1974 to be part of what was known then as Central Services within the Scottish Office, still part of the overall UK Civil Service. I was also promoted on a temporary basis to the grade of Senior Executive Officer then promoted again through the Scottish Office Promotion Board to the grade of Principal and allocated to the Social Work Group.
- 2.8 1977 (approx.) – 1981 (approx.): Principal, Social Work Group, Edinburgh. This position involved dealing, on the administration side, with all matters relative to the Children Act 1975 and its implementation. This Act covered the provision of social work, childcare and adoption.
- 2.9 1981 (approx.) – Principal: Scottish Development Department, Roads. This was a ten-month position involving dealing with the administration relative to the improvement of road transport.
- 2.10 Another opportunity for promotion arose which I took. I was successful and was promoted to the grade of Senior Principal. I was then moved to another position the details of which are set out below.
- 2.11 1981 (approx.) – 1984 (approx.): Senior Principal, Head of the Division for List “D” schools (Approved Schools). As Senior Principal my task was to oversee the withdrawal of central government involvement from the operation of List “D” schools, including the closure of unused schools, and to oversee the transfer of management responsibility for such schools to the relevant local authorities. As the transfer was successful, I was then moved on to another position.
- 2.12 1984 – 1989: Senior Principal, Director of Training for the Scottish Office. This was an administrative position managing others. I was the head of the training

division with a staff, responsible for the purchase or creation of training courses for the Scottish Office Civil Service.

2.13 1989 - March 1995: Assistant Secretary, Scottish Home and Health Department (“SHHD”). I was the successor to Duncan Macniven in this position.

2.13.1 As Assistant Secretary my role was to quality control and check briefings and to channel advice to Ministers.

2.13.2 During my period as Assistant Secretary I was responsible for the management of initially 4 branches – 1) Property (which at the time included establishing a register of NHS property and the selling off of some NHS property at best price,) 2) Emergency Services (which included the design planning of hospitals and contingency planning for public emergencies following the flight disaster at Lockerbie in December 1988), 3) Ambulances, the Scottish Blood Transfusion Service and the relationship with the Common Services Agency (“CSA”), and 4) Services and Equipment for the Disabled.

2.13.3 During my time with SHHD there was substantial change in how services were to be provided in Scotland and I recall having a 5<sup>th</sup> branch added to my responsibilities, namely 5) Breast and Cervical Screening. I recall also being given oversight of the section setting up NHS trusts and being given certain responsibilities in relation to the newly introduced NHS Managerial Executive accountants.

2.13.4 I reported initially to Mr James “Hamish” Hamill, one of the then Under-Secretaries at the SHHD, then in 1990 I reported to Mr Don Cruickshank, the CEO of the new NHS Executive, and then in 1994 (approximately) I reported to Mr Geoff Scaife who replaced Mr Cruickshank as CEO. I took voluntary retirement in March 1995.

**3. Please set out your membership, past or present, of any committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference, including the dates of your membership.**

3.1 None relevant to the Inquiry's Terms of Reference.

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

4.1 None other than the Penrose Inquiry.

## **Section 2: Previous statements and evidence**

**5. What materials were made available to you when you gave evidence to the Penrose Inquiry?**

5.1 I recall that I was provided with a computer memory stick containing copies of certain documents which I was asked to review. I do not recall the contents. The memory stick and its contents were not retained by me.

**6. Did anyone else assist you in preparing your evidence? If so, who, and what assistance did they provide?**

6.1 I recall being contacted by one of the lawyers at the Scottish Office legal department and liaising with them by email and phone calls in relation to the questions asked by the Penrose Inquiry and the documents provided to me on computer memory stick as I mention in 5.1 above. I recall visiting the lawyer (whose name I do not recall) at the Scottish Office in Edinburgh and

being asked to review and comment on the draft statements which became my two statements to the Penrose Inquiry referred to in Q7 below.

**7. The Inquiry understands that you provided the following written statements and oral evidence to the Penrose Inquiry:**

- **Witness statement on “Topic C5b look-back” [PRSE0001266];**
- **Witness statement on “C4 Screening of Donated blood for Hepatitis C” [PRSE0002387]; and**
- **Transcript of your oral evidence on 24.11.2011 [PRSE0006069].**

**Please confirm whether these statements and the oral evidence you gave are, to the best of your knowledge and belief, true and accurate. If there are any matters within your evidence to the Penrose Inquiry that you do not consider to be true and accurate, please explain what they are and how the inaccuracy occurred. Please also identify any evidence you gave to the Penrose Inquiry which is not listed here.**

7.1 I confirm, to the best of my knowledge and belief, that the two statements [PRSE0001266 and PRSE0002387] and the transcript of my oral evidence at pages 89 to 145 of the above transcript [PRSE0006069] are true and accurate and that these statements and the transcript are the total of my evidence to the Penrose Inquiry.

**Section 3: The HIV Litigation**

**Your involvement and the Scottish Office’s approach**

- 8. Please describe your involvement in the Scottish Home and Health Department’s (“SHHD”) decisions and actions in relation to the HIV haemophilia litigation. In doing so, please describe your role in seeking advice from and providing instructions to Scottish Office lawyers. In addition to documents referred to elsewhere in this letter, you may be assisted by the following:**

- 18 October 1990 minute from Mr Rushworth to Mr Hancock [SCGV0000230\_007];
- Your 13 December 1990 letter to Mr Dobson [DHSC0003655\_046];
- 19 December 1990 minute from Mr Henderson to you [DHSC0003655\_004];
- Your 7 January 1991 minute [SCGV0000231\_040];
- 11 January 1991 minute from Mr Henderson to you [SCGV0000231\_037];
- Your 18 February 1991 minute [SCGV0000232\_023];
- Your 26 June 1991 minute with enclosure [SCGV0000234\_033 and SCGV0000234\_034];
- Your 11 July 1991 letter to John Williams [SCGV0000235\_235].

8.1 I recall that there had been no prior consultation by the DoH with the Scottish Office prior to the announcement by the then Prime Minister that there was to be an offer to settle the HIV litigation. Despite the lack of prior consultation, I recall that our approach at SHHD was to co-operate with the DoH where possible in that we did not want to cause any embarrassment to their Ministers or to our Ministers in the Scottish Office. Co-operation meant working in tandem with the DoH to secure settlement of the HIV litigation on terms that were acceptable to all parties. It did not mean agreeing to everything that the DoH suggested. Different circumstances existed in Scotland by way of different law and different litigation proceedings, thus the differences had to be accommodated and solutions found.

8.2 I am not a lawyer and have no legal training. I had a good relationship with the lawyers in the Scottish Office, especially with Richard Henderson and one of his colleagues, Richard Grant. I have no recollection of the extent of my involvement in the settlement negotiations but think it unlikely to have been substantial. There were legal issues to be resolved and it is highly likely that I left the negotiations

to be handled by the lawyers in the Scottish Office. It seems clear from the documents provided by the Inquiry [DHSC0003655\_004 and SCGV0000231\_040] that Mr Henderson was actively involved in the negotiations and in drafting the relevant legal documents from the Scottish perspective. I have no specific recollection of my involvement but it is likely that I left it to the lawyers to deal with the proposed settlement offer, hence the detailed progress briefing provided to me by Mr Henderson.

8.3 I have no recollection of any visit to London to meet Mr Dobson as is suggested in the letter of 13 December 1990 [DHSC0003655\_046]. I do not recall if the meeting ever took place.

8.4 I have no recollection of how certificates were issued for presentation to the MacFarlane Trust. It is possible that the terms of the letter of 11 July 1991 [SCGV0000235\_235] were prepared by Mr Henderson of the Scottish Office legal team to ensure compliance with the terms of the settlement agreement and the letter simply presented to me for signature. I had no way of knowing who the claimants were that are referred to.

**9. To the best of your recollection and from the documents provided or available to you, please describe the following:**

- a. **In broad terms, the rationale underpinning the Scottish Office's approach to the HIV litigation, including the settlement negotiations.**
- b. **The relationship between decisions taken by the Department of Health ("DoH") and the Scottish Office/SHHD during the HIV litigation.**
- c. **The extent to which the Scottish Office's position, both prior to and during the settlement negotiations, was informed by consultation with clinicians and experts.**

- d. **In broad terms, how decisions on issues that arose during the settlement negotiations were taken and who took them.**
- e. **Whether and, if so, the extent to which the Scottish Office's approach to the litigation and settlement negotiations differed from that adopted in England and Wales.**

**In addition to documents referred to elsewhere in this letter, you may be assisted by the following:**

- **Your October 1991 draft minute to the Secretary of State on the extension of "Category G" claims [SCGV0000235\_143];<sup>1</sup>**
- **Your 9 October 1991 letter to Mr Dobson [SCGV0000235\_139];**
- **11 October 1991 letter from Mr Dobson to you [SCGV0000235\_130].**

9.1 In answer to (a) to (e) above, I refer to my answer to Q8 in paragraphs 8.1 – 8.4 above.

**10. In an 11 December 1990 minute, you informed the SHHD Minister of State, Mr Forsyth, that the Prime Minister had announced that the Government had agreed in principle to proposals to settle the HIV haemophilia litigation [BNOR0000064]. The Inquiry understands that the UK Government had not consulted with Scottish Office ministers or officials about these proposals prior to the announcement. If that is correct, what was your view at the time of this absence of consultation? What was its effect on the Scottish Office's approach to settling the HIV litigation?**

10.1 I refer again to my answer to Q8 at paragraph 8.1 above.

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<sup>1</sup> The Inquiry understands that this minute was not finalised and provided to Ministers because agreement was reached between the DoH and SHHD officials on changes to Category G eligibility within the terms of the existing settlement, as you suggested on 8 October 1991 to Mr Rushworth [SCGV0000235\_142]. This minute has nonetheless been provided because it describes the background to the settlement negotiations more generally.

11. You provided an update to Mr Forsyth in a further, 21 December 1990 minute [SCGV0000501\_138], responding to the Minister's view that the Scottish Office "*should move speedily towards a settlement*" [SCGV0001029\_104].

- a. Please explain what you meant when you described the Department of Health as "*the lead Department on this matter*".
- b. Why was it necessary to "*move in step*" with the Department of Health to "*minimise the risk of legal challenge*"?
- c. Please explain why you assumed that Ministers would not wish "*to give any impression to the Scottish Steering Group that there may be scope to amend the terms of the settlement*".

You may be assisted by the following documents:

- 28 December 1990 response from Mr Forsyth's Private Secretary [SCGV0001029\_100].
- 10 January 1991 response from the Secretary of State's Private Secretary [SCGV0000231\_021].
- Your 15 January 1991 minute to the Secretary of State [SCGV0000231\_019].

11.1 As to (a) it is clear from my Minute of 21 December 1990 [SCGV0000501\_138] that the DoH had moved ahead with preparations for the settlement of the HIV litigation in England & Wales and thus had resources and material which may be of use to SHHD in preparing its own response to the offer for Scottish litigants and claimants in HIV litigation in Scotland.

11.2 As to (b) it seems clear from paragraph 2 of my Minute of 21 December 1990 [SCGV0000501\_138] that there were issues to be resolved in relation to social security disregards, what was deemed to be "best available treatment" and issues to be resolved in relation to negligence claims.

11.3 As to (c) I do not recall what I thought at the time in 1990. It is possible that I was aware of what I understood to be the then Treasury position that there was no more money to be made available to settle the HIV litigation than what was on offer.

**12. In the enclosed 8 February 1991 minute, you commented on correspondence between the Secretary of State for Scotland, the Secretary of State for Health and the Chief Secretary [SCGV0000232\_110, DHSC0003660\_009, DHSC0003660\_010 and DHSC0003657\_019].**

- a. **You wrote that the Scottish Office/SHHD could “*readily give*” an assurance that “*the terms of settlement in relation to the size and categories of payment must be common to all litigants*”. Please explain the reasoning behind this statement.**
- b. **Other than in relation to the size and category of payment, was it your understanding that the settlement terms in Scotland could in principle differ from those in England and Wales? Please explain why either way.**

12.1 As to (a) I do not recall if the quotation by the Inquiry is the correct interpretation. Looking at the quotation today, it appears to me that the first sentence of paragraph 2 of my Minute of 8 February 1991 [SCGV0000232\_110] was simply quoting what the Secretary of State for Health wanted and not an answer to that request. My Minute goes on to set out the issues affecting settlement in relation to the Scottish claimants.

12.2 As to (b) I do not recall. I refer also to my answer at paragraph 11.3 above.

#### The undertaking

**13. Evidence considered by the Inquiry shows that, from January 1991, you corresponded with Mr Henderson, a solicitor in the Scottish Office, regarding the Scottish terms of settlement in the HIV litigation, as well as the creation of the Macfarlane (Special Payments) (No.2) Trust (“MFT No.2”)**

and its application to Scotland. The questions in this section focus on the undertaking that applicants were required to give in order to receive payments from the Trust, undertaking not to bring future proceedings against Government and health bodies.

- a. **Why, so far as you understood it at the time, was such an undertaking proposed for and included in the settlement terms?**
- b. **Did you understand it to be a requirement common to the settlements in Scotland and England and Wales?**

13.1 As to (a) I do not recall. I refer again to my answers at paragraphs 8.1 and 8.2 above. However, it is likely that I would have presumed the undertaking was normal legal practice in government circles at the time. Moreover it is likely that I would have presumed that the Government did not want any matters to be left open. It would wish compensation to be final. However, as I have said before in paragraph 8.2, I would have relied upon the lawyers in the Scottish Office to act in the best interests of the Scottish Office at the time.

13.2 As to (b) I do not recall. I refer to my answers at paragraphs 8.1, 8.2 and 13.1.

**14. On 20 March 1991, Mr Powell (a DoH solicitor) provided Mr Henderson with the latest drafts of the English terms of settlement [SCGV0000502\_099 and SCGV0000502\_103], the Macfarlane Trust No.2 deed [SCGV0000502\_100] and a number of schedules to the deed (including schedule 1 [SCGV0000502\_101]). Mr Henderson commented on these documents in a 21 March 1991 minute to you [DHSC0003660\_035]. You were provided with a further draft of the deed on 22 March 1991 [SCGV0000233\_102].**

- a. **So far as you can recall, did you give any particular consideration to the wording of the proposed undertaking for England and Wales in these documents? Please consider, for example, the document at schedule 1 to the draft deed, requiring individuals to undertake not to bring proceedings “*involving any allegations concerning the***

***spread of the human-immunodeficiency virus through Factor VIII or Factor IX (whether cryoprecipitate or concentrate)” [SCGV0000502\_101<sup>2</sup>]***?

- b. Was it your understanding that the undertaking applicable to Scotland would have a similar scope to this draft document?**

14.1 As to (a) I do not recall. I refer again to my answers at paragraphs 8.1 and 8.2 above.

14.2 As to (b) I do not recall if I ever knew. I refer to my answers at paragraphs 8.1 and 8.2 above.

- 15. You provided an update on settlement negotiations in the enclosed 12 April 1991 minute to the Secretary of State [SCGV0000233\_080]. At §6, you wrote: “*The settlement conditions have primarily been dictated by negotiations between the English Plaintiff Steering Group and the Department of Health*”. Please expand on what you meant by this. Did you or others in the Scottish Office have any objection to the approach you described?**

15.1 I do not think that the above quote is understood in context. The sentence was a statement of fact that followed from the fact that the announcement of the proposed settlement of the HIV litigation was made without prior consultation with the Scottish Office. The rest of paragraph 6 of my Minute [SCGV0000233\_080] sets out what was taking place at that time (April 1991) in connection with the proposed settlement for Scottish claimants. I set out below the entire paragraph 6 which makes it clear the likely consequences on Scottish claimants.

*“The settlement conditions have been primarily dictated by negotiations between the English Plaintiff Steering Group and the Department of Health. It has been necessary for separate Scottish terms to be devised*

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<sup>2</sup> Also at p.20 of SCGV0000233\_102, the draft deed sent to you.

*for the settlement of Scottish claims. The Scottish terms of settlement cannot be finished until after the English terms have been. Solicitors Group has been in contact with the Scottish Claimants' Steering Group. The detailed terms of settlement for Scotland are at an advanced stage. However, it is likely that when the English settlement is finalised English Claimants will have access to compensation from the MacFarlane Trust before Scottish Claimants."*

**16. On 22 April 1991, Mr Burrage at the DoH provided you with the latest draft of the settlement terms for England and Wales, commenting that he understood it to be close to a final version [SCGV0000233\_040].**

- a. **§§5 and 8 of this draft, describing the undertakings required of litigants and non-litigants, suggested that the undertakings would cover future claims relating to infection with HIV and hepatitis viruses. Did you realise, whether through receiving these documents or otherwise, that the proposed undertaking for England and Wales had been widened to cover not only HIV but also hepatitis? If so, what was your view of this apparent change in approach?**
- b. **So far as you can recall, did you forward this document to others in the Scottish Office? If you cannot recall, would you have expected to have done so?**
- c. **Did you discuss the DoH's apparent intention to exclude future claims for both HIV and hepatitis infection with other Scottish Office officials or lawyers (such as Mr Henderson)? If so, please explain, to the best of your recollection, the views they expressed.**
- d. **Was it your understanding that the Scottish settlement would be required to follow England and Wales in excluding future claims for both HIV and hepatitis? Please explain why either way.**

16.1 As to (a) I do not recall receiving this letter. If I did, then it is likely that I forwarded it to Mr Henderson in the Scottish Office legal department. I refer again to the answers I provided at paragraphs 8.1 and 8.2 above.

16.2 As to (b) I refer to my answer at paragraph 16.1 above.

16.3 As to (c) I refer to my answer at paragraph 16.1 above.

16.4 As to (d) I do not recall what my understanding was at the time. However, I would have expected Mr Henderson or one of his colleagues to bring the extension of the exclusion to my attention if considered of relevance and importance to the Scottish claims and the terms of the Scottish settlement.

**17. On 24 April 1991, Mr Canavan at the DoH provided you with an updated draft of the settlement terms for England and Wales alongside a memorandum from Justin Fenwick (junior counsel to the DoH) [SCGV0000233\_038]. That same day, Mr Burrage provided you with a copy of the latest draft of the MFT No.2 deed [SCGV0000233\_039].**

- a. **Did you forward or discuss these documents with any other officials or lawyers in the Scottish Office? If you cannot recall, would you have expected to have done so?**
- b. **§§5 and 8 of the 24 April 1991 draft terms for England and Wales continued to refer to both HIV and hepatitis<sup>3</sup>, and Mr Fenwick's accompanying memorandum referred to an intention to exclude future claims for hepatitis as well as HIV (see §§3-4). Schedules 1 and 2 to the draft deed, containing undertakings for England and Wales, also referred to future claims for both hepatitis and HIV [SCGV0000233\_039 pp.19-20]. If you had not previously become aware of the DoH's apparent intention to exclude future claims for both HIV and hepatitis, did your understanding change following receipt of these documents?**
- c. **By contrast, schedule 3, containing the draft undertaking for Scotland, referred to HIV but not hepatitis [SCGV0000233\_039 pp.21-22]. Were you aware of this apparent divergence between the**

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<sup>3</sup> Note that the drafting of §5 had been amended, as explained in Mr Fenwick's memorandum.

**undertakings in Scotland and England and Wales? If so, did you discuss it with the DoH or with other officials or lawyers in the Scottish Office? What was your understanding of the Scottish Office's position on this issue?**

17.1 As to (a) to (c) I refer to my answers to Q16 at paragraphs 16.1 -16.4 above.

**18. On 25 April 1991, Mr Henderson provided Mr Powell with an alternative version of the undertaking for Scotland, referring to HIV but not hepatitis [SCGV0000233\_027 and SCGV0000503\_089]. The following day, Mr Powell responded with a further update to the draft deed, containing an undertaking for Scotland which referred to both HIV and hepatitis [SCGV0000503\_067 and SCGV0000503\_068 pp.25-26]. On 3 May 1991, the MFT No.2 deed was executed and the undertaking for Scotland referred to both HIV and hepatitis [MACF0000083\_004 pp.27-28].**

- a. **These documents appear to suggest that the DoH expected that the Scottish undertaking would cover both HIV and hepatitis, as in England and Wales. Do you believe that to be correct? Was it your understanding at the time?**
- b. **So far as you can recall, was this issue discussed directly by the DoH and Scottish Office? If it was not, is it possible, or likely, that the Scottish Office overlooked the addition of hepatitis to the undertakings for England and Wales and the proposed Scottish undertaking in late April and early May 1991?**

18.1 As to (a) and (b) I have no recollection of what the DOH expected in this regard, if I ever knew. All communications on the negotiations of the terms of settlement proposals were between the lawyers in the Scottish Office and their counterparts in the DoH. I refer also to my answer at paragraph 16.4 above.

**19. In the enclosed 4 June 1991 letter to Mr Powell, Mr Henderson suggested that the wrong schedules for Scotland had been included in the 3 May 1991 MFT No.2 deed and provided alternative versions [SCGV0000234\_105,**

**SCGV0000234\_102 and SCGV0000234\_103]. The alternative undertaking enclosed with Mr Henderson's letter referred to HIV but not hepatitis [SCGV0000234\_102]. Similarly, the undertaking included in the Scottish Office's formal settlement offer, made to the solicitors acting on behalf of the Scottish HIV litigation Steering Group on 24 June 1991, referred to HIV but not hepatitis [DHSC0003635\_065 and BNOR0000329 pp.11-12].**

- a. Were you aware, at the time, that the MFT No.2 deed, executed on 3 May 1991, had included the wrong schedules for Scotland?**
- b. If you discussed this issue with Mr Henderson or any other individuals in the Scottish Office or DoH, please outline those discussions to the best of your recollection. In particular, was it your understanding that the Scottish schedules to the 3 May 1991 deed were wrong because they referred to hepatitis as well as HIV, or for other reasons?**
- c. Were you aware that the undertaking in the 24 June 1991 Scottish settlement terms referred to HIV but not hepatitis, unlike the equivalent in England and Wales? Did you discuss this issue with Mr Henderson or others in the Scottish Office or DoH?**

19.1 As to (a) to (c) I have no recollection of this. As the Inquiry points out, the correspondence was between Mr Henderson of the Scottish Office legal department and Mr Powell of the DoH. It seems to me that the question of why Mr Powell appears to have included the wrong schedules in the Scottish settlement agreement, or otherwise ignored Mr Henderson's drafts as outlined in Q18 above, should be asked of Mr Powell. As Mr Henderson is stated by the Inquiry to have forwarded drafts with an exclusion of HIV only, it seems to me to be one conclusion from that fact that the Scottish form of settlement did not intend at that time to exclude claims for Hepatitis. I refer also to the Inquiry's Q20 below which sets out the fact that the MacFarlane Trust deed was subsequently varied to exclude reference to Hepatitis which seems consistent with the position that Mr Henderson was contending, namely, only to exclude claims for HIV. As I have said above, I have no recollection of this.

I only offer these observations based on the information provided by the Inquiry.

- 20. The MFT No.2 deed was subsequently varied on 19 September 1991 [MACF0000083\_003]. The variation involved substituting new schedules for Scotland, including schedule 4, an undertaking which referred to HIV but not hepatitis. Were you aware of, or otherwise involved in, this variation of the MFT No.2 deed? Please outline any involvement you had and, in particular, whether you were aware that the substituted undertaking removed references to hepatitis.**

20.1 I have no recollection. The variation on 19 September 1991 was to the MFT No. 2 deed, presumably to bring it in to line with the terms of the settlement of the HIV litigation and claims in Scotland. I refer also to my answers to Q18 and Q19 above.

- 21. In the enclosed October 1993 minute, Mr Panton at the SHHD asked Mr Henderson about the lack of reference to hepatitis in the undertaking in the Scottish HIV haemophilia scheme, in contrast to England and Wales [SCGV0000236\_089].<sup>4</sup>**

- a. **So far as you can recall, did you discuss this issue with Mr Panton or Mr Henderson around this time? Please describe any such discussions to the best of your recollection.**
- b. **Was it your understanding that the inclusion of hepatitis in the Scottish undertaking had been “overlooked”, as suggested by Mr Panton?**

21.1 As to (a) I have no knowledge of what Mr Panton discussed with Mr Henderson. I have no recollection of any discussion on this subject in 1993 with Mr Panton or with Mr Henderson. It seems that Mr Panton was not aware of the deliberate variation to the MFT No.2 deed that took place on 19

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<sup>4</sup> The Inquiry has been unable to locate Mr Henderson's response.

September 1991 (referred to in Question 20 above) prior to his October 1993 minute.

21.2 As to (b) I refer again to my answer to Q19 at paragraph 19.1 above.

### Reflection

**22. Looking back and drawing on the totality of your experience in the SHHD, what are your reflections on how the Scottish Office handled the issue of settling the HIV litigation and compensating haemophiliacs infected with HIV from blood products? If you have any reflections on this question in relation to the role of the DoH, the Treasury or the UK Government, please provide them.**

22.1 As I mentioned at paragraph 37 of my statement to the Penrose Inquiry [PRSE0002387], from my experience of SHHD staff, the aim was to work for the best outcome for the general public and the NHS.

### **Section 4: The HIV Blood and Tissue Transfer Scheme**

#### Your involvement and the Scottish Office's approach

**23. Please describe your involvement in the SHHD's decisions and actions in relation to compensation or other financial support for individuals infected with HIV through blood transfusion or tissue transfer. In doing so, please describe your role in seeking advice from and providing instructions to Scottish Office lawyers. In addition to documents referred to elsewhere in this letter, you may be assisted by the following:**

- **Your 12 February 1992 minute to the NHS Chief Executive in Scotland [SCGV0000237\_026];**
- **Your 13 March 1992 minute to the Minister of State [SCGV0000041\_072];**

- **10 April 1992 minute from Mr Henderson to you [SCGV0000238\_029].**

23.1 I do not have any specific recollection but the position seems clear from my Minute of 12 February 1992 [SCGV0000237\_026] and my Minute of 13 March 1992 [SCGV0000041\_072]. Having received prior warning of the intention to expand compensation to non-haemophiliacs with HIV, the Scottish Office had an opportunity to move ahead with plans to establish a scheme in Scotland for Scottish claimants and to investigate the possible sources of funds for the scheme. As Mr Henderson's Minute of 10 April 1992 states [SCGV0000238\_029] the Scottish scheme went live on 9 April 1992, this time ahead of the scheme in England & Wales. I do not recall but would have expected Mr Henderson, or one of his colleagues in the Scottish Office Legal Department to have resolved all legal issues relative to the Scheme and to have drafted all necessary legal documents.

**24. To the best of your recollection, and from the documents provided or available to you, please describe the following:**

- a. In broad terms, the rationale underpinning the Scottish Office's approach to the question of whether to provide compensation or other financial support to patients infected with HIV by blood transfusion or tissue transfer, as well the creation of a payment scheme for such patients.**
- b. The relationship between decisions taken by the DoH and the Scottish Office/SHHD on the question of whether to provide compensation or other financial support to these patients, as well as during the subsequent creation of the payment scheme.**
- c. The extent to which the Scottish Office gave consideration to the introduction of compensation schemes for individuals infected with HIV by blood transfusion in other countries. You**

may be assisted by §1 of your 17 July 1991 minute to the Minister of State [SCGV0000237\_181].

- d. In broad terms, how decisions on issues arising during negotiations on the creation of the payment scheme were taken and who took them.
- e. Whether and, if so, the extent to which the Scottish Office's approach to these issues differed from that adopted in England and Wales.

24.1 As to (a) to (e) I have no specific recollection of these events which took place more than 30 years ago. I think my Minute of 17 July 1991 [SCGV0000237\_181] sets out relatively clearly in paragraphs 1 and 2 what was then viewed as the possible benefits of proceeding with compensation to a wider group of people than existed followed by the then possible downsides. As I set out in paragraph 1, to proceed to provide compensation to a wider group of people at that time would have brought us in line with Norway, Sweden, Denmark, Australia and Canada. Paragraph 3 of my Minute also sets out the then perceived difficulties in sourcing funding for such a scheme. Paragraph 4 also sets out the reality of the then position of the DoH and the desire to portray a UK policy where possible.

25. Following a request from Mr Forsyth, on 6 February 1990 you provided the Minister with a minute setting out the reasons why a campaign to compensate individuals infected with HIV by blood transfusion had been resisted [DHSC0002840\_018 and DHSC0002840\_002].

- a. What was your view, at the time, on the merits of the reasons for resisting compensation that were outlined in your minute?
- b. To what extent was the SHHD's position on this issue led by the DoH? Could the SHHD/Scottish Office have taken a different position? If not, please explain why not. If it could

have taken a different position, please explain why it did not do so.

- c. **You wrote that the “*Scottish Office could not adopt a policy which would undermine the stance taken by other UK Health Departments.*” What did you mean by this and what was the basis for your advice? Did your view on this point later change or remain the same?**
- d. **On 9 February 1990, Mr Forsyth’s Assistant Private Secretary communicated the Minister’s views on part of your 6 February 1990 minute [DHSC0002839\_015]. Did you agree or disagree with those views? Please explain why either way.**

25.1 As to (a) I do not recall what were my views in 1990. My Minute of 6th February 1990 [DHSC0002840\_018] sought to respond to the request from Mr Forsyth and incorporated input from various sources within the Scottish Office to provide Mr Forsyth with the best information then available.

25.2 As to (b) I do not recall. SHHD had its own sources of information but, as a smaller team than the DoH, it also looked to the DoH to use what information resources it had and also to get information on the likely approach of the Treasury to any additional funding of any new initiative. There was a desire, as I outlined in paragraph 8.1 above, not to embarrass Ministers of other departments or our own Ministers, and to work in tandem where possible, subject to the fact that Scotland had different needs and different laws and solutions needed to be found to address these different needs.

25.3 As to (c) I refer to my answer in paragraph 25.2 above.

25.4 As to (d) I do not recall what my views were in 1990.

**26. In April 1991, you advised the Secretary of State on correspondence between the DoH and solicitors acting for individuals seeking**

compensation for HIV infection by blood transfusion.<sup>5</sup> The following documents, relating to your advice, are enclosed: 25 April 1991 minute from Mr Henderson to you [SCGV0000509\_027]; your 29 April 1991 minute to the Secretary of State [SCGV0000233\_124]; the Secretary of State's 1 May 1991 response [SCGV0000509\_025]; Mr Forsyth's 2 May 1991 response [SCGV0000234\_198]; and the Secretary of State's 8 May 1991 response [SCGV0000234\_181].

- a. In your 29 April 1991 minute, you commented critically on reasons given by the DoH for resisting calls for compensation and proposed alternative reasons. What was your view, at this time, on the alternative reasoning proposed in your minute?
- b. You wrote that "*the current position of HM Government is that compensation in respect of whole blood transfusion HIV victims is to be resisted*" and that "*any change in that view would have UK implications*" [SCGV0000233\_124 §7]. Did this mean that the Scottish Office's position could not change unless the wider Government agreed? Please explain why either way.
- c. Did you agree with Mr Forsyth's comment, though his Private Secretary, that the Government's position was "*indefensible*" [SCGV0000234\_198]? Did you or other officials take any steps to "*change the Government's line on this matter*", as suggested by Mr Forsyth? If so, please describe them. If not, please explain why not.

26.1 As to (a) the comments provided were an amalgam of views presented to the recipients of the Minute. Over 30 years later I have no recollection of what my own view was.

26.2 As to (b) it seems the quotation is taken out of context and that it may be useful to the Inquiry to consider the whole content of paragraph 7 of my Minute [SCGV0000233\_124] where the Scottish Office advice is clear.

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<sup>5</sup> For examples of this correspondence, see [DHSC0003657\_119 and DHSC0002851\_012].

*“As the current position of H M Government is that compensation in respect of whole blood transfusion HIV victims is to be resisted and that any change in that view would have UK implications, there would be consistency in the Department of Health continuing to take the lead in replying to Messrs Hastie on this correspondence. Department of Health are taking the lead in responding to an oral PQ on this topic from Lord Malloy for answer on 1 May. However, the advice from our legal advisers is that the Secretary of State for Scotland should deal with the correspondence from Messrs Hastie in particular, taking into account that the cases in issue are the subject of Scottish claims. We consider that this runs the risk of drawing the criticism on the Scottish Office. We should be glad to know whether the Ministers would wish us to take over the correspondence and reply direct on the lines of a suitably amended version of the draft at Annex B.”*

26.3 As to (c) I do not recall what my opinion was at the time. The Minute of 8 May 1991 [SCGV0000234\_181] from the Secretary of State for Scotland makes his view clear that he thought the DoH should make the running for the government as a whole which tended to overrule Mr Forsyth's suggestion at the time.

**27. On 17 July 1991, you provided Mr Forsyth with a further minute on the campaign for compensation for patients infected with HIV by blood transfusion [SCGV0000237\_181].**

a. **You advised that providing compensation to such patients would “increase public pressure for compensation for other diseases transmitted through blood and blood products. A number of haemophiliacs have hepatitis and while few haemophiliacs will die as a result of hepatitis there are some early indications that those excluded from the HIV settlement may seek to be compensated”. To the best of your recollection, what did these “early indications” involve? Please also explain why the SHHD's position was that**

patients infected with hepatitis through blood and blood products should not receive compensation (or other forms of financial support). Did you agree with that position?

- b. Please expand on what you meant, as well as on the reasons for your advice, when you wrote that it would “*be difficult therefore to have a separate Scottish initiative if this was considered by Ministers to be advantageous*”. Did this imply that it would be possible, in principle, for there to be a Scottish payment scheme in the absence of an equivalent in England and Wales?
- c. Please explain why you wrote that “*We assume that Ministers will wish to endorse the Department of Health line*”, particularly in light of the views previously expressed by Mr Forsyth.

27.1 I note that I have already answered questions on this Minute in Q24 above. I refer to my answer at 24.1.

28. According to the enclosed note of a 5 November 1991 meeting, you “*reported that the Government line remained the same and there were no signs of DoH opening up compensation to non-haemophiliacs*” [SCGV0000237\_094 §6]. On 2 December 1991, the Secretary of State for Health, Mr Waldegrave, proposed a change in Government policy [DHSC0002921\_009]. Were you or others in the Scottish Office consulted on this change in policy before Mr Waldegrave’s letter? If not, did you consider at the time that the Scottish Office should have been consulted?

28.1 To the best of my recollection there was no prior consultation with the Scottish Office.

29. On 11 December 1991, Mr Henderson provided you with comments on a draft ministerial submission [SCGV0000112\_134]. Having noted that it did not contain anything “*as to the floodgates argument which can still be put as the consequence of opening up compensation from haemophiliac HIVs to whole blood HIV*”, he commented: “*Obviously Hepatitis C cases are in*

***almost exactly similar position to HIV whole blood victims***". Did you agree with Mr Henderson's comment? Please explain why either way.

29.1 It is over 30 years since the date of the draft submission. I do not recall what my views were at the time. The advice was from Mr Henderson.

**30. Also on 11 December 1991, you recommended that the Secretary of State support Mr Waldegrave's proposal [SCGV0000237\_089]. You wrote that the "*arguments which have been deployed so far in defending the differences between haemophiliacs and this group of patients have increasingly been recognised as untenable*". Were you amongst those who considered these arguments to be untenable? If so, when did you reach that view?**

30.1 I do not recall what my views were over 30 years ago.

The creation of the Scottish scheme and the undertaking

**31. What was the reason for and significance of the final version of the scheme containing your name and signature [SCGV0000239\_016 p.13]?**

31.1 To the best of my recollection I was an authorised signatory to sign on behalf of the Secretary of State for Scotland.

**32. Most of the remaining questions in this section relate to the requirement that applicants to the scheme sign an undertaking not to bring future proceedings in order to obtain a payment. Why did the scheme include this requirement?**

32.1 I refer to my answer at 13.1 above.

**33. On 11 March 1992, you provided Mr Scofield at the DoH with a third draft of the proposed payment scheme for Scotland, as well as commenting on differences with the draft scheme for England and Wales**

[DHSC0002656\_006 and DHSC0002632\_008]. Mr Scofield responded to you on 26 March 1992, enclosing comments on the Scottish draft [SCGV0000238\_105 and SCGV0000238\_106].

- a. Did you agree with Mr Scofield's comment that *"we need to ensure that the two schemes do not differ in substance, although I accept that there are likely to be presentational differences to take account [of] respective legal systems"*? Please explain why either way.
- b. What was your response to Mr Scofield's comment about the absence of any reference to hepatitis in the draft Scottish undertaking [SCGV0000238\_106 p.3]? Did you discuss it with others in the Scottish Office? Did you inform Mr Scofield or others at the DoH that the Scottish haemophilia undertaking did not refer to hepatitis?
- c. Had you also been provided with the medical advice described by Mr Scofield?<sup>6</sup> If so, what impact did it have on the creation of the Scottish scheme?
- d. What was your knowledge and understanding, at this time, of the seriousness of hepatitis C infection (previously referred to as non-A non-B hepatitis), as well as its transmission by blood and blood products?

33.1 As to (a) –(d) I do not have any specific recollection on this. As with the negotiations for compensation for those with HIV, it is likely that I relied upon the lawyers in the Scottish Office to deal with the negotiations and the drafting of the legal documents. As for my knowledge of Hepatitis C I refer to my evidence provided to the Penrose Inquiry on Topic C4 Screening of Donated Blood for Hepatitis C [PRSE0002387] and to the transcript of my oral testimony [PRSE0006069] pages 101, line 18 – page 145, line 13.

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<sup>6</sup> Namely, that it was *"quite possible that a transfusion recipient" had been "infected with both HIV and hepatitis, and so could sue the Secretary of State in respect of hepatitis transmission as well as HIV. This particularly relates to NANB hepatitis"*.

34. On 25 March 1992, Mr Henderson provided Balfour and Manson, a firm of solicitors acting for patients and families, with the fourth draft of the payment scheme [SCGV0000238\_068 and SCGV0000238\_071]. The undertaking included in this draft referred to both HIV and hepatitis [SCGV0000238\_071 pp.16-18]. Were you aware of this change to the proposed scheme? If so, please describe the reasoning behind it.

34.1 I do not have any recollection of this and cannot assist. The question would be better asked of Mr Henderson.

35. In a 9 April 1992 submission, you sought the approval of the NHS Chief Executive in Scotland, Mr Cruickshank, for the finalised Scottish payment scheme [SCGV0000239\_024]. At §9, you explained that the Scottish scheme, unlike in England and Wales, did “*not require an undertaking discharging the Secretary of State in respect of liability for infection of the application with hepatitis virus*”.<sup>7</sup>

- a. Why did the Scottish Office consider itself “*to be bound by the terms of the haemophilia settlement which did not limit an applicant’s rights in connection with hepatitis infection*”?
- b. To the best of your ability, please describe the “*strong representations against extending the undertaking into this area*” that the Scottish Office had received.
- c. To the best of your recollection, why did the Scottish Office/SHHD medical and legal advisers “*specifically support the exclusion of reference to hepatitis from the undertaking*”?

35.1 As to (a) the best answer I can provide is to quote from paragraph 9 of [SCGV0000239\_024] where it states

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<sup>7</sup> The undertaking itself is available at SCGV0000239\_016 pp.14-15.

*“We have had strong representation against extending the undertaking in this area. Our medical and legal advisers specifically support the exclusion of reference to hepatitis from the undertaking.”*

35.2 As to (b) I do not recall after more than 30 years.

35.3 As to (c) I do not recall.

**36. The enclosed document contains a 21 April 1992 letter from the CMO for Scotland to Directors of Public Health and Chief Administrative Medical Officers on publicising the payment scheme, as well as a 23 April 1992 public notice in your name [MACK0000044].**

- a. **How was the notice published and brought to the attention of potential beneficiaries?**
- b. **Other than the CMO’s letter and the public notice, what if any steps did the SHHD take to ensure that potential beneficiaries were informed of the scheme?**
- c. **Looking back now, do you consider that enough was done to advertise the scheme?**

36.1 As to (a) –(c) I do not have any specific recollection of involvement, despite my name being on the public notice. It seems clear from the CMO’s letter [MACK0000044] that the CMO and his medical team were leading the operation of the scheme.

### **Section 5: Hepatitis C: Look Back**

**37. Were you aware that in February 1991, despite it being the view of the Scottish Transfusion Directors, and of Dr John Cash, that a lookback exercise should be undertaken, it was decided that the exercise should not go ahead “in the light of national events”? If so, (i) what were the national events referred to; (ii) what involvement, if any, did you have in deciding that the lookback exercise should not be undertaken; and (iii) what**

**discussions were held between SHHD and SNBTS about the decision? NHBT0000073\_028, PRSE0000348, PRSE0001573 and PRSE0003568 may be of assistance.**

37.1 I can add nothing further to this subject than what is contained in my statement to the Penrose Inquiry on the topic of “Look back” dated 10 November 2011 [PRSE0001266]. However, it is my recollection that the reference to “national events” was a reference to the Gulf War and the perceived need at the time to hold sufficient blood supplies and resources in case of extended need for possible casualties.

**38. Please explain, insofar as you are able to do so:**

- a. **why the SNBTS and the SHHD considered and discussed conducting a lookback exercise before the rest of the UK;**
- b. **who made the decision that a lookback should not be conducted in 1993;**
- c. **why, ultimately, the Scottish lookback was not conducted in 1993;**
- d. **to what extent, if at all, the public health risks from a delay were assessed; and**
- e. **why the Scottish lookback was delayed until 1995.**

**The following documents may be of assistance:**

- **PRSE0003635;**
- **DHSC0003512\_164;**
- **PRSE0003928;**
- **DHSC0003555\_083;**
- **PRSE0003685;**
- **NHBT0097145\_001;**
- **PRSE0002093;**
- **DHSC0003555\_085;**
- **PRSE0000874;**
- **PRSE0001781;**

- PRSE0002454;
- DHSC0032208\_136;
- WITN4461155;
- SBTS0003812\_004;
- SCGV0000165\_085;
- PRSE0003964;
- SCGV0000095\_130;
- DHSC0003555\_173;
- PRSE0000661; and
- DHSC0002551\_110.

38.1 I refer to my answer at 37.1 above.

39. At the meeting of ACVSB on 29 September 1994 [page 4 of PRSE0003670], you are recorded as stating that *“approaches to institute HCV lookback in Scotland had been resisted, and it was important that a UK wide approach was adopted”*. Who had made these approaches? Who resisted them? Why had these approaches been resisted?

39.1 I do not recall.

40. On 19 January 1995, David B McIntosh (General Manager, SNBTS) sent a letter to you titled ‘Hepatitis C and Blood Transfusion’ [DHSC0003555\_113] in which he advised on the wording of a press release, a GP letter, attached notes, and a Parliamentary Question. Related documents which may assist in contextualising this letter are:

- Memorandum by Roger Scofield to Dr Metters (Deputy Chief Medical Officer at the Department of Health and Chairman of the Advisory Committee on the Virological Safety of Blood, ACVSB), titled ‘Hepatitis C: Announcement of Look Back’ [DHSC0002551\_002];

- Opening Statement of Dr Metters re Hepatitis C Look Back (undated). [DHSC0002552\_250]; and
- Press Release titled ‘Hepatitis C and Blood Transfusions’, dated 11 January 1995 [NHBT0005792].

Please confirm whether the handwriting on this page [DHSC0003555\_113] is yours. If it is:

- please confirm whether the handwritten comments on the first page refer to Dr Metters;
- please explain what you meant by the comment “*NO*” on the second page, next to the phrase “*the risk of Hepatitis C infection is almost negligible*” and the basis for your view at the time; and
- please explain what you meant by the comment “*? NO*” on the second page, next to the phrase “*Transmission is not in fact a major source of Hepatitis C infection*” and the basis for your view at the time.

40.1 As to (a) –(c) the handwriting is not mine. It is likely that the manuscript was by someone with a medical background.

41. When you reviewed the press statement and briefing documents from the Department of Health, did you consider that they adequately explained the lookback exercise to the public? In particular, did you give any consideration to whether it identified the limits of the lookback exercise to the public such that they would be falsely reassured that all those who had received infected blood would be identified? [DHSC0002551\_061] and [DHSC0002551\_119] may be of assistance.

41.1 I have no recollection of receiving the documents or of reviewing them. If I received them, it is likely that they were forwarded to the SNBTS, the medical team and possibly the legal team for review.

42. Looking back now, do you consider that the public was accurately informed about the effectiveness of a lookback at the time when it was rolled out? In particular, was there a desire to reassure the public that a lookback would successfully trace most infected patients when that was not the case?

42.1 I refer to my answer at 37.1 above.

**Section 6: Other issues**

43. Other than as set out previously in your answers, are there other aspects of the Scottish Office's policies relating to infections through blood and blood products that you consider could or should have been handled differently during your time as Assistant Secretary? If so, please explain what these were, how you think the matters could or should have been handled, and why they were not so handled.

43.1 I retired from SHHD and from the Civil Service in March 1995. I do not recall what policies were in existence at that time, relative to infections through blood and blood products, other than as mentioned herein.

44. Please explain any other issues that you believe may be of relevance to the Infected Blood Inquiry. To assist, we have provided a list of issues (attached).

44.1 I have no further comments to make.

**Statement of Truth**

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

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

Signature: **GRO-C**

Date: *14 December 2022*