

FIRST WRITTEN STATEMENT OF SIR HUGH HENDERSON TAYLOR

Witness Name: Sir Hugh  
Henderson Taylor

Statement No.: **WITN7498001**

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**WITN7498013**

Dated: 12/01/2023

INFECTED BLOOD INQUIRY

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HENDERSON TAYLOR

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## **Section 1: Introduction, opening comments, employment history**

I, Sir Hugh Henderson Taylor, will say as follows: -

### **Introduction**

- 1.1. My full name is Hugh Henderson Taylor, and my date of birth and home address are known to the Inquiry.
- 1.2. I am providing this written statement in response to the Inquiry's Rule 9 request dated 3 November 2022. I was the Permanent Secretary of the Department of Health (the **Department**) between March 2006 and 31 July 2010.

### **Opening comments**

- 1.3. At the outset, I would like to express my personal sympathy to those whose lives have been affected, and in some cases blighted, by the tragedy that this Inquiry is seeking to address.
- 1.4. Before providing my responses to the questions posed by the Inquiry, I should say that my engagement with the issues that fall under the Inquiry's terms of reference whilst I was Permanent Secretary at the Department was relatively limited and largely confined to particular areas as articulated in this statement. Some explanation of why this was the case may be helpful.
- 1.5. **First**, this was not an area of Departmental policy with which I was familiar, and I cannot claim to have explored the questions raised by the terms of reference or in the Rule 9 request in any depth either at the time or since. Moreover, had I needed to do so at the time, I would have been very conscious that this and related issues of Departmental policy fell under the overall oversight of the Chief Medical Officer (**CMO**). The policy issues fell within the Health Protection, International Health and Scientific Development Directorate with Dr David



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Harper as Director General of that Directorate. Although for managerial purposes that Directorate reported to me during this period, there was also a separate reporting line to the CMO on the policy and related issues that it covered. I would not, therefore, have intervened on any issue of policy substance in this area without the CMO's involvement.

- 1.6. **Second**, these issues did not engage the Secretaries of State for whom I worked in a way that demanded or prompted my attention from a policy, as opposed to a handling, perspective. That is not a comment on the underlying importance of these issues, which I recognise were live and being raised at the time. It is simply a reflection of the reality that, for almost all this period, the Government of the day, amidst all its other priorities and with all the other pressures on it, took a reactive rather than a proactive approach to these issues. They were therefore handled principally by Ministers rather than the Secretary of State (principally the Ministers of State for Public Health), with little or no direct or routine engagement with me, except in limited circumstances, for the reasons set out below.
- 1.7. As the Permanent Secretary of the Department, I was the Principal Accounting Officer and personally responsible for the overall management of the Department. I also worked closely with successive Secretaries of State on their priorities for the Department. These ranged from stabilising the finances of the NHS in 2006/7 and securing positive outcomes from subsequent spending reviews, through a series of major policy initiatives on the NHS, public health and social care and legislation in all these three areas, to – in the period of the Labour Government – oversight of the delivery of significant commitments in the Department's Public Service Agreements covering 'Better Health', 'Better Care' and 'Better Value' (which were closely monitored by the Treasury and Number 10).
- 1.8. My role was to provide direct personal advice, support and challenge to the Secretary of State as needed and more widely to ensure that the Department

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as a whole provided effective support to Ministers in taking forward their agenda and in managing their accountability to Parliament and the public. As well as debates and questions in Parliament, this would for example include: appearances before Select Committees; the need to prepare for and respond to major incidents such as the H1N1 pandemic and the Litvinenko poisoning; the formulation of responses to critical external reports such as the Healthcare Commission reports on Maidstone and Tunbridge Wells NHS Trust and Mid-Staffordshire NHS Foundation Trust; and commissioning and responding to inquiries set up by Ministers on topics such as Modernising Medical Careers (carried out by Professor Sir John Tooke), NHS Co-Payments (carried out by Professor Sir Mike Richards) and the inquiry into the handling of the H1N1 pandemic (chaired by Dame Deirdre Hine).

- 1.9. Over this period, I took a close interest in all the submissions and papers that went to the Secretaries of State for whom I worked; and I attended virtually all the meetings which they called with other Ministers, Special Advisers and the relevant officials to discuss and make decisions on a wide range of policy, strategic and handling issues. I also held weekly, more informal, meetings with all four Secretaries of State, usually accompanied by the NHS Chief Executive. During one such meeting with Patricia Hewitt on 19 or 20 March 2007, the procedural issue concerning engagement with Lord Archer's Inquiry was one of the issues discussed (see Section 5 of this statement below). However, in none of the meetings with the Secretaries of State I served – amounting to some hundreds of meetings – do I recall there being a substantive policy discussion (which would certainly have needed to involve the CMO) about the Government's stance on the issues covered by the Inquiry's terms of reference or by the Rule 9 request. Nor have I seen any documentary evidence that suggests such a meeting took place.
- 1.10. **Third**, in carrying out the role of Permanent Secretary I would very rarely become directly involved myself in the preparation and clearance of submissions to Ministers (unless they related to a major set piece engagement

with the Secretary of State). They would go direct from the policy teams concerned (the level at which they were cleared being a matter for the senior officials in the reporting line). That is the established practice throughout the Civil Service, and the sheer volume of work that goes to Ministers makes any other course impracticable. (Indeed, from time to time, particularly early on in my time as Permanent Secretary, I had to intervene to ensure that senior officials recruited from outside the Civil Service did not try to channel all the work going to Ministers through them, because of the bottlenecks this caused – to the frustration of the Ministers concerned). Nor would I normally attend meetings between Ministers other than the Secretary of State and the policy teams working for them. From time to time one of these Ministers would ask for my advice or support on the handling of a particular issue and very occasionally for my direct intervention if they were particularly concerned about the advice they were being given. But to the best of my recollection, this did not arise on any of the issues on which I have been asked to give evidence.

- 1.11. My Private Office was of course routinely copied into submissions to all Ministers; and when I was first appointed and for some time thereafter, I did make a practice of reading quickly through almost all these submissions and the Ministerial responses. This limited form of 'quality control' was not with a view to 'clearing' the submissions, or in truth to engage in the substance of the issues they covered in any depth. Instead, it was to get a sense of the quality of work going to Ministers and of strengths and weaknesses in policy areas across the Department, to which I could respond managerially over time. It did also mean that, from time to time, I would raise a question on a particular submission, flag a concern, or ask for further information about the background if it was on an issue of potential significance to the Department. An example of me asking such a question is my query on the submission of 26 May 2006 asking what was driving the calls for a public inquiry (see paragraph 4.4 below).

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1.12. I was conscious that there was a wide consensus at this time that the 'Department of State' functions<sup>1</sup> of the Department had been undervalued and, to some extent, under managed in the preceding period because of the overwhelming focus on delivery by the NHS of the Government's priorities for the NHS. This was a particular concern of Patricia Hewitt when she was the Secretary of State; and I was as committed as she was to raising the profile and quality of support for Ministers on policy and accountability issues, particularly, though not exclusively, from areas dealing with NHS reforms. I was not surprised, therefore, to see that my one documented interaction with a Secretary of State on the issues covered by the Rule 9 request related to what Patricia Hewitt must have seen as an example of the need, from a Ministerial perspective, for a more nuanced approach to the handling of an issue (in this case the response to Lord Archer's letter about the inquiry he was about to chair) on which she knew I would be sympathetic to her concerns and would follow them up accordingly.

1.13. Over time we were able to strengthen the leadership of key policy areas and the support they were given; and as the overall quality of work going to ministers improved, so the need for me to take such a close – by Whitehall standards for a Permanent Secretary, I suspect, an unusually close – interest in 'routine' policy submissions diminished. But the overall number I did see and look through no doubt in part accounts for the fact that I have no personal recollection of the Ministerial submissions referenced in the documents that have been made available to me for the purpose of responding to the Rule 9 request.

1.14. One clear exception to – and categorical difference from – the general practice on clearance of submissions and related handling issues would, of course, have been where my formal role as Permanent Secretary in terms of the

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<sup>1</sup> By 'Department of State' functions I am referring principally to policy advice and briefing to Ministers in support of their statutory functions and their accountability to Parliament, including engagement and consultation as appropriate with other Government Departments, both directly and through the formal processes of Cabinet and Cabinet Committees.

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Department's responsibilities for the handling and disclosure of the records of previous administrations was engaged, rather than my role as policy adviser to Ministers. A significant proportion of the documents to which my attention has been drawn for the purpose of the Rule 9 request have to be seen in that context: namely submissions direct to me, or requests for clearance from me before submission to Ministers, where formal processes governing the disclosure of the records of previous administration were engaged, either in response to a Freedom of Information Act (**FOI**) request, or following the discovery of past documents, or in the exercise of the Government's overall commitment to transparency on this matter.

- 1.15. Another case, by way of exception, of policy officials routing some submissions to Ministers on infected blood matters through me was where they touched on devolution issues. This was the case in relation to Scotland's own decision to have an inquiry (what became the Penrose Inquiry). Issues having a significant bearing on devolution or the handling of devolved issues that were sensitive as between the Department and the devolved administrations would need to be drawn to my attention. In relation to Scotland, in particular, the SNP victory in 2007 meant that there was potential for divergence between Westminster and the Scottish Executive. Such issues had a political currency for Ministers at the time that required me to be aware of how they were being handled.
- 1.16. It follows from the above that, not only did the events raised with me by the Inquiry occur between 12 and 16 years ago, but my role in them was also relatively limited. In addition, I am afraid I have no personal recollection of them. My responses to the questions raised are not, therefore, based on direct recall of these events or interventions at the time, but from my reading and interpretation of the documents supplied to me by the Inquiry or retrieved and provided to me by my legal advisers from the Department's records – and in one or two instances tentative reflections on them with the benefit (and limitations) of distance in terms of time and perspective.



## **Employment history (Q2/3)**

1.17. I graduated from Emmanuel College, Cambridge in 1972 with a BA in English Literature.

1.18. I joined the Home Office in September 1972 and undertook a series of policy and managerial roles, including a stint as Private Secretary to a Minister of State, culminating in my appointment as Principal Private Secretary to the Home Secretary (1983-85). The following section sets out the rest of my employment history in the Senior Civil Service:

- (1) I was an Assistant Secretary in the Prison Service, Home Office, dealing with life sentences and parole, between 1985-88 and then between 1992-1993 dealing with personnel. Between 1988-91 I was seconded to an Assistant Secretary post in the Cabinet Office dealing with security policy.
- (2) I returned to the Cabinet Office between 1993-6 as Director of the Civil Service Employment Group.
- (3) I then returned to the Home Office as Director of Administration and Services in the Prison Service and on the Prison Service Board between 1996-97.
- (4) In 1998 I joined the Department of Health as Director General of Human Resources for the NHS and a member of the Board of the NHS Executive, joining the Board of the Department of Health in 2000. I occupied this role between 1998-2001.
- (5) Between 2001 and 2006 I occupied two overlapping roles as a Director General in the Department of Health, first as Director General, Corporate Affairs between 2001-3, then incorporating that role with an expanded remit as Group Director, Strategy and Business Development between 2003-6. Throughout this period, I remained on the Departmental Board and its equivalent for the NHS.
- (6) In March 2006, I became Permanent Secretary at the Department of Health, succeeding Sir Nigel Crisp who had been both Permanent Secretary and Chief Executive of the NHS. That arrangement ceased on

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my appointment. Sir Ian Carruthers took over as interim Chief Executive of the NHS in March 2006, until the appointment of Sir David Nicholson in September 2006. I remained Permanent Secretary until 31 July 2010 when I was succeeded by Dame Una O'Brien, after an interim period in which Richard Douglas covered the role.

- 1.19. From 2011, I was Chairman of Guy's and St Thomas' NHS Foundation Trust and, from 2019, also the Chairman of King's College Hospital NHS Foundation Trust. Both appointments ended on 30 November 2022 following the appointment of my successor in both roles.
- 1.20. I am the Chairman of the Health Foundation since 2017 and a trustee of the Cicely Saunders Institute since 2011. I have also been the Chairman of the National Skills Academy for Health between 2013-2017, a trustee of Macmillan Cancer Support between 2011-2017, the Nuffield Trust between 2011-2017, the Royal College of Physicians between 2011-2014, and of the James Allen Girls School between 2008-2016.
- 1.21. Specifically in relation to the position of Permanent Secretary of the Department of Health, my roles and responsibilities are described above in paragraphs 1.5 to 1.15, above.

### **Memberships (Q4)**

- 1.22. I am not a member of any, past or present, committees, associations, parties, societies or groups relevant to the Inquiry's Terms of Reference.

### **Previous evidence (Q5)**

- 1.23. I have not provided evidence or been involved in any other inquiry, investigation, or litigation relevant to the Inquiry's Terms of Reference.

## Section 2: Destruction of documents

### Seniority to make document retention decisions (Q6)

- 2.1 I have been asked about my understanding of the level of seniority required to make document retention decisions, with specific reference to a letter sent (before I had assumed my role as Permanent Secretary) on 9 February 2006 by Patricia Hewitt (the Secretary of State) to Charles Clarke MP regarding the Department's practices on retention of records [HSOC0009274].<sup>2</sup>
- 2.2 In that letter, Patricia Hewitt stated that, according to the then current guidance, retention decisions were made by officers of (at least) Executive Officer grade, appointed by senior officers and, later in the letter, that recommendations were implemented to update the guidance.
- 2.3 The Rule 9 request suggests that Patricia Hewitt's letter had "... *stated that recommendations were implemented to update the guidance which included ensuring that retention decisions were made by staff at a higher level of seniority.*" That is not quite an accurate summary of Patricia Hewitt's letter. The letter set out that one of the recommendations arising from the earlier internal review was "*ensuring that retention decisions are only made by staff at a higher level of seniority or with sufficient knowledge and experience to make such decisions*" (emphasis supplied to text missing from the Rule 9 request).
- 2.4 In answering this question, I must emphasise that I had no dealings with the Department's retention policies as this was the remit of the Departmental Records Office. I do not recall ever giving personal attention to the question of the level of seniority required to make the decisions relating to retention periods. Had I needed to, I would have asked the team responsible for record management in the Department. That said, my working career started in an era

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<sup>2</sup> The Inquiry has also provided me by way of background with a copy of Patricia Hewitt's earlier letter to Charles Clarke dated 25 November 2005 [HSOC0009249]. Again, this was sent before I was Permanent Secretary.



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where there were only paper documents. Attention to accurate record keeping was therefore seen as particularly important. I remember being concerned at a general level as communications became more and more electronic based that electronic records may not be being kept as rigorously as the old paper files should have been<sup>3</sup>; and I recall during my time in the Department supporting campaigns run by our records management team on the importance of careful record keeping in this environment. I also think it is important to note at this juncture that not every single document and communication is required to be retained; it is only those that are important enough for the record (for instance, ministerial submissions and the decisions made) that should be retained. I will return to this point in Section 3.

- 2.5 Based on Patricia Hewitt's letter, the position by 2006 would appear to have been that decisions on document retention were permitted to be made above Executive Officer level or at Executive Officer level but only if the individual had sufficient knowledge and experience to make such decisions.
- 2.6 The Inquiry has also referred me to a briefing note dated 11 May 2006 entitled "Blood Products – Destruction of Records" outlining the incident regarding the destruction of documents in the mid-1990s [DHSC0041198\_026]. This briefing note was not copied to me or my Private Office and I do not believe I would have seen it at the time, but I note the following:

### *"Key Messages*

*5. Decisions on retention and destruction of records may be made by relatively junior staff (IP2 or above)*

*6. Line managers at all levels are responsible for ensuring that record keeping in their areas is consistent and meets Departmental standards. This includes making sure that staff making decisions on records retention and destruction are "sufficiently aware of the administrative needs of the section to be able to make the decisions".*

*7. There was no deliberate attempt to destroy past papers.*

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<sup>3</sup> In this regard, I note the letter from Sir Nigel Crisp to Lord Jenkin dated 1 December 2005 [WITN3996019] stated: "A key development in the Department over the past few years has been the introduction of an electronic records system to help keep track of e-mail and a range of other electronic records.", which reflects the transition during the preceding years.

*8. When the discovery was made that files had been destroyed, an internal audit report led to improvements in guidance and procedures on record keeping...*

*9. This review led to recommendation for a number of records management improvements, including:*

*....*

*Ensuring that retention decisions are only made by staff at a higher level of seniority or with sufficient knowledge and experience to make such decisions ...*

*These recommendations have been put in place, and with guidance already in use should help prevent such errors in future."*

- 2.7 This briefing note therefore supports what is said in Patricia Hewitt's letter, namely that retention and destruction decisions could be made by relatively junior staff (IP2 or above, equating to Executive Officer or above) provided they were aware of what documents were required to be retained to allow the Department and its various sections and teams to properly function. In this regard, I also note the following passage contained within a background section entitled "Record Keeping" to a briefing paper relating to a parliamentary question raised by Lord Jenkin in May 2006:

*"The Department operates well-established policies and procedures for the review and disposal of files in accordance with its administrative needs and the Public Records Act.*

*These policies and procedures aim to prevent records being destroyed erroneously, but also to ensure that records are not kept after their administrative value is over. The effectiveness of the processes depends on the judgment of individuals in selecting records for long term retention, and the availability of resources to carry out records management processes."* [DHSC0015839].

## **Briefings on destruction of DH documents (Q7)**

- 2.8 I have been asked to outline any briefings I had in relation to my predecessor, Sir Nigel Crisp, and the destruction of Departmental documents upon my assuming the role of Permanent Secretary<sup>4</sup>.

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<sup>4</sup> The Inquiry has referred me to the following documents by way of background information: [WITN3996006]; [WITN3996019]; [WITN3996022]; [DHSC0015839]; [ARCH0000866]; and [ARCH0002968]

- 2.9 I do not recall receiving any specific briefings on the issue of the destruction of records in relation to infected blood matters from my predecessors.
- 2.10 I also do not recall this correspondence with Lord Jenkin or receiving any briefings on his request to retrieve papers from his time in office. I would have expected to be made aware of any outstanding or new requests from a former minister wishing to retrieve their papers (because it related to a past administration, and as such was something that would need to be dealt with by the Permanent Secretary rather than ministers); however, I would not have expected to have received a briefing on Lord Jenkin's request as it appears from the documents to which I have been referred by the Inquiry<sup>5</sup> that the request was made, and was responded to, prior to my appointment as Permanent Secretary.

### **Knowledge and understanding concerning destruction of Departmental papers (Q8)**

- 2.11 I have been asked about my knowledge and understanding when I first joined the Department about how the Department's papers had come to be destroyed, with specific reference to an exchange in the House of Lords between Lord Jenkin and Lord Warner on 19 April 2006 in which it was said that papers had been "*destroyed in error*" [WITN3996024].
- 2.12 When I first joined the Department in 1998, I had no knowledge - specific or otherwise - about the destruction of Departmental papers, nor would I have expected to. Over time, I would have become aware (in general terms) of the controversy over the destruction of documents in the mid-1990s referred to in the exchange between Lord Jenkin and Lord Warner. I was certainly aware of the issue by 2 June 2006 at the very latest as it appears that, on or before that date, I read a minute from Gerard Hetherington to Rebecca Spavin dated 26

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<sup>5</sup> [WITN3996006]; [WITN3996009]; [WITN3996019]; [WITN3996022]

May 2006 that (amongst other things) referenced the two incidents (see further paragraph 4.4 below).

### **Return of papers and further investigations (Q9)**

- 2.13 The Rule 9 request states that the Inquiry understands that documents disclosed by the Department in the HIV and Hepatitis C litigation proceedings were retained by several of the claimant solicitor firms and were returned by two firms to the Department in 2006<sup>6</sup>.
- 2.14 In an email from Jacky Buchan (APS to Caroline Flint) to Gerard Hetherington on 2 June 2006, it was said that Caroline Flint felt that it was insufficient to state that the papers returned by the solicitors were in secure storage as per departmental procedures [DHSC5414762]. I have no direct knowledge of why this was said. From my reading of this document, however, it appears to have been a reflection on the fact that Departmental procedures had not been sufficient to ensure that such documents were adequately stored originally.
- 2.15 In this regard, during the course of preparing this witness statement, my legal representatives have shown me an email from Gerard Hetherington to Jacky Buchan, which was copied to Gregory Hartwell (my APS), dated 5 June 2006 [DHSC5415371] in which he attached a revised draft letter to Lord Jenkin [WITN5427014]. Although I do not recall seeing this email or the revised draft, I think it is likely that Gregory would have referred it to me as the documents show that I had read the earlier submission dated 26 May 2006 and had raised queries regarding the pressure for a public inquiry (see paragraph 4.4 below). The revised draft letter removed the reference to the files being stored under secure Departmental procedures, and instead referred to them as being held securely by the Department's solicitors who were arranging for independent

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<sup>6</sup> [DHSC0041304\_052]; [DHSC0041159\_226]; [DHSC0041159\_227]; [DHSC0041159\_228]; [DHSC5428781]; and [DHSC5438932]

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counsel to prepare a list of the documents (the original draft referred to the files being in the hands of the Department's solicitors [DHSC5415341]).

2.16 I have been referred by the Inquiry to an email exchange between William Connon, Gerard Hetherington and Alisa Wight (amongst others) on 25 May 2006, which stated "*it would be helpful to compile a definitive list of all the sets of documents which have been destroyed ... when they were [de]stroyed (if we know), circumstances of destruction*" [DHSC0200125]. I was not copied into this chain of emails, nor does it appear that my Private Office was, and I have no recollection of this point being discussed. I would also note a submission from Gerard Hetherington to Rebecca Spavin dated 26 May 2006, which was copied to my APS Greg Hartwell [DHSC0041159\_205]. At paragraph 5 of this submission, there was reference to the intention of establishing more information about the papers destroyed following the HIV Litigation and the circumstances of their destruction; and it is apparent from a subsequent email from Greg Hartwell dated 2 June 2006 that he had shown it to me for my information and that I had read it [WITN7498002].

2.17 The Inquiry has also asked me to consider an exchange of emails on 26 May 2006, which included an action proposed by Rebecca Spavin (in Lord Warner's office) that Ministers' Private Offices would contact the CMO and myself to explain the seriousness of the issue and that this may need the CMO and me to "*step in*" [DHSC5286062]. It is not immediately clear from the email what it was proposed we would be asked to step in to assist with, although I think from reading these emails it is most likely to have been around the issue of staff resourcing for the proposed review of documentation which was under discussion at the time. I have no recollection of being asked to "step in" and I do not know whether the CMO was asked to do so. I note, however, the response from Gerard Hetherington to Rebecca Spavin's email, in which he stated that "*I do not think it will be terribly helpful for private offices to contact CMO or Hugh Taylor. I hope we can sort it out ourselves...*". This suggests that senior officials were seeking to grip the concerns themselves and did not feel



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the need to escalate it to me or the CMO at that time. I also note that this exchange was followed by a minute from Gerard Hetherington to Rebecca Spavin also on 26 May 2006 where (at paragraph 3) he explained what was being done on resourcing [DHSC0041159\_205]. That minute was copied to my Private Office and in an email from my APS Greg Hartwell to Gerard Hetherington dated 2 June 2006, he confirmed that he had shown it to me and that I had raised a question on it [WITN7498002].

2.18 I do not know what investigation or analysis may have been undertaken to establish whether any other firms of solicitors held copies of papers used in the litigation proceedings.

2.19 The minutes to which the Inquiry refers me in relation to the above show that Lord Warner and Caroline Flint were pressing for a range of actions to be taken and that Gerard Hetherington, as the Head of Health Protection, was working to ensure this was properly resourced. As I have indicated above, I was not involved in the issues on a day-to-day basis, and I would not have expected to be. As explained above at paragraph 1.10, policy advice and Ministerial responses were not routinely routed through me, nor by any means always involved me unless they became a matter for the Secretary of State. Here, Gerard Hetherington seems to have taken a range of actions to address Ministers' apparent concerns. Rightly, he had not seen it necessary to involve me, other than by copying my Private Office for information purposes explaining what action was being taken. That said, I note from Greg Hartwell's email dated 2 June 2006 that I did raise a query regarding what was driving the pressure for a public inquiry (which I shall return to below in section 4) [WITN7498002].

### **Macfarlane Trust waivers (Q10)**

2.20 I have been asked whether I had any involvement in trying to establish the whereabouts of Macfarlane Trust waivers and what investigations or analysis

was undertaken to establish what had happened to them. In this regard, I have been referred to [WITN1369008]; [WITN1369051] and [DHSC5468582].

- 2.21 As far as I can recall, I had no involvement in establishing the whereabouts of the Macfarlane Trust waivers, and I have seen no documentary evidence to suggest I had. I have no knowledge of any investigations or analysis undertaken to establish what had happened to them. Nor, for the reasons I have explained above in paragraph 1.10, would I have expected to have been involved in an issue such as this, which was more than capable of being handled by other officials.

### **Discovery of files at Wellington House (Q11)**

- 2.22 I have been asked about my knowledge of 47 files discovered at Wellington House during 2006 and what steps were taken following their discovery, if any. In this regard, I have been specifically referred to documents [DHSC5435884]; [DHSC5154769] and [DHSC0200135]. These were not copied to me or my Private Office at the time, and I therefore do not believe I would have seen them previously.
- 2.23 I do not recall whether or not I was made specifically aware of the discovery of the 47 files at Wellington House immediately after they were discovered. Consequently, I do not recall being told anything about the circumstances in which they were discovered. I would have become aware of their discovery in general terms from later documents which referred to them as part of the overall background to the issues, namely that they were unregistered files found in a cupboard.
- 2.24 I have been asked whether the discovery of these 47 files lead to any further investigations or enquiries into other unregistered files within the Department. I do not recall being told that further investigations would be made, but I return to this point at paragraph 2.28, below, when addressing the discovery of further

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documents in 2008, after which it appears that a division wide search was carried out.

2.25 As stated above at paragraph 2.4, there was a team in the Department responsible for record keeping, but I do not know whether they made any changes to the Department's procedures following the discovery of the files at Wellington House.

2.26 In relation to the discovery of a further 41<sup>7</sup> unregistered files at Wellington House in July 2008, I have been referred by the Inquiry to a number of documents<sup>8</sup>, and my legal representatives have provided me with a number of others<sup>9</sup>. These are mostly emails between officials and draft submissions between July 2008 and October 2008 relating to the discovery of these files, a review of their contents and the release of relevant documents to the Archer Inquiry and of a small number to Lord Owen. I was not copied into these emails, nor does it appear was anyone in my Private Office.

2.27 It appears that the first time I was made aware of the discovery of the further files was in or around early October 2008. The Inquiry has referred me to a submission dated 2 October 2008 from William Connon **[DHSC6694278]**. This submission was in the context of releasing documents from a previous administration to the Archer Inquiry and to Lord Owen as a former minister, which I needed to authorise as Permanent Secretary. In the course of preparing this witness statement, my legal representatives have provided me with a submission on the same issue from Liz Woodeson dated 6 October 2008, which is in a different form **[DHSC5276915]**. I do not now recall which submission I would have seen, but I suspect it was the latter from Liz Woodeson because (a) she was the more senior official; and (b) my legal representatives have found emails sending me Liz Woodeson's submission and from my private

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<sup>7</sup> There is a suggestion that it was in fact 43 files that were found – see **[DHSC5085320]**

<sup>8</sup> **[DHSC5533007]**; **[DHSC5532594]**; **[DHSC5114710]**; and **[DHSC5255116]**

<sup>9</sup> **[WITN7498003]**; **[DHSC5543013]**; **[DHSC5255116]**; **[DHSC6421017]**; **[DHSC6423102]**; **[WITN7498004]**; **[WITN7481007]**; and **[DHSC5085320]**



secretary giving my response to it, but have not found similar emails relating to William Connon's submission ([DHSC6428808] and [DHSC6714579]).

- 2.28 I note that neither submission gave any detail as to how the further files were found or why they were not identified earlier. It appears from the emails between officials leading up to the submission (which I would not have seen at the time) that the files were found somewhat by chance (see, for instance, [DHSC5532594] in which Laura Kennedy stated that she and Patrick Hennessy discovered the files while reorganising filing cabinets). Referring back to paragraph 2.24 above, I also note that point 4 of the submission from William Connon (which as I have said I am not sure was sent to me given the later submission from Liz Woodeson) stated that officials were conducting a division wide search of all cabinets to confirm that there were no further unregistered documents held by the Department. This may suggest that further investigations (or at least division wide ones) had not been made following the discovery of the first 47 unregistered files in 2006 but were made at this stage in October 2008.

### **Departmental report in May 2007 (Q12)**

- 2.29 The Inquiry has referred me to the Department's report, "Review of Documentation Relating to the Safety of Blood Products 1970 – 1985" published in May 2007 (the **Document Review**) [PRSE0000642]. I have been asked what involvement I had in identifying the issues in the section of the Document Review headed "Missing Files". I am also asked what steps I took to discover how the Department's papers relating to infected blood and blood products from the 1970s, 1980s and 1990s came to be destroyed.
- 2.30 I do not believe I had any role in the preparation of the Document Review, including of the section headed "Missing Files". I would have been aware that Ministers had agreed to the report being prepared following the ministerial submission on the subject dated 24 July 2006 [DHSC0103399\_092].

2.31 My involvement with the Document Review appears to have been relatively limited. First, I was asked by Linda Page on 19 April 2007 to approve the release of 56 documents referred to in it (see **[DHSC5038943]**). This submission also enclosed a draft submission to ministers from Liz Woodeson for the release of the Document Review itself to interested parties (including the Archer Inquiry) **[DHSC5038943]**, which was sent to Ministers on 24 April 2007 **[DHSC0041193\_026]**. Second, I note from the handwritten annotations on the submission dated 24 April 2007 that the submission had been seen and agreed by me. In giving my agreement, I would have been focused on the recommendations being made to Ministers which I would have judged likely to be generally well received, rather than on the substance of the Document Review itself. As to the latter, I would have noted and been re-assured by the confirmation that the CMO, Prof. Sir Liam Donaldson, had “... *commended the report’s rigorous analysis and agreed its conclusions*”. The Minister of State for Public Health, Caroline Flint, also subsequently noted “*Good work by officials*” when commenting on the submission.

2.32 Amongst the materials made available to me are emails in the weeks that followed the submission on 24 April 2007 which show that Ministers (Caroline Flint and Lord Hunt) were making comments on aspects of the draft Document Review and this was being discussed between officials, see, for instance:

- (1) the email from Jacky Buchan dated 30 April 2007 (which was copied to Gregory Hartwell) **[DHSC0046872\_028]**;
- (2) the email exchange between William Connon and Liz Woodeson dated 2 May 2007 **[DHSC5470539]**;
- (3) the email from William Connon to Jacky Buchan dated 3 May 2007 (which was copied to Gregory Hartwell) **[DHSC0046872\_029]**;
- (4) the email from Rebecca Lloyd to Linda Page dated 8 May 2007 **[DHSC5473421]**;

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- (5) the email exchange between William Connon and Jacky Buchan on 8 May 2007 **[DHSC5471576]**; and
- (6) the email from Jacky Buchan to William Connon dated 10 May 2007) **[WITN7498005]**.

## **Section 3: Private office papers**

### **Guidelines on retention of papers from Private Ministerial Offices (Q13)**

- 3.1 The Inquiry has asked me to outline my understanding of the guidelines on the retention of papers from Private Ministerial Officers within the Department.
- 3.2 By the time I became Permanent Secretary, written communications between Private Offices and policy teams were carried out almost exclusively electronically. I have no particular recollection of the official guidelines covering the retention of papers in Private Offices. In the Department, it was the policy teams that were responsible for keeping the registered files. What was required to be kept was all submissions to Ministers and their decisions on them. Private Offices could keep their own files for convenience or ease of access to documents; but they would have been culled over the course of time (i.e. due to storage constraints or following a change of government) in the knowledge that the policy teams were the custodians of the registered file. It was incumbent on the Private Offices to send any additional documents that they considered should be kept to the policy teams, either at the time or upon a change of government.

### **Lord Owen's Private Office papers (Q14)**

- 3.3 The Inquiry has directed me to email exchanges from April 2006 concerning Lord Owen's Private Office papers, in which it was stated that there are no Cabinet Office guidelines on retention of papers from Private Ministerial Offices, and that papers are either destroyed or returned to the policy section/returned to officials in the Department (after a change in government) **[DHSC0200119]** and **[DHSC0200120]**. The Inquiry has asked me a number of questions in relation to Private Office papers.

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3.4 I have no knowledge or recollection of any investigations into when Lord Owen's Private Office papers were destroyed. I understand from my legal representatives that both the destruction of his papers, and the response to the issue of destruction being raised, were before my time as Permanent Secretary.

3.5 I have no knowledge or recollection of whether Private Office papers would be destroyed internally within a department or sent to DRO for destruction. I also have no knowledge or recollection of certificates of destruction for Lord Owen's Private Office papers and my legal representatives have informed me that they have been unable to find any in the documentary records.

3.6 The Inquiry has asked me several questions in relation to my involvement in 'lines to take' in response to Lord Owen's appearance at the Archer Inquiry and the allegations he made while giving evidence. In this regard, the Inquiry has referred me to a number of documents, namely:

(1) An email chain between officials on 12 July 2007 [DHSC5480655]. In this, Jacky Buchan (APS to Dawn Primarolo) wrote to William Connon:

*"The Daily Telegraph is saying Lord Owen has told the Archer Inquiry that the documents were destroyed to prevent victims taking legal action and he has called for the person who destroyed the papers to be named and called to give evidence. Can you please agree with press office and Hugh Taylor's office strong lines to take on this. I think we should presume we will be approached on this either by the media or formally by the Inquiry secretariat"* [DHSC5480655].

Gregory Hartwell replied saying if the lines to take are agreed with the Press Office he will run them by me.

(2) A further email chain dated 12 July 2007 between Linda Page and Gregory Hartwell with various others copied in, in which I note it was said that I would 'take a look' at the lines to take [DHSC0004109\_023].

(3) I have also been referred to another version of the same thread of emails [WITN5494012].

3.7 I note from [DHSC5093154] that I appear to have reviewed the lines to take on 13 July 2007. Due to the passage of time, I have no recollection of doing so or of what information I may have relied on. As Permanent Secretary, I would not normally have been involved in approving lines to take on particular issues as that would fall to policy teams and ministers. From the email exchanges referred to, I believe that the reason I was specifically asked to approve these lines to take was because they related to allegations made by a minister from a previous administration and who was saying the civil servant responsible for the destruction of his papers should be named. Both issues required me, as Permanent Secretary, to approve what was being said. In approving the lines, I would have relied on the junior officials involved to have satisfied themselves as to the factual accuracy underpinning the lines to take. These lines would have been for immediate use – for example by the Press Office. This being the case, I do not believe I would have asked for further investigations to be carried out before approving them. If I had, I would have expected further emails from Gregory Hartwell to other officials and I am informed by my legal representatives that there are no such emails in the Department's documents.

3.8 The response that came from my Private Office on my behalf indicated that I was "happy" with the lines to take but that I "...also felt we should be cautious on the sentence about Ministerial Private Offices. [I] didn't think there was any need to say this so suggested taking the sentence out" [DHSC5093154]. I cannot specifically recall why I took that view. Looking at the documents now, I think this may have been because officials were giving their own more recent experience of how Private Office papers were handled, when the issue in play was how they had been handled decades before and it was not strictly necessary to go into that aspect in the lines to take.

### **Access for Lord Fowler and Kenneth Clarke to papers (Q15)**

3.9 I have been asked to describe the circumstances surrounding the decision to grant 'controlled access' to Lord Fowler and Kenneth Clarke to their respective



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papers from their time in office. The Inquiry has specifically referred me to the following documents<sup>10</sup>:

- (1) A letter from Lord Fowler to me dated 19 April 2007 asking for access to his and Kenneth Clarke's papers [DHSC0041307\_120].
- (2) A submission from me to the then Secretary of State Patricia Hewitt dated 1 May 2007 [DHSC6329110]. My recommendation was that both Lord Fowler and Kenneth Clarke be allowed controlled access and that the draft letter be agreed. The letter said: *"We would be pleased to provide such access to files we currently hold at the Department's offices at Wellington House related to blood products. These range from 1981 to 1990; 14 of the files relate to your term of office and 71 to both your and Kenneth Clarke's term"* [DHSC6329110].
- (3) A further version of the draft letter above followed by the chronology of events [DHSC0041193\_023].

3.10 It was normal practice to allow former Ministers access to papers from their time in office (see [DHSC6329110], in which one of my officials had contacted the Cabinet Office's Propriety and Ethics team for guidance, and the advice received was explained as follows: *"Guidance received from Cabinet Office's Propriety and Ethics team advises that, as a basic rule, former Ministers are allowed reasonable access (at the Government's discretion) to papers from the period when they were in office"*). This was especially the case where there was a particular purpose to the request for access (i.e. as here, for Lord Fowler and Kenneth Clarke to refresh their memories of the issues in light of Lord Archer's Inquiry).

3.11 As the guidance received stated that access was at the Government's discretion, approval was needed from the Secretary of State, hence my submission dated 1 May 2007.

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<sup>10</sup> On this issue, I have also considered [DHSC6329252], [DHSC6359016] and [DHSC5275066]

- 3.12 In terms of my understanding of what “reasonable access” was, it was that access should be in controlled conditions (i.e. at a Department office and where documents could not be taken away, but merely reviewed), and only to documents during the former Minister’s time in office (i.e. not to any documents outside of this time period).
- 3.13 The ‘as-sent’ copy of the letter to Lord Fowler was dated 3 May 2007 **[DHSC6329351]**<sup>11</sup>. I have no recollection of what happened subsequently, or indeed whether Lord Fowler and/or Kenneth Clarke took the opportunity to review the documents. If they did do so, I doubt that I would have been involved in the logistical arrangements as this would have been handled by junior officials (and I note the letter to Lord Fowler directed him to contact Linda Page for this purpose).

### **Filing and culling of Private Office papers (Q16)**

- 3.14 The Inquiry has referred me to the same email chain between officials from July 2007 in relation to the practice for the retention of Private Office papers and in which Liz Woodeson wrote:

*“...all important documents should be placed on official registered files by the policy sections... [When I was in private office] we only filed papers on certain subjects the minister was most interested in. And we used to have regular annual culls when the filing cabinets got too full (You will know how limited space is).”* **[DHSC5093154]**

- 3.15 I am asked whether Lord Owen’s papers on self-sufficiency from his time in office would have been placed on official registered files, and also whether my experience reflected Liz Woodeson’s comments on annual culls. In relation to Lord Owen’s files, this was obviously many years before I became Permanent Secretary. Clearly, submissions to him and his responses to them should have been retained whatever the precise system that was then in place was. If his

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<sup>11</sup> I have also seen a draft version provided by the Inquiry: **[WITN0771004]**



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Private Office was run in the same way as Private Offices in my time at the Department, then the way this should have been done would have been by the policy team retaining submissions to him, and the response, on registered files for the policy areas. But I am unable to say whether that was the Department's practice in the 1970s.

- 3.16 In relation to annual culls of Private Office papers referred to by Liz Woodeson, I would not be surprised that this occurred for the reasons given above (see paragraph 3.2). The important point, however, is that papers kept in a Minister's Private Office were always intended to be temporary, a duplicate only and not the official record, as registered files were kept by the policy teams. In this regard, I again refer to paragraph 3.2 above. Culling of Private Office papers in this context should not be equated to the destruction of documentary records, because the official record was the registered files kept by the policy teams.

### **Papers containing advice from Sir Donald Acheson to Kenneth Clarke (Q17/Q18)**

- 3.17 I am asked to describe the circumstances surrounding the conflict over whether or not to release papers containing advice from Sir Donald Acheson to Kenneth Clarke under FOI and the extent of my involvement in this. In this regard I have been specifically referred to my letter dated 25 June 2008 to Baroness Scotland, the Attorney General at the time **[DHSC6432347]**.
- 3.18 I have also been referred to a submission dated 25 April 2008 from Zubeda Seedat to me concerning the FOI request for Sir Donald Acheson's advice **[DHSC0038592\_070]**. I have been asked what my understanding was as to why the release of the Clarke/Acheson documents "*may strengthen calls for a public inquiry/compensation*".
- 3.19 In order to answer the Inquiry's questions to me, it is useful to set out my understanding of the chronology of the considerations and differing views on

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the FOI request. I have no direct recollection of these events, so I have been guided by the documents I have seen while preparing this witness statement.

- 3.20 On 10 April 2008, Zubeda Seedat sent a submission to Liz Woodeson and the CMO seeking their views on the FOI request and the use of the exemption contained in section 36 (prejudice to the effective conduct of public affairs) **[DHSC6370796]**. In it, she recorded the views of officials at the Ministry of Justice, who advised the Department to invoke section 36 as disclosure would, or would be likely to, inhibit the free and frank provision of advice. I do not recall seeing this submission, although it was copied to Aimee Gaston who was my assistant private secretary at the time.
- 3.21 On 14 April 2008, the CMO's assistant private secretary emailed to confirm the CMO's views **[WITN7498006]**. This email, which was copied to my Private Office, recorded that the CMO did not think the release of the advice would set a dangerous precedent as he did not think a CMO's advice would be impacted by the possibility of it being disclosed in the future.
- 3.22 On 25 April 2008, Zubeda Seedat sent me a submission which proposed writing to Kenneth Clarke and Sir Donald Acheson to notify them of the Department's intention to release the advice that Sir Donald had provided **[DHSC0038592\_070]** (an unannotated version is **[WITN7498007]**). In the submission, it was recorded that the CMO was content for the advice to be released and that, whilst the Ministry of Justice (who needed to be consulted given that the advice related to litigation) had initially advised against publication, in light of the CMO's view they had agreed it could be disclosed. My agreement was sought to write to both Sir Donald and Kenneth Clarke to seek their views on disclosure.
- 3.23 Pausing here, my understanding of the comment that the release of Sir Donald's advice "*may strengthen calls for a public inquiry/compensation*" is that

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it simply anticipated a possible reaction to the disclosure of the advice. In his advice, Sir Donald was sympathetic to the cause of infected haemophiliacs. One possible consequence of its disclosure was, therefore, that it could strengthen the hand of campaigners calling for a public inquiry in England. Government policy at the time was to resist calls for an inquiry and it was reasonable for that point to be registered in the submission as a factor for consideration, particularly in light of the Scottish Government's announcement of its intention to hold a public inquiry. In my view, however, it was clearly not being used as an argument against releasing the advice; and I would certainly not have read it in that sense at the time or put any weight on it.

- 3.24 On 28 April 2008, Aimee Gaston sent an email confirming my agreement to the release of Sir Donald's advice **[DHSC6697709]**.
- 3.25 Kenneth Clarke was informed accordingly **[DHSC6387197]**. On 28 April 2008, Mr Clarke responded stating he was opposed to the release. There then followed a series of exchanges between officials from the Department and Ministry of Justice as to how to respond and differing views about the release of the advice **[DHSC6500120]**.
- 3.26 On 20 May 2008, in response to Mr Clarke's letter dated 28 April 2008, Liz Woodeson sent a further letter to Mr Clarke **[DHSC6407942]** setting out the Department's view that disclosure was in the public interest. This was in line with the previously agreed stance which I had endorsed. I do not believe I was involved in preparing this further letter.
- 3.27 On 3 June 2008, Mr Clarke sent a letter to Liz Woodeson confirming his opposition to the release of Sir Donald's advice. He was concerned that it would inhibit the frank provision of advice (i.e. the section 36 exemption) and that the document in isolation would not give the full contextual picture as there had been other advice provided at the time **[DHSC6700868]**.

3.28 On 24 June 2008, Liz Woodeson provided a further submission to me following Mr Clarke's opposition regarding the FOI request **[DHSC6387197]**. It explained that the Department favoured releasing the advice, but that a different view was taken by Ken Clarke, officials at the Ministry of Justice, and the Cabinet Office. The submission recommended writing to the Attorney General because, in order to invoke section 36 in the context of papers belonging to a previous administration, it was necessary to obtain the Attorney General's agreement. The submission also stated that all interested parties agreed that a reasoned opinion of the Attorney General should be sought given the conflicting views.

3.29 On 25 June 2008, I wrote to the Attorney General, Baroness Scotland, seeking her reasoned opinion on the application of section 36 **[DHSC6432347]**. My letter set out the Department's views on disclosure including the reasons for why the Department was initially in favour of disclosure, as well as Kenneth Clarke's view as to why he did not want Sir Donald's advice released. It also set out the views of the Ministry of Justice and the Cabinet Office, who were in favour of withholding Sir Donald's advice because of the wider implications of disclosure for the handling of FOI requests across Government Departments. I have no reason to believe that my knowledge about the conflict of opinions extended beyond what is contained in this letter. What is apparent is that there were a number of differing views on whether to release Sir Donald's advice.

3.30 On 25 July 2008, the Attorney General's office provided her response **[DHSC5534558]**. The Attorney General's opinion was:

*"...that disclosure of the advice would, or would be likely to, inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation.*

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

*such advice would make it less likely that the Chief Medical Officers and Ministers will engage in free and frank discussions*

*The Attorney General has not gone on to consider whether the public interest in disclosure outweighs the public interest in withholding the information as she considers that officials in your department are better placed, in the light of their expertise and experience of the relevant policy considerations and public interest factors, to carry out such a test."*

- 3.31 It appears that, following the Attorney General's letter, officials sought advice from the FOI team about the public interest test. I note that this advice is recorded in an email from Zubeda Seedat to Liz Woodeson dated 28 July 2008 **[DHSC6697857]**. The conclusion was that the public interest weighed against release of the document. That email was not copied to my Private Office. I also note that William Connon expressed a differing view on the public interest test, albeit he accepted the decision had been made by a higher authority (see his email dated 29 July 2008 **[DHSC6500120]** - again, this email was not copied to my Private Office).
- 3.32 On 30 July 2008, Liz Woodeson sent a submission to me explaining the Attorney General's view **[DHSC0041157\_073]** and that a decision had been made to withhold. I note now, in the context of reviewing other relevant documents, that the submission itself did not refer to the Attorney General's stance on the public interest test, nor does it refer to her view that the Department was in the better place to exercise that judgment. I note, however, that the briefing note attached to the submission did refer to the public interest test and stated that the conclusion, following consultations, was that the balance of public interest favoured non-disclosure. No reasons were given for why that conclusion had been reached nor of who had been consulted.
- 3.33 Liz Woodeson's submission dated 30 July 2008 confirmed that the Department would be writing to the requestor to inform him of the decision that the document would not be released.



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- 3.34 The decision to withhold the advice produced a complaint (i.e. request for an internal review) dated 21 August 2008 from the political researcher who had requested it **[DHSC6445437]**. I note that, in a submission to Dawn Primarolo dated 19 March 2009, there was reference to the Department having just received a formal request to review the decision to withhold Sir Donald's advice **[DHSC5029952]**.
- 3.35 On 19 March 2009, Liz Woodeson wrote to Kenneth Clarke for his views on the request for the FOI decision to be reviewed **[DHSC6445446]**. Though I do not recall it, I note that I was copied into this letter, no doubt because the Department was writing to a former minister of a previous administration on the basis of prior correspondence of which I had been aware. This letter rightly referred to the fact that, in the intervening period, Lord Archer had published his report following his inquiry.
- 3.36 Mr Clarke re-confirmed his view against disclosure on 24 March 2009 **[DHSC6452375]**. I note that he appears to also have had wider concerns about the need to maintain public interest restraint to stop the FOI being used for political and campaigning purposes and the partial selection of advice to ministers.
- 3.37 On 9 April 2009, I was sent a submission from Rowena Jecock in relation to the internal review of the decision not to release Sir Donald's advice and the need to seek the Attorney General's advice on the recommendation to continue to withhold it **[DHSC6435411]**.
- 3.38 I understand that my legal representatives have not found a response on my behalf to this submission, but the Attorney General was duly asked to review her advice by me on 9 April 2009 **[DHSC6452375]**.

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- 3.39 On 8 May 2009, the Attorney General's office provided her response, confirming that she remained of the view that disclosure would, or would be likely to, inhibit the free and frank provision of advice and the free and frank exchange of views for the purposes of deliberation, referring back to her earlier response dated 25 July 2008 **[WITN7498008]**. This letter was addressed to me, although I do not recall it.
- 3.40 I have now seen emails which show that, following receipt of the Attorney General's letter, officials prepared a response to the requestor that explained the Department had not changed its view (see **[DHSC5055760]** and **[DHSC6445543]**), although it does not appear that my office was copied in on these exchanges. I have no recollection of the response being sent, or being asked to approve it (I would not have expected to have been asked).
- 3.41 I am informed by my legal representatives that, following the response after the internal review, a complaint was made to the Information Commissioner's Office (**ICO**) later in 2009.
- 3.42 On 17 May 2010, my then assistant private secretary Steve Pidgeon was sent an email informing him that the ICO was issuing a decision notice against the Department for withholding Sir Donald's advice **[DHSC5623125]**. Although I have no recollection of it, I note that Steve Pidgeon confirmed that he had alerted me to the situation.
- 3.43 On 20 May 2010, a submission was sent to me regarding the ICO's decision notice **[DHSC6511652]**. The recommendation made was not to appeal the ICO's decision and to now release Sir Donald's advice, but that Kenneth Clarke (who by this point had recently been appointed as Lord Chancellor and Secretary of State for Justice) should be contacted first. I approved the submission on 21 May 2010 and agreed to contact my counterpart in the

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Ministry of Justice to alert him to the letter his Secretary of State would be receiving [DHSC6515376]. Again, I have no recollection of this.

3.44 I am not aware of any further involvement on this point during my time as Permanent Secretary.

3.45 Reflecting on this chronology, it seems to me that, collectively, we did not get this issue quite right. We continued to fuel the suspicion that we were trying to hide something we did not want to come out, which was not the case. The end result was not appealing against the ICO decision. It seems to me that, as a Department, we would have been better off maintaining our original view that the advice should be disclosed. That said, these were difficult issues and there was inevitably Whitehall/inter-departmental concern about disclosing what was on any view direct advice to the then Secretary of State on the approach to significant litigation, in circumstances where the (former) Secretary of State was himself objecting to the release. Had I, with the CMO's support, pressed the case for disclosure in the public interest, I could not have over-ridden the Cabinet Office's reservations without escalating the issue. On reflection I wish I had done so; however, I am by no means sure that we would not still have been overruled.



## Section 4: Calls for a public inquiry

### Decision not to hold a public inquiry (Q19)

- 4.1 I have been asked to outline my involvement in the Government's decision not to hold a public inquiry during my time as Permanent Secretary within the Department.
- 4.2 Although I have seen documents that show I was aware of the pressure for a public inquiry (see, for instance, [DHSC5416837]), as far as I can now recall I had no direct involvement in decision making on this issue. As set out above (paragraph 1.9) I do not recall any of the Secretaries of State for whom I worked holding any substantive discussions with me on the issue of whether to change or maintain the Government's stance on a public inquiry. In effect, my impression was that Ministers were, on balance, content to maintain the position inherited from their predecessors (i.e. to not hold a public inquiry) and to defend that position in parliament and in correspondence. The decision whether to hold a public inquiry or not was, at the end of the day, a ministerial one.
- 4.3 From the specific documents to which the Inquiry has referred me<sup>12</sup>, and other documents I have seen whilst preparing this witness statement, it appears the issue of a public inquiry came up periodically during my time as Permanent Secretary. It may be helpful to set out a short chronology, based on the documents, of when the issue of a public inquiry came across my desk.
- 4.4 The first time that I saw demands for a public inquiry being flagged was in a submission from Gerard Hetherington to Rebecca Spavin, which was copied to my private secretary Gregory Hartwell, dated 26 May 2006 [DHSC0041159\_205]. This followed a parliamentary question from Lord Jenkin and a subsequent meeting officials appear to have had with junior Ministers to

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<sup>12</sup> [DHSC5416837]; [DHSC0015784]; [DHSC0041159\_204]; [DHSC0103399\_003]; [DHSC5444515] and [DHSC5003293]

discuss the issues. As stated above at paragraph 2.16, although I do not recall the submission it is apparent that I read it and asked Gregory Hartwell to find out more information about what was driving the pressure for a public inquiry **[WITN7498002]**. On 8 June 2006, Gerard Hetherington responded with more information, stating that the pressure was from those who had become infected as they believed a public inquiry would establish that the Department was culpable and that it would lead to a higher level of compensation payments **[DHSC5416837]**. He also referenced lobbying that was going on in the Scottish Parliament at the time.

- 4.5 I note that a submission outlining the pros and cons of a public inquiry was sent on 26 June 2006 **[DHSC0041159\_204]**<sup>13</sup>. The submission (which was not confined to the issue of a public inquiry) was copied to Greg Hartwell and it is likely that he would have shown it to me for my information. The submission concluded on this point that “...*on balance therefore, we consider an inquiry to be disproportionate and not justified in the circumstances*”, noting that this was in line with the views of the Scottish Minister.
- 4.6 On 24 July 2006 Caroline Flint and Lord Warner provided a note to Patricia Hewitt as Secretary of State which covered an update on infected blood issues and hepatitis C and the pressure for a public inquiry. This was copied to my Private Office **[DHSC0103399\_003]**. I have been asked specific questions in relation to this submission and I will therefore address this further below.
- 4.7 In May 2007, the new Scottish Government announced that it felt a public inquiry in Scotland was the best way forward but that it wanted to assess the findings of the Archer Inquiry before deciding when and how to proceed. I note that my APS Greg Hartwell emailed other officials on 1 June 2007 asking to be kept in copy on anything to do with the issue of Scotland deciding to have a

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<sup>13</sup> I note that Jacky Buchan had to ask for an earlier draft submission to be re-worked to explain the pros and cons of holding a public inquiry **[DHSC0015784]**; this is the sort of thing I would have been looking out for to improve the overall standard of submissions up to Ministers as I highlighted at paragraph 1.11, above.

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public inquiry, stating that I needed to be kept sighted on everything [DHSC5475476]. I also note a subsequent email from Greg Hartwell to William Connon asking for a note setting out any recent developments from the last few weeks [DHSC5479138]. In that email, he referenced bringing in new ministers/secretary of state. Reflecting on this exchange now, I think there were two factors in play in my Private Office's communications at this stage. The first is the point I have addressed in my introductory remarks concerning devolution. The SNP had formed a minority administration in May 2007 and devolution issues were sensitive (hence my Private Office wanting to be fully sighted on issues pertaining to any Scottish Inquiry). Secondly, we knew that there was going to be a change of Prime Minister (Gordon Brown was to succeed Tony Blair on 27 June) with an associated reshuffle of Ministers which we knew would include a new Health Secretary as Patricia Hewitt was stepping down. Any change of ministers, particularly a change of the Secretary of State, is a major thing for departments; and the Permanent Secretary has a key role to play in preparing for and welcoming new Ministers. I and other senior officials would have been keen to have a clear summary of the current state of play on policy issues such as this in order to be able to fully brief incoming ministers.

- 4.8 In October 2007, I note that it appears I saw a briefing on issues raised by Lord Archer's inquiry as Greg Hartwell raised a query on my behalf on a section about the line to take about the call for a public inquiry [DHSC6510616]. In this email, he recorded that, in relation to a line saying that it was believed the Government of the day (i.e. in the 1970s and 1980s) acted in good faith, I had raised the query: "...have Ministers gone as far as this before? I seem to recall a fuss about all this, with more cautious wording being used".
- 4.9 On 28 March 2008, a further submission was sent to me and the Minister of State for Public Health concerning the intended announcement on 23 April 2008 of a public inquiry in Scotland [DHSC5003293]. Although I do not have any recollection of considering this submission, I note that I was specifically asked to approve it and that Aimee Gasston (my then assistant private secretary)

confirmed that I had seen and agreed it was fine to be passed to the Minister in an email dated 1 April 2008 [DHSC5511981]. I believe it is most likely that I was asked to specifically approve this submission for the reasons I have explained regarding the sensitivity of devolution issues and decisions by the Scottish Government on devolved matters that might diverge from Westminster policy.

4.10 From November 2008 onwards, there were a number of submissions from Patrick Hennessey concerning developments in ongoing judicial review proceedings in Scotland relating to the scope of the proposed public inquiry, and the possibility of a legal decision that would require the UK Government to be a party to that inquiry and, in effect, making the Scottish public inquiry into a UK wide one (one dated 18 November 2008 [DHSC0038592\_031]; one dated 27 November 2008 [DHSC0041157\_070]; one dated 12 December 2008 [WITN7498009]; and one dated 12 January 2009 [DHSC5006342]). My Private Office was copied in on these submissions although I do not now recall seeing these. The thrust of the earlier submissions was to resist and appeal any decision that made the UK Government a party to the inquiry to take place in Scotland, relying on the same arguments being made against holding a UK wide public inquiry at the time. In the event, the Scottish Court's ruling did not require the UK Government to be a party to the inquiry in Scotland.

4.11 On 5 February 2009, a submission was sent to me and Dawn Primarolo from Patrick Hennessey concerning the legal proceedings in Scotland. [DHSC0041157\_067]. I have been asked specific questions in relation to this submission and I will therefore address this further below.

### **Submission to Secretary of State in July 2006 (Q20)**

4.12 The Inquiry has specifically referred me to:

- (1) The note to Patricia Hewitt on 24 July 2006 from Caroline Flint (and Lord Warner [DHSC0103399\_003]; and

- (2) The note containing Patricia Hewitt's response "*...if you really believe an independent commentary is worth it and affordable, then she is content. However, she feels that it will fuel rather than deflect calls for a public enquiry - which we are absolutely right not to do.*" [DHSC0041159\_139] (296) (the note is written by Jacky Buchan, the APS to Caroline Flint, and appears to be dated 4 August 2006). There is a later handwritten note endorsed on it from Caroline Flint dated 23 August 2006 asking how much a review would cost and how long it would take to produce.

I am asked what discussions, if any, I had with the Secretary of State in relation to the note of 24 July 2006 and her subsequent response, and whether I agreed with the views of the Secretary of State or Lord Warner (who had said he felt that an independent commentary would "*help resist a public inquiry*").

- 4.13 Caroline Flint and Lord Warner's note of 24 July 2006 was copied to my private office. It is likely I would have read it. As far as I can recall, I had no discussions with the Secretary of State on this matter; nor have I seen any documentary evidence of such a discussion. However, the Secretary of State's views on a public inquiry were expressed in clear, indeed emphatic, terms in her minute and I would have been guided by her views at the time. I also do not recall forming an opinion on the proposal for an independent commentary; nor do I recall my opinion ever being sought. In terms of my opinion now, my sense is that whatever the stand-alone merits of bringing some form of independent commentary into this exercise – and I agree the merits were worth weighing - I doubt it would have completely satisfied the campaigning groups or deflected continued pressure for a full statutory inquiry, any more than Lord Archer's inquiry did. In that respect I agree with the Secretary of State's comments at the time. I have offered some further comment on the binary choice between having a public inquiry or not in paragraph 6.9, below.

#### **"Review of Documentation Relating to the Safety of Blood Products 1970 – 1985" (Q21)**

- 4.14 I have been asked about my involvement in commissioning the Department's "Review of Documentation Relating to the Safety of Blood Products 1970 –



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1985” [PRSE0000642], my opinion of the purpose of the Document Review and whether the objective was fulfilled. I am also asked for my view as to the extent the Document Review was a factor in the Government’s decision not to hold a public inquiry before.

4.15 To the best of my recollection, I had no involvement in commissioning this Document Review, although from the documents I have seen whilst preparing this witness statement it appears that I would have been aware that the task was to be undertaken (see, for instance, the submission on 26 June 2006 that was copied to my office and which mentions preparing a comprehensive inventory and report of all papers [DHSC0041159\_204]).

4.16 As far as I can tell from the documentation, the internal review was seen as a necessary response to the fact that, after the publication of the Self-Sufficiency Report in 2006, more documents had become available. As a minimum, therefore, the significance of those documents was going to be assessed by this internal review, while options for further action, such as an external independent review, were also being considered.

4.17 I am also asked whether I believe the Document Review fulfilled its objective. The responses of the CMO and the Minister of State for Public Health (referred to above at paragraph 2.31) to the review were positive, not least no doubt because it represented a comprehensive stocktake of the documents then available within its scope and because it confirmed that none of the newly discovered documents contained new or unexpected revelations. It also led to the disclosure of a significant number of documents, which Ministers were also able to point to as a positive development. In that sense the Document Review could be said to have met its, inevitably limited, objectives. However, reflecting on this question now, there is a limit to how far an internal Departmental review of this kind was likely to assuage public concern, given its limitations. The review rehearsed rather than re-examined the Department’s previous analysis of the history, which the new documentation did not appear to undermine, but



which was still being challenged by campaigners. It was not resourced to put the original decision making on these issues under the microscope in the way that, given the passage of time that had already elapsed, only a statutory inquiry with the power to call witnesses and with the resources and expertise to apply an objective forensic analysis to the evidence could do. This comes back to the binary choice that I refer to in paragraph 4.13 above and 6.8 - 6.9 below.

- 4.18 On the basis of the documents I have seen, I very much doubt whether the Document Review itself was a significant factor in the Government's stance over this period on the issue of a public inquiry, although as I have said I was never close to Ministerial thinking on this at the time. I believe Ministers did put weight on their commitment to release relevant papers into the public domain, providing much of the information sought by interested parties – and reference was made to this in the submission on 24 June 2006 [DHSC0041159\_204] (201), though only as the final “con” factor. But, again, I very much doubt whether they saw access to documentation as a decisive factor one way or the other in the arguments for and against a public inquiry.

### **Lord Penrose's Inquiry (Q22/Q23)**

- 4.19 I am asked several questions by the Inquiry in relation to the Penrose Inquiry and have been referred to the submission dated 5 February 2009 to me and Dawn Primarolo from Patrick Hennessy, Project Manager Blood Policy concerning its Terms of Reference [DHSC0041157\_067]. I am asked what my interpretation was of the “commitment” required from the UK Government to support the Penrose Inquiry; whether the terms of a draft letter annexed to the submission, which offered to provide documentation and the two reports conducted by the Department, fulfilled this commitment; and whether the purpose of my letter was “to defeat” Lord MacKay's court action.
- 4.20 Looking back at the earlier submissions on the legal proceedings in Scotland (see paragraph 4.10 above), I note that the submission dated 12 January 2009

referred to the UK Government needing to give further commitment to the Scottish Government to co-operate with what became the Penrose Inquiry [DHSC5006342]. Indeed, it appears that the judge had specifically indicated that he anticipated some level of agreement with the UK Government if the Scottish Government were to meet the terms of his earlier judgment that an inquiry was required under Article 2 of the ECHR. That was the context for the need for the UK Government to give a commitment to co-operate with the Penrose Inquiry.

4.21 It appears that I must have seen the submission dated 5 February 2009 and the draft letter attached to it, because there is a handwritten annotation on it stating that I was “*happy to send letter*” but wanted the Minister of State’s clearance to do so (see also the email dated 9 February 2009 from my then APS Steve Pidgeon confirming I was content to send the letter [WITN7498010]). I think it is therefore reasonable to assume that I was satisfied that the assistance offered in the draft letter fulfilled the level of commitment that was understood to be required. I note the letter signed by me was subsequently sent on 9 February 2009 [DHSC0041157\_042].

4.22 The Rule 9 request asks if it was “...*the purpose of your letter to defeat Lord Mackay’s court action, as suggested in para 7 of the submission*”. It seems to me misconceived to view paragraph 7 of the submission in that way. Paragraph 7 of the submission stated:

*“Officials have therefore consulted with Scottish Government officials before drafting a response, and DH Legal Services have discussed the attached letter of assurance with legal advisers to the Scottish Government. We recommend sending these assurances as the best means of enabling Lord Mackay to rule in favour of Penrose and close his court proceedings. Scottish officials and lawyers are content with this approach and with the draft letter”*

4.23 Reviewing this matter now, all that appears to be being said is that providing the level of assurance of cooperation set out in the draft letter would give the appropriate degree of confidence that the Scottish Inquiry could be effective without the UK Government being made a de facto party to the inquiry. I do not

consider the term “defeat” is appropriate to describe its purpose. Instead, my view is that the purpose of the letter was to satisfy the earlier ruling to help bring the court proceedings to an end and to allow the inquiry to proceed. It does appear to be the case that the Department also had one eye on avoiding future court proceedings from the petitioners in Scotland (see paragraph 6 of the submission).

4.24 I am also asked, with reference to annotations on the first page of the submission, whether I agreed with Dawn Primarolo’s assertion that a Scottish inquiry was a backdoor method to get a UK-wide inquiry [DHSC0041157\_067].

4.25 I do not recall forming a view on her assertion, or indeed being made aware of it at the time. Reviewing that comment now, however, it seems to me to be in keeping with the concerns that were current at the time relating to the effects of devolution. It was within the Scottish Executive’s devolved powers to have a Scottish Health related public inquiry, and that much was not controversial from the devolution point of view. What would, however, have been a problematic issue was for a Scottish inquiry to, in effect, ‘force’ the holding of an English or UK-wide public inquiry when that was contrary to the Westminster Government’s stated policy position.

### **Reasons given for not holding a public inquiry (Q24)**

4.26 I am asked by the Inquiry to what extent officials were encouraged to revisit evidence to ensure that the reasons given over a number of years for not holding a public inquiry remained appropriate. In posing this question, the Inquiry has referred me to examples of reasons given in several documents, as follows:

- (1) In a suggested response dated 21 March 2006 to a Parliamentary Question posed by Lord Jenkin where it was said that “*no wrongful practices were employed and [the Government] does not consider that a public inquiry is justified*” [DHSC0200118];

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- (2) In a document relating to media responses dated 21 April 2006 where it was said that *“the Government of the day acted in good faith, relying on the technology available at that time and therefore we do not feel a public inquiry would provide any real benefit to those affected”* [DHSC5068274];
- (3) In a briefing pack relating to oral questions in the House of Lords dated 5 March 2009, where it was said that *“The time to have held a public inquiry was much closer to the events. Previous Governments decided not to hold an inquiry, and we have also considered the call for a public inquiry very carefully. However the government does not consider a further inquiry is justified as it would not add to current knowledge about how infections happened or the steps taken to deal with the problem”* [MHRA0024712]; and
- (4) In the same document as in (3) above where it was said that *“There would be no practical benefit to be gained from a public inquiry which would be a time consuming and expensive process, diverting funds away from health services and would depend on the recollection of witnesses about events which took place over 20 years ago”* [MHRA0024712] (656).

4.27 I do not know the extent to which officials were encouraged on this particular issue to revisit the evidence. In my experience it would not be uncommon for Ministers or, indeed, senior officials to challenge lines being given by officials and to ask to see the evidence in support. My sight line on this was limited at the time for the reasons I have given above, but even on the basis of the documents I have seen there were a number of interactions between officials and Ministers over this period in which they had the opportunity to challenge the lines being taken; and I would be very surprised if there were not other instances of the successive Ministers of State for Public Health and the Lords Ministers seeking reassurance both on the evidence itself and on the lines they were being given.

4.28 With the benefit of hindsight, however, it is clear that, in this case, there were some limitations on the conventional process of Ministerial challenge – and indeed challenge from senior officials – to the established position in relation to events that had occurred decades before. An official line had been developed much closer to the events in time and then over successive government administrations. Officials briefing Ministers at this time could say in good faith that no fundamentally new evidence had emerged which justified bringing these lines into question. But none of the officials working in the Department at this time had direct experience of the events; and their capacity to interrogate conclusively all the assumptions and evidence behind decisions taken and conclusions drawn at the time was necessarily limited. In the end, that was always the case for some sort of dedicated inquiry. The question was whether that was justified, given that only a full statutory public inquiry was likely to satisfy the campaigners. I return to this point at paragraphs 6.8 and 6.9 below. However, it is difficult not to feel, looking back on this, that the lines being suggested to and used by Ministers at this time might sometimes have been more judiciously expressed, in view of the limitations I have outlined.

### **“Group Think” (Q25)**

4.29 I am informed by the Inquiry that, in his statement to the Inquiry, Charles Lister (the former Head of Blood Policy at the Department of Health between 1998 – 2003, and so several years before my appointment as Permanent Secretary) stated:

*“I raised the question of how much I may have been affected by a collective mindset. I had in mind the concept of ‘Group Think’, and whether officials, experts and ministers alike were affected by group think when addressing this issue. When I now reflect on these issues, it is that concept which I ponder on rather than any sense of resistance from the civil service. It is the sense that when you work closely and collectively together, there is a risk of group mindset developing and the risk that you are not sufficiently open to challenge to the existing group views. It is of course impossible to say how much this impacted on our decision making.” [WITN4505389]*



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- 4.30 I have been asked for my views on Charles Lister's statement, and whether the concept of "group think" impacted on my involvement and that of the Department in the decision not to hold a public inquiry.
- 4.31 I have my reservations that the concept of 'group think' is useful in this context. Ministers can and do challenge settled policy on issues. The CMO in this period had no hesitation in doing so. Reform – in health and other public services - was a keynote of Government policy at this time. On the other hand, it is certainly my impression that, during the period when I was Permanent Secretary, the Government placed a very high bar on holding public inquiries, higher than perhaps it has become in recent years. My sense is that this was a collective view across Whitehall and one generally held, I believe, by senior Ministers across successive and different administrations. That collective general view may have come into play here. But I am sceptical about the idea that 'group think' on the issue of infected blood best captures the mindset of Ministers with whom I worked in the time I was Permanent Secretary, or of independent and other medical officials such as the CMO.
- 4.32 As far as I can judge, Ministers inherited a policy position from their predecessors and, on the balance of the arguments presented to them and in the context of their accountability to Parliament, saw no sufficient reason to change that policy position at the time, given the widely accepted view on the high bar for holding a public inquiry. Their agenda was dominated by other issues, for instance those I've described in paragraphs 1.7-1.8 above. Had Ministerial concerns about the defensibility of the stance on a public inquiry reached a tipping point, the Secretary of State at the time would have sought a thorough re-examination of the issue, no doubt involving me and the CMO, leading to a major set piece meeting. I attended many such meetings on other issues over my time as Permanent Secretary. That this did not happen on this issue during my time as Permanent Secretary of the Department is no more, I suspect, than a mark of its relative salience at the time in terms of the Department's overall agenda and the profile of the issue in Parliament,



combined with Departmental and Ministerial perceptions of the high bar applicable to calls for a public inquiry.

### **Financial implications of a public inquiry (Q26)**

4.33 I am asked for my view as to the extent financial implications, in terms of both the cost of an inquiry itself but also potential compensation to victims, influenced the Department's decision not to hold a public inquiry.

4.34 I cannot usefully comment on what most weighed on Ministers' minds in continuing to uphold the policy of resisting a public inquiry, not least as I have no recollection of discussing it with them. I can see no evidence from the documentation I have seen that cost considerations were given disproportionate prominence in the briefings Ministers received in defending the policy; costs were flagged as something to be considered (for instance, in the submission dated 24 June 2006 which gave some examples of the costs past inquiries had incurred) but that in my view was an appropriate thing for officials to do ([DHSC0041159\_204]).

### **Andy Burnham's reference to resistance in the Civil Service (Q27)**

4.35 The Inquiry has asked for my views, with reference to my time as Permanent Secretary, on a statement made by the former Secretary of State for Health, Andy Burnham, in a House of Commons debate on 15 January 2015:

*"..I do not detect the failure being caused by Members of Parliament or, indeed, Ministers; I have met many who want to resolve this in the right way. I have to say that in my experience the resistance is found in the civil service within Government. That is often the case in examples such as this; I found the same with Hillsborough too. It is very hard to move that machine to face up to historical injustice."* [RLIT0000771].

4.36 I have the highest respect for Andy Burnham, and I felt I had a good working relationship with him when he was Secretary of State. However, I do not recall him taking up this issue with me or with anyone else during his tenure. I also

have no recollection of any of the other Secretaries of State for whom I worked pushing the case for a public inquiry on this issue, still less meeting 'resistance' from the civil service in doing so.

- 4.37 What I can recall is many instances where civil servants worked tirelessly with Ministers to establish inquiries (including those cited in paragraph 1.8 above and those referenced in the 28 June 2006 submission [DHSC0041159\_204] (201)) and in implementing those inquiries' findings. It is fair to say that, while these inquiries took different forms, very few were full public inquiries. As I have expressed above at paragraph 4.29, the bar for holding public inquiries was, I think, set higher in my civil service career than it now appears to have become. What I can say is that, if any of the Secretaries of State for whom I worked had determined that a full public inquiry was justified and necessary, I would have supported them wholeheartedly in bringing that forward, and I would have expected the same support from all civil servants within the Department.

### **Should a public inquiry have been held before now (Q28)**

- 4.38 I am informed by the Inquiry that it has heard evidence from campaigners and from former Secretary of State for Health, Lord Fowler, that the Government should have established a UK-wide public inquiry before now<sup>14</sup>. I am asked to provide my present views on this observation.
- 4.39 It is my view that Lord Fowler's view on this should be respected. I do not feel I ever weighed the issues in sufficient depth to have an informed view on this question, or to offer one with any confidence in retrospect and with the benefit of hindsight. I can only say that I do believe that Ministers and officials closer to the issue than I was acted in good faith at the time and took the view that they did on the balance of the arguments and in the Parliamentary and wider context of the time.

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<sup>14</sup> [INQY1000144], [INQY1000145]

4.40 Nevertheless, given that the decision to hold a full public inquiry has now been made, it is clearly arguable that it could, almost certainly should, have been established earlier and ideally closer in time to the events in question. To the extent that open questions remained about the decisions taken, conclusions drawn and action taken by successive Governments about the circumstances that gave rise to the use of infected blood and its impact on the infected and affected, I can see that a full public inquiry was likely to be the only way both to resolve them to the satisfaction of all parties and to put them under the microscope in a way that could never be achieved in a busy and capacity constrained Department.

## Section 5: Department of Health's engagement with the Archer Inquiry

### Outline Chronology

5.1 Before addressing the questions posed by the Inquiry, I will set out for context, based purely on the documents with which I have been provided by the Inquiry and my legal representatives, a chronology of what seems to be the main exchanges on how the Department should engage with Lord Archer's Inquiry. At the time, I would not have seen a number of the documents referred to (particularly emails between officials) but I include them for completeness.

5.2 On 16 February 2007, Lord Archer wrote to the Secretary of State, Patricia Hewitt, to inform her of his agreement to chair an independent inquiry. In this letter, Lord Archer said:

*"It will be much appreciated if someone from the Department can be available, on a mutually agreed date, to say what its position has been and is; and to lay before us any further facts, of which you think we should be aware."* [DHSC0041193\_056].

5.3 From the date stamp, it would appear that this letter was not received in the Department until 19 February 2007. I understand that it was directed in the first instance to Caroline Flint's Private Office, because as Minister for Public Health she had policy responsibility for this area. They in turn sought advice from officials (see email from Michelle Lucas to William Connon dated 19 February 2007 at [DHSC6700786]).

5.4 Also on 19 February 2007, William Connon sent a submission to Caroline Flint [DHSC0041155\_023]. I note that this was copied to Gregory Hartwell, my assistant private secretary. It appears that this submission may have been prepared before Lord Archer's letter was received as it refers to press and media reports from that morning concerning the announcement of an independent public inquiry.

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5.5 On 20 February 2007, there were a number of emails between officials concerning how to respond to Lord Archer's letter (in addition to the emails referred to in paragraphs 5.7 and 5.9 below, I have also been shown **[DHSC5458311]** and **[DHSC5458364]**). These emails were copied to Gregory Hartwell in my Private Office. I note that in his email timed at 07:32, William Connon specifically mentioned to my APS that he would "*wish to be aware*" **[DHSC6700786]**.

5.6 Within that email William Connon asked for advice from other officials, and stated:

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

5.7 In an email timed at 09.44, Jonathan Stopes-Roe, Head of Strategy & Legislation in the Health Protection Division, gave his thoughts on Lord Archer's request **[DHSC5458185]**. He stated that the request for information should be treated in the same way as a FOI request; that Caroline Flint should offer to meet Lord Archer in due course; and that no-one from the Department should attend as a witness.

5.8 In an email timed at 10:06, William Connon, apparently having considered the matter further, circulated a draft reply to Lord Archer for comment (I believe the draft is that at **[DHSC5458312]**. This stated,

*"I cannot see how we can become involved given the stance DH, on behalf of successive Governments has taken in stating that an inquiry is not justified. Given that position it would be difficult to justify becoming involved in any form of inquiry" **[DHSC5264793]**.*

5.9 In an email timed at 12:10, William Connon emailed Caroline Flint's APS and in response to a suggestion from her office that officials should find out more about the inquiry stated:

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*"I am concerned that if we enter into a dialogue about the details with either Lord Archer or the Haemophilia Society (HS) then we will simply become implicated in the inquiry. I have therefore decided not to do this"* [DHSC5152770].

5.10 On 21 February 2007, my assistant private secretary Gregory Hartwell emailed William Connon attaching a revised draft of his proposed response to Lord Archer [DHSC6323081]. It is clear from this that I had been alerted by my Private Office to Lord Archer's request and to the proposed draft response following the e mail exchanges initiated by William Connon on the previous day and that I had proposed a few small changes to the draft response.

5.11 Later on 21 February 2007, William Connon provided a draft letter of reply for Caroline Flint to send to Lord Archer. The draft letter concluded by saying

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

The covering email to this draft letter stated:

*"The advice is that we should not become involved in Lord Archer's Inquiry at all. The attached draft, which has been cleared by Perm Sec [i.e. myself] and Sol [solicitors], takes a fairly robust line.*

...

*As I explained yesterday, we have very little information about the exact nature of the inquiry. I am concerned that if we enter into a dialogue about the details with either Lord Archer or the Haemophilia Society (HS) then we will simply become implicated in the inquiry, by association. I have therefore decided not to do this.*

*The main points are:*

- It is recommended that no DH officials appear before this informal inquiry.*
- The Inquiry is being launched by Lords Archer, Morris and Turnbull.*
- I am told that the inquiry is not directly linked to the Haemophilia Society, although Lord Morris is the President of the Society.*
- I have no specific information about the terms of reference, location, funding or what form exactly the inquiry will take.*



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- *I would not advise that we make any contact with those launching the inquiry to request further details.*
- *The draft does offer to provide Lord Archer with a copy of the report currently being compiled on all the documentation available to DH. You will be receiving a submission on this in the next few weeks. The report should be ready by the end of March.*
- *I will continue to monitor the situation and keep everyone fully informed of any developments.*
- *I am copying this to the DA's [devolved administrations] for information, as I believe they will be taking a similar line...."***[DHSC5460426]**

5.12 On 6 March 2007, Caroline Flint's Office requested a meeting between her and Patricia Hewitt, stating:

*"Officials advice ... is that we do not get involved at all. Caroline needs a discussion with SofS both on a DH and political level before we can respond."* **[DHSC5460473]**.

5.13 On 7 March 2007, it appears from later documents I have seen that I met with William Connon. When I first saw reference to this discussion, I had no recollection of it or what was discussed, and it seemed somewhat unusual that William Connon would be having a meeting with me on this aspect. However:

- (1) First, it is plain that some discussion did take place between William Connon and me on 7 March 2007. William Connon's email of 22 March 2007 to Liz Woodeson stated that I had agreed the Department should not cooperate with the Archer Inquiry **[DHSC5463453]**. Liz Woodeson's submission to me dated 23 March 2007 referred to William Connon discussing the concerns officials had with me, which I believe is very likely to be a reference to this meeting on 7 March 2007 **[DHSC5046267]**.
- (2) Second, from other documents it now seems apparent that the discussion I had with William Connon on 7 March 2007 would have been in the margins of a meeting to discuss an entirely different matter. On 16 March 2007, my Principal Private Secretary emailed William Connon referring to our discussion on 7 March 2007 **[DHSC5462527]**. It is clear from this that the main reason I had met William Connon was in relation to a question that

had arisen about declaration of interests concerning the former Health Minister, the late Tessa Jowell. For further reference to the purpose of the meeting on 7 March regarding the declaration of interests point see further the background note to the draft answer to PQ03685 [DHSC6817095].

Piecing matters together, I think it likely that William Cannon took the opportunity of this meeting on 7 March 2007 to run by me the position that officials wanted to take in relation to Lord Archer's Inquiry, to which at that stage I had already agreed, in light of Caroline Flint's request for a meeting with the Secretary of State.

5.14 It is apparent from the documents that a meeting between Patricia Hewitt and Caroline Flint took place on 13 March 2007 with Lords Warner and Hunt also present. I was not at that meeting.

5.15 On 14 March 2007, Dani Lee (the APS to the Secretary of State) sent an email to Jacky Buchan and Rebecca Spavin setting out a note and actions from the Ministerial meeting [DHSC5461987]. I will not have seen this at the time, but I note it stated as follows:

*"1. Meeting started with a brief discussion on Lord Archer's inquiry. SofS thought that we need to find out more information about the inquiry and asked either MS(PH) or MS(Q) to follow up with Lord Archer or Lesley Turnberg on terms of reference, funding, how they intend to proceed and what they hope to get out of the meeting. Can you discuss with each other which Minister you think would be best placed to do this. We might want to consider asking Lord Warner instead to make contact if officials feel strongly that Ministers should not get involved.*

*2. On the draft response to Lord Archer's letter - MS(PH) was concerned about the content and language of the letter. The letter was signed off by Hugh [i.e. myself] which SofS agreed to take up with him at their next 1:1. I'll let you know the outcome of that discussion on Tues 20 March.*

*3. SofS gave a steer on how we approach the Inquiry. She is happy for officials to give evidence to the Inquiry but only after they have completed and compiled their report on the analysis of the documentation. She is also content to make all the documentation available to the Inquiry. Jacky - you might want to agree a deadline with officials on their report so that we/they can start planning their appearance before the Inquiry"* (emphasis added)

- 5.16 On 15 March 2007, Dani Lee emailed my private secretary (Ruth Cuthbert) to flag that Patricia Hewitt may raise the issue at our next one-to-one meeting [WITN7498011]:

*“SofS wants to speak to Hugh about Lord Archer's letter about his Inquiry into contaminated blood products at their 1:1 on Mon[day]. SofS had a meeting on Tues with Caroline, Philip and Norman Warner about the Inquiry and how we respond to Lord Archer's letter. Caroline isn't happy with the content or language of the letter that has been drafted for her to sign (copy is attached below) and mentioned that Hugh had seen and cleared this. SofS said that she would speak to Hugh about it.*

*Two other points that Hugh should be aware of which SofS might also mention. She has asked either Caroline/Philip or Norman to speak to the Inquiry to find out what their terms of reference and how they are being funded. SofS also agreed to officials giving evidence to the Inquiry after they have complied [sic] their detailed report into documentation on contaminated blood products (you might be aware that a number of documents were destroyed in error).” (emphasis in original).*

- 5.17 I met with Patricia Hewitt on either 19 or 20 March 2007<sup>15</sup>. As indicated by Dani Lee's minute to Ruth Cuthbert above, this was one of our regular, usually weekly, one to one meetings as opposed to it being a meeting solely to discuss the response to Lord Archer. I have no recollection of the actual discussion with her during this meeting, although it is clear that it happened.

- 5.18 On 21 March 2007, there was an email exchange arising out of what appears to have been a brief discussion with the Secretary of State:

- (1) In answer to a request from Caroline Flint's Private Office as to what had emerged from the discussion, Dani Lee in the Secretary of State's Office replied (at 09.05),

*“Clara [Swinson i.e. PPS to the Secretary of State] was too busy sorting out our side of the Chancellor's budget yesterday to feed any details to me. However, she did say that Hugh thought that we needed to tweak the language of the letter a little. I'll speak to Clara again this afternoon after the Chancellor has announced his budget.*

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<sup>15</sup> There are conflicting references to whether the meeting was on the 19 or 20 March, though I do not believe anything turns on this.

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*As far as I know, there there's been no change to who is responding to the letter but again, I'll clarify that with Clara later."* **[DHSC5463384]**

- (2) The Secretary of State's Private Office then emailed Caroline Flint's Private Office, copying in my own Private Office, explaining that,

*"At the 1:1 yesterday, SofS and Hugh agreed that:*

*MS(PH)'s draft response needs to be more co-operative about Lord Archer's Inquiry. Please could you ask officials to redraft this.*

*We need more information about the Inquiry including, when it is due to commence because if we are going to offer DH officials to give evidence and make all documentation available then we need to agree a mutually convenient time frame for the Inquiry."* **[DHSC5463384]**

- (3) Caroline Flint's Private Office emailed William Connon asking for a re-draft of the letter to Lord Archer, noting that:

*"MS(PH) has met with SofS to discuss our response to Lord Archer and SofS subsequently had a discussion with Hugh Taylor. ... It has been agreed that the response needs to be more cooperative regarding the inquiry and officials should give evidence and papers should be made available."* **[DHSC5463411]**.

- (4) William Connon was informed that I wanted to clear the draft before it went to Ministers **[DHSC5463720]**.

5.19 On 23 March 2007, Liz Woodeson sent a submission to me (I have been provided with two slightly different versions of this submission by the Inquiry - **[DHSC5046267]** and **[DHSC5857854]** – and it is not clear which one was in fact sent to me). In the submission, Liz Woodeson explained that, given her team's concerns about the Archer Inquiry, she wanted to run the re-drafted letter to Lord Archer past me before sending it to Ministers. I note that her principal concern related to the suggestion that officials should agree to appear as witnesses. The concerns she raised were, in summary:

- (1) While there was no evidence of any negligence or wrongdoing on the part of the Department during the period in question, there was considerable scope for embarrassment for the Department if officials were asked to appear before the Archer Inquiry in light of the subsequent destruction and loss of a number of files;

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- (2) As the Archer Inquiry was not an official public inquiry, there was no clear legal framework under which to operate, not least whether officials could be compelled to give evidence;
- (3) The significant amount of preparation time that would be required if officials were called to answer questions on over 6,000 documents;
- (4) The possibility of Ministers themselves being asked to give evidence if it was agreed that officials should;
- (5) The risk of the Department being pressed to release unredacted documents and the possibility of criticism and embarrassment to those involved at the time of the events in question (in one version of her submission, a number of examples are provided); and
- (6) It was not clear what evidence officials would be able to provide in person, given the lapse in time since the events in question.

5.20 On the afternoon of 26 March 2007, Gregory Hartwell emailed Liz Woodeson to confirm that I was content for the submission to be sent to Caroline Flint **[DHSC5046266]**.

5.21 It appears from the documents that William Connon had also sought the views of the Department's legal advisers on the submission to Ministers and the draft response to Lord Archer. The views of the legal advisers can be seen in a version of the submission to Caroline Flint from William Connon dated 26 March 2007 **[DHSC5041872]**. In the "*Recommendation*" section, it is stated that:

*"Sol [Solicitors] have questioned the offer of a meeting between Lord Archer's team and the department. The offer to agree to release our imminent report should be sufficient and Sol feels that a meeting could imply that the department is willing to be more deeply involved."*

5.22 On 27 March 2007, Dani Lee in the Secretary of State's Private Office then emailed my Private Office:



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*“You mentioned that Hugh would need to see the draft response before it came to SofS. Please could you also ask Hugh to consider the submission attached in William’s email below and let me know what his thoughts are about letting officials give evidence at Lord Archer’s Inquiry. SofS and Hugh discussed this briefly at their 1:1 on 19 March.”*  
[DHSC6326158].

- 5.23 It appears from the email sent by Gregory Hartwell to Liz Woodeson and William Connon on 27 March 2007 [DHSC5464486] that I was asked to review the revised draft reply to Lord Archer, following the legal advisers’ input, that afternoon. Gregory made clear in the email to Liz and William that I was concerned about the new proposal not to meet with Lord Archer’s team. Attached to that email was a short note from me to Liz Woodeson and William Connon [DHSC5464487] in which I stated:

*“I’m not sure about the latest line on all this. Does it really prejudice our position on giving evidence to the inquiry to offer a meeting with the team supporting Lord Archer? Are we really going to be able to keep them at arm’s length? I’d prefer to say that we will offer what assistance we can – and offer a meeting for the purposes of background briefing.”*

- 5.24 Accordingly, on 28 March 2007, William Connon provided a redrafted response to Lord Archer together with the final version of the submission to Caroline Flint. These reflected my comments about offering a meeting. The submission concluded with a recommendation that:

*“7. For all these reasons, we think it is not advisable to offer in the reply that officials would be willing to give evidence to the inquiry. The offer of a meeting between Lord Archer’s team and departmental officials is qualified to explaining about our review and the level of assistance we can provide his team.”* [DHSC0041307\_142]

- 5.25 The copy of the submission dated 28 March 2007 with which I have been provided contains a handwritten manuscript note of the same date from Dani Lee in the Secretary of State’s Office [DHSC0041307\_142]. This note recorded that it was the legal advice that the Department should avoid becoming in any way directly involved with the Archer Inquiry and that I agreed with that advice. As is apparent from the chronology, that was not an entirely accurate summary of my own position as I had urged the amendment of the submission such that



officials should meet with the Inquiry team (in addition to the previously agreed position that documents should be provided to it).

5.26 On 29 March 2007, Jacky Buchan wrote a note to Caroline Flint in relation to the redrafted letter of reply to Lord Archer, in which she stated the reply “...*falls short of agreeing to give evidence but agrees to share documentation*”. [DHSC0041193\_054]. The note also recorded that I had approved the wording of the draft letter.

5.27 On 30 March 2007, the reply to Lord Archer was sent, signed by the Secretary of State [DHSC0041193\_048]. In the reply, the Department agreed to provide the results of its review into the available documentation for the period 1970-1985; to consider any FOI requests in relation to documents not already in the public domain; and offered an early meeting between Department officials and Lord Archer’s team.

5.28 I understand that there were several subsequent meetings between officials and Lord Archer on 25 April 2007, 19 September 2007, 18 February 2008 (with representatives of the Scottish Government attending also) and 12 June 2008. I was not involved in those meetings.

### **Lord Archer’s initial request for assistance (Q29)**

5.29 I am asked about my interpretation, and that of the Department, of Lord Archer’s request for assistance from the Department in his letter to the Secretary of State on 16 February 2007 [DHSC0041193\_056]. I am also asked whether there were any immediate meetings or discussions that took place among ministers and officials on receipt of Lord Archer’s letter.

5.30 I refer to the chronology rehearsed at paragraphs 5.2 - 5.28, above for what happened in terms of discussions within the Department following receipt of Lord Archer’s request for assistance.

- 5.31 I do not recall what my interpretation of Lord Archer's request was at the time. Reviewing the actual letter now, there is a degree of ambiguity in what Lord Archer was actually requesting in his letter of 16 February 2007. I am satisfied, however, that the reply he was given was a reasonable response to his request as phrased.

**Decision as to cooperation with the Archer Inquiry (Qs30-33 and Q 37)**

- 5.32 I am asked for my recollection of discussions that took place with William Connon, in particular during a meeting on 7 March 2007, concerning a decision not to cooperate with the Archer Inquiry. I am also asked for an explanation as to why my views on co-operating changed.
- 5.33 As I have indicated, I do not have any actual recollection of the meeting with William Connon on 7 March 2007 or what was discussed in terms of co-operation with Lord Archer's Inquiry. As noted above, the meeting appears to have been arranged to discuss a separate issue. It was settled Government policy at the time to resist the calls for a full public inquiry; and it seems clear to me from the documentary evidence (see in particular the email from William Connon on 21 February 2007 [DHSC5460426]) that the policy team took the view that this was not compatible with providing Departmental support to the Archer Inquiry. I had already cleared the initial advice given to ministers on these lines (see paragraph 5.10 above). It seems possible, in view of the chronology set out above, that William Connon wanted to alert me to the fact that Caroline Flint was seeking a meeting with the Secretary of State to discuss the issue and sought confirmation that I was supportive of the line that had been taken, which I expect I confirmed in the margins of the meeting discussing the Tessa Jowell issues.

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- 5.34 Having now looked at this again, I am not surprised that Ministers wanted to take a different approach to the one proposed initially; and I am confident that would have been my response on reflection at the time. The tone was wrong for a response to such a senior Parliamentarian; and there was clearly scope for a more constructive approach given that the Department had been moving to a more transparent stance in terms of making documents available. It was obvious in hindsight that a more cooperative line would be needed.
- 5.35 With reference to the exchange of emails between William Connon and Jacky Buchan on 21 March 2007 [DHSC5463411] I am also asked to provide an outline of what discussions took place during my one-to-one meeting with the Secretary of State and for an explanation as to why it was decided that officials should give evidence and make papers available.
- 5.36 I do not myself recall this discussion with the Secretary of State. As it was during one of our regular one to one meetings it would have been one of a number of issues discussed. However, I note the email dated 27 March 2007 from Dani Lee to my Private Office in which she refers to the issue having been discussed “*briefly*” at the meeting [DHSC6326158]. I do not remember whether the Secretary of State simply informed me that she and Caroline Flint wanted to adopt a different, more constructive approach, or whether it led to a wider discussion of the proposed approach to the inquiry. I suspect the former is more likely, particularly as the email chain accompanying Dani Lee’s feedback to Caroline Flint’s Private Office on this meeting shows that Clara Swinson’s quick initial feedback to her from the meeting had been that I agreed that the response needed ‘tweaking’ [DHSC5463384]. But either way she would have expected me to be supportive of her request for the proposed response to be reconsidered, as the chronology above shows that I was. I asked to clear a revised draft submission before it went to Caroline Flint [DHSC5463720] and I subsequently intervened to ensure that the offer of a meeting with officials remained in the proposed response (paragraph 5.23, above).

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- 5.37 In particular, I very much doubt if the terms of Jacky Buchan's email referring to this discussion reflected any in-depth consideration between the Secretary of State and myself of what it would mean for officials to give evidence to the inquiry. Certainly, I have no recollection of such a discussion. It seems clear from the documentation that it was this element of the response from Ministers that gave the policy team, and our legal advisers, most cause for pause rather than an offer of a meeting with Lord Archer's team.
- 5.38 Officials would only have been able to give evidence to the inquiry on the basis that they were reflecting the views of the Government of the day and/or simply to give a narrative account of what the documents from the time said. They would have been speaking on behalf of Ministers and the Government about events of which they had no first-hand knowledge; and as the submission to me and the subsequent advice to Ministers pointed out, it would have been difficult to see why, if officials serving the current administration were to give evidence, Ministers should not also. I therefore supported the line taken on this point alongside the generally more co-operative stance that Ministers were looking for. I can readily understand, therefore, why officials' subsequent advice to Ministers took a more nuanced line on this in response to the Ministers' views; in other words, to offer disclosure of documents and for private meetings to discuss background, but not to offer witnesses.
- 5.39 Reflecting on Lord Archer's request now, it is also not obvious to me that he was in fact requesting witnesses as opposed to someone from the Department being available for a discussion about documents and their background. Certainly, I have not seen any documents that indicate that Lord Archer raised any dissatisfaction that officials from the Department did not give evidence.
- 5.40 I have also been asked about the two versions of the submission prepared for me by Liz Woodeson dated 23 March 2007 attaching a revised draft letter to Lord Archer **[DHSC5046267]** and **[DHSC5857854]**. One version of Liz Woodeson's submission included examples of potential areas of criticism or embarrassment for Ministers, should documents be released without redaction;

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the other version did not include this. I am asked to give my views on the concerns expressed by Ms Woodeson about the Archer Inquiry, and also to outline what action I took on receipt of her submission.

- 5.41 As explained above, I do not know which version of the submission I received. Nor do I think it is material to the way this played out. As set out above, the documents show that I endorsed the line proposed on the issue of officials (or indeed Ministers) giving evidence to the inquiry and agreed the revised, more co-operative response which Ministers then agreed.
- 5.42 As referred to above at paragraphs 5.21-5.23, there was a subsequent exchange of emails following advice from the legal team about meeting with Lord Archer. In particular, I note that my note to Liz Woodeson and William Connon on 27 March 2007 **[DHSC5464487]** rejected the lawyers' view that offering a meeting with Lord Archer would prejudice the Department's stance that a public inquiry was not necessary.
- 5.43 The Inquiry has also asked if there is a copy of the draft response to Lord Archer attached to a version of a submission from William Connon to Caroline Flint dated 28 March 2007 **[DHSC0041307\_142]**. My lawyers have searched the records database of the Department and have found what I believe is the draft version referred to, see: **[WITN7498012]**.
- 5.44 I am also referred by the Inquiry to the email chain between William Connon, Head of Blood Policy, and Jacky Buchan, Assistant Private Secretary to Caroline Flint **[DHSC5460426]**. As I have set out above, Mr Connon advised that the Department "*should not become involved in Lord Archer's Inquiry at all*" and provided a draft response letter to Lord Archer which his email stated was cleared by myself, which "*takes a robust line*" **[DHSC0041193\_071]**. I am asked why a "robust line" was taken. I am also asked whether I attended a meeting between Caroline Flint and Patricia Hewitt and, if so, for my recollection of what



discussions took place. Finally, I am asked who the special advisers referred to in the email chain were.

5.45 I refer to my answers given above at paragraphs 5.10-5.17 in relation to “*the robust line*” that was taken. Officials were no doubt seeking to be consistent with the line adopted over many years by ministers that a public inquiry was not justified. Against that background, when a non-Government commissioned inquiry had been established, there were obvious concerns in engaging with that inquiry as if it were a Government commissioned public inquiry; and in practice I do not think it would have been at all unusual to resist or at most limit Government involvement in an independently commissioned inquiry of this kind. That did not preclude the use of a different tone and more constructive approach in framing the response which Ministers understandably sought and were given.

5.46 It seems clear from the documentary records that I did not attend the meeting between Patricia Hewitt and Caroline Flint and other Ministers on 13 March 2007, which then gave rise to my brief discussion with Patricia Hewitt about the need for a more co-operative response to Lord Archer’s letter. As I was not in attendance, I do not know who the special advisers referred to in the email record of the discussion were.

### **Decision not to provide witnesses to Lord Archer’s Inquiry (Q34)**

5.47 I have been asked who made the final decision on behalf of the Department not to provide witnesses to the Archer Inquiry.

5.48 The final decision was made by Caroline Flint, with the Secretary of State, as the decision needed to be made at ministerial level. There appears to be a manuscript initial by Caroline Flint made on 30 March 2007 on the handwritten note from Jacky Buchan to her in relation to the redrafted submission and revised draft to Lord Archer [DHSC0041193\_054]. The final letter was sent by Patricia Hewitt as Secretary of State.

**Delay in responding to Lord Archer (Q35)**

5.49 I am asked why it took almost six weeks for the response from Patricia Hewitt to be sent to Lord Archer. As is clear from the chronology above, this reflects the time taken for Ministers to review the original advice they were given and, in the light of their feedback, for officials to prepare a revised response in the light of the particular concerns about the issue of officials giving evidence as witnesses to the inquiry.

**Meetings between Lord Archer's Panel and the Department of Health (Q36)**

5.50 I am informed by the Inquiry that they understand that meetings took place between the Archer Inquiry panel and representatives of the Department took place on 25 April 2007, 19 September 2007 and 12 June 2008. (I am informed by my legal representatives that the records suggest that there were in fact 4 meetings, the fourth on 18 February 2008 also being attended by representatives of the Scottish devolved administration.) In respect of those meetings, I have been asked how those meetings came to be arranged (including how the agendas came to be set and by whom); who attended those meetings and what was discussed; whether any conditions were attached to those meetings and, if so, who were they requested by; and why no written records were made of the meetings, including who made that decision.

5.51 I do not know the answers to any of these questions, nor have I seen any relevant documentation that would enable me to provide answers. As far I can recall, I had no involvement in any of the meeting arrangements at the time and nor would I have expected to have been so involved unless there was a significant matter of concern raised. I also have no recollection of attending any of the meetings. I anticipate that they would have been attended by more junior officials who had more day-to-day involvement with the policy area.

## Report of the Archer Inquiry [Q38]

5.52 The Inquiry has referred me to page 9 of the Report published by the Archer Inquiry on 23 February 2009 (the **Archer Report**) in which the comment was made on the stance of the Department to the Archer Inquiry that:

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

5.53 I have been asked to confirm my responsibilities and involvement regarding the Department’s engagement with the Archer Inquiry, and to confirm the names and job titles of any other individuals in the Department who had responsibility for such engagement. I am specifically asked about the justification, if any, provided by the Department for the view that the Archer Inquiry was unnecessary, and who came to that conclusion within the Department. Finally, I am asked whether I agreed with the Department’s view that the Archer Inquiry was unnecessary and whether my view changed over the course of the Archer Inquiry and during my tenure as Permanent Secretary.

5.54 To a large extent, the answers to these questions are apparent from the chronology I have set out above and the answers to previous questions.

5.55 From the documents (rather than from a direct recollection) the officials who were involved with the immediate engagement with Lord Archer’s Inquiry were William Cannon (later Rowena Jecock) and, at a more senior level, Liz Woodeson. There was also input from Departmental lawyers. I have set out my own involvement above. It was ultimately Ministers who determined the nature of the Department’s engagement with the Archer Inquiry.

5.56 The comment in Lord Archer’s report stating that the Department considered a public inquiry to be “unnecessary” reflects the fact that Ministers did not

consider that a public inquiry was justified – they had declined to call one prior to the establishment of Lord Archer's own inquiry. Ministers had been considering the concept of an external commentary (see Section 4 of this statement) but were not in favour of a statutory public inquiry. All the interactions which officials had with the inquiry, on the terms agreed by Ministers, would have been set in that context. I do not recall Ministers altering their line on the necessity for a public inquiry during the course of the Archer Inquiry or later. As I have already indicated, I have no recollection of the Secretary of State or other Ministers seeking out my views on this issue.

### **Provision of documents to the Archer Inquiry [Q39/Q40]**

5.57 I am asked to explain how the Department determined which documents were to be provided to the Archer Inquiry, whether the Department withheld any requested documents and, if so, what documents or class of documents were withheld and what justification was given for this.

5.58 The Inquiry has also referred me to the witness statement of Judith Willetts, a panel member of the Archer Inquiry, in which she outlined the difficulties she stated she experienced in obtaining documents from the Department [WITN4736001]. I am asked for my recollection of the Department's document disclosure process to the Archer Inquiry and whether I consider that there was an unwillingness of the Department to help the Archer Inquiry. The Rule 9 request gives only a partial quotation from Judith Willetts' witness statement. To put it into context, the full quotation is:

*"One of the key barriers was the difficulty in establishing exactly what relevant documentation existed and could therefore be requested. As we did not know what the Department had, we did not know what to ask for! We experienced no willingness to co-operate with this dilemma from the DoH. Had there been any desire to identify a range of key documents that would be useful, we might have saved days of work. My abiding sense was that the individuals we had contact with simply did not want to help."*

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5.59 In preparing this witness statement, the Inquiry and my legal representatives have provided me with a number of documents concerning the release of documents publicly, including to the Archer Inquiry (including: [DHSC5038943], [DHSC5084337], [DHSC0041193\_026]), [DHSC5468168], [DHSC5051140], [DHSC5479534], [DHSC5284704], [DHSC6366277], [DHSC5003744], [DHSC5276915], [DHSC6714579]). In summary, the process adopted by the Department followed FOI disclosure principles, with documents only withheld where a valid exception applied. The aim, as reflected in various submissions referred to in paragraphs above, was to be as transparent as possible by disclosing as many documents as possible. My only involvement in the process came in authorising the release of documents once they had been reviewed by officials; because they related to past administrations, I needed to give the authorisation as Permanent Secretary. Due to the sheer numbers involved, documents were released in tranches. Although I have not seen a document that explicitly records this, it appears that I gave a general authorisation to release all documents covered by the Document Review in line with FOI principles at the outset (see paragraph 5 of the minutes of a meeting between officials on 19 June 2007 (*"The Permanent Secretary had approved release of the papers, relating to a previous administration, at the time approval was given to the release of the 56 NANBH papers."*) [DHSC5051140], and the handwritten annotation recording my agreement to the ministerial submission dated 24 April 2007 that had recommended the release of papers [DHSC0041193\_026]).

5.60 As I was not involved in the review of documents for release, I do not know what documents or classes of documents were withheld, or the justification for doing so beyond the fact the Department was releasing documents in line with FOI principles. In this regard, I note the submission from Patrick Hennessy to me dated 27 February 2008 [DHSC6366277]. In that submission he informed me that officials had recently reviewed again the small number of documents that had been withheld under exemptions in the FOI and had concluded that on balance further documents should be released, which demonstrates the Department's continuing efforts to disclose materials where possible.



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5.61 I note from a later ministerial submission from Rowena Jecock dated 26 February 2009 (to which my private office does not appear to have been copied at the time) that she referred to 35 documents being withheld in whole or part out of c.4,500, with the reasons given in a table **[DHSC0011467]**. On 9 March 2009, in a further Ministerial submission (also not copied to my Private Office) on the 35 documents, it was envisaged that the numbers withheld would be reduced further **[DHSC0041157\_051]**. I note that David Harper was by this stage involved in advising on the very few that may have still needed to be withheld. Then, on 19 March 2009, Liz Woodeson sent a submission to Dawn Primarolo indicating that, following a further review, only eight documents were being withheld **[DHSC5029952]**. That submission was copied to my Private Office, but it was David Harper and Liz Woodeson who had carried out the further review and were advising on the few that were still to be withheld, none of which were said to contain significant information. Although he had by now reported, Lord Archer was informed of this on 7 April 2009 **[ARCH0000061]**.

5.62 As far as I can tell from the documents, therefore, it appears that the vast majority of relevant documents were supplied to the Archer Inquiry.

5.63 In relation to Judith Willetts' views, while the process of releasing documents took longer than might have been desirable, it appears that this was down to the number of documents that needed to be reviewed before release rather than a lack of co-operation or a positive stance of non-co-operation on the part of the Department. I can only say that, in so far as I can recall, no complaints or concerns were raised by Lord Archer himself, Ms Willetts or other panel members, either with Ministers or directly with me about this process or about the Department's cooperation with the Archer Inquiry at the time. Had any complaints been raised with Ministers, I am sure I would have been alerted to these.

5.64 I also note that, amongst the available documentary records, is the Department's minute of the meeting the Archer Inquiry panel team had with

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Scottish Government representatives and the Department on 18 February 2008 **[DHSC5507507]**. In this, it is recorded that Lord Archer had said the Department had been very helpful in releasing documents, but that there was a huge amount of paper (I have seen later submissions referring to over 18,000 pages) and that the Archer Inquiry did not have the resources to handle it all in detail (see also the minute of the meeting by the Scottish Government representatives, that records a similar issue with volume and available resources **[DHSC5015521]**).

## Section 6: Response to the Archer Inquiry

### Government's response to the Archer Report (Q41/Q42)

- 6.1 I have been asked to outline my role and responsibilities in respect of the Government's response to the Archer Report [ARCH0000001].
- 6.2 As far as I can recall, I had no involvement in the framing of the Department's response to the Archer Inquiry<sup>16</sup>. I was obviously aware of the publication of the report and that officials and ministers were discussing how to respond to it as my private office was copied in on various ministerial submissions (for instance, one dated 24 February 2009 [DHSC0041157\_057]<sup>17</sup>), but I have seen no documents to indicate I was involved in shaping the response or discussing it with Alan Johnson, who by then was the Secretary of State.
- 6.3 In preparing this witness statement, my legal representatives have provided me with a copy of an email from Morven Smith (the assistant private secretary to Dawn Primarolo) dated 2 March 2009 to various officials, which summarised action points from a meeting officials appear to have had with the Minister [WITN7498013]. I note that this states that David Harper and I were to be tasked with going through the withheld and partially withheld documents to give the Minister a "blow-by-blow" account (which I take to mean a summary of what they contained and why they had been withheld). This relates to the 35 documents that were reduced down to just 8 being withheld to which I have referred at paragraph 5.62, above. I have no recollection of this, and it seems likely that it was David Harper and not me who considered these on a document-by-document basis (see the Ministerial submission of 19 March 2009

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<sup>16</sup> [HSOC0011282\_002]

<sup>17</sup> I have also been shown another briefing note, with handwritten annotations addressed to Dawn Primarolo, which it appears was sent just prior to Lord Archer publishing his report, although it is not clear who else this was sent to [DHSC0041157\_059], an email dated 27 February 2007 from Morven Smith to Dawn Primarolo containing a draft briefing note for her to send to the Secretary of State [DHSC6483568], and an exchange of emails between officials around this time in February 2009 [DHSC0011469].

which, as I have indicated, refers to the review having been done by Liz Woodeson and David Harper [DHSC5029952]).

6.4 The Inquiry has referred me to several statements made by Government ministers, namely a response from Dawn Primarolo to a Parliamentary Question from Danny Alexander MP on 6 March 2009 (*"The Department has never received any formal request to give evidence to the inquiry"* [ARCH0000244]); a statement in the House by Gillian Merron on 1 July 2009 (*"Lord Archer asked for someone from the Department of Health to meet him, and officials did so on several occasions, but he did not invite Ministers to attend or participate in his inquiry"* [DHSC5200930]); and by Andy Burnham in a letter dated 16 July 2009 (*"Ministers were not invited to attend or participate in his [Lord Archer's] inquiry"* [PMOS0000191]). In relation to those statements, I have been asked what my understanding was for those statements being made.

6.5 My understanding is that these statements were compatible with both the terms of Lord Archer's initial letter to Patricia Hewitt [DHSC0041193\_056] and her response. I think it was reasonable to interpret his request for someone from the Department to meet the panel as a request for a meeting rather than a formal request for evidence. The statements certainly reflect the original ministerial decision that the Department (which would have included Ministers) would not give evidence to the Archer Inquiry. The subsequent meetings with officials were held privately, consistent with that decision. Nor on the basis of the documents I have seen does it appear that Ministers were ever formally invited to give evidence to the Inquiry (See also my comments at paragraph 5.31 and 5.39, above).

### **Meeting between the Minister of State, Secretary of State and Lord Archer (Q43)**

6.6 I am asked whether I attended a meeting between the Minister of State, Secretary of State and Lord Archer and, if so, to provide my recollection of what

discussions took place, in particular in relation to the Department's cooperation with the Archer Inquiry and the Archer Report's impact on continued calls for a public inquiry.

- 6.7 The meeting took place on 11 March 2009. I do not recall attending this meeting; and the documentary record suggests that I did not. I note that the briefing note prepared ahead of this meeting dated 10 March 2009 does not appear to have been copied to my private office [DHSC0041157\_052]. A summary of points arising at the meeting was circulated by the Secretary of State's Private Secretary on 13 March 2009 [DHSC5277959]. Again, my Private Office was not copied into this email as would almost certainly have been the case had I attended the meeting.

#### **Department's handling of engagement with the Archer Inquiry (Q44)**

- 6.8 I have been asked to confirm my present views on how the Department handled the issue of engaging with the Archer Inquiry. Reflecting on matters now, I think that the fact that this was a non-government commissioned inquiry, with limited resources at its disposal, made this genuinely difficult. It might be argued that a different approach could have been taken, with the Department engaging more significantly with the Archer Inquiry; however, reviewing the records now it is clear that the Inquiry struggled with the volume of materials provided to it. If the Department had offered more support with that it would have raised questions both on how that would be resourced within the Department and about the independence of the analysis. Moreover, as I have noted above, there was no one in the Department with first-hand knowledge of the events that gave rise to the concerns driving the campaigners on this issue. Even if the Department had been more engaged, therefore, I doubt whether the outcome would have been significantly different.
- 6.9 It seems to me that there was always a binary choice between not having an inquiry and having a full statutory inquiry. Lord Archer's Inquiry did not disperse



the calls for a full public inquiry, not least given the continued strength of feeling amongst the campaigning group. As I have suggested elsewhere in this statement, nothing less than a full statutory inquiry held in public was ever likely to satisfy the perceived need to put the circumstances that gave rise to the use of infected blood and their impact on the infected and affected sufficiently under the microscope. Successive Government administrations struggled with the issue of whether such a major undertaking was justified in the light of the arguments presented to them both internally and externally at the time. That step has now been taken; and as I have indicated (at paragraph 4.37 above), it must therefore be the case that the question is whether it is that step, rather than supporting or establishing any more limited form of inquiry, which is the nettle that might have been grasped earlier and closer in time to the events themselves.

## Section 7: Other issues

7.1 To the best of my recollection the Rule 9 request and my response do cover all the points at which I appear to have been personally involved in the issues covered by the Inquiry's Terms of Reference during my time as Permanent Secretary of the Department. However, I am conscious that the Rule 9 request itself does not cover all the policy issues that the Inquiry is addressing, including, for example, the important issue of the form and quantum of ex gratia payments, some of which I understand were live issues for the Department during this period under my leadership at official level. For the reasons set out in my opening comments, similar constraints would apply to the depth of my knowledge and understanding of those issues, now and at the time, as to the issues covered in the statement, together with the same hesitation in offering retrospective judgments. Nevertheless, within those constraints I would of course be willing to provide any further evidence sought by the Inquiry on those issues, or indeed the issues covered in my statement, from my perspective as a former Permanent Secretary with overall responsibility for the management of the Department during this period.

7.2 Finally, I should say that now these longstanding issues are finally being addressed independently and in depth, notwithstanding the scale and complexity of the task and the inherent difficulty of examining events that occurred so long ago, it is my genuine hope that the Inquiry will provide some form of resolution for all those impacted by this tragedy.

### Statement of Truth

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

Signed GRO-C .....

Dated.....12.1.2023.....