

Penrose InquiryA Response to David MacIntosh's C4 Statement (PEN,017.2126-2145)John Cash

1. This remarkable statement has much in common with other documents prepared by David Macintosh when general manager of the SNBTS. There is virtually no reference to the innumerable briefings he received, in the period from his appointment to June 1991, on the complex nature of the HCV saga (with specific reference to donation testing), the position adopted by SHHD and the structure and function of the ACVSB.
2. I believe it would be helpful if I commented on some specific points he has raised (the numbered references are those of Mr MacIntosh's statement):-
  - (a) **('Professor Cash who was a loud and aggressive advocate of UK Solidarity Camp' 5.5.2; 5.16; 6.2; 6.3)** There was never any doubt in my mind, after over a decade as the SNBTS's National Medical Director, that Scottish Ministers and their officials were ultimately legally responsible for the work of the SNBTS. Indeed this was well discussed in a meeting held in SHHD in September 1988, on which David was briefed. That said, occasions arose when Scottish Ministers and their officials deemed it appropriate (sometimes because of perceived limited resources) that DHSS took a lead position in the development of policy/strategy. I understood that this situation did not make the Scots in any way operationally subservient to the English, but I sensed that, when DHSS had a lead position, SHHD was reluctant to challenge their advice, not least because DHSS seemed always to ensure that SHHD were in some way engaged in their policy/strategy developing process.

I was satisfied that in theory SHHD could, at any time, have 'gone its own way'. There are notable examples of this in the context of the work of the SNBTS, which are well documented. Some of these I like to think I played a significant role in persuading Scottish Ministers to develop a separate Scottish policy approach. Examples would include: the rejection of cross charging for blood and blood products, the development of our own donor exclusion and care criteria as we addressed the threat of HIV and HCV, the direct SHHD support for SNBTS microbiological reference facilities and my efforts to secure a separate identity for the SNBTS with regard to contributing to the management of the HIV and HCV challenges in the UK.

At another level my record for challenging events in E&W in defence of the SNBTS was, I believe, also significant. Examples of which would include my BMJ leading article in 1987; my sustained support of Brian McClelland in his search for UK data on surrogate testing (which did not enjoy the support of DHSS, SHHD or some influential NBTS RTDs); my hustling of reluctant E/W colleagues to support a look back programme, my promotion of indemnity in Scotland for patients in our clinical trials; and challenging the BPL promotion of highly purified albumin products over our less purified, lower cost and higher yielding PPF.

The proposition, currently made by David MacIntosh, that I was in some way thrall to the determinations of NBTS Directors or indeed DHSS I believe reveals remarkable evidence of his poor comprehension of the management environment to which he had been employed.

(b) (**'Held back by conformation to an English norm' (5.9)**) There was never any doubt in my mind, from my many discussions with Dr MacIntyre (SHHD), that, both with the introduction of HIV and HCV donation screening, SHHD had invited DHSS to take the lead. Of course I regret that these decisions were taken without consultation with the SNBTS management team or SHHD's Consultant Adviser (for HIV) on Blood Transfusion and made these disappointments known to Dr MacIntyre. Had consultation taken

place then we would have almost certainly advised SHHD colleagues that both with regard to HIV and HCV, SNBTS had enough scientific expertise to generate sufficient quality data from which Scottish Ministers could be appropriately informed. On both occasions (HIV and HCV), when I discussed this option with Dr MacIntyre (SHHD), it was clear that a policy decision had already been taken to devolve the lead to DHSS, and SHHD considered the separate engagement of SNBTS at this stage might be a distraction and a potential cause of difficulty. Dr MacIntyre also made clear to me that the final authority for the SNBTS to commence donation screening would rest with SHHD and this would be communicated to the SNBTS by the CSA, who would be held responsible to SHHD for the timing of the release of the strictly ring-fence funding allocated for implementation. David MacIntosh was fully briefed on all these previous communications with SHHD.

- (c) On many occasions I briefed David MacIntosh on my understanding of the position – as outlined in (a) (b) and (c) above – and also of my feeling that in some political circles there was (perhaps not surprisingly in 1990) overt antagonism to the Scots doing anything ‘their way’. That said, on many occasions I advised David MacIntosh that if he felt that the HCV donation testing position was intolerable, as I did, then as SNBTS General Manager he should brief his boss, Jim Donald (General Manager of CSA) and be prepared thereafter to join with Mr Donald and petition senior SHHD officials and Ministers to change their position. In this regard I offered him every support, in the context of challenging the role, structure and performance of the ACVSB, thereby speeding up the kit evaluation process for us all, and seeking to engage in a direct dialogue with officials on the start dates for implementation. I have no recollection, nor am I aware of any documentation, which confirms that David MacIntosh ever responded to this advice, and this finds some support in his statement (**items 7.6; 7.13.1.2**). I have a recollection of David

getting 'jittery' when the news of Dr Lloyd's action became known to us (SNB.005.1707) (5.8.1). We discussed this at some length and he clearly regretted he had taken no earlier action to alert SHHD of our concerns at the way the kit evaluation process was being handled.

- (d) David makes frequent reference to what he describes as my **'loud and aggressive views' about 'UK solidarity' (5.16)** and seems to signal that such was my obsession with this that I was prepared to put Scottish patients at risk. I found these comments deeply disturbing and believe there is a need for me to respond. First, it is correct that, both with regard to HIV and HCV kit evaluation and implementation of donation screening, I supported the concept of a UK approach. My views on this were informed by the several examinations I made of the working of the fragmented and dysfunctional service in England and Wales. As I recall, of particular relevance in 1991 was the study I had been invited to do in 1984 by the North Thames Regional Health Authority (NETHRA) (1 and 2). But other (later) studies in Canada, Australia and in England (Liverpool) confirmed the conclusions I made in the 1980s. Nearer to home was the fragmented way the SNBTS abandoned collecting blood in prisons. But most important of all were the two (HIV and HCV) seminal donation testing discussions I had with Dr MacIntyre. He made it very clear to me that, with regard to donation testing, UK solidarity was a substantial political policy commitment.

I believed and still do that the safety of blood supplied by unpaid donors in a country such as ours is a national (UK), corporate and moral high priority, and within this donation testing should be paramount. What I failed to do, both with HIV and HCV, despite considerable efforts, was to secure a place for the SNBTS to influence the management of the UK agenda for kit evaluation and thereafter be engaged in discussions on implementation. David MacIntosh was

fully aware of this **(7.6)** and was requested by me to use his position to seek change.

(e) There are several references in David MacIntosh's statement suggesting that, with regard to the HCV Kit evaluation, as far as he was concerned, all was proceeding harmoniously until the early summer of 1991 **(5.3.2)**. I must confess these conclusions come as a surprise to me. The fact is that David was briefed, soon after he took up post, that WBTS (and other RTDs in England and Wales) had generated convincing data by August 1989 which indicated we could have commenced HCV donation screening between April and June 1990 and that this had been communicated to SHHD. He was also briefed that on 23 April 1990 Bob Perry and Harold Gunson had sought and failed to persuade the ACVSB (on which SHHD representatives served) to advise Ministers to implement HCV donation screening without further delay. He was further briefed of the delay in ACVSB's consideration of mounting its own (first) kit evaluation. Finally, David was briefed on the distressing phone conversations I had with Dr Gunson over the week end immediately prior to the ACTTD meeting on 25 March 1991 and my belief that NHS financial management system problems in England and Wales were now influencing decisions about start dates, which in turn were affecting Scotland.

(f) **(.....'out of fear of bullying from Professor Cash.....' 5.6)** I am deeply concerned that David felt it necessary to put into the public domain his view that I bullied my colleagues. Of course I deny it. I have no recollection of any events which could be described as bullying in nature. In the period before David's appointment there were occasion's when robust debate between Directors took place, but these were an inevitable outcome of a management system that was founded in the principle of primus inter pares. I would warmly welcome an opportunity for my former (director)

colleagues to be invited to comment on this allegation. If this is felt appropriate by the Inquiry Team then I would also suggest others I had the privilege of working closely with for many years – scientific and technical colleagues and personal assistants.

- (g) **‘.....I did not feel that it was my role to come down heavily on any one side until I had heard all my colleagues views un full’ 5.11.1** I regret I am unable to share this recollection! On the contrary, my recollection is that David gave support to Dr McClelland’s proposal from the start until it was evident it had been rejected.
- (h) It is correct that unfortunately in May 1991 we found ourselves in a position in which WBTS (one of the UK kit trial centres) had been instructed by Dr Gunson , along with other UK evaluation centres, to continue the trial after the planned evaluation had been completed **(5.7)**. It is also a fact that this embarrassing position was the one selected by a ‘paralysed’ DHSS when advised by me, through Dr Gunson, that, after Dr Lloyd’s action, DHSS had 3 responding options (1) suspend Dr Lloyd, stop the testing and caution the Newcastle RHA; or (2) capitulate and allow full routine donation testing to start right across the UK ASAP (my preferred option); or (3) extend the trial to acquire more information on confirmatory testing (DHSS preferred option and agreed to continue funding.). David was fully briefed on all this as he was that Dr Gunson had subsequently confirmed SHHD had concurred with the DHSS preferred option.
- (i) I have to confess that David MacIntosh’s description of events during the seminal Board meeting of 11/12 June 1991 **(5.10)** do not fit well with my recollections, or, I suggest, with the content of

available documents. In the context of the points he has raised I would comment as follows:

- (1) An attempt was made to persuade Board members to approve a proposal that the SNBTS should follow Dr Lloyd's (Newcastle RTC) lead and commence HCV donation testing immediately and without informing CSA/SHHD. This critical fact does not emerge in David MacIntosh's statement nor in any of the associated documents, though it was in the original draft Minutes. A heated and damaging discussion took place. The majority of the Board members (including myself) believed that the proposed action would be a serious breach of trust with SHHD and rejected it. Whilst content with a proposal to advance the date of commencement for full HCV donation screening the majority insisted this must first be cleared by SHHD.

David makes much of the letter from Brian McClelland, dated 11 June 1991 **(5.8.2)**. It is difficult to be certain when this letter (SNB.002.7902) was actually drafted, for the author was at the University of Stirling Management Centre throughout the 11 June 1991 (attending the Board meeting). What I believe is more certain and important is that the several recipients would not have seen it before the Board's HCV donation testing debate commenced. My recollection is that some Board members (including myself), arriving for the meeting on the 11 June, had no knowledge that this debate had been planned by David and Brian. I have a strong recollection that some of us felt, perhaps unjustly, that we had been hijacked; this did much to raise the temperature of the debate! That said I don't recall any Board member feeling that the concerns expressed by Dr McClelland were not justified and should not be discussed.

(2) (**'fuller discussions of the HCV issue took place 'offline'.....' 5.10**). As I recall, there was nothing 'offline' about this debate. It occurred within the Agenda set for the Board Meeting, was an AOB on day one and all Board members were present. David MacIntosh's surprise at the absence of appropriate documentation of these discussions in the Minutes is indeed surprising as he was responsible for this.

(3) ( **' Neither the full discussion nor the full decision were recorded in the full Minutes – much to my surprise' ; 5.10**)  
As I recall, in the first draft of the meeting minutes, the Board Secretary (Miss Corrie) recorded accurately some of the detail of the HCV debate. This proved not acceptable to the Chairman. He insisted an amendment was made, such that the whole debate was now covered by a single statement which read: Item 3.1.2 Anti-HCV Testing: Agreed: Routine donation testing to begin on 1<sup>st</sup> September 1991 (3 )

This conclusion was never agreed or even considered! The debate was about the 'Newcastle option' and finished with Board members recommending that David MacIntosh write to SHHD alerting them of our concern at the events associated with Dr Lloyd's actions. There is no record in the Minutes of this. Some weeks after the June Board meeting David MacIntosh replaced Miss Corrie with Mrs Porterfield (David MacIntosh's PA) as Secretary to the Board (4 and 5).

(4) I have no recollection of any discussions **(5.14)** which could have led David, in his current extra-ordinary statement, to claim, that we agreed he would write a letter to SHHD signalling **(5.14.1, 5.14.2 and 5.14.3)** : (a) that the SNBTS was ready to begin testing immediately (SHHD officials already knew this), (b) Directors were only delaying doing so to fall in line with English implementation (c) we were doing

so (delaying) because we understood that to be Minister's wish.

What I recall we agreed was that if David felt he should do anything then he should write to SHHD advising that the SNBTS Board were seriously concerned with the events in Newcastle and believed the September start date for the UK should be subject to review.

There seems to be s no evidence that this letter was sent or even drafted. Moreover, there is no evidence of follow up in the Minutes of the August or September 1991 Board meetings.

- (5) The 'disaster' to which I referred **(6.3)** had nothing to do with SNBTS going off on its own. It had to do with the fragmenting consequences of this and those if done without SHHD support. During the June Board meeting debate there was a moment when I had a vision of the severe retribution that would have been inflicted on senior SNBTS management team members (many of whom I counted as old friends and comrades and who, throughout the 1980s, had together delivered 'miracles' for patients in Scotland) had the debate gone the other way. As far as HCV donation testing was concerned the SNBTS held the SHHD line. In the near panic situation in the Departments of Health after Dr Lloyd's actions, Dr Gunson advised that this and other SNBTS contributions to this Newcastle saga were much appreciated at the highest levels, though had been received with some surprise!

## References

- 1 Report on NETHRA Blood Transfusion Services with special reference to Hampstead, Bloomsbury and Islington. Author: John Cash 19 March 1986 (C3-129)
- 2 Letter from Dr Trevor Sussman (NETHRA) to JDC dated 7 January 1986 (C3-130)
- 3 Minutes of SNBTS Board Meeting 11/12 June 1991
- 4 Minutes of SNBTS Board meeting 21 August 1991
5. Minutes of SNBTS Board meeting 10/11 September 1991

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