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**TOPIC C4 – SCREENING OF BLOOD FOR HEPATITIS C**

**RESPONSE OF DR RUTHVEN MITCHELL TO WITNESS STATEMENT REQUEST DATED 19.08.11 - (responses in quotes and italics to questions which can be answered)**

1. The Inquiry Team now has the correspondence referred to at paragraph 9.93. The letter of 5 July to Chiron is SNB.008.3584, SNB.008.3585 was a letter to Ortho asking if they were to market the test and SNB.008.3586 is the reply from Ortho dated 19 July.

2. The Inquiry team has minutes of the meetings of two groups which considered developments in the testing for hepatitis C over the period 1988 to 1991: the ACTTD and the ACVSB. **Why was it necessary to have both the ACVSB and the ACTTD? What lay behind the raising of the roles of the two groups at the meeting of 24 April 1990[1] – had it come to seem that there was unhelpful overlap?**

   *"The ACVSB and the ACTTD had separate roles and separate terms of reference which are given in the defining documents. Basically the Advisory Committee on Transfusion Transmitted Diseases dealt with the implementation of policy and the Advisory Committee on Virological Safety of Blood took advice from many sources to formulate policy which was decided by Government ministers"*

3. **How was the membership of each body determined, in particular the Scottish representation? We have a copy of the letter inviting Dr Perry to serve on ACVSB[2] – was he in fact nominated by SHHD? How did Dr Mitchell end up on both groups?**

   *"Nomination for membership of the ACTTD was by peer opinion based on individual interest, knowledge and ability. Nomination for ACVSB was by*

[1] Minutes SNB.001.9761
[2] SNF.001.1263

*selection of DoH and SHHD. In my case I would imagine that the National Medical Director and others at the SHHD would have some say in my nomination as our reputation in the West of Scotland and elsewhere was high following the work done on Hepatitis B. It is clear from various minutes that representatives of SHHD attended the meetings and therefore were well aware of my presence which was never challenged. I presume my membership of both groups was because I represented the largest transfusion centre in Scotland and had considerable experience of transfusion matters.*

4. The first meeting of ACTTD was on 21 February 1989. Further papers are now available, at SNB.006.1920, 1921, 1922 and 1923. SNB.006.1923 is the draft terms of reference, which were agreed at the meeting as the terms of reference of the committee.

5. Each group met in May 1989: the ACTTD had its second meeting on 19 May and the ACVSB its second meeting on 22 May. The minutes of the former meeting are now available at MIS.001.0009. At that meeting, Professor Cash expressed a desire to proceed with testing the Ortho assay. The minutes of the latter meeting may reflect a different attitude. Reservations appear to have been expressed about the benefits of the Ortho test, and the possibility of proceeding in due course without resort to the Ortho/Chiron test was mentioned. A figure of 50% was given as the sensitivity of the test – **what was the source of that figure? What further data from Chiron additional to the information in the article in Science in April 1989 (LIT.001.0629) was being anticipated?**

6. Professor Cash duly proceeded with his intention to arrange testing of the Ortho assay, as set out in paragraph 9.123. From the report of this study referred to in paragraph 9.148 (SNB.006.1596) it is evident that one objective was

"to determine the efficiency of the test in the examination of sera from patients with alleged post-transfusion non-A non-B hepatitis along with the implicated donations."

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**Was this the Scottish equivalent of the assessment discussed in paragraph 9.126?**

**What was the particular function of these studies – were they seen at the time they were initiated as potentially sufficient to inform a decision as to whether or not to proceed to introduce the Ortho test or were they in some way preliminary to a further assessment?**

*"The study referred to was a preliminary study in Scotland and was not, as I recall, part of the assessment discussed in paragraph 9.126. Results of our studies were of course made known to Dr Gunson and the Advisory Committee at which there was additional evidence from various speakers who noted that sensitivity and specificity of the test was low and the figure quoted of 50% sensitivity was generally agreed by virologists on the Committee."*

7. **What was the relationship between that assessment process and the exercise referred to at paragraph 9.124 (the assessment of samples of special interest using 1000 Ortho tests)?**

*"The 1000 Ortho tests, as I recall, were part of a preliminary study to determine technical and handling procedures."*

8. At the meeting of ACVSB on 3 July 1989, Dr Mortimer reported a view that the Ortho tests were reliable. The Chairman asked for all the data to be given to the committee at its next meeting. On the face of it, this does not appear to reveal a sense of urgency. **Was there a sense of timescale within which testing might be introduced? Why did ACVSB not consider it necessary to commission its own evaluation of the test?**

*"Technically the Ortho test could be performed in technical terms. In my view the ACVSB did not commission its own evaluation of the test since advice was available from many other places."*

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9. Paragraph 9.128 narrates a letter from Professor Cash of 28 July 1989, concerning the fact that the decision on testing was to be taken by SHHD not SNBTS. **Did Professor Cash ask for this letter to relieve pressure from Ortho representatives?**

*"It was clear in various correspondence that Ortho representatives were seeking a licence to introduce the tests in the UK at the earliest opportunity despite the fact that there were considerable reservations about specificity and sensitivity. Professor Cash was not the only person experiencing pressure from Ortho and this was reinforced by discussions at the trade meetings and the Rome Conference."*

10. Dr McIntyre replied to Professor Cash on 2 August 1989. His reference to introduction of a further test was conditional, suggesting that the principle of introducing a further test designed to reduce the incidence of post-transfusion hepatitis had not yet been determined. **Is this a correct impression**? He also mentioned his understanding that any new test would be introduced simultaneously throughout the UK. **What was the source of his understanding?**

*"Dr McIntyre was representative of SHHD at the ACVSB meetings and had access to all of the papers and discussions which took place. His reply to Professor Cash was correct."*

11. At this time there was also correspondence between Professor Cash and Dr Gunson regarding the timing of screening and the desirability of Scotland and England moving together on the matter. We now have the letter of 26 July from Dr Gunson (SNB.006.1574) to which the letter referred to in paragraph 9.129 is the reply. In his letter of 3 August 1989 to SNBTS Directors Professor Cash referred to its being only a matter of time before the new testing programme would be commenced. **At this point, was he envisaging a shorter time period than in fact eventuated?**

*"Professor Cash was reflecting the generally held position at the time and was of course aware that sensitivity and specificity of the test was still problematical and that many experts considered that the test required much improvement to avoid the problems of false positive and false negative results."*

12. Dr Mitchell and Dr Follett attended a meeting with Ortho representatives and also Drs Gunson, Contreras and Barbara in London on 23 August 1989. Dr Mitchell's report of the meeting is SNF.001.1449. It is clear from that report that the next meeting of ACVSB was scheduled for 17 October 1989, which would be after the Rome meeting on the virus, organised by Ortho. **Was there a view that the meeting of 17 October (subsequently postponed – see paragraph 15 below) was likely to take the decision to recommend the introduction of screening? What is the "turn-key" system referred to in paragraph 4? Were the figures presented by Dr Mitchell (paragraph 5) those from the ongoing studies referred to in paragraphs 9.123 and 9.148?**

*"I recollect that the Ortho meeting revealed a need to improve the test and it will be noted from my account and that of others that again Ortho were extremely keen to introduce a test into the United Kingdom before it had been accepted by the Federal Drugs Administration Licensing Authority in its country of origin."*

*"Turn key in my view means a system which is reliable and will work first and every time to the same degree of accuracy i.e. fit for purpose."*

13. A Civil Servant, G W Tucker, sent a memo to Michael Forsyth, (at the time a Minister rather than Secretary of State), on 23 August 1989 (as discussed in paragraphs 9.134-6). The memo was prompted by an article in the Guardian regarding the hepatitis C test. At the end of the memo, it is stated that "this (was) a UK issue" and that the Department of Health were "taking the lead". This appears slightly different from a position that the health departments were working together to appraise and, if appropriate, introduce the tests simultaneously. There is also the penultimate paragraph of page 3 of

SNB.002.4627, which seems to suggest that the Scottish decision would be taken in its own right, on a recommendation from ACVSB. **What was the position – were the health departments for Scotland, England/Wales and Northern Ireland working jointly on the decision or was it an issue on which Scotland would follow whatever decision was taken in England? Was the formal position that the decision for Scotland would be taken in Scotland, independently from the decision for England?**

*"It was abundantly clear that any decision to introduce any tests for Non A Non B Hepatitis would be a decision of the joint ministers of the United Kingdom."*

14. From the letter discussed in paragraph 9.140 (and from other statements made around this time) it appears that there was no question of introducing screening until a satisfactory confirmatory test became available. Our understanding of the thrust of this particular letter is that it was possible simply to repeat a positive test, using another kit the same as the first, or to carry out a further test using the same antigen but a different set of reagents and that the latter was preferable and should be facilitated by Ortho as soon as possible. **Is this correct?**

*"This is correct and as I recall Ortho were unable to undertake this requirement."*

15. The Rome symposium in September 1989 was clearly an important meeting. We have reports of this meeting prepared by Dr Mitchell (SNB.001.8678) and Dr Gunson (SNB.006.1456), and the sequence of events from and after the meeting is set out in paragraphs 9.143 to 9.159. Dr Gunson's report of the Rome meeting was amended after the meeting of ACTTD on 9 October; his recommendation remained that introduction of testing be approved in principle by ACVSB. The meeting of ACVSB on 6 November did not accede to this recommendation. Evidence about this period and about the proceedings of the two committees at this time was given to Mr Justice Burton in A v NBA, and an extract from his judgement is provided. Unfortunately, it is not possible for

this Inquiry to hear from Dr Gunson, he having died on 15 October 2005. **It would assist the Inquiry if those who were members of either group and who can recall this period could provide any further comments or recollections of events at that time, including the discussions at the meetings. Similarly, those who were not members of one of the two committees but who recall the atmosphere of the time may wish to provide their comments or recollections.**

*"The Rome Symposium was an important meeting. The atmosphere at the time was one of optimism that sufficient alterations would be made to the test to increase the suitability for widespread introduction and mass screening of blood donors."*

16. Para 3 e ii of the minutes of the SNBTS Directors' meeting on 29 September 1989 says Scotland had not been invited to participate in UK evaluation but SHHD had asked that they should and so the West and SE regions had obtained kits for evaluation. This must have been a different exercise from the evaluation conducted by Dr Dow and his colleagues,[3] who looked at samples from Aberdeen, Dundee and Glasgow. We are able to follow the latter study but are unaware of how the participation of the West and South East regions in the former was organised. **Is it possible for any of those involved to recollect this information? It also appears from this set of minutes that Dr Mitchell was not particularly enthusiastic about the Ortho test ("not robust") – is this an accurate impression?**

*"As I recall there were an increasing number of evaluations being conducted by ourselves and elsewhere looking at, firstly, archive sample and random donor samples. Some of these were subsequently published and they continued to show difficulties of sensitivity and specificity including batch variation which suggested that the Ortho test was not yet ready for providing reliable results."*

[3] As narrated in paragraphs 9.123 and 9.148 of the Preliminary Report

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17. Ortho were pressing ahead with their confirmatory test – see para 9.163. **Was this (RIBA) the one that was thought unsatisfactory at the autumn meetings? At that time, what were seen as the defining characteristics of a satisfactory confirmatory test?**

*"Dr Brian Dow would be best able to speak to this."*

18. We now have letters referred to in 9.162 and 9.163 (SNB.006.1560 and SNB.006.1561).

19. Dr Barbara's editorial in the December 1989 edition of Transfusion Today (LIT.001.3786) indicates that Ortho were developing confirmatory Western Blot assays. **Is it correct that they were simultaneously developing tests using both RIBA techniques and Western Blot? If so, was it considered that Western Blot would be superior?**

*"Dr Dow or Dr Follett would be best able to answer this. As far as I know the RIBA techniques and Western Blot are different tests performed in virology reference laboratories."*

20. In December 1989, the final report of the SNBTS evaluation of the Ortho kits was produced (paragraph 9.168). There was a concern, mentioned also in the October report, about the reduced sensitivity compared with "the dev kit". **"Dev" may stand for development, but what was the "dev kit"?**

*"The question is correct. In this study of 2745 samples there were two batches provided by Ortho. One was Development Batch 89038 and Routine Batch HCV101."*

21. Over this period, there are repeated references at meetings to the need for the Ortho test kit to be approved by the FDA for use in screening in the USA. Yet a number of evaluations of the kits were being carried out in the UK. Moreover, there does not appear to have been any legal requirement for

licensing of the kits in the UK. **Why, therefore, was it necessary to tie introduction of the test in the UK to approval by the FDA?**

*"To all the members of the various committees of which I was a member it seemed self-evident that a test not approved in the USA, its country of origin, could not be approved in the United Kingdom."*

22. Paragraph 9.187 of the Preliminary Report narrates the transmission in February 1990 of a Press Statement from the USA to Dr McIntyre and to the DoH. **Can any present or former civil servants shed light on the handwritten notes on the letter from Professor Cash, in particular the comment that the statement had "stirred up a hornet's nest"?**

23. The meeting of ACVSB on 24 April 1990 again stopped short of recommending the introduction of testing. According to a note Dr Perry sent to Professor Cash about this meeting on 2 May, (SNF.001.1710) he and Dr Gunson had both felt that there was sufficient data to justify testing now. **Can Dr Perry now recall his sentiments at the meeting? What did he consider to be the answers to the negative points made in paragraph 29 of the minutes of the meeting (SNB.001.9761 at 9764)?**

24. The memo from Dr Young dated 23 May 1990 (paragraph 9.207) appears to suggest some concern about progress on the issue of hepatitis C screening. **Can Dr Young recall anything further about the CSA management committee meeting, and what in the discussion there prompted the memo? After Dr McIntyre attended each meeting of ACVSB, to whom within SHHD would he report its proceedings? It would also be helpful if all the "hieroglyphics" on this letter could be translated – who are all the individuals writing or referred to and what was the role of each in dealing with the memo?**

25. Dr McIntyre responded to this memo on 6 June (SGF.001.2034). Mr Panton then wrote on it on 7 June. **What is the background to his reference to the need to "dip" into the contingency fund? There is another (handwritten)**

**memo from someone to Mr Hogg and Mr. Panton dated 6 June 1990 (SGH.002.7935) but this does not appear to add anything to the narrative of events – is this correct?**

26. The letter from Dr Metters to Dr Perry of 5 June 1990 (SNB.002.0245) suggested that the study to investigate the significance of a positive reaction to the antibody test might not now proceed; the subgroup comprising Drs Gunson, Mitchell, Mortimer and Tedder had taken the view on 23 May that an extended study of RIBA and PCR techniques might not be appropriate. **If the study had been considered important at the ACVSB meeting on 24 April, why was it no longer considered so? It appears that the grant of FDA approval of the test may be the explanation – was this so?**

*"Dr Perry may recall the correspondence but the FDA had finally given approval for the test in the United States."*

27. In his letter of 21 June 1990 to Dr Gillon (SNB.005.5023) Dr Cash said "now that we know we will have access to confirmation testing". At the ACVSB meeting of 24 April Professor Zuckerman remarked that the RIBA test was not good enough to use routinely as a confirmatory test (explained in A v NBA as meaning not good enough because it also tested for the antibody). Dr Tedder commented that the PCR test was not yet suitable for the mass screening needs of RTC laboratories**. Can Professor Cash recall what testing he was thinking of in his reference to access to confirmatory testing being available?**

*"Professor Cash will respond."*

28. Paragraph 9.215 refers to a bid for funds to introduce testing. It appears to the Inquiry team that, given the information in SNB.013.4871, had screening been introduced before the financial year 1991 – 92, it could only have been paid for from the reserve (the contingency referred to in SGH.002.7930). **Is this correct?**

29. The ACVSB meeting of 2 July did recommend that screening be introduced, but not before the results of a comparative study of the Ortho and Abbott tests, (the latter only having become available at the beginning of July**). Why was it considered necessary to have a UK wide comparison of the two tests, and selection of one of them?** The alternative would have been to allow each centre to decide individually which test to use – as was ultimately the outcome (see paragraph 9.241). **Does the fact that this was ultimately the route followed (see for example letters SNB.005.2555 and SNB.004.7202) mean that the time taken for this study was, in retrospect, wasted?**

*"It was necessary to have a UK wide regional transfusion centre study of Ortho and Abbott tests because laboratories were not all using the same technology and some had no experience of this. Some were used to Abbott and some were used to Ortho for other reasons and it was important to field test the two systems by exchanging samples in this study to look for concordance and varying degrees of detection or otherwise to ensure that no one laboratory would be disadvantaged or fail to detect what others were detecting. The time taken to complete the study was not therefore in my view wasted since the object was to ensure that wherever the test was performed in the United Kingdom and by whatever method, donors and patients could be assured of products of an equal standard. It was for this reason that the multi-centre trial was evaluated using 10,000 samples provided by each of the laboratories which revealed considerable discrepancies in the two systems and the confirmatory or other result. That is the reason that a further phase 2 multi-centre trial was performed using second generation and first generation Ortho and Abbott tests which showed that the second generation tests were much superior."*

30. We have not found any memo by Dr McIntyre reporting the decision of 2 July 1990 to others in SHHD. **Was there such a report or note of the meeting**? The minutes record that a submission would be put to Ministers and the minutes of the next meeting (21 November) record that "a note had gone to ministers" after the July meeting. We have located some documentation from the Department of Health but have not found any memorandum or submission

to the Scottish Health Minister and would be grateful if any such document could be identified to us.

31. As is recorded in the Preliminary Report (paragraph 9.241), the meeting of ACVSB on 21 November 1990 decided that hepatitis C screening should be introduced as soon as practicable. At that meeting, Dr Gunson thought that a six month period to set up testing would be excessive (paragraph 21 of minutes). In his note of the meeting, Dr McIntyre records that the chairman had suggested 1 April 1991 as a realistic start date. We have not found it easy to determine why, given those views, testing was not introduced until 1 September 1991. We have amplified this section of the Preliminary Report with additional material now available to us, and enclose a copy of this enhanced narrative for reference. The following questions address this period.

32. It appears from Dr McIntyre's note of the meeting of ACVSB on 21 November 1990 (SGH.002.8501) that any submission to the Scottish Health Minister was to await sight of the draft of the English submission. The memo from Mr Tucker to Mr Panton dated 21 January 1991 (SGH.002.7890) asks for preparation of a submission; a later memo apparently dated 19 March 1991 (SGH.002.7880) indicates that the Scottish submission was based on the English one but shorter. It appears that the submission did not go to the Scottish Minister until 24 July 1991 – SGH.002.7828. **Is it possible for those involved within SHHD to explain why the submission was not sent more quickly?**

33. **The correspondence at the end of January 1991 now referred to in paragraphs 9.251 and 252 suggests that both in Scotland and England there was difficulty in moving the issue forward in the early part of 1991 – is this correct?**

34. **Why was SNBTS not to be told that there was an unofficial start date of 1 July 1991 (SGH.002.7886)? Why would this be confidential to the extent of not informing the transfusion service?**

*"I cannot recall any reason that the SNBTS was not informed of all of the progress being made, including correspondence to Directors from Professor Cash indicating the reasons for the change of date."*

35. As is recorded in the Preliminary Report, Newcastle unilaterally commenced testing in April 1991. It is evident that Professor Cash and other transfusion Directors were opposed to this action, although it is also evident that Dr McClelland became increasingly uneasy at the delay (SNB.002.7902). **Is it the case that there was no consideration of Scotland similarly going ahead more quickly? If ministerial approval had been granted in Scotland around the same time as such approval was granted for England and Wales (January 1991), could this have happened, albeit with a second generation kit which was still being evaluated?**

*"In my view there was never any reason for Scotland to go ahead of other parts of the United Kingdom and the correspondence makes it clear how much regional and other authorities disagreed with the decision of Newcastle."*

36. **What was the "near disaster" referred to in Professor Cash's letter of 17 June 1991 (SNB.011.8178)?**

*"I believe Professor Cash was referring to the unilateral decision of Newcastle."*

37. **SNB.005.4822 appears to be a recognition that there had been failings in the process leading to the introduction of screening. Do those now providing statements agree with Mr McIntosh's views?**

*"I agree with the advisory committee and others that the test should be introduced on 1 September to ensure everyone was up to speed and capable of performing to a satisfactory standard through the United Kingdom. I believe that unified introduction throughout the United Kingdom was correct for the reasons I have already stated."*

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Signed .....

Date ..... 8/10/2011 .....