

INVITATION FOR SUBMISSIONS ON PENROSE

The Infected Blood Inquiry (“the Inquiry”) is interested in ascertaining the views of those of its core participants who were directly involved in the Penrose Inquiry (“Penrose”) as to the best use that can be made by the Inquiry of the evidence that was gathered by Penrose and set out in some detail in Penrose’s Preliminary and Final Reports (“the Penrose Reports”). It is interested to know, from the perspective of those who were directly involved in Penrose who are also core participants in the Inquiry, which areas of the Penrose Reports are accepted and which are contentious. To that end this request for submissions is made to the legal representatives of the following core participants (a) the infected and affected persons and organisations who are represented by Thompsons; (b) Scottish National Blood Transfusion Service; (c) the Scottish Regional Health Boards (shortly to be designated as core participants); and (d) the Scottish Government. The current intention of the Inquiry is to disclose a copy of any submissions which it receives in response to this request to all other core participants.

It should be emphasised that the Inquiry has not as yet made any decision as to what, if any, use it should make of the Penrose Reports and the material which underpinned them. Further, and as was made clear at the Preliminary Hearing, it will be for the Chair in due course to make his own independent findings on the matters set out in the Terms of Reference.

The Inquiry has received some helpful submissions relating to Penrose in the opening statement provided by the legal representatives for the Thompsons core participants at the Preliminary Hearing. It is not necessary for those submissions to be repeated. However, the Inquiry would be assisted by submissions addressing (to the extent that the core participants identified above are able and wish to do so) the questions set out below.

Please note that:

- The questions relating to witnesses (questions 3-5 below) are not intended to cover witnesses who are infected or affected individuals: The Inquiry expects to receive written statements from many such individuals who did not provide evidence to Penrose and will determine in due course which of those witnesses to hear from orally.

- The Inquiry is not seeking any comments on Chapters 1, 4, 5 and 6 of Penrose's Final Report.
- The Inquiry is not seeking any comments on Penrose's investigation into the deaths of David Black, Eileen O'Hara, Alexander Black Laing and Victor Tamburrini (Chapter 7 of the Final Report).
- The Inquiry is not asking core participants to comment on each and every fact or piece of evidence referred to by Penrose and will not be assisted by a line-by-line analysis of the contents of the Penrose Reports.

Evidence gathered/relied on by Penrose

1. What facts and evidence recorded in the Penrose Reports could be relied on or adopted by the Inquiry without the need for the Inquiry to test the underlying evidence further or without the need for further inquiry? In particular, could some or all of the evidence and facts set out in the Penrose Preliminary Report by way of narrative be relied on or adopted by the Inquiry? (As set out above the Inquiry is not, in posing this question, asking for a line-by-line analysis of the Penrose Reports; with some exceptions, it should be possible to answer this question by reference to themes, sections, topics and/or chapters of the Reports).
2. Were there any significant lines of inquiry/issues within the Terms of Reference of Penrose which were not adequately investigated, or were not investigated at all?
3. Which witnesses who provided evidence to Penrose should be asked to provide evidence to the Inquiry?
4. Are there any Penrose witnesses whose evidence is irrelevant to the Inquiry?
5. Are there any witnesses who should have provided evidence to Penrose but did not and should be asked to provide evidence to the Inquiry?

Overall findings of Penrose

6. Penrose in the Final Report made the following (amongst other) findings:

- a. that the estimated number of people infected in Scotland with HCV by blood transfusion between 1970 and 1991 is 2500;
- b. that the estimated number of people in Scotland infected with HIV by blood transfusion is 18 (although Penrose stated that this figure may be a little low);
- c. that 478 people were infected with HCV in Scotland as a result of therapy for a bleeding disorder;
- d. that 59 people were infected with HIV as a result of therapy for a bleeding disorder;
- e. that other than by a general cessation of therapy with concentrates, the infection of haemophilia patients with HIV over the period 1980 to 1984 could not have been prevented;
- f. that it was reasonable to continue to treat patients with concentrates after the autumn of 1983 when the first death of a UK haemophilia patient had occurred (provided these were used on a more discriminating basis);
- g. that in the period 1985-7 treatment decisions in relation to patients with haemophilia were particularly difficult;
- h. that in respect of the period 1985-7 it was unfortunate that no information about the potential use of 8Y (produced by BPL) was disseminated from Edinburgh;
- i. that the risk of AIDS was viewed appropriately for the purposes of the viral inactivation programme at the PFC in 1983-4;
- j. that there was no basis for finding that the PFC should have accelerated its heat treatment programme from the spring of 1983;
- k. that there was no basis for finding that UK licensing of commercial heat-treated product should have taken place before February 1985;
- l. that there was no criticism of those involved in viral inactivation in Scotland;

- m. that there was no basis for criticising PFC for failing to produce a heat-treated Factor VIII product earlier than it did;
- n. that there was no legitimate criticism for the failure to introduce HIV screening earlier and that screening was introduced as soon as reasonably practicable;
- o. that there was no ethical breach in relation to warnings given or not given to patients with or at risk from NANB Hepatitis/HCV;
- p. that no blame attached to the failure to introduce surrogate testing for HCV;
- q. that in regards to the delay in introducing second generation HCV screening/testing, the only thing that could have led to an earlier introduction was briefing the responsible Scottish Minister so that they could make a decision on whether to either depart from or remain with the policy of a uniform start date across the UK.;
- r. that it was not unreasonable to continue blood collections from prisoners until the early 1980s, and that there was limited information to suggest increased prevalence of NANB Hepatitis/HCV within prisoners;
- s. that before autumn 1984 there is no basis for criticism of individual clinicians in relation to the provision of information about the risk of HIV;
- t. that the suspicion that patients were experimented on without their consent was without factual basis;
- u. that there was no breach of any ethical rule in terms of the use of samples to undertake immunological studies, as there was at the time no fixed rule which would have required consent from patients for such purposes;
- v. that to undertake a HIV test required no specific patient consent at the time, standards being different in 1984;
- w. that there was no breach of any ethical provisions in relation to warnings given or not given to patients about the risks of NANB Hepatitis (and thus no criticism to make);

- x. that it was not possible to conclude that an earlier look-back programme for HCV exposure should have been undertaken.

Interim conclusions on fact

- 7. From time to time when setting out in detail the facts upon which the eventual conclusions were to be based, the Preliminary and Final Reports pause to summarise what appeared to be the factual position at a particular time, often in bullet point format. An example is paragraph 6.36 of the Preliminary Report. This is not primary fact but represents conclusions of fact summarising (and hence being selective) the primary facts covered in the immediately preceding paragraphs. To what extent are these summaries, where they appear, to be treated as sound bases for drawing overall factual conclusions?

The Inquiry anticipates that, at least insofar as those represented by Thompsons are concerned, most of these findings are contentious and are not accepted as correct (if that assumption is wrong, it should of course be corrected; the Inquiry would be assisted by knowing the position of the other participants in any event). Furthermore, and as set out above, it will be for the Chair to make his own independent findings and judgments as to the matters set out in the Terms of Reference, both as they relate to Scotland and as they relate to the other parts of the UK. Nevertheless it would be of assistance to the Inquiry, in particular for the purpose of determining what additional investigations and lines of inquiry to pursue, to understand the principal bases on which the Penrose findings set out above are criticised. Is it, for example, because evidence was available to Penrose which undermined the finding(s) and which was ignored or not properly addressed by the inquiry? Is it because Penrose failed to undertake appropriate lines of investigation? Or because the inquiry failed to test the evidence which it heard? Or perhaps because the focus was on assessing the rights and wrongs of matters largely by reference to the standards of the time? Or because of some other (and if so what) erroneous application of principle or analysis? Or is it simply because (in the view of core participants) Penrose reached the wrong conclusion? The Inquiry would be grateful to receive succinct submissions in relation to the above findings, setting out in summary form where (if at all) it is suggested that Penrose went wrong in reaching these conclusions. Conversely, if it is the view of core participants that some or all of the Penrose findings as summarised above were correct, then those core participants are invited to say so.

14 November 2018



Royal Courts of Justice
2nd Floor, Westblock
Strand
London
WC2A 2LL

Shona Robison MSP
Cabinet Secretary for Health and Sport
Scottish Government
St Andrew's House
Regent Road
Edinburgh
EH1 3DG

21 March 2018

Dear Minister,

I am writing to introduce myself as Chair of the Infected Blood Inquiry. As I said when my appointment was announced, I intend this statutory Inquiry to provide much needed answers to the victims and their families across the United Kingdom. I thought it might be helpful to share some early thoughts about how I would like the Inquiry to progress.

We are still in the early days of the Inquiry, which will not be formally established until the Minister for the Cabinet Office sets out the terms of reference. I intend to meet a range of campaigning groups, including Haemophilia Scotland and the Scottish Infected Blood Forum, over the next few weeks and in addition to those meetings I will be seeking views more widely through a public consultation.

You can find the consultation on the terms of reference on the Inquiry website [<https://www.infectedbloodinquiry.org.uk>] and I would be very grateful if you could raise awareness of this consultation, which closes on 26 April, in Scotland.

The National Record of Scotland (NRS) is working with Cabinet Office officials to ensure that the Inquiry has access to the Penrose records. I am clear that it is important to both learn from, and avoid duplicating the work of the Penrose Inquiry, in particular in relation to consideration of what happened in Scotland. I am grateful for the assistance of the NRS.

I am determined to put the people affected at the heart of the Inquiry's work. I am grateful for, and can assure you we will take up, the offer of support from your team in ensuring that the voices of people in Scotland are heard.

Yours sincerely

A black rectangular box redacting the signature of Sir Brian Langstaff.

Sir Brian Langstaff

Infected Blood Inquiry
Royal Courts of Justice | 2nd Floor | Westblock
Strand | London | WC2A 2LL
Enquiries: contact@infectedbloodinquiry.org.uk



Cabinet Office

Rt Hon David Lidington CBE MP
Chancellor of the Duchy of Lancaster
Minister for the Cabinet Office
70 Whitehall
London
SW1A 2AS

Web www.cabinetoffice.gov.uk

Our Ref: CDL/1395

Shona Robison MSP
Cabinet Secretary for Health and Sport
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG

12 February 2018

Dear Shona

Thank you for your letter of 18th January, providing your views about the Infected Blood Inquiry.

Having been nominated by the Lord Chief Justice, Sir Brian Langstaff has been appointed as Chair of the Inquiry. Now the appointment has been made, the Chair will hold further consultation with affected communities throughout the UK over the Inquiry's terms of reference, and will want to do this as quickly as possible.

I note your view that the Inquiry should be led by a panel. The appointment of panel members would follow consultation with the Chair, in accordance with section 4(3) of the Inquiries Act 2005 and on completion of the consultation on the terms of reference.

The Chair will, I am sure, want to both learn from, and avoid duplicating the work undertaken by the Penrose Inquiry. I am grateful for your offer to help supply records from the Penrose Inquiry held by the National Records of Scotland (NRS); Cabinet Office officials will make the Chair aware of your offer, and will be happy to work with the NRS to ensure that the UK Inquiry has access to the Penrose records.

The Government is required by the Inquiries Act to consult the Scottish Government, where the Inquiry will investigate or make recommendations wholly or primarily on areas that are not currently reserved, and I can confirm that we will do so before the Terms of Reference are set.

DL

Rt Hon David Lidington CBE MP



T: 0300 244 4000
E: scottish.ministers@gov.scot

The Rt. Hon Theresa May MP
Prime Minister
10 Downing Street
London
SW1A 2AA

27th October 2017

Dear Prime Minister,

I am writing regarding the planned UK-wide Inquiry into the tragic events which led to many people becoming infected with hepatitis C and/or HIV as a result of receiving either blood products or a blood transfusion.

I have already had some correspondence and telephone discussions with Department of Health Ministers regarding the Inquiry. However, given that the consultation period with those affected has now ended and you will soon be making announcements regarding your plans for the Inquiry, I would like to set out the Scottish Government's position regarding the handling of the Inquiry. I have consulted Haemophilia Scotland and the Scottish Infected Blood Forum in developing the Scottish Government's position; they in turn have consulted their members.

Firstly, as is supported by the great majority of stakeholders and those affected, I believe the Inquiry should be a statutory inquiry under the Inquiries Act 2005. A statutory inquiry will allow for witnesses to be compelled to appear or provide documents.

Secondly, the Inquiry should be led by a panel, rather than a single chair. As well as hopefully allowing the Inquiry to conduct its work more quickly, a panel would also help ensure resilience in the event of illness or any other unforeseen circumstances meaning one of the panel members requires a period of absence. While I recognise that there are arguments for and against having a chair with a legal background, the most important priority is that the chair can elicit trust and credibility amongst all those involved with the Inquiry.

Thirdly, I would hope you would agree that the panel should have a say on the terms of reference of the Inquiry. The panel should take account of the range of views expressed by stakeholders representing those affected. I appreciate of course that it will be difficult to



agree terms of reference that meet the expectations of all of those affected, particularly given that the broader the inquiry's terms of reference are, the longer it will take. However, it should be possible to be able to agree terms of reference that meet the priorities of the majority of those affected in examining all of the key events that led to this tragedy and how patients were diagnosed and cared for in the initial period following their infection. It would be helpful to get clarity as soon as possible regarding what the process for setting the terms of reference will be and how the Scottish Government can be involved early on in that process.

As I have already raised with the Secretary of State for Health, in terms of meeting most stakeholders' objectives of avoiding the inquiry becoming too lengthy, the Scottish Government believes the UK Inquiry should not duplicate the work of the Penrose Inquiry, particularly in relation to consideration of what happened in Scotland. If it is agreed that the Inquiry will be statutory, the Scottish Government would of course be happy to work with the National Records of Scotland (NRS) to supply all the records NRS holds from the Penrose Inquiry. There is a very detailed set of records, which will cover the key decisions made, including many that were taken on a UK-wide basis and so will be relevant to the UK Inquiry.

Fourthly, the Scottish Government would expect that we and the other UK administrations should each be designated as a core participant in the Inquiry, with legal representation. We also feel that key stakeholder representative organisations, such as Haemophilia Scotland and the Scottish Infected Blood Forum, should also be core participants.

Finally, while I appreciate that it is vital to find the right panel members with appropriate experience and credibility, I would urge you to move forward as quickly as possible in getting the Inquiry up and running. This will be important in ensuring that stakeholders feel that progress is being made. The Scottish Government would of course be happy to assist it in any way we can with the Inquiry to help it to progress.

I am copying this letter to Jackie Doyle-Price MP, Parliamentary Under Secretary of State at the Department of Health, to Bill Wright, Chair of Haemophilia Scotland, and to John Rice, Convenor of the Scottish Infected Blood Forum.

*Yours sincerely,
Shona Robison*

SHONA ROBISON

[REDACTED]

From: Kate Meredith-Hardy <kate.meredith-hardy@infectedbloodinquiry.org.uk>
Sent: 14 November 2018 16:02
To: [REDACTED]; Brown GJ (Gareth)
Cc: Brian Stanton; Deirdre Domingo
Subject: Penrose submissions
Attachments: 2018-11-13 IBI Penrose Submissions invited from Scottish CPs.pdf

Dear both,

Please see **attached** the invitation for submissions on the Penrose Reports.

We require a response by Friday 4 January 2019. While we do not anticipate that all of this time is required to produce submissions, we are allowing additional time in consideration of the intervening Christmas and New Years period. It is important that this timeframe is adhered to, as any delays will have a corresponding delay on the provision of the submissions to the remainder of the core participants.

Any questions, please do not hesitate to contact me.

Thanks,

Kate

--



Kate Meredith-Hardy
Inquiry Lawyer (Australian Qualified)
Infected Blood Inquiry

Mobile: [REDACTED]

Address: Fleetbank House, 1st Floor, 2-6 Salisbury Square, London, EC4Y 8AE

Email: kate.meredith-hardy@infectedbloodinquiry.org.uk

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>

[REDACTED]

Subject: FW: Infected blood inquiry - correspondence relating to Scotland
Attachments: UK Infected Blood Inquiry.pdf; u441811_10-04-2018_12-00-20_1.pdf; Letter to Shona Robison re Infected Blood Inquiry.pdf; u418806_18-01-2018_13-24-13_1.pdf; UK Infected Blood Inquiry - letter from Cabinet Secretary to UK Governme....pdf; u441811_19-09-2017_13-05-33.pdf; n416095_27-10-2017_12-16-43.pdf

From: [REDACTED]
Sent: 18 July 2018 15:12
To: Brian Stanton (brian.stanton@infectedbloodinquiry.org.uk) <brian.stanton@infectedbloodinquiry.org.uk>
Subject: Infected blood inquiry - correspondence relating to Scotland

Dear Brian

As discussed earlier, please see attached the relevant letters I could find to and from our former Cabinet Secretary confirming that the scope of the inquiry should not cover areas already considered by Lord Penrose in relation to Scotland. Jackie Doyle-Price also gave Ms Robison assurances on the phone on 17 October 2017 that the inquiry wouldn't duplicate areas considered by Penrose. I hope this is helpful, but please let me know if there are any queries.

Regards

[REDACTED]

[REDACTED]

Organ Donation, Blood Policy and Abortion Services
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG
Tel: [REDACTED]

[REDACTED]

From: Brian Stanton <brian.stanton@infectedbloodinquiry.org.uk>
Sent: 23 August 2018 18:01
To: [REDACTED]
Cc: Sam Green; Deirdre Domingo
Subject: Infected Blood Inquiry - Rule 9 Requests 1 and 2
Attachments: 2018-08-23 - Scottish Gov R9 request 1.pdf; 2018-08-23 - Scottish Gov R9 request 2.pdf

Dear [REDACTED]

Please find attached requests for documents, schedules and a witness statement under Rule 9 of the Inquiry Rules 2006.

Please don't hesitate to contact me for any further information or clarification.

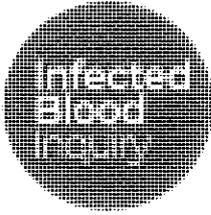
Kind regards

Brian



Brian Stanton
Solicitor to the Infected Blood Inquiry
Mobile: [REDACTED]
Address: Fleetbank House, 1st Floor, 2-6 Salisbury Square, London, EC4Y 8AE
Email: brian.stanton@infectedbloodinquiry.org.uk

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit <http://www.symanteccloud.com>



Fleetbank House
1st Floor, 2-6 Salisbury Square
London
EC4Y 8AE

Organ Donation, Blood Policy and Abortion Services
Scottish Government

FAO: [REDACTED]

By email

23 August 2018

Dear [REDACTED],

Request for the production of documents and information under Rule 9(2) of the Inquiry Rules 2006

I write to request production of the following documents and information however held (paper, electronic, audio, video, microfiche etc.), to the Inquiry within 28 days:

1. All documents and information provided by Scottish Government to the Penrose Inquiry together with a schedule listing the documents and information provided.
2. A schedule of all documents and information sent by Scottish Government to National Records of Scotland which is potentially relevant to the Infected Blood Inquiry's Terms of Reference.

Once you are in a position to produce the documents and information requested I would be grateful if you could liaise with the Inquiry's Information Manager, Sam Green sam.green@infectedbloodinquiry.org.uk to establish the most appropriate means of provision to the Inquiry.

The Inquiry's Terms of Reference can be found on the Inquiry's website at www.infectedbloodinquiry.org.uk together with a series of documents titled "Statement of Approach", which set out the Inquiry's processes and procedures. The document titled "Statement of Approach - Anonymity and Redaction" explains the Inquiry's approach to redaction and you will note the request that documents are to be provided to the Inquiry without redaction.

Infected Blood Inquiry

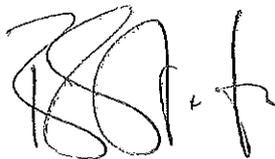
Fleetbank House, 1st Floor, 2-6 Salisbury Square, London EC4Y 8AE

contact@infectedbloodinquiry.org.uk

Freephone 08081691377

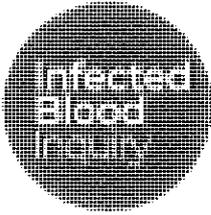
Please do not hesitate to contact me should you require any further information or clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Stanton', with a stylized flourish at the end.

Brian Stanton
Solicitor to the Inquiry

Email: brian.stanton@infectedbloodinquiry.org.uk
Telephone: [REDACTED]



Fleetbank House
1st Floor, 2-6 Salisbury Square
London
EC4Y 8AE

Organ Donation, Blood Policy and Abortion Services
Scottish Government

FAO: [REDACTED]

By email

23 August 2018

Dear [REDACTED],

Request for a written statement and the production of documents and information under Rule 9(1), 9(2) and 9(4) of the Inquiry Rules 2006

I write to request the provision of a written statement within 28 days on behalf of Scottish Government by a person with the appropriate knowledge, experience and seniority to provide evidence of the issues and matters described below:

1. An account of the archiving system of the Organ Donation, Blood Policy and Abortion Services.
2. A list of all Organ Donation, Blood Policy and Abortion Services repositories, including those storing documents and information in hard copy, electronic format, and any other form (whether the documents and information stored within the repositories are considered relevant to the Inquiry's terms of reference or not), together with an indication of the quantity of documents and information stored at each facility.
3. An account of the process for archiving Organ Donation, Blood Policy and Abortion Services documents and information at National Records of Scotland.
4. An account of Organ Donation, Blood Policy and Abortion Services retention and destruction policies and processes from 1948 to date, together with an account of any material known to have been destroyed with potential relevance to the Inquiry's terms of reference. Please also provide copies of Organ Donation, Blood Policy and Abortion Services destruction policies from 1948 to date as exhibits to the written statement.

Infected Blood Inquiry

Fleetbank House, 1st Floor, 2-6 Salisbury Square, London EC4Y 8AE

contact@infectedbloodinquiry.org.uk

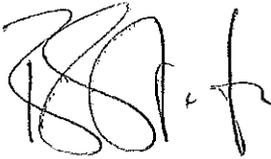
Freephone 08081691377

References to Organ Donation, Blood Policy and Abortion Services is intended to encompass any government organisation or agency with responsibility, past or present, for blood policy and services in Scotland.

The Inquiry's Terms of Reference can be found on the Inquiry's website at www.infectedbloodinquiry.org.uk together with a series of documents titled "Statement of Approach", which set out the Inquiry's processes and procedures. The document titled "Statement of Approach - Anonymity and Redaction" explains the Inquiry's approach to redaction and you will note the request that documents are to be provided to the Inquiry without redaction, including any documents exhibited to a written statement. The document titled "Statement of Approach – Evidence 2: Written Statements" explains the Inquiry's procedures for the provision of written statements.

Please do not hesitate to contact me should you require any further information and clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'B. Stanton', with a stylized flourish at the end.

Brian Stanton
Solicitor to the Inquiry

Email: brian.stanton@infectedbloodinquiry.org.uk

Telephone: [REDACTED]



T: 0300 244 4000
E: scottish.ministers@gov.scot

Sir Brian Langstaff
Infected Blood Inquiry
Royal Courts of Justice
2nd Floor
Westblock Strand
London
WC2A 2LL

10 April 2018

Dear Sir Brian,

Thank you for your letter of 21 March setting out your early thoughts on the approach to the UK Infected Blood Inquiry. I appreciate that you are already engaging directly with stakeholders in Scotland to seek their views on the Terms of Reference of the Inquiry. The Scottish Infected Blood Support Scheme has sent details of the consultation to all its beneficiaries and officials have also highlighted it to other interested individuals to encourage them to contribute to the process.

My officials recently met Cabinet Office officials to discuss the proposed approach of the UK Inquiry and reflect on some of the challenges of the Penrose Inquiry, which was helpful. We would hope to develop a close working relationship with the Inquiry team as the investigations progress and are happy to share lessons learned from the Penrose Inquiry. Hopefully the Preliminary Report and Final Report of the Penrose Inquiry will be of use to you in mapping out the key issues and historic events. The Preliminary Report set out the evidential background to the topics identified in the Terms of Reference and provided a basis to move forward and examine any areas of controversy.

There will inevitably be some crossover with matters considered by the Penrose Inquiry given that the events occurred pre-devolution and many of the key strategic decisions were taken at UK-level. You will no doubt want to examine the international context as Lord Penrose did. As I have noted previously to UK Government Ministers, I do not think there is much added value in reconsidering local decision-making in Scotland, unless it is of significant relevance to meeting the Terms of Reference of the Inquiry and therefore I welcome your confirmation that you wish to avoid duplicating the work of the Penrose Inquiry.

Those affected in Scotland will of course want to reflect and comment on their own experiences, so I welcome your commitment to put the people affected at the heart of the UK Inquiry. It is vital that the Inquiry is sufficiently accessible to those affected across the UK

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

and that it hears the range of views and experiences from those affected, both those who are members of a representative organisation and those who are not.

Thank you for agreeing to chair this very important and sensitive investigation. I look forward to considering the proposed scope of the Terms of Reference in relation to Scottish matters. We will, of course, continue to provide any advice and assistance to the UK Inquiry that we can.

Yours sincerely,
Shona Robison

SHONA ROBISON

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew's House, Regent Road, Edinburgh EH1 3DG
www.gov.scot





Department
of Health

From the Rt Hon Jeremy Hunt MP
Secretary of State for Health

Richmond House
79 Whitehall
London
SW1A 2NS

PO-1094119

020 7210 4850

Shona Robison MSP
Cabinet Secretary for Health and Sport
Scottish Government
St Andrew's House
Regent Road
Edinburgh EH1 3DG

15 SEP 2017

Dear Shona,

Thank you for your letter of 17 July about the announcement of the Government's intention to hold a full independent inquiry into the tragic events that surrounded the infection of thousands of people with HIV and/or hepatitis C through NHS-supplied blood or blood products. I am sorry for the delay in replying to you.

I am pleased that you welcome in principle our decision to hold an inquiry.

In response to your concerns, please let me reassure you by confirming firstly that we will of course involve the Scottish Government in the scope and terms of reference of the inquiry insofar as it applies to Scotland or covers Scottish matters, and we will ensure that your officials are properly engaged at each stage as the inquiry goes forward.

As you are aware, it is our intention that this should be a UK-wide inquiry, and we will of course ensure all the devolved administrations are fully consulted. We are, as you know, consulting stakeholders more generally before establishing any inquiry, and it is vital that the voices of those affected in Scotland are properly heard in deciding the scope and format of an inquiry.

Our intention is that the new inquiry would complement, rather than unnecessarily duplicate, the Penrose Inquiry, and that the new inquiry would be assisted and supported by the extensive work already carried out. I am therefore grateful for your offer of assistance in facilitating access to all the Penrose Inquiry evidence.

Following our discussions on 19 July, I can confirm that Departmental officials are now liaising with their Scottish counterparts to ensure that the new inquiry will have

access to any relevant evidence compiled for the purposes of the Penrose Inquiry. I am also grateful that you are keen to explore the further issues you mentioned, including funding, and my officials will liaise with yours to arrange these further discussions.

Finally, I appreciate your concerns about the handling of the announcement of the intention to hold an inquiry on 11 July and I understand the potential difficulty the announcement could have caused. I would like to affirm my commitment to ensuring that the devolved administrations are fully consulted in developing the terms of reference for the inquiry, and I look forward to having further discussions as this work progresses.

I hope this reply is helpful.

Yes

Jeremy

JEREMY HUNT

T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt. Hon Jeremy Hunt MP
Secretary of State for Health
Department of Health
Richmond House
79 Whitehall
London
SW1A 2NS

17th July 2017

I am writing following the UK Government's announcement on 11 July 2017 that it would call a public inquiry into infected blood.

While I fully understand and welcome in principle your decision to hold an inquiry, I am writing to raise serious concerns regarding the fact that this inquiry is apparently expected to cover the whole of the UK, including Scotland, and yet this was not discussed at all with the Scottish Government beforehand, despite it having potentially very significant implications for us; the Scottish Government was not even informed in advance in confidence about the announcement.

As you are aware, there has already been a detailed statutory inquiry in Scotland, the Penrose Inquiry, which has examined in relation to Scotland all, or at least most of, the key issues that the UK inquiry would be likely to consider. I am not aware of any precedent for a UK-wide inquiry considering matters which have already been considered by a Scottish inquiry under the Inquiries Act and this therefore raises a number of constitutional questions, particularly if the UK inquiry were to reach any different findings from those of the Penrose Inquiry. The Scottish Government would be keen to explore these issues further with the Department of Health. I note in particular the comments made by the Cabinet Secretary for Health, Well-being and Sport for Wales in his letter to you of 12 July regarding the potential funding implications of any inquiry findings and agree that this needs to be discussed further. Given that you have made the decision to have an Inquiry, my assumption is that you will bear responsibly for all the Scottish Government's and the Scottish National Blood Transfusion Service's costs associated with the Inquiry, such as for legal representation and travel costs, as well as any ultimate costs arising from the Inquiry, in event that the Inquiry recommends increased payments for those affected.

I recognise and absolutely accept that, given that the events that very unfortunately led to people becoming infected occurred prior to Scottish devolution and that a number of key decisions were taken on a UK-wide basis, any UK inquiry's findings may need to consider to

some extent what happened in Scotland, I do not feel that the inquiry should directly re-examine those issues which Lord Penrose has already examined. I am however happy for my officials to explore with the National Records of Scotland whether the UK Inquiry could be given access to all the Penrose Inquiry evidence and to do what we can to assist if there are any issues within the UK Inquiry's remit which were not considered by the Penrose Inquiry. While I recognise that there are differing views amongst those affected in Scotland, I do feel that looking again at evidence regarding Scotland which has already been examined in detail by Lord Penrose could be a massive duplication of effort as the Penrose Inquiry took six years and considered over 118,000 documents and more than 150 statements which were taken from patients and relatives. It could also further drag out the long and painful experience of reliving what happened for many of our stakeholders in Scotland, many of whom wish to be able to move on and put this tragedy behind them as much as possible. Therefore, while we will obviously wish to take on board any findings from the new inquiry, our main focus now needs to be on supporting these people moving forward, in particular by providing them with the appropriate support they need through the Scottish Infected Blood Support Scheme.

I would therefore hope that you can confirm that you will fully involve the Scottish Government in agreeing the remit of the Inquiry as it applies to Scotland and ensure that myself and my officials are properly engaged in proceedings at all stages as the Inquiry goes forward.

I am copying this letter to Jackie Doyle-Price MP, Parliamentary Under-Secretary of State for Health, the Cabinet Secretary for Health, Well-being and Sport in Wales and the Permanent Secretary at the Department of Health in Northern Ireland.



SHONA ROBISON

T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt Hon David Lidington MP
Chancellor of the Duchy of Lancaster
Minister for the Cabinet Office
The Cabinet Office
70 Whitehall
London
SW1A 2AS

Your ref: CDL/1879
Our ref:
25th June 2018

Dear David

I am writing regarding the proposed Terms of Reference for the UK Infected Blood Inquiry which you forwarded for consultation on 15 June. In broad terms I am content with the proposed Terms of Reference as far as they relate to Scottish matters, although I would reiterate that the Scottish Government believes the UK Inquiry should not duplicate the work of the Penrose Inquiry in relation to what happened in Scotland. Both UK Ministers and the Inquiry Chair have previously undertaken to avoid any unnecessary duplication where the Penrose Inquiry has already considered a matter in depth that is wholly or primarily a Scottish matter. As the Secretary of State for Health commented last year, the UK Inquiry should complement rather than duplicate the Penrose Inquiry, supported by the extensive investigations already carried out.

I note that the Terms of Reference are broader than those of the Penrose Inquiry, particularly in relation to the consideration of financial support and the inclusion of vCJD and other risks to the blood supply. The Penrose Inquiry focused on hepatitis C and HIV infections, although some consideration was given to hepatitis B. I am sure that stakeholders in Scotland and the UK will be pleased that these additional matters are being investigated.

The broad Terms of Reference give rise to the potential identification of activity that may be assessed as potentially criminal. For example, it is proposed that the Inquiry examine whether there have been any attempts to conceal what happened. In considering these matters, the Inquiry will of course be aware that Scottish criminal law is distinct and separate from other UK jurisdictions. The Inquiry must also recognise the constitutional position of the Lord Advocate as independent public prosecutor in Scotland.

We supported the view from most stakeholders that the Inquiry should be led by a panel, rather than a single chair, but I think the proposed use of expert groups to inform the Inquiry

is a good alternative. This should allow the Inquiry to conduct its work more quickly, drawing on a range of expertise from across the UK. We would be happy to suggest appropriate experts in Scotland who could participate in these groups, including those who previously provided evidence to the Penrose Inquiry. I agree that core participants should be given the opportunity to discuss how the proposed approach would work in practice.

As has been indicated by the Chair, I hope that appropriate consideration will continue to be given to engagement with those affected across the UK as the Inquiry develops, with hearings and evidence taking sessions accessible to everyone.

I would be grateful if we could continue to keep in close touch as the Inquiry develops so the Scottish Government is kept up to date and can consider what further evidence, documents or other information may need to be produced in due course.



SHONA ROBISON

Egress Software Technologies Ltd Certifications v3.0

supporting <http://www.egress.com/certifications>

Current Certifications					
Certification	Cert #	Issue Date	URLs (click text to redirect)	Scope \ Details	Business Sector
<p>ISO/IEC 27001:2013 Information Security Management</p> 	IS 611606	<p>Original issue: 14/07/2014</p> <p>Valid until: 13/07/2020</p>	<ul style="list-style-type: none"> ▪ Egress' International BSI Listing 	<p>All offices in scope (London, Ontario, Sheffield & Barnsley).</p> <p>International best practice standard for information security management systems (ISMS) that assures our customers and partners of the resilience and excellence of our service.</p> <p>All Egress offices externally-audited by BSI every ~May; 3-year recertification audit was passed on 20th April 2017. Certification now valid until 13th July 2020.</p>	All
<p>Commercial Product Assurance (CPA)</p> 	DGEE378428688-1104	<p>Original issue: 14/02/2014</p> <p>Valid until: 20/12/2019</p>	<ul style="list-style-type: none"> ▪ NCSC Foundation Grade Listing ▪ Security Procedures 	<p>Scope: Egress Switch Secure Email & File Transfer v4.81</p> <p>CESG Security Characteristics - Gateway & Desktop Email Encryption v1.x</p> <p>CPA makes Switch suitable for sharing OFFICIAL and OFFICIAL SENSITIVE (IL2 and low-threat IL3 data). As a result, Switch helps fill the</p>	UK Government

Egress Software Technologies Ltd Certifications v3.0

supporting <http://www.egress.com/certifications>

				gap between existing accredited government networks.	
<p>Common Criteria EAL2</p> 	CRP302	08/08/2017	<ul style="list-style-type: none"> ▪ Certificate & Security Target No direct link, so please see under 'Network and Network-Related Devices and Systems' ▪ Scheme details 	<p>Scope: Egress Switch Secure Mail and File Transfer v4.8</p> <p>The Common Criteria for Information Technology Security Evaluation (CC) and the companion Common Methodology for Information Technology Security Evaluation (CEM) are the technical basis for an international agreement, the Common Criteria Recognition Arrangement (CCRA), backing an international driving force for the widest available mutual recognition of secure IT products.</p>	UK / US Government / NATO Organisation
<p>Cyber Essentials Plus (CE+)</p> 	6628248325931967	23/02/2017	<ul style="list-style-type: none"> ▪ Certificate ▪ Scheme details 	<p>Scope: Two external IP addresses which are hosted internally. Standard laptop build tested on site.</p> <p>Extending CE, extensive tests of Egress' systems are carried out by an external certifying body (ProCheckUp) using a range of tools and techniques.</p>	UK Government / UK Commercial Organisations

Egress Software Technologies Ltd Certifications v3.0

supporting <http://www.egress.com/certifications>

<p>Trustwave PCI DSS Certification</p> 	<p>B21E-389F-B799-3238</p>	<p>01/11/2017</p>	<ul style="list-style-type: none"> ▪ Scheme details 	<p>Scope: Egress' website's Paypal payment portal.</p> <p>Whilst Egress doesn't directly handle any customer credit cards (all our online sales are managed by Paypal) Trustwave partners Paypal to assure that our payment portal is always secure using their PCI Manager with monthly security scans (together with their SMB Security Toolkit).</p>	<p>Commercial / Financial Organisations</p>
---	----------------------------	-------------------	--	--	--

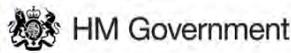
Historic Certifications					
Certification	Cert #	Issue Date	URLs (click text to redirect)	Scope \ Details	Business Sector
<p>Pan Government Accreditation (PGA)</p> 	<p>G230.001 IL2</p>	<p>15/08/2014</p>	<ul style="list-style-type: none"> ▪ Egress PR 	<p>Scope: Egress Switch Secure Email & File Transfer v4.x</p> <p>No public listing available as PGA has been replaced by the G-Cloud Security Approach, but published here as it demonstrates that the Egress Switch platform passed the rigorous PGA accreditation process.</p> <p>Egress' G-Cloud service offerings in the Digital Marketplace are supported by the Cloud Security Principles and are all listed here (including our Partners' listings).</p>	<p>UK Government related</p>

Egress Software Technologies Ltd Certifications v3.0

supporting <http://www.egress.com/certifications>

Cryptographic Certifications					
Certification	Cert #	Validation Date(s)	Named libraries link to respective Non-proprietary Security Policies	Scope \ Details	Business Sector
<p>FIPS 140-2</p>  <p>FIPS 140-2 Inside</p>	<p>#2937</p> <p>#2936</p> <p>#2606</p> <p>#2605</p> <p>#1894</p> <p>#1111</p> <p>* Additional certificates are listed on the FIPS 140 Validation page.</p>	<p>26/01/2017</p> <p>26/01/2017</p> <p>26/08/2016</p> <p>26/08/2016</p> <p>27/08/2013</p> <p>04/03/2009</p>	<p>1. Egress Switch use the following cryptographic libraries:</p> <ul style="list-style-type: none"> a. Cryptographic Primitives Library (bcryptprimitives.dll and ncryptssp.dll) b. Kernel Mode Cryptographic Primitives Library (cng.sys) c. Enhanced Cryptographic Provider (RSAENH.DLL) <p>Links to additional security policies are available on the FIPS 140 Validation page.</p> <p>2. OpenSSL FIPS Runtime Module for use with the high-level API of the OpenSSL v0.9.8 product.</p>	<p>The Egress Switch platform employs current Microsoft Cryptographic Libraries for regular run time operation that have been independently validated to FIPS 140-2 by Microsoft on the following platforms:</p> <ul style="list-style-type: none"> a. Windows Server 2016 b. Windows Server 2012 R2 c. Windows Server 2012 d. Windows Server 2008 R2 e. Windows 10 (v1607, v1511, v1507) f. Windows 8.1 g. Windows 8.0 h. Windows 7 <p>Optionally, Egress Switch Client software can use OpenSSL 1.2 FIPS Runtime Module by the Open Source Software Institute.</p>	<p>All</p>

Egress Software Technologies Ltd Certifications v3.0supporting <http://www.egress.com/certifications>

Uncertified Schemes & Catalogues					
Scheme \ Catalogue	Testing Country (Reach)	Issue Date	URLs (click text to redirect)	Scope (all Egress Switch Secure Mail) \ Details	Business Sector
Skyhigh CloudTrust 	U.S.A. (International)	28/01/2015	<ul style="list-style-type: none"> ▪ Skyhigh CloudTrust details (Egress listed below) 	Skyhigh evaluates cloud services and presents the Skyhigh Enterprise-Ready™ seal to only those services that have the highest CloudTrust™ rating possible. These are among the services that have earned Skyhigh's CloudTrust™ rating of Skyhigh Enterprise-Ready™ based on their attributes across the data, user and device, security, business, and legal evaluation categories.	US Organisations
EU 2PE EU RESTRICTED 	Germany (EU)	13/11/2015	<ul style="list-style-type: none"> ▪ EU RESTRICTED Listing ▪ EUCI Scheme 	Underpinned by Egress' CPA certification, where the national evaluator was NCSC, a second party EU evaluator (Germany's Bundesamt für Sicherheit in der Informationstechnik) rigorously tested our Egress Switch Secure Email product to validate its security for the EU Market.	EU Organisations
NATO NATO RESTRICTED 	NATO (NATO Nations)	16/07/2014	<ul style="list-style-type: none"> ▪ NIAPC Listing ▪ NIAPC Scheme 	The NATO Information Assurance Product Catalogue (NIAPC) provides NATO nations, and NATO civil and military bodies with a catalogue of Information Assurance (IA) products, Protection Profiles and Packages that are in use or available for procurement to meet operational requirements.	NATO Organisations
Cyber Security Supplier to Government Scheme 	United Kingdom (UK)	14/07/2014	<ul style="list-style-type: none"> ▪ Participating Companies ▪ Participating Ministerial 	Egress software is currently listed under the formal Cyber Security Supplier to Government Scheme. The scheme is administered by the Department for Business, Innovation and Skills (BIS) and is	UK Government

This document has been classified as: UNCLASSIFIED

Egress Software Technologies Ltd Certifications v3.0

supporting <http://www.egress.com/certifications>

			Government Departments	designed to clearly identify and recognise key suppliers to UK Government.	
--	--	--	--	---	--



T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt Hon David Lidington MP
Minister for the Cabinet Office
The Cabinet Office

By Email.

18 January 2018

I am writing regarding the UK Inquiry into the tragic events which led to many people becoming infected with hepatitis C and/or HIV as a result of receiving either blood products or a blood transfusion. I have previously had a number of useful discussions with Jackie Doyle-Price MP, Parliamentary Under Secretary of State at the Department of Health, when she was lead Minister for this inquiry. Now that responsibility for this has transferred to the Cabinet Office, I thought it would be useful to raise some key points in relation to the inquiry with you.

Firstly, we support the view from most stakeholders that the Inquiry should be led by a panel, rather than a single chair. As well as hopefully allowing the Inquiry to conduct its work more quickly, a panel would also help ensure resilience in the event of illness or any other unforeseen circumstances meaning one of the panel members requires a period of absence.

I understand that you hope to be in a position to announce a chair shortly. Could you confirm when you will be able to let me and Scottish Government officials know who the chair will be? I would be grateful if you could give us prior notice in confidence of your proposed chair sufficiently ahead of any announcement so that we can reflect back to you any views of concerns that may be raised by Scottish stakeholders.

Secondly, as I have already raised with the Secretary of State for Health and the Prime Minister, particularly to help meet most Scottish stakeholders' objectives of avoiding the inquiry becoming too lengthy, the Scottish Government believes the UK Inquiry should not duplicate the work of the Penrose Inquiry in relation to what happened in Scotland. As well as considerably increasing the likely timescales for the inquiry, considering points which the Penrose Inquiry has already considered in depth would be likely to raise very difficult constitutional questions in the event that the UK Inquiry reached any different conclusions from those of Lord Penrose. The Scottish Government would be happy to work with the National Records of Scotland (NRS) to help supply any records NRS holds from the Penrose Inquiry which the UK Inquiry panel wishes to consider. There is a very detailed set of records, which will cover the key decisions made, including many that were taken on a UK-wide basis.

I would be grateful if we could keep in close touch as the inquiry is set up so that the Scottish Government is kept up to date and that we can feed in our views in relation to the terms of reference.

Best wishes,
Shona

SHONA ROBISON