

Penrose Inquiry
Statement of G W Tucker
Topic C5b); Look Back

i. My recollection of events is now rather vague and therefore the comments which follow are based on my reading of the various documents provided by the Inquiry. Unfortunately, some Management Executive documents are no longer available, namely the note of the meeting between SHHD and SNBTS on 24th May 1994, the minute seeking legal advice on Look Back and Scottish Office Solicitor's Office response and my minute of 29th December 1994 to Lord Fraser, seeking his decision on instituting the Look Back exercise for Scottish patients. These documents would have been of help in clarifying certain aspects.

ii. Before answering the specific questions it may be helpful if I explain that when routine testing for anti-HCV was introduced in the UK in September 1991, no decision had been taken by the UK Health Departments on whether a Look Back programme would be instituted. My understanding was that there were differing opinions on the benefits to patients when there seemed to be no effective treatment available and that it was not known whether all recipients of infected blood could be identified and traced. The issue appears to have been put on hold by the UK Health Departments, and I do not recall the issue being raised with SHHD by SNBTS until 1994, when it was discussed at the meeting on 16th May 1994 (SGH.004.0847). As the note of meeting shows, Mr McIntosh was asked to produce a draft paper for the SHHD to consider. I note however, from item 11 of the minutes, that Dr Young and I had left the meeting before the issue of Look Back was raised under 'Any Other Business'.

iii. With regard to the specific questions posed to me I offer the following comments:-

1. What was Mr Tucker's involvement in the look-back exercise?

iv. My involvement in the Look Back exercise was as the administrative Head of the Division (which included Mr R Panton's branch) with responsibility for formulating and coordinating policy advice to Ministers based on the views of the professional experts. Mr Panton as Branch Head reported to me on the detailed work of liaising with medical and legal advisors as well as with Department of Health administrative staff. I would have put

forward the minute to Lord Fraser advising him of the advice received and seeking his decision; the minute would probably have been drafted in the first instance by Mr Panton.

2. Did Mr Tucker attend the meeting on 24 May 1994? What was discussed at the meeting? Who made the decision not to commence an HCV look-back in Scotland on 1 June 1994? Why was that decision made?

v. I do not specifically recall the meeting on 24th May but it would seem to have been called at short notice specifically in relation to the Look Back exercise. Unless I was unavailable I would certainly have been there. If not, Mr Panton would have discussed with me beforehand what line we were to take. Although I cannot say with any certainty what was discussed, I consider that the meeting would have been used to clarify the situation. Mr McIntosh had previously indicated that the Look Back policy had been approved by the SNBTS MSC and would commence on 1st June 1994.

vi. However, as the minutes of the meeting on 18th May 1994 (SNB.009.9331) indicate, Dr Keel was uncertain as to whether the SHHD had a locus in this matter and asked that no formal action be taken until this had been discussed with SHHD colleagues and their views conveyed back to Professor Cash. I consider that in issuing his note of 19th May (SNB.008.4779) about the commencement date, Mr McIntosh had not been aware that the SNBTS MSC had been asked to await SHHD views. In my view the meeting of 24th May would have been arranged to explain that SHHD considered that there was a UK dimension to HCV Look Back. SHHD would have wished to consult with other Health Departments before proceeding further. I assume that we would have asked SNBTS at that meeting to delay the proposed announcement of the commencement of the Look Back exercise until further consultations and consideration of advice had been completed. I assume that this was accepted as a reasonable course of action.

3. On 21 June 1994, Dr Cash referred to the "unusual events following our last MSC meeting". What were the unusual events that he was he referring to?

vii. I am unable to say what events Professor Cash was referring to in his letter but it may have related to the postponement.

4. At the meeting of the ACMSBT on 29 September 1994, Mr Tucker said that approaches to institute HCV look-back in Scotland had been resisted, and that it was important that a UK wide approach was adopted. Who had resisted? Why? Why was it important that a UK wide approach be adopted?

viii. As indicated in my reply to Question 2, we had asked SNBTS to defer taking further action until further information had been obtained regarding the medical, ethical and social implications. It was not a matter of resistance but rather of caution until this information was available to us. I produced a note of this meeting for internal use and I noted that I had expressed the view that “we (SHHD) had reservations about a look-back *unless it was on a UK basis and there were real benefits for patients in treatment.*” (NQJ 4/1, Part 2, pages 164-168). I may not have seen the minutes of the ACMSBT meeting (I was not the usual SHHD observer) but I do not think it would be accurate to say that SHHD were “resisting” the concept of a Look Back. It would have seemed desirable to obtain the views of the Advisory Committee (ACMSBTT), since HCV infection from blood was a UK issue and this Committee of experts was an important source of advice to Ministers. In my view a collaborative and orderly UK approach would have best served the interest of all NHS patients and would have been advantageous in approaching the Treasury if extra funding was required; it was always more difficult to obtain additional money from the Treasury if there was no equivalent request from the Department of Health.

5. At the meeting of the ACMSBT on 15 December 1994, Dr Keel said that the view in Scotland was that the Secretary of State was vulnerable as look-back was feasible since donors could be identified and traced, and advice from Scottish Officer Lawyers was that look-back should start immediately. Please explain this comment in more detail.

ix. I am not able to expand very much on Dr. Keel’s comments in the absence of the papers relating to the Scottish Office Solicitor’s advice. But the fact that SNBTS were confident that a look back exercise was feasible and practical for Scottish patients, together with the prospect of some effective form of treatment becoming available, had led our legal advisers to warn that the Secretary of State would be exposed to a legal liability if SNBTS were not instructed to proceed as quickly as possible.

6. We refer to paragraphs 24-25 above. In his letter of 22 December 1994, Lord Fraser noted that Scottish circumstances made it imperative that action was taken immediately and that he had no alternative but to instruct the SNBTS to proceed with the HCV look-back (in advance of the rest of the UK).

What were the Scottish circumstances?

What, if anything, happened in Scotland between 22 December 1994 and 11 January 1995 when the UK wide look-back was announced? Did the SNBTS take

steps to implement the look-back in Scotland prior to 11 January 1995? If not, why not?

x. In my view the circumstances were: SNBTS had the evidence from the Edinburgh and South East Scotland BTC pilot study that a Scotland wide exercise was feasible and practical; that the cost excluding drugs was in the region of £50,000 and could be met from within the existing budget and that medical and legal advice now supported introduction.

xi. I cannot recall if any steps were taken by SNBTS between 22 December and before 11 January 1995 but if not I feel sure that they would have had their reasons since they were aware of the Minister's wish for the process to start quickly.

7. On 3 April 1995, comprehensive guidance on anti-HCV testing and HCV generally was issued to all doctors in Scotland in the form of a CMO letter. However, anti-HCV testing had been introduced more than three years earlier in September 1991 and diagnostic testing had been available since 1990. What steps, if any, did the SHHD take to draw doctors' attention to the availability of testing and implications of HCV for patients before April 1995?

xii. SHHD guidance to doctors was undertaken by the CMO and his staff and I would not have expected my Division to be directly involved in communicating with GPs or hospital medical staff in relation to HCV. I do not recall seeing any CMO guidance on HCV issued after September 1991 but if there was guidance it could have been sent to Mr Panton's branch for information.

xiii. I left the civil service in mid March 1995 and was not involved with the guidance issued on 3 April 1995.

Statement of Truth

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

Signed George W. Tucker
Dated 10 November 2011