IN THE FIRST-TIER TRIBUNAL WPAFCC Ref: ENT/00281/2012

WAR PENSIONS AND ARMED FORCES COMPENSATION CHAMBER

Appellant: Mr David Watt Whyte

Respondent: Secretary of State for Defence

NINO: ZM 33 63 15 A

**DECISION OF THE TRIBUNAL**
**(with full reasons)**

On 5th June 2018

Held at: Fox Court
Before:

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| Judge | Mr H Lederman |
| Medical member | Mr J McKintosh |
| Service member | Mr RM Pennell |

**DECISION**

The Tribunal dismisses the appeal of the Appellant against the decision of Veterans UK dated 20th September 2011 [59-60] ("the Decision") to reject claims for a War Pensions for injuries due to exposure to radiation on Christmas Island in 1958.

1. This is the statement of reasons for the decision made on 19 June 2018 following the hearing on 5th June 2018 and the adjournment of that hearing for the opportunity for both parties to make further submissions upon additional evidence which only became available on that day. There is a separate adjournment notice dated 5th June 2018.

2. The Appellant attended on 5th June 2018 and was not represented but in the morning session was accompanied by a friend (Mr Heydon) who did not attend after the luncheon adjournment. The Appellant declined the opportunity to seek an adjournment to seek representation offered to him at the outset of the hearing

and after the Tribunal Judge's provisional explanation of the issues had been given to him. The Tribunal Judge explained before the substantive hearing commenced, that the Appellant's claim raised issues of scientific and historic fact, and some legal issues that the Appellant, who had no legal or scientific training might find it difficult to deal with.

3. The Secretary of State was represented by: Mr I Irwin (Veterans UK).

4. The commencement of the hearing on the morning of 5th June 2018 was delayed as a member of the Tribunal had suffered a bereavement of a close family member the day before. Although the hearing did not start until 11.30 am, it was made clear to the Appellant that he had as much time as he needed and, if necessary, if time was insufficient and the hearing had not finished by the afternoon on that day, further time could be found on another day.

**Introduction**

5. This is one of series of appeals by members of the armed forces or their families against decisions of Veterans UK to reject a claim to an award under the War Pensions legislation described below for injuries, illness and death alleged to have been due to exposure to ionising radiation whilst serving on a territory which was then known as Christmas Island in 1957-1958 ("the Christmas Island appeals"). That territory is now known as "Kiritimati" part of the Republic of Kiribati. No disrespect is intended by the use of the name Christmas Island which is common to most of the documents.

6. In these Reasons references to page numbers are to the Response, unless stated otherwise. Where narrative, facts or descriptions are recited, they should be treated as the Tribunal's findings of fact unless stated otherwise. References to a "Rule" or "the Rules" are to the Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008/2686 (as amended).

7. These reasons address in summary form the key issues raised by the appeal. They do not rehearse each and every point raised or debated. The Tribunal concentrates on those issues which in its view go to the heart of the War Pension claims. The Tribunal does not have jurisdiction to consider issues of informed consent, breaches of international law, Data Protection, Freedom of Information, negligence or breaches of criminal laws, all of which are canvassed at some point in the documents in the Response.

**The Appellant – summary of claim**

8. It was common ground the Appellant, born in 1936, served between February 1952 and January 1961 in the regular army; and subsequently between July 1967 and November 1979 in the RAF. It was undisputed the Appellant was present on Christmas Island between March 1958 until a date in either October or December 1958. In was also common ground, 5 atmospheric nuclear test detonations on or around Christmas Island occurred during the time he was present on Christmas Island on 28th April 1958, 22nd August 1958, 2nd September 1958, 11th September 1958 and 23rd September 1958. Further details are given below.

**The Decision appealed against**

9. The Appellant submitted a claim form for a War Pension dated 16th May 2011 at [33-41]. This form was interpreted by Veterans UK as asserting that the following injuries or disablements were due to the Appellant's service on Christmas Island and exposure to ionising radiation in the course of that service:

   a. Genetic damage.
   b. Sterility/infertility
   c. Internal damage due to radiation
   d. Diverticulitis (or diverticulosis)
   e. Abdominal pain
   f. High blood pressure (hypertension)
   g. Loss of teeth
   h. Lymphadenopathy
   i. Abdominal pain

10. By a letter dated 20th September 2011 [59-60] ("the Decision") Veterans UK notified the Appellant of their decision that the following diagnosed conditions had been caused by the Appellant's service Lymphadenopathy (1960) and Abdominal pain (1958/1960). The assessment for those disablements was 0% from 25 05 2011. The Appellant appealed against that assessment. He informed the Tribunal that that appeal was heard by a Pensions Appeal Tribunal in Scotland where he resides. There are references to the assessment appeal papers in the Response: see for example at [78] but neither party contended those papers were relevant to this appeal, despite the Tribunal Judge's initial enquiries about relevant evidence before the substantive hearing of this appeal. This appeal was against the rejection of claim interpreted as Diverticular disease, High blood pressure (hypertension), Loss of teeth and infertility and genetic damage notified to the Appellant in the Decision.

was notified of the various directions of this Tribunal shortly after those directions (set out below) were made.

16. On 24th January 2018 the Acting Tribunal President of this Tribunal issued the following material directions in this appeal (among other Christmas Island appeals):

> "i. In so far as it has not already been done any stay in respect of each of these appeals is lifted.
> ii. The general factual findings cases made in the Blake Tribunal judgment in respect of the common issues in these related cases to the lead cases are binding on these appeals in accordance with Rule 18 of the Rules.
> iii. The Secretary of State's request that a list of radiogenic and non-radiogenic conditions is agreed as a result of the Blake Tribunal judgment is refused; their conclusions in respect of the conditions of the appellants in the lead cases may well be persuasive in respect of those conditions but are not determinative of causation in each of these individual appeals.
> iv. The Secretary of State will prepare supplementary responses in respect of all these appeals to include further comment by the Secretary of State and further medical comment if so advised.
> v. All the appellants will have an opportunity to respond to the further comments in writing if they wish to do so before any appeal hearing.
> vi. In all the appeals, to avoid burdensome additional copying, the appellants or their representatives will be expected to bring to the hearing their own copy of the Blake Tribunal judgment (All appellants, other than Mr Dowell, have already been issued with a copy.) The tribunal panel will bring their own copies to the hearings."

17. In addition specific directions were made in Mr Whyte's appeal as follows:

> "15. Mr Whyte has repeated a request for disclosure of various evidence by VUK and for the attendance of Mr R Cockerill, from AWE Dosimetry Unit as a witness.
> 16. VUK shall make further enquiries in relation to items 1-4 to see if they are obtainable and also to see if Mr Cockerill is available. They will respond in 28 days to say whether or not the evidence exists/is available and/or whether there is any objection to its disclosure/an order being made for attendance. A final determination on the appellant's application will then be made. No order is made for item 5 as the records are no longer in existence and I am satisfied the SoS

State Court case in 2017 when documents are suddenly found

has made reasonable attempts to locate the hospital records from the RAF hospital in Aden from 1960.

17. This appeal will be listed on the first available date after 1 June 2018 in London with a time estimate of half a day. No other case will be listed before the panel on that day to give them time to make their decision."

18. On 21st May 2018, the acting Tribunal President made further directions in this and other appeals, as follows:

> "Case management directions were issued in respect of these appeals on 24 January 2018 since when a number of the appeals have come on for hearing. In a number of the appeals which have been listed for hearing VUK have not served a supplementary Response until very shortly before the hearing or, on occasion have provided further responses at the hearing itself. In order to avoid further adjournments and to ensure that both parties to the appeal are fully aware of the evidence and arguments of the other side
>
> IT IS DIRECTED THAT:
>
> 1. The Secretary of State will ensure that the supplementary responses prepared in compliance with my directions of 24 January in respect of all outstanding appeals will be sent to the Tribunal and the appellant (or their representative) by no later than 6 weeks before the date fixed for hearing.
> 2. Neither party will file additional evidence or submissions any later than 2 weeks before the date fixed for hearing other than with the leave of the Tribunal.
> 3. Any further applications for directions must be made on notice to the other party."

16. Sadly, the Secretary of State failed to comply with item iv. of the directions given on 24th January 2018, and served a supplemental response (including a generic policy statement concerning ionising radiation claims) so as to arrive during the hearing. This was despite public adverse comment made by this Tribunal Judge upon a materially identical default in other Christmas Island appeals heard on 11th and 12th April 2018 and on 29th and 30th May 2018. The Tribunal considered long and hard whether the interests of justice could be served by declining to admit the supplemental response served late. Ultimately the Tribunal decided that most, if not all of the supplemental response was already in the Response or in the Blake judgement which had been served upon the Appellant previously. In addition, the Tribunal Judge had anticipated this default on the part of the Secretary of State and had directed the Tribunal's administrative staff to send to

the Appellant the Secretary of State's generic policy statement for the Christmas Island appeals the week before the hearing of this appeal and the Appellant acknowledged receipt. To mitigate any prejudice which might have been caused by late production of this evidence and submissions by the Veterans Agency, the Tribunal gave the Appellant the opportunity to make further submissions. Pursuant to those directions the Appellant sent a letter containing further submissions dated 7th June 2018 which the Tribunal has taken into account.

**Representation of the Appellant**

17. The Response indicated that at some stage in the past the Appellant may have had access to legal advice (see his letter of 23 March 2012 at [71] for example) but that his claim form and this appeal had been conducted without the benefit of such advice. The hearing had been listed in London at his request to enable his legal team and expert to attend. In introducing the possible issues in this appeal before the substantive hearing commenced, the Tribunal drew attention to the apparent lack of medical evidence to justify the Appellant's claims that hypertension, diverticulitis, loss of teeth and sterility infertility were *on the Appellant's case* linked to his service. The possibility of the Tribunal giving directions requiring further attempts to locate medical evidence and of the Appellant seeking representation to get advice, or the Tribunal ordering such expert medical evidence about those issues was canvassed, before the substantive hearing started. The Appellant was offered the opportunity to consider those issues but declined to seek an adjournment. He was also given the opportunity on 5th June 2018 to have a short adjournment to reflect with his companion Mr Heydon or others, upon the offer of seeking an adjournment to obtain further evidence.

18. At the outset the Appellant was asked if there was other documentary evidence he wished to rely upon. It was explained the Tribunal would only make decisions upon the available evidence included in the Response and other documents, in addition to his oral evidence.

19. The Tribunal noted that the Appellant had requested the Tribunal to issue a witness summons to call Mr Cockerill of AWE to be cross examined upon his evidence contained in the letter of 28 July 2011 and annexes [42 onwards]. The Appellant requested issue of such a summons in his letter of 31 June 2017 (page [202]) under article 16 of the Rules. The Tribunal deferred consideration of whether such a summons was appropriate, until later in the hearing so it could reach a view as to the evidence and issues to which such cross examination might be directed and whether the attendance of Mr Cockerill would assist the Tribunal and whether such a course would be consistent with the overriding objective.

**Statutory framework for this appeal**

20. This is an appeal under Section 1 of the Pensions Appeal Tribunals Act 1943 ("the 1943 Act") (as amended) and the Pensions Appeal Tribunals Act 1943 (Armed Forces and Reserve Forces Compensation Scheme) (Rights of Appeal) Regulations 2011 against the Decision.

21. The Tribunal applied the legal framework set out in the 1943 Act and in Article 41 of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 ("the 2006 Order"). This provides in its material parts:

> **Entitlement where a claim is made in respect of a disablement, or death occurs, more than 7 years after the termination of service**
>
> "41(1) Except where paragraph (2) applies, where, after the expiration of the period of 7 years beginning with the termination of the service of a member of the Armed Forces, a claim is made in respect of a disablement of that member, or in respect of the death of that member (being a death occurring after the expiration of the said period), such disablement or death, as the case may be, shall be accepted as due to service for the purpose of this Order provided it is certified that-
>
> (a) The disablement is due to an injury which-
>
> (i) is attributable to service before 6th April 2005; or
>
> (ii) existed before or arose during such service and has been and remains aggravated thereby; or
>
> .....
>
> (2) ----------
>
> (3) A disablement or death shall be certified in accordance with paragraph (1) if it is shown that the conditions set out in this article and applicable thereto are fulfilled.
>
> (4) ----------
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> (5) Where, upon reliable evidence, a reasonable doubt exists whether the conditions set out in paragraph (1) are fulfilled, the benefit of that reasonable doubt shall be given to the claimant.
>
> (6) Where there is no note in contemporary official records of a material fact on which the claim is based, other reliable corroborative evidence of that fact may be accepted."

16. For the purposes of the War pension legislation "injury" is defined (so far as relevant) by item 32 of Schedule 6 to the 2006 Order to include "wound or disease".

17. Under Article 41 the burden of proof is on the Appellant to prove military service and disablement or death. The standard of proof in respect of those two issues is the balance of probabilities: see Secretary *of State for Social Security v Bennett* 17 October 1997 (unreported) applying *Royston v Minister of Pensions* [1948] 1 All ER 778; and *Rusling* [2003] EWHC 1359 at para 23, confirmed in the first *Abdale* decision on 22 October 2014 CAF/3206/2013 and others ("Abdale").

18. This point was explained at the very outset to the Appellant as the Decision held that there was no evidence the Appellant had suffered from genetic damage, and the burden fell to him to establish such damage or injury on the balance of probabilities.

19. It was explained the standard of proof for establishing other conditions of entitlement to a War Pension was less exacting than proving on the balance of probabilities that the Appellant sustained a particular injury or disease such as genetic damage. In this context word "reliable" adds something to what amounts to a reasonable doubt as that expression is used in criminal law, in that the evidence to establish the role of service in causing injury or disease must not be fanciful or worthless. The "reasonable doubt" test is founded on the establishment of possibilities based on evidence that cannot be rejected as being fanciful or worthless: see *Abdale* paragraphs 78 -79.

20. The Tribunal has only taken into account circumstances obtaining at the date of the Decision. In deciding this appeal the Tribunal has not considered any issue that was not raised by the Appellant or the Secretary of State in relation to the appeal unless the Tribunal thought it appropriate to do so: see section 5B of the 1943 Act.

**Documentary evidence before the Tribunal**

21. Before the substantive hearing on 5th June 2018 commenced, the Tribunal Judge confirmed that all parties had the same documentary evidence and what (if any) additional documents the parties intended to rely upon. The Response included 260 numbered pages including the supplemental response received on the day of the hearing. All parties had a copy of the Blake judgement.

22. All parties were provided a copy of the excerpt from the decision of Foskett J. at first instance in *AB & others v Ministry of Defence* [2009] EWHC 1225 on 5th June

2009 the personal injury claims made by large numbers of serviceman present at Christmas island. That judgment related to the preliminary issue of whether the limitation period should be disapplied in claims for damages for personal injuries and was not a final determination of factual issues but some of the background facts are common ground, or if not admitted, have not been disputed by the Secretary of State in the Christmas Island appeals.

23. In addition, as the Appellant had been acting in person for some time, he had sent a letter to the Tribunal dated 24th January 2016 which he had wanted included in evidence (12 numbered pages and sketch plan – on the reverse of page [202] ("202R") (also included at [76]). The Appellant also wished to structure his submissions and evidence by reference to a 15 page document entitled "Foreword for Nuclear Veteran Case", ("the June statement") a version of the earlier statement and annexes numbered [202R to 224R] which accompanied that document. Mr Irwin very realistically acknowledged that much of the ground travelled in these documents had been canvassed by the Appellant previously and the annexes were mostly contained in the Response. In any event the Secretary of State was given a 14-day opportunity to comment further upon the additional documents relied upon by the Appellant. No further submissions were received from the Secretary of State.

24. The Appellant also relied upon and produced a copy of document entitled "Radiological Safety Regulations Christmas Island July 1958".

25. The Tribunal Judge decided to give leeway to the Appellant. It was considered much of this "additional" material would have been covered and in the hearings leading up to the Blake Judgement. In any event as the Appellant had no professional experience or relevant qualifications it was not in the interests of justice to exclude this evidence in the absence of any compelling reasons to do so put forward by the Secretary of State.

**Undisputed findings – the background facts**

26. The following facts were not seriously in issue. The Appellant a served as a sapper with 38 CER on Christmas Island during the Grapple Y and Z detonations in 1958. He had trade qualifications as a carpenter/joiner and field engineer. He was a member of the Technical services (Forward) ("TSF") group responsible for construction and reconstruction duties in the Forward Area before and immediately after tests: see Secretary of State's observations referring to his record of service at [5] (apparently prepared in 2011).

27. On 28 April 1958 GRAPPLE Y took place. This was an airburst above the sea off Christmas Island. The bomb was dropped from a Valiant Bomber. The yield was 3 megatons, the highest yield achieved in all the British tests.

28. On 22 August 1958 GRAPPLE Z1 ('Pennant') involved a balloon suspended 24 kiloton hydrogen/fusion detonation approximately 700 km south-east of Christmas Island some 450 metres over land. Air sampling was carried out by 76 Squadron RAF Canberra B2s. The yield was estimated at 24 kilotons.

29. On 2 September 1958 GRAPPLE Z2 ('Flagpole') involved a 1 megaton hydrogen/fusion air burst at 2,800m (9,440 feet) over the sea off Christmas Island from a bomb dropped from a 49 Squadron RAF Valiant. Air sampling was carried out by 76 Squadron RAF Canberra B6s.

30. On 11 September 1958 GRAPPLE Z3 ('Halliard') involved a 0.8 megaton hydrogen/fusion air burst at 2,600 m (8,500 feet) over the sea off Christmas Island from a bomb dropped from a 49 Squadron RAF Valiant. Air sampling was carried out by 76 Squadron RAF Canberra B6s.

31. On 23 September 1958 GRAPPLE Z4 ('Burgee') involved a balloon suspended 25 kiloton hydrogen/fusion detonation approximately 700 km South-East off Christmas Island some 450 m over land. Air sampling was carried out by 76 Squadron RAF Canberra B6s. The Ministry of Defence says that the primary purpose of the test was to produce a 1-ton, 1-megaton warhead that was invulnerable to radiation damage that might render it inoperable.

32. Over 20,000 British men were present in the general areas of the tests carried out between 1951 and 1960. This has relevance to the evidence of exposure to ionising radiation considered by the Blake judgement. The scale of the tests was huge. There were 21 detonations over 6 years or so (including the above tests). Well over 20,000 individuals attended the tests overall in the 1950's before the comprehensive test ban treaty. The tests were planned as military operations and they represented the largest military undertaking since the Second World War and the entire venture was unprecedented. The development of nuclear weapons was in its infancy, and this meant that those who planned and implemented the tests were working in a wholly new area of operations, setting their own rules and standards and not simply following custom and practice or regulatory guidelines as would normally be the case. This was as true for the earlier tests as it was for the later ones, when thermonuclear devices were tested for the first time. It would not be an overstatement to say that a "Task Force" was necessary to carry out this undertaking; at GRAPPLE for example, a fleet of Royal Navy and Royal Fleet Auxiliary ships, a fleet of many different types of aircraft, (bombers, reconnaissance, rescue, transport), hundreds of thousands of

tons of supplies and equipment, and of course, thousands of military and civilian personnel from several nations. Much had to be transported 7,500 miles to Christmas Island, although some supplies were sourced from Australia, (Perth in Northern Australia was about 1,500 miles away). The engineering undertaking at each of the test sites was enormous too: the preparation work alone took more than 2 years. A wharf and port had to be built together with roads, two 6,000 foot runways, recording stations, a water processing plant and accommodation, sanitation and recreational facilities for four thousand men (at the peak); and all had to be built from nothing. The tribunal acknowledges these findings from the judgment of Foskett J.

33. Much of the above background was set out in paragraphs 1- 10 of the Blake judgement. The Grapple tests were described in detail in paragraphs 151 - 225 of the Blake judgment. Those findings should be treated as incorporated into these reasons.

34. The Tribunal gratefully adopts the introduction to the scientific background in section 2 of the Blake judgment including Radioactive exposure, Measurement of Dose, Background Radiation, Protection of Health from Radiation and the LNT Model, in paragraphs 43 – 110 of the Blake judgment. That explanation should be treated as incorporated into these reasons.

**The Appellant's Medical records**

35. The available medical records were considered in some detail at the hearing. As the Tribunal explained to the Appellant before the substantive hearing started, given his complaints of injury due to ionising radiation and the passage of time, the contemporaneous evidence of his health went to the heart of the issues which the Tribunal had to consider. In particular, one of the claims made by the Appellant in his claim form at [34R] was that he lost all of his teeth due to sepsis (within 3 years of returning from Christmas Island).

36. The Appellant underwent a medical examination on or about 16 November 1951 when aged 16 prior to enlistment. The report of that examination at [21-22] showed he was fit with no serious illness or conditions. That report was not disputed by the Appellant.

**The 1961 medical examination report**

37. There is a report of a medical examination of the Appellant bearing the date January 1961 at [23-24]. That report indicated the Appellant had no serious illnesses. That report appears to bear the signature of the Appellant and of a medical officer. The Appellant disputed that the signature on page 24 was his

signature and described the entirety of that document as a "forgery" in his evidence before the Tribunal (and in his written statements put before the Tribunal). The Appellant says that his signature in that document is different from the signature in other documents signed by him at the time and subsequently. He illustrated this point by reference to copies of various excerpts from documents containing what he said was his signature on pages [221] and [221R].

38. Paragraph 33 of the June statement summarised his points about this report as follows:

> "The signature on the document bears no resemblance to my own (see pages 221 & reverse) and, much more sinister, my personal details are recorded both on 22 November 1951and 6 January 1961as being of a height of 61 ¼ inches and weight 95lbs. This is no change in nearly 10 years and yet my personal details dearly entered at a medical on 15 October 1954 (page 21 reverse) record my height as 67 Inches and weight 126 lbs? This is impossible therefore the only logical conclusion is that the report is a forgery as it does not reflect accurately my personal details on discharge!"

39. The Tribunal accepts that it is unlikely that the Appellant's height and weight in 1951 were the same 10 years later when he was 25. However, there are a number of possible explanations for the potential inaccuracy, none of which necessarily lead to the conclusion that all of the entries in the 1961 report were inaccurate. It is not unknown for medical staff to copy some parts of entries from previous reports or records, to "cut corners". If that is what occurred, it does not necessarily follow that the entirety of the remainder of the report was inaccurate. The allegation of forgery if it is taken to mean that the entire document was not a contemporaneous record, is not made out in the Tribunal's view. It is not unknown for such reports to be prepared hastily and it is possible that the record keeping is consistent with that explanation.

40. The Appellant does not directly challenge the significant parts of the 1961 report, except insofar as it does not mention the various ailments which he was said to have been suffering from which led to his lymph nodes being removed in 1960 and two admissions to hospital in Aden in 1960 and (on his case) his teeth falling out by 1961. Even if it is accepted the 1961 report was not comprehensive, there is no evidence in that report to support the conclusion which the Appellant invites the Tribunal to accept that he was exposed to 894 mSvs of radiation in 1958 (see page 14 of the June statement). Had he been exposed to radiation even approaching that level, very severe symptoms of damage to internal organs and other structures would have been expected.

41. In reaching this conclusion the Tribunal has also considered carefully the other surviving medical records to see if there was any other evidence of the injuries or exposure to radiation of the kind which the Appellant asserts in his claim form.

42. Ultimately the Tribunal does not have to determine the accuracy of the Appellant's recollection solely by reference to the 1961 report which is a small part of the evidential background following his service on Christmas Island.

43. If it is relevant, the Tribunal does not accept the suggestion that 1961 report is the product of deliberate concealment of the correct record or fabrication or reconstruction after the event. There is no evidence before the Tribunal which comes close to supporting such a conclusion which the Tribunal regards as fanciful.

**Records of removal of Appellant's lymph nodes in 1960**

44. The Appellant believes that Veterans UK and the Ministry of Defence have failed to disclose relevant documents and have suppressed relevant documents and in particular documents relating to removal of his lymph nodes whilst in an RAF hospital in 1960 in Aden.

45. The Ministry of Defence responded to the Appellant's request for the records relating to that hospital treatment entry in 2010 and by letter at [225]. Veterans UK responded in 2017 saying the hospital case notes from Aden are no longer extant: see the memorandum at [226]. The Appellant's position is that he believes that he and other surviving veterans of nuclear tests are being denied access to information and records which would enable them to claim compensation for being deliberately exposed to radiation for scientific and medical research. In support of this belief he draws attention to excerpts from the report of an Inquiry by Michael Redfern QC into human tissue analysis in UK nuclear facilities published in 2010: see the Appellant's written submission at [83] and [83R]. He refers to excerpts from the report at [94R] [98] and [98R] which he says support his belief. The excerpts he produces make it clear that organs were removed at post-mortems. They do not support the inference which he invites the Tribunal to draw, namely that the Ministry of Defence or Veterans UK are suppressing or have failed to disclose evidence of his organs removed in 1960. Apart from anything else, the Appellant appears to have read a page in the Redfern report which suggests that documents were removed at [98] to suggest a sinister or improper motive in connection for claims for damages. Analysis of organs for the purpose of claims for damages may have been for legitimate and lawful purposes to support or defend such claims. The excerpts from the report do not bear the interpretation which the Appellant seek to put on them, namely that organs were improperly removed for the purpose of suppressing evidence.

46. The Tribunal does not accept the suggestion that records from his hospitalisation in Aden 1960 have been concealed or suppressed. It is unclear when he first made the request of such records but it may have been in about 2010. On the face of it, unfortunately, it is unsurprising that such records no longer exist, or if they exist cannot be found. This is not a unique situation in the Tribunal's experience. There is no evidence before the Tribunal which comes close to supporting a conclusion that they are being concealed or suppressed.

**The Appellant's other medical records**

47. In July 1967, at about the time of enlistment into the RAF, the Appellant underwent a medical examination, only part of which survives, and is found at [27-28]. That report which indicated no serious illnesses and PULHEEMS employment standards of 1 and 2, went unchallenged by the Appellant. The evidence in that report, which the Tribunal accepts, is inconsistent with exposure to high or moderate levels of ionising radiation whilst the Appellant served on Christmas Island.

48. There is no reference in that report to any adverse health or symptoms which are asserted, such as loss of teeth, sepsis or infertility. Indeed there is no reference to abdominal pains or any symptoms which might have been associated with Lymphadenopathy.

49. The unchallenged evidence is that the Appellant entered the RAF and was posted to a Dental training establishment on 30 August 1967 and became a Dental Surgical attendant on 07 December 1967. DSTL records show the Appellant was exposed to radiation of 14.19 mSv from 1968 to 1979: see [66] and [67] reverse. For the purpose of this part of the Tribunal's reasons the significance of this record of radiation dose is not in the measurements. It is confirmation (taken with the Appellant's lack of challenge) that in that period his health was reasonable and he was not suffering from injury or symptoms which would be consistent with the level of exposure to radiation which he asserts he was exposed to in 1958 (or a lesser level which might have caused him injury).

50. On or about 26 March 1976 he underwent a "special medical examination" by a Medical Officer (found at [25] in the Response) when he was 39, in respect of his application for a commission in the RAF. He was reported to be single. No serious illness were recorded. His medical employment standard was A4 G2 Z1, fully fit for ground trades, to fly as a passenger in an aircraft and fit to serve anywhere in the world with no climatic restriction. This report is particularly relevant as he recalls he carried out a home fertility test in the 1960's which showed he was sterile. There was no mention of this issue in this report.

51. On or about 10 July 1979 the Appellant underwent a further medical examination shortly prior to discharge from the RAF. The manuscript version of that report of that examination is at [26—26R] and was countersigned by the Appellant, as he accepts at page [221]. The typescript version of that report is at [29]. No serious illnesses or disorders were reported and there is no reference to loss of teeth or symptoms which might be consistent with exposure to the amounts of ionising radiation which the Appellant claims or other amounts which might have caused him injury. As noted below, in 1979 the Appellant then went to work for the Prison Service for some 17 years. None of his occupational health records for that period were produced into evidence.

**The Appellant's General Practitioner's report 27 September 2011**

52. This report is at [47-50] of the Response. None of its contents were challenged by the Appellant in the course of questioning by the Tribunal. The Appellant had been the patient of this GP since 1996 and the GP had notes going back to 17th October 1989: see [49 reverse]. The GP was unable to provide confirmation of infertility: see pages [48] and [49].

53. The GP confirmed a record of diverticulosis and "abdo pains" in 1994 at the Whittington Hospital London but no operation or medical intervention was required [48]. The GP confirmed left iliac fossa pains, a barium enema and a diagnosis of diverticulitis as at 1994 – again at the Whittington. [48 reverse].

54. The GP also confirmed that the Appellant had been diagnosed with essential hypertension (asymptomatic) at registration with the practice in 1996: see [48 reverse].

**The Appellant's oral evidence – injuries and health**

55. The Appellant's evidence at the hearing was that he recalled having lumps in the groin and having a lymph node removed in the right arm in the 1960's in Aden. The Appellant recalls being asked by a doctor at that time whether he had had any contact with women whilst in Aden. The Appellant in his evidence interpreted this enquiry as questioning whether he was fertile. The Tribunal places very little weight upon this evidence, being so long after the event in the absence of any contemporary or other confirmation. The Tribunal also places very little weight upon the existence of lympthenopathy as evidence of injury due to exposure to radiation. Lymphadenopathy could have been due to viral infections or other causes unrelated to exposure to radiation. The Tribunal returns to the significance of the award for this condition in the Decision elsewhere in these Reasons.

1990's

56. In relation to infertility, in his oral evidence the Appellant recalled obtaining a commercial fertility test in 1964/1965 "from a chemist" and drawing the conclusion he was infertile. On being questioned about this he said he did not take this further and did not mention this to his unit medical officer, or any of the medical officers who examined him for the purpose of his service in the armed forces. In the War Pension Medical Examination Report prepared on 17 August 2011 he is reported to have told the Examiner that in 1968 he was in a relationship and tried to start a family but was unsuccessful. He reported carrying out a "home fertility" test on a sperm sample and the test read "as being sterile": [52]. The Appellant has asked for a test for chromosomal abnormalities known as FISH test which he believes would show whether he suffered genetic damage. He has not been able to obtain such a test. No symptoms or other evidence of infertility was referred to by the Appellant.

57. The Appellant was asked whether he had any medical conditions which to his knowledge affected his memory but denied knowledge of such a condition and expressed the view that he had "a fairly good memory".

58. In relation to his teeth the Appellant said that he "started to get trouble" with his teeth whilst in Scotland and had "abscesses". He recalled his dentist recommended his teeth were removed and had them removed in two sessions in 1964/1965 and had dentures from that time. He said that the reference to "loss of dentures" in the document dated 1959 on page [22] was a reference to single denture in his front tooth which he had required following a boxing injury sustained previously, in the course of his "boy service" in the army. No dental records were available or put before the Tribunal. There was no evidence confirming the Appellant's recollection. One troubling part of the Appellant's recollection is that it is potentially inconsistent with the findings in the 1967 medical examination at [28] that there was nothing abnormal about his lower or upper jaw.

59. In relation to hypertension the Appellant's attention was drawn to the Medical Appendix at [15 reverse, [16], and [16 reverse], which distinguished between primary ("essential") hypertension and secondary hypertension and the fact that his GP had diagnosed the former. The aetiology (study of causes) of "essential" hypertension did not refer to exposure of radiation as a cause of hypertension which the medical appendix categorises as "a constitutional condition…arises from the interaction of inherent biological traits, behaviour and environmental factors in a genetically susceptible individual": see paragraph 47 of the Appendix at [18] (reverse). When asked about hypertension and how this was discovered, the Appellant said he was first told that he had high blood pressure in 1996 after coming out of the Prison Service for 17 years. The Tribunal concludes that his

health during the previous 17 years or so had been sufficiently good to enable him to hold down work in the Prison Service. That was consistent with what he had said to the War Pension Medical Examiner on 17th August 2011: see [53]

60. The Tribunal considered the possibility that the label 'Primary/Essential Hypertension' had been applied incorrectly by SoS and the Appellant's doctors. If the Appellant instead has 'Secondary Hypertension', the only mechanism through this could arise due to radiation (in evidence in pages [15] reverse and [16] of the Medical Appendix above) would be due to kidney or adrenal gland damage caused by radiation. The Appellant was asked whether he had such damage which might have given rise to high blood pressure. The Appellant did not know, but confirmed that he had had numerous blood tests in hospital in the course of investigating his abdominal problems. He confirmed he was not told of any abnormality on standard blood tests. The Tribunal concludes that if he had had sufficient damage from radiation to produce hypertension, such damage would have almost certainly have been detected by standard blood tests. Furthermore, the Appellant gave evidence that he has since been started on a diuretic tablet (as treatment for his hypertension). Kidney damage is a contraindication to such medication. Although the Tribunal did not have access to the results of these blood tests, it inferred from the fact that the Appellant had been started on a diuretic by his doctor, that his doctor was satisfied the Appellant did not have kidney damage.

61. The Tribunal elicited from the Appellant that shortly after the detonations he did not experience any major or severe symptoms of injury, only mild diarrhoea. The absence of such symptoms is a further factor consistent with the conclusion on the balance of probabilities that the Appellant was not exposed to amounts of ionising radiation sufficient to cause him injury.

**Interim Conclusions injuries and disablements**

62. The Appellant has not persuaded the Tribunal he has suffered or suffers from

    a. genetic damage
    b. infertility or sterility

63. There is no medical or scientific evidence which supports a conclusion the Appellant suffers from either condition or did so suffer previously. The report of the infertility test in 1964 is not satisfactory evidence or reliable evidence from which a conclusion can be drawn. There is no evidence that he has or has suffered from a similar condition which might be labelled differently.

64. The Tribunal does not carry forward into an overall evaluation of the possibilities these conditions because the Appellant has not got over the first hurdle of establishing that he has suffered from these conditions.

65. The Appellant's complaint that he has not had access to a FISH test or other test for chromosomal abnormalities does not assist him in establishing genetic damage. A test carried out so long after the exposure would be of hardly any evidential value in establishing such damage or the effects of exposure to radiation in 1958.

**Radiogenicity – are any of the claimed conditions capable of being caused by exposure to radiation**

66. As the Tribunal explained to the Appellant, the next issue is whether, as a matter of medical or scientific learning, the injuries or conditions that he claims have been due to radiation, could be caused by exposure to radiation, namely

    i. Internal damage due to radiation
    ii. Diverticulitis (or diverticulosis)
    iii. High blood pressure (hypertension)
    iv. Loss of teeth

67. This issue is not subject to the same standard of proof as the issue whether the Appellant suffered from the conditions claimed. The test is whether there is a reasonable doubt based upon reliable evidence. The Blake judgment at paragraph 33 paraphrased the principles set out by *Abdale* as follows:

    a. "Is there plausible evidence, scientific or otherwise, that might found a possibility or certainty on which the overall evaluation is to be based?
    b. Taking into account all plausible evidence, has the appellant satisfied us there is a reasonable possibility of a causal link between the military service and the medical condition claimed in his case? If so a reasonable doubt will exist."

68. In this part of its reasons the Tribunal reaches provisional conclusions about this issue. Even where it finds there is no plausible evidence of a reasonable possibility that needs to be carried forward to the overall evaluation. The Tribunal later goes on to assume that its findings on this issue are not correct for the purpose of considering the overall evaluation later in these reasons.

69. The Medical Appendix at pages [11-12] provides a summary of Diverticular Disease (including diverticulosis and diverticulitis). Exposure to radiation is not a recognised cause of that disease, according to that summary, which was prepared in 2001. The disease was first diagnosed in the Appellant 1988, long after exposure on Christmas Island. The Appellant recalls that he complained of stomach problems within a year or so of service on Christmas Island and was investigated for this in 1960 at the Royal Air Force hospital: see paragraph 27 of his June statement. None of this is supported by any of the armed forces medical examination reports available to the Tribunal but the Tribunal does not exclude this as a possibility at this stage.

70. In the Appellant's favour is the fact that the Veterans UK have accepted that he did suffer abdominal pains in the period 1958/1960 and that there was a reasonable doubt based upon reliable evidence that that injury was due to exposure to radiation whilst on Christmas Island: see the notification of the Decision in the letter of 20 September 2011 [59-60]. Whilst there is no clear medical support for the conclusion that Diverticular disease can be caused by radiation, it cannot be excluded from consideration at this stage in view of the Decision.

**High Blood pressure and radiogenicity**

71. The Medical Appendix at [15 reverse, [16], and [16 reverse] provides a conventional understanding of the causes and features of hypertension (essential and secondary) which was diagnosed in 1996 after 17 years' work in the Prison Service. Exposure to Radiation is not a recognised cause of that condition according to that summary, which was prepared in 2001. No scientific or medical evidence was adduced which might support a link between the claimed (or any) exposure to radiation and this condition. There is no plausible evidence of a link. The Tribunal's provisional view is this condition should not be carried forward into the Tribunal's overall evaluation. This part of its decision was made on the evidence available in the Appellant's case and without regard to any other decisions. However, in passing the Tribunal notes that the same conclusion was reached about essential hypertension in the war pension claim of Trevor Butler also exposed to radiation in Christmas Island in 1958 considered in the Blake judgment, to whom the Appellant makes comparison.

**Loss of teeth and radiogenicity**

72. The Medical Appendix at [13] [14] provides a summary of the conventional explanations for dental abscesses including caries, gingivitis and periodontitis. Exposure to radiation is not a recognised cause of such an abscess. If radiation had been the cause, damage to other surrounding structures would have been

expected. None are noted in the medical examination reports after 1958. The Appellant's account of circumstances leading to removal of his teeth in 1964/1965 is based upon his unsupported recollection. The Tribunal is compelled to assess the reliability of the Appellant's recollection, in the absence of any contemporaneous evidence relating to loss of teeth. The Tribunal found the Appellant to be a witness who was convinced that the Ministry of Defence and other government bodies had supressed documents which might show that he and other nuclear veterans had been unlawfully exposed to high levels radiation during the tests and had taken unlawful steps to suppress the results of tests. It is not the Tribunal's task to determine the accuracy or otherwise of his beliefs. However, the Tribunal formed the impression that his belief had affected his memory and his approach to past events. That said, the Appellant suffered from the disadvantage of arguing his own case and giving evidence. A strong belief in the truth of a case is not necessarily an indication of an unreliable witness. The Tribunal's view is that this aspect of the Appellant's claim has (only) just overcome the hurdle of showing it is a reasonable possibility that should be carried forward to the overall evaluation.

73. The Tribunal takes into account the part of the Veterans UK December 2017 policy statement which addresses "Evidence of radiation of induction of non-cancer conditions [247] reverse and [248] (paragraphs 63-64) and the comments of Dr Braidwood at paragraph 4 of page [260] where she asserts that Veterans UK does not accept that any of the conditions relied upon by the Appellant are radiogenic. The Tribunal does not find that the research and policy statement is a convincing or satisfactory analysis. It appears to come close to the proposition that there are no studies which support the existence of the Appellant's conditions being radiogenic, therefore the conditions cannot be radiogenic. The Tribunal is unimpressed by that line of logic in the context of the test required by article 4|1.

**Events on Christmas Island in 1958 and dosimetry**

74. The Appellant's evidence about this issue took up much of the time at the hearing and he was keen to provide his recollection. Fortunately, his oral evidence was reflected the June statement, although much of that statement and the annexes required clarification.

75. As the Tribunal explained to the Appellant before the substantive hearing commenced, the difficulty he faced with his evidence about events at Christmas Island is that most if not all of events about which he sought to give evidence (and in particular about the effect of dose of radiation causing adverse health consequences) were considered by the Blake judgment, the findings of which bound this Tribunal, so far as they relate to facts, because of the ruling of the

Chambers President referred to earlier. Accordingly, although much of the Appellant's evidence is summarised below, that is done for the purpose of considering the extent to which the findings of the Blake Tribunal are binding.

76. The Appellant's evidence is he was a Sapper with 61 Field Squadron, 38 Corps Engineer Regiment and was required to work before and after the detonation of atomic bombs PENNANT on the 22 August, and BURGEE on the 23 September 1958. The Appellant recalled that his accommodation was at 'B' site (Page [202 reverse]) and less than three miles from what he described as Ground Zero. (GZ). The Appellant referred to the photograph at page [222] as what he said was a photograph of the tents in "B" site blown over after each of the detonations. The provenance and date of that photograph were not in evidence and the Tribunal was far from satisfied as to the status or significance of that photograph as evidence of what occurred in 1958. It was fanciful to suggest that photograph was reliable evidence of what occurred without an explanation of how when and where it was taken.

77. The copy of [202] Reverse which accompanied the June statement contained a legible version of the Appellant's sketch which indicated according to the annotation that Ground Zero was at the point marked "BW site" on the sketch plan. The Appellant confirmed (upon enquiry by the Tribunal) that the annotations on the [202R] had been inserted by him and were not part of the "original" sketch plan, a similar version of which was in evidence before the Blake judgement.

78. The Appellant's evidence at the hearing was that he was part of Special Group H and served with the same group as Trevor Butler, one of the lead claimants in the Blake Judgement. According to the Appellant, Trevor Butler was given different duties. Like Trevor Butler, the Appellant lived at B site. According to the Appellant he was at "A" site which he described as the "muster point" when all 4 detonations took place. The Appellant interprets "A site" as being 13 km away from ground zero in relation to the Pennant and Burgee detonations. This accords with the information provided in the AWRE letter of 28th July 2011 at [43]. According to the Appellant, "A" site was a wide open space and he and others sat there in the wide open space with their backs to the detonation. The Tribunal has reservations about the accuracy of the Appellant's recollection of these issues, which is addressed elsewhere in these Reasons for example in paragraph 72 above.

79. Like Trevor Butler, the Appellant says he wore his normal working clothes (long trousers, short sleeves) and drove a Bedford tipper truck.

80. One of the Appellant's duties as a carpenter, according to his evidence at the hearing, was to shore up the roof of bunker similar to that on page [207]: see

paragraph 5 of the June statement as well. After enquiry by the Tribunal it emerged that the photograph of the bunker at page [207] and [207R] was taken in the last 5 years or so, and the individual in the photograph was unconnected to this appeal. The Tribunal found this photograph of very little assistance in determining the nature of the Appellant's duties in 1958 because of its relatively recent date.

81. The Appellant's oral evidence and that in the June statement is that he was issued with a radiation film badge and a QFE Dosimeter and instructed to work for a maximum of two hours only should the radiation level go up to 7r/h. The Appellant's evidence is that he believes that the QFE dosimeters issued to him were only designed to read up to a maximum of 5r/h. The Appellant's belief was unsupported by any contemporaneous evidence.

82. The Appellant said that after 2 hours after each of the Pennant and Burgee blasts he went into the main area (ground zero) and spent some 2.5 hours there each time collecting "all radioactive debris scattered around the area". In his evidence he estimated some 4-5 pounds of debris was loaded on to the tipper truck by him on his own.

83. The Appellant's contention in paragraph 6 of June statement is that as he worked at GZ for 2½ hours after each detonation, this totals 5 hours' exposure and a minimum radiation exposure dose of 25 r/ or 250 mSv.

84. The Appellant criticised all the readings recited in letter from the Ministry of Defence of 13th March 2008 starting at [203] in paragraph 13 of the June statement. Part of that letter says (page [204], paragraph 3, 3rd line down) "the maximum reading at ground zero at 1.5 hours after the burst from PENNANT and BURGEE were 1r/h and 1.6 respectively". The Appellant says this is "untrue" as his view is the documents at pages [210] (reverse) and [211], show the radiation readings 'inside' the bunker at GZ, 1½ hours after the detonation of both PENNANT and Bungee were 1.52r/h and 1.87r/h respectively. These readings were logged by Major McDougall who was attached to the AWRE. The Appellant says "It depends on the position of the instruments within the bunker as to the levels of radiation recorded."

85. There are multiple issues which arise from the Appellant's contention which mean the Tribunal is unable to accept the Appellant's evidence as a reliable or accurate account of events at the time of the relevant detonations. The first and most fundamental one is that issues of dosimetry (the maximum dose to which the Appellant and other servicemen were exposed) were dealt with by the Blake judgement. The Tribunal returns to this issue below. A second fundamental issue is that the Ministry of Defence have said as long ago now as 9th May 2012 in their

letter at [213] (reverse) that they believe the Appellant has misread and misinterpreted the figures and the graph at [212 and 212R] available by a large factor (perhaps of 1000 or 100) – they are millirads not rads per hour.

86. A third problem is that the Appellant relies upon copies of documents to support his readings at [210 (reverse)] and [211] which contain his own annotations, such as the addition of figure such as "1.42 and ASSESSED" on page [210R". Similar annotations are found on pages [211] 211R, 210, 209R]. The fact of these annotations only emerged during the course of the Tribunal's enquiries of the Appellant. The Appellant's omission to make clear which parts of the documents he relied upon were his own creation, meant the Tribunal did not have confidence in the completeness or accuracy of the documents produced by the Appellant.

87. Fourthly, the Appellant acknowledged that he has no qualifications or expertise in dosimetry or radiation.

88. Fifthly, the documents produced at this part of the Response were incomplete and the Appellant sought to introduce further documents into the hearing whilst they were considered, despite the extensive opportunities given to him earlier in the proceedings and even earlier in the same hearing. The Tribunal had not been presented with a complete "run" of the relevant documents relied upon or any reliable evidence of their provenance or which parts of them were true copies of originals.

89. The Appellant also gave evidence that when he delivered the radioactive waste to the decontamination centre he parked his vehicle in the reserved bay and, and on entering the decontamination tent, saw an AWRE Employee dressed in full protective clothing and wearing a respirator who, "jumped into my vehicle and drove it away to empty it". This was his evidence at the hearing and in paragraph 24 of his June statement. His evidence was clearly affected by his belief (which may be justified) that he was not provided with the radiation protection measures that were provided to others. The Appellant's belief about this and other allegations of misconduct on the part of the Ministry of Defence made by him, meant that his ability to give a balanced picture of events had been diminished.

90. The Appellant contends that his blood tests taken after exposure are missing. If it is relevant, the Tribunal is unable to accept that the Ministry of Defence is or has deliberately concealed or suppressed that evidence, *on the evidence put before the Tribunal*

and GZ detonations). He concluded that the likely mechanism for such a high level of deposition would be rainfall shortly after each detonation.

96. In paragraphs 324-325 of the Blake judgment it is recorded Mr Hallard calculated the maximum possible exposure for external exposure and internal exposure.

97. That was considered in more detail in paragraphs 326 to 329. Of particular significance is the Blake judgment's consideration of Trevor Butler at paragraphs 329 – 330 as he (Mr Butler) was the only one of the veterans in that case to have enter the controlled zone. In many respects he was comparable to the Appellant in his duties and levels of possible exposure.

98. Mr Hallard's evidence was tested in cross examination summarised in paragraphs 335- 339 of the Blake judgment.

99. The assessment of estimated total exposure was then converted into mSv: see paragraph 347 of the Blake judgment.

100. The Blake judgment then considered the overall possibilities arising from Mr Hallard's evidence: see paragraphs 353 - 355.

101. The Blake judgment also expressly took into accounts studies of New Zealand veterans: see paragraphs 356 - 397 (among others), some of which the Appellant relies upon in his June statement and other written submissions.

**The role of dosimetry**

102. This Tribunal is bound by the following finding of the Blake Tribunal at paragraph 635:

> "..... the existence of reasonable doubt must depend on whether any of the veterans was exposed to a dose of radiation at all and if they might have been whether such exposure was at an intensity that science suggests might cause a risk to health of the kind of condition that forms the basis of the claim. We are, therefore, sure first that dosimetry is and remains an essential element of the process of assessment of risk to health, and second that it is the possibility of the particular health condition being caused by exposure to the dose assessed is the focus of the particular appeal"

103. Even if that was not a finding that this Tribunal was required to adopt by virtue of the rule 18 direction, this Tribunal accepts that finding as an inescapable part of

the detailed and meticulous examination of the expert evidence available, which has not been available to this Tribunal. The Appellant had no effective answer to the conclusions reached by the Blake judgement on this issue and other issues.

104. We return to the Blake judgment later at the overall evaluation stage.

**The request for witness summons to call Mr Cockerill of AWRE**

105. It in this context that the Appellant wishes to call Mr R Cockerill the author of AWRE letters dated 29th July 2011 at [42-43], 25th April 2004 [44-45], and 9th June 2004 [46]. Much of what Mr Cockerill says in the letter of 29th July 2011 is not in issue insofar as it describes the Appellant's duties on Christmas Island. Mr Cockerill does not challenge the Appellant's description of his duties. The request would have some significance if the Tribunal were to place reliance upon Mr Cockerill's evidence about the total effective dose. However, this issue has been overtaken by the evidence about dosimetry recorded in the Blake judgement.

106. The Tribunal takes a similar view about the Appellant's request to view a film or consider evidence about New Zealand servicemen. All of this material was considered in the proceedings leading to the Blake judgement.

107. The Tribunal has taken into account the Appellant's contentions that documents have not been disclosed and/or further documents could be discovered if Mr Cockerill gives evidence. As the Appellant recalled because he was present at some of the hearings, the *Abdale* judgement was preceded by extensive debates and hearings concerning disclosure, including a hearing at the Upper Tribunal. This Tribunal is unconvinced that further relevant documents would come to light if Mr Cockerill were to be called to give evidence.

**Overall evaluation**

108. We now come to stage (v) as described by Mr Justice Charles at paragraph 103(v) of the *Abdale* decision:

> "'in the light of all the evidenced and argument and so, on an overview or assessment in the round, evaluate the claimant's case to determine whether he has or has not satisfied the article 41(5) test…..
> It is at stage (v) that the decision maker will form views that can be expressed by reference to the circumstances of the given case on whether the possibilities (and effective certainties) relied on by the claimant found a reasonable doubt. ….At that stage it may be that the decision will be that the combined effects of the possibilities carried

forward do nor found a reasonable doubt because for example the combination of those possibilities is too far-fetched."

**The Appellant's written and oral evidence**

109. The Tribunal had real concerns about the accuracy of much of the Appellant's evidence so many years after the events complained of, insofar as it was not corroborated by contemporaneous documents. The Tribunal was particularly concerned about the Appellant's apparent confidence about his recollection of locations and timings on Christmas Island and his recollection of the state of his health as it appeared to be inconsistent with the surviving contemporaneous records. He has clearly spent much time reading other reports and literature about Christmas Island and his recollection has inevitably been affected by that, his sense of grievance and his belief that the government were guilty of breaches of international law and other misconduct.

110. The issue of a maximum exposure has effectively been addressed by the Blake judgement and there is no real or sensible distinction between him and Trevor Butler for the purposes of dosimetry.

111. The Tribunal is unpersuaded that there is a reasonable doubt that the Appellant suffered any of the claimed injuries which are in issue in this appeal because of the level of exposure to radiation on Christmas Island. In particular, taking into account all of the evidence (not just the medical evidence), there is no realistic or plausible connection between the loss of his teeth, hypertension, and diverticular disease. There is no evidence of internal injury or other evidence of injury by radiation exposure. Had such injury been sustained the Appellant would have developed significant symptoms at a much earlier stage.

**Coda**

112. The Tribunal cannot leave this judgment without remarking that this Response in this case has been one of the most disorganised and illogically compiled the Tribunal Judge has considered for many years. This level of disorganisation lengthened the hearing time preparation and inhibited the understanding of litigant in person. It is a poor reflection on Veterans UK who are responsible for compiling the Response and inhibits the efficient administration of justice in these appeals.

Signed) Mr H Lederman
Judge of the First-tier Tribunal
12th August 2018

Notes. 1. If this decision is given without full written reasons, either party may apply in writing to the Tribunal office for a written statement of reasons within 42 days of the date on which this decision is issued. You should apply for a written statement of full reasons if you wish to appeal against the tribunal's decision.

2. If you wish to appeal, you must apply in writing to the Tribunal office for permission to appeal within 42 days of the date on which you are sent full written reasons for the decision (i.e. the date on which this decision is issued if it contains full written reasons). Details on how to apply for permission to appeal are given in the accompanying leaflet.

Decision issued to the parties on..... 16 AUG 2018