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Witness Name: ALAN MILBURN

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INFECTED BLOOD INQUIRY

WRITTEN STATEMENT OF ALAN MILBURN

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Opening Comments

I, Alan Milburn, will say as follows:-

1.1. I am a former Secretary of State for Health. I make this Statement pursuant to a R9 request from the Inquiry dated 3 March 2022, which has asked me questions about my period in office as Secretary of State for Health at the Department of Health ("DH"), from 11 October 1999 – 12 June 2003.

1.2. At the outset I would like to offer my personal sympathy to those who have been affected by the issues raised during the Inquiry, especially to the infected victims and their families. I will, of course, seek to help the Inquiry in whatever way I can.

The Statement Process

1.3. Until I was asked to give evidence, I had little recollection of my involvement in the events on which the Inquiry is focussed. The extensive bundle of documents I have received has helped jog my memory about parts of the story, but two decades have passed since I was Secretary of State for Health and, after that passage of time, much detail remains unclear to me. In truth I have limited direct recall of what happened and when. Instead, I have had to rely on the documents I have seen to piece together the story and answer the Inquiry's questions.

1.4. From the documents, it looks as if I had an intermittent engagement with the matters with which the Inquiry is concerned. Until the publication of the BSE Inquiry report on 26 October 2000 and the High Court judgment of 29 March 2001 in the case of *A and Others v National Blood Authority* (concerning Hepatitis C screening and the Consumer Protection Act 1987), it seems that few blood-related issues came across my desk either as Minister of State or Secretary of State. Thereafter I seem to have had some more involvement although detailed handling remained with my junior ministers as part of their designated Ministerial responsibilities. Until I read the bundle of documents, I was unaware of most of the exchanges involving them and officials. This is not surprising. The large workload of the Department of Health necessitated a clear division of labour between junior Ministers and the Secretary of State. In the latter role my attention was focussed on a number of high profile political and policy topics (see paragraph 3.3 and 3.4 below). This was a period of considerable challenge and change for the care system and as the political leader of the Department I was responsible for leading the Government's substantial efforts to reform and improve it.

1.5. As Secretary of State, I was of course accountable to Parliament for all that happened on my watch, even where I did not necessarily have direct involvement or oversight. That accountability was discharged through frequent appearances on the floor of the House of Commons as well as in the media and at external events. In providing evidence to the Inquiry some twenty years later I will also do my best to discharge that accountability.

1.6. I have tried to set out a reasonably full account of events, to make the chronology clear not only to the Inquiry but to those who are following it. As a result, I have often referred to documents that I would not have seen at the time, if they cast light on developments. But the account below still reflects both limitations in the documents that have been shown to me, and also the need to select what seems sufficiently relevant. I have not referred to every document that touches on the subject of blood policy, to keep this statement focussed. For example, there were a great number of letters and also very many Parliamentary questions and debates on the topic – I have referred only to a few.

1.7. It seems that the times when I was most involved in matters touching on the questions that I have been asked by the Inquiry were:

- In the summer of 2000, when I was asked for my opinion on the management of the litigation in *A and Others v the National Blood Authority*;

Opening Comments

- In October 2000, when the BSE Inquiry reported and I, together with other Government Ministers, agreed that a vCJD Trust should be established to provide support to those who contracted this terrible and fatal disease;
- When I agreed, in February 2001, that recombinant clotting factor products should be made available for all haemophiliac patients, to remove the risk of transmission of vCJD through blood products. This is one example of precautionary-based decision-making on vCJD-related issues, although there were others, such as my decision on single-use surgical instruments;
- In April 2001, when I was briefed on the outcome of *A and Others v National Blood Authority* and agreed that there should be no appeal. That summer, I also received copies of submissions discussing a possible compensation scheme for those infected by Hepatitis C but the substantive lead continued to be taken by junior Ministers;
- From the summer of 2002, I became more directly involved with this issue, as the Scottish Executive decided to explore introducing a financial support scheme. The constitutional as well as the financial implications led not only to my involvement, but to that of other senior Cabinet Ministers in other Departments.

Section 1: Introduction

Q1, Q2 Career History

2.1. My full name is Alan Milburn. My date of birth and home address are known to the Inquiry.

2.2. I was elected as the MP for Darlington on 9 April 1992 and remained its MP until 6 May 2010, when I did not seek re-election in the General Election.

2.3. As an MP and from 6 May 1997 to May 2005, I served in various Ministerial posts, including within the Department of Health ("DH"). These positions are detailed below.

Table 1 – Parliamentary Career and Ministerial Offices

9 April 1992 – 6 May 2010	Labour MP for Darlington
6 May 1997 to 23 December 1998	Minister of State (Department of Health)
23 December 1998 to 10 October 1999	Chief Secretary to the Treasury (HM Treasury)
11 October 1999 to 12 June 2003	Secretary of State for Health (Department of Health)
8 September 2004 to 6 May 2005	Chancellor of the Duchy of Lancaster (Cabinet Office)
7 May 2005 to 6 May 2010	Labour MP for Darlington.

2.4. After leaving the House of Commons, I have pursued a full-time business career. I run my own advisory business, advise a number of large global corporate organisations and serve on and chair a number of business boards as well as charities such as the Social Mobility Foundation. I was Chair of the government's Social Mobility and Child Poverty Commission from 2012 – 2017. I have been the Chancellor of Lancaster University from 2017.

Q3: Roles and Responsibilities within the Department of Health

3.1. The Inquiry wishes to see a description, in broad terms, of my role and responsibilities as Minister of State for Health and then as Secretary of State for Health. I have been asked to identify any particular responsibilities I had for matters relating to blood and blood products and for the provision of financial support for those infected as a result of treatment with blood or blood products.

3.2. When Minister of State for Health, I was generally engaged with overseeing the quality, performance and reform of the NHS. I did not have any responsibility for blood-related issues. I was one of two Ministers of State appointed after the 1997 General Election; my late colleague Tessa Jowell MP was the other. As Minister of State for Public Health, I think it is likely that she had more involvement in blood-related matters. The other Ministers at the time were Baroness Jay of Paddington (Parliamentary Under-Secretary of State, Lords) and Paul Boateng MP (Parliamentary Under-Secretary of State). The late Frank Dobson MP was Secretary of State at that time.

3.3. As Secretary of State for Health, I had overall responsibility for policy-setting for health policy and the NHS in England and was accountable to Parliament for these matters. The DH Departmental Report for 2000-2001 stated that I had: "Overall responsibility for the work of the Department of Health; Individual responsibility for sponsorship including health exports; NHS finance; NHS resource allocation; NHS central budgets; Performance monitoring; Management costs & NHS efficiency; PFI & NHS capital; NHS Estates; Strategic communications."

3.4. The key issues with which I was personally involved during my time in office included, in no particular order, leading the process of transformational NHS reform (including the introduction of new structural architecture such as Primary Care Trusts and NHS Foundation Trusts), the securing and deployment of substantial additional resources for the care system (that is, the NHS and the social care sector as a whole), programmes to reduce waiting lists and times for treatment, winter and emergency planning, the roll-out of new delivery models of care (such as new partnerships between the public and private sectors), the negotiation of new contracts of employment for GPs, hospital consultants and all other NHS staff, the development of new standards of care for patients (such as National Service Frameworks), the implementation of new quality mechanisms (such as clinical governance), the response to the Bristol Royal Infirmary Inquiry, winter and emergency planning, the health implications of BSE, the scandal at Alder Hay hospital and the response to the murders committed by Harold Shipman.

3.5. The programme of investment and reform set out in The NHS Plan was based on securing major increases in NHS funding, announced in the Chancellor's budget on 21 March 2000. This funding was agreed in order to drive a major modernisation programme of the NHS. The NHS Plan, which was presented to Parliament by Prime Minister Tony Blair on 27 July, set out where resources were to be allocated. The demands on services were pressing, not least to deal with excessively long waits for treatment. As a consequence, finances remained constrained, and often difficult decisions had to be made about what to prioritise.

3.6. The breadth of the issues handled by the Department of Health and the subsequent workload for Ministers (as well as officials) meant that responsibilities had to be shared, and Ministers given particular portfolios. The responsibilities linked to blood and products are outlined below. Ministerial Responsibilities were clearly delineated to ensure appropriate focus and accountability. I trusted my Ministers to do their job although Ministers knew that they could refer issues to me if they wished for guidance or support. Equally, matters that either amounted to a significant policy decision or were politically controversial or high-profile, could be referred to me by the responsible Minister, usually after an 'in principle' decision or position had been reached. An example of this can be seen at paragraphs

7.12 and 7.13 below (Lord Phillip Hunt's note of 30 June 2000 to me and Ms Gisela Stuart).

3.7. Similarly, it appears from the papers I have been shown that I was on occasions asked by Ministers and officials to make decisions on blood-related matters that they must have considered were sufficiently significant to require my attention. Examples of this included efforts to secure the country's supply of blood plasma [WITN6942002]). More substantively, I was involved with issues arising from the BSE Inquiry (see below paragraph 7.17 onwards) and in relation to vCJD, for example over decisions about the use of single use surgical instruments given the potential risks of contamination.

3.8. Despite these direct engagements on my part, by and large Ministers took charge of their own areas of responsibility.

Q4: Ministerial Colleagues

4.1. I have been asked to identify, by name, the other Ministers within the Department of Health ("DH") during my time in office as Secretary of State and identify which Minister or Ministers had particular responsibility for matters relating to blood and blood products and for the provision of financial support for those infected as a result of treatment with blood or blood products.

4.2. When I served as Secretary of State for Health, the team was as follows:-

(1) <u>Ministers of State:</u>

a. Minister of State - John Hutton MP (now Lord Hutton) who was the Parliamentary Under-Secretary of State from 29 October 1998 - 11 October 1999, and then became Minister of State until 6 May 2005;

b. Minister of State - John Denham MP (30 December 1998 – 7 June 2001); he was succeeded by;

c. Jacqui Smith MP (11 June 2001 – 13 June 2003).

(2) <u>Parliamentary Under-Secretaries:</u>

d. Parliamentary Under-Secretary of State (Lords) - Lord Philip Hunt of Kings Heath (1 January 1998 – 17 March 2003) – Phil was then succeeded on a temporary basis by Baroness Kay Andrews, the Government Whip in the Lords, until Lord Norman Warner was appointed on 13 June 2003;

e. Parliamentary Under Secretary of State for Health - Gisela Stuart MP (29 July 1999 – 7 June 2001); she was succeeded by

f. Hazel Blears MP, Parliamentary Under Secretary of State for Health (11 June 2001 – 28 May 2002); she in turn was succeeded by

g. David Lammy MP (29 May 2002 – 13 June 2003).

<u>Parliamentary Under Secretary of State (Public Health):</u>

h. Yvette Cooper MP (11 October 1999 – 28 May 2002); she was succeeded by

i. Hazel Blears MP, who moved across into the Public Health role, until 13 June 2003.

4.3. This was a large team, necessary because as Secretary of State for Health it was impossible to take primary responsibility for all matters within the Department. In practice, lead responsibility for blood and blood products rested with Lord Hunt, the Parliamentary Under-Secretary of State (Lords). However, also involved were the following:-

(1) Gisela Stuart, who received submissions in June 2000 from Lord Hunt on the topic of the AB Litigation;

(2) Yvette Cooper, who held the public health brief, including for infectious diseases. From June 2001, Yvette appears to have handled issues relating to possible compensation or financial support for haemophiliacs with Hepatitis C, until she moved to act as the Parliamentary Secretary in the Lord Chancellor's Department from 29 May 2002 onwards;

(3) John Hutton, who covered this issue whilst Yvette was away on maternity leave during a period from the summer of 2001;

(4) Hazel Blears, who succeeded Yvette in her role from 28 May 2002;

(5) Hazel was also responsible for issues related to BSE and vCJD.

4.4. I have attached a table of Ministerial responsibilities, taken from Departmental reports from the time [WITN6942003].

Q5: Committee Memberships

5.1. I have been asked to set out my membership, past or present, of any committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference, including the dates of my membership and the nature of my involvement.

5.2. I have not held any relevant memberships, past or present or committee associations, parties, societies or groups that are relevant to the Inquiry's Terms of Reference, as far as I am aware.

Q6: Involvement in Other Inquiries

6.1. I have been asked to confirm whether I have 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.

6.2. I have not been involved in any relevant inquiries or investigations.

Section 2: Financial Support for HCV Infection

Q7: Consideration of Proposals for a Hepatitis C Compensation or Financial Support Scheme

7.1. I have been asked what part I played, as Secretary of State for Health, in the Government's decision not to support a compensation scheme for people who had been infected with Hepatitis C through infected blood or blood products.

7.2. When I became Health Secretary it appears that the Department of Health had a long-standing policy of not supporting financial compensation for this group. That position survived changes of Secretaries of State and of Governments and would have been made clear through briefings to the relevant Ministers during my term of office. Of course, Ministers were free to change that policy, as my successor John Reid MP chose to do when he became Secretary of State. Inevitably these are matters, not of science, but of political judgement. For my part, from the materials I have seen, it appears that when the issue came across my desk I too was convinced that the long standing argument against compensation was one that should be upheld - that is, that the NHS would pay compensation only when fault had been established or only in the most exceptional of circumstances. In looking at issues such as this, I would have had to balance concerns felt towards those affected with considerations both about immediate financial consequences and matters of precedent, such as the potential for decisions to lead to the introduction of a 'no-fault' compensation scheme that would have had significant implications both in policy and financial terms. The health budget may have been rising at an historically high rate as a result of the political decisions I and other Cabinet colleagues had made, but I, like every other health Minister, had to make choices within the resources available and set against the competing priorities I had determined. These are never easy decisions, but Health Secretaries are paid to make these sort of difficult judgements.

Section 2: Financial Support for HCV Infection

7.3. What is evident from the documents I have been shown, however, is the shared determination across my Ministerial team to improve services for patients such as those suffering from Hepatitis C or haemophilia. An example would be the decisions that I took with Lord Hunt to ensure universal provision of recombinant clotting factors for haemophilia patients [**DHSC0042291_003, DHSC0041379_179**] through dedicated central funding. Similarly, John Hutton was urging officials to come up with means to improve social care funding for people with Hepatitis C and to increase the number of specialist nurses who could help them [**SCGV0000247_039**]. Furthermore, and consistent with my determination to improve standards of care for different groups of patients, Hazel Blears and I agreed a Hepatitis C Strategy to address the issue holistically. This was put out for comment in August 2002 [**WITN6942004**]. In each case, what followed were additional resources being invested in services for these patients. I do not recollect whether I felt at the time that these decisions were a better use of public resources than the payment of compensation, or forms of ex-gratia financial support, but my sense is that we all felt a strong moral obligation to help as many existing patients and their families cope with such a distressing condition.

7.4. Turning to the issue then of financial support or compensation, to assist the Inquiry I have set out a relevant chronology below, based on the materials I have been shown, and – in particular - what appears to have been sent to me or my Private Office at the time when I was Secretary of State for Health. In doing so I should stress again that I have mainly had to rely on the documents I have been shown – many for the first time - in preparing this Statement rather than my own limited recollections from the time.

October 1999 – end 1999

7.5. When I came into office on 11 October 1999, the position adopted by my predecessor Frank Dobson MP and by the Government, was that a scheme of financial support should not be introduced to help those who had been infected with Hepatitis C as a result of treatment with NHS blood or blood products. I have been shown a letter from Frank to the Haemophilia Society, dated 28 July 1998 **[DHSCO016534]** setting out this position and the reasons why this stance was adopted.

7.6. I have not been provided with copies of any of the briefings provided to me on taking up office as Frank's successor. As a result, I am not sure what information was provided to me on this issue when I first took up my post. Nor, from the documents supplied to me, does it appear to me that I had any real involvement in this issue during the remainder of 1999.

7.7. I can see from papers, however, that representations and lobbying on the issue were ongoing, and that the responsible Minister, Lord Phil Hunt, took responsibility for responding. Thus, when the solicitor Graham Ross sent through a detailed letter to me on 4 November 1999 [see **SCGV0000170_212**], the response was sent by Phil [see **DHSC0006462_085**]. I can see from a faxed document shown to me that the letter did come into my Private Office **[WITN6942005]** but it appears from the file that a response was co-ordinated by Dr McGovern, with a Submission to Phil containing a detailed draft reply **[DHSC0006462_091]**. I do not believe that I would have seen the original letter, or Phil's response. This would not have been unusual. It would be standard practice for junior Ministers to reply to the enormous volume of letters addressed to the Secretary of State, just as they did with Parliamentary Questions from MPs, in keeping with their delineated Ministerial responsibilities.

7.8. The response refers to government initiatives relating to Reducing Litigation in the NHS. I have referred at paragraph 8.6 below to the work that was being done by the CMO in this area, and to the document that was, in time, published on this, in June 2003.

2000

7.9. There was a Westminster Hall Debate held in Parliament on 7 March 2000 initiated by Michael Mates MP, addressing the subject of those suffering from Hepatitis C, and in which John Denham spoke for the Government. I have no recollection of being consulted about John's response and again it would have been normal for him to determine the form it should take without seeking input from me.

7.10. At about the time of the Westminster Hall debate, it seems that Lord Hunt asked for and received a briefing on the options for increasing support, focussing on counselling provision, to haemophiliacs infected with Hepatitis C. See the submission of 27 March 2000 to Lord Hunt from Ms Skinner [**DHSC0004033_003**]. The submission also addressed the issue of a hardship fund, but noted that it would be likely to be unacceptable and too far away from the HIV scheme. I note that this Submission was not copied to my Private Office, so it is extremely unlikely that I was aware of it.

7.11. Throughout 2000, I now understand (having been shown the bundle of documents supplied) that Phil as the responsible Minister also received briefings about the Hepatitis C litigation that had been mounted in the Courts against the National Blood Authority (the NBA), based on the provisions of the Consumer Protection Act 1987. I will refer to this as "the A v NBA litigation". It involved some 114 people infected with Hepatitis C through blood transfusion. The claimants were infected after 1 March 1988 (the date when the Consumer Protection Act came into force) and before 1 September 1991, when measures screening donated blood for Hepatitis C were introduced.

7.12. On 30 June 2000, I, together with Gisela Stuart (Parliamentary Under Secretary in the Commons), was sent a Note on this topic by Phil [**DHSC5297720**]. As far as I am aware this must have been the first time that the issue came across my desk although I have no recollection of receiving the note or responding to it.

7.13. The Note set out options for the A v NBA litigation and rehearsed the legal advice and the risks. Phil's recommendation was to allow the NBA to settle the case out of court (see paragraphs 8 and 20). He noted the need to draw a *"clear and defensible"* distinction between settling the litigation and *"our continued, and justified, refusal to compensate haemophiliacs infected with HCV though blood products on the basis of non-negligent harm"* (see paragraphs 9 and 10 of the Note).

7.14. An email dated 3 July records my response to this minute: "*SofS saw Lord Hunt's minute at the weekend and is content to follow his advice at para 20. Could the proposed action, therefore, be pursued urgently to minimise costs etc*" **[WITN6942006]**. Ultimately, I understand that although some measure of agreement was reached, the case still proceeded to trial in October 2001.

7.15. At this time, the BSE Inquiry was also close to reporting (the report was published on 26 October 2000). The Report concluded that the victims of vCJD and their families had special needs which should be addressed:

"What is needed includes:

- *as speedy as possible a diagnosis of vCJD;*
- *informed and sympathetic advice to relatives about the future course of the disease and the needs of the patient;*
- *speedy assistance for those who wish to care for the victim at home. Needs often include aids for the care of the disabled, modification to the home, financial assistance and respite care;*
- *a coordinated care package which addresses the needs of the victims and their families; and, if requested;*
- *a suitable institutional environment for a young person, incapacitated and terminally ill.*

> *It should occasion neither surprise nor individual criticism that these needs were frequently not met in the early days of the disease. We are now able to look back with hindsight. The lesson is clear: the needs of vCJD victims call for a different approach by the health service and the social services departments of local authorities."*[1]

Although the Rt Hon Nick Brown, the Secretary of State for Agriculture, Fisheries and Food, led the Government's response, I was involved with its health-related aspects and so was engaged with determining our collective response to these recommendations.

7.16. I have been shown a note of a meeting held with me and others, including Counsel on 11 October 2000 **[DHSCO006245_007]**. This discussed the options for financial support/compensation for those with CJD. It is apparent

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[1] Volume 1: Findings and Conclusions, Chapter 14 Lessons to be learned; The experience of vCJD victims and their families, paragraph 1337 and 1338: https://webarchive.nationalarchives.gov.uk/ukgwa/20060525120000/http:/www.bseinquiry.gov.uk/report/volume1/chapt142.htm#649163

from the note that there was concern about the "read across" from vCJD financial support to the ongoing Hepatitis C litigation (para 6). I can see that I asked for a paper on the options for "*some form of compensation*" (para 10), "*making clear the pros and cons, and making explicit the read-across to HCV, and any issues of precedent, not only for this department*." I also note that I flagged up the importance of transparency with the public about the risks of medicines, but that there were concerns about the serious effects of any knock-on impact on vaccines programmes (para 13). I was concerned to ensure that we had a policy of "*maximum openness on this issue*".

7.17. In the meeting on 11th October, the-then Permanent Secretary Chris Kelly argued that there was a strong moral case for compensation for vCJD victims based not only on them having been fed infected material that they had been assured was safe, but that Government Ministers had not made all the facts and risks publicly available. In addition, he touched on the fact that vCJD was a particularly horrifying condition for which there was neither cure nor treatment. This latter argument in particular helped to form the basis of the differentiation between the treatment of vCJD and Hepatitis C victims when it came to compensation/financial support. I supported that position.

7.18. At a subsequent Ministerial meeting on 19 October, Ministers decided that an ex-gratia payment should be made to the families of victims of vCJD in recognition of the suffering and expense incurred [see **DHSC0041310_080**]. Whilst this was an additional cost pressure, the Treasury agreed that the costs could be met from the reserve: see [**DHSC0004451_074**], my letter of 11 December 2000 to Andrew Smith MP, then Chief Secretary at the Treasury.

7.19. Correspondence between me and Baroness Jay ventilated the arguments about comparisons between vCJD and HCV financial support. [**CAB O0000123_006** and **CABO0000123_013**]. I have returned to this issue at paragraph 20.5 below.

7.20. At the same time, it appears that Lord Hunt was considering whether further support should be offered to those infected with Hepatitis C. A Submission was sent on 26 October 2000 from Ms Verity and Charles Lister to Phil's Private Office **[DHSC0020784_008** and **WITN6942007].** This stated that *"Lord Hunt has asked for a package of care to be worked up for all patients infected with HCV. We enclose a short statement for Lord Hunt to consider sending to SofS asking him to agree to a statement in the Lords on Wednesday that pulls together the elements of a co-ordinated approach to the problems associated with HCV."* The focus was on care and treatment for all, not only for haemophiliacs who contracted the infection through blood products. However, I have not been shown anything that would suggest that the further Note was sent to me, and I do not have any recollection of my taking part in conversations about these issues. Phil set out the elements of what was being done in his response to the debate held on 1 November 2000 in the Lords, in response to The Earl Howe's question, and policy-making continued on this issue, as set out below.

7.21. A subsequent submission from March 2001 **[WITN6942008]** shows the subsequent work on formulating a strategic approach to Hepatitis C for all those infected, via a Steering Group of experts. Access to testing for at risk groups was one of the issues to be considered. The work was led by the CMO, with Lord Hunt the Minister in charge, but the submission was copied to my Private Office.

7.22. The issues of financial support or compensation for those infected through blood or blood products continued to be debated in Parliament. For example, there was an adjournment debate in the House of Commons on 9 November 2000 on the subject of NHS Services for Haemophiliacs. Mr Syms MP made a number of points on Hepatitis C infection, and contrasted the decision to provide payments to those with vCJD with the position of haemophiliacs with Hepatitis C. The Government's response was given by the Minister of State, John Denham, who restated the position that compensation or other financial help to patients was paid when the NHS or individuals working in it are at fault.

Section 2: Financial Support for HCV Infection

2001

8.1. A Ministerial Submission from Mr Lister dated 19 January 2001 suggests that Lord Hunt was to meet with the Haemophilia Society on 24 January 2001 **[WITN6942009]**. (Read literally, the Submission gives the impression that the Secretary of State too was attending the meeting, but it is clear from Lord Hunt's subsequent Note to me that I was not present). It was expected that the Society would be pressing for the introduction of recombinant clotting factors for all haemophilia patients in England. The implications, including the shortage of the product globally and the costs implications were discussed and there was a recommendation that this measure be introduced on a phased basis. *"The concerns focus on the potential for transmission of new, undetected viruses and on the possibility that vCJD may be transmissible through blood."* The submission was sent to my Private Office on 22 January, and was followed up by a Note from Lord Hunt on 2 February 2001 [**DHSC0042461_189**], recommending that the officials' proposals be agreed.

8.2. Having read the submission over the weekend, I asked further questions about the proposals [**WITN6942010**] and followed this up again on 20 February [**DHSC0042291_003**]. Replies were provided on 22 February 2001 [**DHSC0046909_062**], including a discussion of the priorities that would be affected by the new funding required; I commented on 26 February that the funding would have to be found from the centre rather than from Heath Authorities' allocations [**DHSC0046909_060**], to ensure that the commitments we made were resourced with earmarked funds. These are examples of decisions made on a precautionary basis, as we did also on such matters as the single use of surgical instruments.

8.3. It seems that the issue of funding for recombinant clotting factors took some time to resolve. I have been shown an email from Mr Lister dated 2 July 2001 which suggests that, as a result, a bid for new funding under the 2002 Spending Review was being developed by Mr Lister [**DHSC0041379_179**]. The matter was still pending in February 2003 [**DHSC0042275_075**], when officials hoped that it could be resolved and an announcement made; I was sent a Note on the topic by Hazel Blears on 5 February 2003 and approved the decision, including the funding needed (£13m/£21.7m/£53.4m over the next three years as it was phased in) [**DHSC0042275_073**].

8.4. Returning to events in 2001, I note that on 26 March 2001, Mr Justice Burton gave judgment in the case of *A and Others v the National Blood Authority*. He held that under the Consumer Protection Act 1987, consumers had been entitled to expect that surrogate tests for Hepatitis C should have been used to test blood donations from 1 March 1988, and that routine screening for Hepatitis C should have been introduced from 1 March 1990 (rather than from 1 September 1991 when it was actually implemented). He awarded compensation to those infected after 1 March 1988 and before screening for Hepatitis C was introduced in September 1991. This did not affect those haemophiliacs who had been infected much earlier, before blood products were heat-treated, but it appears to have had the effect of intensifying the lobbying for the campaign for financial support.

8.5. Concerns about the financial pressures that this decision could cause were highlighted in my subsequent letter to the Chief Secretary to the Treasury, Andrew Smith MP on 5 April 2001 [**MHRA0025032**]. I made the point in that letter that I had no resources available to deal with the potential impact of the judgment given that they were already committed to delivering the commitments set out in The NHS Plan and other pressures such as escalating clinical negligence claims. In his response, Andrew made clear that there was no commitment from the Treasury to meet the costs from the reserve [**DHSC0004741_017**].

8.6. On this latter issue, the Inquiry may be aware that at the time, the CMO was leading work on rising NHS litigation costs and the response to this. The work eventually led to the publication, on 30 June 2003, of a report from the CMO "*Making Amends, A Consultation Paper*" which contained a critique of the existing clinical negligence system and its rising costs. On costs, according to the CMO's Report the data was poor but annual NHS clinical negligence expenditure rose from £1m in 1974/75 (£6.33m at 2002 prices) to £446m in 2001/02. This was allied to concerns about the cost-effectiveness of litigation. Rejecting the case for a 'no-fault' compensation scheme, the main recommendation in the Report was for a "NHS redress scheme", offering redress for patients harmed as a result of seriously substandard NHS care. There would be (i) an investigation of the incident; (ii) provision of an explanation; (iii) development and delivery of a package of care providing remedial treatment and (iv) payments for pain and suffering, out of pocket expenses and treatment that the NHS could not provide.

8.7. Returning to events in 2001, a reply to my letter of 5 April was received from the Chief Secretary the following day **[DHSC0004741_017]**. A note from my Private Office stated that "*I know Lord Hunt is also working with officials to assess the wider implications of the judgment on the NHS…*" **[DHSC0004741_020]**, indicating that I was assuming that Phil was dealing with the detail of this area.

8.8. On or around 6 April 2001, on legal advice, I also decided that leave to appeal against the judgment should not be sought **[DHSC0004741_022, SCGV0000243 051]**

8.9. It is apparent that after this, submissions were sent to the responsible Minister, the Parliamentary Under-Secretary (Public Health), Yvette Cooper MP, or PS(PH), on the topic of a Hepatitis C compensation scheme; see below.

8.10. In particular, a Briefing paper on haemophiliacs infected with HCV dated 2 July 2001 was sent to PS(PH) at her request **[DHSC0041379_177]**. The author, Briony Enser, set out a detailed account of the background and arguments, together with five options for action, expanded in an options paper **[WITN6942011]**, **[DHSC0020756_025]**.

8.11. It appears that Yvette asked for further information and received a further submission dated 19 July 2001 **[DHSCO042461_182]** together with an Annex **[DHSC0041379_177]**.

8.12. I have been asked whether I received a copy of the July Submission and options paper. I can see from the copy list on the Submission

[DHSC0041379_177] that it was copied to my Private Office. The later paper dated 19 July was also copied to my Private Office [**SCGV0000243 043**].

8.13. I cannot however recollect seeing these papers or any discussion of them. Again, that would not be unusual. Private Offices are often copied in but as Secretary of State I would not necessarily see the note.

Involvement of Mr Hutton.

8.14. On 12 September 2001, John Hutton (Minister of State) held a meeting on HCV compensation. As I noted at paragraph 4.4, he took over responsibility for this matter whilst Yvette was on maternity leave. His Private Office sent a brief summary of the meeting to Yvette's Private Office and to Charles Lister [**DHSC0004363_090**]. This said that John did not think that offering compensation was an option. Instead, he wanted to look into providing a social care support package for haemophiliacs with HCV on the lines of the one developed for people with vCJD, e.g. exempting haemophiliacs from the charge regime.

8.15. For reference, the compensation/financial support scheme for variant CJD sufferers was announced by me on 1 October 2001 [**NHBT0008988**].

8.16. In the meantime, it seems that events were developing in Scotland. On 2 October 2001, the Scottish Health Committee called for financial support for all Hepatitis C blood transfusion sufferers [**ARCH0003326**]. The Committee said that it was persuaded by the 'moral' case for providing practical and financial assistance.

8.17. Initial indications were that this issue was to be raised by Susan Deacon MSP (Minister for Health and Community Care in the Scottish Executive) at the Joint Ministerial Meeting of UK Health Ministers on 22 October 2001 [**DHSC6262783**], which I chaired, but it seems that this did not occur [**WITN6942012**]. There was a pre-read (briefing) for that meeting, but I suspect that since it was the last item on a long agenda we simply ran out of time and did not get to it.

8.18. Instead, a submission dated 12 November 2001 was sent from Charles Lister to John Hutton, MS(H); this was again copied to my Private Office

[DHSC0004601_021] as well as that of PS(PH). The submission starts by recording that *"When we met in September to discuss the campaign to compensate haemophiliacs with hepatitis C, you [i.e. MS(H)] took the view that compensation for this group was not appropriate but asked us to investigate … (i) ex gratia payments for people infected with hepatitis C through blood after the introduction of the Consumer Protection Act 1987 [who would now be time-barred from initiating an action] and (ii) a care package, on the lines of the one developed for people with CJD."* The overall recommendation from officials was against the suggestion that an ex-gratia payment scheme should be developed.

8.19. A minute dated 13 November 2001 **[SCGV0000247_039]** records that John agreed with the recommendations to:

- *"to hold the policy line that no payments will be made in respect of hepatitis C infection through blood and blood products except where awarded by the Courts;*
- *to refer the hepatitis C litigation case to the CMO's Advisory Group on Clinical Negligence as an example when they consider no fault compensation;*
- *for officials to take the actions set out at para 18 above (these concerned further support for the hepatitis C strategy and exploring the options for funding further initiatives through the Haemophilia Society, and raising the awareness of haemophilia and Hepatitis C awareness in DWP medical examiners);*
- *to leave wider consideration of the social care needs of people with hepatitis C to the Hepatitis C Steering Group and the subsequent consultation paper."*

8.20. I do not recall specific discussion of these options in October – November 2001, but I can see from the papers that factors such as the Scottish announcement were increasing pressures on Ministers.

Section 2: Financial Support for HCV Infection

2002

The Haemophilia Society's Report, June 2002

9.1. I have been shown a Note briefing Yvette Cooper, dated 7 January 2002. This notes that the Scottish Executive Ministers had rejected the recommendations of their Health Committee, but that this was due to be debated in the Scottish Parliament on 10 January 2002. This was the first time that Scottish Ministers had rejected such a recommendation and Malcolm Chisholm (Minister for Health and Community Care in the Scottish government) was apparently concerned that the Executive would lose the vote. Yvette was to be briefed on the outcome of the vote [**DHSC0041379_116**]. It appears that, in response, the Scottish Executive set up an Expert Group on Financial Support Arrangements. Meanwhile, in England matters continued to be handled by Yvette, including a meeting with the All-Party Group and the Haemophilia Society on 14 March 2002 and with the Manor House Group on 15 May 2002. I do not believe that I received any relevant submissions.

9.2. On 12 June 2002, Hazel Blears (who by then had succeeded Yvette as PS(PH)) met with the Chair of the newly formed All-Party Parliamentary Group on Haemophilia, Michael Connarty MP and with the Haemophilia Society [**ARCH0002964_004**]. I can see from the documents that I have been shown that the topic was the Society's report, *"Report of the Hepatitis C Working Party*" (see **[HSOC0005927]** which recommended financial support to people with haemophilia infected with Hepatitis C through contaminated blood products). Hazel committed to looking carefully at the report and to responding in due course.

9.3. I have been asked whether I saw and considered the Society's proposals and if so what was my response. I have no recollection of doing so and presume that the issue was being handled by Hazel. This is consistent with the letter that she later sent to the Haemophilia Society on 19 November 2002, in which she wrote that she was "*continuing to consider the report and will respond as soon as I am able*" [**DHSC0042275_199**].

9.4. I can now see that in advance of the meeting, on 10 June 2002, Hazel was sent a briefing by Jill Taylor **[DHSC0041305_037]**, together with a copy of the Society's Report. This submission was not copied to my Private Office and it therefore seems unlikely that I was sent or saw a copy.

9.5. I have been shown a copy of a fax dated 6 August 2002 to Hazel or her Private Office, which sent a note dated 31 July 2002 to Hazel. The covering note says: *"Attached is the note on Hep C + Scotland that you will need in front of you when you speak to SofS. This is a devolved issue – but it will be v difficult for us to have different positions."* **[DHSC0042275_131; DHSC0042275_132; DHSC0042275_133]**. The note that was attached recorded developments in Scotland, where Lord Ross's Expert Group had deferred finalising the conclusions of their report to consider the costs implications. It noted the political pressures on the Scottish Executive, *"with the prospect of defeat in the Scottish Parliament if he [i.e., Mr Chisholm] maintains a pure "no compensation" stance".* It is apparent from the Note that it was thought likely that Malcolm Chisholm would be speaking to Hazel at the end of August; but the fax cover letter also implies that she was to speak to me.

9.6. I cannot recall that happening, but an email dated 6 September 2002 **[DHSC0042275_136]** from Mr Lister records the results of a conversation that I apparently had with Hazel. Mr Lister noted that I had been "*unequivocal in [my] opposition to a compensation scheme*" during that conversation. There is a handwritten note on the copy at **[WITN6942013]** which records that I was content with the line that "*The Department of Health in England has advised that it has no intention of initiating any scheme for compensating this group.*"

Hepatitis C Strategy, August 2002

10.1. For the sake of completeness, I note that on 14 August 2002, the Government published the document, "Hepatitis C strategy for England", which proposed developing professional and public awareness of the disease, and strengthening services for its prevention, diagnosis and treatment"

[**WITN6942004** from 7.3 above]. It invited comments on the proposed strategy.

<u>Lord Ross's Expert Group, Preliminary Report</u>

11.1. I have been reminded that in September 2002, the Preliminary Report from Lord Ross's Expert Group was published [**HS000003349**].

11.2. On 22 October 2002, there was an adjournment debate in the Commons. Mr Richard Spring MP raised the situation of his constituent GRO-A [**WITN6942014**]. Hazel Blears responded on behalf of the Government. The matters that she addressed included the issue of compensation. She noted that the Haemophilia Society's proposed scheme would cost about £500 million over 10 years. The proposal was receiving "*detailed consideration*" but "*the fact remains that in the NHS compensation is usually given only when either the NHS or those working in it have been at fault.*" That was not the case in relation to those infected with Hepatitis C. The *<u>A v NBA</u>* litigation did not change that as it was based on the Consumer Protection Act's strict liability rules (as well as applying only to those infected after 1 March 1988).

11.3. I have been asked whether I read the preliminary report of the Ross Committee and if so when. I think it very unlikely that I would have read it, since it was a report to the Scottish Executive or Scottish Parliament. I am not even clear that I was supplied with a copy of it; I have not been shown any evidence that I was. According to Malcolm Chisholm, with whom I subsequently spoke (see below), the report argued that Hepatitis C was comparable to HIV [**DHSC0042275 129**] and set out proposals for financial support.

Q12: Conversation with Mr Chisholm, November 2002

12.1. I have been reminded from the note of an email dated 4 November 2002 [**DHSCO042275 129**] that on that day Malcolm Chisholm phoned to inform me that the Expert Group (Lord Ross's Committee) was about to publish its preliminary report [**HSOC0003349**] calling for financial help for all people infected with HCV through blood, blood products and tissues. Although the Scottish Executive had rejected its specific recommendations, Scottish Ministers felt that they had to offer something, probably around payments to people once they became seriously ill. The note records that I responded:

> *"SoS was very clear that he thought this would be a grave mistake and that once the principle that we'd established had been breached, then we were scuppered and on a slippery slope to payments running into millions in the UK. He said he thought that Malcolm Chisholm needed to tough it out.*
>
> *Malcolm Chisholm said that the advice that he had had was that this was a devolved matter for the Scots, however he wasn't sure this was right. SofS is very clear that we need to find some way of showing that the Scots don't have the devolved power to go it alone on this, and thereby prevent them going ahead with any kind of announcement on Wednesday."*

[DHSC0006217_027] DHSC0020878_013 and **DHSC0042275_129**].

12.2. I have been asked to set out my recollection of this discussion and the reasons for my stance. I have only a vague recollection of having a conversation with Malcolm but not its contents, and so I have to rely on the written record being accurate. I seem to have been concerned about the fact that the Scots were setting an unwelcome financial precedent that would increase pressures on me to follow suit, with the potential costs rapidly escalating. In addition, it is also possible that any concerns I had were amplified by the fact that the Scottish Government had already set such a precedent when they decided to give the go-ahead to free personal care for the elderly. That intensified pressure on England to do the same without the UK Government having decided that it was right to do so or the appropriate political priority. I had set out very clearly in The NHS Plan where the Government's health priorities lay and had allocated resources behind them. I am sure that I would have wanted to retain control of events rather than them being dictated to by events in Scotland. In saying this, I should like to be clear and to emphasise that I believe my concern was for the overall needs of NHS patients and NHS services because of the wider financial pressures that I was worried we would face from this development. This was not indicative of any lack of sympathy for the personal tragedy of those infected, to which I return later in this statement.

Q13: Devolution Issues

13.1. An email from Mr Lister to officials (copied to my Private Office) in the morning of 5 November 2002 records that he had spoken to Howard Roberts (DWP) "*who has come up with an argument we can give SofS to deploy. We are also in touch with the devolution unit in the Office of the Deputy PM"* (OPDM). He envisaged a further conversation with OPDM and then sending advice to me [**DHSC0020878_013**].

13.2. This discussion of the legal position reflected not only the relative novelty and uncertainties of the devolution settlement established by the Scotland Act 1998, but the fact that – as is apparent from the note of the call referred to above - Malcolm Chisholm himself was not sure whether the Scottish government had the power to introduce a financial support scheme. It was obviously important to establish what the boundaries of "reserved" and "devolved" matters were.

13.3. A memorandum from Charles Lister to Sammy Sinclair of my Private Office dated 5 November 2002 presumably records the further advice that Mr Lister had received from Mr Roberts [**DHSC0004601_003** and **DHSC0004601_004**]. Mr Lister noted that following my conversation with Malcolm Chisholm on 4 November, there had been discussions between the DH and ODPM. The issue of the Scottish devolved powers was discussed at paragraphs 6 – 11 of the Note. It recorded that this situation had been discussed with DH lawyers and with those in the Devolution Unit of ODPM. Health was a devolved matter (with one or two exceptions) but social security benefits were not. The Note stated:

> *"The Scotland Act [establishing the devolution settlement] provides that disputes on questions relating to devolved powers should be decided by examining the principal purpose of the measures. As this is not about the legal liabilities of the health service – no such liabilities exist – there would seem to me to be a strong case for arguing that the principal purpose of a payment scheme is to relieve financial hardship and is therefore not health related.*

> *SOL have stressed that this is not definitive advice … However, we could certainly say that we also have doubts about whether such a scheme is within Scotland's devolved power; that given this and the considerable implications of such a scheme for the rest of the UK, that Malcolm Chisholm should not go public until such issues have been resolved. Our lawyers could then take this up with their opposite numbers in DWP." (paras 9, 10).*

13.4. It was suggested that I should raise my concerns about the Hepatitis C Scottish compensation proposals with Jack McConnell (First Minister) and request that "*the Scots do not go public with any indication that they are exploring a financial package*" until the matter of whether Scotland had devolved power to do so was resolved.

13.5. Further details of the concerns about the Scottish proposals were set out at Annex A **[DHSC0004601_004]**: these included concerns about the sums involved and the fact that *"there are very real concerns that such a scheme could open the flood gates to other claims."* A number of parallel campaigns were noted. *"Special cases have already been made for haemophiliacs with HIV, vaccine damage and vCJD. There must be a limit to the number of special cases that can be introduced before we slip towards no fault compensation for any kind of health injury."*

13.6. Also on 5 November 2002, Malcolm Chisholm wrote to the Secretary of State for Work and Pensions, Andrew Smith MP, copying the letter to me as well as others. Malcolm referred to his appearance before the Health and Community Care Committee of the Scottish Parliament the next day. He noted the 'long-running dispute' and that the Scottish Executive was looking at the possibility of ex gratia financial payments to relieve suffering and hardship; "*It is generally accepted that the NHS was not at fault in this instance*". He continued:

> *"We have had to consider whether such a scheme would be compatible with our powers under the devolution settlement and have been particularly concerned with any application of the reservation of social security schemes under Schedule 5 of the Scotland Act. Our preliminary view is that there is a sustainable argument that a scheme of this sort would be within devolved*

> *competence. We would be grateful, however, if you would consider whether that is a view which the UK government would endorse. .....*
>
> *In any event any payments made would have clear potential implications for social security.....*
>
> *Our understanding of the position of the Department of Health is that they have no intention at present of initiating any scheme for compensating this group of patients. This means that any change in social security legislation would need to apply to Scotland only.*
>
> *I would be grateful to know whether would be willing to support the necessary legislation...."* **[WITN6942015]**

13.7. Again, this letter highlights how there was uncertainty in Scotland about the potential legality of a "Scottish" scheme, and that Malcolm was looking for confirmation of his preliminary views. It also seems clear from this exchange that the implications of the desired Scottish decision had potential impacts well beyond the DH, both constitutional and financial. The fact that DWP were now involved suggests that the potential consequences for social security policy and spending were serious. This had quickly become an issue of cross-governmental significance, also involving HM Treasury and the Office of the Deputy Prime Minister, and, ultimately, the Law Officers.

13.8. I have been asked whether I raised my concerns with Jack McConnell. I have recollections about speaking to Jack on a number of occasions, but I cannot recall whether I did so in relation to this issue. The fact that there is no record of such a conversation suggests it did not, in fact, happen.

13.9. I have been referred to a Chronology **[DHSC0006217_027]** later written by, I understand, a DH official. This states (p.20), in relation to the events of 4 November 2002, that "*SoS subsequently asked officials to find some way of showing that the Scots don't have the devolved power to go it alone on this, and thereby prevent them from going ahead with any kind of announcement on 6 November*". I have been asked whether this is accurate. It seems this chronology entry is derived directly from the note of the conversation that I had with Malcolm on 4 November, quoted at paragraph 12.1 above ("*SofS is* *very clear that we need to find some way of showing that the Scots don't have the devolved power to go it alone on this, and thereby prevent them going ahead with any kind of announcement on Wednesday"),* on which I have already commented. I cannot recall asking officials to do so and this may simply reflect the events and conversation with Malcolm that day, but it seems that I was having growing concerns about the risks of read-across from decisions taken in Scotland impacting on England. The reference in the chronology to me asking officials to find a way of showing Scotland did not have the appropriate devolved powers would, I am sure, be a crude shorthand for me seeking legal advice to ascertain that this appeared to be a reserved matter (which is what then happened on 5 November, see paragraph 13.3 above). It is clear from Malcolm's letter to Andrew (see paragraph 13.6 above) that at the Scottish end too there were real doubts about who had jurisdiction here and that there was a real case for clarifying or agreeing this before any possible policy commitments were made. This probably explains an early morning email dated 6 November from my Private Office which records that "*we are fixing up calls for him to speak to Andrew Smith and Jack McConnell this morning*" [**DHSC0020878_010**]. However, a further email from Mr Lister timed at 10:06 noted that Malcolm Chisholm had already gone to the Health Committee where he would be all morning – he would have to be "*pulled out*" before 12 noon if "*we are going to stop any announcement*". See [**WITN6942016**]. I would not have seen these emails at the time, but I have been referred to them in an attempt to work out what happened, in answer to the Inquiry's questions. I do not recall these conversations taking place and these emails suggest that I did not speak either to Jack or Malcolm before the latter attended the Committee, after which it would have been less urgent in any event.

13.10. A short response to Malcolm's letter was sent on behalf of Andrew Smith (DWP) to Malcolm on 6 November. It set out the "initial" legal advice that a payments scheme would appear to be a reserved matter and therefore outside of Scottish competence (see **WITN6942017**). A copy was sent to Heather Rogers in my Private Office. The copy list, which includes the Treasury and the Lord Chancellor's Department, reflects the cross-cutting nature of the issue and its constitutional importance. I have also now been shown a copy of the DWP legal minute of the same date **[DHSC0016767]**. This is not, as far as I am aware, something I saw at the time, but the gist of the DWP legal advice and letter were conveyed to me (see paragraph 13.12 below).

13.11. There is a Scottish government press release dated 6 Nov 2002 **[WITN6942018],** welcoming the report and stating that they would "like to find a way" of "doing something" to help those infected. However, the statement was described as a "fudge" which pleased no one in an email by Mr Lister to Hazel's office, copied to Sammy Sinclair of my Private Office, **[DHSC0042275_142]**.

13.12. Mr Lister wrote at 15:17 on the same day to Sammy Sinclair **[DHSC0016773]** stating: "*I attach the advice that SOL have given to Andrew Smith on the devolution issue which fits with the advice we gave to SofS yesterday.*" In response, my Private Secretary replied (7/11/2003, 08:23) that she had "*updated SofS on the latest position re the Scots*" (based on the fax of the Scots press release) which "*he has noted*" **DHSC0016773** . Again, this is consistent with me being kept informed.

14.1. The same chronology **[DHSC0006217_027]** states (p. 20), by reference to 5 November 2002, that Malcolm wrote to Andrew Smith about the possibility of ex gratia financial payments (noted above); that legal advice was obtained from DH and DWP lawyers and that a response from Andrew Smith suggesting that this was a reserved matter was sent on 6 November. I have covered these matters above.

14.2. The chronology also continues, again by reference to 5 November, by saying that *"SofS made further attempts to persuade Scottish Ministers not to make any undertakings on a payment scheme but was unsuccessful".* I have been asked about this, but I cannot recollect any further conversations with Scottish Ministers. It is possible that it is a reference to the attempts to "fix up calls" with Andrew Smith and Jack McConnell on the morning of 6 November, which I have already discussed above, at paragraph 13.9.

14.3. On 8 November, Malcolm's Private Office wrote to Andrew Smith's Private Office, again summarising developments including the evidence given on 6 November, saying that Malcolm indicated *"that the [Scottish] Executive wished to find a way of helping Hepatitis C victims who are suffering long term harm, but made clear that he would not accept the recommendations of the Lord Ross Expert Group and made no commitment to what form of support might be offered."* **[WITN6942019]**. The wish was for speedy discussion of the *"legal and social security issues raised in our letter"* and there was reference to a meeting that had been organised at official level on 14 November. A copy of the letter went to Heather Rogers in my Private Office, amongst others, but it is not clear whether I was personally informed of these matters.

<u>Involvement of Helen Liddell</u>

15.1. The chronology **[DHSC0006217_027]** states (p. 21) that on 20 November 2002 "Secretary of State" met with Helen Liddell (who was at that time the Secretary of State for Scotland) to discuss HCV payments. I have been asked whether this is correct. I have no recollection of this and have been informed that no notes of any conversation have been found.

15.2. However, on 10 December 2002, Andrew Smith wrote to Helen Liddell proposing that the Law Officers should be asked to provide an opinion "*as to the correct approach to resolving the difficult legal question, and also the strength of the argument that the proposed schemes fall within reserved competence*." He proposed that the request should come jointly from DWP and the Scotland Office "as guardian of the devolution settlement". The letter was copied to me, as well as the Prime Minister and Sir Andrew Turnbull (Cabinet Secretary) **[DHSC0042275_111]**. It appears that I was in favour of this proposal, see paragraph 16.2 and 16.3 below.

15.3. I was copied into further correspondence from Malcolm to Andrew Smith on 18 December 2002 **[WITN6942020]** when Malcolm sent further details of the Scottish Executive's thinking. He made it clear that the preference was for "*ongoing payments to surviving patients – triggered by progression to a stage of disease that could be easily linked to the concepts of need and* *suffering*." He considered that these would be less likely to be regarded as a new departure from the principle that the NHS "*does not pay compensation when there is no legal liability.*" Again, the letter was widely copied to senior Government colleagues.

2003

16.1. On 30 January 2003 Malcolm announced that he was prepared to establish an ex-gratia payment scheme for people in Scotland who had been infected with HCV as a result of treatment with NHS blood/blood products [**DHSC6701261**].

16.2. I have been asked what consideration I gave to this announcement and what if any actions I took in light of it. I have been referred by the Inquiry to a number of documents, including:

- **DHSC0046315_070**: this is an update about the announcement, sent by Charles Lister to Hazel's Private Office on 29 January, but copied to mine. He noted that this was the first time that the Scottish Executive had been explicit about the potential payments being considered;
- **DHSC0042275_047**: this is a minute from Sammy Sinclair in my Private Office, back to Mr Lister, expressing a degree of confusion about the statement. She noted her understanding that DH, DWP and HMT "*have all been very firm that Scotland should not go ahead unilaterally with a financial assistance scheme… I think we have been working with DWP on this …. to resolve an outstanding issue about whether the Scots in any case have the right to do this unilaterally as social security matters are reserved, not devolved. The legal advice has been somewhat unclear and SofS here has certainly agreed that the matter should be referred to the Attorney General for a definitive view…*" She asked whether definitive legal advice had yet been received, and for confirmation that "*DWP are still taking the lead on this with us working closely alongside them.*"
- **DHSC5320612**: this is an updating email from Charles Lister to Peter Thompson (DWP) (copied to my Private Office) dated 16 April 2003, which included a question on whether the legal advice had yet been received.

16.3. As mentioned above, the Inquiry has asked what consideration I gave to Malcolm Chisholm's January announcement, and what if any actions did I take in light of it. I cannot recall my response other than seemingly to have noted it **[DHSC0042275_047]** when informed about it but it seems to me, from the documents I have been shown, that by this time further consideration and policy-making were being driven by the constitutional issues – i.e., on whether Scotland's devolved powers extended to the scheme proposed - and by the cross governmental decision to seek legal advice at the highest level on this issue. I supported this decision, but it is also apparent that by this stage actions were being led by DWP and the Scotland Office, with secondary support from DH as well as HM Treasury.

Law Officers' Advice

17.1. I have been reminded that on 30 January 2003, advice was formally commissioned from the Law Officers (that is, from the Attorney General and the Advocate General for Scotland) by the DWP, jointly with the Scottish Office. See paragraph 20 below. For the assistance of the Inquiry, I attach a copy of the letter of instruction **[WITN6942021]**, although it is very unlikely that I saw it at the time: it was the product of work between DWP and the Scotland Office. However, I now understand that, shortly after I left office as Secretary of State, the Law Officers advised that the Scottish government *did* have the power to establish its own scheme of financial support.

Ross Report, March 2003

18.1. In early March 2003 the final report of the Ross Committee was published **[HSOC0020367]**.

18.2. I have been asked if I read this report and what if any actions I took in light of it. This was a Scottish report and I do not believe that I would have read it - or even shown it – and did not take any further action in response to it.

18.3. I have already explained how by this time, a legal opinion had been commissioned from the Law Officers. It is apparent that by then, the development of policy was waiting for the receipt of this advice.

Q19: Ministerial Presence in Parliamentary Debates

19.1. I have been asked whether the Department of Health failed to field a Minister on three occasions for a debate in the House of Lords on the needs of haemophiliacs who had been infected with Hepatitis C through contaminated blood. This issue was noted in the letter to me from Karin Pappenheim, Chief Executive of the Haemophilia Society, dated 11 March 2002 [**HSOC0009489_010**]. I have been asked to comment on this matter.

19.2. Phil Hunt was a very diligent and highly respected Minister with extensive experience of the NHS, the broader care system and health issues more generally. As Health Minister in the House of Lords, he had to cover the waterfront of issues covered by the Department of Health, albeit with some help on occasions from Government Whips such as Geoff Filkin and Tom Burlison. In that sense he acted as a "shadow" Health Secretary in the Lords fielding the whole gamut of issues that I and my team of junior Ministers in the Commons covered. I have ascertained that Phil took part in at least 26 health-related debates in the Lords between 1 January and 31 December 2002 (in addition to any 'blood-related' debates). He had policy responsibility for the following matters:

> *"Responsibility for Health services development; Renal services; National Service Framework for Diabetes; Pharmaceutical industry including the PPRS; Community pharmacy; Pharmaceutical services including prescribing and drugs bill; Medicines; Medical devices; Transplants; Blood; Research and Development; Procurement & NHS Supplies Authority; Spreading good practice; General dental services; General optical services; Counter-Fraud services; Nursing strategy including recruitment and retention; Professions Allied to Medicine; Defence medical services, Prison health care; Contingency planning (civil defence); Departmental Management including agencies; Regional NHS casework for Eastern & North West."* (see the Table of Ministerial responsibilities).

19.3. In that regard he would have had to undertake countless meetings with officials and external interest groups. I assume that the sheer weight of work on his shoulders may on occasions have necessitated not replying to particular debates in the Lords. That is a decision he would have had to make about his workload and commitments.

19.4. However, I have been supplied with a table showing Parliamentary debates on this issue during the period when I was in office. From this table it is clear that Phil responded to debates on the issue on no less than seven occasions between 2000 and 2003.

Date	**Nature of Debate/ Proposer**	**Government Response**
7 March 2000	Debate, Westminster Hall	Mr Denham (Minister of State, Health)
30 March 2000	Debate, House of Lords: Lord Morris	Lord Hunt
1 November 2000	Unstarred question, The Earl Howe	Lord Hunt
9 November 2000	Adjournment Debate, House of Commons	Mr Denham (Minister of State)
18 December 2000	Oral Question, Lord Morris	Lord Hunt
26 March 2001	Starred Question, Lord Morris	Lord Burlison
23 April 2001	Adjournment debate, House of Lords	Lord Burlison
15 October 2001	Oral Question, Lord Morris	Lord Hunt
16 October 2001	Oral Questions, House of Commons	Hazel Blears
14 November	Westminster Hall Debate, House of Commons	John Hutton

2001		
12 March 2002	Debate, House of Lords – Lord Morris	Lord Filkin (Whip)
22 October 2002	Adjournment Debate on Hepatitis C, House of Commons	Hazel Blears
21 November 2002	Oral Parliamentary Question (PQ), Lord Morris, House of Lords	Lord Hunt
13 January 2003	Oral PQ tabled by Lord Morris, House of Lords	Lord Hunt
26 February 2003	Oral PQ tabled by Lord Morris, House of Lords	Lord Hunt

19.5. This table does not include the written answers given by Lord Hunt: eg on 7 November 2002 to a question from Lord Morris [**DHSC0032279_124**]. These would also have taken time to review and approve.

Q20: Further Discussions, 2003

20.1. On 4 February 2003, Mr Lister sent a memorandum to my Private Office to provide a requested update and clarification [**DHSC5320610**]. He noted that the Office of the Solicitor to the Advocate General for Scotland had sought the opinion of the Law Officers on 30 January. He suggested that little could be done until we received the Law Officers' opinion. He further noted that DH officials were continuing to work closely with the DWP, the Office of the Deputy Prime Minister, the Scotland Office and (as far as possible) the Scottish Executive.

20.2. In a submission to Hazel Blears (copied to Sammy Sinclair in my Private Office) dated 09 April 2003 [**DHSC5320619**], draft letters were attached responding to Karin Pappenheim and Michael Connarty MP, advising that the Society's proposal had been considered but that the position remained that compensation was not payable. The submission contained an analysis of the costs of the Haemophilia Society's proposals (about £522m over 10 years, or £52m/year).

20.3. I have been asked if I was involved in the discussions that took place to consider the Haemophilia Society's proposal and if so, to provide details. I do not recall being involved in these decisions and it appears from the submission quoted above that Hazel was handling this issue, although a memo from her office dated 31 March 2003 says that she felt that SofS should be aware, which is presumably why this submission and draft letters were copied to my Private Office. I do not believe I would have seen them, although I feel that, if asked, I would have supported the position that Hazel adopted.

Q9, 10: Reasons for Opposing a Scheme for Hepatitis C Financial Support

20.4. I have been asked a number of questions by the Inquiry about my reasons for opposing the introduction of a scheme for the financial support (or compensation) of those who had been infected with Hepatitis C through NHS treatment. In particular, the Inquiry has referred to:

- *Q9: A newspaper article dated 1999* **[DHSC0038695_072]** *noting that in 1995 I signed an early day motion (EDM) in 1995 in favour of Hepatitis Compensation for haemophiliacs* **[SCGV0000170_215]**.
- *Q10: The fact that there were financial support schemes for those infected with HIV via blood and blood products; and*
- *The fact that a compensation scheme for a compensation scheme for victims of vCJD was announced during my tenure.*

20.5. In relation to why I changed my position from supporting an EDM in 1995, to supporting the Government's position that no support scheme should be introduced when in office from 1999 onwards, by the latter time I had the opportunity to more properly assess the arguments both in favour and against doing so. As Mr Graham Ross, the solicitor acting for a number of haemophiliacs during the DH, put in in a letter to me I have been shown **[SCGV0000170_212]** *"I fully appreciate that even though, as a backbench MP, one sees the strength of the moral argument, that, on entering Cabinet and, in your case, taking charge of the relevant Department of State, that you may then become aware of priorities and issues that perhaps could lead you to take a different view."* Clearly these are matters of judgement and the arguments in cases like this are often evenly poised. As is evident from the documents I have read, Ministers were extensively engaged in assessing the right course of action over a long period of time and were listening carefully to all the arguments in favour of a compensation scheme. I and they were aware of the personal tragedy that had been caused to those who find themselves affected. But from memory I was concerned about a number of issues that tipped the argument against paying financial compensation.

20.6. Firstly, in the NHS compensation was usually given only when either the NHS or those working in it have been at fault. That is, where there has been some negligence established and the damage can be attributed to it. That was not, to my understanding, the case with hepatitis C infection. There was not a "no-fault" compensation scheme in place, and it was important that individual decisions did not lead incrementally to the establishment of one without an in-principle agreement across government that such a change was in the interest of patients, both those from the past and those in the present and the future. I asked the CMO to consider these issues as part of his review of the clinical negligence system and he rejected the idea of adopting such an approach (see the report "Making Amends" published in June 2003, which canvassed the arguments for no-fault compensation but set out proposals for redress to be offered when there had been seriously substandard NHS care).

20.7. Secondly, although Governments occasionally made ex-gratia payments to patients - for example, in the case of haemophiliacs with HIV and the families of people with variant CJD - these were in truly exceptional circumstances that did not apply to Hepatitis C. When HIV first emerged as a disease, it was almost undoubtedly the case that people would die quickly in dreadful circumstances as a result. There was no treatment available. The same applied to vCJD. If you got it, it was a death sentence - and a gruesome one at that [**WITN6942022**]. None of this is to take away from the fact that those with Hepatitis C also suffered, often very seriously and sometimes fatally, as a consequence of their condition, but thankfully in some cases treatment was possible and death could be avoided. I am, of course, aware that the distinctions were fine ones and that these lines were difficult to draw. It is also true that with each new "exemption" the general rule against paying compensation was somewhat weakened.

20.8. Thirdly, however, the financial costs of paying compensation to Hepatitis C sufferers would have been considerable. The Haemophilia Society put forward a proposal for a scheme that the Department estimated would have cost about £500 million over 10 years, for example. As Secretary of State, I had to make judgements about what to agree to and what not. It was - and is - not possible to say yes to every proposition for spending public resources, however well motivated or good the cause. I was responsible for determining priorities and had done so through decisions such as those contained in The NHS Plan and other policies.

20.9. Fourthly, there was a risk that in agreeing to financial support for Hepatitis C sufferers it would open the door to other claims to do likewise. Again, I am sure that there could have been good arguments made for doing so, but in government priorities have to be chosen and lines have to be drawn. In relation to the 'precedents' or 'floodgates' arguments, these were raised by officials. Whilst, as I have explained, I do not remember seeing this submission at the time, the parallels with the arguments made by other groups were set out in the submission of 19 July 2001 to Yvette Cooper [**DHSC0042461_182**]. This detailed that a number of "current" groups might potentially have argued that a decision to provide financial support to those with Hepatitis C should also be applied to their cases:

(i) RAGE (the Radiotherapy Action Group);

(ii) The Bristol Royal Infirmary Inquiry cases;

(iii) Retained Organs;

(iv) Myodil Action Group (a group seeking compensation for alleged injury following use of Myodil, a diagnostic agent);

(v) MMR Vaccines claimants;

In each case the DH had been resisting making payments in the absence of established legal liability.

20.10. Fifthly, we chose to provide financial support to Hepatitis C sufferers through investment in services and treatments rather than compensation. During my tenure as Secretary of State, for example, combination therapy (interferon with ribavirin) was referred urgently to the National Institute for Clinical Excellence (NICE) in August 1999 (NICE having been established in April 1999). NICE recommended in October 2000 that patients suffering from moderate or severe Hepatitis C should be given combination therapy. Although I am aware that despite the improvements in therapies, combination drug treatments appeared to be successful in around only 40% of cases, still we asked the NHS to put this in place quickly and we also placed a legal obligation on the NHS to implement NICE recommendations so that funding would be made available to follow the clinical decision-making and to tackle to the problem of "postcode prescribing". In addition, (i) the Hepatitis C strategy document was published in August 2002, which made explicit the government's commitment to public health awareness work (including to combat stigma), prevention and treatment for all those who suffered from Hepatitis C; and (ii) DH Ministers recommended that pegylated interferon treatment for Hepatitis C (which appeared to have a higher success rate than combination therapy) should be included in NICE's work programme in February 2002 [**DHSC0032036_004**], although the NICE assessment would have been concluded after I left office as Secretary of State. These decisions were consistent with a broader determination Ministers had to tackle infectious disease. The CMO's report on this issue

"Getting ahead of the Curve", published on 10 January 2002, was a milestone statement about orientating the care system to pursue that objective.

Section 3: Consideration of a Public Inquiry

21.1. I have been asked what consideration I gave or (to my knowledge) the Government gave to calls for a public inquiry, during my time in office.

21.2. I have answered this by reference to my time as Secretary of State.

21.3. I have already explained how decision-making was delegated in DH so that the responsible Ministers were, I believe, Phil Hunt and then also Yvette Cooper and her successors, rather than me. I can see from the documents that I have been shown for this Statement that the issue of a public inquiry was mentioned in a number of documents, eg the 'options' paper sent to Yvette on 2 July 2001 **[SCGV0000243_051]**, copied to my office. However, as far as I am aware, there was never any formal submission from officials put to me for decision that canvassed the arguments for or against a public inquiry.

21.4. To the extent that I can now reconstruct my thinking on this issue, I have dealt with this below. However, I would stress that it is based on trying to remember what I may have thought at the time – there is no documentary record, as far as I am aware, which sets out what I actually thought almost two decades ago.

Q22: Reasons not to Establish a Public Inquiry

22.1. I have been asked to set out my understanding of the Government's reasons not to establish a public inquiry during my time in office.

22.2. I cannot speak for the reasons of all in office at the time. For my part, I cannot recall being asked to consider establishing a public inquiry and I believe at the time would probably not have agreed to one if I had been. I believe that I would have taken this decision based on the following.

22.3. First, there was no evidence at the time that I was aware of suggesting there had been wrongful action or serious fault on the part of the NHS system. Of course, I appreciate that this was contested, e.g., by campaigners, and it is also true that individuals had been harmed; I like other Ministers had nothing but sympathy for those infected and affected. But the background to this tragedy seemed to be reasonably well understood. Whilst I fully appreciate that, again, this is very controversial, Ministers were being briefed on this basis at the time; thus, I note that the "options paper" to which I have referred at paragraph 21.3 above stated "Relevant facts largely established; information in the public domain".

22.4. Reviewing papers for this statement, I have also been made aware of the fact that by July 2002, an initial review of DH papers relating to self-sufficiency and events in the 1970s and 1980s had been undertaken and the results shared with the Haemophilia Society; but it had also been agreed that a further and more detailed review was to be conducted by officials (see the briefing for Hazel Blears at **WITN6942023**, with its Annexes at **WITN6942024**). This was expected to take some 4 – 5 months or so. I do not believe that I was made aware of this review at the time; but I suspect that had I been informed of it, I would have wanted to see the results of the study, to see whether it supported the case for a public inquiry or not.

22.5. Meanwhile, it certainly seemed that there was an active and well-informed debate about infected blood and its consequences taking place in the public domain. Further, from what I have seen from the documentation I have reviewed for this statement, it seems that at the time the main focus of that public debate was on securing financial support, and it was on this that Ministers chiefly concentrated.

22.6. Secondly, although there were no formal criteria for when a public inquiry should be established, I believe I would have considered that they could be helpful where there was substantial doubt about events that had happened, where it appeared there had been systemic negligence or serious fault on the part of the care system and where lessons had arguably not been learned. I do not think that I would have concluded that a Public Inquiry would have been justified on these grounds. In relation to this last point, whilst I appreciate that there had not been a review or "lessons learned" exercise, there had also been a great deal of change in the NHS since the 1970s and early 1980s (when many key events had taken place). My focus was inevitably on dealing with more current issues than those that had taken place, in some cases, three decades before I was in office.

22.7. Thirdly, in weighing up the merits of a Public Inquiry one would have had to assess benefits against costs. There were a number in motion across government in the period from 1999 – 2003, when I was in office. They included:

- *The Bristol Royal Infirmary Public Inquiry*: this was established by Frank Dobson in June 1998 and reported in July 2001. The DH Response to "Learning from Bristol" was presented to Parliament in January 2002.
- *The Shipman Inquiry*: the establishment of this inquiry was announced by me on 1 February 2000. Initially this was planned to be a private inquiry which would report in public, but it was reconstituted as a full public inquiry after a successful judicial review application (July 2000). Dame Janet produced five reports: the first was on 19 July 2002 (extent of Dr Shipman's unlawful activities). The second (conduct of the police investigation) was published on 14 July 2003. The third (Death Certification and the Investigation of Deaths by Coroners) was presented to Parliament in July 2003 (with a foreword dated 10 June 2003, still addressed to me as SofS). Thereafter, the fourth report, concerning the regulation of controlled drugs in the community, was published on 14 July 2004 and the final one was published on 27 January 2005.
- *The Climbié (or Laming) Inquiry* – this was established jointly by DH and the Home Office in April 2001 and reported in January 2003. The government response in the form of "Keeping Children Safe" (DH, DfES, HO) was published in September 2003.

- *The BSE Inquiry, under Lord Philips*. This involved both DH and MAFF. It had been established in December 1997, and reported in October 2000, as set out above.

22.8. I was involved with establishing other forms of inquiries - short of a full Public Inquiry - dealing with issues that came to light during my time in office, such as:

- The Royal Liverpool Children's Inquiry (the Alder Hey Inquiry). The establishment of this confidential Inquiry was announced by Lord Hunt on 3 December 1999. The report was published on 30 January 2001 and ultimately led to the Human Tissue Act 2004.

22.9. Each was a lengthy and complex operation that inevitably involved a large expense to the public purse. In the case of The Bloody Sunday Inquiry, for example, it had been established in 1998 and was still ongoing when I was in office, eventually finishing in June 2010. By then the total cost was £191m. Closer to home, I believe the Shipman Inquiry's total cost was eventually £21m. The BSE Inquiry cost was approximately £26 million, and expenditure on the Kennedy Report was said to be £14 million. The true costs would have been far higher, of course, since the quoted costs only represent those incurred by the Inquiry itself (together with any groups funded directly by each Inquiry). The costs of the public bodies engaging with each inquiry will have been separately accounted for. In part, making decisions to establish an Inquiry is a resource allocation decision. The money spent on an Inquiry could have been spent instead on direct patient care, for example. Furthermore, the reality is that each Inquiry occupied a large amount of Ministerial and civil service time, at a time when there was already a huge policy and delivery agenda in play.

22.10. As I indicate above, I cannot recall being asked to establish a Public Inquiry and nor can I recollect what my view might have been at the time if I had. Like every Health Minister who dealt with these issues I had huge sympathy for those infected and affected, but the reasons I outline above would, I believe, have contributed to me deciding, if I had been asked, not to establish a Public Inquiry into the issues that are being examined today.

Q23: Inquiries Abroad

23.1. I have been asked what part, if any, did the establishment and findings of inquiries in other countries such as Canada (inquiry established in 1993) and Ireland (inquiry established in 1999) play in the Government's decision not to hold a full public inquiry during my time in office.

23.2. I cannot now recall being made aware of these other inquiries at the time.

23.3. I have, however, been shown a letter that I received from my Ministerial colleague Baroness Margaret Jay in which she referred to the Irish Hepatitis C Tribunal and my reply [**CABO0000123_006**, **CABO0000123_013**]. I have also been shown a letter from Lord Hunt responding to campaigners in which he writes:

"I note that in his letter Mr [redacted] mentions that the haemophilia community has asked for a public enquiry. A number of other countries have held public enquiries into a similar situation and have offered compensation to those affected. These are, however, matters for those countries to decide taking account their own particular circumstances. Whilst the Government has great sympathy for those infected with hepatitis C and has considered the call for a public enquiry very carefully, we do not think it is the way forward." [**HSCO0002025**]

23.4. Phil's response seems to me to be appropriate. Inquiries had been established and compensation paid in some countries - a minority from what I understand - but in circumstances that were very different from the situation in the UK. I assume that officials would have briefed Ministers accordingly.

Q24: Views of Campaigners and Others

24.1. The Inquiry has noted that it has heard evidence from campaigners and from the former Secretary of State for Health, Lord Fowler, that the Government should have established a UK-wide public inquiry before now [**INQY1000144**; **INQY1000145**].

24.2. I have been asked to set out my present views on this observation. As set out above, the notion of a public inquiry was not, as far as I am aware, something that I gave personal consideration to during my time in office and nor am I aware that I was personally advised to consider the merits of such an Inquiry. As I indicate above, if I had been asked, I would probably not have agreed to one at the time. Of course, I understand why those affected by the issues in this case would wish to have a Public Inquiry. I am sure that they have appreciated the opportunity to have all of the issues aired in an open and transparent way. To that extent this Inquiry is welcome, but I believe the utility of this – like all other public inquiries - has also to be judged by what it finds, i.e., whether through the public inquiry process there is significant new evidence brought to light that was not previously known and, critically, what outcomes it achieves.

24.3. I hope it succeeds in those regards and that my evidence helps that process.

Q25: Any other comments

25.1. I have been asked if I wish to add any further comment about matters of relevance to the Inquiry's Terms of Reference.

25.2. I do not have any further comments to make about events, but I would like to reiterate my very real sympathy and concern for all those who have been affected by the issues raised during the Inquiry. I hope that my evidence will be of assistance to the infected victims and their families, as well as to the Inquiry itself.

Statement of Truth

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

Section 3: Consideration of a Public Inquiry

Signed **GRO-C**

Dated 27 May 2022