

## **THE PENROSE INQUIRY**

Written Statement by Dr Nancy Woodhead BSc PhD.

1. I am the Penrose Inquiry Team Leader, within the Blood and Transplant Division in the Scottish Government. In my earlier position, in the Sponsorship role, I ensured that resources and support were provided by the Scottish Government to the Penrose Inquiry. This included transferring documents to the Inquiry team, from Scottish Government files.

### **Scottish Government files of relevance to the Penrose Inquiry**

2. In response to a request for information relevant to the Inquiry's terms of reference, followed by a Section 21 Notice on 17 September 2009, the File Management Team and a former colleague, Mark Dorrian (now on secondment to the Vale of Leven Inquiry) identified 269 Health Department files containing approximately 25,000 documents, which were delivered to the Inquiry by 13 November 2009. The Scottish Ministers subsequently provided the Inquiry with a further 8 Health Directorate files, 12 Legal Directorate files, 2 Department of Health files deposited at the National Archives in Kew and 33 SHHD telephone directories found in the National Records of Scotland. Of these, the majority of files were from the NQ series of files, managed by the Blood and Rehabilitation Equipment Branch (also referred to as the 'Blood Policy Team/Branch') in the Patients and Quality Division. File ciphers and titles are found in the NETIMPreS database maintained by the Scottish Government Records Management Team. All Scottish Government records are registered on an electronic tracking and retrieval system called NETIMPreS. NETIMPreS is the intranet facility whereby those on the Scottish Government IT system can view details of files such as the file reference number, title, location and details of disposal. The database can be searched for key words contained in the file title (e.g. HIV and Hepatitis C) or, as in this case, the cipher (NQ). These files were requested through the File Management Team. The files were scanned and most transferred to the Penrose Inquiry electronically. A small number of

documents which contained Law Officer advice, references to Law Officer advice or exchanges between Scottish and UK Law Officers were not provided to the Inquiry as they were subject to legal professional privilege (“LPP”) and it was considered to be appropriate to withhold them (see paragraphs 17 to 19 below).

### **Selecting Blood Policy Files - NQ files**

3. Files opened in the NQ series cover policy, administration and operational aspects of policy delivery, on providing blood and blood products through the National Health Service over the period being examined by the Penrose Inquiry. NQ files belonging to the Blood and Rehabilitation Equipment Branch were found to contain information dating back to 1970 which was relevant to the terms of reference of the Inquiry. NETIMPRoS cannot be guaranteed to be completely comprehensive for these earlier files. The database was created by manually entering pre-existing registers of files from various Scottish Office Departments, a process which should have excluded any files which had already been destroyed. Unfortunately there is no way to compile an absolutely definitive list of files which improves upon NETIMPRoS.
4. Staff file documents about a range of policy subjects. Files were opened in sequence by staff in the branch. A file will hold around 300 pages, and can be closed either when the file is full (at which point a new part can be opened, which can be treated separately for the purposes of reviewing and closing), or when the subject is no longer pursued in the branch, irrespective of whether the file is full or not. The file names and ciphers refer to subject matter of the files. Opening and closing dates are recorded on the front of the file. The NQ cipher is subdivided into:
  - NQA – Administration
  - NQB – Buildings and Accommodation
  - NQC – Committees and Meetings
  - NQD – Equipment

- NQE – Transport
  - NQF – Finance
  - NQG – Staff
  - NQH – Policy and Products
  - NQJ – Research
  - NQL – Legal
  - NQZ - Miscellaneous
5. Our records indicate that 560 files have been opened in the NQ cipher series since its inception. All these files are recorded in the NETIMPreS database. The database showed 242 of the 560 files had been destroyed, as a result of standard file management procedures. The names of these files are shown at Annex A. The titles of all remaining files in this cipher were surveyed by the Blood and Rehabilitation Equipment Team in 2009, for their relevance to the Inquiry's terms of reference. From the file names, 62 were considered not to come under the terms of reference. These files cover a wide range of subjects, including buildings and accommodation, staffing issues, vCJD, and tissue banking. A full list of these 62 files can be found in Annex B. The branch requested all remaining files from Records Management to send to the Inquiry.
6. Although files may be preserved in the National Records of Scotland, NRS, they are still recorded in the NETIMPreS database, which shows where files are held, and is updated to allow files to be called from any location, including NRS

#### **Search for further files – NETIMPreS**

7. The policy team searched file records from the records management database, NETIMPreS. By selecting relevant search terms such as HIV and Hepatitis C we identified a range of files with ciphers other than NQ, belonging to other branches.
8. An email requesting files relevant to the Inquiry was sent to every Scottish Government Directorate with a request to cascade the email to every branch

within the Directorate. As a result, the Public Health Division provided a list of files which covered HIV and Hepatitis C. Public Health Division files are identified by the NJ cipher. Of this list of about 125 files, all were read by me and 23 NJ files were selected by me to be forwarded to the Inquiry. The others did not appear to fall within the Inquiry's terms of reference.

9. Further files were selected from the NETIMPreS search from pharmacy and Chief Medical Officer branches. These files were requested from the relevant branches and the branches were asked if they held further relevant files. It was noted that outside the Blood Policy Branch, older files on blood policy had not been retained, unless they were in the NRS.

#### **National Archives of Scotland**

10. During a meeting to provide updates on current issues in respect of the Inquiry on 27 August 2009, attended by Scottish Government representatives, the Secretary and Solicitor to the Inquiry and the Inquiry's Document Manager, the Solicitor to the Inquiry indicated that there was an interest in the Medicines Act 1968 and events following the coming into force of this Act, such as the establishment of the Medicines Commission. Information relating to these early events was located by searching, what was then, the National Archives for Scotland (NAS). The NETIMPreS system would not hold these records, as the files were selected by NAS before NETIMPreS was established. A small number of such files were identified as potentially relevant, requested from NAS, scanned and forwarded to the Inquiry. These files have ciphers HOS, HPS, 1-HHH.

#### **Delivery of documents following section 21 order of 17 September 2009**

11. The Scottish Government files were electronically scanned and sent to the Inquiry. Files were sent from a range of Health Directorate and organisational sources, under the following ciphers:

NQ:            Blood Policy

NJ: Public Health  
 NP: Pharmaceutical Services  
 PL: Pharmaceutical Services  
 2HEB: Communicable and Infectious Diseases  
 HOS: Specific Diseases  
 HPS: Pharmaceutical Services  
 1-HHH: Branch unknown  
 MSR: Clinical Resources and Audit Group  
 QOE & LIT: Solicitors  
 MH: Blood policy files held by National Archives at Kew  
 SOE: Telephone directories

12. The batches of files sent to the Inquiry were accompanied by Transfer Manifests listing each item sent to the Inquiry team. The dates on which files were transferred are shown below, and the manifests are attached to this statement, in Annex C.

Batch 1	22 September 2009	9 files
Batch 2	30 October 2009	19 files
Batch 3	16 November 2009	50 files
Batch 4	16 November 2009	50 files
Batch 5	16 November 2009	50 files
Batch 6	16 November 2009	50 files
Batch 7	16 November 2009	32 files
Batch 8	13 November 2009	15 files
Batch 9	11 December 2009	12 files
Batch 10	22 December 2009	1 file
Batch 11	8 February 2010	1 file
Batch 12	4 February 2011	3 files
Batch 13	15 February 2011	1 file
Batch 14	26 July 2011	3 files
Batch 15	19 August 2011	2 files plus 33 telephone directories
Batch 16*	11 January 2012	12 files

\* These are the same 12 files which were provided as Batch 9, however much of the material previously withheld on the ground of Legal Professional Privilege (LPP) was disclosed (see paragraph 17(c) below). Although the Transfer Manifest for Batch 16 states that these files were provided on 11 December 2009, they were in fact provided on 11 January 2012; they had been provided on the earlier date as Batch 9.

13. A number of further searches were undertaken. Some were unsuccessful. Our solicitor located a reference in file NQL 8/2 Part 1 to a further file which did not appear on the lists of files already delivered, destroyed (Annex A) or considered not to be relevant (Annex B). This further file, NQL 1/6, contained, according to a handwritten note at page 7 of NQL 8/2 Part 1, material which would potentially be of relevance in the Inquiry, for example a chronology showing the Scottish Home and Health Department's knowledge of the AIDS problem. I instructed a search to attempt to locate this file but it is not recorded on the NETIMPreS system, nor is it held by NRS; it therefore seems likely that it has been destroyed prior to the NETIMPreS system being set up. It will not therefore be possible to provide this document or file.
14. During the Inquiry's public hearings a number of questions arose concerning the structure of the Scottish Government, and relations between divisions. Searches were carried out to discover information on this, going back to 1970s. The NRS found a series of telephone directories which provide lists of divisions and an indication of reporting hierarchies. However, it was known that organisational charts were sent each year to the Treasury. Treasury documents would have been placed in the National Archives at Kew. A search was then undertaken of these records, but did not find the organisational charts.
15. Further questions were raised as to whether records relating to Scottish blood policy might have been deposited at Kew, and a general search indicated a few files that might be of interest. These included CMO circular letters, which could not be found in Scotland (for instance, one concerning consent from 1971), and some blood policy files. These files were called up from Kew and I reviewed

their relevance to the Inquiry. Two files were selected as being of some relevance, they were scanned and sent as part of Batch 15 (MH 160/1354 and MH 160/1355).

16. I also undertook a review of the "not relevant" files, which were read to confirm that they were not of any interest. Following this review, 3 files were scanned and sent to the Inquiry (Batch 14).

#### **Documents in respect of which legal professional privilege was asserted**

17. The Scottish Ministers have asserted legal professional privilege ('LPP') in respect of a number of documents which contain or directly relate to the provision of legal advice. Delivery of such documents to the Inquiry cannot be required under section 22 of the Inquiries Act 2005. Of the documents in respect of which LPP was asserted, some were withheld while others were exhibited to the Chairman and the Inquiry team subject to a confidentiality undertaking. The Scottish Government documents in respect of which LPP has been asserted were dealt with as follows:

- (a) The Scottish Ministers, in response to a Section 21 Notice, delivered 269 Health Directorate files containing an estimated 25,000 documents to the Inquiry by 13 November 2009. Ministers initially asserted LPP in respect of 28 individual documents or exchanges of correspondence as they related to the provision of legal advice by the UK or Scottish Law Officers. Lord Penrose noted the withholding of this material.
- (b) It was not possible, due to the relatively short time period available to comply with the Notice, to consider comprehensively which documents in addition to Law Officers' advice should be withheld under section 22. It was therefore agreed between the Scottish Ministers and the Inquiry team that all potentially relevant files would be delivered to the Inquiry, without the withholding of any document other than those relating to Law Officers' advice, but that no documents would be released into the public domain prior to 31 March 2010, in order to allow the Scottish Ministers to

make representations, if so minded. On 30 March 2010 the Scottish Ministers asserted LPP in respect of 310 individual documents or correspondence exchanges from 32 of the files delivered to the Inquiry. The Scottish Ministers are satisfied that those documents all contain or directly relate to legal advice and that their production could not be required. The Scottish Ministers indicated at that time that if, following consideration of these documents, the Inquiry wished to make use of a document for which LPP was claimed, or wished to place it in the public domain, such a request would be given careful consideration. This LPP material was subsequently exhibited to the Inquiry on the basis of a confidentiality undertaking signed by a solicitor to the Inquiry on behalf of the Chairman and the Inquiry team. No request for waiver of confidentiality in respect of any of these documents, for which LPP is claimed, has been made.

- (c) In December 2009 the Scottish Ministers provided the Inquiry with 11 correspondence files and a file of court papers in the possession of the Scottish Government Legal Directorate relating to the court action *Kennedy & Black v the Lord Advocate and the Scottish Ministers* (see Document Transfer Manifest, Batch No. 9). Some 1010 individual documents were withheld on the grounds that they contain or directly relate to the provision of legal advice. A further 168 documents were disclosed to the Inquiry under reservation of the position as to confidentiality.

In January 2012 the 12 *Kennedy & Black* files were resubmitted to the Inquiry, this time including legally privileged material (see Document Transfer Manifest, Batch No. 16), although a total of 62 individual documents were withheld at that time on the ground that they related to the provision of legal advice by the UK and Scottish Law Officers. The LPP material was exhibited to the Inquiry subject to a confidentiality undertaking. It was open to the Inquiry team, after reviewing these documents, to request the Scottish Ministers to waive confidentiality in respect of any document for which confidentiality was claimed, on LPP

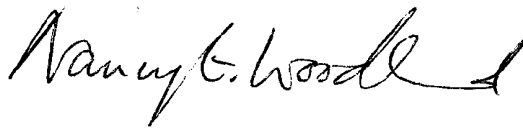


grounds or otherwise, which was considered to be of evidential significance, with a view to it being produced in evidence before the Inquiry and placed in the public domain. Such a request would have been given careful consideration. No such request was made.

18. The end result is that of 338 documents on Health Directorate's files for which LPP might be asserted, only the 28 'Law Officer' documents have been withheld. Of the 1010 documents on the Legal Directorate's files for which LPP might be asserted, only 62 'Law Officer' documents have been withheld. The Inquiry has had sight of all others.
19. The UK Department of Health asserted LPP in respect of 14 individual documents or correspondence exchanges contained in files which had been provided to the Inquiry by the Scottish Ministers. This LPP material was exhibited to the Inquiry subject to a confidentiality undertaking.

**Confirmation of satisfying the section 21 notice**

20. Following the methods described above and in the statement from Ben Plouviez I am satisfied that, in so far as it has been practicable to do so, the Scottish Ministers have produced to the Inquiry all documents called for in terms of the section 21 notice served on Ministers on 17 September 2009.



Nancy Woodhead

22 March 2012

**Annex A**

242 NQ files destroyed by File Management processes (file attached)

**Annex B**

62 NQ files considered not relevant to the Terms of Reference for the Inquiry (file attached)

**Annex C**

Copies of Manifests 1 – 16.