THE PENROSE INQUIRY
STATEMENT OF G W TUCKER
C4: SCREENING OF DONATED BLOOD FOR HEPATITIS C

i. My name is George Webster Tucker. My date of birth is [redacted]. I am a retired civil servant.

ii. I joined the Civil Service in September 1959 as a clerical officer with the Crofters Commission in Inverness. I passed the UK Executive Officer examination in 1964 and was assigned to the SHHD NHS audit, Inverness. I was promoted in 1970 to HEO and was involved in setting up the Childrens Hearing system. I was subsequently appointed, in 1972, as Private Secretary to the Parliamentary Under Secretary of State for Health and Education (Hector Monro MP and then Robert Hughes MP). I was in that post for about 18 months and then in 1974 I was promoted to a senior executive officer. My SEO post was in the Management Services Division. I was promoted again to Principal in around 1977, when I moved to the Social Work Services Group. In this post I was concerned with child care. I was promoted again to a Senior Principal in 1981, still within the Social Work Services Group but this time in relation to List D schools. I moved then to be in charge of the Scottish Office Training Unit, where I remained until 1989. In 1989 I was promoted to Assistant Secretary. I joined SHHD, taking over from Duncan Macniven.

iii. Initially I had 4 branches reporting to me. The first was concerned with NHS property (selling off the NHS estate). The second related to emergency planning and guidance to health boards in relation to building and design of buildings. The third branch was the branch concerned with the Common Services Agency, headed by Rab Panton. This dealt with *inter alia* blood, ambulances and supplies. The fourth branch was concerned with services for the disabled. After about a year in post, I became responsible for a fifth branch, dealing with operational aspects of Carstairs hospital and also the breast screening and cervical smear test programmes. I was subsequently given oversight of the branch setting up NHS trusts and certain responsibilities in relation to newly brought in NHS Management Executive accountants.

iv. I left the Division, and indeed the Civil Service, in 1995, having taken voluntary early retirement.

v. The former branch head, Rab Panton, was the administrator who had the most detailed knowledge of the issues which the Inquiry is interested in. As Assistant Secretary, it was my job to quality control check briefings and to channel advice to Ministers. The detailed content of the advice would generally be provided by Mr Panton. Mr Panton was obviously able to call on our medical experts for advice.

vi. The Under Secretary whom I reported to initially was Hamish Hamill. At some point during my time in post, he was replaced by Don Cruickshank, who was the first holder of the newly created role of Chief Executive of the NHS Management Executive.

vii. Before attempting to answer the detailed questions posed, it might be useful if I attempted to set out the sort of channels of funding which existed at that time. SHHD had responsibility for overall management and financing of the Common Services Agency. Also in SHHD we had finance officials who had connections to the main Scottish Office Finance Department (this was certainly the case when Don Cruikshank came on board, but I cannot be certain that this was the case throughout the whole period that I held this post). The Scottish Office Finance Department would look over the shoulders of SHHD Finance. SNBTS derived their funding from the Common Services Agency which in turn was funded by SHHD. SHHD funding was obtained from the overall Scottish Office budget which was ultimately tied to the Treasury.

viii. I will now answer specific questions of which I have some knowledge using the same numbers as the Inquiry's list of questions.

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 – had it come to seem that there was unhelpful overlap?

2. My understanding is that the ACVSB was an "official" group and involved civil servants who represented the various Health Departments but also included outside experts. ACTTD was more of an operational group and I believe it was set up by the transfusion people with no official involvement.. ACTTD therefore had a more operational point of view whereas ACVSB had the wider role of ensuring the virological safety of blood whilst maintaining adequate supplies of appropriate quality for both immediate use and plasma processing (SNB.001.9366), which went beyond the transfusion services.

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?**

9. I do not know whether Professor Cash asked for a letter to relieve pressure from Ortho representatives but my recollection is that Ortho were considered to be a very commercially minded organisation and were pushing their product. I have no evidence of this but I believe I had heard that mentioned. I know that they approached the Transfusion Services directly to try to push their kit (see SNB. 008.2603). I would point out that there was a national procurement process in place whereby the Health Service would seek to negotiate contracts on a national basis with the aim of obtaining best value for money. Value for money was something that was seriously encouraged by SHHD as I recall at the end of the 80s and 90s as there were severe public expenditure restraints.

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?**

11. This question will no doubt be answered by Professor Cash but my recollection is that a shorter time period was hoped for (Professor Cash mentions

"after April 1990" in SNB.006.1580) but this did not prove possible owing to the lack of satisfactory confirmatory tests and other issues which had yet to be resolved.

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?**

13. It was intended that the position to be reached would be a UK one. It was not unusual for the Department of Health to take the lead in respect of national issues and because SHHD was a smaller (both in terms of numbers and resources) Department there was a general desire to make whatever use we could of DHSS resources (this is reflected in Hamish Hamill's minute of 26 August 1988, referred to at paragraph 9.95 of the preliminary report). There was a real desire not to duplicate effort. It was also important that DHSS as the bigger Department was able to exert more pressure on the Treasury. From our point of view it certainly made sense to be in partnership with DHSS, and in any event both SHHD and DHSS obtained the same advice from ACVSB; their recommendations went to Ministers in both countries, as well as Wales and Northern Ireland. I am asked whether Scotland would simply follow England; the answer to this is "yes" and "no". We would follow England if it was sensible to do so, for example in relation to the introduction of national testing where there was clear expert advice that this was the correct thing to do. We would not necessarily have followed England if, for example, the ACVSB's recommendation had not been unanimous and had decided not to introduce testing; if we had contradictory Scottish expert advice then Ministers would have been consulted first. We would certainly have looked at the issue further in light of the information that other countries were testing and would not necessarily have followed ACVSB's recommendations. The situation might also have been different if we were talking about something which was a distinctly Scottish problem. I have been provided with a copy of the relevant SHHD file (NQH/23/1, Part 1) and it is notable that there is no indication in the file that Mr Forsyth, our Minister at that time,

was unhappy about action being taken in conjunction with England (he was in the habit of calling his civil servants if he had concerns or doubts with a submission which he had received, and any misgivings would have been recorded). I would assume then that he was happy for DHSS to be allowed to take the lead. It must be borne in mind that at that stage all Ministers were part of the same Government and there would be a desire among Ministers not to embarrass each other by taking contradictory steps without serious cause.

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?**

14. This question really ought to be answered by the medical experts but it was my understanding that there was a need for a satisfactory confirmatory test. I am not able to challenge the expert views on the technical details.

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, 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?**

16. I do vaguely recall that Dr Mitchell was not too enthusiastic about Ortho, perhaps because there seemed to be a desire on Ortho's part to introduce the test in Britain before it had been licensed in the USA and, as I have mentioned previously, I seem to recall that Ortho seemed to be particularly commercially focused.

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?**

21. Again I would defer to the experts on this but from my layman's point of view I would not have been happy to use a test which was not FDA approved, because the FDA were regarded as being very tough in relation to product licensing.

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"?**

22. I do not recall this incident and would suggest that my former colleague Mr Angus would be the most appropriate person to answer this question.

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?**

25. When the CSA received its annual allocation 10% of each Division's budget would be held in reserve (i.e. 10% of the SNBTS budget, 10% of the ambulance budget etc). This 10% was known as the contingency fund. I agree that Mr Angus's note does not add to the narrative of events.

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?**

28. I do not believe this is strictly correct. The contingency fund was related directly to money which the CSA had budgeted for and made a bid for. If there had been no money in the reserve but there was a very good case for urgent funding to be sought, CSA would have been asked to look at their priorities e.g. is this a priority for spend over buying new ambulances; can we delay buying new ambulances until next year? If subsequently approached we would then look within other SHHD Divisions to ascertain whether any money allocated to bodies other than SNBTS had not been spent in the financial year. If there was no unspent money from within other Health Divisions, Scottish Office Finance would be asked whether there was any likelihood of unspent money from other Scottish Office areas which could be used (for example Transport if, say, a planned roads project had not proceeded).

This would only be done in exceptional circumstances and would need Ministerial and Treasury approval. In any event the question is theoretical because we were not in a position to move forward with the test before financial year 1991/92.

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.

31. My understanding is that the original proposed date of 1 April turned out not to be possible because evaluation of the tests was still ongoing (see also p107 of NQH 23/1, Part 1 – RTCs were still evaluating second generation kits as at June 1991). Dr Gunson then proposed a start date of 1 July. Prof. Cash raised the issue of the potential impact of the Gulf war and this was also a factor. The Newcastle Centre took a unilateral decision to continue with testing on 1 April, the date originally proposed. I believe that they were able to do this because of the different funding situation in England, where they were able simply to pass their costs on to the hospital to which they were supplying the blood. There was however a desire not to break ranks and Scotland adhered to that. 1 September was the date which appeared to suit most of the English centres and we were able to follow suit. Paragraph 9.10 of the preliminary report encapsulates what I understand to have been the main factors delaying introduction of testing. Essentially there were some unresolved issues.

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?**

32. I asked Mr Panton on 21 January 1991 to move forward the Scottish submission (SGH.002.7890). I do not remember the detail of what happened but on reading the file it is clear that Mr Panton felt that we needed to be certain about the proposed start date before we could go to our Minister (see, for example, NQH 23/1,

Part 1, page 143 (12 March 1991 – introduction date referred to as 1 July 1991, which SHHD believed at that stage had not yet been agreed), SGH.002.7880 (19 March 1991 – proposed date of commencement was 1 July 1991), NQH 23/1, Part 1, pages 137 (27 March 1991 – NBTS struggling to meet 1 July deadline) and 135 (4 April 1991 – DoH considering new start date of 1 September)). There was also a concern to be satisfied that the test suggested to be used was the most suitable, with reliable results. There was also a decision to be made in relation to a possible look back exercise (see pages 91-92, 99-100). I note from the letter from Professor Cash at page 137 of NQH/23/1, Part 1, that he and Dr Mitchell supported Dr Gunson of the English NBTS who had suggested that the proposed 1 July start date should be delayed until evaluation of the new generation of screen tests had been completed. In any event there was no doubt in my mind that our Minister would have supported what had been agreed by DHSS Ministers. This would have been the case irrespective of when our minute was submitted.

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?

33. I think it is correct that there was difficulty in moving the issue forward in the early part of 1991 in both Scotland and England. Throughout the UK there was a concern over reliability of tests. It was felt that a second generation test should be fully evaluated. I think there was also a concern at what additional effect the Gulf war might have on donor supplies. In addition, some of the English BTS centres were not in a position, staff-wise, to move forward.

33. 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?

34. I do not know why SNBTS were not to be told that there was an unofficial start date of 1 July 19991 however I would assume that the minute written by Mrs Falconer (SGH.002.7886) is an example of a junior member of staff at the Department of Health "leaking" some official start date to her counterpart in SHHD but being worried about that information being further "leaked" to NBTS via SNBTS. I do not think it is of any consequence, since the date turned out to be inaccurate.

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?**

35. There was no consideration of Scotland similarly going ahead more quickly because of the agreement that the test would be introduced on a UK basis. There is also the issue which I have referred to previously of national procurement; SNBTS people were responsible and didn't attempt to buy outwith nationally agreed contracts (as I assume must have been the case with Newcastle). It would have been a far more expensive exercise had piecemeal purchasing occurred.

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?

37. I am surprised to read Mr McIntosh's comments. I agree with Mr McIntosh's view that this was a learning experience for all involved. Perhaps the various organisational differences between England and Scotland may not have been fully understood by Mr McIntosh. I am uncertain whether NBTS and SNBTS were accustomed to collaborating on a national approach and which of these organisations would naturally seek the leadership role. Similarly the role of CSA in relation to SNBTS would not seem to have been fully recognised by Mr McIntosh as the official channel of communication with SHHD.

I do not agree with his comment that "a certain amount of ambiguity will be required by civil servants". From my experience of SHHD staff, the aim was to work for the best outcome for the general public and the NHS.

Statement of Truth

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

Signed George W. Tucker

DATED 28TH SEPTEMBER 2011